



# **NBN Co submission: Proposed amendments to Part 20A of the Telecommunications Act 1997**

**September 2020**



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## Introduction

NBN Co Limited (**nbn**) welcomes the opportunity to provide a submission to the Australian Government's Consultation Draft of Proposed amendments to Part 20A of the *Telecommunications Act 1997* (September 2020). Set out below is **nbn**'s perspective on the Government's options for reducing instances where a small number of premises are built either without the necessary infrastructure to provision fixed-line telecommunications services or infrastructure that is not fit for purpose. This submission also provides more context on the issue, as well as **nbn**'s position on each of the options outlined in the Regulatory Impact Statement (RIS) and a proposed additional inclusion for the Telecommunications Act.

## Context

The Government's Telecommunications in New Developments (TiND) policy prescribes both carriers' and developers' responsibilities regarding the provision of telecommunications in new developments. The telecommunications market for new developments is competitive in Australia, meaning developers are able to choose a telecommunications carrier that best meets their needs. If that carrier is **nbn**, the developer or builder must apply to **nbn** to provision a telecommunications service. A key objective of the TiND policy is to ensure that people moving into new developments are provided with ready access to modern telecommunications, both voice and broadband. The TiND policy also outlines **nbn**'s responsibility as the default infrastructure provider in Australia, meaning **nbn** is obliged to service new developments with broadband infrastructure upon reasonable request. For the most part this takes place without difficulty, and developers and builders apply to **nbn** and construct infrastructure that is fit for purpose. However, there are instances where developers, typically those smaller in size and unfamiliar with the process, fail to apply to **nbn**, apply late to **nbn** or provide infrastructure that is not fit for purpose, which requires retrofitting.

Each of the above circumstances has negative impacts on the end user, the developer and **nbn** through increased build complexity, higher deployment costs and overall delays to the development and end user getting connected. Though these examples represent a small portion of **nbn**'s total application pipeline, the impact on end users without an internet connection in their new home or business can be significant. Additionally, with more Australians than ever before working from home this adverse impact is of growing significance, making it essential that high quality broadband is provided from the first day of occupation of new premises.



### Summary of nbn's position on proposed Options in RIS

Option	Description	nbn's position
1.	<i>Do nothing</i>	Do not support
2.	<i>Raise awareness within the developer and buyer community</i>	Support
3.	<i>Liaison with state, territory and local governments</i>	Support
4.	<i>Legislation to require unincorporated developers to provide pit and pipe</i>	Support
5.	<i>Legislation to require disclosure</i>	Do not support
6.	<i>Legislation to provide a compensation mechanism</i>	Do not support
7.	<i>Legislation to require the installation of networks</i>	Support (preferred)

nbn has the following commentary on each of the seven options proposed in the RIS.

#### **Option 1 – Do nothing**

The problem has been articulated in the Government's RIS and further outlined in nbn's submission. Doing nothing is likely to result in negative outcomes for nbn, developers and end users.

nbn does not support this option.

#### **Option 2 – Raise awareness within the developer and buyer community**

nbn has in general observed that developers and builders who are unfamiliar with telecommunications processes are typically smaller, less experienced developers who don't belong to a particular group or association. This can make it more challenging to target messaging to this set of developers. However, nbn has found that usually one of the consistent points of contact for smaller developers is their local council. nbn has met with local councils across Australia to inform and upskill council officers on telecommunications requirements for development proposals. nbn believes there would be merit in the Department of Infrastructure, Transport, Regional Development and Communications (the Department) also engaging with councils and providing targeted communications to developers/builders about their obligations under the TiND policy and the *Telecommunications Act 1997* with respect to new developments.

nbn supports this option.

#### **Option 3 – Liaison with state, territory and local governments**

The Government has outlined an option to continue to encourage state, territory and local governments without requirements for developers to install fibre-ready facilities to amend their planning requirements. nbn supports this option, with the following context and suggestions.

One of the most effective options to ensure telecommunications are provisioned correctly as part of the development process is to include requirements in the development approvals system. These requirements vary depending on which state or territory you are in and in some states, vary depending on which council area you



are in. National consistency would be preferable, but unlikely achievable given the intricacies of different planning jurisdictions. The most effective model is one that requires developers to contract with a carrier and have a confirmation mechanism that provides the planning authority with some certainty that the infrastructure has been built to a carriers' standard. Both New South Wales and Victoria have models that work under a similar principle. However, there are still instances where developers and council officers can misinterpret the intention of the planning controls. Additionally, while some states have requirements to install telecommunications infrastructure, it is sometimes the case that developers do not build the infrastructure to the carriers' standard. This results in infrastructure being built, which then requires remediation work before installation of the telecommunications network can take place, which can result in delays to all parties. Lastly, there are also some states with no requirement. These jurisdictions should be the priority for the Department's engagement efforts on encouraging changes to their planning requirements. **nbn** also suggests the Government continues to encourage all jurisdictions to review their planning controls for telecommunications infrastructure. This will help ensure that best practice controls are in place and their interpretation is well understood by planning authorities.

