



**Australian Government**

# **Telecommunications in new developments policy**

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# 1. Overview

This document sets out the Australian Government’s policy on the provision of telecommunications in new developments. It replaces the Telecommunications Infrastructure in New Developments (TIND) policy that took effect on 1 March 2015. This policy takes effect on 1 July 2020 and applies to the provision of telecommunications infrastructure in all developments, including historic and future developments.

The TIND policy has two key objectives: to provide people moving into new developments with ready access to modern telecommunications, both voice and broadband; and to support a competitive and sustainable market for the provision of such infrastructure, thereby fostering efficiency, innovation and choice.

The TIND policy reflects Australia’s open and competitive telecommunications market in which telecommunications carriers compete to provide infrastructure and services, including in different developments. The policy seeks to promote sustainable outcomes by minimising government intervention and fostering commercial operation in a competitive context.

The policy has been revised in light of changes since the 2015 policy took effect, notably the impending completion of the National Broadband Network (NBN), the evolution of alternative providers’ operations, Telstra’s reduced role in new developments and the forthcoming passage of new statutory infrastructure provider (SIP) legislation.

The policy supplements statutory requirements under Part 20A of the *Telecommunications Act 1997* for the installation of fibre-ready facilities, typically passive infrastructure like pit and pipe, in new developments. In many instances these rules are backed up by complementary requirements under state and territory planning laws.

The Government has decided to continue to address the provision of telecommunications in new developments through this policy rather than additional regulation because the market overall is working well. Most participants in the market have been operating in line with the policy and most outcomes are positive. The number of negative outcomes is limited. In this context a lighter touch approach is warranted. The Government will, however, look at more direct approaches should this change and greater guidance be required.

## 2. Key concepts

### 2.1 What is a development?

Development has a broad meaning under this policy, largely deriving from the statutory definition in Part 20A. The Part 20A obligations apply to real estate development projects which involve making lots available for sale or lease, where building units are expected to be constructed at a later date, as well as the construction of new premises.

A development includes the subdivision and development of land for further sale or lease, for example, as is common in large greenfield broadacre developments in outer urban areas, such as new suburbs or estates, or comparable infill developments in more established brownfield areas. A brownfields area is a location with existing housing and buildings. A development also includes the construction of new premises in greenfield or brownfield areas or the refurbishment of premises.

New developments may vary in size and scope. A new development could be a single lot with a free-standing residential premises built on it (known as a ‘single-dwelling unit’ or SDU), a single lot with more than one SDU on it, or a new apartment block (known as a ‘multi-dwelling unit’ or MDU).

In brownfield areas, a SDU or MDU may be built on a vacant block, existing premises may be knocked down and new SDUs or MDUs built at the same location (known as a 'knock-down rebuild'), or an existing building redeveloped or refurbished (e.g. where a warehouse is converted into apartments).<sup>1</sup>

Developments are covered by the policy regardless of their use. The policy therefore covers residential, business, commercial, industrial, agricultural, mixed or any other types of development.

Developments by owner-builders such as the construction of a new premises on a vacant block, construction of a new premises on a sub-divided block or a knock-down rebuild project, whether it involves one or more premises, are treated as developments under the policy.

While the definition of development under the policy is broad and most rules under the policy apply to all developments, there are some areas where some developments may be treated differently to others. These are identified where this is the case.

## 2.2 Who is a developer?

Just as there are many types of developments, there are many types of developers. Developers may be large corporations, partnerships, families or individuals. The policy applies to all developers, regardless of their nature and whether they are incorporated or unincorporated. Owner-builders are also considered to be developers.

Regardless of their size or nature, all developers have responsibilities to ensure telecommunications are appropriately provided in their new development, just as they do for other utilities like power, water, and sewerage.

Again, while the definition of developer under the policy is broad and most rules under the policy apply to all developers, there are some areas where some developers may be treated differently to others. These are identified where this is the case.

## 2.3 Broadband and voice services on fixed networks

The TIND policy is focussed on the provision of broadband and voice services using fixed infrastructure. This is because the provision of fixed infrastructure is best done as part of the development process, involves more investment and co-ordination and has been historically more challenging. While an increasing amount of telecommunications traffic is now carried by mobile networks, fixed networks still carry the vast majority of internet traffic, for example, streaming videos and large file downloads. Access to voice services over fixed lines is also considered beneficial as a back-up for mobile services and for those consumers not comfortable with mobile technology. The TIND policy does not directly address the provision of mobile services in new developments as these services are typically provided by competing carriers on a commercial basis with minimal government involvement.

