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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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1 Title

This Act is the Telecommunications Act 2001.

Part 1 Preliminary

Subpart 1—General

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

- (1) The main purpose of this Act is to regulate the supply of telecommunications services.
- (2) To avoid doubt, nothing in subsection (1) or in any other provision of this Act limits the Resource Management Act 1991.

4 Overview

In this Act,—

- (a) provisions concerning the functions of the Commission under this Act and the performance of those functions by members of the Commission (in particular, the Telecommunications Commissioner) are set out in subpart 2; and

- (b) telecommunications services that are regulated are contained in Schedule 1 and are classified as designated services (Part 2 of Schedule 1) or specified services (Part 3 of Schedule 1); and
- (c) supplementary provisions concerning the detail of those regulated telecommunications services may be—
 - (i) prescribed by regulations (section 69):
 - (ii) provided in telecommunications access codes (Schedule 2) prepared by the Commission on its own initiative or formulated by the Telecommunications Industry Forum and approved by the Commission; and
- (d) provisions concerning determinations by the Commission in respect of those regulated telecommunications services are set out in subparts 2 to 5 of Part 2; and
- (e) provisions about altering regulated telecommunications services are set out in subpart 6 of Part 2 and Schedules 3 and 3A; and
- (ea) provisions concerning the structural separation of Telecom are set out in Part 2A; and
- (eb) provisions about the preparation and disclosure of information are set out in Part 2B; and
- (f) provisions about the supply of certain telecommunications services under TSO instruments, the enforcement of those instruments, and contributions payable by certain telecommunications service providers to the suppliers of those telecommunications services are set out in Part 3; and
- (g) provisions from Parts 1 and 1A of the 1987 Act about the following matters are set out in Part 4:
 - (i) network operators and connection to, and misuse of, a network (subpart 1):
 - (ii) maintenance of networks (subpart 2); and
- (gaaa) subpart 3 of Part 4 sets out provisions granting statutory rights of access to private property for the purpose of installing certain fibre optic and other technology in circumstances where the consent of multiple parties would otherwise be required, together with provisions for establishing a dispute resolution scheme to deal with disputes relating to those rights of access (*see also* Schedule 3C); and
- (gaab) subpart 4 of Part 4 sets out provisions granting statutory rights for owners of existing electricity works (for example, power poles) to enter land where those works are situated and use the existing works for undertaking fibre optic works; and

- (gaa) provisions about undertakings required to be given by providers of certain telecommunications services involving fibre optic communications networks constructed in whole or in part using Crown investment funding, restrictions on unbundling in respect of such service providers, and the preparation and disclosure of information are set out in Part 4AA; and
- (ga) enforcement provisions are set out in Part 4A; and
- (gb) provisions facilitating the establishment of 1 or more complaints systems for the purpose of addressing complaints by consumers against service providers are set out in Part 4B; and
- (h) miscellaneous provisions about the repeal of certain provisions of the 1987 Act (including consequential amendments and transitional provisions) are set out in Part 5 and Schedule 4.

Section 4(c)(ii): amended, on 22 December 2006, by section 4(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 4(e): amended, on 22 December 2006, by section 4(2) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 4(ea): substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 61 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 4(eb): inserted, on 22 December 2006, by section 4(3) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 4(gaaa): inserted, on 9 June 2017, by section 4 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 4(gaab): inserted, on 3 May 2017, by section 4 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 4(gaa): inserted, on 1 July 2011, by section 88 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 4(ga): inserted, on 22 December 2006, by section 4(4) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 4(gb): inserted, on 22 December 2006, by section 4(4) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

5 Interpretation

In this Act, unless the context otherwise requires,—

1987 Act means the Telecommunications Act 1987

access provider—

- (a) means, in relation to a designated service or specified service, the person named or described in Part 2, or Part 3, of Schedule 1 as the access provider for the designated service or specified service; and
- (b) means, in relation to a service that is supplied under a registered undertaking, the person that provided the undertaking under Schedule 3A

access seeker—

- (a) means, in relation to a designated service or specified service, the person named or described in Part 2, or Part 3, of Schedule 1 as the access seeker for the designated service or specified service; and
- (b) means, in relation to a service that is supplied under a registered undertaking, a service provider who seeks access to the service and who complies with any conditions set out in the registered undertaking for eligibility as an access seeker

applicable access principles, in relation to a designated access service or specified service, means the access principles described in subpart 1 of Part 2, or Part 3, of Schedule 1 as the access principles for the designated access service or specified service

applicable conditions, in relation to a designated service or specified service, means the conditions set out in Part 2, or Part 3, of Schedule 1 as the conditions for the designated service or specified service

applicable final pricing principle, in relation to a designated access service, means the final pricing principle described in subpart 1 of Part 2 of Schedule 1 as the final pricing principle for the designated access service

applicable initial pricing principle, in relation to a designated access service, means the initial pricing principle described in subpart 1 of Part 2 of Schedule 1 as the initial pricing principle for the designated access service

approved code—

- (a) means a telecommunications access code that has been approved by the Commission under clause 9 or clause 10 of Schedule 2; and
- (b) includes any amendment to an approved code that has been approved under either of those clauses

auditor's report has the meaning set out in section 83(b)

broadcasting has the same meaning as in section 2(1) of the Broadcasting Act 1989

chief executive means the chief executive of the Ministry of Economic Development

Commission means the Commerce Commission established by section 8 of the Commerce Act 1986

computer record has the meaning set out in section 116(2)

CPI means the Consumers Price Index (All Groups) published by Statistics New Zealand

deemed TSO instrument has the meaning set out in section 71

designated access service means a service described in subpart 1 of Part 2 of Schedule 1

designated multinet network service means a service described in subpart 2 of Part 2 of Schedule 1

designated service means a designated access service or designated multinet-work service

draft code—

- (a) means a draft telecommunications access code prepared by the Forum under clause 1 of Schedule 2; and
- (b) includes a proposed amendment to, or proposed revocation of, an approved code

eligible person means a person who is—

- (a) registered with the Commission for the purpose of voting on a draft code under clause 4 of Schedule 2; and
- (b) a member of the Forum

end-user, in relation to a telecommunications service, means a person who is the ultimate recipient of that service or of another service whose provision is dependent on that service

existing lines—

- (a) means any lines constructed by Telecom or any of its former subsidiaries before 1 April 1989; and
- (b) includes any lines that were wholly or partly in existence, or for which work on the construction, erection, or laying commenced, before 1 April 1989

existing residential line—

- (a) means a Telecom residential line (other than a party line or a second line) that was an active connection on 20 December 2001; and
- (b) to avoid doubt, includes any such line that has been replaced or altered since 20 December 2001

existing works—

- (a) means any works relating to the provision of telecommunications under the Post Office Act 1959 (or any former Act) that were wholly or partly in existence, or for which work on the construction, erection, or laying commenced, before 1 January 1988; and
- (b) includes, for the purposes of subpart 2 of Part 4, any works relating to any conveyance that constitutes broadcasting under the Post Office Act 1959 (or any former Act) that were wholly or partly in existence, or for which work on the construction, erection, or laying commenced, before 1 January 1988; but
- (c) does not include any works that, after that date, have been altered or moved or added to in a way that substantially alters their character or location, as the case may be; and
- (d) in subpart 4 of Part 4, has the same meaning as in section 155ZS

fibre-to-the-premises access network has the meaning set out in section 156AB

financial year means a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year

fixed PDN—

- (a) means a PDN, or that part of a PDN, that connects an end-user's building (or, in the case of commercial buildings, the building distribution frames) to a data switch or equivalent facility; and
- (b) includes the data switch or equivalent facility and that part of the overall telecommunications link within the building that connects to the end-user's equipment

fixed PSTN—

- (a) means a PSTN, or that part of a PSTN, that connects an end-user's building to the local switches or equivalent facilities; and
- (b) includes those local switches or equivalent facilities

fixed radio station means radio apparatus comprising transmitters or receivers, or a combination of transmitters and receivers, installed at a fixed location, for the purposes of carrying on a radiocommunications service

Forum means the Telecommunications Industry Forum, which is a group that consists of at least 75% of all persons who are, for the time being, registered with the Commission for the purpose of voting on a draft code under clause 4 of Schedule 2

liability allocation determination means a determination of the Commission prepared in accordance with section 87(1)(a)

liable person means a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person

line—

- (a) means a wire or a conductor of any other kind (including a fibre optic cable) used or intended to be used for the transmission or reception of signs, signals, impulses, writing, images, sounds, instruction, information, or intelligence of any nature by means of any electromagnetic system; and
- (b) includes—
 - (i) any pole, insulator, casing, fixture, tunnel, or other equipment or material used or intended to be used for supporting, enclosing, surrounding, or protecting any of those wires or conductors; and
 - (ii) any part of a line

local authority means a local authority within the meaning of the Local Government Act 2002

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministry means the Ministry responsible for administering this Act

net cost,—

- (a) in relation to an instrument that is declared to be a TSO instrument under section 70, means the unavoidable net incremental cost to an efficient service provider of providing the service required by the TSO instrument to commercially non-viable end-users; and
- (b) in relation to a deemed TSO instrument that requires the supply of a service to end-users, means the unavoidable net incremental cost to an efficient service provider of providing the service required by the TSO instrument to all end-users connected to existing residential lines; and
- (c) in relation to a deemed TSO instrument that requires the supply of a wholesale service that is an input to a service supplied to end-users, means the unavoidable net incremental cost to an efficient service provider of providing the service required by the TSO instrument to another service provider for the purpose of making a retail service available to all end-users connected to existing residential lines

net revenue means the range of direct and indirect revenues and associated benefits derived from providing telecommunications services to all end-users connected to existing residential lines, less the costs of providing those services to those end-users

network means a system comprising telecommunication links to permit telecommunication

network operator means any person declared under—

- (a) section 105 to be a network operator for the purposes of this Act or any provision of this Act; or
- (b) section 2A of the 1987 Act (as it read immediately before the commencement of this Act) to be a network operator for the purposes of that Act or any provision of that Act

party or **parties** means,—

- (a) for a determination made under section 27 or a residual terms determination made under section 30ZB, the access seeker and the access provider of the service; and
- (b) for a standard terms determination made under section 30M, a designated multinet service determination made under section 39, or an approved code under Schedule 2, all access seekers and all access providers of the service (whether they became an access seeker or an access provider before or after the determination was made or the code was approved); and

- (c) for a registered undertaking under Schedule 3A, the access provider of the service and the Commission

PDN or **public data network** means a data network used, or intended for use, in whole or in part, by the public

price (except in subpart 6 of Part 2A) includes—

- (a) valuable consideration in any form, whether direct or indirect; and
(b) any consideration that in effect relates to the acquisition of goods or services or the acquisition or disposition of any interest in land, even though it ostensibly relates to any other matter or thing

proposed addition has the meaning set out in clause 8(1)(b) of Schedule 3

proposed alteration has the meaning set out in clause 1(1) of Schedule 3

proposed omission has the meaning set out in clause 8(1)(a) of Schedule 3

PSTN or **public switched telephone network** means a dial-up telephone network used, or intended for use, in whole or in part, by the public for the purposes of providing telecommunication between telephone devices

PTN or **public telecommunications network**—

- (a) means a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication:
(b) includes—
(i) a PSTN;
(ii) a PDN

public notice has the meaning set out in section 6

qualified auditor means a person who is qualified for appointment as an auditor in accordance with any prescribed requirements or, if there are no prescribed requirements, any requirements of the Commission

qualified revenue means the revenue (as determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to the liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

- (a) telecommunications services by means of its PTN;
(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN

radio frequency means electromagnetic waves of frequencies between 9 kilohertz and 3 000 gigahertz, propagated in space without artificial guide

registered undertaking has the meaning set out in clause 1 of Schedule 3A

road includes—

- (a) a street and any other place to which the public have access, whether as of right or not; and
- (b) land that is vested in a local authority for the purpose of a road as shown on a deposited survey plan; and
- (c) all bridges, culverts, ferries, and fords that form part of any road, street, or any other place referred to in paragraph (a) or paragraph (b)

service provider, except in subpart 3 of Part 4 and Part 4AA, means a provider of a telecommunications service

specified amount has the meaning set out in section 71A

specified service means a service described in Part 3 of Schedule 1

subsidiary has the same meaning as in sections 5 and 6 of the Companies Act 1993

Telecom—

- (a) means Telecom Corporation of New Zealand Limited; and
- (b) includes any of its subsidiaries

telecommunication—

- (a) means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; and
- (b) for the purposes of subpart 2 of Part 4, includes any conveyance that constitutes broadcasting; but
- (c) for all other purposes, does not include any conveyance that constitutes broadcasting

telecommunication link means any line, radio frequency, or other medium used for telecommunication

telecommunications access code has the meaning set out in section 7(1)

Telecommunications Commissioner means the Telecommunications Commissioner appointed under section 9(3)

telecommunications service means any goods, services, equipment, and facilities that enable or facilitate telecommunication

telephone device means any terminal device capable of being used for transmitting or receiving any communications over a network designed for the transmission of voice frequency communication

TSO or **telecommunications service obligations** means obligations in relation to a TSO instrument

TSO charges means the amounts payable to a TSO provider by the Crown under section 94L(1)

TSO cost allocation determination means a determination prepared by the Commission in accordance with sections 87 to 91

TSO cost calculation determination means a determination of the Commission prepared in accordance with section 94J(1)(a)

TSO instrument or **telecommunications service obligation instrument** means—

- (a) an instrument that is declared to be a TSO instrument under section 70;
- (b) a deemed TSO instrument

TSO provider or **telecommunications service obligation provider** means a provider of a telecommunications service under a TSO instrument

wireless works means any works relating to the provision of any wireless or mobile telecommunications services

working day means a day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, and Waitangi Day; and
- (b) the day observed in the appropriate area as the anniversary of the province of which the area forms part; and
- (c) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
- (d) if 1 January in any year falls on a Friday, the following Monday; and
- (e) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (f) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday

works includes—

- (a) a line and any instrument, furniture, plant, office, building, machinery, engine, excavation, or work, of whatever description, used in relation to, or in any way connected with, a line; and
- (b) a fixed radio station.

Compare: 1987 No 116 s 2(1), (1A)

Section 5 **access provider**: substituted, on 22 December 2006, by section 5(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 5 **access seeker**: substituted, on 22 December 2006, by section 5(2) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 5 **constitution of Telecom**: repealed, on 1 July 2011, by section 4(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **CPI**: inserted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **existing residential line**: inserted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **existing works**: substituted, on 17 May 2005, by section 3(1) of the Telecommunications Amendment Act 2005 (2005 No 70).

Section 5 **existing works** paragraph (c): amended, on 3 May 2017, by section 5(1) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 5 **existing works** paragraph (d): inserted, on 3 May 2017, by section 5(2) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 5 **fibre-to-the-premises access network**: inserted, on 1 July 2011, by section 88 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **financial year**: substituted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **KSO**: repealed, on 1 July 2011, by section 4(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **liability allocation determination**: inserted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **liable person**: substituted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **liable person's TSO-qualified revenue**: repealed, on 1 July 2011, by section 4(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **local authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 5 **local loop network**: repealed, on 22 December 2006, by section 5(6) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 5 **Ministry**: inserted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **net cost**: substituted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **net cost** paragraph (b): substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 52(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **net cost** paragraph (c): added, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 52(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **net revenue**: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 52(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **network operator**: amended, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 63(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **original KSO**: repealed, on 1 July 2011, by section 4(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **party or parties**: substituted, on 22 December 2006, by section 5(7) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 5 **price**: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 62 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **PTN or public telecommunications network**: inserted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **qualified revenue**: inserted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **registered undertaking**: inserted, on 22 December 2006, by section 5(8) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 5 **service provider**: amended, on 1 July 2011, by section 88 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **specified amount**: amended, on 22 December 2006, by section 5(9) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 5 **telecommunication**: substituted, on 17 May 2005, by section 3(2) of the Telecommunications Amendment Act 2005 (2005 No 70).

Section 5 **TSO charges**: inserted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **TSO cost calculation determination**: substituted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **TSO instrument or telecommunications service obligation instrument**: substituted, on 1 July 2011, by section 4(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **TSO provider or telecommunications service obligation provider**: inserted, on 22 December 2006, by section 5(11) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 5 **TSO provider's TSO-qualified revenue**: repealed, on 1 July 2011, by section 4(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **TSP or telecommunications service provider**: repealed, on 22 December 2006, by section 5(11) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 5 **wireless works**: inserted, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 5 **working day** paragraph (e): replaced, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 5 **working day** paragraph (f): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

6 Public notice

- (1) Subject to subsection (2), if, under this Act, the Commission is required to give **public notice** of any matter, the Commission must—
 - (a) publish a notice of the matter, or cause a notice of the matter to be published, in the *Gazette*; and
 - (b) at all reasonable times, make the matter available for inspection on the Commission's website in an electronic form that is publicly accessible.
- (2) If the Commission is required to give public notice of any matter under this Act, nothing in this Act requires the Commission to include in that public notice any information that would, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the person who supplied, or who is the subject of, the information.

7 Telecommunications access codes

- (1) In this Act, **telecommunications access code** means an access code for 1 or more—
 - (a) designated services or specified services:

- (b) services supplied under a registered undertaking.
- (2) Schedule 2 sets out provisions that apply to telecommunications access codes.
- Section 7(1): substituted, on 22 December 2006, by section 6 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

7A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 7A: inserted, on 3 May 2017, by section 6 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

8 Act binds the Crown

This Act binds the Crown.

Subpart 2—Commerce Commission

Telecommunications Commissioner

9 Appointment of Telecommunications Commissioner

- (1) There must be a Telecommunications Commissioner.
- (2) The Telecommunications Commissioner is a member of the Commission as provided in section 9(3) of the Commerce Act 1986.
- (3) Subject to subsection (4), the Telecommunications Commissioner must be appointed by the Governor-General on the recommendation of the Minister.
- (3A) Subsection (3) applies despite section 28(1)(b) of the Crown Entities Act 2004.
- (4) No person may be recommended for appointment as the Telecommunications Commissioner unless, in the opinion of the Minister, that person is qualified for appointment, having regard to the functions and powers of the Commission, whether under this Act or any other enactment.
- (5) For the purposes of subsection (4), a person is qualified for appointment by virtue of that person's knowledge of, or experience in, the telecommunications industry or any other industry, commerce, economics, law, accountancy, public administration, or consumer affairs.
- (6) Subsections (4) and (5) do not limit section 29 of the Crown Entities Act 2004.

Section 9(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 9(3A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 9(6): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

9A Functions of Commission in relation to sector monitoring and information dissemination

- (1) In addition to the other functions conferred on the Commission by this Act, the Commission—
- (a) must monitor competition in telecommunications markets and the performance and development of telecommunications markets; and
 - (b) may conduct inquiries, reviews, and studies (including international benchmarking) into any matter relating to the telecommunications industry or the long-term benefit of end-users of telecommunications services within New Zealand; and
 - (c) must make available reports, summaries, and information about the things referred to in paragraphs (a) and (b).
- (2) The function in subsection (1)(c) does not require the Commission to release all documents that the Commission produces or acquires under this section.

Compare: 1986 No 5 s 25; 1986 No 121 s 6

Section 9A: inserted, on 22 December 2006, by section 7 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

10 Performance of Commission's functions

- (1) Subject to subsection (2) and sections 15 and 17,—
- (a) the Telecommunications Commissioner and no fewer than 2 other members of the Commission must—
 - (i) make every determination in respect of a designated multinetwork service under section 39; and
 - (ii) make every pricing review determination under section 51; and
 - (iii) make every liability allocation determination under section 87; and
 - (iv) make every TSO cost calculation determination under section 94J; and
 - (ab) the determinations referred to in paragraph (a) must, if the Telecommunications Commissioner and the other members of the Commission are not unanimous in their view, be made in accordance with the majority view; and
 - (b) the Telecommunications Commissioner must report to the Minister about every proposed alteration to Schedule 1 in any of the ways set out in sections 66 and 67 following consideration by the Telecommunications Commissioner and no fewer than 2 other members of the Commission in accordance with clause 4 of Schedule 3, and—
 - (i) the recommendation included in the final report to the Minister must be supported by the majority of the Telecommunications Commissioner and the other members of the Commission; and

- (ii) the final report must include the majority view and any dissenting views; and
- (c) every function of the Commission under this Act (other than any of the functions set out in paragraphs (a) and (b)) must be performed—
 - (i) by the Telecommunications Commissioner alone; or
 - (ii) if the Telecommunications Commissioner requests the chairperson of the Commission to make 2 other members of the Commission available for the performance of a particular function and the chairperson agrees to that request, by the Telecommunications Commissioner and 2 other members of the Commission.
- (2) If there is no Telecommunications Commissioner or if the Telecommunications Commissioner is for any reason unable to perform the functions of the Commission that would otherwise have been performed by him or her under this Act,—
 - (a) those functions must be performed by the chairperson of the Commission; and
 - (b) every reference in this Act to the Telecommunications Commissioner must, unless the context otherwise requires, be read as a reference to the chairperson of the Commission.
- (3) The chairperson of the Commission is responsible for determining which members of the Commission, other than the Telecommunications Commissioner, must perform the functions referred to in subsection (1).
- (4) The quorum requirements in section 15(4) of the Commerce Act 1986 do not apply if the Telecommunications Commissioner is performing functions alone under section 10(1)(c)(i).

