

25 September 2020

Director
USG Implementation
USG Taskforce
Department of Infrastructure, Transport, Regional Development and Communications

By email: New.developments@communications.gov.au

Dear Director

Options for boosting pit and pipe in new developments

I welcome the opportunity to comment on the Department's proposal to amend Part 20A of the *Telecommunications Act 1997* (Telco Act) to boost the installation of pit and pipe infrastructure in new developments by unincorporated developers.

It is pleasing to see some of the proposed options are consistent with feedback from my office's previous submissions to the review of the Telecommunications in New Developments policy.¹

My observations on the options proposed in the Regulation Impact Statement are set out below. I support the adoption of option 4, together with options 3 and 2.

Legislate to require unincorporated developers to provide pit and pipe infrastructure in new developments (Option 4)

I support the adoption of option 4. Under this option, Part 20A of the Telco Act would be amended to require unincorporated developers to install pit and pipe infrastructure in a new development, before selling or leasing a building lot or unit.

This legislative change would ensure clarity, certainty, and uniformity across Australia. Currently, local planning laws are inconsistent with each other. In addition, they do not all reflect the requirements of Part 20A of the Telco Act.

Developer obligations that are clearly defined would help my office handle complaints about connection delays in new developments, where this is caused by a lack of pit and pipe infrastructure.

Encourage all states, territories, and local governments to amend their planning laws (Option 3)

I support the adoption of option 3, if implemented together with option 4. In addition to amending Part 20A of the Telco Act, the Department could consider continuing its efforts to encourage state, territory, and local governments to amend their laws.

If all state, territory, and local government planning laws reflected the requirements of option 4, building plans submitted by developers without pit and pipe infrastructure would not be approved. Preventing a new development from being built without the necessary infrastructure would be beneficial to prospective purchasers and tenants. This would mean they would not need to retrospectively remediate or instal any pit and pipe infrastructure after purchasing or leasing a

¹ [TIO Submission to the Department of Communications and the Arts – Review of the 2015 Telecommunications in new developments policy \(January 2020\)](#); [TIO Submission to the Department of Infrastructure, Transport, Regional Development and Communications – Consultation on proposed new Telecommunications in New Developments Policy \(June 2020\)](#).

property. It would also make connections more straightforward for retail service providers, by, for example, avoiding the need to provide interim services to their customer.

Raise awareness within the developer and buyer community (Option 2)

In addition to adopting options 4 and 3, the Department may also wish to consider implementing option 2.

I support continued efforts to raise the awareness of developers and prospective purchasers of the consequences of not having pit and pipe infrastructure installed in a new development.

The Department estimates in its Regulation Impact Statement, up to approximately 3,000 properties per year are being built without pit and pipe infrastructure or infrastructure that is defective. This suggests levels of awareness among small unincorporated developers could be improved.

While the level of non-compliance may not be high, the impact on those affected can be serious. In complaints received by my office about non-compliance, consumers often experience delays in connecting telecommunication services and are required to arrange costly alternative services in the interim.

Extend the timeframe for disclosure notices under Option 5

If the Department chooses to adopt option 5, it may wish to consider increasing the minimum timeframe in which a developer is required to provide notice. The 48-hours timeframe proposed in the exposure draft bill may not be enough time for a prospective purchaser or tenant to understand and consider the consequences of not having pit and pipe infrastructure installed. Prospective purchasers and tenants should be given adequate time before entering a sale or lease contract as the cost and inconvenience of remediation can be high.

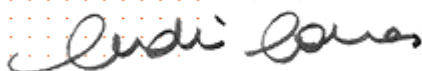
The Department could consider providing guidance on what information should be included in a disclosure notice. For example, a template with standard wording and information about the consequences of not having pit and pipe installed would assist prospective purchasers and tenants.

Property owners and tenants should be able to seek compensation without going to court under Option 6

If there is a dispute about whether a developer has complied with any requirements for the installation of pit and pipe infrastructure, there should be a mechanism for compensation that does not involve formal legal proceedings.

The cost, uncertainty, and time involved in going to court can present a barrier for property owners and tenants seeking redress. The Department may wish to consider clarifying what recourse is available to property owners and tenants, including whether they can make a complaint to an external dispute resolution scheme.

Yours sincerely



Judi Jones

Telecommunications Industry Ombudsman