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<sup>1</sup> Such 'building redevelopment projects' are also defined in statute (see section 360Y of the *Telecommunications Act 1997*).

## 2.4 Fibre-ready and other telecommunications facilities

The TIND policy seeks to provide people moving into new developments with ready access to modern telecommunications facilities by having developers organise and fund the cost of two main sets of telecommunications infrastructure.

The first set is known as 'fibre-ready facilities'. These are typically passive infrastructure like underground pits and conduits through which telecommunications lines can be fed. In some instances, the facilities may be aboveground (e.g. poles where ducts are not practical).

The second set of infrastructure is the active infrastructure such as cabling (or radio pathways) and associated electronics that connect individual premises to the wider telecommunications network and provide the active services that consumers use.

## 2.5 Carriers and carriage service providers

Passive and active infrastructure are generally provided by telecommunications carriers. These are firms licensed under the *Telecommunications Act 1997* to provide such infrastructure for public use. Rather than provide this infrastructure themselves, developers typically contract a carrier to provide it for them. NBN Co Limited (NBN Co), Telstra, OptiComm and Uniti Wireless (Uniti) are four examples of carriers active in the new developments market.

Developers are free to choose the carrier that services their developments. Most carriers make commercial decisions as to whether to provide infrastructure and services in new developments. However, to ensure services are available, NBN Co is obliged to service new developments with broadband infrastructure upon reasonable request. That is, it is the default infrastructure provider. Fixed line and fixed wireless infrastructure can typically support voice services as well as broadband.

Telecommunications infrastructure is commonly used to provide wholesale services which are then used by competing retail service providers to provide services to their customers. Again, most retail service providers make a commercial decision as to where they will provide services. However, Telstra is obliged to provide a voice service upon reasonable request nationally as part of its universal service obligation (USO).

Telstra will generally provide a voice service where required using NBN Co's infrastructure and wholesale services. Where Telstra does not use NBN Co's infrastructure, it may need to provide its own infrastructure to supply voice services.

## 2.6 Statutory infrastructure providers (SIPs)

To ensure all places in Australia have ready access to modern telecommunications the Australian Parliament has before it new statutory infrastructure provider (SIP) legislation. This legislation creates obligations for NBN Co (as the default SIP for Australia) and for other carriers who roll out networks in new developments.

When a developer contracts a carrier to service its development, the carrier will become the SIP for that development. SIPs are required to connect premises in their service areas to their networks on reasonable request from a retail provider, and supply wholesale services that allow end-users to receive high-speed broadband and (on fixed-line and fixed wireless networks) voice services.

The Minister can make standards, rules and benchmarks that apply to SIPs and SIPs must provide mapping information on their new developments to the Australian Communications and Media Authority (ACMA).

## 3. The policy

### 3.1 Consumer outcomes

People moving into new developments should have ready access to modern telecommunications, specifically broadband and voice services, which are of a high quality. Before they take possession of new premises, they should be able to know that telecommunications services are or will be available to them, who is providing them, the timeframes for delivery, and what costs apply.

Consumers that have particular preferences about the network, and or the retail service provider they use, are encouraged to check which carrier and/or retail service providers are servicing a development before committing to it.

### 3.2 Developer responsibilities

Developers are responsible for organising, and meeting the costs of pit and pipe infrastructure and telecommunications network infrastructure in their developments, so that services are available when people move into premises. This is consistent with their responsibility to organise other infrastructure required to make a premises liveable and consistent with the user pays principle.

More specifically, incorporated developers can face penalties under Part 20A of the *Telecommunications Act 1997* if they seek to sell or lease lots or units in new developments without fibre-ready facilities (e.g. pit and pipe). The Commonwealth will also consider similar laws going forward for unincorporated developers.

Developers are able to undertake or sub-contract aspects of this work themselves, for example, trenching and the installation of pit and pipe. However, only licensed carriers can operate telecommunications networks for public use. As such, developers are encouraged to work with carriers to find the optimal solution for their developments. Given Australia's open and competitive market, developers are free to approach the network provider of their choice. Carriers including NBN Co can provide turnkey packages, including pit and pipe and network infrastructure, if they wish.

Most developers engage a carrier, provide pit and pipe where required, and have a carrier install the network. Developers who do not do this may create additional costs and inconvenience for new occupants, potentially attracting adverse publicity, and face difficulties in selling or leasing premises.

