

EXPLANATORY STATEMENT

Telecommunications Act 1997

CARRIER LICENCE CONDITIONS (TELSTRA CORPORATION LIMITED) DECLARATION 1997 (AMENDMENT NO. 1 OF 2006)

Issued by the authority of the Minister for Communications,
Information Technology and the Arts

Legislative basis

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Amendment No. 1 of 2006) (the Amending Declaration) amends the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (the Original Declaration). The Amending Declaration will amend the Network Reliability Framework (NRF), which was added by amendment to the Original Declaration in 2002. The NRF is a three-tier reporting, remediation and monitoring framework to improve the reliability of Telstra's telephone services at both the network and individual levels.

The Amending Declaration amends clauses 3, 24, 25, 26, 27 and 28 of the Original Declaration.

Subsection 63(3) of the *Telecommunications Act 1997* (Cth) (the Act) enables licence conditions to be imposed on a particular carrier. The Original Declaration was made on 24 June 1997 in reliance on this provision and came into force on 1 July 1997. These original Telstra licence conditions have since been varied by a number of declarations, including the 2002 amendments to establish the NRF.

The Amending Declaration has been made under subsection 63(5) of the Act. Subsection 63(5) of the Act enables the Minister for Communications, Information Technology and the Arts (the Minister), by written instrument, to vary an instrument under subsection 63(3) of the Act. Subsection 63(13) of the Act provides that an instrument under subsection 63(5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* (Cth).

As a consequence of the commencement of the *Legislative Instruments Act 2003* (LIA) and the repeal of section 46A of the *Acts Interpretation Act 1901* on 1 January 2005, the accompanying Amending Declaration is a legislative instrument for the purposes of the LIA (see LIA s.6(1)(d)). The accompanying Amending Declaration must therefore be tabled in the Parliament and is subject to Parliamentary disallowance. The requirement for gazettal in subsection 63(10) of the Act has been satisfied by the registration of the accompanying amending declaration and this explanatory statement on the Federal Register of Legislative Instruments (see LIA s.56(1)).

Section 68 of the Act provides that a carrier must not contravene a condition of its carrier licence. In the event of a contravention of a carrier's licence conditions:

- (a) section 69 of the Act enables the Australian Communications and Media Authority (ACMA) to give a carrier a remedial direction aimed at ensuring that the carrier does not contravene its licence conditions in future;
- (b) section 70 of the Act enables ACMA to issue a formal warning to a carrier in relation to the contravention; and
- (c) Part 31 of the Act enables the Minister or ACMA to institute proceedings in the Federal Court for the recovery of a pecuniary penalty of up to \$10 million for each contravention.

Consultation

Section 64 of the Act provides that before making an instrument under subsection 63(5) the Minister must arrange for a draft version of the instrument to be provided to the licence holder and invite the holder to make a submission to the Minister on the draft. The Minister wrote to Telstra on 1 June 2006, and Telstra made a formal submission on the draft on 5 July 2006. Telstra's views were fully considered in finalising the Amending Declaration and a number of changes were made as a result.

Policy Basis

The NRF was first introduced as a licence condition on Telstra in response to Recommendation 11 of the Telecommunications Service Inquiry (TSI) report, *Connecting Australia*.

In July 2001, the Minister directed ACMA to investigate and report on appropriate fault monitoring arrangements to give effect to the TSI recommendation. In its report, *Monitoring and Reporting Framework for USO Service Reliability*, released publicly in July 2002, ACMA proposed the adoption of a three-tiered approach to fault monitoring, reporting, prevention and enforcement, to be known as the NRF. The aim of this framework was to prevent or reduce the incidence of recurrent faults on the network of Telstra (hereafter 'the licensee').

The NRF commenced on 1 January 2003.

The NRF addresses reliability issues by requiring the licensee (who is the universal service provider and the main supplier of telephone services in Australia) to monitor and report to ACMA on fault levels, and to take action where faults levels threaten to exceed or do exceed specified levels.

In 2004-05 ACMA, in accordance with Regional Telecommunications Inquiry Recommendation 2.10, conducted a review of the NRF to assess the effectiveness of the existing framework. ACMA received and considered five written submissions to the public NRF Review Discussion Paper, including a detailed submission from Telstra.

The Government's response to the NRF Review was announced on 8 September 2005.

