

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only. The final terms of the declaration may vary from the text of this draft declaration.

Carrier Licence Conditions (Networks in New Developments) Declaration 2016

IMPORTANT NOTICE

As indicated in the Government's [Telecommunications in New Developments Policy](#), the Government is proposing to put in place Carrier Licence Conditions with a view to ensuring that new networks in new developments meet or exceed minimum standards, comparable to those available on the [National Broadband Network](#) (NBN).

This draft Carrier Licence Conditions (Networks in New Developments) Declaration 2016 (the Declaration) is provided for information and comment.

Note boxes like this provide context or explanation where it is considered it might be useful to understanding the drafting and commenting on it.

These note boxes will not be part of the final declaration, but similar guidance may be included in the accompanying Explanatory Statement.

Under the proposed Declaration, carriers not meeting the requirements of the Declaration would not be able to install or operate infrastructure in a new development.

Carriers who provided such infrastructure but were not able to continue to comply with the conditions may be liable for penalties for breach of the carrier licence.

The proposed Declaration is not intended to duplicate other regulatory requirements applying to carriers but imposes obligations in addition to those. Specifically it does not duplicate wholesale-only (structural separation) requirements applying through other mechanisms under:

- Parts 7 and 8 of the Telecommunications Act 1997,
- the Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014; and
- the proposed Government amendments to Parts 7 and 8 which would have effect from 1 January 2017.

Please also refer to the draft Carrier Licence Conditions (Networks in New Developments Reporting Requirements) Declaration 2016 which would require carriers to provide information about new development networks for online publication by the Department of Communications and the Arts.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

Commonwealth of Australia

Telecommunications Act 1997

**Carrier Licence Conditions
(Networks in New Developments) Declaration 2016**

I, MITCH FIFIELD, Minister for Communications, make the following declaration under subsection 63(2) of the *Telecommunications Act 1997*.

[DRAFT—NOT FOR SIGNATURE]

Dated .

MITCH FIFIELD
Minister for Communications

1. Name of Declaration

This Declaration is the *Carrier Licence Conditions (Networks in New Developments) Declaration 2016*.

2. Commencement

Note: Section 2 provides that the Declaration will come into effect four weeks after the day the Declaration is registered on the Federal Register of Legislative Instruments.

This Declaration commences four weeks after the day it is registered on the Federal Register of Legislative Instruments.

3. Definitions

Note: Section 3 sets out the meaning of the terms used in the Declaration. Existing terms have been used to the greatest extent possible.

(1) In this Declaration:

Act means the *Telecommunications Act 1997*.

building lot has the meaning given by section 372Q of the Act.

building unit has the meaning given by section 372S of the Act.

business day in a location, means a day which is not a Saturday, Sunday or public holiday in the location.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

declared service has the same meaning as given in section 152AL of the *Competition and Consumer Act 2010*.

Note: The definition of 'dependent services' describes a number of services which the new developments network would be required to support in addition to broadband, voice, free-to-air broadcasting services and subscription broadcasting services.

dependent services means services which rely upon, or are supported by, a carriage service and use any one of the following devices or systems:

- (a) monitored or non-monitored personal medical alarms or pendants;
- (b) monitored or non-monitored security alarms;
- (c) monitored or non-monitored fire alarms;
- (d) payment systems;
- (e) devices for people with a hearing impairment;
- (f) automatic teller machines;
- (g) monitored or non-monitored lift alarms;
- (h) lift phones;
- (i) traffic lights; and
- (j) any service or device similar to those listed in any of the above paragraphs.

Developer means a person (or that person's agent) which has legal responsibility for a Development.

Note: The definition of 'development' is based on the definition of the 'real estate development project' at section 372Q in Part 20A of the Act which requires the deployment of fibre-ready facilities in certain new developments. The definition is broader than that in the Act because it includes the construction of a building on a lot that has already been subdivided and the refurbishment or repurposing of existing buildings.

This means that the scope of the Declaration is broad and carriers providing networks to a wide range of new premises will be required to install and operate high quality telecommunication networks in line with the Declaration.

