

OPENetworks Response on carrier licence conditions (Networks in New Developments Declaration 2016)

Issues	Description of Issue	Submission
1.	The assessment to demonstrate the need for government action by imposing the CLC is fundamentally flawed and patently wrong.	<p>There is no objective evidence justifying the imposition of the CLC.</p> <p>On page 2 of the Regulation Impact Statement (RIS), the Department concludes that, <i>“While competition in the provision of telecommunications infrastructure will provide many benefits, it also raises a number of risks that need to be mitigated, These are the issues this RIS focuses on.”</i></p> <p>The RIS goes on to repeat the allegation that with competition allowed under TIND, <i>“there is a risk that some developments may have no infrastructure or receive low quality solutions, particularly if developers and carriers seek to minimise costs.”</i> The RIS justifies the assessment that the potential problem deserves government action and, in effect, a new CLC by simply saying, <i>“In the past, residents have written to their local members and Minister for Communications about poor broadband outcomes in their new developments. The former Minister and Department have also received a number of complaints about other providers for poor delivery of services in their developments, the lack of choice of RSPs over the network and pricing.”</i></p> <p>There is no rigorous assessment of or challenge to that assumption in the RIS. Yet the CLC will have a significant impact on the ability of alternative carriers to compete with NBN Co and promote the interest of non-complaint non carrier operators in new developments. This was obviously the true intent of the CLC and of the Department, as it has never abandoned the monopolist model for the National Broadband Policy promoted by the Rudd and Gillard Governments.</p> <p>Instead of looking at the issues logically or applying historical trends in the market or requiring evidence to prove the existence and extent of the alleged problem identified by the Department and the likelihood that the proposed solution (the CLC) will fix the problem without crushing competition (which the Department claims is a good thing for the infrastructure provider market),</p>

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		<p>the Department expects bald assertions to be enough justification. Statements like <i>“Competition to service an estate creates an incentive to reduce prices, but also a potential to reduce the cost and quality of infrastructure provided. In the absence of ongoing competition in the market, there may also be reduced incentives for a provider to continue to operate at a high level of service. This is because it faces a reduced threat of competitive entry.”</i>¹ This is not evidence of the problem or of the extent of the alleged problem.</p> <p>The Department goes on to demonstrate a lack of rigor in its assessment when it identifies that the next threat that must be clobbered by a CLC, when it says, <i>“The Principal-agent problem is a market issue that exists in the new development sector. Developers have few, if any, on-going obligations to landowners after the sell the land.”</i>²</p> <p>What is not mentioned by the Department in the RIS are the obvious and many safeguards that do exist in the new development market. It is that prejudice and failure of the Department that underpins the naïve and twisted conclusions in the RIS.</p> <p>Despite what the Department thinks, developers are not disinterested in the outcome of telecommunications network deployments, nor what they are getting for their contribution to carriers for network deployments. The facts are that developers are very interested in keeping the residents happy with their choice of networks and operators. It is the experience of the submitters that, without exception, developers are scrupulous in their analysis of network infrastructure and the comparative study of what they are getting for their contribution to network deployments. They are certainly more rigorous than government’s attempt to sell this heavy handed CLC on the basis that developers simply don’t care what they get as long as they sell land.</p>
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¹ Pages 2 and 3 of RIS.

