

## 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 Reporting Requirements) Declaration

## 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 Reporting Requirements) Declaration (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 building or controlling networks in new developments will be required to report certain details about the networks they install to the Secretary of the Department for publication on an online map showing the location and boundaries of new developments and the carriers serving them. This map will:

- assist carriers to better co-ordinate provision of infrastructure
- allow developers to locate carriers operating nearby networks
- enable consumers to check who can connect their premises, and
- allow governments to verify that infrastructure has been provided.

The intention is that this data be open source and widely useable. The Declaration requires carriers other than Telstra and NBN Co to provide information about all networks in new developments where they are provided under a new contract. The Declaration also requires Telstra and NBN Co to report on networks for developments of 20 or more lots. This difference in approach reflects NBN Co and Telstra's general responsibility as Infrastructure Providers of Last Resort (IPOLR) and the practical reality they may need to service many small developments by extending their networks including in brownfield areas.

Because of their potential commercial sensitivity, carriers would also not need to report on networks for large construction projects for single client occupants, for example, industrial sites or government sites.

Carriers who cease to be responsible for servicing a locality (e.g. because a developer on-sells a superlot without novating the carrier contract) will need to adjust their data accordingly.

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

*This Declaration should be read in conjunction with the draft Carrier Licence Conditions (Networks in New Developments) Declaration 2016 which proposes requiring carriers building and operating networks in new developments to meet certain network quality, connection time and fault rectification standards.*

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Commonwealth of Australia

*Telecommunications Act 1997*

**Carrier Licence Conditions  
(Networks in New Developments Reporting Requirements)  
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

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**1. Name of Declaration**

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

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

**Department** means the Department of State of the Commonwealth that is administered by the Minister administering the Act from time to time.

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

*Note: The following definition of 'Development' is a key definition for the Declaration as it defines the two types of development where carriers may be required to provide information about networks under section 5 below. These are:*

- *developments of up to 19 lots or units – where the carrier (except Telstra and NBN Co) constructs a new network or extends a pre-existing network under a legally binding contract*
- *developments of 20 or more lots or units.*

*Under the first limb above, the intention is carriers would not need to report connections of small developments (e.g. knock-down rebuilds) using existing networks, but would need to report anything that was a new network or extension required under a legally binding agreement with a carrier. Extensions within an existing service footprint would not need to be reported on the basis that they would already be covered by prior reporting of the footprint.*

*NBN Co and Telstra are excluded from this limb of the definition because it is likely these carriers will be regularly extending their existing networks for small developments as IPOLRs, particularly in brownfield areas, and it would be unduly burdensome for them to have to provide reports on these extensions.*

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

- (a) the construction by a carrier (other than Telstra or NBN Co) of either a new telecommunications network or an extension to a pre-existing network under a legally binding arrangement with a Developer in an area of land which comprises:
  - (i) the subdivision of one or more areas of land in Australia into 19 or less lots (however described); or
  - (ii) the construction of 19 or less new building units on one or more lots and the making available of any of those building units for sale or lease; or
  - (iii) the significant refurbishment or repurposing of one or more existing buildings to create 19 or less new building units, and the making available of any of those building units for sale or lease;

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- (b) the subdivision of one or more areas of land in Australia into 20 or more lots (however described);
- (c) the making available of one or more of lots of land for sale or lease, where it would be reasonable to expect that 20 or more building units would be subsequently constructed on the lots;
- (d) the construction of 20 or more new building units on one or more lots and the making available of any of those building units for sale or lease; and
- (e) the significant refurbishment or repurposing of an one or more buildings on a building lot to create 20 or more new building units and the making available of any of those building units for sale or lease.

***estimated service date*** means, in relation to a specified new development network, the first date that the network is expected to become operational and technically capable of being activated to supply carriage services on a commercial basis.

***NBN Co*** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time.

***project area*** means the area of land within a real estate development project.

***specified carrier*** means a carrier 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' defines the types of networks to which the various reporting 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 temporary networks that may be provided on a short term basis for the first occupants of a development until a final network is provided. This is to provide transparency as to how services are being provided.*

*Unlike the 'specified new development networks' in the associated draft Carrier Licence Conditions (Networks in New Developments) Declaration 2016, this definition includes all technologies, including mobile and satellite. This is because this instrument is collecting data on how new developments are serviced and, in some instances, some new developments could be used with these technologies under different obligations to those set out in the associated instrument. For example, as USO provider Telstra may service a*

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*new development using mobile technology (pending the rollout of the NBN) or NBN Co could service a remote development using satellite.*

*It excludes from the reporting requirements networks used by or intended to be used by a single business or one or more government entities because there may be commercial sensitivities about the publication of data about these networks. It is expected that there would be limited public interest in information about this type of development.*

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

- (a) is (or will be) owned or operated by a carrier;
- (b) is (or will be) capable of being used to supply carriage services to an end-user in the project area;
- (c) uses (or will use) any kind of telecommunications access technology or a technology platform including but not limited to:
  - (i) mobile technology; or
  - (ii) satellite technology;
- (d) but does not include a network intended for use, or in use, by:
  - (i) a single business; or
  - (ii) one or more government entities.