Development means a real estate development project which involves any of the following:

- (a) the subdivision of one or more areas of land in Australia into lots (however described);

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

- (b) the making available of one or more of lots of land for sale or lease, where it would be reasonable to expect that one or more building units would be subsequently constructed on the lots;
- (c) either:
 - (i) the construction of one or more new building units on a building lot; or
 - (ii) the significant refurbishment or repurposing of one or more existing buildings to create one or more new building units; and
- (d) the making available for sale or lease of any of those building units referred to in paragraph (c).

Note: The definition of 'development boundary' is included in order to assist in defining the extent of the obligation on the carrier to be the infrastructure provider of last resort in subsection 5(7) below. There are two possible ways of defining the boundary: as the boundary included in a legally binding agreement between the carrier and the developer or, if there is no agreement, the boundary of the development as specified in a legislative instrument. A legislative instrument could, for example, include a separate carrier licence condition declaration.

Development Boundary means the boundary of the Development:

- a) as specified in a legally binding agreement between the specified carrier and the Developer; or
- b) if no agreement is in place, as specified in a legislative instrument made under the Act.

national broadband network has the same meaning as in the National Broadband Network Companies Act 2011.

NBN Co means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

Note: The definition of 'network transmission infrastructure' is intended to capture infrastructure for supplying backhaul transmission services for the new developments networks.

network transmission infrastructure means any infrastructure intended to be used by a carrier to supply transmission services to a service provider:

- a) to and from the carrier's nominated point of interconnection; and
- b) for the purpose of enabling retail carriage services to be supplied to an end-user at a premises situated within the Development Boundary.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

relevant premises means a premises that is (or is to be)

- a) occupied or used by an end-user; and
- b) situated in a Development

Note: The following definitions of remote, rural and urban areas are included because subsections 5(12) and 5(14) will establish timeframes for activation and fault repair depending on the location of the premises in one of these three areas. The definitions are derived from those used in NBN Co's Wholesale Broadband Agreement which in turn reflects the approach used in the Telecommunications Customer Service Guarantee Standard.

remote area means a geographical area other than an urban area or rural area.

rural area means an urban centre, locality or other recognised community grouping with a population equal to or greater than 200 but less than 10,000.

Note: The following definition specifies that this Declaration applies to carriers other than Telstra and NBN Co. Telstra's networks are generally supplied in fulfilment of the Universal Service Obligation and are subject to regulation in this context. NBN Co is subject to requirements under the Shareholder Ministers' Statement of Expectations and the Government has announced its intention to introduce separate legislation imposing an Infrastructure of Last Resort Obligation on NBN Co from 1 January 2017.

specified carrier means a carrier (other than Telstra Corporation Limited ACN 051 775 556 or NBN Co) that:

- a) owns (or will own); or
- b) operates (or will operate),

a specified new development network

Note: The following definition of 'specified new development network' is a key definition for the Declaration as it defines the types of networks to which the various substantive conditions in section 5 apply.

The definition covers networks built to deliver telecommunication services in new developments from the time of the commencement of this Declaration. It also includes networks for which a contract was signed before the declaration commenced but construction of the network began on or after the Declaration commenced.

Importantly, it includes networks that may be provided on a short term (i.e. temporary) basis for the first occupants of a development until a final (i.e. permanent) network is provided. The effect of this is to require temporary and permanent networks to offer the same service outcomes.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

The definition does not include to mobile telephony networks or satellite communications networks. This recognises that such networks may overlay fixed line networks in a new development but they are not required to meet the performance requirements specified in the Declaration because other wireline and wireless networks which are the subject of the Declaration are providing a direct connection to premises in the Development. This approach also recognises the mobile and satellite networks may technically be able to cover a new development by nature of their footprint but are not the primary networks intended to service the Development.

specified new development network or network (if the context permits) means a telecommunications network (regardless of whether it is installed on a temporary or permanent basis) which:

- a) is (or is to be) owned or operated by a specified carrier;
- b) is (or will be) capable of being used to supply carriage services to an end-user at premises situated in the Development;
- c) uses (or will use) any kind of telecommunications access technology or a technology platform other than:
 - (i) mobile technology; or
 - (ii) satellite technology.

