

## Submission

**6 September 2023**

Department of Infrastructure, Transport, Regional Development, Communications and the Arts  
Via email: [new.developments@infrastructure.gov.au](mailto:new.developments@infrastructure.gov.au)

**Re: Possible amendments to pit and pipe exemption criteria under Part 20A of the  
*Telecommunications Act 1997 (Cth)***

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) for the opportunity to comment on the possible amendments to pit and pipe exemption criteria under Part 20A of the *Telecommunications Act 1997 (Cth)* (**the Draft Instrument**).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

ACCAN supports, in part, the proposed changes, and we further recommend that the Department:

- Ensure reasonable consideration is given to the long-term use of a site.
- Consider how a development may become a growth area in the future.
- Promote community safety through supporting adequate infrastructure in locations at risk of natural disasters.
- Ensure that commercial processes are not relied upon to determine the ownership of pit and pipe.

For more detailed feedback on specific questions regarding the Draft Instrument, see **Appendix A** below.

We thank the Department for the opportunity to comment on the Draft Instrument. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at [amelia.radke@accan.org.au](mailto:amelia.radke@accan.org.au).

Yours sincerely,

Dr Amelia Radke  
Senior Policy Adviser

## Appendix A: Further responses on the Draft Instrument

### Question 1: Should the possible changes be adopted in full, or part, or not?

ACCAN supports, in part, the proposed changes to the Draft Instrument. ACCAN recommends the second and fallback criteria be revised to require that reasonable consideration should be given to the long-term use of the site. Regarding the second criterion:

*...a relevant Statutory Infrastructure Provider (SIP) has provided written notice to the developer that it will not install a fixed-line network inside the project area.*

ACCAN recommends that the criterion be revised to ensure that reasonable consideration has been given to the long-term development trends of the proposed site. We recommend the Department give consideration to how the criterion could be revised to reflect how expected population growth may impact on the need for pit and pipe infrastructure in the foreseeable future, and how this may be reflected when amending the exemption criteria. This will ensure that planned but not announced fixed line infrastructure can be made available for residents in the future at least cost.

In addition, ACCAN does not support the 'fallback' criterion. The criterion provides:

*...where a SIP advises it will not install fixed-line, but the development fails to meet one or more of criteria 3-5 above, and the relevant SIP also refuses to take ownership of pit and pipe.*

ACCAN recommends that any fallback criterion is further defined so that eligible developments for pit and pipe have the appropriate infrastructure in the foreseeable future.

### Question 2: Should alternative proposals that have been rejected (adjacency, growth areas, and minimum number of lots) still be considered?

ACCAN recommends the second criterion should be revised to reflect growth areas, especially in cases where sites currently in the peri-urban fringe are likely to become urbanised in the future.

### Question 3: Are there other exemption criteria that could be considered as well?

ACCAN recommends that any proposed exemption criteria prioritise community safety in areas of high-risk of natural disasters to ensure SIPs are required to build appropriate infrastructure in these locations.

### Question 4: Is 1,000m<sup>2</sup> a reasonable average lot size for exempting developments?

ACCAN considers 1000 square metres or greater a reasonable average lot size for exempting developments.

### Question 5: Should criteria 3, 4 and 5 all need to be met to give rise to an exemption or would it be sufficient for one or two of them to be met to warrant an exemption being available?

ACCAN recommends that criteria 3, 4, and 5 all need to be met to give rise to any exemption, due to these criteria reflecting the urban/suburban character of developments.

**Question 6: Would criteria 1, 2 and 6 discussed above work by themselves as threshold criteria, without the need for criteria 3, 4 and 5?**

ACCAN recommends that all criteria should be met to give rise to any exemption.

**Question 7: Would criterion 6 above give SIPs too much discretion, allowing them to exercise quasi-regulatory functions, and would arrangements for taking ownership of pit and pipe where fixed line infrastructure was not being immediately provided be better left to purely commercial processes?**

Notwithstanding the Department's concern of quasi-regulatory functions, ACCAN does not support a reliance on commercial processes.

ACCAN considers that appropriate public consultation concerning the potential exercise of SIP powers by the Minister of Communications would allow for consideration to be given to the appropriate requirements that must be met by SIPs and their potential economic, commercial and consumer impacts.

ACCAN notes that for NBN Co, further consideration of appropriate arrangements may be undertaken through the Replacement Module Application (**RMA**) process envisioned in the proposed variation to the NBN Special Access Undertaking (**SAU**). ACCAN understands that similar processes are undertaken for electricity distribution networks, via the classification and specification of monopoly standard control services. This may be paralleled as part of the RMA process, which allows for the review of 'core' monopoly NBN services.

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*The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.*

*ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP](#)*

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