Section 10(1)(a): substituted, on 1 July 2011, by section 5 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 10(1)(ab): inserted, on 1 July 2011, by section 5 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 10(1)(b): substituted, on 1 July 2011, by section 5 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 10(1)(c)(ii): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(2)(a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(2)(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(4): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Levy

11 Levy

- (1) Every service provider, or class of service providers, specified in regulations made under subsection (3) must pay to the Minister, in each financial year or part financial year (as the case may require), a levy of an amount stated in, or calculated or set or reset in accordance with, those regulations for, or in connection with,—
 - (a) the performance of the Commission’s functions and duties under this Act; and
 - (b) the exercise of the Commission’s powers under this Act.
- (2) Subsection (1) applies irrespective of the fact that the regulations are made and come into effect after the date on which the financial year or part financial year commences.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
 - (a) specifying the amounts of levies payable under this section:
 - (b) providing for the method by which those levies will be calculated:
 - (c) specifying the criteria and other requirements by and against which those levies will be set or reset:
 - (d) specifying the financial year or part financial year to which those levies apply:
 - (e) providing for the payment and collection of those levies:
 - (f) exempting any service provider or class of service providers from paying levies under this section:
 - (g) providing for waivers or refunds of the whole or any part of any levy paid by any service provider or class of service providers under this section.

12 Levy for first financial year or part financial year

- (1) Every service provider, or class of service providers, specified in regulations made under subsection (3) must pay to the Minister, for the first financial year or part financial year (as the case may require), a levy of an amount stated in, or calculated or set or reset in accordance with, those regulations for, or in connection with,—
 - (a) the preparation of the performance of, and the performance of, the Commission’s functions and duties under this Act; and
 - (b) the preparation of the exercise of, and the exercise of, the Commission’s powers under this Act.

- (2) The levy for the first financial year or part financial year may include the costs incurred from 30 June 2001 by the Commission for, or in connection with, the matters set out in subsection (1)(a) or (b).
- (3) Subsections (1) and (2) apply irrespective of the fact that the regulations are made and come into effect after the date on which the first financial year or part financial year commences.
- (4) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
 - (a) specifying the amount of levy payable under this section:
 - (b) providing for the method by which the levy will be calculated:
 - (c) specifying the criteria and other requirements by and against which the levy will be set or reset:
 - (d) specifying the first financial year or part financial year to which the levy applies:
 - (e) providing for the payment and collection of the levy:
 - (f) exempting any service provider or class of service providers from paying the levy under this section:
 - (g) providing for waivers or refunds of the whole or any part of any levy paid by any service provider or class of service providers under this section.

13 Minister must consult before making recommendation under section 11(3) or section 12(4)

The Minister must not make any recommendation under section 11(3) or section 12(4) without first consulting those persons and organisations that the Minister considers appropriate having regard to the subject matter of the proposed regulations.

14 Late payment of levy

- (1) If any service provider liable to pay the levy fails to pay the whole amount of that levy by the date specified in regulations made under section 11(3) or section 12(4), the service provider must pay interest on the unpaid amount at the rate of 1.5% per month calculated from the date payment is due.
- (2) Interest will be calculated in monthly instalments for each month, or part of each month, that the payment is due.
- (3) The amount of any unpaid levy or interest is recoverable in any court of competent jurisdiction as a debt due to the Crown.

Application of Commerce Act 1986

15 Application of Commerce Act 1986 and Crown Entities Act 2004

The following provisions of the Commerce Act 1986 apply with any necessary modifications:

- (a) *[Repealed]*
- (b) section 13 (termination of appointment of members):
- (c) *[Repealed]*
- (d) section 15 (except as provided in section 10(4) of this Act) (meetings of Commission):
- (e) *[Repealed]*
- (f) section 98 (Commission may require person to supply information or documents or give evidence):
- (g) subject to section 16, sections 98A and 98G (Commission's powers of search and seizure):
- (h) section 99 (powers of Commission to take evidence):
- (ha) sections 99B(a) and 99C to 99P (assistance to overseas regulators), as if—
 - (i) references in those sections to competition law functions, or functions in relation to competition law, were references to functions relating to the regulation of telecommunications; and
 - (ii) references in those sections to the Minister were references to the Minister responsible for telecommunications:
- (i) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (j) section 100A (Commission may state case for opinion of High Court):
- (k) sections 101 (notices) and 102 (service of notices):
- (l) section 103 (offences):
- (m) section 104 (determinations of Commission):
- (n) *[Repealed]*
- (o) section 106 (proceedings privileged):
- (p) section 106A (judicial notice):
- (q) section 109 (Commission may prescribe forms).

Section 15 heading: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(c): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(d): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(e): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(g): amended, on 1 October 2012, by section 339(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 15(ha): inserted, on 24 October 2012, by section 4 of the Telecommunications (International Co-operation) Amendment Act 2012 (2012 No 87).

Section 15(n): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

16 Application of section 98A of Commerce Act 1986

A search warrant may be issued under section 98A(2) of the Commerce Act 1986, and powers may be exercised under that warrant, only for the purposes of—

- (a) ascertaining whether a person has done any of the following things:
 - (i) committed an offence against section 46(1)(b) or (c) or section 82(1) of this Act:
 - (ii) contravened section 103 (except subsection (1)(c)) of the Commerce Act 1986:
- (b) obtaining information and documents that have been requested by the Commission under section 82(b) or 83(1)(a) of this Act or section 98 of the Commerce Act 1986 and that have not been provided within the required time.

Section 16(b): amended, on 1 July 2011, by section 6 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

17 Telecommunications Commissioner to consent to delegation of some functions and powers of Commission

If there is a Telecommunications Commissioner, the Telecommunications Commissioner's consent must be first obtained for the delegation, under section 73 of the Crown Entities Act 2004, of a function or power of the Commission that would normally be performed or exercised by the Telecommunications Commissioner.

Section 17 heading: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 17: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Part 2

Designated services and specified services

Subpart 1—Preliminary

18 Purpose

- (1) The purpose of this Part and Schedules 1 to 3 is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers.
- (2) In determining whether or not, or the extent to which, any act or omission will result, or will be likely to result, in competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand, the efficiencies that will result, or will be likely to result, from that act or omission must be considered.
- (2A) To avoid doubt, in determining whether or not, or the extent to which, competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand is promoted, consideration must be given to the incentives to innovate that exist for, and the risks faced by, investors in new telecommunications services that involve significant capital investment and that offer capabilities not available from established services.
- (3) Except as otherwise expressly provided, nothing in this Act limits the application of this section.
- (4) Subsection (3) is for the avoidance of doubt.

Section 18(2A): inserted, on 1 July 2011, by section 7 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

19 Commission and Minister must consider purpose set out in section 18 and additional matters

If the Commission or the Minister (as the case may be) is required under this Part or any of Schedules 1, 3, and 3A to make a recommendation, determination, or a decision, the Commission or the Minister must—

- (a) consider the purpose set out in section 18; and
- (b) if applicable, consider the additional matters set out in Schedule 1 regarding the application of section 18; and
- (c) make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to the purpose set out in section 18.

Section 19: amended, on 22 December 2006, by section 8(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 19(c): amended, on 22 December 2006, by section 8(2) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

19A Commission to have regard to economic policies of Government

- (1) In the exercise of its powers under Schedule 3, the Commission must have regard to any economic policies of the Government that are transmitted, in writing, to the Commission by the Minister.
- (2) The Minister must, as soon as practicable after transmitting a statement of economic policy of the Government to the Commission under subsection (1),—
 - (a) arrange for a copy of that statement to be published in the *Gazette*; and
 - (b) present a copy of that statement to the House of Representatives.
- (3) To avoid doubt, a statement of economic policy of the Government transmitted to the Commission under this section is not a direction for the purposes of Part 3 of the Crown Entities Act 2004.

Section 19A: inserted, on 22 December 2006, by section 9 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Subpart 2—Determinations for designated access services and specified services*Application***20 Application**

- (1) An access seeker or an access provider of a designated access service or specified service may apply to the Commission for a determination of all or some of the terms on which the service must be supplied during the period of time specified in the application.
- (2) For the purposes of subsection (1), the terms on which the service must be supplied—
 - (a) may, in the case of a designated access service, include the price payable by the access seeker for the service; and
 - (b) must, in the case of a specified service, exclude the price payable by the access seeker for the service.

21 When application must be treated as application for pricing review determination

An application by an access seeker or an access provider of a designated access service for a determination that relates to the price payable by the access seeker for the service must be treated as an application for a pricing review determination under section 42 if the only term at issue is the discount specified in the applicable initial pricing principle.

22 When application may not be made

- (1) Despite section 20, no person may apply for a determination if—
 - (a) *[Repealed]*

- (b) *[Repealed]*
 - (c) that person has not made reasonable attempts to negotiate the terms of supply of the service with the person who would otherwise be a party to the determination; or
 - (ca) the standard terms development process for the service is proceeding or a standard terms determination for the service is in force; or
 - (d) the applicable conditions in relation to the service (if any) have not been met.
- (2) However, subsection (1)(ca) does not prevent a person from applying for a residual terms determination under section 30V.
- (3) The Commission may investigate whether subsection (1)(d) applies either at the time—
- (a) it receives an application made under section 20; or
 - (b) it prepares a determination under section 27.
- (4) However, if the Commission is satisfied, at any time, that the applicable conditions in relation to the service have not been met, the Commission must discontinue—
- (a) all of its investigation; or
 - (b) as the case may be, that part of its investigation that relates to the market in which those conditions have not been met.

Section 22(1)(a): repealed, on 22 December 2006, by section 10(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 22(1)(b): repealed, on 22 December 2006, by section 10(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 22(1)(ca): inserted, on 22 December 2006, by section 10(2) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 22(2): added, on 22 December 2006, by section 10(3) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 22(3): added, on 22 December 2006, by section 10(3) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 22(4): added, on 22 December 2006, by section 10(3) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

22A Effect of application on existing agreement for supply of designated access service or specified service

- (1) This section applies if an access seeker of a designated access service or specified service applies for a determination under section 27 while an agreement is in force between that access seeker and the access provider of the service for the supply of that service or of any other service.
- (2) The access provider must not, as a direct or indirect result of the access seeker making the application for the determination, act in a way that is, or is likely to be, prejudicial to the interests of the access seeker.

- (3) The access provider may discontinue the supply of the service under the agreement only if—
- (a) a determination is made under section 27 for that service or a comparable service; and
 - (b) the access provider begins to supply the service on the terms specified in the determination.
- (4) Subsection (3) does not apply if, before the date on which the determination is made, the agreement—
- (a) has already expired; or
 - (b) has been terminated for a reason that is unrelated to the making of the application.
- (5) If there is any inconsistency between the determination and the agreement, the determination prevails.

Section 22A: inserted, on 22 December 2006, by section 11 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

23 Requirements for application

An application made under section 20 must—

- (a) be in writing; and
- (b) be given in the prescribed manner, if any; and
- (c) contain the prescribed information, if any; and
- (d) be accompanied by the prescribed fee, if any.

Notification

24 Commission must notify parties

On receiving an application made in accordance with section 23, the Commission must—

- (a) notify the parties to the determination in writing that the application has been received; and
- (b) provide a copy of the application to the other party to the determination; and
- (c) request the parties to the determination to comment on the matter by written notice to the Commission not later than 10 working days after receipt of the notice from the Commission.

Investigation

25 Commission must decide whether to investigate

- (1) The Commission must make reasonable efforts to do the following things not later than 10 working days after the date by which the parties may comment on the application:
 - (a) decide whether or not to investigate the matter:
 - (b) give written notice of its decision to the parties:
 - (c) give public notice of its decision:
 - (d) request the parties to the determination to make submissions on the matter by written notice to the Commission not later than 10 working days after receipt of the notice from the Commission.
- (2) Subsection (1)(d) applies only if the Commission has decided under subsection (1)(a) to investigate the matter.

Consultation

26 Consultation or conferences

If the Commission considers that persons, other than the parties to the determination, have a material interest in the matter to be investigated, the Commission must, before preparing a determination under section 27, either consult those persons or hold conferences in relation to the matter.

Determination

27 Preparation of determination

After investigating the matter, the Commission must—

- (a) prepare a determination; and
- (b) give a copy of the determination to the parties to the determination; and
- (c) give public notice of the determination.

28 When determination must be prepared

- (1) The Commission must make reasonable efforts to prepare a determination under section 27,—
 - (a) if the determination does not include the price payable for the supply of the service, not later than 40 working days after it gave written notice under section 25(1)(b); or
 - (b) if the determination includes the price payable for the supply of the service, not later than 50 working days after it gave written notice under section 25(1)(b).
- (2) If, despite making reasonable efforts, the Commission is unable to do the things set out in subsection (1) within the relevant time limit, the Commission

must give to the parties concerned written reasons for not meeting the relevant time limit.

29 Requirements for determination

A determination must, in the opinion of the Commission,—

- (a) be made in accordance with—
 - (i) the applicable access principles and any limits on those applicable access principles; and
 - (ii) any regulations made in respect of the applicable access principles and any limits on those applicable access principles; and
- (b) comply with any relevant approved codes; and
- (c) in the case of a determination regarding a designated access service, be made in accordance with—
 - (i) the applicable initial pricing principle (as affected, if at all, by clause 2 or clause 3 of Schedule 1); and
 - (ii) any regulations that specify how the applicable initial pricing principle must be applied.

30 Matters to be included in determination

- (1) A determination must include—
 - (a) the terms on which the service must be supplied; and
 - (b) the reasons for the determination; and
 - (c) the terms and conditions (if any) on which the determination is made; and
 - (d) the actions (if any) that a party to the determination must do or refrain from doing; and
 - (e) the expiry date of the determination.
- (2) To avoid doubt, a determination may also include, without limitation, terms concerning any or all of the following matters:
 - (a) dispute resolution procedures;
 - (b) the consequences of a breach of the determination (including provision for set-off or withholding rights, or liquidated damages);
 - (c) suspension and termination of the service;
 - (d) procedures for, or restrictions on, assignment of the service.

Section 30(2): added, on 22 December 2006, by section 12 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Subpart 2A—Standard terms determinations for designated access services and specified services

Subpart 2A: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Preliminary

Heading: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30A Overview of subpart

- (1) This subpart enables the Commission to make, as an alternative to a determination made under section 27, a determination of the terms on which a designated access service or specified service must be supplied with reference to all access seekers and all access providers of the service.
- (2) Accordingly, this subpart—
 - (a) provides a process for the development of standard terms for the supply of the service (sections 30C to 30J):
 - (b) provides for the Commission to make, and review, a standard terms determination (sections 30K to 30R):
 - (c) specifies how a standard terms determination is to apply (section 30S):
 - (d) clarifies the interface between a determination made under section 27 and a standard terms determination (section 30T):
 - (e) provides a mechanism that allows parties to a standard terms determination to apply for a residual terms determination if they wish to adjust, as between themselves, the application of terms specified in the standard terms determination (sections 30U to 30ZD).
- (3) This section is intended only as a guide to the general scheme and effect of this subpart.

Section 30A: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30B Interpretation

In this subpart,—

change in circumstances, in relation to the price payable for a service, means any change in relevant circumstances since the last date on which that price was calculated (for example, any change to the terms of the service)

regulated terms means the terms set by any New Zealand or overseas regulator for any telecommunications service.

Section 30B: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Standard terms development process

Heading: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30C When standard terms development process may be initiated

- (1) The Commission may, on its own initiative, initiate the standard terms development process for a designated access service or specified service.
- (2) However, the Commission may not initiate that standard terms development process if the applicable conditions in relation to the service (if any) have not been met.
- (3) The Commission may investigate whether the applicable conditions in relation to the service have been met either—
 - (a) before deciding to initiate the standard terms development process; or
 - (b) at the time it prepares a standard terms determination under section 30M.
- (4) However, if the Commission is satisfied, at any time, that the applicable conditions in relation to the service have not been met, the Commission must discontinue—
 - (a) all of its investigation; or
 - (b) as the case may be, that part of its investigation that relates to the market in which those conditions have not been met.
- (5) For the purposes of subsection (1), the Commission may, if it considers it appropriate in the circumstances, initiate a single combined standard terms development process for 2 or more designated access services or specified services.

Section 30C: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30D Commission must give public notice if Commission initiates standard terms development process

The Commission must give public notice that it has initiated the standard terms development process for a designated access service or specified service not later than 10 working days after initiating that process under section 30C.

Section 30D: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30E Commission must conduct scoping workshop

- (1) The Commission must conduct 1 or more scoping workshops in relation to a designated access service or specified service.
- (2) The purpose of a scoping workshop is to provide the Commission with information to assist it in specifying—
 - (a) a reasonable period of time within which an access provider must submit a standard terms proposal under section 30F; and
 - (b) any additional requirements for that proposal under section 30F(2).

- (3) A scoping workshop must be—
 - (a) open to all parties to the standard terms determination; and
 - (b) conducted by an employee or agent of the Commission in a manner, and within the time, that the Commission thinks fit.
- (4) To avoid doubt, this section does not prevent the Commission from conducting a workshop in relation to any other matter, nor does it affect the matters that may be considered by the Commission in any other workshop.

Section 30E: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Standard terms proposal

Heading: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30F Call for standard terms proposal

- (1) After giving public notice under section 30D and conducting a scoping workshop under section 30E, the Commission must—
 - (a) give written notice to 1 or more access providers of the designated access service or specified service requiring them to submit to the Commission, by the date specified in the notice, a standard terms proposal that complies with section 30G; and
 - (b) give public notice of that requirement.
- (2) The Commission may include in the written notice under subsection (1)(a) any additional requirements that it thinks fit to specify, having regard to any relevant matters (for example, the terms and conditions of any commercial agreement or regulated terms for any service in New Zealand or overseas).
- (3) An access provider of the designated access service or specified service to whom written notice is given under subsection (1)(a) must comply with the requirement or requirements contained in that notice.
- (4) The written notice under subsection (1)(a) must be accompanied by a copy of—
 - (a) section 30G; and
 - (b) any additional requirements that the Commission specifies under subsection (2).

Section 30F: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30G Requirements for standard terms proposal

- (1) A standard terms proposal must—
 - (a) specify sufficient terms to allow, without the need for the access seeker to enter into an agreement with the access provider, the designated ac-

- cess service or specified service to be made available within the time frames specified under paragraph (c); and
- (b) provide an explanation of, and reasons for, those terms; and
 - (c) state the time frames within which the access provider must make the service available to—
 - (i) every person who is already an access seeker when the standard terms determination is made; and
 - (ii) every person who becomes an access seeker after the standard terms determination is made; and
 - (d) be consistent with the description of the service in Part 2 or Part 3 of Schedule 1, as the case may be; and
 - (e) be consistent with the applicable access principles and any limits on those applicable access principles; and
 - (f) comply with any additional requirements that the Commission has specified under section 30F(2).
- (2) The terms referred to in subsection (1)(a)—
- (a) must include the price payable for the supply of the service if that price has been determined in accordance with the applicable initial pricing principle or the applicable final pricing principle in a previous determination made under section 27; or
 - (b) must not include that price if that is not the case.
- (3) The Commission may refuse to consider a standard terms proposal that—
- (a) fails to comply with this section:
 - (b) is submitted late.

Section 30G: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30H Failure to submit standard terms proposal

- (1) If an access provider of a designated access service or specified service fails to submit, in response to a notice under section 30F, a standard terms proposal that complies with section 30G, the Commission may—
- (a) give written notice to another access provider, or an access seeker of the service requesting that access provider or, as the case may be, that access seeker to submit to the Commission, by a further date specified in the notice, a standard terms proposal that complies with section 30G:
 - (b) prepare a draft standard terms determination under section 30K even though it has not received a standard terms proposal from an access provider or an access seeker of the service.
- (2) The written notice under subsection (1)(a) must be accompanied by a copy of—

- (a) section 30G; and
- (b) any additional requirements that the Commission specifies under section 30F(2).

Section 30H: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30I Receipt of standard terms proposal

As soon as practicable after receiving a standard terms proposal that complies with section 30G, the Commission must make reasonable efforts to do the following things:

- (a) notify all parties to the determination in writing that the proposal has been received;
- (b) give public notice of the receipt of the proposal;
- (c) include in the public notice—
 - (i) information about where a copy of the proposal may be viewed and obtained; and
 - (ii) the closing date for submissions on the proposal.

Section 30I: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30J Requirement for submissions

A submission to the Commission on a standard terms proposal—

- (a) may be made about any matter to which the proposal relates; but
- (b) must set out the wording of any additional or alternative terms that are proposed to be included in the standard terms determination.

Section 30J: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Draft standard terms determination

Heading: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30K Draft standard terms determination

- (1) The Commission must make reasonable efforts to do the following things not later than 60 working days after the closing date for submissions on a standard terms proposal:
 - (a) determine the terms on which the service must be supplied; and
 - (b) prepare a draft standard terms determination containing those terms; and
 - (c) provide a copy of the draft standard terms determination to all parties to the determination; and
 - (d) give public notice of the draft standard terms determination; and

- (e) include in the public notice the closing date for submissions.
- (2) A draft standard terms determination for a designated access service must also include,—
 - (a) if the price or prices payable for the service have been determined in accordance with the applicable final pricing principle in a determination made under section 51, either of the following:
 - (i) that price or those prices; or
 - (ii) an updated calculation of that price or those prices if the Commission considers it to be necessary because of a change in circumstances; or
 - (b) if paragraph (a) does not apply, and the price or prices payable for the service have been determined in accordance with the applicable initial pricing principle in a determination made under section 27, any of the following:
 - (i) that price or those prices; or
 - (ii) an updated calculation of that price or those prices if the Commission considers it to be necessary because of a change in circumstances; or
 - (iii) if the price or prices referred to in subparagraph (i) or (ii) are higher than the existing price charged by the relevant access provider to the majority of its access seekers for the service, that existing price; or
 - (c) if neither paragraph (a) nor paragraph (b) applies, the price or prices determined by the Commission in accordance with the applicable initial pricing principle.

Section 30K: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30L Consultation or conferences

If the Commission considers that persons other than the parties to the determination have a material interest in a standard terms determination, the Commission must, before preparing the standard terms determination under section 30M, either consult those persons or hold conferences in relation to the matter.