Note: The following three definitions of types of premises are included because subsection 5(12) will define timeframes for activation of services depending on whether the premises are already physically connected to a network, in close proximity to a network or not in close proximity to a network. 'Other direct connection' refers to fixed wireless connections. Comment is specifically sought on whether these definitions are appropriate, particularly whether 500 metres is an appropriate criterion for proximity to the network.

type 1 premises means a relevant premises which has a physical (or other kind of direct) connection to the specified new development network

type 2 premises means a relevant premises which is in close proximity to a facility forming part of the specified new development network that will be used to supply the carriage service. For the purposes of this definition, a premises will be considered to be in 'close proximity' where it is situated within 500 metres or less from any part of the network.

type 3 premises means a relevant premises which is not in close proximity to a facility forming part of the specified new development that will be used to supply the carriage service. For the purposes of this definition, a premises will be considered not to be in 'close proximity' where it is situated more than 500 metres from any part of the network.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

Note: The following definitions of 'urban area' and 'urban centre' are included because subsections 5(12) and 5(14) will establish different timeframes for activation and fault repair depending on the location of the premises in urban, rural or remote areas. The definitions are derived from those used in NBN Co's Wholesale Broadband Agreement which in turn reflects the approach used in the Telecommunications Customer Service Guarantee Standard.

urban area means an urban centre with a population equal to or greater than 10,000.

urban centre is a reference to a geographic area defined as an urban centre in accordance with criteria used by the Australian Bureau of Statistics for the most recent census.

The definition of 'voice service' is included to ensure that new development networks are capable of supporting basic voice services, as well as broadband Internet access, comparable in functionality to those available on the historical public switched telephone network. For this reason the definition includes requirements for the transmission and reception of voice (or equivalent in the case of end-users with a disability requiring an alternative service such as text-based communication), any-to-any connectivity including the emergency call service, and dual-tone multi-frequency signaling (DTMF). DTMF is the signaling method used by telephones to transmit numbers to the exchange to connect to a dialled number and is commonly used to support phone-based payment and transaction services like phone banking.

voice service means a carriage service that enables:

- a) the transmission and reception of voice (or equivalent) communications; and
- b) any-to-any connectivity, including to the emergency triple zero number; and
- c) dual-tone multi-frequency signalling or comparable functionality.

Note The following expressions have the meaning given by the Act (see subsection 13(1) of the *Legislative Instruments Act 2003*):

- associate;
- broadcasting service;
- carriage service;
- service provider; and
- telecommunications network.

Note: Subsection 3(2) is to clarify the circumstances in which a carrier is considered to be in a position to exercise control of a network by reference to section 155 of the Telecommunications Act. This test is important in subsections 4(1)(b) and 5(1)(b) below. In summary, a person is in a position to exercise control of the network if they own the

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

network, are in a position to exercise control of the operation of all or part of the network, or control of the selection of the kinds of services that are supplied using the network or the supply of services using the network. If a company other than the controller owns the network, the controller is in control of the network if it has power to influence certain ways in which the company is governed or operates.

(2) In this Declaration, the question of whether a carrier is in a position to exercise control over a telecommunications network is to be determined in accordance with section 155 of the Act.

Note: Subsection 3(3) provides that in this Declaration, reasonable grounds for discrimination covers any grounds to believe that the particular wholesale customer would fail, in a material way, to comply with an obligation that is reasonably necessary to protect the specified carrier's legitimate commercial interests. (For example, where the wholesale customer is unlikely to be able to pay for the wholesale service when the supply charge becomes due and payable). This provision is to clarify the circumstances in which a carrier is able to exercise discrimination on reasonable grounds for the purposes of subsection 5(6A) below. Subsection 5(6A) is designed to ensure the new development networks offer their open access wholesale services on a non-discriminatory basis. It specifies the terms and conditions for the supply of wholesale carriage services where these are not 'declared services' including that the carrier must not discriminate in favour of itself or between wholesale customers except on reasonable grounds.

(3) In this Declaration, reasonable grounds for discrimination covers any grounds to believe that the particular wholesale customer would fail, in a material way, to comply with an obligation that is reasonably necessary to protect the specified carrier's legitimate commercial interests. (For example, where the wholesale customer is unlikely to be able to pay for the wholesale service when the supply charge becomes due and payable).