The Communications Alliance has published generic specifications for pit and pipe<sup>2</sup>, and carriers may have pit and pipe specifications of their own they prefer developers to use.

Developers should approach a carrier early so that there is enough time to install network infrastructure before people move into premises. The standard notice period for a developer to apply to NBN Co to install infrastructure is six months (180 calendar days) prior to the development's estimated first occupancy date. Carriers can also specify a minimum period for which pit and pipe should be available prior to the date when infrastructure needs to be ready for service. NBN Co asks for a minimum of four months (120 calendar days) between the provision of pit and pipe and the ready for service date. Other carriers may have other requirements, and this may be an area where carriers compete. Failure by developers to follow a carrier's timeframes can lead to delays and inconvenience for occupants of their developments.

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<sup>2</sup> Guideline G645: *Fibre ready pit and pipe specification for real estate development projects*, available at [www.commsalliance.com.au/Documents/all/guidelines/g645](http://www.commsalliance.com.au/Documents/all/guidelines/g645).

### 3.3 Exemptions from pit and pipe requirements

In rural and remote areas incorporated developers may claim an exemption from the pit and pipe infrastructure requirements under Part 20A of the *Telecommunications Act*<sup>3</sup>. This exemption is specifically targeted at developments where telecommunications would generally be offered by direct buried cable, wireless or satellite service, and do not need pit and pipe infrastructure. Details on claiming an exemption are available from the website of the Department of Infrastructure, Transport, Regional Development and Communications.<sup>4</sup>

It is important to note that an exemption of this type would only exempt a development from the requirement to install pit and pipe infrastructure under Part 20A, and not any other obligation to provide telecommunications infrastructure, for example under state or territory planning laws.

Other exemptions may also be available, for example, where there is existing pit and pipe infrastructure that can be used, infrastructure is to be installed, or where above ground infrastructure is used in connection with optical fibre networks.<sup>5</sup>

### 3.4 SIPs and infrastructure providers

As noted above, developers are free to approach the carrier of their choice. The carrier a developer contracts to roll out networks in a new development will become the SIP for that development, and that SIP will need to connect premises and supply wholesale services so retail providers can supply broadband and voice to consumers at those premises.

As also noted above, outside NBN Co's fixed-line footprint, Telstra may also need to provide infrastructure of its own to provide voice services. Typically a developer would contract Telstra to provide such infrastructure for voice services, and this infrastructure may be additional to infrastructure provided by SIPs for broadband. The basis on which Telstra does this would be a commercial matter for it and the developer.

### 3.5 Access technology

So they can meet their ongoing SIP requirements, carriers should install fixed-line networks in new developments unless this is not reasonable, in which case they should use either fixed wireless or satellite technologies.

Consistent with their ongoing SIP requirements, the technology platform must enable the carrier to supply wholesale services to retail providers that will then allow those retail providers to supply broadband services to end-users with peak download speeds of at least 25 Mbps and peak upload speeds of at least 5 Mbps.

On fixed-line and fixed wireless networks, including NBN Co's, the wholesale services should also allow retail providers to supply end-users with voice services. Measures that prevent them being used in this way will be scrutinised and subject to appropriate action.

Carriers remain free to install networks that offer both higher and lower speeds as well as these specified speeds.

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<sup>3</sup> The formal exemption instrument is at [www.legislation.gov.au/Details/F2016L01871](http://www.legislation.gov.au/Details/F2016L01871).

<sup>4</sup> See [www.communications.gov.au/policy/policy-listing/telecommunications-new-developments](http://www.communications.gov.au/policy/policy-listing/telecommunications-new-developments).

<sup>5</sup> The formal exemption instrument is at [www.legislation.gov.au/Details/F2011L02808](http://www.legislation.gov.au/Details/F2011L02808).

NBN Co is also subject to an additional statutory target that its fixed-line networks be capable of being used by retail providers to supply broadband fixed-line carriage services with peak speeds of at least 50/10 Mbps to 90 per cent of premises serviced by the networks.

### 3.6 Adjacency to NBN Co's long term fixed-line footprint

Where NBN Co is servicing a new development that is outside but adjacent to its long-term fixed-line footprint, it should consider using fixed-line technology. A new development is considered to be adjacent to NBN Co's fixed-line footprint if the development's nearest boundary is 1,000 metres or less from the nearest point of NBN Co's fixed-line footprint boundary.