Section 30L: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Standard terms determination

Heading: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30M Standard terms determination

- (1) As soon as practicable after completing any consultation or conferences under section 30L, or if there is no consultation or there are no conferences, after the closing date for submissions under section 30K(1)(e), the Commission must—
 - (a) prepare a standard terms determination; and
 - (b) provide a copy of the standard terms determination to all parties to the determination; and
 - (c) give public notice of the standard terms determination.
- (2) A standard terms determination is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 (and does not have to be presented to the House of Representatives under section 41 of that Act).

Section 30M: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 30M(2): inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

30N Commission's discretion to determine how standard terms determination is to be prepared

- (1) The Commission may, if it considers it appropriate in the circumstances, comply with section 30M(a) by preparing—
 - (a) a standard terms determination relating to 2 or more designated access services or specified services that contains—
 - (i) terms of general application to all the services to which the standard terms determination relates; and
 - (ii) a separate schedule for each of those services that includes terms of specific application to that service; or
 - (b) a separate standard terms determination for each designated access service or specified service.
- (2) Instead of preparing a standard terms determination in each case, the Commission may also comply with section 30M(a) by adding a separate schedule that contains terms of specific application to a particular designated access service or specified service to an existing standard terms determination of the kind referred to in subsection (1)(a).

Section 30N: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30O Matters to be included in standard terms determination: general

- (1) A standard terms determination must—
 - (a) specify sufficient terms to allow, without the need for the access seeker to enter into an agreement with the access provider, the designated access service or specified service to be made available within the time frames specified under paragraph (b); and
 - (b) state the time frames within which the access provider must make the service available to—
 - (i) every person who is already an access seeker when the standard terms determination is made; and
 - (ii) every person who becomes an access seeker after the standard terms determination is made; and
 - (c) specify the reasons for the standard terms determination; and
 - (d) specify the terms and conditions (if any) on which the standard terms determination is made; and
 - (e) specify the actions (if any) that a party to the standard terms determination must take or refrain from taking.
- (2) To avoid doubt, a standard terms determination may also include, without limitation, terms concerning any or all of the following matters:
 - (a) dispute resolution procedures:
 - (b) the consequences of a breach of the determination (including provision for set-off or withholding rights, or liquidated damages):
 - (c) suspension and termination of the service:
 - (d) procedures for, or restrictions on, assignment of the service.
- (3) The Commission must identify which of the terms (if any) specified in a standard terms determination are allowed to be varied, on an application made under section 30V by a party to that determination, under a residual terms determination.

Section 30O: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30P Additional matters to be included in standard terms determination for designated access service

- (1) In addition to the matters set out in section 30O, a standard terms determination for a designated access service must also include,—
 - (a) if the price or prices payable for the service have been determined in accordance with the applicable final pricing principle in a determination made under section 51, either of the following:
 - (i) that price or those prices; or

- (ii) an updated calculation of that price or those prices if the Commission considers it to be necessary because of a change in circumstances; or
 - (b) if paragraph (a) does not apply, and the price or prices payable for the service have been determined in accordance with the applicable initial pricing principle in a determination made under section 27, any of the following:
 - (i) that price or those prices; or
 - (ii) an updated calculation of that price or those prices if the Commission considers it to be necessary because of a change in circumstances; or
 - (iii) if the price or prices referred to in subparagraph (i) or (ii) are higher than the existing price charged by the relevant access provider to the majority of its access seekers for the service, that existing price; or
 - (c) if neither paragraph (a) nor paragraph (b) applies, the price or prices determined by the Commission in accordance with the applicable initial pricing principle.
- (2) A standard terms determination for a designated access service may also include any other terms concerning the price for the service that the Commission considers relevant.

Section 30P: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30Q Standard terms determination not to include expiry date

A standard terms determination must not include an expiry date for the determination.

Section 30Q: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30R Review of standard terms determination

- (1) The Commission may, on its own initiative, commence a review, at any time, of all or any of the terms specified in a standard terms determination.
- (2) The Commission may replace a standard terms determination or vary, add, or delete any of its terms, if it considers it necessary to do so after conducting a review.
- (3) In exercising the power conferred by subsection (2), the Commission may specify how and when a replacement standard terms determination, or a variation, addition, or deletion of terms specified in the determination, takes effect in relation to—
 - (a) the initial standard terms determination:
 - (b) any relevant residual terms determination.

- (4) The Commission may conduct a review in the manner, and within the time, that it thinks fit.
- (5) The Commission must—
 - (a) consult all parties to the determination on the review; and
 - (b) give public notice of the commencement of the review; and
 - (c) include in the public notice under paragraph (b) the closing date for submissions; and
 - (d) give public notice of the result of the review.

Section 30R: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Application of standard terms determination

Heading: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30S Application of standard terms determination

- (1) If the Commission has made a standard terms determination for a designated access service or specified service,—
 - (a) an access seeker of the service may request an access provider in writing to supply the service on the terms specified in that determination; and
 - (b) the access provider must comply with the request.
- (2) However, subsection (1) does not apply if,—
 - (a) after the date on which the standard terms determination for the service was made, the access seeker and the access provider entered into an agreement for the supply of the service; and
 - (b) it is less than 18 months since the date on which that agreement came into force.
- (3) In complying with a request from an access seeker under subsection (1), the access provider must, if the Commission has made a residual terms determination for the service under section 30ZB in relation to that access seeker and that access provider, supply the service to that access seeker on the terms specified in that determination, as well as on the terms specified in the standard terms determination.
- (4) However, if there is any inconsistency between the terms specified in a residual terms determination in relation to that access seeker and that access provider and the terms specified in a standard terms determination, the terms specified in the residual terms determination prevail.

Section 30S: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30T Effect of standard terms determination on determination made under section 27

- (1) This section applies if—
 - (a) a determination for a designated access service or specified service is made under section 27; and
 - (b) that determination is still in force at the time a standard terms determination is made for the service.
- (2) An access seeker of the service who is a party to the determination made under section 27 may request the access provider in writing to supply the service on the terms specified in the standard terms determination.
- (3) The access provider must comply with the request.
- (4) The determination made under section 27 expires on the date on which the access provider begins to supply the service on the terms specified in the standard terms determination.

Section 30T: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Residual terms determination

Heading: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30U Purpose of residual terms determination

- (1) The purpose of a residual terms determination is to allow the Commission, on the application of a party to a standard terms determination, to adjust the terms for the supply of a designated access service or specified service that are specified in the standard terms determination.
- (2) To that end, a residual terms determination may—
 - (a) address matters that were not addressed in the standard terms determination; and
 - (b) vary any terms in the standard terms determination that the Commission has identified under section 30O(3) as being allowed to be varied.

Section 30U: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30V Application for residual terms determination

- (1) An access seeker of a designated access service or specified service who is a party to a standard terms determination may apply to the Commission for a residual terms determination of any terms on which the service must be supplied.
- (2) If an access seeker applies for a residual terms determination under subsection (1), the access provider of the service may also apply to the Commission for a residual terms determination of any terms on which the access provider considers the service must be supplied.

- (3) To avoid doubt, an application under this section—
- (a) may only be made if the Commission has made a standard terms determination for the service; and
 - (b) may seek either or both of the following:
 - (i) a determination of matters that were not addressed in the standard terms determination;
 - (ii) a variation of any terms in the standard terms determination that the Commission has identified under section 30O(3) as being allowed to be varied.

Section 30V: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30W When application may not be made

- (1) Despite section 30V, no person may apply for a residual terms determination if—
- (a) all of the following apply:
 - (i) the persons who would otherwise be parties to the determination have an agreement for the supply of the service; and
 - (ii) that agreement was entered into after the date on which the relevant standard terms determination was made; and
 - (iii) it is less than 18 months since the date on which that agreement came into force; or
 - (b) that person has not made reasonable attempts to negotiate the terms that are sought in the application for the residual terms determination with the person who would otherwise be a party to that determination; or
 - (c) that person has previously applied for a residual terms determination for the service and it is less than 18 months since the date on which that determination was made; or
 - (d) it is less than 18 months since the date on which the access provider began to supply the service on the terms specified in the standard terms determination in accordance with a request made by the access seeker under section 30S(1); or
 - (e) the applicable conditions in relation to the service (if any) have not been met.
- (2) However, subsection (1)(d) does not prevent an access seeker from applying for a residual terms determination at any time before the access provider begins to supply the service on the terms specified in a standard terms determination in accordance with a request made by the access seeker under section 30S(1).

Section 30W: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30X Requirements for application

An application made under section 30V must—

- (a) be in writing; and
- (b) be given in the prescribed manner, if any; and
- (c) contain the prescribed information, if any; and
- (d) be accompanied by the prescribed fee, if any.

Section 30X: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30Y Commission must notify parties

On receiving an application made in accordance with section 30X, the Commission must—

- (a) notify the parties to the determination in writing that the application has been received; and
- (b) provide a copy of the application to the other party to the determination; and
- (c) request the parties to the determination to comment on the matter by written notice to the Commission not later than 10 working days after receipt of the notice from the Commission.

Section 30Y: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30Z Commission must decide whether to investigate

- (1) The Commission must make reasonable efforts to do the following things not later than 10 working days after the date by which the parties may comment on the application:
 - (a) decide whether or not to investigate the matter:
 - (b) give written notice of its decision to the parties:
 - (c) give public notice of its decision:
 - (d) request the parties to the residual terms determination to make submissions on the matter by written notice to the Commission not later than 10 working days after receipt of the notice of decision from the Commission.
- (2) Subsection (1)(d) applies only if the Commission has decided under subsection (1)(a) to investigate the matter.

Section 30Z: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30ZA Consultation or conferences

If the Commission considers that persons other than the parties to the determination have a material interest in the residual terms determination, the Commis-

sion may either consult those persons or hold conferences in relation to the matter.

Section 30ZA: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30ZB Preparation of residual terms determination

After investigating the matter, the Commission must—

- (a) prepare a residual terms determination; and
- (b) give a copy of the determination to the parties to the determination; and
- (c) give public notice of the determination.

Section 30ZB: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30ZC Requirements for residual terms determination

A residual terms determination must, in the opinion of the Commission,—

- (a) be made in accordance with—
 - (i) the applicable access principles and any limits on those applicable access principles; and
 - (ii) any regulations made in respect of the applicable access principles and any limits on those applicable access principles; and
- (b) comply with any relevant approved codes.

Section 30ZC: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

30ZD Matters to be included in residual terms determination

A residual terms determination must include—

- (a) the terms on which the service must be supplied; and
- (b) the reasons for the determination; and
- (c) the terms and conditions (if any) on which the determination is made; and
- (d) the actions (if any) that a party to the determination must take or refrain from taking; and
- (e) the expiry date of the determination.

Section 30ZD: inserted, on 22 December 2006, by section 13 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Subpart 3—Determinations for designated multinetwork services

Commission may initiate process for designated multinetwork service determination on own initiative

Heading: inserted, on 22 December 2006, by section 14 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

31AA Commission may initiate process for designated multinetwork service determination on own initiative

- (1) The Commission may, on its own initiative, initiate the process for a determination of—
 - (a) the functions that must be performed by a system for delivering a designated multinetwork service and the standard to which those functions must be performed; and
 - (b) the formula for how the cost of delivering the service must be apportioned between the access seeker and all access providers of the service.
- (2) The Commission may decide to initiate that process only if it is satisfied that there are reasonable grounds for doing so.

Section 31AA: inserted, on 22 December 2006, by section 14 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Application

31 Application

An access seeker of a designated multinetwork service may apply to the Commission for a determination of—

- (a) the functions that must be performed by a system for delivering the service and the standard to which those functions must be performed; and
- (b) the formula for how the cost of delivering the service must be apportioned between the access seeker and all access providers of the service.

32 When application may not be made

Despite section 31, no person may apply for a determination—

- (a) of any matters that an approved code already provides for; or
- (b) if the Commission has already made a determination in respect of the designated multinetwork service and the determination has not expired; or
- (c) if there is an agreement between the access seeker and all access providers for the supply of the service and the agreement provides for all of the matters set out in section 31.

33 Requirements for application

An application under section 31 must—

- (a) be in writing; and
- (b) be given in the prescribed manner, if any; and
- (c) contain the prescribed information, if any; and
- (d) be accompanied by the prescribed fee, if any.

Notification

34 Commission must notify parties

On initiating the process for a designated multinet network service determination under section 31AA or on receiving an application made in accordance with section 33, the Commission must—

- (a) notify all the parties to the determination in writing that it has initiated that process or received the application, as the case may be; and
- (b) for an application made in accordance with section 33, provide a copy of the application to all access providers of the service; and
- (c) request all the parties to the determination to comment on the matter by written notice to the Commission not later than 10 working days after receipt of the notice from the Commission.

Section 34: substituted, on 22 December 2006, by section 15 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Investigation

35 Commission must decide whether to investigate

The Commission must make reasonable efforts to do the following things not later than 10 working days after the date by which the parties may comment on the matter:

- (a) decide whether or not to investigate the matter;
- (b) give written notice of its decision to all the parties to the determination;
- (c) give public notice of its decision.

Section 35: amended, on 22 December 2006, by section 16 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Draft determination

36 Draft determination

- (1) The Commission must make reasonable efforts to do the following things not later than 60 working days after it gave written notice under section 35(b)—
 - (a) prepare a draft determination; and
 - (b) give a copy of the draft determination to all the parties to the determination; and
 - (c) give public notice of the draft determination; and

- (d) include in the public notice—
 - (i) the closing date for submissions, which must not be earlier than 20, and not later than 40, working days after the date of publication of the draft determination; and
 - (ii) if a public hearing is to be held under section 38, the date of the public hearing.
- (2) If, despite making reasonable efforts, the Commission is unable to do all the things set out in subsection (1) within the time limit specified in that subsection, the Commission must give to the parties concerned written reasons for not meeting that time limit.

37 Matters to be included in draft determination

- (1) Subject to subsection (2), the draft determination must include—
 - (a) a description of the functions that must be performed by a system for delivering the service and the standard to which those functions must be performed; and
 - (b) the formula for how the cost of delivering the service must be apportioned between the parties to the determination and every person who becomes an access provider after the determination is made; and
 - (c) the reasons for the determination; and
 - (d) the terms and conditions on which the determination is proposed to be made; and
 - (e) the actions (if any) that a party to the determination must do or refrain from doing; and
 - (f) the proposed expiry date of the determination.
- (2) Subsection (1)(a) applies only to the extent that the matters referred to in that paragraph have not already been provided for in an approved code.

38 Consultation, conferences, or public hearing

The Commission may consult with interested parties, hold conferences, or, if it is satisfied that it is in the public interest to do so, hold a public hearing, in relation to a draft designated multinet network service determination.

Determination

39 Determination

As soon as practicable after completing any consultation, conferences, or any public hearing under section 38, or if there is no consultation, conferences, or public hearing, after the closing date for submissions under section 36(1)(d)(i), the Commission must,—

- (a) prepare a determination; and

- (b) give a copy of the determination to all the parties to the determination; and
- (c) give public notice of the determination.

40 Matters to be included in determination

- (1) Subject to subsection (2), a designated multinetwork service determination must include—
 - (a) the functions that must be performed by a system for delivering the service and the standard to which those functions must be performed; and
 - (b) the formula for how the cost of delivering the service must be apportioned between the parties to the determination and every person who becomes an access provider after the determination is made; and
 - (c) the requirement that all the parties to the determination provide the service by means of a system that is consistent with the functions and the standards set out in the determination; and
 - (d) the requirement that any party to the determination make payments to an access provider of amounts calculated in accordance with the formula set out in the determination; and
 - (e) the reasons for the determination; and
 - (f) the terms and conditions (if any) on which the determination is made; and
 - (g) the actions (if any) that a party to the determination must do or refrain from doing; and
 - (h) the expiry date of the determination.
- (2) Subsection (1)(a) applies only to the extent that the matters referred to in that paragraph have not already been provided for in an approved code.

41 Determinations not invalid for certain failures

- (1) If the Commission omits to do any of the things listed in subsection (2), that omission does not in any way affect the validity of the determination to which the omission relates.
- (2) The things referred to in subsection (1) are as follows:
 - (a) to notify any party to a determination under section 34(a);
 - (b) to provide a copy of an application for a determination to an access provider under section 34(b);
 - (c) to give a copy of the draft determination to a party to the determination under section 36(1)(b);
 - (d) to give a copy of the determination to a party under section 39(b).

Subpart 4—Pricing review determinations for designated access services

Application

42 Application

- (1) If a determination is made under section 27 or section 30M regarding the price payable for a designated access service, a party to the determination may apply for a review of that part of the determination that relates to the price to be paid for the service.
- (1A) However, subsection (1) does not apply in relation to a determination made under section 30M if the price to be paid for the service was included in that determination under section 30P(1)(a).
- (2) A determination made under section 27 or section 30M continues to have effect and is enforceable pending the making of a pricing review determination.
- (3) A party to a determination made under section 27 or section 30M that relates to the price payable for a designated access service may apply for a review of any discount specified in the applicable initial pricing principle for the service.
- (4) Subsections (2) and (3) are for the avoidance of doubt.

Section 42(1): amended, on 22 December 2006, by section 17(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 42(1A): inserted, on 22 December 2006, by section 17(2) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 42(2): amended, on 22 December 2006, by section 17(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 42(3): amended, on 22 December 2006, by section 17(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

43 Requirements for application

An application under section 42 must—

- (a) be in writing; and
- (b) be given to the Commission not later than 25 working days after,—
 - (i) for a determination made under section 27, the date on which the person received the copy of the determination; and
 - (ii) for a standard terms determination made under section 30M, the date on which public notice of that determination is given under section 30M(c):
- (c) be given in the prescribed manner, if any; and
- (d) contain the prescribed information, if any; and
- (e) be accompanied by the prescribed fee, if any.

Section 43(b): substituted, on 22 December 2006, by section 18 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

*Notification***44 Commission's requirements on receiving application**

On receiving an application made in accordance with section 43, the Commission must—

- (a) notify the parties to the determination in writing that the application has been received; and
- (b) provide a copy of the application to the other party or parties to the determination (as the case requires); and
- (c) request the parties to the determination to comment on the matter by written notice to the Commission not later than 10 working days after receipt of the notice from the Commission; and
- (d) give public notice of the application.

Section 44(b): amended, on 22 December 2006, by section 19 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

*Calculation of price***45 Access provider to calculate price on request**

- (1) On receiving an application made in accordance with section 43, the Commission may, by notice in writing, require an access provider to calculate the price payable for the designated access service.
- (2) If an access provider is requested, under subsection (1), to calculate the price payable for the designated access service, an access provider must, not later than the time specified by the Commission,—
 - (a) calculate that price in accordance with—
 - (i) the applicable final pricing principle (as affected, if at all, by clause 2 or clause 3 of Schedule 1); and
 - (ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission:
 - (b) provide to the Commission—
 - (i) a statement that sets out how the price was calculated; and
 - (ii) all information on which the calculation of the price was based.
- (3) Subsection (2) is subject to the requirement (if any) set out in subpart 1 of Part 2 of Schedule 1 in respect of the applicable final pricing principle.

Section 45(1): amended, on 22 December 2006, by section 20(1) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 45(2): amended, on 22 December 2006, by section 20(2) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 45(2)(a)(ii): substituted, on 22 December 2006, by section 20(3) of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

46 Offences

[Repealed]

Section 46: repealed, on 22 December 2006, by section 21 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Draft determination

47 Draft pricing review determination

As soon as practicable after the completion of any requirements under section 45 or, if the Commission does not make a request under that section or under subpart 1 of Part 2 of Schedule 1, after receiving an application under section 42, the Commission must—

- (a) prepare a draft pricing review determination; and
- (b) give a copy of the draft pricing review determination to the parties to the determination; and
- (c) give public notice of the draft pricing review determination; and
- (d) include in the public notice the closing date for submissions, which must not be later than 30 working days after the date of publication of the draft determination.

48 Requirements for draft determination

In preparing the draft pricing review determination, the Commission—

- (a) must consider any calculation made under section 45; and
- (b) may consider any matters included in a determination made under section 27 that relate to the price payable for the designated access service, and may make a determination in respect of those matters.

49 Matters to be included in draft determination

The draft pricing review determination must include—

- (a) the price payable for the designated access service, which, in the opinion of the Commission, is determined in accordance with—
 - (i) the applicable final pricing principle (as affected, if at all, by clause 2 or clause 3 of Schedule 1); and
 - (ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission; and
- (b) if the Commission has considered any matters that relate to the price payable for the designated access service under section 48(b), the Commission's determination (if any) of those matters; and
- (c) the reasons for the determination; and

- (d) the terms and conditions on which the determination is proposed to be made; and
- (e) the actions (if any) that a party to the determination must do or refrain from doing; and
- (f) the proposed expiry date of the determination.

Section 49(a)(ii): substituted, on 22 December 2006, by section 22 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Consultation

50 Consultation or conferences

If the Commission considers that persons, other than the parties to the determination, have a material interest in the matter to be determined, the Commission must, before preparing a determination under section 51, either consult those persons or hold conferences in relation to the matter.

Determination

51 Pricing review determination

- (1) As soon as practicable after completing any consultation or conferences under section 50, the Commission must—
 - (a) prepare the pricing review determination; and
 - (b) give a copy of the determination to the parties to the determination; and
 - (c) give public notice of the determination.
- (2) To avoid doubt, a determination made under section 27 continues to have effect and is enforceable to the extent that it has not been altered by a pricing review determination.

