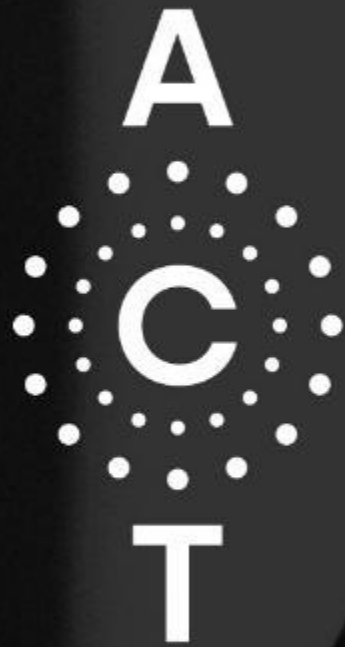


# Draft regulations on Rapid Deployment of Electronic Communications Networks and Facilities



Association of  
Comms & Technology

ICASA Rapid Deployment Public Hearings

**13 July 2026**

# About the Association of Comms and Technology (ACT)

## WHO WE ARE

Registered as a non-profit company in October 2021, ACT provides a unified voice for South Africa's Information, Communication and Technology (ICT) sector, focusing on ecosystem matters vital to the broader economy.

## OUR MISSION

ACT collaborates with stakeholders across the ICT ecosystem to advocate for a thriving communications and telecommunications sector by conducting leading-practice research and analysis to inform a conducive strategic, policy and regulatory environment in South Africa.

## OUR OBJECTIVES

1. Promote an enabling policy, legislative and regulatory operating environment.
2. Contribute to the growth and socio-economic, sustainable development of SA's telecommunication network ecosystem.
3. Foster a culture of collaboration, education, research, development, innovation and technology development.
4. Enable a transformed, inclusive and diverse sector ready for the Fourth Industrial Revolution.
5. Play a strategic role as a collaborative leader in SA's telecommunication network ecosystem.

OUR MEMBERS



# EXECUTIVE SUMMARY

## ACT Welcomes:

- The Draft Regulations are a significant and welcome step toward implementing Chapter 4 of the ECA – particularly the GIS mapping framework, lifecycle management provisions, and the dispute resolution structure.

## The Central Gap

- The Regulations do not address the primary cause of deployment delays: Unregulated, inconsistent and costly municipal wayleave processes. Without this fix, the objective of rapid deployment cannot be achieved.

## ACT's Ask

- ICASA should strengthen the Regulations with binding municipal obligations, deemed-approval mechanisms, cost-based fee caps, a Single Information Point, and alignment with the 2026 Ministerial Policy Direction.

# WHY RAPID DEPLOYMENT MATTERS

## STATUTORY MANDATE:

- Section 4 of the ECA requires ICASA to facilitate rapid infrastructure deployment in the public interest.
- SA Connect (2013) and the ICT Policy White Paper (2016) identify non-uniform permit processes and absent deadlines as principal causes of delay.
- The 2023 and 2026 Policy Directions both direct ICASA to resolve fragmented municipal processes – the primary barrier identified by the Authority's own research

**6-12 month**  
wayleave  
processing in  
some metro  
areas

**R 8K+ tp**  
hundreds of  
thousands in  
wayleave fees  
per site

**1<sup>st</sup> ranked**  
barrier in  
ICASA's own  
Explanatory  
Memorandum

**0 binding**  
municipal  
timelines in the  
Draft  
Regulations

# LEGAL AND POLICY FRAMEWORK

## THE REGULATORY HIERARCHY UNDERPINNING ACT'S SUBMISSION

### STATUTORY FOUNDATION

ECA s 21 – 25 : Section 21(2) mandates ICASA to prescribe binding procedures for permits, approvals and dispute resolution, Section 22 confers ECN licensees the right to enter upon land – civiliter modo

### POLICY DIRECTION

2023 Ministerial Policy Direction: Directed ICASA to develop permit procedures and dispute resolution. Identified inconsistent municipal processes and non-cost based fees as key barriers.

### CONSTITUTIONAL AUTHORITY

City of Tshwane v Link Africa (ConCourt): Section 22 does not require prior landowner consent. Sections 22 and 24 are constitutionally valid – no arbitrary deprivation of property.

### CURRENT POLICY (NOT YET ADDRESSED)

2026 Draft Ministerial Policy Direction: Directs ICASA to standardize municipal by-law processes, create a centralized GIS database with safeguards, and discourage infrastructure duplication.