In all such cases, NBN Co will need to consider whether it is cost effective for it to install fixed-line infrastructure. It must keep records where it decides not to use fixed-line infrastructure, including its reasons for not using such infrastructure, and must make those records available to the Minister on request.

### 3.7 Charging

Like other businesses carriers are entitled to charge developers for the infrastructure and services they provide. Generally the charging arrangements they enter into with developers, including the structure and level, will be a commercial and contractual matter for the parties concerned.

Like other carriers, NBN Co is entitled to charge and is expected to do so, even when acting as the default SIP. The charges NBN Co may charge are set out in Annex A. These charges include a developer contribution per lot or unit to the cost of the network, a developer contribution per lot or unit to backhaul costs, and a retail customer contribution per lot or unit to the cost of the network.

NBN Co may charge below these amounts if warranted by competitive and commercial forces, but it is not able to charge above them; that is, the charges operate as caps. These caps are to protect developers and occupants from costs that might otherwise discourage them from accessing telecommunications.

NBN Co may, however, charge other amounts to provide additional services (such as expedited installation). In this case, NBN Co may charge above the cap.

The charges in Annex A apply to typical development projects providing residential, business and other premises. Consistent with established practice, the provision of telecommunications to one-off major projects like major office complexes, industrial sites, commercial premises, hospitals, airports, hotels or similar, would be subject to commercial negotiations.

The structure and level of charges set by providers other than NBN Co is a commercial matter for them in a competitive marketplace.

Where a carrier other than NBN Co seeks an end-user contribution (possibly referred to as a connection charge) from a retail carriage service provider or a retail customer, it should publish the charge on its website. Carriers should not charge end-users more than the relevant published rate. The maximum end-user contribution charge is set by this policy at \$500. The Government will monitor carrier compliance with these aspects of the policy and will consider further regulation if warranted.

NBN Co must publish information on the treatment of infill developments, where premises have ready access to NBN Co's existing infrastructure. Such developments would include the construction of new premises on vacant land or subdivisions and knock-down rebuilds where owner-builders or others construct one or more premises in established areas. NBN Co's published information must set out the circumstances in which it will require the payment of new development charges in [Annex A](#) as opposed to its usual new connection charges. Other carriers should publish similar information. The

objective of these principles is to ensure it is clear to developers, including owner-builders, when a standard new connection charge is payable as opposed to additional new development charges.

### **3.8 Competitive infrastructure provisioning ('overbuilding')**

Consistent with the evolution of the telecommunications in new development market and the move to a more normal and sustainable market for the future, there will be no special rules relating to the competitive provision of telecommunications infrastructure in new developments or overbuilding of one network by another.

In an open and competitive market like Australia's, where developers are free to choose which carrier they wish to use and carriers are generally free to make commercial decisions, such rules have no merit going forward. To the extent market circumstances dictate an area is most efficiently serviced by one fixed-line network, this should be the outcome of normal commercial forces and does not need to be mandated by Government policy.

Section 3.10 below looks further at residual concerns that NBN Co may take advantage of its Government ownership or position in the market to compete unfairly or to undermine the value of past investments.

### **3.9 Access to NBN Co's backhaul and business to business interface**

Mechanisms exist in the telecommunications sector to provide access to services (such as backhaul). Consistent with normalising operation of the new developments market, the policy gives preference to these mechanisms.

Carriers can seek access to these services on a commercial basis. If NBN Co needs to develop new products, it has a Product Development Forum, through which new products can be sought. If a service cannot be obtained through these means, the ACCC can be asked to look at the issue.

Part 6 of the *Telecommunications Act 1997* also provides mechanisms by which industry can make codes or the ACMA can make standards in relation to industry-wide processes and practices, which could include business-to-business interfaces. It is always open to retail service providers to operate on multiple networks as many do, though ultimately this is their commercial decision.

### **3.10 Competitive safeguards and competitive neutrality**

The Government strongly supports competition in all telecommunications markets and between all providers, including NBN Co and alternative carriers servicing new developments. In the case of telecommunications in new developments, this includes competition for the market, as often the first fixed-line provider in a development may be the only such provider, as well as competition within the market, where it can support multiple providers. However, competition should be fair and subject to the usual competitive safeguards.

To the extent there may be residual concerns that NBN Co may take advantage of its Government ownership or position in the market to compete unfairly or to undermine the value of past investments, NBN Co is required to operate commercially and this places an inherent discipline on any overbuilding decisions, particularly in lower density, residential markets.