4. Application

Note: The purpose of section 4 is to specify the circumstances in which the substantive conditions in section 5 below apply to specified carriers. Subsection 4(1)(a) and (b) provides that the conditions will apply to networks where a specified carrier is contracted by a developer to build a network in a new development or becomes in a position to control a network. The second approach covers the circumstances where a developer may have infrastructure installed without the involvement of a carrier but on the basis that it will be transferred to a carrier to operate. Alternatively, the network could have been built by one carrier but another carrier takes over its operation. The Declaration focuses on capturing carriers entering into commercial arrangements to provide and operate infrastructure in new developments consistent with the Government's March 2015 policy.

(1) A carrier licence granted to a specified carrier is subject to the conditions set out in section 5 of this Declaration if at any time on or after the commencement of this Declaration, the specified carrier:

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

- (a) is required to by any legally binding arrangement with a Developer to build a specified new development network in the respective Development; or
- (b) first becomes in a position to exercise control of a specified new development network.

5. Conditions

Build and operation requirements

Note: Subsections 5(1) and 5(2) are intended to ensure carriers do not install or operate networks in new developments unless all the conditions in subsection 5(3) about network standards are met.

- (1) In circumstances where paragraph 4(1)(a) applies, the specified carrier must not:
 - (a) install a line, or procure the installation of a line, that would form part of a specified new development network in a Development; or
 - (b) become in a position to exercise control of such a network;unless all of the requirements set out in subsection 5(3) of this Declaration are satisfied.
- (2) In circumstances where paragraph 4(1)(b) applies, the specified carrier must not operate the specified carrier network unless all of the requirements set out in subsection 5(3) of this Declaration are satisfied.

Note: The purpose of subsection 5(3) is to require a carrier providing a network in a new development to build and maintain it to a high standard, benchmarked against the NBN, so that it meets or exceeds reasonable community expectations including to minimise contention which may arise if there is not adequate backhaul to assure network speeds.

The network will be required to be capable of supporting the delivery of voice services including calls to the emergency services.

The network will also need to be capable of supporting dependent services such as fire alarms as well as both free-to-air and subscription broadcasting services.

The requirement that a network can be integrated into another network is included to address developer concerns about end-users losing their services if the carrier operating a network ceases trading and the network needs to be integrated into another network.

Comment is sought on whether revisions are needed to make the proposed requirements more specific and to add any additional requirements considered necessary to meet minimum community expectations. For example, should there be additional requirements in relation to the commercial track record of carriers and their ongoing sustainability?

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

- (3) For the purposes of sections 5(1) and 5(2), the following requirements are specified:
- (a) the network, and associated network transmission infrastructure is capable of being used to supply carriage services to an end-user with the following transmission speeds:
 - (i) download transmission speed of at least 50 megabits per second; and
 - (ii) upload transmission speed of at least 10 megabits per second;
 - (b) the network is capable of:
 - (i) keeping up with the technology of the fixed-line national broadband network as set out in the corporate plan issued by NBN Co from time to time; and
 - (ii) being physically integrated into another telecommunications network if required and incorporates a physical interface that would readily permit such integration;
 - (c) the network supports the delivery of:
 - (i) voice services;
 - (ii) dependent services;
 - (iii) free-to-air broadcasting services; and
 - (iv) subscription broadcasting services.
 - (d) the service quality of the carriage services provided using the network, in respect of the minimisation of packet loss, latency and jittering, is at a minimum comparable to the service quality typically experienced by end-users being supplied with comparable carriage services over the fixed-line national broadband network;
 - (e) the availability of the network, in respect of the percentage of time across any 12-month period that it is available for use by end-users, is at a minimum, comparable to the network availability of the fixed-line national broadband network; and
 - (f) the specified carrier has a contract, arrangement or understanding with at least three carriage service providers to offer to supply retail carriage services (including voice services), using the specified new development network, to any end-users situated in premises within the Development.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

Certification and related compliance conditions

Note: The purpose of subsection 5(4) is to require that there be an independent certification of the standard of the network in the new development provided by the carrier prior to the first end-user being connected. The types of person who would be suitably qualified would have skills in engineering and telecommunications. Subsection 5(5) would require that the carrier publish this certification and make it available to local councils where it is required by law or within five business days of receiving a written request from the council. This is intended to provide a mechanism by which local councils can assure themselves networks of appropriate quality have been installed, for example, prior to issuing occupancy or other certificates.