**ACT CONCERN:** The Draft Regulations make no express reference to the 2026 Draft Policy direction and appear developed solely against the 2023 Policy – creating a risk of regulatory misalignment should the final direction materially differ.

# WHAT ACT SUPPORTS

## Provisions in the Draft Regulations that should be retained and strengthened

### Lifecycle Management

Regulation 5 addresses removal of obsolete infrastructure. The 60 day decommissioning deadline reflects international best practice – but should be extendable for genuine operational constraints.

### Compensation Principles

Regulation 6 provides for good-faith negotiation of compensation (Propose to use last market value within 1 year to avoid speculation). The safe harbour for infrastructure retained as part of registered operational networks is a necessary protection.

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### National GIS Database

Regulation 7's mandatory GIS requirement is a significant step. Technical standards (WGS84/OGC) ensure interoperability. Forward-looking investment data addresses a persistent market failure (not possible for legacy networks). Please note 6 month timeline is unrealistic

### Dispute Resolution

Regulation 8's graduated framework – negotiation, mediation, arbitration – is structurally sound and should be retained but requires enforceable timelines and mandatory escalation – also note that the CCC does not regulate non-licensees.

### Access Procedures

Regulation 4 establishes a framework for entry and consultation with landowners and authorities, providing a necessary procedural baseline for ECNS licensees.

### Standardised GIS Specs

Prescription of WGS84/EPSSG: 4326 coordinate reference systems and OGC compliant vector polygon data and aligns with ITU guidelines to ensure technical interoperability. There is currently multiple standards (i.e. Minister of Land Reform and Rural development has promulgated Spatial Information Standards to apply to municipalities (GG. 54744, 26 May 2026).



# ACT SUBMISSION CONTENTS

How ACT's submission on the Draft Rapid Deployment Regulations is structured

## 01 THE CORE CHALLENGE

- The Principal Bottleneck: Municipal Wayleaves
- Current vs Proposed Wayleave Process

## 02 STRENGTHENING THE FRAMEWORK

- Cost-Based Wayleave Fees
- Procedural Certainty: Consultation Timelines
- GIS Database: Governance and Security

## 03 KEY REGULATORY GAPS

- Dispute Resolution: Gaps and Fixes
- Infrastructure Sharing: A Structural Gap
- Penalty Provisions: Proportionality and Legal Validity

## 04 BENCHMARKS, REFORMS & CLOSE

- International Best Practice
- Drafting Concerns and Regulatory Alignment
- The Five Reforms That Will Make Rapid Deployment Work
- ACT's Conclusion and Request
- Q&A

# THE PRINCIPAL BOTTLENECK: MUNICIPAL WAYLEAVES

The Draft Regulations impose NO binding turnaround times on municipalities and include NO deemed-approval mechanism — leaving the primary systemic barrier to broadband deployment entirely unaddressed.

## ICASA's Own Explanatory Memorandum

- “Inconsistent and unpredictable municipal wayleave processes” ranked as the #1 recurring barrier. “Long approval timelines” ranked #3.

## Minister Malatsi's 2026 Explanatory Note

- “Every municipality has a different process and charges different fees and there is significant delays in issuing permits.”

## Industry Evidence

- Processing times of 6-12 months in metro areas. Fees from R8,000 to hundreds of thousands per application. Arbitrary annual “maintenance” charges for which no service is provided.

**Legal Gap:** This omission means the Regulations fail the mandate of section 21(2)(a) of the ECA to “prescribe the procedures and processes applicable to obtaining permits, authorisations and approvals required for deployment.”

# CURRENT vs PROPOSED WAYLEAVE PROCESS

## CURRENT POSITION:

- Operator submits wayleave application\Municipality acknowledges (if at all)
- Indefinite processing – No deadline
- Operator follows up repeatedly
- No response? No remedy available
- Months of delay” 6 – 12 months in metros
- Customer goes live – eventually

## PROPOSED (ACT RECOMMENDATION)

- Operator submits complete application
- Municipality acknowledges within 4 days
- section 24(1) (Pipes under streets), provides for 30 day notice period.
- Decision within 30 working days (binding)
- Written reasons required if refused
- No decision? Deemed Approval applies
- Fees capped to administrative costs only
- Customer goes live – on time