The purpose of the Amending Declaration is to:

- improve consumer awareness of overall service reliability, both nationally and regionally, by strengthening the Clause 25 reporting requirements;
- increase the level of disaggregation in Clause 26 to focus on cable runs, rather than Exchange Service Areas (ESAs), to allow for more precise targeting of remediation activities and monitoring, and more efficient use of resources; and
- improve the Clause 27 remediation, monitoring and reporting processes for individual Customer Service Guarantee (CSG) services.

General comments in relation to drafting

The Amending Declaration aims to provide clear guidance for Telstra and ACMA on the operation of the NRF. Accordingly, the Amending Declaration is prescriptive in relation to many requirements (eg. information to be provided and timeframes). At the same time, ACMA is given discretion to vary some requirements, seek additional information and agree to alternative timeframes.

As a matter of administrative law, ACMA will be required to exercise the powers conferred upon it by the Amending Declaration in a manner that is reasonable.

Notes on the Clauses

Clause 1 – Name of Declaration

Clause 1 provides for the citation of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2006)*.

Clause 2 – Commencement

Clause 2 provides that the Amending Declaration commences on 1 October 2006.

Clause 3 – Amendment of the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997

Clause 3 provides that the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* is amended as set out in Schedule 1 to the Amending Declaration.

Schedule 1

Item 1 of Schedule 1 omits the existing definition of the ‘ACA’s Boulding Report’ from clause 3 of the licence conditions as this term is no longer used in the licence conditions.

Item 2 of Schedule 1 amends clause 3 of the licence conditions by inserting a definition of ACMA (the Australian Communications and Media Authority) for the purposes of the licence conditions. As a result of the *Australian Communications and Media*

Authority Act 2005, on 1 July 2005 the former Australian Broadcasting Authority and the former Australian Communications Authority (the ACA) were merged to form a single communications regulator, to be known as ACMA.

The Amending Declaration replaces references to the ACA in clauses 24 to 28 of the licence conditions (which relate to the NRF) with references to ACMA. Other references to the ACA in the licence conditions will be replaced with references to ACMA in a subsequent amendment to the licence conditions. As a result of clause 8 of Schedule 3 to the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, references in the licence conditions to the ACA are taken to be references to ACMA.

Item 3 of Schedule 1 replaces the title of clause 24 of the licence conditions to include a reference to ‘general requirements’, in addition to the previous reference to ‘definitions’ as a consequence of the addition of subclauses 24(2) and (3) by item 5.

Item 4 of Schedule 1 introduces the numbering of subclauses to clause 24, and provides that subclause (1) will set out the ‘definitions’ part of clause 24. Subclause 24(1), as amended by items 6 to 10, sets out key definitions used in the NRF.

Item 5 of Schedule 1 inserts two new subclauses into clause 24. These subclauses deal with the ‘general requirements’ referenced in the new title of this clause (see item 3 above). Subclause 24(2) provides a general provision that any information or report that is required to be provided to ACMA under clauses 25, 26 and 27 of the framework must be in a form approved by ACMA. Subclause 24(3) specifies that the relative performance of cable runs, which need to be ranked for the purposes of clause 26(1) to allow for the selection of the worst performing cable runs, is to be assessed by a method approved in writing by ACMA.

Item 6 of Schedule 1 inserts three new definitions into the ‘definitions’ part of clause 24 (ie. subclause 24(1)).

The definition of ‘average network event volume’ provides that the average network event volume means the total number of network events on a given cable run over a given period. The average network event volume must be calculated using data from a continuous period of six continuous calendar months, or such other period as notified by ACMA to the licensee. This data is required to be reported under subclauses 26(1) and 26(8), and is necessary to allow ACMA to determine whether the licensee has met the requirements of subclause 26(8).

The second definition provides that the boundary of the licensee’s telecommunications network is consistent with the definition in section 22 of the Act.