- (4) The specified carrier must arrange for a suitably qualified independent person to provide written certification that the network meets all of the requirements specified in subsection 5(3) before a specified new development network can be used to supply carriage services to the public.
- (5) A copy of the certification obtained under subsection 5(4) must be:
 - (a) published on the carrier's website within 5 business days of the certification being issued to the specified carrier; and
 - (b) provided by the specified carrier to the local council which approved the Development:
 - (i) in accordance with any State or Territory (including local government) law;
 - (ii) where there is no applicable law under subparagraph (i), within 5 business days of receiving a written request from the council

Note: Subsection 5(6) is to enable regulators to ascertain the performance characteristics of a network installed or being installed by requiring the carrier to produce the legally binding agreement with the developer to build the network and the certification about the network's quality on request. The regulators would seek this information with a view to either pre-empting or taking action to remediate possible breaches of the Declaration.

- (6) The specified carrier must provide the following information to the Australian Communications and Media Authority or the Australian Competition and Consumer Commission (as applicable) within 10 business days of receiving a written request from the requesting body:
 - (a) a certified copy of the legally binding agreement referred to in
 - (b) subsection 4(1); and
 - (c) a certified copy of the certification obtained under subsection 5(4).

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

Terms and conditions of wholesale carriage services

Note: Subsection 5(6A) is designed to ensure the new development networks are open access, wholesale-only, non-discriminatory networks. It specifies the terms and conditions for the supply of wholesale carriage services where these are not 'declared services' within the meaning of section 152AL of the Competition and Consumer Act 2010.

These are services declared by the Australian Competition and Consumer Commission (ACCC) to be subject to the access regime. A list of declared telecommunications services is included on the ACCC website.

This provision is included to ensure that the complete range of wholesale services provided by a carrier in a new development is provided on an open access, non-discriminatory basis as Part 7 of the Act only applies to a Layer 2 bitstream service. Part 8 of the Act requires persons controlling new superfast networks to operate on a wholesale-only basis. While such networks will generally be wholesale-only and not in a position to favour their own downstream operations, the reference to a provider favouring itself (in subparagraph 5(6A)(c)(i) recognises there is scope for exemption from Part 8 of the Act and that changes to Part 8 are proposed from 2017.

- (6A) The specified carrier must, in respect of any wholesale carriage services it offers to supply using the specified new development network where such services are not declared services:
- (a) publish on its website the terms and conditions (price and non-price) on which it supplies any wholesale carriage services using the specified new development network (**supply contract**); and
 - (b) for the purposes of paragraph 5(6A)(a), the supply contract must include (without limitation) reasonable terms and conditions for:
 - (i) service fault detection, handling and rectification;
 - (ii) alternative dispute resolution in the event of a dispute between the specified carrier and a wholesale customer in relation to the supply contract; and
 - (c) not discriminate:
 - (i) in favour of itself or its associates (if applicable); or
 - (ii) between wholesale customers;in relation to the supply of any wholesale carriage service, including in respect of any price and non-price terms and conditions for such supply other than on reasonable grounds.

Note: Subsection 3(3) of this Declaration defines the expressions 'reasonable grounds' for the purpose of paragraph 5(6A)(c).

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

Infrastructure provider of last resort obligation

Note: The purpose of subsection 5(7) is to require a carrier contracted to provide a network under contract to the developer or controlling a network in a new development to operate as the infrastructure provider of last resort (IPOLR). That is, to provide and maintain a network to which all premises within the network boundary can request connection via a retail services provider.

This is to ensure premises have access to telecommunications infrastructure upon request. The text is modelled on that used to implement the IPOLR obligations applied to carriers under the former Adequately Served Policy. This obligation extends to new connections within the boundary of the development but not to where there may be a subsequent development within the boundary if there is a new contract for the provision of telecommunications with another provider (e.g. if a football field were to be developed, but its network was contracted to a new provider).