# COST-BASED WAYLEAVE FEES

## Municipalities using fees as revenue – not cost recovery

### THE PROBLEM

- No fee cap in the Draft Regulations.
- Some municipalities charge:
  - Excessive application fees (R8,000 to hundreds of thousands)
  - Annual “maintenance” charges with no service provided
  - Non-cost-reflective, arbitrary amounts.
- The 2023 Policy Direction identified excessive non-cost-based fees as the SECOND ranked barrier to deployment in ICASA’s own research

### ACT RECOMMENDATION

- Insert new sub regulation requiring:
  - Fees limited to the reasonable direct administrative cost of processing the application
  - Non-refundable deposits capped as a percentage of the projected fee
  - Recurrent annual fees based on transparent, published methodology – not revenue generation
- International precedent: EU Gigabit Infrastructure Act requires permit fees to reflect administrative costs only.

# PROCEDURAL CERTAINTY: CONSULTATION TIMELINES

“Reasonable” is not a regulatory standard

**CONCERN:**  
Vague  
“reasonable  
ss” standard

Regulations 4(3) and 4(4) require “reasonable notice” and a “reasonable opportunity” – language that will itself generate disputes and delays.

**RECOMMENDATION**

Replace with fixed periods: 21 days’ notice for private land; 14 days for public land (scheduled maintenance) and 30 days for pipes under streets (s24(1)).

**CONCERN:** No  
distinction:  
major vs minor  
works

A 30 -day notice period for minor works (aerial fibre drops, short duct extensions) is commercially impractical and disproportionate.

**RECOMMENDATION**

DEINE “MINOR WORKS” – 5-7 Business days notification only. Consistent with EU Gigabit Infrastructure Act minor-works exemption.

**CONCERN:**  
Privately owned  
land  
insufficiently  
addressed

Regulation 4 primarily contemplates municipally owned land. Substantial infrastructure traverses private farms, estates, and sectional title developments.

**RECOMMENDATION**

Expressly recognize distinct legal and operational considerations for privately owned land under section 22 of the ECA

# GIS DATABASE: GOVERNANCE AND SECURITY

**The framework is valuable – but safeguards are critically absent**

- ✓ ACT SUPPORTS: Mandatory GIS database, WGS84/OGC technical standards, forward-looking investment data, ICASA as custodian – all commended as significant regulatory steps aligned with ITU broadband mapping guidelines.

**However, there is misalignment between municipalities, ICASA and ECNS licensees and utility providers like Eskom etc. w.r.t. standards used for spatial information. There needs to be alignment between all parties.**

| CONCERN: No Access Controls                                                                                                                                                                                                                                                                                                               | CONCERN: National Security Risk                                                                                                                                                                                                                            | CONCERN: Implementation Timeline                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• The Draft Regulations contain no provision governing who may access GIS data, under what conditions, or with what security safeguards. Commercially sensitive investment strategies and critical infrastructure locations would be exposed. This raises serious competition concerns.</li> </ul> | <ul style="list-style-type: none"> <li>• Centralising detailed geo-referenced data on all fibre routes, ducts, poles, towers and base stations creates material national security risk. Infrastructure theft and sabotage are documented risks.</li> </ul> | <ul style="list-style-type: none"> <li>• Six-month implementation period is insufficient – particularly for smaller operators who must develop entirely new data collection and reporting systems ACT proposes twelve months with phased implementation.</li> </ul> |

|                                                                     |                                       |                                                         |
|---------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------|
| <b>ACT<br/>RECOMMENDATION:<br/>Tiered Data Disclosure<br/>Model</b> | <b>ICASA (full access)</b>            | Complete data for planning, coordination and regulation |
|                                                                     | <b>Co-operators (Aggregate only):</b> | Aggregated data for co-build opportunities only         |

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# DISPUTE RESOLUTION: GAPS AND FIXES

The framework is sound – but lacks binding force at every critical stage, moreover a key concern for is the lack of alignment between the dispute resolution mechanisms of standard draft by-laws and those proposed by ICASA

| Issue                             | Current Regulations                                                        | ACT Recommendation                                                                                      |
|-----------------------------------|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| Optional mediation                | “May appoint” mediator – parties can avoid mediation entirely              | Replace with “MUST appoint” – mediation mandatory within 14 days of negotiation ailure                  |
| No completion timeline            | No deadline for completing mediation; no deemed-failure mechanism          | Mediation commences within 30 days of appointment; completed within 60 days, auto-escalation on failure |
| Arbitration by consent only       | Recalcitrant party can veto arbitration forcing expensive court litigation | Unilateral right to refer to binding arbitration on mediation fialure                                   |
| No fast-track for access disputes | No interim relief pending resolution – deployment halted                   | Fast-track to CCC for interim order on access disputes unresolved within 10 business days of mediation  |
| No compensation timeline          | Regulation 6 requires good-faith negotiation – no deadline to conclude     | 60 day deadline; automatic escalation to mediation if not agreed                                        |