The third definition, ‘cable run’, provides that a cable run is made up of a set of facilities logically located between a particular exchange and the boundary of the licensee’s telecommunications network. The terms ‘facilities’, ‘telecommunications network’ and the ‘boundary’ of the licensee’s network are linked to definitions in the Act (sections 7 and 22 respectively). The final part of this definition provides that a cable run should include at least one set of 10 or 100 (as the case may be) copper wire pairs within a physical cable sheath. This reflects Telstra’s standard copper network architecture, and

means that Level 2 focuses on poorly performing parts of Telstra's network at a highly disaggregated level. This definition is intended to reflect the licensee's network architecture, and to include cable runs that are constituted exclusively of copper cable or, for example, a mixture of copper cable and wireless network elements. For example, it is intended that cable runs to isolated communities that utilise a central radio tower to connect to the network and a series of copper distribution cables to connect individual customer locations would be covered under this definition.

Item 7 of Schedule 1 inserts a definition of ESA category for the purposes of subclause 26(1).

Item 8 of Schedule 1 replaces a reference to the ACA in subclause 24(1) with a reference to ACMA.

Item 9 of Schedule 1 inserts a definition of 'network event' into subclause 24(1). This definition excludes faulty customer equipment, third party damage to facilities of the licensee and faults beyond the boundary of the licensee's telecommunications network. It also excludes faults or service difficulties within switching or transmission systems, and it is understood that these systems are to be monitored and repaired by the licensee using different processes.

Item 10 of Schedule 1 amends the definition of 'remediation' by replacing a reference to a CSG service in subclause 24(1) with a reference to a service. This definition has been broadened to cover all services because Level 2 of the NRF (dealt with by new clause 26 at item 12 below) applies to any services on a cable run, whether considered a CSG service or not.

Item 10 of Schedule 1 also amends the definition of 'remediation' by replacing a reference to a root cause with a reference to root cause or causes. This change will mean that the licensee must address one or more root causes, as the case may be, when planning or undertaking remediation work under the framework. For example, recurrent faults on a service may be traced to two different root causes on different parts of a cable run, such as a poorly installed cable joint in one place and a corroded or waterlogged cable in another.

Item 11 of Schedule 1 substitutes a new clause 25 in the Original Declaration. Each new subclause is discussed in turn.

Clause 25 – Monitoring and reporting at the Field Service Area (FSA) level

Clause 25 gives effect to 'Level 1' of the NRF, the purpose of which is to provide the public with useful and recent information regarding the reliability of telephone services nationally and in different regions within Australia.

Subclause 25(1) requires Telstra to report to ACMA on a monthly basis (or such other timeframe as ACMA agrees in writing) on:

- the percentage of CSG services free from faults or service difficulties nationally and in each FSA; and

- the average availability (in terms of time) of CSG services nationally and in each FSA.

Supporting data is further required to enable ACMA to validate the licensee's reports, if necessary, and to collate and analyse trend information over an extended period of time. For example, this supporting data will enable ACMA to undertake further analysis on average performance in aggregated regions or over specific periods. Subclause 25(2) provides minimum requirements for the supporting data that the licensee must provide to ACMA. The subclause provides that the supporting data will include the total numbers of CSG services in operation, the numbers of CSG services that have one or more fault or service difficulties for the preceding calendar month as well as a summation of the times required to repair all CSG fault or service difficulties.

Subclause 25(3) requires Telstra to publish the report provided to ACMA under subclause 25(1) within 20 working days of the end of the calendar month or such other timeframe as ACMA agrees in writing. The requirement that this information be published on a monthly basis is designed to provide consumers with up-to-date information about service reliability in their region and nationally, as well as allowing consumers to view comparative information regarding service levels in other regions.

Paragraph 25(3)(b) enables ACMA to independently publish the information provided by Telstra under subclauses 25(1) and (2) if, following consultation with Telstra, ACMA considers it appropriate for publication. This will provide the public with a possible alternative source of information about performance in their area. More importantly, it will also enable ACMA to publish the data in conjunction with other performance data it collects, enabling it to provide a more holistic picture of Telstra's performance. Provision that ACMA must consult with Telstra about the publication of this data will allow Telstra to raise any concerns regarding its publication (for example, if they consider the information to be commercially sensitive), for consideration by ACMA, prior to any publication.

The ability of ACMA to publish the data will also enable it to make available to the public historical and comparative analyses of Telstra's reliability performance, for example:

- the performance of different FSAs in a particular month;
- the performance of one or more FSAs over time; and
- the performance of FSAs relative to national performance.

Item 12 of Schedule 1 substitutes a new clause 26 in the Original Declaration. Each new subclause is discussed in turn.