52 Matters to be included in determination

A pricing review determination must include—

- (a) the price payable for the designated access service, which, in the opinion of the Commission, is determined in accordance with—
 - (i) the applicable final pricing principle (as affected, if at all, by clause 2 or clause 3 of Schedule 1); and
 - (ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission; and
- (b) if the Commission has considered any matters that relate to the price payable for the designated access service under section 48(b) and has made a determination in respect of those matters, that determination; and
- (c) the reasons for the pricing review determination and the determination referred to in paragraph (b) (if any); and

- (d) the terms and conditions (if any) on which the pricing review determination and the determination referred to in paragraph (b) (if any) is made; and
- (e) the actions (if any) that a party to the determination must do or refrain from doing; and
- (f) the expiry date of the determination.

Section 52(a)(ii): substituted, on 22 December 2006, by section 23 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Subpart 5—Supplementary provisions for all determinations

53 Procedure for determinations

For a determination made under this Part, the Commission—

- (a) is not bound by technicalities, legal forms, or rules of evidence:
- (b) may inform itself of any matter relevant to the determination in any way it thinks appropriate:
- (c) must consider all submissions made in relation to the determination and all information and opinions presented or expressed at any conference or public hearing in relation to the determination.

54 Applicant may withdraw

- (1) An applicant in respect of a determination (except a standard terms determination or a designated multinet network determination) may, at any time, withdraw the application by written notice to the Commission.
- (2) If the Commission receives a notice of withdrawal under subsection (1), then it must—
 - (a) notify all the parties to the determination of the withdrawal; and
 - (b) cease preparation of the determination concerned; and
 - (c) determine any costs under sections 55 and 56.

Section 54(1): amended, on 22 December 2006, by section 24 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

55 Commission's costs

- (1) The costs of the Commission in relation to a determination or application for a determination (including the costs of any expert advice) must be met by the parties to the determination in the proportions directed by the Commission in writing.
- (2) The Commission's costs in relation to a standard terms determination, or a pricing review determination in relation to a standard terms determination, may be met—
 - (a) in the manner provided under subsection (1); or

- (b) by way of a levy under section 11; or
- (c) by a combination of the ways referred to in paragraphs (a) and (b).

Section 55(2): added, on 22 December 2006, by section 25 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

56 Parties' costs

- (1) Subject to subsection (2), each party bears his or her own costs in relation to a determination or application for a determination.
- (2) The Commission may, by written direction to a party to a determination, require that person to meet some or all of the other party's costs in respect of a determination or application for a determination if, in the opinion of the Commission, the party has materially contributed to any costs or unreasonable delay.
- (3) The direction must specify the amount payable by each person.

57 Enforcing directions given under section 55 or section 56(2)

- (1) The Commission may enforce a direction given under section 55 by filing it in the prescribed form in the Wellington Registry of the High Court.
- (2) A party to a determination in respect of which a direction has been given under section 56(2) may enforce that direction by filing it in the Wellington Registry of the High Court.
- (3) A direction that is filed in the High Court under this section is enforceable as a judgment of the High Court in its civil jurisdiction.

58 Clarification of determination

- (1) The Commission may amend a determination for the purpose of making a clarification if—
 - (a) at any time the Commission, on its own initiative or on the application of any person, considers that a determination requires clarification; and
 - (b) *[Repealed]*
 - (c) no appeal is pending in respect of the determination.
- (2) The Commission must give public notice of an amendment to a determination made under subsection (1).

Section 58(1)(b): repealed, on 22 December 2006, by section 26 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

59 Reconsideration of determination

- (1) Subject to subsection (2), the Commission may at any time, on the application of a party to a determination, revoke or amend the determination or revoke the determination and make a further determination in substitution for it if the Commission considers that—

- (a) there has been a material change of circumstances since the date on which a determination was made or last reconsidered; or
 - (b) *[Repealed]*
 - (c) the determination was made on the basis of information that was false or misleading in a material particular.
- (2) A determination may not be reconsidered if an appeal is pending in respect of the determination.
 - (3) In reconsidering a determination, the Commission must follow the same process that was followed for the initial determination.
 - (4) To avoid doubt, a determination continues to have effect and is enforceable pending its reconsideration under this section.
 - (5) The Commission must give public notice of a revoked or amended determination or a revoked and substituted determination.

Section 59(1)(b): repealed, on 22 December 2006, by section 27 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

60 Appeals from certain determinations under Part 2

- (1) Subject to subsection (2), a party to a determination made under this Part may appeal to the High Court against—
 - (a) a direction of the Commission under section 55 or section 56(2);
 - (b) the determination (including an amendment to a determination made under section 58 or a determination that has been reconsidered under section 59) on a question of law;
 - (c) a decision of the Commission not to clarify a determination under section 58 on a question of law;
 - (d) a decision of the Commission not to reconsider a determination under section 59 on a question of law.
- (2) No party may appeal against a determination made under this Part—
 - (a) while a clarification of the determination under section 58 is pending; or
 - (b) while a reconsideration of the determination under section 59 is pending.
- (3) If appeal or judicial review proceedings are commenced in respect of a determination, then, until the proceedings are finally disposed of, the determination continues to have effect and is enforceable as if the proceedings had not been commenced.
- (4) The decision of the High Court on appeal from a determination is final unless leave to appeal to the Court of Appeal is given by the High Court or, if leave is refused by the High Court, by the Court of Appeal.
- (5) *[Repealed]*

Section 60(5): repealed, on 1 January 2004, by section 48(2) of the Supreme Court Act 2003 (2003 No 53).

61 Enforcing determinations of Commission

[Repealed]

Section 61: repealed, on 22 December 2006, by section 28 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

62 Expiry of determinations

Every determination expires on the earlier of—

- (a) the expiry date stated in the determination (if any); or
- (b) the date on which the designated service or specified service to which the determination applies ceases to have that status because it has been omitted from Schedule 1 under section 66(b).

Section 62: substituted, on 22 December 2006, by section 29 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

63 Application of Commerce Act 1986

Part 2 of the Commerce Act 1986 does not apply in respect of a determination made under this Part or any matter necessary for giving effect to a determination made under this Part.

Subpart 6—Matters relating to regulation-making powers for designated services and specified services

64 Mandatory review of local loop unbundling and access to, and interconnection with, Telecom’s fixed PDN

[Repealed]

Section 64: repealed, on 22 December 2006, by section 30 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

65 Expiry of designated services and specified services

[Repealed]

Section 65: repealed, on 22 December 2006, by section 30 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

66 Alterations to Part 2 or Part 3 of Schedule 1

The Governor-General may, by Order in Council made on the recommendation of the Minister, amend Part 2, or Part 3, of Schedule 1 by—

- (a) adding a telecommunications service to the Part and setting out in relation to that service—
 - (i) a description of the service; and
 - (ii) any applicable conditions; and
 - (iii) a description of the access providers and access seekers; and
 - (iv) in the case of a service being added to subpart 1 of Part 2, or Part 3, of Schedule 1, a description of—

- (A) the applicable access principles; and
- (B) the limits (if any) on the applicable access principles; and
- (v) in the case of a service being added to subpart 1 of Part 2 of Schedule 1,—
 - (A) the applicable initial pricing principle; and
 - (B) the applicable final pricing principle; and
 - (C) any requirement referred to in section 45 for the applicable final pricing principle; and
 - (D) any additional matters that must be considered regarding the application of section 18:
- (b) omitting a telecommunications service from the Part:
- (c) in respect of a service, amending—
 - (i) the description of the service:
 - (ii) any applicable conditions:
 - (iii) the description of access seekers:
 - (iv) the description of access providers:
 - (v) the description of the applicable access principles:
 - (vi) the description of the limits (if any) on the applicable access principles:
 - (vii) the applicable initial pricing principle and the applicable final pricing principle:
 - (viii) any requirement referred to in section 45 for the applicable final pricing principle:
 - (ix) any additional matters that must be considered regarding the application of section 18.

67 Alterations to clauses 1 to 6 of Schedule 1

The Governor-General may, by Order in Council made on the recommendation of the Minister, amend any of clauses 1 to 6 of Schedule 1.

68 Minister's recommendation subject to procedure in Schedule 3

- (1) The Minister must not make a recommendation under section 66 or 67 unless the Minister accepts the Commission's recommendation that the proposed alteration be made.
- (2) The Commission's recommendation must be made in accordance with the procedure set out in—
 - (a) Part 2 of Schedule 3 for a telecommunications service that is omitted from Part 3 of Schedule 1 and is added to Part 2 of that schedule; or
 - (b) Part 1 of Schedule 3 in any other case.

- (3) This section does not prevent the Minister from making a recommendation under section 66 or 67 to amend the detail of a proposed alteration so long as the recommendation—
- (a) implements the effect of the Commission’s recommendation on the proposed alteration; and
 - (b) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail).

Section 68: substituted, on 22 December 2006, by section 31 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

68A Application of Schedule 3A

- (1) Schedule 3A applies if Schedule 3 applies.
- (2) However, Schedule 3A does not limit Schedule 3.

Section 68A: inserted, on 22 December 2006, by section 31 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) providing for the application of applicable access principles under section 29(a);
 - (b) providing for the application of the applicable initial pricing principle under section 29(c);
 - (c) prescribing a method or methods for the calculation of the price payable under section 45(2), which must be consistent with the applicable final pricing principle;
 - (d) providing for the determination of the price payable under section 49(a), which must be consistent with the applicable final pricing principle;
 - (e) providing for the determination of the price payable under section 52(a), which must be consistent with the applicable final pricing principle;
 - (f) providing requirements relating to the information that must be provided to the Commission in relation to all or any of the matters referred to in paragraphs (a) to (e);
 - (g) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.
- (2) The Minister must not make a recommendation under subsection (1) unless the Commission has recommended the making of the regulations.

Part 2A

Structural separation of Telecom

Part 2A: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 1—Preliminary provisions

Subpart 1 heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69A Purpose of Part

The purpose of this Part is to provide for matters relating to the structural separation of Telecom to facilitate—

- (a) the promotion of competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and
- (b) efficient investment in telecommunications infrastructure and services.

Section 69A: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69B Interpretation

In this Part, unless the context otherwise requires,—

asset—

- (a) means property of any kind, whether or not situated in New Zealand, whether tangible or intangible, real or personal, corporeal or incorporeal, and whether or not subject to rights; and
- (b) includes—
 - (i) estates or interests in any land, including rights of occupation of land or buildings:
 - (ii) buildings, vehicles, plant, equipment, machinery, fixtures and fittings, and rights in them:
 - (iii) choses in action and money:
 - (iv) rights of any kind, and applications, objections, submissions, and appeals in respect of those rights:
 - (v) intellectual property and applications pending for intellectual property:
 - (vi) goodwill, and any business undertaking

Chorus—

- (a) means ChorusCo; and

(b) includes any of its subsidiaries

ChorusCo means the company that is to be demerged from Telecom on separation day in accordance with the demerger arrangement

demerger arrangement means an arrangement approved by the court pursuant to Part 15 of the Companies Act 1993 on the application of Telecom involving the distribution of 100% of the ordinary shares held by Telecom Corporation of New Zealand Limited in ChorusCo to the holders (including a nominee for holders) of ordinary shares in Telecom Corporation of New Zealand Limited

liabilities means liabilities, debts, charges, duties, and obligations of every description, whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere

related party has the meaning set out in section 69U

rights includes all rights, powers, privileges, interests, leases, licences, approvals, consents, designations, permissions, dispensations, authorisations, benefits, defences, immunities, claims, and equities of any kind, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

separation day means the day on which Telecom Corporation of New Zealand Limited distributes 100% of the ordinary shares it holds in ChorusCo in accordance with the demerger arrangement.

Section 69B: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 2—Monitoring of shared assets, services, and systems

Subpart 2 heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69C Interpretation

In this subpart, unless the context otherwise requires,—

arm’s-length has the meaning set out in section 69D

executed, in relation to a sharing arrangement or a material amendment to a sharing arrangement, means signed under the name of the relevant company by a person acting under the company’s authority

sharing arrangement—

(a) means an arrangement, agreement, contract, or understanding between Telecom and Chorus for the purpose of providing either or both with access to, or continued use of, a system, asset, or service that is owned or controlled by Telecom at the close of the day before separation day; and

- (b) includes an arrangement, agreement, contract, or understanding of the kind described in paragraph (a) that is conducted with or through a third party; but
- (c) does not include any of the following, or anything that is wholly in accordance with the following:
 - (i) the regulated terms of supply of a designated service or a specified service; or
 - (ii) a registered undertaking; or
 - (iii) an undertaking under Part 4AA; or
 - (iv) a deemed TSO instrument; or
 - (v) an undertaking approved in accordance with subpart 4 of this Part (undertakings by Chorus); or
 - (vi) an arrangement that is exempted under section 69N; or
 - (vii) an arrangement that relates to ensuring compliance by Telecom, Chorus, or both with—
 - (A) the duties imposed by the Telecommunications (Interception Capability and Security) Act 2013 on a network operator (within the meaning of that Act); or
 - (B) duties or requirements imposed by any other Act, interception warrant, or other lawful authority that relate to the interception of communications.

Section 69C: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 69C **sharing arrangement** paragraph (c)(vii)(A): amended, on 11 May 2014, by section 123 of the Telecommunications (Interception Capability and Security) Act 2013 (2013 No 91).

69D Meaning of arm's-length

Without limiting the ordinary meaning of the expression, **arm's-length** includes having relationships, dealings, and transactions that—

- (a) do not include elements that parties in their respective positions would usually omit; and
- (b) do not omit elements that parties in their respective positions would usually include,—

if the parties were—

- (c) connected or related only by the transaction or dealing in question; and
- (d) acting independently; and
- (e) each acting in its own best interests.

Section 69D: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69E Requirements for sharing arrangements

- (1) Every sharing arrangement must—
 - (a) be recorded in writing and be executed by Telecom and Chorus; and
 - (b) be on arm's-length terms between Telecom and Chorus; and
 - (c) be unlikely to harm competition in any telecommunications market; and
 - (d) ensure the protection of confidential commercial information or customer confidential information.
- (2) Telecom and Chorus must not enter into a sharing arrangement unless the arrangement meets the requirements in subsection (1).

Section 69E: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 69E(1)(d): amended, on 5 December 2013, by section 4 of the Telecommunications Amendment Act 2013 (2013 No 136).

69F Commission must be notified of proposed and final sharing arrangements

- (1) Telecom and Chorus must,—
 - (a) not later than 10 working days after separation day, provide a copy of all sharing arrangements executed before separation day to the Commission; and
 - (b) if a sharing arrangement is entered into after separation day,—
 - (i) not later than 10 working days before the sharing arrangement is executed, notify the Commission of their intention to enter into the sharing arrangement and provide a copy of the proposed arrangement to the Commission; and
 - (ii) not later than 10 working days after the final sharing arrangement is executed, provide a copy of the arrangement to the Commission.
- (2) Subsection (1) applies to any material amendment to a sharing arrangement as if that amendment were a sharing arrangement.
- (3) *See* sections 156L(3) and 156M for the maximum penalty of \$1 million (and \$50,000 per day) for breach of this section.

Section 69F: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69G Obligation to collect and retain information for monitoring purposes

Telecom and Chorus must each collect and retain information relating to the operation and performance of a sharing arrangement for the purpose of enabling the Commission to monitor compliance with this subpart.

Section 69G: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69H Commission’s monitoring, investigation, and enforcement powers

- (1) The Commission may, by notice in writing, require Telecom and Chorus to prepare and disclose information consisting of, or about, the following:
 - (a) the terms, execution, or performance of a sharing arrangement;
 - (b) any report, agreement, or other information relating to the sharing arrangement that the Commission considers necessary for the purpose of monitoring compliance with this subpart.
- (2) Telecom and Chorus must prepare and disclose the information required within the period specified in the notice.
- (3) A notice under this section may require either or both of the following:
 - (a) that all or any of the information be audited by a qualified auditor and that the auditor provide a report directly to the Commission on the matters that the Commission specifies as those that must be addressed in that report;
 - (b) that all or any of the information be verified by statutory declaration in the form and by the persons required by the Commission.
- (4) To avoid doubt, nothing in this section limits the application of section 98 of the Commerce Act 1986.
- (5) The Commission may, for the purpose of monitoring, investigation, and enforcement under this subpart, consult with any persons that the Commission considers may be affected by a sharing arrangement.
- (6) *See* sections 156L(3) and 156M for the maximum penalty of \$1 million (and \$50,000 per day) for breach of this section.

Section 69H: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69I Commission may give non-compliance notice

- (1) This section applies if the Commission considers that Telecom and Chorus are parties to a sharing arrangement that contravenes section 69E (a **non-compliance**).
- (2) The Commission may give written notice to each party (a **non-compliance notice**) setting out—
 - (a) the nature of the non-compliance; and
 - (b) the 10-day time limit for responses in section 69J; and
 - (c) the 40-day time limit for rectification and enforcement (*see* section 69K).

Section 69I: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69J Process for responding to non-compliance notice

- (1) Each party may, not later than 10 working days after the date of the non-compliance notice or any further time as the Commission may allow, respond in writing to the notice either—
 - (a) by disputing the notice; or
 - (b) by setting out the reasons for the non-compliance.
- (2) The Commission must consider each party's response (if any) before deciding what action to take under subsection (3).
- (3) The Commission must, not later than 10 working days after the final date for the parties to respond to the non-compliance notice under subsection (1),—
 - (a) retract the non-compliance notice; or
 - (b) give a revised non-compliance notice; or
 - (c) confirm the non-compliance notice.
- (4) If the Commission gives a revised non-compliance notice, or confirms the non-compliance notice, the Commission must—
 - (a) set out the nature of the non-compliance; and
 - (b) require the parties to rectify the non-compliance.

Section 69J: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69K Commission may decide on appropriate enforcement action if non-compliance persists

- (1) This section applies if the Commission considers that a non-compliance has not been rectified within 40 working days after the date of a non-compliance notice given under section 69I.
- (2) The Commission may, at any time, do all or any of the following:
 - (a) direct Telecom and Chorus to amend the sharing arrangement in order to rectify the non-compliance within 10 working days of the direction (an **amendment direction**):
 - (b) apply for an injunction under section 69M in respect of the non-compliance or a failure to comply with an amendment direction:
 - (c) seek a pecuniary penalty under Part 4A in respect of the non-compliance or a failure to comply with an amendment direction.
- (3) The Commission must give written notice of each decision to each party affected by the decision.

Section 69K: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69L Application of pecuniary penalty provisions

- (1) Sections 156L and 156M apply to a party to a sharing arrangement who, without reasonable excuse, fails to rectify a non-compliance, or fails to comply with an amendment direction, in respect of which the Commission decides to take enforcement action under section 69K(2)(c).
- (2) *See* sections 156L(3) and 156M for the maximum penalty of \$10 million (and \$500,000 per day) for breach of this section.

Section 69L: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69M Injunction may be granted by High Court

- (1) If the High Court is satisfied that a non-compliance has not been rectified within 40 working days after the date of a non-compliance notice under section 69I, the court may, on the application of the Commission, grant an injunction restraining Telecom and Chorus from further performing the sharing arrangement or engaging in any conduct for the purpose of giving effect to that arrangement.
- (2) If the High Court is satisfied that there has been a failure to comply with a direction of the Commission given under section 69K(2)(a), the court may, on the application of the Commission, grant an injunction requiring Telecom and Chorus to comply with the direction of the Commission.
- (3) In any proceeding under this section, the Commission, on the order of the court, may obtain discovery and administer interrogatories.
- (4) The court may at any time rescind or vary an order made under this section.

Section 69M: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69N Minister may grant exemption from application of subpart

- (1) The Minister may, by notice in the *Gazette*, exempt a sharing arrangement or class of sharing arrangements from the application of this subpart, if the Minister is satisfied that—
 - (a) any potential harm to competition in telecommunications markets would be likely to be trivial or inconsequential; and
 - (b) commercial information or customer confidential information would not be disclosed.
- (2) The Minister must consult the Commission before granting an exemption under this section.

- (3) The exemption takes effect from the date specified in the exemption (which may not be earlier than the date of the *Gazette* notice).
- (4) The Minister may grant the exemption on any terms and conditions that the Minister thinks fit.
- (5) The Minister may, in like manner, vary or revoke such an exemption.
- (6) An exemption under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (7) Telecom and Chorus must ensure that all exemptions granted under this section are available at all reasonable times, free of charge, on the Internet sites maintained by or on behalf of Telecom and Chorus.

Section 69N: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 69N(6): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Subpart 3—Line of business restrictions

Subpart 3 heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69O No participation in supply of retail services

- (1) Chorus, or any related party of Chorus, must not participate in the supply of a telecommunications service to a person (A) if 25% or more of the services supplied, or to be supplied, by Chorus to A in any year are or will be supplied—
 - (a) for A's own use or consumption; or
 - (b) for the use or consumption of persons who are related parties of A.
- (2) *See* sections 156L(3) and 156M for the maximum penalty of \$10 million (and \$500,000 per day) for breach of this section.

Section 69O: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69P Register of non-retail users

- (1) The Commission must maintain a register of users for the purposes of section 69O.
- (2) If the name of the user appears on the register maintained by the Commission under this section, it is conclusive evidence of the fact that Chorus does not breach section 69O by supplying to that person.
- (3) Chorus or any user of telecommunications services may make a written application to the Commission (in a form required by the Commission, if any) for a name of a user to be entered on the register.

- (4) The Commission must give public notice of the application as soon as practicable after receiving it.
- (5) The Commission must, within 15 working days of public notice of the application, enter the name of the user on the register if the Commission is satisfied that Chorus would not breach section 69O by supplying to that person.
- (6) At separation day, the register must include all of Chorus's existing unbundled copper local loop customers and unbundled bitstream access customers as at separation day, as notified to the Commission by Chorus before separation day.
- (7) The Commission must, at all reasonable times, make the register available for inspection on the Commission's Internet site in an electronic form that is publicly accessible.