# INFRASTRUCTURE SHARING: A STRUCTURAL GAP

Tower companies and passive infrastructure providers are excluded

## THE STRUCTURAL GAP

- Tower companies and passive infrastructure providers:
  - Own significant mast, tower and duct infrastructure
  - Are not ECNS licensees
  - Are critical participants in the deployment ecosystem
- Consequences of exclusion:
  - GIS database will not capture the full universe of passive infrastructure
  - Co-build and sharing provisions are undermined
  - Regulatory framework cannot achieve its coordination objectives

## SINGLE INFORMATION POINT

- A critical missing structural reform:
  - The Draft Regulations do not establish a Single Information Point (SIP) for permit applications – a significant omission.
- What a SIP would deliver:
  - Digitised platform for tracking wayleave applications
  - Coordination of civil works across operators
  - Controlled access to GIS data
  - Reduction of fragmentation across municipalities
- Both the 2023 and 2026 Policy Directions identify fragmented approval process as a central barrier. The EU GIA mandates a digitized SIP as a core requirement.

# PENALTY PROVISIONS: PROPORTIONALITY AND LEGAL VALIDITY

Compliance, not punishment, should be the objective

## CURRENT PENALTY STRUCTURE

- R150 000 Fine – contraventions of regulations 3 and 4 (Infrastructure removal and entry procedures)
- R1 000 000 Fine – Contraventions of regulations 6 and 7 (compensation and GIS). Flat maximum with no graduated structure.
- Zero penalty – No penalty for contraventions of regulation 8 (dispute resolution obligations) – an anomaly.
- Disproportionate – R1 million penalty for GIS non-compliance may deter participation where non-compliance is technical and not willful.

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## ACT RECOMMENDATION

- Gradual penalty structure:
  - Starting fine escalating daily up to R1 million maximum
  - Incentivises prompt rectification not deterrence
  - Right of appeal to CCC with stay of enforcement
- Calibrated to nature, duration and severity:
  - Proportionate to promoting compliance
  - Distinguishes willful from technical non-compliance
- Municipal non-compliance penalties:
  - Penalties for municipal



# INTERNATIONAL BEST PRACTICE

ACT's recommendations are consistent with leading global frameworks

## EU GIGABIT INFRASTRUCTURE ACT (2024/1309)

- In force 11 May 2024; applicable from 12 November 2025
- 4 month maximum permit period (binding)
- Tacit approval where no response within deadline
- Mandatory compensation for operators harmed by delays
- Permit fees capped to administrative costs only
- Mandatory digitized single Information Point
- Minor civil works exempt from permit requirements

## ITU BEST PRACTICE GUIDELINES

- Infrastructure Sharing and Broadband Mapping
- One-stop-shop to coordinate trenching and ducting\Comprehensive broadband mapping as international standard
- Dispute resolution: timeliness, transparency, accessibility
- Secured infrastructure information with access controls
- Phased GIS implementation for all operators
- Coordinated civil works to reduce deployment costs.

All ACT recommendations have direct international precedent. South Africa would not be innovating – it would be adopting established international standards.