Clause 26 – Monitoring, remediation and reporting at the Cable Run level

Clause 26 gives effect to a completely new approach to 'Level 2' of the NRF, the purpose of which is to facilitate the identification of poorly performing cable runs, and to provide a mechanism by which Telstra is required to remedy those cable runs to a prescribed standard.

Subclause 26(1) requires Telstra to provide ACMA with a list of at least 40 cable runs each month. Paragraph 26(1)(a) specifies the information Telstra is required to provide in respect of each cable run on this list. This information includes the average network event volume for each cable run (this information is necessary for ACMA to monitor the licensee's performance against the standard provided in subclause 26(8)), unique identification details (to ensure that cable runs can be tracked through the Level 2 process), the ESA code (to allow ACMA to confirm the licensee's compliance with the requirements of Table 2) and the performance ranking of each cable run. Paragraph 26(1)(b) provides that the licensee must give the list to ACMA within 15 working days of the end of each calendar month.

Subclause (1) is particularly important as it includes the tables that are used to select the worst performing cable runs from different ESA categories. In combination, Tables 1 and 2 provide that cable runs from category D ESAs will be considered in NRF Level 2 through inclusion of the 'next worst' category at Step 5 of Table 2. This means that cable runs in category D ESAs are covered under Level 2 where they are 'next worst' performing cable runs, once minimum quotas of cable runs in smaller ESAs (ie. category A, B and C ESAs) have been met. This will provide a regional focus for Level 2, while also allowing poorly performing cable runs in larger ESAs to be covered.

Table 2 also excludes any cable runs that were included in a previous remediation list from eligibility for a new cable run list, unless that cable run had already been remedied, reached its 90 per cent reduction target under subclause 26(8) and then subsequently become faulty enough again to be included in a new list. This will ensure that poorly performing cables runs that are already being remedied under Level 2 are not 'double counted' in subsequent months.

Subclause 26(2) provides ACMA with the discretion either to approve or refuse to approve a remediation list given to them under subclause 26(1). It is expected that ACMA will perform this function in a reasonable timeframe. This may involve the agreement of protocols for timeframes with the licensee.

Subclause 26(3) provides that, if ACMA refuses to approve a remediation list, it must direct the licensee to provide a new list. It is expected that ACMA will perform this function in a reasonable timeframe. This may involve the agreement of protocols for timeframes with the licensee. As the relative performance of cable runs is assessed by a method approved in writing by ACMA, and the remediation list is then prepared using the method in Table 2, the licensee is provided five working days to provide this new list. Subclause 26(3) also limits ACMA's discretion to the consideration of the requirements of subclause 26(1). For example, ACMA could refuse to accept a remediation list if it contained less than 40 cable runs in total or less than five cable runs from category A ESAs. However, ACMA could not refuse to accept a remediation list simply because, for example, none of the cable runs was in a particular state/location.

Subclause 26(4) provides that where ACMA approves a remediation list, it must notify the licensee of its decision. It is expected that ACMA will perform this function in a reasonable timeframe. This may involve the agreement of protocols for timeframes with the licensee. As the default, the licensee must complete the remediation of cable

runs on the remediation list within six months of receipt of ACMA's notification, but ACMA may agree to another timeframe under subclause 26(5). As it is not intended that ACMA 'micro-manage' Telstra's operations, Telstra does not need to submit a remediation plan to ACMA for the remediation of cable runs on the approved remediation list. Rather, the method of remediation is first and foremost a matter for the licensee, rather than the regulator, and the licensee's performance is then assessed using the objective criteria set out in subclause 26(8).

Subclause 26(5) provides ACMA with the discretion to extend or further extend the period for the completion of remediation by a further period of up to six months. While the period of time needed for remediation will vary from cable run to cable run, three to six months is considered a likely timeframe for most remediations. However, this subclause recognises that unforeseeable or unusual events may occur which may impact on the licensee's ability to meet the specified timeframe. In such circumstances, the licensee may request that ACMA agree to an extension of the proposed timeframe. Paragraphs 26(5)(a) to (c) provide the circumstances under which the licensee may request an extension from ACMA.

Subclause 26(6) provides time limits before which extensions may be sought by the licensee under subclause 26(5). These time limits will ensure that the licensee applies to ACMA before the current period expires, and within a reasonable time after the licensee becomes aware that it will not complete, or reasonably expects that it may not complete, the remediation in the specified time. These provisions are intended to place discipline on the licensee in seeking extensions to remediation timeframes.