² Page 3 of RIS

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		<p>The facts are that most new developments take a long time to build and sell and developers have, at very least, a self-interest to ensure that the chosen network and operator does not disappoint existing or potential buyers and residents. To believe otherwise is a nonsense.</p> <p>It is also significant that the RIS fails to mention, much less recognise the imperative commercial importance for carrier operators of network reliability, robustness in network design, quality in provisioning and excellence in network operation. Carriers do not build networks to sell them. They build to operate the networks and if they were to include substandard components in that infrastructure then they are likely to pay higher costs for repairs and replacements of those components. If nothing else than for self-interest, private carrier operators of wholesale networks genuinely want the best quality networks that they can build.</p> <p>However, it is undeniable that cost is a factor to consider. But the main cost driven quality reducing pressure for private carriers in the new development market is from NBN Co and the government's decision to heavily subsidise NBN Co's networks in new development. The facts are that by only insisting that NBN Co must charge \$400 for MDUs and \$600 for SDUs and might yet give away TV and other services and make potential backhaul costs for developers self-assessable by NBN Co, the government has forced the private carriers to meet that artificially low threshold and to subsidise their own network deployments or perish. It is government policy to artificially fix the developer contribution to NBN Co well below the true or actual cost to NBN Co, not private carriers' innate desires to cut cost and corners, which creates the risks for future networks in new developments.</p> <p>It is muddleheaded and shameful to now further twist the truth, just to suit the Department's monopolist plan for the NBN by denying the effect of government subsidies on the new development market and competing operator carriers.</p>
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		<p>Hopefully, government will not be swayed by the Department on this matter and that the Minister will have the courage and integrity to examine the underlying motives and relevant evidence justifying this attempt to impose CLC regulations, that are designed to force private wholesale carriers into a less competitive position to NBN Co in relation to new developments.</p> <p>Carriers in the real world, not the NBN Co world, must remain competitive and innovative in their networks to attract RSPs as well as future contracts with developers that scrupulously assess the competing operators' capabilities, competences and commitment to excellence in operations. They would recognise that it was the smaller private carriers and operators that brought optical fibre networks to Australia many years before the NBN. They would accept that it was not NBN Co, but the same small private carriers and operators that added Pay TV and Free TV onto their fibre networks in new developments and that today those operators offer a huge array of innovations that NBN Co still does not offer, such as:</p> <ul style="list-style-type: none">• Access Control Systems;• Fire Line and Lift Line Services;• Video and Voice Intercom Systems;• CCTV and security service systems;• Smart home and building automation systems;• Community, council and building services; and• Integrated free Wifi in public areas giving mobility network access to residents; to name a few of the services and systems offered via non-NBN Co networks. <p>The argument that Telstra might choose not to access customers using a non-NBN Co network³ because of the risk of poor quality or cost driven limited scale third party infrastructure, is naïve and misleading. It is naïve because readers of that statement could reach the opposite conclusion on the speculative assurance of the Department as to what Telstra might do. Indeed,</p>
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³ Page 3 of RIS

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		<p>as Telstra is only recently only a retailer, instead of being also a wholesaler, Telstra’s motivations and future plans are at best, unpublished and unknown on this matter. However, as a retailer, Telstra knows it can insist on Customer Service Guarantees from wholesalers, if it decides to interconnect and that it can do its own inter-operability, network testing before it would interconnect to any third party infrastructure. It is misleading by the Department, because Telstra has been negotiating the lease to NBN Co of its wholesale network for many years and clearly did not want those valuable negotiations to be jeopardised by concerns about Telstra using third party (non-NBN Co) networks for access. Further, the Department is well aware of the anti – competitive restraint of trade clause exists in Telstra’s Definitive Agreement with NBN Co that compels Telstra to use NBN Co where there is or may be a competitive access network to reach Telstra’s customers. Hence, the Department’s speculation about what Telstra may do in relation to access to third party (non-NBN Co) infrastructure is at best pointless.</p>
2.	<p>By pursuing the CLC option, government’s focus is only on carriers and the imposition on carriers is a penalty encouraging unregulated non carrier operators and builders of broadband networks in new developments.</p>	<p>OPENetworks appreciates that the option being pursued by government is to introduce a new declaration that would impose conditions on <u>carriers</u>, but the fact remains that government has by default and inaction allowed unregulated non carrier operators and network builders (“NCOs”) to flourish in the same new development network deployment market. NCOs can satisfy developer requirements and without the same regulatory constraints are flourishing to the prejudice of the residents in development served by their networks and exhibiting all of the problems that the RIS says could arise if government does nothing.</p> <p>Any advantage of being a carrier has been eroded by government over-regulation of carriers. For example:</p> <ol style="list-style-type: none"> 1. there are no federal legal obligations on developers to deploy optical fibre networks in new developments. Such obligations only arise if the developer wants to deploy a telecommunications line. Uncanny developers know that if they only install conduits and cable ways in