Section 69P: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 69P(5): amended, on 5 December 2013, by section 5 of the Telecommunications Amendment Act 2013 (2013 No 136).

69Q Variations to, and removals from, register

- (1) The Commission may, at any time,—
 - (a) review and correct the register maintained under section 69P; and
 - (b) remove the names of users from the register if—
 - (i) the Commission ceases to be satisfied of the matters in section 69P(5); or
 - (ii) the Commission is satisfied that the user is insolvent or has ceased business.
- (2) However, the Commission must give Chorus and the user—
 - (a) notice of its intention to remove the user from the register, and a reasonable opportunity to comment before removing a name from the register; and
 - (b) notice that the name has been removed, as soon as practicable after removal.
- (3) Chorus is not in breach of section 69O to the extent that it continues to supply a service to a user within the 6-month period following the removal of the user's name from the register.

Section 69Q: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69R No services above layer 2

- (1) Every undertaking entered into by Chorus in favour of the Crown under subpart 4 of this Part or Part 4AA must include a prohibition on participation by Chorus, or any related party of Chorus, in services above layer 2 services.

- (2) In this section, unless the context otherwise requires, **layer 2 services** has the same meaning as in the document “New Zealand Government Ultra-Fast Broadband Initiative Invitation to Participate in Partner Selection Process” dated October 2009 (as amended).
- (3) This Act applies to an undertaking required under this section as if the undertaking were required under subpart 4 of this Part or Part 4AA, as the case may be.

Section 69R: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69S No end-to-end services

- (1) Chorus, or any related party of Chorus, must not provide telecommunications links to customers except—
- (a) between an end-user’s building (or, in the case of a commercial building, the 2 building distribution frames) and a Chorus local or regional aggregation point; and
 - (b) between 2 Chorus local or regional aggregation points.
- (2) To avoid doubt,—
- (a) telecommunications links provided by Chorus, or a related party of Chorus, to customers must terminate at a local or regional aggregation point; and
 - (b) Chorus, or a related party of Chorus, must not sell a service to customers that links 2 or more end-user sites together (but a customer of Chorus can create the linking between 2 or more end-user sites).
- (3) However, this section does not prevent the resale of PSTN-based services for the purposes of acting as a channel to market for Telecom.
- (4) *See* sections 156L(3) and 156M for the maximum penalty of \$10 million (and \$500,000 per day) for breach of this section.

Section 69S: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69T Enforcement of breaches of sections 69O and 69S

Sections 69V (injunctions) and 156B (enforcement actions) apply to Chorus, and any related party of Chorus, that, without reasonable excuse, participates in the supply of a telecommunications service in breach of sections 69O and 69S.

Section 69T: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69U Application of line of business restrictions to related parties of Chorus

- (1) The test for related parties in this Part is that a person is related to another person if—
 - (a) they are acting jointly or in concert; or
 - (b) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
 - (c) they are related companies within the meaning of section 2(3) of the Companies Act 1993; or
 - (d) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
 - (e) they are both, directly or indirectly, under the control of the same person.
- (2) However, for the purposes of subsection (1),—
 - (a) a director of a company or other body corporate is not related to that company or body corporate merely because he or she is a director of that company or body corporate; and
 - (b) a person is not able to exert a substantial degree of influence over another person merely because—
 - (i) those persons are in competition in the same market; or
 - (ii) one of them supplies goods or services to the other.
- (3) Any sharing of assets, services, and systems between Chorus and Telecom must be disregarded for the purposes of applying subsection (1) to the extent that it is provided for in a sharing arrangement of which a copy has been provided to the Commission under section 69F(1)(a) or (b)(ii).
- (4) Without limiting section 69O, Chorus is deemed to participate in the supply of a telecommunications service if a related party of Chorus participates in the supply of the telecommunications service.
- (5) The order of responsibility for remedying breaches is, to the extent practical, that the breach must be remedied first by the party whose activity resulted in the breach.

Compare: 1993 No 106, s 4A(2), 1998 No 88 s 21

Section 69U: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69V Injunctions may be granted by High Court for certain contraventions

- (1) The High Court may, on the application of the Commission, grant an injunction restraining a person from engaging in a breach of sections 69O or 69S.
- (2) The High Court may, at any time, rescind or vary an injunction granted under this section.

Section 69V: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 4—Undertakings by Chorus

Subpart 4 heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69W Purposes of subpart

The purposes of this subpart are to—

- (a) promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and
- (b) require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and
- (c) facilitate efficient investment in telecommunications infrastructure and services.

Section 69W: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69X Overview

- (1) This subpart imposes obligations on Chorus to give undertakings—
 - (a) to supply wholesale services using its copper access network (called relevant services in this subpart) on a non-discrimination basis; and
 - (b) to supply a subset of those services, which Chorus consumes and which it supplies to its competitors, (called relevant regulated services in this subpart) on an equivalence basis.
- (2) This section is intended only as a guide to the general scheme and effect of this subpart.

Section 69X: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XA Interpretation

In this subpart, unless the context otherwise requires,—

equivalence, in relation to the supply of a relevant regulated service, means equivalence of supply of the service and access to Chorus's network so that third-party access seekers are treated in the same way to Chorus's own business operations, including in relation to pricing, procedures, operational support, and supply of information and other relevant matters

legacy access network means the network comprising—

- (a) Chorus's local loop network, as defined in clause 1 of Part 1 of Schedule 1 (including any relevant line in Chorus's local telephone exchange or distribution cabinet); and
- (b) Chorus's local telephone exchange, as defined in clause 1 of Part 1 of Schedule 1, and Chorus's distribution cabinet (or equivalent facility); and
- (c) Chorus's backhaul network (whether copper, fibre, or anything else) between the local loop network handover point in Chorus's distribution cabinet (or equivalent facility) or Chorus's local telephone exchange and the first data switch (including the first data switch); and
- (d) Chorus's digital subscriber line access multiplexer (or equivalent facility)

local access and calling service means the designated access service described in subpart 1 of Part 2 of Schedule 1 as local access and calling service offered by means of a fixed telecommunications network

non-discrimination, in relation to the supply of a relevant service, means that Chorus must not treat access seekers differently or, where Chorus supplies itself with a relevant service, must not treat itself differently from other access seekers, except to the extent that a particular difference in treatment is objectively justifiable and does not harm, and is unlikely to harm, competition in any telecommunications market

relevant regulated services means the following designated access services:

- (a) Chorus's unbundled copper local loop network service:
- (b) Chorus's unbundled copper local loop network co-location service:
- (c) Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange):
- (d) Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

relevant services—

- (a) means—
 - (i) wholesale telecommunications services that are provided using, or that provide access to the unbundled elements of, the legacy access network; and
 - (ii) the designated access service described in subpart 1 of Part 2 of Schedule 1 as Chorus's unbundled bitstream access backhaul; but
- (b) does not include any services that are agreed by the Commission in writing to be legacy input services, being inputs to services that are no longer offered to end-users other than customers who were end-users before separation day

UBA service means the designated access service described in subpart 1 of Part 2 of Schedule 1 as unbundled bitstream access service.

Section 69XA: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XB Requirements for undertakings by Chorus relating to supply of certain wholesale telecommunications services

Chorus must give undertakings that—

- (a) require Chorus to achieve non-discrimination in relation to the supply of relevant services; and
- (b) set out rules and principles that Chorus will apply to ensure that non-discrimination is achieved in relation to the supply of relevant services; and
- (c) require Chorus to achieve equivalence of supply in relation to relevant regulated services; and
- (d) require Chorus to develop, in consultation with the Commission and key industry stakeholders, key performance indicators for systems and processes for relevant regulated services by which it may be judged whether Chorus is achieving equivalence of supply in relation to those services; and
- (e) require Chorus to develop, in consultation with the Commission and key industry stakeholders, key performance indicators by which it may be judged whether Chorus is achieving non-discrimination in relation to the supply of the UBA service; and
- (f) require Chorus to—
 - (i) conduct quarterly reviews of performance as measured against the key performance indicators referred to in paragraphs (d) and (e); and
 - (ii) make all information relating to those reviews available to the Commission to support the Commission's assessment of compliance with the undertakings; and
 - (iii) publish quarterly reports on its performance as measured against the key performance indicators referred to in paragraphs (d) and (e); and
 - (iv) internally audit the controls and processes behind the key performance indicator reporting; and
- (g) require Chorus to carry out quarterly customer surveys of its performance in relation to relevant regulated services; and
- (h) require Chorus to—

- (i) implement a policy of control of commercial information provided by access seekers for relevant services and relevant regulated services, in consultation with the Commission; and
 - (ii) internally audit the effectiveness of that policy, at the end of each of the first two 6-month periods following separation day and then annually after that; and
- (i) require Chorus to supply the UBA service in a bundle with the local access and calling service; and
 - (j) require the directors of Chorus to certify that Chorus has complied with the undertakings; and
 - (k) provide for disclosure of relevant information to the Commission, to support the Commission's assessment of compliance with the undertakings; and
 - (l) require Chorus to commit to a reasonable plan containing time frames for a transition to the end of the sharing arrangements referred to in subpart 2.

Section 69XB: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XC Implementation of Chorus undertakings

- (1) On and from separation day, the undertakings approved by the Minister on or before separation day under sections 42 to 44 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 take effect as if they were a deed that is—
 - (a) properly executed by, and binding on, Chorus; and
 - (b) given in favour of the Crown.
- (2) The undertakings approved by the Minister after separation day under sections 42 to 44 of that Act take effect in accordance with subsection (1), but with effect from the date of approval.

Section 69XC: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XD Chorus must publish Chorus undertakings

- (1) As soon as practicable after the date on which an undertaking takes effect under section 69XC, Chorus must publish the undertaking.
- (2) Section 156AK applies with necessary modifications.

Section 69XD: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XE Variation of Chorus undertakings

Sections 156AL to 156AN apply with necessary modifications to undertakings under this subpart.

Section 69XE: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XF Termination of Chorus undertakings

Section 156AO applies with necessary modifications to undertakings under this subpart.

Section 69XF: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XG Enforcement of Chorus undertakings

- (1) Sections 156AQ to 156AS apply with necessary modifications to undertakings under this subpart.
- (2) *See* sections 156L(3) and 156M for the maximum penalty of \$10 million (and \$500,000 per day) for failure to comply with undertakings).

Section 69XG: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 5—Miscellaneous

Subpart 5 heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Public Works Act 1981

Heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XH Application of Public Works Act 1981

- (1) Despite section 4(4) of the Finance Act 1990 and section 24(4) of the State-Owned Enterprises Act 1986, nothing in sections 40 to 42 of the Public Works Act 1981 applies to the transfer of affected land from Telecom to Chorus.
- (2) However, after that transfer, sections 40 and 41 of the Public Works Act 1981 apply to that land as if Chorus were the Crown and the transfer of the land from the Crown to Telecom and from Telecom to Chorus had not taken place.
- (3) If, in relation to affected land that has been transferred by Telecom to Chorus, an offer made by Chorus under section 40(2) of the Public Works Act 1981 is not accepted within the time specified in subsection (4) and the parties have not agreed on other terms for the sale of the land, Chorus may sell or otherwise dispose of the land to any person and on such terms and conditions as it thinks fit.

- (4) The time referred to in subsection (3) is the later of the following:
- (a) 40 working days after the offer is made or such further period as Chorus considers reasonable;
 - (b) if an application has been made to the Land Valuation Tribunal pursuant to section 40(2A) of the Public Works Act 1981, 20 working days after the determination of the Tribunal.

- (5) In this section,—

affected land means any land that, immediately before it was transferred by the Crown to Telecom pursuant to section 4(4) of the Finance Act 1990, was held by the Crown under the Public Works Act 1981 for a public work

land has the same meaning as in section 2 of the Public Works Act 1981

working day has the same meaning as in section 2 of the Public Works Act 1981.

Section 69XH: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Resource Management Act 1991 issues

Heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XI Requiring authority status under Resource Management Act 1991

- (1) Chorus is approved as a requiring authority, as a network utility operator, under the Resource Management Act 1991 for the following purposes:
- (a) constructing or operating, or proposing to construct or operate, a network for the purpose of telecommunication as defined in section 5 of this Act; and
 - (b) constructing or operating, or proposing to construct or operate, a network for the purpose of radiocommunications as defined in section 2(1) of the Radiocommunications Act 1989.

- (2) Part 8 of the Resource Management Act 1991 applies with necessary modifications as if the approval had been given under section 167 of that Act.

Section 69XI: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XJ Designations under Resource Management Act 1991

- (1) The Minister may, before separation day, by notice in the *Gazette*, issue 2 lists comprising all or any of the designations (within the meaning of section 166 of the Resource Management Act 1991) for which Telecom is responsible, as follows:
- (a) designations that are to be transferred to Chorus:

- (b) designations that are to be additionally granted back to Telecom.
- (2) On separation day,—
 - (a) all the rights and responsibilities of Telecom in relation to the designations listed in a *Gazette* notice under subsection (1)(a), as they existed immediately before separation day, are transferred to Chorus for the purposes of section 180 of the Resource Management Act 1991; and
 - (b) the designations listed in a *Gazette* notice under subsection (1)(b), as they existed immediately before separation day, are (in addition to being transferred to Chorus) granted back to Telecom, with the effect that, subject to subsection (3), Telecom continues to have the same rights and responsibilities as Chorus in relation to the designations.
- (3) For the purposes of section 177 of the Resource Management Act 1991,—
 - (a) the designations transferred to Chorus under subsection (2)(a) are treated as earlier designations; and
 - (b) the additional designations granted to Telecom under subsection (2)(b) are treated as later designations.
- (4) Part 8 of the Resource Management Act 1991 applies with necessary modifications as if the designations had been transferred or made under that Part.

Section 69XJ: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Restrictive covenants

Heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XK Certain restrictive covenants

- (1) This section applies to any restrictive covenant that is registered in favour of land—
 - (a) of which Telecom was a registered proprietor immediately before separation day; and
 - (b) that is transferred from Telecom to Chorus on separation day.
- (2) Despite the transfer of land to Chorus, Telecom is entitled to enforce the covenant against the persons bound by the covenant as if Telecom were an owner or occupier of the land.
- (3) This section does not limit the rights to enforce the covenant of Chorus, Chorus's successors in title, and persons claiming through Chorus or Chorus's successors in title.
- (4) The Registrar-General may enter in the register relating to the burdened land, the benefited land, or both, a notification of the effect of this section as if it were an instrument.

Section 69XK: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Government Superannuation Fund Act 1956

Heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XL Protection of existing members of Government Superannuation Fund

- (1) The Government Superannuation Fund Act 1956 continues to apply to the persons referred to in subsection (2) in all respects as if service with Chorus were Government service.
- (2) The persons are every person who, immediately before separation day,—
 - (a) is employed by Telecom; and
 - (b) is deemed to be employed in the Government service under section 2A of the Government Superannuation Fund Act 1956; and
 - (c) is a contributor to the Government Superannuation Fund under Part 2 or 2A of that Act.
- (3) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of Chorus is the controlling authority.

Section 69XL: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 6—Taxation consequences of structural separation

Subpart 6 heading: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XM Interpretation in this subpart

In this subpart, unless the context requires otherwise,—

appointed day means,—

- (a) for a purpose specified in a proposal approved by Order in Council made under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, a day specified in that proposal for that purpose;
- (b) if there is no relevant day under paragraph (a), the day on which the vesting of the designated assets and liabilities, and the demerger distribution, take effect

Chorus company means a member of the group of companies comprising ChorusCo and the companies that are, or will be, its subsidiaries immediately following the demerger distribution and the vesting of the designated assets and liabilities

demerger distribution means a distribution, or an entitlement to a distribution, to each holder of ordinary shares in Telecom Corporation of New Zealand Limited, where the distribution or entitlement—

- (a) arises under the demerger arrangement; and
- (b) comprises—
 - (i) an amount determined by reference to the value of a holder's entitlement to ordinary shares in ChorusCo:
 - (ii) ordinary shares in ChorusCo to which the holder is entitled, or proceeds from the disposal of that holder's entitlement to ordinary shares in ChorusCo

designated assets and liabilities means assets and liabilities, or parts of assets and liabilities, as the case may be, specified in an Order in Council made under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, and **designated assets** and **designated liabilities** have corresponding meanings

income year has the same meaning as in the Income Tax Act 2007

Inland Revenue Acts has the same meaning as in the Tax Administration Act 1994

Telecom company means a member of the group of companies comprising Telecom Corporation of New Zealand Limited and the companies that are, or will be, its subsidiaries immediately following the demerger distribution and the vesting of the designated assets and liabilities

vest means the transfer of the designated assets and liabilities from a Telecom company to a Chorus company on the appointed day

vesting year means the income year that includes the appointed day for the vesting of the designated assets and liabilities.

Section 69XM: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XN Purpose

The purpose of this subpart is to ensure that—

- (a) the vesting of the designated assets and liabilities in Chorus does not give rise to tax consequences under the Inland Revenue Acts for Telecom or Chorus that would not have arisen if they were the same person:
- (b) no tax consequences arise under the Inland Revenue Acts on the appointed day for any shareholder of Telecom Corporation of New Zealand Limited or Chorus from the demerger distribution that would not have arisen if the vesting of the designated assets and liabilities and the demerger distribution had not occurred.

Section 69XN: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XO Depreciation

- (1) For the purposes of the Income Tax Act 2007, for a designated asset (the **asset**) that is depreciable property,—
 - (a) the relevant Telecom company has a deduction for an amount of depreciation loss for the period beginning on the first day of the vesting year and ending on the day before the appointed day:
 - (b) the relevant Telecom company does not derive depreciation recovery income and does not have a deduction for an amount of depreciation loss under sections EE 44 to EE 52 of the Income Tax Act 2007 as a result of the vesting of the asset:
 - (c) the relevant Chorus company must calculate, on and after the appointed day, depreciation recovery income and deductions for amounts of depreciation loss as if, in respect of the period up to and including the appointed day, it and the Telecom company were the same person.
- (2) In this section, **depreciable property**, **depreciation loss**, and **depreciation recovery income** have the same meanings as in the Income Tax Act 2007.

Section 69XO: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XP Tax effect of distribution of ChorusCo shares

- (1) For the purposes of the Income Tax Act 2007, the following transactions do not give rise to, and are ignored for the purposes of calculating, the available subscribed capital of a Chorus company or a Telecom company:
 - (a) the vesting of the designated assets and liabilities:
 - (b) the demerger distribution:
 - (c) a transaction necessary for carrying into effect the vesting of the designated assets and liabilities, or the demerger distribution, if, for that transaction, there is no party other than Chorus companies and Telecom companies.
- (2) The demerger distribution on the appointed day—
 - (a) is not a dividend or other kind of assessable income for the purposes of the Income Tax Act 2007:
 - (b) is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:
 - (c) is, for any relevant Telecom company, a disposition for the cost price of the share, for the purposes of the Income Tax Act 2007.

- (3) For the purposes of the Income Tax Act 2007, a person who receives a demerger distribution by virtue of holding a Telecom Corporation of New Zealand Limited share or shares is treated as—
- (a) acquiring the relevant ChorusCo share or shares at the same time and for the same purposes as the Telecom Corporation of New Zealand Limited share or shares that give rise to that person's entitlement to the demerger distribution:
 - (b) having paid the amount given by subsection (4) for the acquisition of the ChorusCo share or shares:
 - (c) having paid the amount given by subsection (5) for the acquisition of the Telecom Corporation of New Zealand Limited share or shares.

- (4) For the purposes of subsection (3)(b), the amount paid for the acquisition is calculated using the following formula:

$$\frac{\text{pre-calculation amount paid}}{\text{combined mv}} \times \text{Chorus mv}$$

- (5) For the purposes of subsection (3)(c), the amount paid for the acquisition is calculated using the following formula:

$$\frac{\text{pre-calculation amount paid}}{\text{combined mv}} \times \text{Telecom mv}$$

- (6) In the formulas in subsections (4) and (5),—
- (a) **pre-calculation amount paid** is the person's expenditure or loss incurred in acquiring the relevant Telecom Corporation of New Zealand Limited share or shares, ignoring this section:
 - (b) **Chorus mv** is the market capitalisation of ChorusCo calculated in the manner prescribed in a proposal approved by Order in Council under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, or, if none is prescribed, the number of ChorusCo shares on issue immediately following the demerger distribution multiplied by the volume weighted average price of ChorusCo shares as traded on the NZSX over the first 5 trading days commencing on the date of listing of ChorusCo:
 - (c) **Telecom mv** is the market capitalisation of Telecom Corporation of New Zealand Limited calculated in the manner prescribed in a proposal approved by Order in Council under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, or, if none is prescribed, the number of Telecom Corporation of New Zealand Limited shares on issue immediately following the demerger distribution multiplied by the volume weighted average price of Telecom Corporation of New Zealand Limited shares as traded on the NZSX over the first 5 trading days commencing on the date of listing of ChorusCo:

- (d) **combined mv** is the total market capitalisation of ChorusCo and of Telecom Corporation of New Zealand Limited calculated in the manner prescribed in a proposal approved by Order in Council under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, or, if none is prescribed, the total of the market capitalisation of ChorusCo and of Telecom Corporation of New Zealand Limited determined in accordance with paragraphs (b) and (c).
- (7) Subsection (8) applies where—
- (a) an arrangement entered into on or before the appointed day would, but for the demerger distribution, be a returning share transfer or share-lending arrangement in respect of which the original share is a Telecom Corporation of New Zealand Limited share; and
- (b) if, under the relevant arrangement in respect of the Telecom Corporation of New Zealand Limited share, the share user is required to transfer a Telecom Corporation of New Zealand Limited share or shares and a ChorusCo share or shares to the share supplier.
- (8) If subsection (7) applies,—
- (a) the relevant ChorusCo share or shares are treated as part of the relevant Telecom Corporation of New Zealand Limited share or shares for the purposes of the definitions of identical share, original share, returning share transfer, and share-lending arrangement in the Income Tax Act 2007;
- (b) subsection (3) applies to the share supplier as if the share supplier were the person referred to in that subsection.
- (9) In this section, **available subscribed capital, dividend, identical share, original share, returning share transfer, share-lending arrangement, share supplier, and share user** have the same meanings as in the Income Tax Act 2007.