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

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

## 4. Application

*Note: The purpose of section 4 is to specify the networks to which the substantive reporting conditions of the Declaration in section 5 below apply.*

*Subsection 4(1)(a) provides that the conditions will apply to networks where a carrier is contracted by a developer to build a network in a new development.*

*Subsection 4(1)(b) provides that the conditions will apply to a carrier when it becomes in a position to exercise 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.*

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*Subsection 4(1)(b) provides that whether a carrier is in a position to exercise control of a network is to be determined in accordance with section 155 of the Act which, in summary, provides that a person is in a position to exercise control of the network if they own the 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.*

- (1) The conditions set out in section 5 of this Declaration apply to a carrier licence granted to a specified carrier if, at any time on or after the commencement of this Declaration, the specified carrier:
  - (a) enters into legally binding agreement with a developer to build a specified new development network; or
  - (b) becomes in a position to exercise control of a specified new development network after construction of the network first commenced ('control' is to be determined in accordance with section 155 of the Act).

## 5. Reporting Conditions

*Note: Subsection 5(1) require carriers to provide information to the Secretary of the Department of Communications and the Arts about networks to be built in new developments for publication online.*

*This will provide information to assure potential real estate buyers that telecommunications services will be available in new estates, to inform developers of carriers operating networks near their developments, to enable carriers to coordinate infrastructure planning and help retail service providers determine which network services an area.*

*The data is to be published as open source data at [data.gov.au](http://data.gov.au) and is to be mapped. A beta version of the map has been operating at [www.communications.gov.au/what-we-do/internet/competition-broadband/telecommunications-new-developments-map](http://www.communications.gov.au/what-we-do/internet/competition-broadband/telecommunications-new-developments-map) since 14 August 2015.*

*Useful mapping requires certain types of information to be provided including the name of the development, the carrier, accurate coordinates showing the location and shape of the development, the type of technology to be used and estimated service date.*

*Subsection 5(1) requires carriers to provide the required information within 5 business days of the start of the month about activities that occurred in the previous month of either entering a contract to construct a network, or becoming in a position to exercise control of a network. This is intended to facilitate monthly data reporting, with a view to keeping the map up-to-date, without imposing an undue burden on carriers.*

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*To reduce the administrative burden on industry, the intention is that carriers will be able to provide data on particular new development networks once only. Carriers can update their information, such as the timing of completion of the network or the number of lots, if it changes but this will not be a requirement, unless they cease to be responsible for a development (subsection 5(3)). Subsection 5(2) lists the information which the Secretary of the Department will require to be provided. Carriers may not have some of the information so these subsections provide that the information is to be provided 'if available'. Other information is mandatory to provide.*

- (1) Within five business days of the commencement of each month, a specified carrier must provide to the Secretary of the Department all of the information set out in subsection 5(2) in relation to any specified new development network for which, at any time during the prior calendar month:
  - (a) the relevant legally binding agreement of the kind referred to in paragraph 4(1)(a) came into force; or
  - (b) the specified carrier first became in a position to exercise control over the network after its construction.
  
- (2) For the purposes of subsection 5(1), the following information is specified:
  - (a) a unique identifier number generated by the carrier for the Development;
  - (b) the name of the Development, if available;
  - (c) the Development's stage name or number, if available;
  - (d) the name of the developer;
  - (e) the developer application date, being the date that the developer submitted its request to the specified carrier to service the Development, if available;
  - (f) the nature of the Development, in terms of whether it is 'commercial', 'industrial', 'mixed development', 'residential', 'public/private institution' or 'other';
  - (g) the type of the Development, in terms of whether it is a 'building', 'refurbishment' 'subdivision', 'subdivision and building' or 'other';
  - (h) the total estimated number of building lots or building units in the Development;
  - (i) the status of the specified new development network, in terms of whether it is 'check with carrier', 'contracted', 'ready for service', or 'under construction';

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- (j) the date the legally binding agreement of the kind referred to in paragraph 4(1)(a) was entered into;
- (k) the estimated service date for the specified new development network, if available;
- (l) the technology type of the specified new development network in terms of whether it is 'copper', 'fixed wireless', 'FTTB-VDSL2 (unvectored)', 'FTTB-VDSL2 (vectored)', 'FTTN', 'FTTP', 'G.Fast', 'HFC', 'mobile wireless', 'satellite', or 'other'; and
- (m) the location and boundary of the Development as provided by geographical coordinate identifiers using the coordinate datum system of [specify datum type] .

*Note: Subsection 5(3) provides that where a carrier is no longer going to be responsible for a new development network, it must notify the Secretary of the Department by updating its data to reflect this change. How this is done is set out in the guidance provided on the Department's mapping website.*

- (3) Within 5 business days of the commencement of each month, the specified carrier must update the information provided to the Secretary of the Department under subsection (1) in respect of all specified new development networks that the carrier is no longer responsible for servicing.

*Note: Subsection 5(4) provides that a trivial breach of the conditions is not to be taken as a breach of the conditions in the Declaration. An example of a trivial breach might be a slight delay in providing data or a failure to provide data in the format required for technical reasons where this is quickly rectified.*

- (4) 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.