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		<p>the development, then NBN Co or some other operator will eventually deploy an active network through their passive network of conduits and cableways. The disinterested local governments (including Brisbane, Gold Coast and Sunshine Coast City Councils to name just a few of the largest) prefer to let the market decide and not rankle with developers about whether superfast broadband telecommunications should be a mandatory conditions imposed by them on development approvals. The Federal government policy states it is working with local government to change that situation and yet there has been no tangible evidence to show how the Federal government is doing that or to show any positive change in this trend. The policy is clearly failing and NCOs are the beneficiary of that failure and the continuing trend to further burden carriers.</p> <ol style="list-style-type: none">2. Developers are not obliged to ensure that the only operators of networks in their new developments are carriers. Instead, developers are free to permit any NCO to deploy any form of broadband network, even WiFi networks, and tell buyers of land or lots in those developments that a fibre network will one day be deployed by NBN Co or perhaps the WiFi operator. As long as the developer completes the pits; pipes and trenching or conduits and cableways, they can be "NBN Ready". That is the extent of their obligations. So what if NBN Co does not have those developments on their immediate build plans? One day NBN Co may get there and meanwhile a limited range of WiFi or expensive mobile broadband providers are the only choices for the unsuspecting land buyers. Commercial carriers are unlikely to overbuild those networks, as it would be at the cost of the carriers, not the developer, land buyers or local council and NBN Co is mandated by the NBN Policy and Ministerial Statements of Expectations to have a national IPOLR to bring broadband to all Australians, even though this may take a long time.3. Wholesale carriers are already heavily regulated with requirements for mapping network deployment, data retention, carrier interception and reporting on everything from access agreements to income for
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		<p>TIO scheme purposes. NCO have none of that regulation or compliance costs to worry about.</p> <p>4. The introduction of mandatory design, construction and procurement specifications, costly third party professional certification of compliance, price and trading term regulation and the CLC that would oblige non NBN Co carriers to “<i>keep up with technology of NBN Co</i>”, a company whose future technology directions are dependent on whose in government and whose corporate plan does not explain either the true costs of networks nor the technical feasibility, design or procurement of their network technology. Indeed the “Build and Operate” CLC 5 would compel non NBN Co carriers to support delivery of services that NBN Co does not delivery (Eg Free and Pay TV) and meet network availability standard of NBN Co that are neither public nor audit verified standards.</p>
3.	<p>Either Option 1 (Retain the Status Quo) or Option 4 (Voluntary Industry Code) are better options for government and industry.</p>	<p>It is understood that despite our submissions that demonstrate there is no need for action by government against carriers, the Minister may want to set some performance standards for broadband networks in new developments, but the Minister must not introduce unfair or indeterminable standards via the CLC nor focus only on Carriers.</p> <p>If government must do something, which we submit is unwarranted, then the least intrusive and most effective option is Option 4. This is to allow industry to set the standards by development of Voluntary Industry Codes (“VICs”) which by virtue of existing legislation) has the same effect as a CLC since all carriers must comply with VICs.</p> <p>Government may also want to flag an intention to enact legislation (Option 3) to mandate standards for network deployments and operation that will have industry wide application and require all developers of new developments to deploy optical fibre networks that must be operated only by carriers that are open access operators that have a minimum number of independent</p>

⁴ CLC 5 (b), (c), and (e)

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		<p>disassociated retail service providers (“RSPs”) and also complying with Option 4.</p> <p>The assumption that the creation of VICs could take 6 to 12 months and therefore adversely affect property buyers to significant additional costs to access quality telecommunications in their development, does not recognise that the proposed alternative (under Option 2 – CLC) is no quicker in reality because of the time NBN Co would take to develop and publish fair and sensible standards and strategies and suffers from other more significant deficiencies because of the burden and risks for the non NBN Co carriers.</p> <p>The justification for the CLC is founded on the false assumption that carriers are currently deploying substandard network infrastructure or infrastructure that is inappropriate or from sources that are risky. That assumption is without any factual substantiation. That notion is a frolic of fancy promoted by NBN Co and the vendors of infrastructure to NBN Co to reduce competition from other wholesale carriers and alternative infrastructure vendors. This is an attempt to mandate infrastructure procurement and standards that will have the same anti-competitive conditions that favoured NBN Co before it had to charge developers for network deployments. It denies the sense and force of commercial competition. It is nationalisation by stealth and falling for the easy option without regard for true tests of commercial competition in the network infrastructure market. It is the same folly that allowed NBN Co to throw away the two vendor policy that Telstra had adopted to protect itself from stagnation of innovation and absence of price competition in procurement of network infrastructure.</p> <p>It also assumes NBN Co has sensible standards and directions that are readily available for other carriers to access and implement and that the only source of innovation is NBN Co. That thinking is simply naïve and untrue. Apart from the boast that NBN Co is building a national broadband network, there is nothing new in the technology or services that it provides or intends to provide. Indeed the alternative non NBN Co carriers are already operating</p>
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		networks that provide Australians with services many years in advance of the NBN Co service and product range.
4.	“Adequately Served Policy” no longer exists and has no relevance to the alleged problem or solutions, but should be reinstated to prevent the unnecessary overbuilding of networks.	<p>Despite the reliance placed on the mention of the “Adequately Served Policy”⁵ to further justify the CLC option, government removed that protection for non-NBN Co networks because the government was satisfied that NBN Co would respect the Telecommunications in New Developments Policy 2015 (“TIND Policy”). That TIND Policy simply mentioned that NBN Co should seek Ministerial consent before overbuilding other networks, but failed to adequately describe the circumstances that may give rise to it or what comprise overbuilding. The failed attempt of government to stop NBN Co wasting resources and duplicating infrastructure by mere policy is now extensively evident in almost every State and carriers have no faith in mere policy. But VICs are binding and should be binding on all carriers and this is what both NBN Co and non-NBN Co carriers should be expected to meet.</p> <p>The next Statement of Expectations by the responsible Ministers should impose IPOLR on all compliant wholesale carriers and afford those carriers the protection from over building both within their network mapped areas. IT should compel NBN Co to deliver a commercial profit within 3 years and to not ever overbuild or extend its network in to the mapped network footprint of other IPOLR networks without prior published reasons for Ministerial consent to do so.</p>
5.	The Declaration of CLC must not have a retrospective effect on networks constructed after the Declaration but commenced pursuant to contracts before the Declaration.	<p>The definition of “<i>specified new development network or networks</i>” in the CLC⁶ means the CLC will affect almost every networks no matter when it was commenced and that is unfair and unreasonable. The costs to comply with the CLC for those networks will already be fixed and the contracted obligation as to what must be supplied and deployed by the carrier is fixed by contract. IT is unfair and unreasonable to require compliance with the CLC when that may oblige a carrier to deliver different standards, designs and infrastructure</p>