Section 69XP: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XQ Goods and Services Tax Act 1985

- (1) The vesting of the designated assets and liabilities is treated as being a taxable supply on the appointed day that is charged with tax at the rate of 0% for the purposes of the Goods and Services Tax Act 1985.
- (2) For the purpose of calculating, under the Goods and Services Tax Act 1985, the amount of tax payable, or input tax deductible, on or after the appointed day by a Chorus company in respect of, or in relation to, a designated asset or a designated liability, the Chorus company and the relevant Telecom company are treated as if they were the same person in respect of the period up to and including the appointed day, subject to subsection (1).

- (3) If it is necessary for a tax invoice, a credit note, or a debit note (the **document**) to be issued by or to a Telecom company in respect of a supply made by or to a Telecom company before the appointed day, the document may be issued by or to a Chorus company if the supply was in respect of or in relation to designated assets and liabilities. The Chorus company and the Telecom company are treated as if, in relation to that supply, they were the same person for the purposes of any requirement in the Goods and Services Tax Act 1985 that the Telecom company holds, has previously been issued with, or has issued to a person, a tax invoice, a debit note, or a credit note for the supply.
- (4) In this section, **credit note**, **debit note**, **input tax**, **supply**, **tax**, and **tax invoice** have the same meanings as in the Goods and Services Tax Act 1985.

Section 69XQ: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XR Prepayments

- (1) For the purposes of the Income Tax Act 2007,—
- (a) for the vesting year, the relevant Telecom company is treated as having an unexpired amount of expenditure under section EA 3 of that Act (the **unexpired portion**) for expenditure connected with the designated assets and liabilities, calculated by applying section EA 3(4) to (7) of that Act as if the day before the appointed day were the end of an income year:
 - (b) the relevant Telecom company has, for the vesting year, income under section CH 2 of that Act for the unexpired portion described in paragraph (a):
 - (c) for an income year starting after the appointed day, the relevant Telecom company is not allowed a deduction for the unexpired portion under section DB 50 of that Act, and no part of the unexpired portion is income under section CH 2 of that Act:
 - (d) the relevant Chorus company has, for the vesting year, a deduction for the unexpired portion described in paragraph (a) under section DB 50 of that Act:
 - (e) for the vesting year and any subsequent income year, section EA 3 of that Act applies to the relevant Chorus company as if that member had been allowed a deduction under that Act for expenditure to which paragraph (a) applies.
- (2) In this section, **expenditure** means expenditure that the relevant Telecom company has been allowed a deduction for under the Income Tax Act 2007 or an earlier Act, and that was not incurred on the items described in section EA 3(2) of that Act.

Section 69XR: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XS Expenditure or loss incurred, and amounts derived

A Chorus company and the relevant Telecom company are treated as the same person for the period prior to and including the appointed day for the purpose of determining the following, under the Income Tax Act 2007:

- (a) whether a deduction is allowed for an amount of expenditure or loss incurred by the Chorus company in connection with the designated assets or liabilities:
- (b) the amount of any deduction of the Chorus company in connection with the designated assets or liabilities:
- (c) whether an amount derived by the Chorus company in connection with the designated assets or liabilities is income:
- (d) the amount of any income of the Chorus company in connection with the designated assets or liabilities.

Section 69XS: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XT Bad debts

Sections CG 3 and DB 31 of the Income Tax Act 2007 apply to a relevant Chorus company in respect of any obligation that is owed to the relevant Telecom company immediately before the appointed day and that vests in the Chorus company, as if the Telecom company and the Chorus company were the same person in respect of the period up to and including the appointed day.

Section 69XT: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XU Unpaid employment expenditure

Sections DC 11(2) and (3) and EA 4(6) of the Income Tax Act 2007 apply to any amount of employment income (as that term is defined in the Income Tax Act 2007) that a Chorus company assumes the obligation to pay in connection with the vesting. For the purposes of those sections, the Chorus company is treated as **person B**, and the relevant Telecom company that incurred the obligation to pay is treated as **person A**.

Section 69XU: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XV Vesting of designated assets and liabilities

The vesting of the designated assets and liabilities in a Chorus company—

- (a) does not give rise to a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:
- (b) does not give rise to a dividend, or, except as provided in this subpart, other assessable income, for the purposes of the Income Tax Act 2007:
- (c) does not, except as provided in this subpart, give rise to a deduction for the purposes of the Income Tax Act 2007.

Section 69XV: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XW Revenue account property

- (1) For the purposes of the Income Tax Act 2007, for a designated asset or liability that is revenue account property (the **property**), the property is treated as being disposed of by the relevant Telecom company and acquired by the relevant Chorus company for an amount equal to the property's tax book value.
- (2) In this section, **tax book value** means,—
 - (a) for the property, if it is trading stock or an excepted financial arrangement acquired by the relevant Telecom company before the vesting year, the opening value of the property under section DB 49 of the Income Tax Act 2007 for that Telecom company for the vesting year:
 - (b) for the property, if paragraph (a) does not apply, the amount of expenditure or loss for which the relevant Telecom company is allowed a deduction in the vesting year as a result of the disposal.
- (3) In this section, **excepted financial arrangement**, **revenue account property**, and **trading stock** have the same meaning as in the Income Tax Act 2007.

Section 69XW: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XX Leased assets

For the purposes of the Income Tax Act 2007, for expenditure that a Telecom company incurs as a lessee under a lease that relates to a designated asset and to which section EJ 10 of the Income Tax Act 2007 applies,—

- (a) the Telecom company must calculate an amount to be allocated to the vesting year under section EJ 10(3) and (4) of that Act as if the day before the appointed day were the end of the vesting year:
- (b) the relevant Chorus company must calculate an amount to be allocated to the vesting year under section EJ 10(3) and (4) of that Act as if the appointed day were the start of the vesting year:
- (c) section EJ 10 of that Act applies to the Chorus company for income years after the vesting year as if, in respect of the period up to and including the appointed day, the Telecom company and the Chorus company were the same person.

Section 69XX: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XY Finance leases: financial arrangements rules

- (1) For the purposes of the financial arrangements rules as defined in section EW 1(2) of the Income Tax Act 2007, for a finance lease that a Telecom company is party to immediately before the appointed day and vests in a Chorus company on the appointed day,—
 - (a) if the finance lease is an asset of the Telecom company, the Chorus company is treated as paying to the Telecom company an amount of consideration for the finance lease that is equal to the tax book value of the finance lease on the relevant day:
 - (b) if the finance lease is a liability of the Telecom company, the Telecom company is treated as paying to the Chorus company an amount of consideration for the finance lease that is equal to the tax book value of the finance lease on the relevant day:
 - (c) the Telecom company must calculate, on the relevant day, a base price adjustment under section EW 31 of the Income Tax Act 2007:
 - (d) if the Chorus company calculates, on or after the relevant day, a base price adjustment under section EW 31 of that Act, that base price adjustment must be calculated as if, in respect of the period up to and including the relevant day, it and the Telecom company were the same person:
 - (e) sections EW 38, EW 42, and GB 21 of that Act do not apply for the vesting.
- (2) In this section,—
 - (a) **finance lease** has the same meaning as in the Income Tax Act 2007:
 - (b) **tax book value** means, for the relevant day and a finance lease, the value for tax purposes of the finance lease on the relevant day determined consistently with the method used in subpart EW of the Income Tax Act 2007 to calculate and allocate income and expenditure under the finance lease as if the day immediately preceding the relevant day were the last day of an income year.

Section 69XY: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69XZ Approved issuer levy and administrative status

- (1) For the purposes of the Income Tax Act 2007 and the Stamp and Cheque Duties Act 1971, a transaction or class of transactions registered as a registered security or as registered securities by a Telecom company on or prior to the appointed day is treated as also being registered as a registered security or as registered securities, as the case may be, by the relevant Chorus company. The

relevant Chorus company is treated as an approved issuer in respect of the registered security or registered securities, as the case may be.

- (2) The relevant Telecom company and the relevant Chorus company are treated as the same person, for the period prior to and including the appointed day, for the purposes of the making, giving, or receiving of any election, notice, certificate, and filing provided for under the Inland Revenue Acts.
- (3) A Telecom company and the relevant Chorus company are treated as the same person for the purposes of receiving the benefit of—
 - (a) a provisional rate, as defined in section EE 67 of the Income Tax Act 2007:
 - (b) a special rate, as defined in section EE 67 of that Act.
- (4) In this section, **registered security** has the same meaning as in the Income Tax Act 2007.

Section 69XZ: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 51 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Part 2B

Information disclosure requirements

Part 2B: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69Y Purpose

The purpose of this Part is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand by requiring that reliable and timely information prescribed by the Commission is made publicly available—

- (a) by Telecom, so that a wide range of people are informed about the operation and behaviour of Telecom's network, wholesale, and retail business activities and services; and
- (b) by access providers, including Telecom, so that a wide range of people are informed about the operation and behaviour of prescribed businesses that provide prescribed services, in order to monitor and facilitate compliance with prescribed applicable access principles.

Compare: 1986 No 5 s 57T(1)

Section 69Y: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69Z Parameters of Part

The Commission's requirements under this Part must be reasonable, having regard to the purpose of this Part, the confidentiality of the information in question, and the time required to prepare the information.

Section 69Z: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69ZA Interpretation

In this Part, unless the context otherwise requires,—

disclose means to publish or make publicly available or otherwise supply, as may be required by the Commission

information and **disclosed information** includes any statements, certificates, or other information required to be disclosed under this Act

prescribed means prescribed by the Commission.

Compare: 1986 No 5 s 57T(6)

Section 69ZA: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69ZB Accounting separation of Telecom

[Repealed]

Section 69ZB: repealed, on 1 July 2011, by section 47 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69ZC Information disclosure by all access providers

- (1) This section applies—
 - (a) to any access provider in relation to any part of its business that provides prescribed designated or specified services; and
 - (b) for the purpose of enabling monitoring of, and facilitating compliance with, prescribed applicable access principles—
 - (i) that are incorporated in any determination, approved code, or registered undertaking; and
 - (ii) with which the access provider is required to comply.
- (2) The Commission—
 - (a) may require the access provider to prepare and disclose information about the operation and behaviour of that part of its business; and
 - (b) may require the access provider to adopt, in the preparation or compilation of that information, any methodology that is required by the Commission.
- (3) The Commission may require the access provider to prepare and disclose information consisting of, or about, the following things, as part of the information required under this section,—
 - (a) contracts:
 - (b) prices, terms, and conditions of supply of prescribed services:
 - (c) transactions with related parties (as if the test for related parties were the same as the test in section 79):

- (d) performance measures and statistics (for example, response times, technical performance, and service quality details):
 - (e) plans and forecasts:
 - (f) network capacity information:
 - (g) policies and methodologies in these or other areas.
- (4) Access providers must prepare and disclose any information required under this section in accordance with the Commission's requirements.
- (5) Subsection (3) does not limit subsection (2).

Compare: 1986 No 5 s 57T(2), (3)

Section 69ZC: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69ZD Miscellaneous provisions relating to Commission's information disclosure requirements

- (1) The Commission may, in making requirements under section 69ZC—
- (a) prescribe the form and manner in which information must be disclosed:
 - (b) specify a time or date, or times or dates, as at which information must be disclosed:
 - (c) require the disclosure of assumptions made in the preparation of the information:
 - (d) require the audit of disclosed information:
 - (e) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner by persons belonging to any specified class of persons:
 - (f) set rules about when and for how long information must be disclosed:
 - (g) require the retention of data on which disclosed information is based and associated documentation:
 - (h) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements:
 - (i) provide for transitional provisions:
 - (j) make requirements from time to time (for example, more than once a year):
 - (k) make requirements in respect of all or part of the relevant business.
- (2) Subsection (1)(j) does not limit section 16 of the Interpretation Act 1999.

Compare: 1986 No 5 s 57T(8)

Section 69ZD: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 69ZD(1): amended, on 1 July 2011, by section 48 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

69ZE Publication of Commission's information disclosure requirements

The Commission must give public notice of requirements made under this Part.

Compare: 1986 No 5 s 57T(4)

Section 69ZE: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69ZF Information to be supplied to Commission

- (1) Every person who is required under this Part to disclose information must supply to the Commission—
 - (a) a copy of all information disclosed under this Part, which must be supplied within 5 working days after the information is first disclosed under this Part; and
 - (b) any further statements, reports, agreements, particulars, and other information requested in writing by the Commission for the purpose of monitoring the person's compliance with the requirements made under this Part.
- (2) Every person to whom a request is made under subsection (1)(b) must comply with that request within the period specified by the Commission.
- (3) The Commission may require all or any statements, reports, agreements, particulars, and other information supplied under subsection (1) to be either or both—
 - (a) audited;
 - (b) verified by statutory declaration by the persons and in the form required by the Commission.

Compare: 1986 No 5 s 57U

Section 69ZF: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69ZG Commission to publish summaries

The Commission must, as soon as practicable after the Commission is supplied with information under section 69ZF, publish a summary and analysis of the disclosed information for the purpose of promoting greater understanding of—

- (a) the operation and behaviour of the relevant prescribed businesses of Telecom and access providers; and
- (b) the changes in operation and behaviour over time.

Compare: 1986 No 5 s 57V

Section 69ZG: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

69ZH Reasonable charge may be imposed for providing copies of statements

- (1) Any person who is required under this Part to provide copies of information, on request, to the public may charge for providing those copies.
- (2) A charge must be no more than is reasonably required to recover the costs of providing those copies.

Compare: 1986 No 5 s 57W

Section 69ZH: inserted, on 22 December 2006, by section 32 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Part 3**Telecommunications service obligations****Subpart 1—TSO instruments****70 Declaration of TSO instruments**

- (1) The purpose of this section is to facilitate the supply of certain telecommunications services to groups of end-users within New Zealand to whom those telecommunications services may not otherwise be supplied on a commercial basis or at a price that is considered by the Minister to be affordable to those groups of end-users.
- (2) Subject to subsection (3), the Governor-General may, by Order in Council made on the recommendation of the Minister, declare an instrument that is identified in the Order in Council and that meets the requirements set out in subsection (4) to be a TSO instrument.
- (3) The Minister must not make a recommendation under subsection (2) unless—
 - (a) the service provider to whom the instrument applies agrees to the instrument being declared a TSO instrument; and
 - (b) the Minister has first—
 - (i) consulted liable persons and any persons and organisations that the Minister considers appropriate having regard to the subject matter of the proposed TSO instrument; and
 - (ii) assessed whether or not contestability could reasonably be achieved in relation to each of the obligations to which the instrument applies.
- (4) An instrument that is to be declared a TSO instrument must—
 - (a) record a contract or arrangement or an understanding between the Crown and a service provider for the supply of a particular telecommunications service or range of telecommunications services; and
 - (b) identify the group of end-users to whom the service must be supplied; and

- (c) define the geographical area within which the service must be supplied; and
- (d) specify the retail price at, or below which, the service must be supplied; and
- (e) specify the criteria that must be met for the standard of the service to be supplied.

(5) *[Repealed]*

Section 70(5): repealed, on 22 December 2006, by section 33 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

71 Deemed TSO instrument

- (1) Despite anything to the contrary in section 70, any other enactment, or rule of law, an instrument of the kind referred to in subsection (2) is deemed to be a TSO instrument (**deemed TSO instrument**) for the purposes of this Part (as if that instrument had been declared to be a TSO instrument under section 70).
- (2) Subsection (1) applies to any other instrument that—
 - (a) includes or records provisions that state that the parties intend the instrument to be a deemed TSO instrument under this Act; and
 - (b) is conditional on, or entered into as a consequence of, the structural separation of Telecom.

Section 71(2): substituted, on 1 July 2011, by section 8 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

71A TSO instrument may specify total amount payable by the Crown

- (1) A TSO instrument may specify the total amount payable by the Crown under the instrument for each financial year (the **specified amount**).
- (2) The total amount may be specified as—
 - (a) a fixed monetary amount; or
 - (b) a capped monetary amount; or
 - (c) an indexed monetary amount; or
 - (d) a formula for the calculation of a monetary amount; or
 - (e) any combination of paragraphs (a) to (d).

Section 71A: substituted, on 1 July 2011, by section 9 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

72 New KSO does not alter or revoke constitution of Telecom

[Repealed]

Section 72: repealed, on 1 July 2011, by section 10 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

73 When KSO part of original KSO ceases to have effect

[Repealed]

Section 73: repealed, on 1 July 2011, by section 10 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

74 Compliance with TSO instrument

- (1) A TSO provider must comply with the terms of a TSO instrument.
- (2) The statutory duty in subsection (1) does not limit or affect any right, duty, liability, or remedy in respect of a TSO instrument that exists or is available apart from this Act.

Section 74: substituted, on 1 July 2011, by section 11 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

75 Variation of TSO instrument

A variation of—

- (a) an instrument that is declared to be a TSO instrument under section 70 must be treated as part of the TSO instrument as long as the TSO instrument continues to meet the requirements set out in section 70(4):
- (b) a deemed TSO instrument must be treated as part of the deemed TSO instrument.

Section 75 heading: amended, on 1 July 2011, by section 12(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 75(a): amended, on 1 July 2011, by section 12(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

76 When instrument ceases to be TSO instrument

- (1) An instrument ceases to be a TSO instrument,—
 - (a) in the case of an instrument that is declared to be a TSO instrument under section 70, if the Governor-General, by Order in Council made on the recommendation of the Minister, revokes the declaration of that TSO instrument; or
 - (b) in the case of a deemed TSO instrument, on a date appointed by the Governor-General by Order in Council made on the recommendation of the Minister; or
 - (c) if the instrument is terminated in accordance with its terms.
- (2) The Minister must not make a recommendation under subsection (1)(a) or (b) unless,—
 - (a) in the case of an instrument that is declared to be a TSO instrument under section 70, the service provider to whom that instrument applies agrees to the revocation of the declaration; or

- (b) in the case of a deemed TSO instrument, the service provider to whom that instrument applies agrees to that instrument ceasing to have effect as a deemed TSO instrument.

Section 76: substituted, on 1 July 2011, by section 13 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

77 Notification of TSO instrument

- (1) The Minister must notify the Commission of—
 - (a) every instrument that is declared to be a TSO instrument under section 70; and
 - (b) every deemed TSO instrument.
- (2) The Commission must give public notice of every TSO instrument.

Section 77: substituted, on 1 July 2011, by section 14 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

78 Application of Commerce Act 1986

Part 2 of the Commerce Act 1986 does not apply in respect of a TSO instrument or a contract, arrangement, or understanding to which the TSO instrument relates or any matter necessary for giving effect to the TSO instrument or the contract, arrangement, or understanding.

79 When 2 or more bodies corporate must be treated as 1 person

- (1) For the purposes of this Part, any 2 or more bodies corporate must be treated as 1 person if—
 - (a) one of them is a body corporate of which the others are subsidiaries; or
 - (b) all of them are subsidiaries of the same body corporate; or
 - (c) all of them are associates of each other; or
 - (d) one of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or
 - (e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.
- (2) For the purposes of subsection (1)(c), a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.
- (3) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of subsection (2) just because—
 - (a) those bodies corporate are in competition in the same market; or
 - (b) one of them supplies goods or services to the other.

- (4) If any of the circumstances described in subsection (1)(a) to (e) apply to 2 or more bodies corporate for part of a year, those bodies corporate must be treated as 1 person in respect of that part of the year to which the relevant circumstance applies.

Section 79: substituted, on 22 December 2006, by section 36 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 79(4): inserted, on 3 May 2017, by section 7 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Subpart 2—Amounts payable by liable persons to the Crown

Subpart 2 heading: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Annual procedure for determining amounts payable by liable persons to the Crown

Heading: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

80 Interpretation

In this subpart, unless the context otherwise requires,—

financial reporting standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

financial statements—

- (a) has the same meaning as in section 6 of the Financial Reporting Act 2013, unless section 79 applies; and
- (b) if section 79 applies and an applicable financial reporting standard requires the bodies corporate to produce group financial statements (within the meaning of section 7 of the Financial Reporting Act 2013), means those financial statements

minimum telecommunications revenue means \$10 million, or such other amount, as may be prescribed by regulations made under section 101(1)(a), of gross revenue (as may be determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to a liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

- (a) telecommunications services by means of its PTN;
- (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

Section 80: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 80 **financial reporting standard**: inserted, on 3 May 2017, by section 8 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 80 **financial statements**: replaced, on 3 May 2017, by section 8 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Requirement to produce certain information

[Repealed]

Heading: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

81 Subpart does not apply to certain liable persons

- (1) This subpart does not apply to a liable person in respect of a financial year (**financial year A**) if—
 - (a) the liable person was not trading in the financial year preceding financial year A; or
 - (b) the liable person's telecommunications revenue for the year preceding financial year A was less than the minimum telecommunications revenue.
- (2) For the purpose of determining whether a person is a liable person to whom this subpart applies in respect of a financial year, the Commission may, by written notice to that person, require the person to provide to the Commission, within the time specified in the notice,—
 - (a) the person's financial statements for the year preceding financial year A, which may be the financial statements for—
 - (i) the financial year as defined in section 5; or
 - (ii) if the person has a different accounting period, the relevant period for that person, provided that the financial statements are for a period of 12 consecutive months ending not more than 6 months before 30 June in the year preceding financial year A; and
 - (b) any further information specified by the Commission for the purpose of enabling it to verify the telecommunications revenue of that person for the year preceding financial year A; and
 - (c) a certificate that complies with subsection (3).
- (3) A certificate complies with this subsection if—
 - (a) it certifies the person's telecommunications revenue for the year preceding financial year A; and
 - (b) it is signed by 2 directors of the person with the authority of the other directors.