Moreover, NBN Co, as a matter of course, is subject to normal competition law requirements, and as a Commonwealth Government Business Enterprise, the Commonwealth Competitive Neutrality Policy<sup>6</sup>. In the event of a breach of the Competitive Neutrality Policy, a complaint can be made to the Australian Government Competitive Neutrality Complaints Office (AGCNCO)<sup>7</sup>.

As an added measure, NBN Co will be required by this policy to keep records of any decisions to build competing infrastructure in new developments, so it can justify them to Shareholder Ministers if they consider there is a need for it to do so, or to the AGCNCO, in the event of a competitive neutrality complaint.

### 3.11 Network and service standards

Telecommunications infrastructure and services in new developments need to meet the reasonable expectations of consumers. Market forces play an important role in this regard as developers who provide high quality telecommunications networks in their developments will be more attractive to buyers or tenants while those offering sub-standard telecommunications are likely to face difficulties in selling or leasing properties. This means consumers need to be well informed. Proposed new consumer safeguards flowing from the Consumer Safeguards Review will be beneficial in this regard, however consumers also need to take responsibility for finding information and using it to make informed choices.

The new SIP legislation will also be beneficial as it will, in effect, set baseline requirements for access technologies and download and upload speeds that will need to be provided in new developments.

The Government has also indicated it will set standards and associated benchmarks applying to SIPs<sup>8</sup>, including providers in new developments. These will provide maximum timeframes for connection and repair of wholesale services, and set out associated appointment keeping arrangements. Further network performance and reliability standards may also be considered over time if warranted by market outcomes.

### 3.12 Awareness-raising and compliance

As noted above, the vast majority of developers have followed past policies on telecommunications in new developments and had high quality telecommunications installed in their projects for the benefit of property buyers and other occupants. The proportion of developers that have not done the right thing is relatively small. To maintain and improve on these outcomes, ongoing awareness-raising of this policy and relevant regulation is essential.

The Government will continue to work with relevant parties, including firms and associations in the development and telecommunications sectors, consumer groups and state, territory and local governments, to maintain and raise awareness among all developers of the need to install appropriate telecommunications infrastructure in new developments. As most developers turn to local planning laws for guidance in the first instance, the Government see ongoing merit in complementary state, territory and local government rules on telecommunications in new developments.

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<sup>6</sup> See <https://treasury.gov.au/publication/commonwealth-competitive-neutrality-policy-statement>.

<sup>7</sup> See [www.pc.gov.au/about/core-functions/competitive-neutrality](http://www.pc.gov.au/about/core-functions/competitive-neutrality).

<sup>8</sup> See [www.communications.gov.au/documents/part-b-reliability-services-consumer-safeguards-review-final-report](http://www.communications.gov.au/documents/part-b-reliability-services-consumer-safeguards-review-final-report).

## 4. Further information

Further information about this policy is available on the website of the Department of Infrastructure, Transport, Regional Development and Communications at [www.communications.gov.au/policy/policy-listing/telecommunications-new-developments](http://www.communications.gov.au/policy/policy-listing/telecommunications-new-developments).

Comments or queries can be directed to the Department of Infrastructure, Transport, Regional Development and Communications at [new.developments@communications.gov.au](mailto:new.developments@communications.gov.au).

## Annex A—NBN Co maximum charges and caps for new developments

NBN Co charge per premises/lot		Paying party
<b>Network</b>		Developer
Deployment contribution per lot/premises (SDU)	\$600	
Deployment contribution per premises (MDU)	\$400	
Wireless/satellite contribution per premises (SDU)	\$1300	
Wireless/satellite contribution per premises (MDU)	\$1100	
<b>Backhaul</b>		
NBN backhaul already available	No charge	
Backhaul costs up to \$1000 per lot/premises	Up to 50% of costs	
Backhaul costs over \$1000 per lot/premises	Up to 100% of costs over \$1000 (in addition to up to 50% of the first \$1000)	
<b>Network</b>		
End-user contribution per premises	\$300	RSP contracted with NBN Co (RSP may pass through to end-user)

The charges in this table are maximum amounts and NBN Co can charge below these amounts for the network infrastructure it provides to new developments. It may charge additional amounts where developers require additional services (such as expedited installation).

The specific definitions of what qualifies as an SDU and what qualifies as an MDU will be a matter for NBN Co in the first instance. Its definitions will need to be consistent with generally accepted industry practice.

In addition to these charges, developers are required to meet the cost of pit and pipe or other fibre-ready facilities required by NBN Co (or any other carriers).