⁵ Page 4 of RIS regarding Option 2

⁶ Page 6 - CLC 3 (Definitions)

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		and especially if the cost of compliance would not be met by the developer or government.
6.	Mobile and Satellite networks should not be exempt from compliance with the selected solution to the alleged problem.	The definition of “ <i>specified new development network or networks</i> ” in the CLC ⁷ exempts Mobile and Satellite networks. Why should that be so if the compliance costs and burden is to address alleged problems in the wholesale broadband market, why should the operators of those competing technologies be exempt? Indeed why should NBN Co be exempt or the benchmark. Logic suggests that all broadband wholesale network operators should meet determine the industry standards (through VICs) and should comply with those VICs. NBN Co (even before it is privatised) should not be the benchmark for industry, but should comply with industry standards (VICs) to which it may contribute ideas and suggestions.
7.	There are inconsistencies in the Definition of <i>Type 1, 2 and 3 premises</i> in relation to “<i>specified new development network or networks</i>”.	The definitions of type 1 premises is on part based on the distance from a “ <i>specified new development network</i> ”. The definitions of type 2 premises and type 3 premises is on part based on the distance from a “ <i>network</i> ”. That looks to be in unintended inconsistency.
8.	The application of CLC 4 so that the CLC relates to carriers acquiring networks built by someone else is unfair and unreasonable.	It is unfair and unreasonable to require carriers to pay indeterminable sums of moneys for compliance with the CLC in relation to acquired networks, much less newly constructed networks with pre-CLC infrastructure, without hope of compensation for the potential cost of future upgrades or compliance.
9.	Pursuant to CLC 5(1), freezing older networks is unfair and unreasonable.	As CLC 5 will prohibit the installation of a line etc in a specified new development network unless the network complies with CLC 5(3) this will freeze existing networks so they are incapable of expansion even within their existing footprints and also crush investment in non-NBN Co networks as there will be doubts as to the extent of compliance with this condition where there is existing networks that have not be “certified” and the cost of “Certification” of entire existing networks will be an exorbitant and unfair

⁷ Page 6 - CLC 3 (Definitions)