Section 81: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 81(2)(a): replaced, on 3 May 2017, by section 9 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

81A Application of subpart if non-liable person acquires assets of liable person

- (1) Subsection (2) applies if, during a financial year, a liable person disposes of assets used to generate qualified revenue and a person who acquires those assets is a non-liable person.
- (2) The acquirer of the assets must, in relation to revenue associated with those assets, pay the amount of the telecommunications development levy determined under section 88(b), and any further amounts that may be payable to the Crown under section 89, as if the acquirer were the liable person, regardless of whether any part of the revenue taken into account in calculating that liability was received before the person acquired the assets.
- (3) To avoid doubt, an acquirer of assets who does not receive the minimum telecommunications revenue is not a liable person.

Section 81A: inserted, on 3 May 2017, by section 10 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

82 Liable persons must produce information on qualified revenue

Not later than 60 working days before the end of each financial year (**financial year A**), each liable person must provide to the Commission a copy of—

- (a) its financial statements for the financial year preceding financial year A; and
- (b) any further information specified by the Commission for the purpose of enabling it to verify the qualified revenue of that person for the financial year preceding financial year A.

Section 82: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Net cost

[Repealed]

Heading: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

83 Liable persons must produce information for purposes of liability allocation determination

- (1) Not later than 60 working days after the end of each financial year, each liable person must provide to the Commission—
 - (a) all prescribed information or, if there is no prescribed information, information specified by the Commission, for the purpose of enabling the Commission to make its determination in accordance with section 88(a); and
 - (b) either—
 - (i) a report on the information provided by the liable person under subsection (1)(a), prepared by a qualified auditor in accordance

with an auditing and assurance standard issued under section 12 of the Financial Reporting Act 2013, as specified by the Commission; or

- (ii) an alternative form of assurance, as specified by the Commission, that the Commission is satisfied will enable it to make a determination.

(2) *[Repealed]*

Section 83: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 83(1)(b): replaced, on 3 May 2017, by section 11(1) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 83(2): repealed, on 3 May 2017, by section 11(2) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

84 Commission to prepare draft liability allocation determination

(1) The Commission must—

- (a) prepare a draft liability allocation determination for each financial year; and
- (b) give public notice of that draft determination; and
- (c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 80 working days after the end of the financial year.

Section 84: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Amount of revenue received by liable persons in relation to TSO instrument

[Repealed]

Heading: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

85 Matters to be included in draft liability allocation determination

(1) A draft liability allocation determination must include—

- (a) the amount of each liable person's qualified revenue; and
- (b) the amount of the telecommunications development levy payable by each liable person for the financial year, calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

- a is the amount of the liable person's qualified revenue

- b is the sum of all liable persons' qualified revenue
 - c is the telecommunications development levy specified for the relevant year in Schedule 3B; and
 - (c) the methodology applied by the Commission in preparing the determination; and
 - (d) the reasons for the determination.
- (2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of subsection (1)(a) (for example, a net revenue basis).
- Section 85: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

General provision relating to TSO cost allocation determination and TSO cost calculation determination

[Repealed]

Heading: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

86 Conferences on draft liability allocation determination

The Commission may—

- (a) hold conferences in relation to the draft liability allocation determination; and
- (b) invite to those conferences any person who has a material interest in the determination.

Section 86: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

TSO cost allocation determination

[Repealed]

Heading: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

87 Commission to prepare final liability allocation determination

- (1) The Commission must—
- (a) prepare a final liability allocation determination; and
 - (b) give public notice of that final determination; and
 - (c) give a copy of that final determination to all liable persons.
- (2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 20 working days after the closing date for submissions specified in accordance with section 84(1)(c).

Section 87: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

88 Matters to be included in final liability allocation determination

A final liability allocation determination must include—

- (a) the amount of each liable person's qualified revenue; and
- (b) the amount of the telecommunications development levy payable by each liable person, calculated in accordance with the formula set out in section 85(1)(b); and
- (c) the methodology applied by the Commission in preparing the determination; and
- (d) the reasons for the determination.

Section 88: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

89 Payment by liable persons to the Crown

- (1) Each liable person must pay to the Crown the amount set out in the determination in accordance with section 88(b) not later than 20 working days after the date that the determination is publicly notified.
- (2) If that amount is not paid on or before the due date,—
 - (a) it is recoverable in any court of competent jurisdiction as a debt due to the Crown; and
 - (b) the liable person must pay the Crown interest on the unpaid amount at the 90-day bank bill rate (as at 21 working days after the date on which the determination is publicly notified) plus 5% for the period from the time the amount was due until the time at which it is paid.
- (3) Subsection (2) does not authorise the imposing of interest on interest.

Section 89: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

General matters

Heading: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

90 Crown use of telecommunications development levy

- (1) The amounts paid by liable persons under section 89 (collectively, the **telecommunications development levy**) may be used for the following purposes:
 - (a) to pay TSO charges:
 - (b) to pay for non-urban telecommunications infrastructure development:
 - (c) to pay for upgrades to the emergency service calling system:
 - (d) any other purpose that the Minister considers will facilitate the supply of certain telecommunications services to groups of end-users within New Zealand to whom those telecommunications services may not otherwise

be supplied on a commercial basis or at a price that is considered by the Minister to be affordable to those groups of end-users.

- (2) The telecommunications development levy must not be used for a purpose under subsection (1)(d) unless the Minister has first consulted liable persons and any persons and organisations that the Minister considers appropriate having regard to the proposed use of the levy.
- (3) To avoid doubt, except as provided in section 94L, nothing in this section requires the Crown to use any amount paid by liable persons under section 89 within any particular time.

Section 90: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

91 Commission must notify final liability allocation determination before notifying TSO cost calculation determination

- (1) The Commission may determine the priority between the preparation of a liability allocation determination and the preparation of a TSO cost calculation determination and, accordingly, may comply with sections 84 to 88 and sections 94F to 94K in the sequence, as between those 2 sets of sections, as it thinks fit.
- (2) *[Repealed]*

Section 91: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 91(2): repealed, on 3 May 2017, by section 12 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

TSO cost calculation determination

[Repealed]

Heading: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

92 Annual telecommunications development levy may be reduced by Order in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend Schedule 3B by reducing the annual telecommunications development levy set out in that schedule for 1 or more future years.
- (2) The Minister must not recommend the making of an order unless the Minister is satisfied that the full amount set out in Schedule 3B is not required for the purposes in section 90.

Section 92: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 2A—TSO charges payable by the Crown

Subpart 2A: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Assessment of compliance

Heading: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

93 Assessment of compliance with TSO instrument

Not later than 60 working days after the end of each financial year, the Commission must—

- (a) assess a TSO provider's compliance with its TSO instrument during that financial year in accordance with any process set out in the TSO instrument; and
- (b) notify the TSO provider and the Minister, in writing, of any non-compliance by the TSO provider with the TSO instrument.

Section 93: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

93A Matters to be included in draft TSO cost calculation determination

[Repealed]

Section 93A: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

93B Conferences on draft TSO cost calculation determination

[Repealed]

Section 93B: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

93C Commission to prepare final TSO cost calculation determination

[Repealed]

Section 93C: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

93D Requirements for final TSO cost calculation determination

[Repealed]

Section 93D: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

93E Matters to be included in final TSO cost calculation determination

[Repealed]

Section 93E: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

*Calculation of amount payable by liable person**[Repealed]*

Heading: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

93F Calculation of amount payable by liable person*[Repealed]*

Section 93F: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

TSO provider may request TSO cost calculation determination

Heading: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94 TSO provider under TSO instrument without specified amount may request TSO cost calculation determination

- (1) If a TSO provider under a TSO instrument that does not contain a specified amount wishes to have the TSO charges for the instrument determined in respect of a financial year, the TSO provider must notify the Commission that it wishes to invoke the procedure in sections 94D to 94K for the preparation of a TSO cost calculation determination for that financial year.
- (2) The notification must be—
 - (a) in writing; and
 - (b) given not later than 90 working days after the end of the relevant financial year.
- (3) A TSO provider under a deemed TSO instrument who gives notice under subsection (1) must, at the time of giving that notice to the Commission, serve a copy of the notice on every other TSO provider under a deemed TSO instrument.

Section 94: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 94(3): added, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 54 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

*Calculation of amount payable by TSO provider**[Repealed]*

Heading: repealed, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94A TSO provider who requests TSO cost calculation determination liable for costs in certain circumstances

- (1) A TSO provider who notifies the Commission under section 94 must, if the Commission determines the TSO charges for the instrument to be zero, pay the

costs of the Commission relating to the procedure in sections 94F to 94K for the preparation of the TSO cost calculation determination (including the costs of any expert advice) as directed by the Commission in writing.

- (2) The Commission may enforce a direction given under subsection (1) by filing it in the prescribed form in the Wellington Registry of the High Court.
- (3) A direction that is filed in the Registry of the High Court under this section is enforceable as a judgment of the High Court in its civil jurisdiction.

Section 94A: substituted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94B Withdrawal of request for TSO cost calculation determination

- (1) A TSO provider who notifies the Commission under section 94 may subsequently withdraw its request for a TSO cost calculation determination.
- (2) The withdrawal must be made by submitting a notice in writing to the Commission before the Commission publicly notifies its final TSO cost calculation determination under section 94J(1)(b).
- (3) A TSO provider who withdraws a request for a TSO cost calculation determination must pay the costs of the Commission (including the costs of any expert advice) relating to as much of the procedure in sections 94F to 94K as has been undertaken in preparing the determination before the withdrawal, as directed by the Commission in writing.
- (4) Section 94A(2) and (3) apply to the enforcement of the direction.

Section 94B: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94C TSO charges deemed to be zero if TSO provider does not request TSO cost calculation determination

If a TSO provider under a TSO instrument that does not contain a specified amount does not notify the Commission in accordance with section 94,—

- (a) sections 91 and 94D to 94L do not apply in respect of the TSO provider or TSO instrument; and
- (b) the TSO charges for the instrument are deemed to be zero.

Section 94C: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Annual procedure for determining TSO charges payable by the Crown

Heading: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94D Calculations of net cost and auditor's report must be given to Commission

- (1) Not later than 90 working days after the end of each financial year, a TSO provider under a TSO instrument that does not contain a specified amount must provide to the Commission—

- (a) calculations of the net cost to the TSO provider of complying with the TSO instrument during the financial year; and
 - (b) a report prepared by a qualified auditor that includes a statement of whether or not the calculations comply with—
 - (i) any prescribed requirements relating to those calculations; and
 - (ii) any requirements of the Commission.
- (2) This section is subject to section 94C.

Section 94D: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94E Considerations for determining net cost

- (1) In calculating the net cost under section 94D and calculating the net cost for the purposes of a draft TSO cost calculation determination under section 94F and a final TSO cost calculation determination under section 94J, the following must be taken into account:
- (a) in the case of an instrument that is declared to be a TSO instrument under section 70, the range of direct and indirect revenues and associated benefits derived from providing telecommunications services to commercially non-viable end-users, less the costs of providing those services to those end-users:
 - (b) in the case of a deemed TSO instrument, the range of direct and indirect revenues and associated benefits derived from providing telecommunications services to all end-users connected to existing residential lines, less the costs of providing those services to those end-users:
 - (c) the provision of a reasonable return on the incremental capital employed in providing those services to end-users.
- (2) Subsection (1) is subject to subsections (3) and (4).
- (3) In calculating the net cost for the purposes of a draft TSO cost calculation determination under section 94F and a final TSO cost calculation determination under section 94J, the Commission—
- (a) may choose not to include profits from any new telecommunications services that involve significant capital investment and that offer capabilities not available from established telecommunications services; and
 - (b) must not include any losses from telecommunications services other than services that the TSO instrument requires the TSO provider to provide; and
 - (c) must consider the purpose set out in section 18.
- (4) In calculating the net cost under section 94D, the TSO provider must comply with any requirements of the Commission relating to the application of subsection (3)(a) to (c).
- (5) In this section,—

established telecommunications services means telecommunications services that are not new telecommunications services

new telecommunications services means telecommunications services that were first provided in New Zealand within 5 years before the start of the financial year to which the calculation of the net cost relates.

Section 94E: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94EA Calculations of net revenue and auditor's report must be given to Commission

- (1) This section applies to a TSO provider under a deemed TSO instrument that requires the TSO provider to provide a telecommunications service to end-users and who is served with a copy of a notice under section 94(3).
- (2) Not later than 60 days after receiving the copy of the notice served under section 94(3), a TSO provider to whom this section applies must provide to the Commission—
 - (a) calculations of the net revenue of the TSO provider for the financial year; and
 - (b) a report prepared by a qualified auditor that includes a statement of whether the calculations comply with—
 - (i) any prescribed requirements relating to those calculations; and
 - (ii) any requirements of the Commission.

Section 94EA: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 55 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94EB Considerations for determining net revenue

- (1) In calculating net revenue under section 94EA and calculating net revenue for the purposes of a draft TSO cost calculation determination under section 94F and a final TSO cost calculation determination under section 94J, the provision of a reasonable return on the incremental capital employed in providing telecommunications services to end-users must be taken into account.
- (2) In calculating the net revenue for the purposes of a draft TSO cost calculation determination under section 94F and a final TSO cost calculation determination under section 94J, the Commission—
 - (a) may choose not to include profits from any new telecommunications services that involve significant capital investment and that offer capabilities not available from established telecommunications services; and
 - (b) must not include any losses from telecommunications services other than services that the TSO instrument requires the TSO provider to provide; and
 - (c) must consider the purpose set out in section 18.

- (3) In calculating net revenue under section 94EA, the TSO provider must comply with any requirements of the Commission relating to the application of subsection (2)(a) to (c).
- (4) In this section, **established telecommunications services** and **new telecommunications services** have the same meanings as in section 94E.

Section 94EB: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 55 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94F Commission to prepare draft TSO cost calculation determination

- (1) The Commission must—
 - (a) prepare a draft TSO cost calculation determination in respect of each TSO instrument for each financial year; and
 - (b) give public notice of that draft determination; and
 - (c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.
- (2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 120 working days after the end of the financial year.
- (3) This section is subject to sections 94 and 94C.

Section 94F: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94G Matters to be included in draft TSO cost calculation determination

A draft TSO cost calculation determination must include,—

- (a) if the TSO instrument does not contain a specified amount, the net cost to the TSO provider of complying with the TSO instrument during the financial year and all material information that—
 - (i) relates to the calculation of the net cost; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
- (ab) if the TSO instrument does not contain a specified amount and is a deemed TSO instrument, the net revenue of all providers under deemed TSO instruments, excluding the provider whose net cost is set out in paragraph (a), and all material information that—
 - (i) relates to the calculation of the net revenue; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of any TSO provider; and

- (b) if the TSO instrument contains a specified amount, the dollar amount of the specified amount and all material information that—
 - (i) relates to the calculation of that amount; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
- (c) the amount (if any) by which the total amount that the TSO provider would receive from the Crown in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and
- (d) the methodology applied by the Commission in preparing the determination; and
- (e) the reasons for the determination.

Section 94G: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 94G(ab): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 56 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94H Requirements for draft TSO cost calculation determination

In preparing a draft TSO cost calculation determination of the matters referred to in section 94G(c), the Commission must consider the steps taken (if any) by the TSO provider to remedy any non-compliance by the TSO provider with the TSO instrument between the date the TSO provider was notified of the non-compliance under section 93(b) and the date that is 15 working days before public notice is given under section 94F(1)(b).

Section 94H: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94I Conferences on draft TSO cost calculation determination

The Commission may—

- (a) hold conferences in relation to a draft TSO cost calculation determination; and
- (b) invite to those conferences any person who has a material interest in the determination.

Section 94I: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94J Commission to prepare final TSO cost calculation determination

- (1) The Commission must—
 - (a) prepare a final TSO cost calculation determination; and
 - (b) give public notice of that final determination; and

- (c) give a copy of that final determination to the Minister, all liable persons, and the TSO providers in relation to the TSO instrument.
- (2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 40 working days after the closing date for submissions specified in accordance with section 94F(1)(c).
- (3) This section is subject to sections 94 and 94C.

Section 94J: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94K Matters to be included in final TSO cost calculation determination

- (1) A final TSO cost calculation determination must include,—
 - (a) if the TSO instrument does not contain a specified amount, the net cost to the TSO provider of complying with the TSO instrument during the financial year and all material information that—
 - (i) relates to the calculation of the net cost; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
 - (ab) if the TSO instrument does not contain a specified amount and is a deemed TSO instrument, the net revenue for the financial year of all providers under deemed TSO instruments, excluding the provider whose net cost is set out under paragraph (a), and all material information that—
 - (i) relates to the calculation of the net revenue; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of any TSO provider; and
 - (b) if the TSO instrument contains a specified amount, the dollar amount of the specified amount and all material information that—
 - (i) relates to the calculation of that amount; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
 - (c) the amount (if any) by which the total amount that the TSO provider would receive from the Crown in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and
 - (d) the amount payable by the Crown to the TSO provider in relation to the TSO instrument in respect of the financial year calculated,—
 - (i) in the case of a TSO instrument that does not contain a specified amount and is not a deemed instrument, by subtracting the amount

- of the reduction (if any) referred to in paragraph (c) from the net cost referred to in paragraph (a); and
- (ia) in the case of a TSO instrument that does not contain a specified amount and is a deemed TSO instrument, by subtracting the amount of the reduction (if any) referred to in paragraph (c) and the net revenue referred to in paragraph (ab) from the net cost referred to in paragraph (a); and
 - (ii) in the case of a TSO instrument that contains a specified amount, by subtracting the amount of the reduction (if any) referred to in paragraph (c) from the specified amount referred to in paragraph (b); and
- (e) the amount payable by the Crown to the TSO provider in relation to the TSO instrument for the loss of use of the amount referred to in paragraph (d), calculated at the 90-day bank bill rate (as at the date of the final determination) for the period commencing from the end of the financial year and ending with the date of the final TSO cost calculation determination; and
 - (f) the methodology used by the Commission in preparing the determination; and
 - (g) the reasons for the determination.
- (2) To avoid doubt, if the calculation under subsection (1)(a) or (b) results in a figure that is zero or less, the amount for the purposes of subsection (1)(d) and (e), and that must be included in the determination, is zero.

Section 94K: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 94K(1)(ab): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 57(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 94K(1)(d)(i): amended, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 57(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 94K(1)(d)(ia): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 57(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

94L Payment by the Crown to TSO provider

- (1) The Crown must pay to the TSO provider, not later than 30 working days after the date that the final TSO cost calculation determination is publicly notified,—
- (a) the amount set out in the final TSO cost calculation determination in accordance with section 94K(1)(d); and
 - (b) the amount set out in the final TSO cost calculation determination in accordance with section 94K(1)(e).

- (2) If the Crown does not pay the total of the amounts referred to in subsection (1) on or before the due date, the Crown must pay the TSO provider interest on the unpaid amount at the 90-day bank bill rate (as at 31 working days after the date on which the final cost calculation determination is publicly notified) plus 5% for the period from the time the amount was due until the time at which it is paid.

Section 94L: inserted, on 1 July 2011, by section 15 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 3—Remedies and miscellaneous

Remedies

95 Application of sections 96 to 98 to TSO instruments that are company constitutions

[Repealed]

Section 95: repealed, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 58 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

96 Power of court to grant relief in respect of TSO instrument

- (1) If, on the application of the Crown, it appears to the High Court that a TSO provider intends to engage, or is engaging, or has engaged, in conduct that constitutes, or would constitute, a breach of the terms of a TSO instrument, the court may make any orders on any terms and conditions that it thinks appropriate, including, without limitation,—
- (a) an order to—
- (i) restrain the TSO provider from engaging in conduct that constitutes, or would constitute, the breach:
 - (ii) require the TSO provider to do a particular act or thing:
 - (iii) require the TSO provider to comply with the terms of the TSO instrument:
- (b) an interim order.
- (2) In any proceeding under this section, the Crown, on the order of the court, may obtain discovery and administer interrogatories.
- (3) The court may at any time rescind or vary an order made under this section.

Section 96(1): amended, on 22 December 2006, by section 47 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 96(1)(a)(i): amended, on 22 December 2006, by section 47 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 96(1)(a)(ii): amended, on 22 December 2006, by section 47 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 96(1)(a)(iii): amended, on 22 December 2006, by section 47 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

97 Court must take public interest into account

In deciding whether to make an order under section 96, the court must take into account whether or not it is in the public interest that the order be made.

98 Certain matters not to prevent making of order under section 96

None of the following prevents the court from making an order under section 96:

- (a) the fact that any benefit or advantage that the TSO provider obtains, or is likely to obtain, in connection with the TSO instrument is provided by a person other than the Crown:
- (b) the fact that services are provided under the TSO instrument to a person other than, or in addition to, the Crown.

Section 98(a): amended, on 22 December 2006, by section 48 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

99 Amounts identifying particular TSOs in invoices not permitted

[Repealed]

Section 99: repealed, on 1 July 2011, by section 16 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Miscellaneous

100 Right of appeal to High Court

- (1) The following persons and (as applicable) the Crown may appeal to the High Court against the following matters:
 - (a) a liable person, against a determination of the Commission, in relation to that person, of the matter referred to in section 88(a):
 - (b) a TSO provider, against a direction of the Commission under section 94A(1) or 94B(3):
 - (c) a liable person, TSO provider, or the Crown, against a determination of the Commission in respect of a matter referred to in section 94K(1)(a) to (g).
- (2) An appeal under subsection (1) may be on a question of law only.
- (3) If an appeal or judicial review proceedings are commenced about a liability allocation determination, TSO cost calculation determination, or direction under section 94A(1), the determination or direction continues to have effect and is enforceable as if the proceedings had not been commenced until the proceedings are finally disposed of.
- (4) To avoid doubt, the obligations to pay money imposed by sections 89 and 94L continue to have effect and are enforceable despite any appeal or judicial review proceedings about a determination that relates to those payments, until the proceedings are finally disposed of.