**nbn** supports this option.

#### **Option 4 – Legislation to require unincorporated developers to provide pit and pipe**

**nbn** supports the option of expanding the existing requirements to install fibre ready facilities to unincorporated developers. However, the effectiveness of this option as a stand-alone option is constrained. As referred to earlier, development approval systems are controlled at a state and local level. When development planners are making their assessment to approve a new development, they make their assessment based on the planning controls applicable to the respective site. There is no requirement as part of the development assessment process to consider the *Telecommunications Act 1997* requirements in relation to pit and pipe. If the respective state or local planning controls have a pit and pipe requirement, the development planner must make an assessment that includes pit and pipe infrastructure. Further, because enforcement of the pit and pipe requirements under the *Telecommunications Act 1997* are administered by the Australian Communications and Media Authority (ACMA), the ACMA must be resourced to enforce any breaches of requirements on a consistent and ongoing basis.

There are two gaps that exist in the current legislation that should be addressed for a more effective solution:

1. That a 'fit for purpose' requirement is included in the legislation. The draft legislation has included this provision described as 'functional fibre ready facilities'. **nbn** supports this inclusion as currently there is no requirement that the infrastructure installed must meet a certain standard. The technical specification of the fibre ready facility can differ between network infrastructure carriers so an industry standard would need to be provided. An appropriate option would be the Comms Alliance Guideline: G645:2017, the status of which would need to be upgraded from a 'guideline' to a 'standard' to help ensure its use is mandatory.
2. Changing the definition of 'fibre ready facilities' to include the 'pathways and spaces' that are required in apartment buildings to reticulate fibre to each apartment. Without this definition, developers are only required to install pit and pipe. Meaning if a developer only built to the minimum requirement outlined by legislation, a carrier would be unable to readily connect fibre to each apartment. While most developers install pathways and spaces, there are instances where this does not happen.



To date, the current legislation has been somewhat effective at encouraging state and local planning authorities to update their planning controls to include contemporary telecommunications requirements. This was the case after the inception of the initial fibre ready facilities requirements. However, not all jurisdictions have updated their planning controls. Some jurisdictions have indicated that as the federal requirements do not apply to all developers, their state and local requirements shouldn't go further than the federal legislation.

By further expanding the federal requirements to all developers, state and local governments will have more justification to implement change that reflects federal requirements. **nbn** support expanding the requirements to include all developers, as well as including a fit for purpose requirement and changing the definition to include 'pathways and spaces' in the fibre ready facilities definition.

**nbn** supports this option

#### **Option 5 – Legislation to require disclosure**

Option 5 requires developers to disclose whether they have installed fibre ready facilities. In order to do this, developers will have to demonstrate that the fibre ready facilities are installed and to the carriers' standard. As part of this option a suitably qualified person would have to make that declaration. This can present some risk if the disclosure is made independently from a contract with an infrastructure carrier. There is no current register of suitably qualified persons for fibre ready facilities, and issues can still arise if a declaration is made and the infrastructure carrier later deems it to be defective and not functional. While **nbn** believes that this option may yield more transparency for the buyer/occupier, it does not solve the problem. The RIS's assertion that an occupant may either choose to not buy the property or negotiate a lower price does not solve the problem either. As this will not happen as part of the development process, installation is likely to be very disruptive for future occupiers who may be without a service for some time and potentially with visually unappealing installation results. **nbn** does not support this option as it does not think it will be overly effective in changing developer behaviour.

**nbn** does not support this option.

#### **Option 6 – Legislation to provide a compensation mechanism**

Overall **nbn** does not support this option as it places the onus on the occupier to seek out compensation, rather than incentivising the developer to do the right thing. This could also involve a long, drawn out process of limited effect at addressing the problem as outlined in the RIS. **nbn** believes a combination of other options are likely to provide better solutions.

**nbn** does not support this option.

#### **Option 7 – Legislation to require the installation of networks**

**nbn** is supportive of this option. This is the most complete option that mirrors effective state and local planning requirements. It allows for fibre ready facilities specification to be coupled with agreement to provide connections. This means an infrastructure carrier can confirm infrastructure has been built to the carrier's standard and is indeed fit for purpose. It also means the developer has contracted with a carrier, rather than just



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being required to provide the infrastructure. This option also allows for the specification of the other requirements such as pathways and spaces for apartments, space and environment for far end devices, and internal conduit within building units. The RIS states that there would be a substantial cost for developers who are failing to install infrastructure. **nbn** believes – as outlined in government policy – that developers should contribute to the cost to telecommunications infrastructure. **nbn** also believes if this option is pursued it could lead to further improvements in state and local planning controls. It is assumed that if option 7 is selected by the Government, it would supersede option 4.

Option 7 is **nbn**'s preferred option.

### **Conclusion**

**nbn** notes the options the Government has proposed to help ensure occupants of new developments receive timely access to high quality telecommunications services. **nbn** has supported a combination of options which it considers can address the issue. **nbn** supports options 2, 3, 4 and 7 however **nbn** notes that if option 7 is selected, option 4 would be superseded. Accordingly, the suggestions that have been made in respect of **nbn**'s response to option 4 should be incorporated into drafting of option 7.

Option 7 is **nbn**'s preferred approach. **nbn** also suggests further consultation with carriers as progress is made with the options, including on the drafting of the legislation to ensure the intent of the proposed amendments is achieved.