Subclause 26(7) provides that ACMA must give the licensee written notice of its decision to extend or not extend the period allowed for remediation, if requested by the licensee under subclause 26(5). ACMA must provide this written notice within 15 working days of receipt of the licensee's written request.

Subclause 26(8) provides that, after the end of six months following completion of the remediation of a cable run, the licensee must demonstrate a 90 per cent reduction in the average network event volume for that cable run. This provision will ensure that the licensee's remediation performance is assessed using objective criteria, without micro-managing its internal remediation processes. These reports must be provided to ACMA by the licensee on a monthly basis, within 10 working days of the end of each calendar month. Each monthly report should include details of all cable runs that reached, during that calendar month, the end of the six month period following the completion of the remediation. The report must include details of any reduction in the average network event volume for each cable run included in the report (ie. details for individual cable runs rather than aggregate figures). Details of the average network event volume for each cable run will allow ACMA to verify the 90 per cent reduction for each cable run, by comparing it to the data provided under paragraph 26(1)(a).

Subclause 26(9) provides that there are two options that the licensee can pursue if it has not achieved the 90 per cent reduction in average network event volume for a cable run, as specified in subclause 26(8). The first option, provided at paragraph 26(9)(a), is to provide a fresh remediation plan to ACMA at the same time that it provides its report under subclause 26(8). Paragraph 26(9)(a) provides the requirements for a fresh remediation plan. The second option, provided at paragraph 26(9)(b), is to provide a

written application to ACMA to waive the requirement for a fresh remediation plan. The licensee would need to pursue one of these options for each cable run that had not reached the 90 per cent reduction.

Subclause 26(10) provides a timeframe (15 working days after receipt of the application) for ACMA to respond to a waiver application that has been made by the licensee under paragraph 26(9)(b). It is expected that ACMA would discuss the reasons for its response with the licensee, where appropriate.

Subclause 26(11) makes clear that if ACMA approves a waiver application made by the licensee under subclause 26(9), then no further remediation of the cable run would be required at that time. However, if that same cable run is included in a future remediation list approved by ACMA under subclause 26(2), then the licensee must remedy the cable run in the same way as all other cable runs on the future list.

Subclause 26(12) provides that if ACMA does not approve a waiver application made by the licensee under subclause 26(9), then the licensee must provide ACMA with a fresh remediation plan that satisfies the requirements of paragraph 26(9)(a) (ie. the same requirements as for a fresh remediation plan provided by the licensee under subclause 26(9)). The licensee is provided 30 working days to provide the fresh remediation plan. This will mean that the licensee must prepare a fresh remediation plan, and must also undertake the remediation requirements specified under subclause 26(13), in all cases where the 90 per cent reduction specified in subclause 26(8) has not been met and ACMA has not provided a waiver.

Subclause 26(13) provides that where the licensee has failed to achieve the required 90 per cent reduction in average network event volume, and ACMA has not approval a waiver, the licensee must continue to undertake remediation action until there is 90 per cent reduction in the average network event volume. The licensee is allowed a maximum of 12 calendar months to achieve this reduction, starting from the receipt of the notification under subclause 26(10) or ACMA's receipt of a fresh remediation plan submitted under paragraph 26(9)(a). This subclause also provides that the licensee must achieve a 90 per cent reduction in the average network event volume across a continuous six month period starting no earlier than the date of completion of the original remediation activity specified in subclause 26(4). This means that if a significant number of faults occurs during the six month period following the completion of the remediation of the cable run, the licensee could choose to begin further remediation work to reduce the incidence of faults prior to that period expiring, and begin measuring the 90 per cent reduction again from the before the end of this period if they so chose.

Subclause 26(14) provides that the licensee must provide an annual report to ACMA on remediation activity conducted under clause 26. The report must cover remediation undertaken in that financial year, and be provided within 20 days of the end of the financial year.

Paragraph 26(14)(a) provides that the report must include a single figure for the total number of services affected (eg. either improved, remediated or otherwise benefiting) by either remediation undertaken under clause 26 or by the remediation of other cable runs referred to in paragraph 26(14)(d). This figure will therefore include all services provided by cable runs identified for remediation in a remediation list approved by

ACMA under subclause 26(2), as well as any other cable runs that the licensee remedied in conjunction with remediation under this clause. For example, if a 10 pair cable run identified for remediation under subclause 26(2) formed part of an existing 50 pair cable, and as part of the remediation activity the licensee replaced the entire 50 pair cable, then all the services provided by the 50 pair cable would be reported under this paragraph.