Subsection 5(8) provides that this obligation does not apply if another carrier is designated as the IPOLR by some other means (e.g. via a separate carrier licence conditions declaration).

Subsection 5(9) provides that a request for connection can be made either directly to the specified carrier by an end-user or through a carriage service provider. The first scenario is included to enable pre-installations in premises in new developments.

Subsections 5(10) requires the specified carrier to provide on reasonable terms wholesale carriage services to carriage service providers to use the network to provide internet services, dependent services, services to support voice communication and, if applicable, the carriage of broadcasting services.

Subsection 5(11) provides that the specified carrier must offer services to carriage service providers that meet or exceed the quality available on the NBN at equivalent or better price for comparable services. This is intended to ensure that end-users in premises in new developments have access to high quality communications at reasonable prices no matter which carrier is servicing the network.

- (7) Subject to subsection 5(8), the specified carrier, or another person on its behalf, must, upon reasonable request by an end-user at a premises, situated within the Development Boundary serviced by the carrier's specified new development network:
- (a) connect the relevant premises to the network; and
 - (b) activate the connection to the network to enable a carriage service provider to provide carriage services to the end-user at the relevant premises using the network.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

- (8) The obligation under subsection 5(7) does not apply to the specified carrier to the extent that another carrier is otherwise required by law to perform the obligations set out in that subsection.
- (9) For the purposes of subsection 5(7), a request may be made directly by an end-user to the specified carrier or by a carriage service provider to the carrier on behalf of an end-user.
- (10) The specified carrier must offer to supply, upon reasonable request by a carriage service provider, wholesale carriage services using the specified new development network to enable the carriage service provider to supply internet carriage services, services to support voice communication (including voice services), and any dependent services.
- (11) The wholesale services offered in accordance with the condition set out in subsection 5(7) above must:
 - (a) meet or exceed the performance and quality of services; and
 - (b) be equivalent or better in price;

to comparable services offered at the relevant time by NBN Co using the fixed-line national broadband network to carriers and carriage service providers.

Activation time and repair conditions

Subsections 5(12) and (13) are included to define timeframes for the carrier to activate the services to a premises in a new development, depending on how close the premises is to a network and whether the premises is in an urban, regional or remote area.

These timeframes are similar to those that apply to connection of the NBN under NBN Co's Wholesale Broadband Agreement. In the case of premises type 3 (i.e. not in close proximity to a network) they reflect the obligations on Telstra to provide a standard telephone service in the Telecommunications (Customer Service Guarantee) Standard 2011.

The timeframes do not relate to the delivery of the overall network solution to the developer. That is expected to be covered in the contract between the developer and the carrier. Rather, these are the timeframes that apply to connections and activations of premises once the contracted network is in situ and ready for service.

A type 1 premises has an existing physical connection to the network.

A type 2 premises has no connection but is in close proximity to the network (within 500 meters) so the activation time is longer.

A type 3 premises would be more than 500 metres away from the network and may require the construction of additional network infrastructure in order to enable activation.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

The timeframes reflect the view that consumers expect services to be connected and repaired in reasonable timeframes and the reality that most new development networks, particularly, in broadacre developments, will be the sole network in operation and may face little direct competitive pressure. Interaction between these performance levels and the retail level Customer Service Guarantee are being considered further.

In all instances, it is assumed that the premises to be serviced are within the carrier's service footprint as IPOLR. While it is generally expected that any new premises would, at a minimum, be in close proximity to network; type 3 premises are provided for to cover the possibility that new areas of an IPOLR's service footprint not previously developed (e.g. a further development stage, sports oval or greenbelt) are developed, requiring networks to be extended by the carrier as IPOLR.

In all cases, where activation depends on the actions of third parties, the timeframes for a carrier would be in addition to the completion of the third parties' actions. For example, a third party may be installing pit and pipe to support the network and this needs to be completed before a network connection can be provided.