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		burden on carriers. Indeed there is no similar certification or network specification requirement on a carrier anywhere in the world.
10.	CLC 5(b) – network capability requirements are vague, uncertain and unreasonable.	<p>The uncertainty and vague meaning of CLC 5(b) is the most objectionable feature of the CLC. Indeed it demonstrates the naïve think behind Option 2 and the unreasonableness of Option 2 being adopted by Government.</p> <p>To set requirements to “keep up with technology of a competitor” or to be “capable of being physically integrated into another [competitor] telecommunications network is unreasonable.</p> <p>The idea of knowing, understanding, or meeting plans of a competitor such as NBN Co that are neither complete, costed nor properly described is unreasonable.</p> <p>This government has previously criticised the NBN Co business plans as “shambolic” would now have non NBN Co carriers try to make sense of them so as to know, understand and deploy NBN Co technology, even if that is only in a corporate plan and not yet done by NBN Co.</p> <p>Those non NBN Co carriers must use infrastructure planned by NBN Co, cost what has not been costed by NBN Co and plan what their competitor (ie NBN Co) plans to do so, just so that they can be seen to “keep up” or be “capable”. This is a nonsense. If NBN Co were the benchmark, then none of the innovations previously mentioned and achieved by non-NBN Co carriers would never happen. NBN Co was not the first operator to deploy optical fibre networks, GPON networks, voice networks, Free and Pay TV Over fibre now any other services on fibre. These were all first done by the other non-NBN Co carriers. This CLC is itself an incredibly arrogant and ignorant act of government if it is adopted.</p>
11.	The requirement that networks must support free and pay TV is unreasonable?	CLC 5(c) requires carriers other than NBN Co to build networks to support free and pay TV and yet NBN Co has no such requirement and does not do so. The

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		<p>cost burden of compliance would be unreasonable especially since neither free TV operators nor Pay TV providers contribute to the cost of the network deployments. The cost of such compliance is another unreasonable burden that is contrary to the competition policy of Australia insofar as NBN Co does not have to support such services and yet government is now intending to impose those requirements on the competing network carriers. This in also contrary to the intention of the Competitive Neutrality Policy of Australia as published in 1999. Surely VICs are more certain, clear and uniformly applicable and fair.</p>
12.	<p>The service quality and availability of NBN Co is unknown and an unreasonable standard?</p>	<p>CLC 5(d) and (e) seek to benchmark carriers against NBN Co quality and availability information which is unknown, variable and unpredictable. The idea of such benchmarking is itself a nonsense. Surely VICs are more certain, clear and uniformly applicable and fair.</p> <p>The cost of such compliance is another unreasonable burden that is contrary to the competition policy of Australia insofar as NBN Co does not have to support such services and yet government is now intending to impose those requirements on the competing network carriers. This in also contrary to the intention of the Competitive Neutrality Policy of Australia as published in 1999.</p>
13.	<p>The cost and burden of certification and compliance is unreasonable.</p>	<p>CLC 5(4) and (5) are so outrageously extravagant and unfair as to make them unreasonable, but this is also contrary to the competition policy of Australia insofar as NBN Co does not have to undertake certification or comply with these rules that government is intending to impose on the competing network carriers. This in contrary to the intention of the Competitive Neutrality Policy of Australia as published in 1999.</p>
14.	<p>The pre-emptive action of a regulator determining that a breach of CLC <u>might</u> happen is an unreasonable threat to entangle carriers in a web of</p>	<p>CLC 5(6) is another unjustifiable expense and compliance burden on carriers. This requirement for either the ACMC or ACCC who themselves have never built any networks to assess those networks against the unknown, ever changing plans and propaganda of the competitor NBN Co is unreasonable.</p>

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	very expensive show cause and other legal actions with the regulator.	<p>The notion of dealing with a regulator about a prospective breach of some vague and uncertain standard, capability or benchmark of a direct competitor beg the question of what expertise the regulator has and about the regulators dependence on information and expertise provided by NBN Co against carrier competitors. The cost and burden of such actions and involvement with the regulator will be expense and time consuming and generally stifle innovation and network expansion by the non-NBN Co carriers.</p> <p>Additionally the requirement of producing binding commercial agreements to the regulatory in such an environment of commercial competition with NBN Co is a terrifying power that may unjustifiably threaten the viability of confidential dealings and agreements that commercial developers reach with carriers other than NBN Co. The exercise of such powers would now be possible even if the regulator merely suspect there may be a prospective breach of the CLC and given the uncertainties and vagueness of the CLC such suspicions would arise in any and every instance other than when NBN Co is the carrier (as it would be exempt).</p>
15.	Given that developers do not have to deploy optical fibre networks in new development and merely have to be “fibre ready”, the imposition of CLC 5(6A) is unreasonable and unjustified until the government can by legislation or agreement with local government ensure that developers are obliged to provide superfast broadband networks as well.	<p>The cost and burden of compliance with CLC 5(6A) is unreasonable where there is no requirement on developers to be other than fibre ready in new developments.</p> <p>Publication of carrier websites of terms and conditions of access, fault detection handling and rectification and dispute resolution are not matters for the public but are matters concerning the RSPs and the wholesale carrier operator. So the burden and cost of compliance is unreasonable and unnecessary. It also does not relate to the risks identified and justification for the CLC.</p>
16.	IPOLR Obligations in CLC 5(7), (8), (9), (10) and (11)	<p>Whilst the idea of being the Infrastructure Provider of Last Resort is in principal acceptable to carriers if the rules relating to the overbuilding of a network or inside the mapped network footprint are clarified and</p>