Paragraph 26(14)(b) provides that the report must include a summary of the types of network plant remedied and the nature of the remediation work undertaken on those types of plant.

Paragraph 26(14)(c) provides that the report must include the size (ie. whether it included 10 or 100 copper pairs), the ESA category, and the number of services in operation supplied by each cable run identified for remediation in a remediation list approved by ACMA under subclause 26(2). Cable runs that the licensee remedied in conjunction with remediation undertaken under subclause 26(2), such as those cable runs remedied under the circumstances described in paragraph 26(14)(d), would not be reported under this paragraph.

Paragraph 26(14)(d) provides that the report must include details of other cable runs remedied in conjunction with remediation under clause 26. This would include cable runs positively affected by remediation undertaken under this clause, other than those identified for remediation in a remediation list approved by ACMA under subclause 26(2). For example, if a 10 pair cable run identified for remediation under subclause 26(2) formed part of an existing 50 pair cable, and as part of the remediation activity the licensee replaced the entire 50 pair cable, then details of this 50 pair cable would be provided under this paragraph.

Item 13 aligns references in subclauses 27(1) to (3) to ‘faults or service difficulties’ by replacing them with references to ‘fault or service difficulties’ for consistency with the definition of ‘fault or service difficulty’ in subclause 24(1) of the licence conditions.

Item 14 replaces subclause 27(4) and Note with a new subclause 27(4) and Note. This new subclause has the following differences: it replaces references to the ACA with references to ACMA; it replaces the requirement that the licensee report to ACMA within 15 days after the contravention has occurred with a monthly reporting requirement that covers all contraventions within that calendar month (the licensee must provide this report to ACMA within 10 working days after the end of each calendar month); and changes paragraph 27(4)(d) to provide that the licensee only report on those fault or service difficulties in relation to the CSG service that resulted in the CSG service contravening subclause 27(4). The monthly reporting requirement and change to paragraph 27(4)(d) will rationalise the reporting required by the licensee without compromising ACMA’s ability to monitor the Level 3 provisions.

Items 15 to 25 replace references to the ACA throughout clause 27 with references to ACMA.

Item 26 omits subclauses 27(13), (14) and (15).

Subclauses (13), (14) and (15) provided a reporting and monitoring framework to ensure that the remediation work undertaken in accordance with clause 27 had been

successful and had raised the relevant services' reliability to a higher level. These provisions have been replaced by the provisions in new subclauses 27(14) to (18).

Item 27 omits subclause 27(16) and the associated Note, which detailed implementation procedures that are now redundant.

Item 28 inserts additional subclauses at the end of clause 27. Each new subclause is discussed in turn.

Clause 27 – Monitoring, prevention, remediation and reporting at the CSG service level

Clause 27 gives effect to 'Level 3' of NRF, the purpose of which is to prevent individual CSG services experiencing high numbers of faults or service difficulties and to require the remediation of individual CSG services that exceed specified recurrent fault thresholds. Under clause 27, investigation and remediation must be undertaken by the licensee if fault levels exceed specified levels, and this work will be subject to oversight by AMCA.

New subclause 27(13) provides that in the event that one or more fault or service difficulties occur during the 'remediation period' (defined in subclause 27(18)), the licensee is required to review its planned remediation to ensure it addresses the root cause or causes of the new faults (called 'subsequent faults'). This requirement ensures that the root cause or causes of all fault and service difficulties are addressed during the remediation of a CSG service under this clause, and some are not excluded simply because remediation has already been planned or commenced. As the root cause or causes of these faults is required to be addressed by remediation under this subclause, they are not otherwise treated as faults or service difficulties for the purposes of clause 27.

New subclause 27(14) establishes a 'monitoring period' (defined in subclause 27(18)) for a CSG service during which the licensee must report all fault of service difficulties to ACMA, and specifies a timeframe for the provision of such reports (within 10 working days after the end of each calendar month in which the difficulties occurred). Similar to previous subclauses 27(13), (14) and (15), the intention of this monitoring period is to ensure that remediation work undertaken under Level 3 has been successful and has raised the reliability of the CSG service to a higher level.