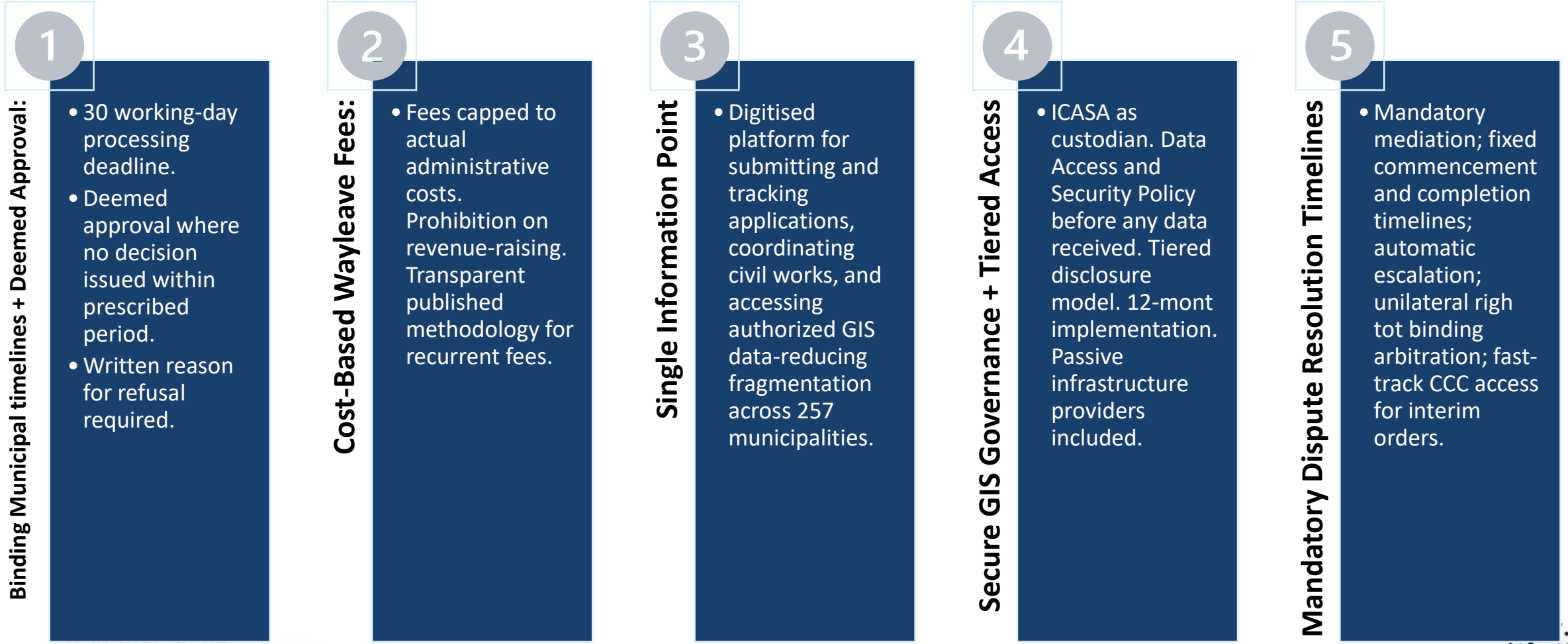
# DRAFTING CONCERNS AND REGULATORY ALIGNMENT

Additional technical matters requiring ICASA's attention

|                                                  |                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Drafting error – Regulation 6(3)                 | Sub-regulation (a) of regulation 6(3) repeated twice, both referring to “market value of the affected land.” The second instance should be sub-regulation )b) addressing severance and injurious affection. This must be corrected in the final Regulations.                                       |
| Alignment with 2026 Ministerial Policy Direction | The Draft Regulations make no express reference to the 2026 Draft Policy Direction. Should the final Policy Direction materially differ, regulatory misalignment will result.                                                                                                                      |
| In-Building Infrastructure Provision             | A new provision should require all new multi-dwelling unit developments and substantially renovated commercial buildings to “enable deployment of fibre networks or to to be equipped with passive fibre-ready infrastructure – consistent with the EU GIA approach applicable from February 2026. |
| Regulatory Impact Assessment Required            | ICASA must publish a Regulatory Impact Assessment setting out the costs and benefits of the proposed regulatory interventions and demonstrating that the chosen approach is the least restrictive means of achieving the objective. This is a basic requirement under PAJA.                        |

# THE FIVE REFORMS THAT WILL MAKE RAPID DEPLOYMENT WORK

Act calls on ICASA to adopt these priority amendments



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# ACT's CONCLUSION AND REQUEST

## ACT Commends

- The Draft Regulations are a meaningful foundation. The GIS framework, lifecycle management, access procedures, compensation principles and dispute resolution structure are all commended and should be retained and strengthened.

## The Remaining Gap

- The Regulations fall materially short of the 2023 Policy and 2026 Draft Policy Direction. Without binding municipal obligations, the primary systemic barrier to broadband deployment remains unaddressed.

## ACT Respectfully Requests

- That ICASA adopt the five priority reforms – binding municipal timelines and deemed approval, cost-based fees, a Single Information Point, secure GIS governance, and mandatory dispute resolution timelines – and engage the Minister to ground a binding wayleave framework in constitutional cooperative governance principles.



# Q&A