- (12) Upon receiving a request under subsection 5(7), the specified carrier must activate a carriage service supplied to the relevant premises using the specified new development network within the following timeframes:
- (a) for a type 1 premises:
 - (i) situated in an urban area – 1 business day from acceptance of the request;
 - (ii) situated in a rural area – 1 business day from acceptance of the request;
 - (iii) situated in a remote area – 1 business day from acceptance of the request;
 - (b) for a type 2 premises
 - (i) situated in an urban area – 14 business days from acceptance of the request;
 - (ii) situated in a rural area – 14 business days from acceptance of the request;
 - (iii) situated in a remote area – 19 business days from acceptance of the request; and
 - (c) for a type 3 premises:
 - (i) situated in an urban area – 20 business days from acceptance of the request;

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

(ii) situated in a rural area – 20 business days from acceptance of the request;

(iii) situated in a remote area – 20 business days from acceptance of the request.

(13) For the purposes of subsection 5(12):

- (a) if a specified carrier accepts a request on a day that is not a business day or after 5pm on a business day, the request is deemed to be accepted on the next business day; and
- (b) the timeframes specified only relate to the time required by the specified carrier (including its agents, employees and contractors) to undertake the relevant action and exclude any third party actions (where such actions are outside of the reasonable control of the carrier) or any third party dependencies.

Note: Subsections 5(14) and 5(15) relate to network faults for which the carrier is responsible rather than a service provider. A fault may be reported by an end-user or a carriage service provider or be identified ('produced') by the carrier's own systems (thus the reference of the 'production of a fault report'.

The timeframes for rectifying faults are in whole business days. This means that for a fault in an urban area requiring rectification in 1 business day, if it was accepted at 10.00 am on Monday, the carrier would have until 5.00 pm on Tuesday to complete the repair.

Faults reported outside business hours would be treated as if they were accepted on the next business day.

(14) In satisfying its obligations under subsections 5(7) and 5(12), the specified carrier must rectify a network fault, or service difficulty for which it is responsible within the following timeframes:

- (a) where the fault or cause of the service difficulty can be corrected remotely - within 1 business day from acceptance (or production) of a fault report: and
- (b) in respect of all other faults or service difficulties:
 - (i) where the relevant premises is located in an urban area –1 business day from acceptance (or production) of a fault report:
 - (ii) where the relevant premises is located in a rural area – 2 business days from acceptance (or production) of a fault report;
 - (iii) where the relevant premises is located in a remote area –3 business days from acceptance (or production) of a fault report.

CONSULTATION DRAFT

NOTE: This draft declaration is provided for the purposes of consultation only.
The final terms of the declaration may vary from the text of this draft declaration.

- (15) For the purposes of subsection 5(14), if a specified carrier accepts or produces a report that a carriage service provided using the specified new development network is affected by a fault or service difficulty on a day that is not a business day or after 5pm on a business day, the notification is deemed to be received on the next business day.

Reporting and compliance conditions

Note: Subsection 5(16) is included to require a carrier to publish a summary report on its website each year in relation to this Declaration in order to demonstrate it has complied or, if there have been instances of non-compliance, the action taken to rectify the non-compliance.

The reporting period is each calendar year and a carrier has two months to prepare a report.

Subsection 5(17) provides that the statement is to be signed by the carrier's chief executive or equivalent. This is to ensure compliance has an appropriate level of visibility and accountability within the firm concerned.

- (16) Within two months of 31 December of each year, commencing on 31 December 2016, the specified carrier must publish on its website a statement that the carrier has, during the prior twelve months:
- (a) fully complied with all of the conditions under this Declaration; or
 - (b) not fully complied with all of conditions under this Declaration and provide a summary (at an aggregated level) of the extent of any non-compliance with the conditions under this Declaration, the cause of the non-compliance and, if applicable, any action undertaken (or to be undertaken) by the carrier to rectify the non-compliance.
- (17) For the purposes of subsection 5(16), the statement must be made by made by the carrier's chief executive officer (or equivalent).

Note: Subsection 5(18) provides that a trivial breach of the Declaration is not to be taken as a breach of the conditions in the declaration. An example of where a breach might be treated as trivial might be not connecting a single premises within the timeframes required by a short period in circumstances where this has been rectified.

- (18) A specified carrier will not be in breach of the conditions set out in section 5 of this Declaration in circumstances where the carrier fails to comply with a requirement and the failure to do so is trivial.