New subclause 27(15) provides that the licensee must provide sufficient information to allow ACMA to satisfy itself whether a fault or service difficulty that occurs during the monitoring period is or is not a 'related fault or service difficulty' (defined at subclause 27(18)). This information would include the licensee's own assessment, including reasons, as to whether or not a fault or service difficulty that occurs during the monitoring period is a related fault or service difficulty. The licence condition operates on the assumption that each fault or service difficulty that occurs during the monitoring period needs to be considered on its merits as to whether or not it is a 'related fault or service difficulty'. This is consistent with ACMA's role as the regulator in making decisions in the case of disagreement. It is anticipated that operational protocols may be developed between the licensee and ACMA to streamline the exchange of information under this subclause. The subclause also provides a timeframe of 15 working days for the licensee to provide sufficient information to ACMA to determine

whether the fault or service difficulty is related. This will ensure that the monitoring period is not circumvented by unnecessary delays. If a fault or service difficulty that occurs in the monitoring period is not a related fault or service difficulty, then it is to be treated as a fault or service difficulty for the purposes of subclause 27(4) (ie. a fault in a new Level 3 cycle for that CSG service). If the licensee disagrees with a decision made by ACMA under this subclause that a fault or service difficulty is related it may seek a review of this decision under the *Administrative Decisions (Judicial Review) Act 1977*.

Subclause 27(16) specifies the actions that the licensee must undertake if one or more related fault or service difficulties occur during the monitoring period. Paragraph 27(16)(a) provides that the licensee must re-examine its previous remediation activity and undertake further remediation activity to address the root cause of causes of the new fault or service difficulties. The licensee must undertake these activities within 20 working days after the end of the period mentioned in subclause (15). Paragraph 27(16)(b) provides that the licensee must report to ACMA on its further remediation activities within 20 working days of their completion.

Subclause 27(17) provides that the monitoring period commences again after ACMA notifies the licensee that it has received a report under subclause 27(16). This means that the monitoring period will not cease until an entire eight month monitoring period passes without the occurrence of a related fault.

Subclause 27(18) defines three key concepts utilised in clause 27.

‘Monitoring period’ is defined as the eight month period immediately following the completion of the initial remediation of a CSG service under clause 27.

A ‘related fault or service difficulty’ is defined as a fault or service difficulty that either arose from: the same root cause or causes that caused the fault or service difficulties that resulted in the licensee being required to remedy the CSG service under clause 27; or a similar root cause or causes that the licensee could have reasonably been expected to address during remediation of the service under this clause. This definition is linked to the definition of ‘remediation’ in clause 24, so that a failure to address and eliminate the root cause or causes of faults or service difficulties in relation to a CSG service can be seen as a failure to undertake adequate remediation. The following examples illustrate how this would work in practice:

- (a) a fault in the monitoring period would be a related fault with the same root cause if it was caused by a section of corroded copper cable, and if one or more of the faults that resulted in the licensee being required to remedy the CSG service under clause 27 were also caused by that same section of corroded copper cable;
- (b) a fault in the monitoring period would be a related fault with a similar root cause if it was caused by corrosion on a different section of copper cable, and if it would have been reasonable to expect the licensee to detect the corrosion problem during its remediation activity (for example, through undertaking line testing and appropriate line inspection in the circumstances); and
- (c) a fault in the monitoring period would not be a related fault if it was caused by a faulty joint that it would not have been reasonable to expect the licensee to have detected during its remediation activity, and if each of the faults that resulted in

the licensee being required to remedy the CSG service under clause 27 was caused by a section of corroded copper cable.

‘Remediation period’ is defined as the period between the day the licensee is required to report a fault or service difficulty for a CSG service under subclause 27(4) and the completion of the remediation of the service under clause 27.

Item 29 provides that amendments made to clause 27 by item 28 apply to any remediation under clause 27 that is completed on or after 1 October 2006. This means that any if a CSG service is being remedied under clause 27, and the remediation of that service is completed on or after 1 October 2006, that CSG service will be subject to the new monitoring period arrangements provided in subclauses 27(14) to (18).

Item 30 replaces a reference to the ACA in clause 28 with a reference to ACMA.