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		<p>strengthened, the drafting of CLC 5(7) and (8) is too vague and uncertain to be reasonable.</p> <p>First, the exceptions to the IPOLR obligations must include cases where there may be breaches of Acceptable Use Policies that protect networks and the network business from unfair or unacceptable use.</p> <p>Second, there is uncertainty as to whether the carriers must provide at their own cost services for which neither developers nor government are not prepared to pay.⁸ For instance, it is uncertain whether the level of services that carriers can be compelled to provide will include free TV or pay TV or other services and to the uncertain and nebulous standards that “<i>meet or exceed the quality available on the NBN at equivalent or better price for comparable services</i>”⁹.</p>
17.	Activation and Repair Obligations must be government funded – CLC 5(12) and (13)	<p>If government intends to oblige carriers to connect and maintain services to premises that were and are unfunded but heavily subsidise NBN Co and provide the USO fund for Telstra etc, then it should fairly also fund these obligations on the IPOLR carriers.</p> <p>It should be left to industry under VICs, not the whim of the Department as to the time it takes to activate and repair connections. For example, without special funding, in non urban areas and without regard to the environment and geography of the terrain, carriers cannot be expected to build say, 500 metres of fibre cable to premises in 2 weeks or perhaps even 4 weeks for remote areas. This must be a fully funded build and one that government must bear if it is to be reasonable.</p>
18.	Fault Rectification in CLC 5(14) and (15)	<p>There is no definition of “a network fault” so it is not possible to meaningfully comment on this obligation. However, assuming there was some definition of the term the issue of fault rectification ought to be a commercial matter</p>

⁸ CLC 5(10)

⁹ CLC 5(11)

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		determined by the negotiations with the RSPs and wholesale carrier, not regulation by government. The fairness of imposing additional legislative requirements and risks on the wholesale carrier is made dubious when a “fault” may be in the customer premises, RSP network or CVC network provider or cross connected networks or the content providers’ services. The consequences to the carrier arising from a potential breach of CLC far outweighs the consequence of delayed restoration of services which is already covered by Service Level Assurances negotiated with RSPs as fair compensation that in turn will be paid by RSPs to end users without contracted services.
19.	Reporting and Compliance – CLC 5(16) and (17) are costs and burdens that are unreasonable and unfair.	<p>The notion of further reporting on compliance and publishing statements about non-compliance is both unfair and unreasonable when NBN Co and Telstra do not publish that information and given that the level of record keeping to do so would be another unreasonable burden and cost.</p> <p>It is not possible to accurately determine the extent of the cost of reporting and compliance for the Department but if it is imposed then there would be a need to employ additional full time compliance staff and with appropriate on costs that would require an annual budget of:</p> <ul style="list-style-type: none"> • \$150,000 - \$200,000 for carriers with up to 10,000 premises past • \$300,000 - \$500,000 for carriers with larger networks.
20.	What would be a “trivial failure” in relation to compliance with the CLC is too vague and uncertain.	The dispensation under CLC 5(18) for “ <i>trivial</i> ” failures to comply with the CLC would not be a bad thing if there was any way of determining what is or isn’t a “trivial failure”. So whilst it may appear to be a minor softening of an otherwise cruel and costly regulatory burden, it is illusory and there can be no meaningful non disclosures where the CLC is concerned.
21.	Do not make the Determination to impose the CLC	It is our submission that the CLC is unjustified on the facts, unfair and unreasonable in its drafting and focus, misguided in its motives and should not be imposed by the Minister on carriers.

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22.	Up-front costs to meet the standards and requirements mentioned in the CLC	Given that the CLC lacks certainty and is too vague on the key issues as previously discussed, it is a nonsense to try to estimate the cost of compliance and any upgrades to the existing network infrastructure of carriers. This applies to the questions concerning redesign of networks, training of personnel and the activations and repairs of connections and fault rectification etc.
23.	Rollout of Infrastructure numbers is NOT the right test to determine this issue about the CLC.	<p>Carriers other than NBN Co are currently involved in numerous new developments each year.</p> <p>The issue should not depend on how big or small that number is. Whether the CLC is the right option should be determined on the basis of the evidence to justify the burden and cost of regulation and where that regulation is fair and reasonable in the circumstances.</p>