- (5) **TSO provider**, in subsection (1), means the TSO provider under the TSO instrument to which the direction or determination relates.

Section 100: substituted, on 1 July 2011, by section 17 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

100A Procedure for determinations

For a determination made under this Part, the Commission—

- (a) is not bound by technicalities, legal forms, or rules of evidence;
- (b) may inform itself of any matter relevant to the determination in any way it thinks appropriate;
- (c) must consider all submissions made in relation to the determination and all information and opinions presented or expressed at any conference in relation to the determination.

Section 100A: inserted, on 22 December 2006, by section 50 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

100B Commission must include information about deemed TSO instrument in TSO cost calculation determinations

- (1) The Commission must include the information specified in subsection (2) in a—
- (a) draft TSO cost calculation determination under section 94F in relation to a deemed TSO instrument;
 - (b) final TSO cost calculation determination under section 94J in relation to a deemed TSO instrument.
- (2) The information referred to in subsection (1) is as follows:
- (a) the name, location, and limits of each geographical area within which the TSO provider supplies the service under the deemed TSO instrument; and
 - (b) the number of subscriber lines for that service in each geographical area; and
 - (c) the number of those subscriber lines for which—
 - (i) the revenue attributed by the Commission is greater than, or equal to, the respective cost attributed; and
 - (ii) the revenue attributed by the Commission is less than the respective cost attributed; and
 - (d) the net cost of the deemed TSO instrument in each geographical area; and
 - (e) any related information that is necessary to assist in understanding the information specified in paragraphs (a) to (d).
- (3) The geographical areas referred to in subsection (2) must correspond to the areas that the Commission has identified in assessing, for the purpose of calcu-

lating the TSO net cost, the commercial viability of supplying the service to end-users.

Section 100B: inserted, on 22 December 2006, by section 50 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 100B(1)(a): amended, on 1 July 2011, by section 18(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 100B(1)(b): amended, on 1 July 2011, by section 18(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 100B(3): amended, on 1 July 2011, by section 18(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

100BA Commission must include information about spending of TSO charges paid in relation to deemed TSO instrument

- (1) The Commission must include the information specified in subsection (2) in—
 - (a) a draft TSO cost calculation determination under section 94F, in relation to a deemed TSO instrument; and
 - (b) a final TSO cost calculation determination under section 94J, in relation to a deemed TSO instrument.
- (2) The information referred to in subsection (1) is the amount of the total TSO charges most recently received by the TSO provider (if any), that the TSO provider has spent on each of the following, and details of that expenditure:
 - (a) TSO-related infrastructure:
 - (b) TSO-related operational costs:
 - (c) any other items.
- (3) For the purpose of enabling the Commission to comply with subsection (1), the Commission may require the TSO provider to prepare and provide information about the spending of the TSO charges most recently received by the TSO provider.
- (4) The TSO provider must prepare and provide any information required under subsection (3) in accordance with the Commission's requirements.

Section 100BA: inserted, on 1 July 2011, by section 19 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

100C Duties of Commission in complying with sections 100B and 100BA

- (1) In complying with section 100B, the Commission must ensure that—
 - (a) the information to be included in a draft or final TSO cost calculation determination is at its lowest level of aggregation (as determined by the Commission); and
 - (b) satisfactory provision exists to protect the confidentiality of any information that—
 - (i) the person who supplied it has advised is confidential; or
 - (ii) may reasonably be regarded as confidential; and

- (c) the inclusion of that information does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.
- (2) However, if the Commission considers that compliance with subsection (1)(a) will, or is likely to, prejudice compliance with subsection (1)(b) or (c), the Commission—
 - (a) may aggregate the information before it is included under section 100B; and
 - (b) may do so in any manner that it thinks fit.
- (3) In complying with section 100BA, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.

Section 100C: inserted, on 22 December 2006, by section 50 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 100C heading: amended, on 1 July 2011, by section 20(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 100C(3): added, on 1 July 2011, by section 20(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

101 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—
 - (a) determine the amount of the minimum telecommunications revenue for the purposes of section 80:
 - (b) prescribe the information that must be provided to the Commission under section 83(1)(a):
 - (c) provide for the appointment of auditors who may make an auditor's report under section 83(1)(b) or 94D(1)(b):
 - (d) prescribe requirements to which section 94D(1)(b)(i) applies:
 - (da) prescribe requirements to which section 94EA(2)(b)(i) applies:
 - (e) provide for any methods for all or any of the following:
 - (i) preparing a draft determination of the amount of qualified revenue referred to in section 85(1)(a):
 - (ii) determining the amount of qualified revenue referred to in section 88(a):
 - (iii) calculating the net cost under section 94D:
 - (iiia) calculating the net revenue under section 94EA:
 - (iv) preparing a draft determination of the net cost referred to in section 94G(a):
 - (v) determining the net cost referred to in section 94K(1)(a).

- (2) The Minister must not make a recommendation under subsection (1)(b) to (e) unless—
 - (a) the Commission has consulted every liable person; and
 - (b) the Commission has recommended that the regulations be made.
- (3) The Minister must not recommend the making of regulations under subsection (1)(a) unless the Minister is satisfied that, if the regulations were made, the minimum telecommunications revenue under those regulations would not exceed the maximum telecommunications revenue threshold.
- (4) In this section, **maximum telecommunications revenue threshold** means the amount calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

- a is the CPI index number for the last quarter before the Minister's recommendation would be made
- b is the CPI index number for the last quarter before the date of commencement of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011
- c is \$10 million.

Section 101: substituted, on 1 July 2011, by section 21 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 101(1)(da): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 59(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 101(1)(e)(iia): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 59(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

101A Review of local service TSO arrangements

- (1) The chief executive of the Ministry must,—
 - (a) at the start of 2013, commence a review of the deemed TSO instruments and the provisions of this Act that implement those deeds (including the provisions that relate to funding) (collectively, the **deemed TSO arrangements**), including consideration of the following:
 - (i) the operation of the deemed TSO arrangements:
 - (ii) changes in the telecommunications sector that have arisen from investments in, and the roll-out of, new and enhanced telecommunications infrastructure and facilities and the impact of those changes on the deemed TSO arrangements:
 - (iii) the continued need for, and relevance of, the deemed TSO arrangements:

- (iv) the practicality of adopting universal, rather than provider-specific, arrangements for provision of the services and achievement of the outcomes covered by the deemed TSO arrangements:
 - (v) the impact of the funding arrangements for deemed TSO instruments and the calculation of costs in relation to deemed TSO instruments on TSO providers, market competition, and the development generally of the telecommunications industry:
 - (vi) alternative arrangements for achieving the purpose set out in section 70(1), including—
 - (A) the potential for adopting a contestable TSO model for deemed TSO arrangements and the costs and benefits of those alternatives in comparison with the deemed TSO arrangements; and
 - (B) alternative approaches for the funding of deemed TSO instruments and the calculation of costs in relation to deemed TSO instruments, including the costs and benefits of those alternative approaches in comparison with the deemed TSO funding arrangements:
 - (vii) related regulatory issues; and
 - (b) report to the Minister on its findings not later than the end of 2013.
- (2) In carrying out the review, the chief executive of the Ministry must consult with interested parties, including the Commission, industry participants, consumers, and Māori.
- (3) In conducting the review and reporting to the Minister, the chief executive of the Ministry must take the following into account:
- (a) the long-term interests of end-users of telecommunications services:
 - (b) the long-term interests of those end-users in respect of whom the provision of services covered by the deemed TSO arrangements is commercially non-viable:
 - (c) the legitimate business interests of TSO providers:
 - (d) the ability for providers of TSO services to receive a reasonable return on the incremental capital employed in providing the services required under deemed TSO instruments:
 - (e) the impact on the incentives and capabilities of TSO providers and other telecommunications service providers to invest in new and improved telecommunications facilities and services:
 - (f) the effects on competition in telecommunications services markets in New Zealand.

Section 101A: inserted, on 1 July 2011, by section 22 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Part 4 Networks

Subpart 1—Network operators and networks generally

Declarations of network operator status

102 Persons declared to be network operators

- (1) The purpose of this section and sections 103 to 105 is to facilitate entry into, and competition in, telecommunications markets and broadcasting markets.
- (2) A person may apply to the Minister to be declared a network operator for the purposes of this Act or any provisions of this Act.
- (3) For the purposes of this section and sections 103 to 105, any 2 or more bodies corporate must be treated as 1 person if—
 - (a) one of them is a body corporate of which the others are subsidiaries; or
 - (b) all of them are subsidiaries of the same body corporate; or
 - (c) all of them are associates of each other; or
 - (d) one of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or
 - (e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.
- (4) For the purposes of subsection (3)(c), a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.
- (5) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of subsection (4) just because—
 - (a) those bodies corporate are in competition in the same market; or
 - (b) one of them supplies goods or services to the other.

Compare: 1987 No 116 ss 2(2), 2A(1)

Section 102(1): amended, on 17 May 2005, by section 4 of the Telecommunications Amendment Act 2005 (2005 No 70).

Section 102(3): substituted, on 22 December 2006, by section 52 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 102(4): added, on 22 December 2006, by section 52 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 102(5): added, on 22 December 2006, by section 52 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

103 Ministerial requirements for declaration

The Minister must declare an applicant to be a network operator for the purposes of this Act or any provisions of this Act if the Minister is satisfied that a declaration is necessary to enable the applicant to commence or carry on a business providing—

- (a) facilities for telecommunication between 10 or more other persons that enable at least 10 of those persons to communicate with each other; or
- (b) facilities for broadcasting to 500 or more other persons that enable programmes to be transmitted along a line or lines to each of those persons.

Compare: 1987 No 116 s 2A(2)

104 When declaration must be revoked

The Minister must revoke a declaration if the Minister is satisfied that a network operator has ceased to provide the facilities listed in section 103.

Compare: 1987 No 116 s 2A(4)

105 Declaration made or revoked by notice in *Gazette*

- (1) A declaration is made by notice in the *Gazette*, except that Chorus and Telecom are declared to be network operators by this Act.
- (1A) A declaration may be revoked by notice in the *Gazette* (including the declarations relating to Chorus and Telecom).
- (2) A notice in the *Gazette* under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1987 No 116 s 2A(3), (5)

Section 105(1): substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 63(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 105(1A): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 63(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 105(2): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

*Connection to network***106 Operator must agree to connection to network**

- (1) Except as provided in Part 2, a person may only connect equipment to a network, or to anything connected to a network, that is owned or operated by an operator who has agreed to the connection.
- (2) Nothing in subsection (1) limits the Commerce Act 1986.
- (3) Subsection (1) is subject to sections 107 and 108.
- (4) In subsection (1) and sections 107 and 108, **operator** means—

- (a) a network operator; or
- (b) any other person who provides a telecommunications service by means of a PTN that is operated by the person.

Compare: 1987 No 116 s 6(1), (2)

Section 106(4)(b): amended, on 1 July 2011, by section 26(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

107 When operator must not agree to connection to network

- (1) An operator must not agree to the connection of a telephone analyser to a network that is owned or operated by an operator unless the connection is for 1 or more of the following purposes:
 - (a) to enable a person to whom the operator provides telecommunications services to obtain call associated data that relates to telecommunications between the person and other persons:
 - (b) to maintain the network:
 - (c) to detect, investigate, or prosecute any offence against section 112 or section 113.
- (2) In subsection (1), **telephone analyser** and **call associated data** have the same meanings as in section 2(1) of the Telecommunications (Residual Provisions) Act 1987.

Compare: 1987 No 116 s 6(2A)

108 When operator must not refuse to agree to connection to network

- (1) An operator must not refuse to agree to the connection of any equipment to a network, or to anything connected to a network, that is owned or operated by the operator if the only reason for the refusal is that the operator considers that the equipment does not conform with the operator's standards for connection of that equipment.
- (2) Subsection (1) applies only if—
 - (a) the network operator has set either a standard that applies, or standards that apply, (**applicable standards**) to the equipment and its connection to the network; and
 - (b) those applicable standards have been published in accordance with any regulations made under section 109; and
 - (c) a relevant competent conformity assessment body has, in accordance with any regulations made under section 109, determined that the particular equipment complies with those published applicable standards.
- (3) In subsection (2) and section 109, **relevant competent conformity assessment body** means a body that is recognised, in accordance with any procedure set out in any regulations made under section 109, as being responsible for assessing, in accordance with those regulations, whether or not particular equipment complies with applicable standards that are published.

109 Regulations

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

- (a) providing for procedures and requirements relating to the publication of applicable standards under section 108(2)(b):
- (b) providing for procedures and requirements that relate to recognising a body as a competent conformity assessment body for the purposes of assessing compliance with applicable standards under section 108(2)(c):
- (c) providing for procedures and requirements that relate to assessing compliance with applicable standards under section 108(2)(c):
- (d) providing for any other matters contemplated by section 108, necessary for its administration, or necessary for giving it full effect.

110 Actions for damages for contravention of section 106

- (1) Every person is liable for damages who—
 - (a) contravenes section 106:
 - (b) induces by threats, promises, or otherwise, the contravention of that section:
 - (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention of that section.
- (2) An action under subsection (1) may be commenced at any time within 3 years from the time when the cause of action arose.

Compare: 1987 No 116 s 20D

111 Injunctions may be granted by High Court for contravention of section 106

- (1) The High Court may, on the application of a network operator, grant an injunction restraining a person from engaging in conduct that constitutes, or would constitute, any of the following:
 - (a) a contravention of, or an attempt to contravene, section 106:
 - (b) inducing, or attempting to induce, any other person, whether by threats, promises, or otherwise, to contravene that section:
 - (c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that section.
- (2) The High Court may, at any time, rescind or vary an injunction granted under this section.

Compare: 1987 No 116 s 20C

Information requirement

Heading: inserted, on 22 December 2006, by section 53 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

111A Information about interconnection arrangements

- (1) A major supplier must make publicly available a copy of—
 - (a) the procedures that apply to interconnection with a PTN owned or operated by that supplier; and
 - (b) all the applicable terms and conditions of supply for interconnection with that PTN.
- (2) In this section, **major supplier**—
 - (a) means Telecom; and
 - (b) includes a person who is declared by the Governor-General, by Order in Council made on the recommendation of the Minister, to be a major supplier for the purposes of this section.
- (3) The Minister must not make a recommendation under subsection (2)(b) unless the Minister is satisfied that the proposed order to which the recommendation relates is necessary to facilitate New Zealand's compliance with its international obligations.

Section 111A: inserted, on 22 December 2006, by section 53 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 111A(1)(a): amended, on 1 July 2011, by section 26(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 111A(1)(b): amended, on 1 July 2011, by section 26(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Misuse of network

112 Misuse of telephone device

- (1) Every person commits an offence who, in using a telephone device, uses profane, indecent, or obscene language, or makes a suggestion of a profane, indecent, or obscene nature, with the intention of offending the recipient.
- (2) Every person commits an offence who—
 - (a) uses, or causes or permits to be used, any telephone device for the purpose of disturbing, annoying, or irritating any person, whether by calling up without speech or by wantonly or maliciously transmitting communications or sounds, with the intention of offending the recipient; or
 - (b) in using a telecommunications device, knowingly gives any fictitious order, instruction, or message.

- (3) Every person who commits an offence against subsection (1) or subsection (2) is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

Compare: 1987 No 116 s 8

Section 112(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

113 Indecent telephone calls for pecuniary gain

- (1) Every person commits an offence against this Act who, in using a telephone device, uses or causes to be used indecent or obscene language, or makes or causes to be made a suggestion of an indecent or obscene nature, for the purpose of obtaining commercial gain.
- (2) Every person who commits an offence against subsection (1) is liable, on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$2,000;
- (b) in the case of a body corporate, to a fine not exceeding \$5,000.

Compare: 1987 No 116 s 8A

Section 113(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

114 Interception of telecommunications for authorised purposes

[Repealed]

Section 114: repealed, on 1 October 2003, by section 35 of the Crimes Amendment Act 2003 (2003 No 39).

115 Offence to use or disclose certain information for unauthorised purposes

[Repealed]

Section 115: repealed, on 1 October 2003, by section 35 of the Crimes Amendment Act 2003 (2003 No 39).

Evidence

116 Computer records

- (1) A document certified by an employee of a network operator to be a computer record of a telecommunication and to have been produced in the ordinary course of producing those computer records is prima facie evidence—
- (a) that the telecommunication was made; and
- (b) of the originating number, the number called, the date and time of the telecommunication, and the duration and cost of the telecommunication, to the extent that those items are contained in the computer record.

- (2) For the purposes of this section, **computer record** includes a computer print-out or any other document produced by a device by means of which information is recorded or stored.

Compare: 1987 No 116 s 9(2), (3)

Subpart 2—Maintenance of networks

Preliminary

117 Meaning of maintenance

- (1) In this subpart, **maintenance** includes—
- (a) any repairs and any other activities for the purpose of maintaining, or that have the effect of maintaining, lines or works; and
 - (b) the carrying out of any replacement or upgrade of lines or works as long as the land will not be injuriously affected as a result of the replacement or upgrade.
- (2) Subsection (1) does not have the effect of making an activity of a kind referred to in that subsection a permitted use under a district plan or regional plan under the Resource Management Act 1991 if the activity would not have otherwise been a permitted use.

118 Meaning of evidence of authority

In this subpart, **evidence of authority**, in relation to an officer, employee, or agent of a network operator, means a written authority issued to that officer, employee, or agent by the network operator that states—

- (a) the full name of the officer, employee, or agent to whom it is issued; and
- (b) the name of the network operator; and
- (c) the date on which the written authority is issued; and
- (d) the date (if any) on which the written authority expires; and
- (e) particulars of the powers of the network operator that the officer, employee, or agent is authorised to exercise; and
- (f) particulars of conditions (if any) imposed on the officer, employee, or agent by the network operator.

118A Notices under this subpart

- (1) Any notice that is required to be given to any person under this subpart must be in writing.
- (2) To avoid doubt, subsection (1) does not apply to notices given in any proceedings in a court.

Section 118A: inserted, on 1 July 2011, by section 26(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

119 Criteria for setting reasonable conditions

- (1) In setting, varying, or revoking reasonable conditions under section 135(2) or section 142(2)(b), the local authority or other person who has jurisdiction over the road concerned may consider all or any of the following matters:
 - (a) the safe and efficient flow of traffic (whether pedestrian or vehicular):
 - (b) the health and safety of any person who is, or class of persons who are, likely to be directly affected by the work on the road:
 - (c) the need to lessen the damage that is likely to be caused to property (including structural integrity of the roads) as a result of work on the road:
 - (d) the compensation that may be payable under section 154 for property that is likely to be damaged as a result of work on the road:
 - (e) the need to lessen disruption to the local community (including businesses):
 - (f) the co-ordination of installation of other networks:
 - (g) the co-ordination with road construction work by the local authority or other person who has jurisdiction over that road:
 - (h) the need of a network operator to establish a telecommunications network in a timely manner.
- (2) Nothing in subsection (1) limits a local authority's or other person's ability to impose reasonable conditions under section 135(2) or section 142(2)(b).
- (3) However, a condition requiring a network operator to increase amenity values (rather than to merely maintain them) must not be imposed unless the work to be done is in an area identified in a district plan as an area in relation to which, under the district plan, there are particular considerations, or rules or requirements, relating to amenity values.
- (4) If the cost to the network operator of complying with a condition referred to in subsection (3) is higher than it would have been if there were not a requirement to increase amenity values, then the person imposing the condition must pay that increase in cost.

Section 119(3): added, on 6 August 2010, by section 5 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

Section 119(4): added, on 6 August 2010, by section 5 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

*Rights of entry to land in respect of lines***120 Application to District Court**

- (1) If a network operator wishes to enter land for the purpose of constructing, erecting, laying, or maintaining any line, the network operator may apply to the District Court for an order under section 121.

- (2) The network operator must give the owner and the occupier of the land at least 10 working days' notice of the operator's intention to apply to the District Court under subsection (1).

Compare: 1987 No 116 s 11(1)

Section 120(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

121 Court order

- (1) If the District Court is satisfied that the requirements set out in subsection (2) have been met, it may make an order authorising the network operator to—
- (a) enter the land at reasonable times, with or without any person who is, or anything that is, reasonably necessary for the construction, erection, laying, or maintenance of a line;
 - (b) perform work that is reasonably necessary to construct, erect, lay, or maintain a line.
- (2) The requirements that must be met are as follows:
- (a) the construction, erection, laying, or maintenance of the line is necessary for the purposes of telecommunications;
 - (b) the network operator has taken all reasonable steps to negotiate an agreement for entry;
 - (c) in relation to the construction, erection, or laying of a line, no practical alternative route exists.

Compare: 1987 No 116 s 11(2)

122 Contents of court order

Every order made under section 121 must specify—

- (a) how and when entry may be made; and
- (b) the specific powers intended to be exercised; and
- (c) any other conditions (including conditions relating to the payment of compensation) that the District Court thinks fit to impose.

Compare: 1987 No 116 s 11(3)

123 Service of order

Before exercising any powers authorised by an order made under section 121, the network operator must serve the order on the owner and the occupier of the land to which the order relates.

Compare: 1987 No 116 s 11(4)

124 Production of order

Every officer, employee, or agent of a network operator acting under an order made under section 121 must produce evidence of his or her authority and identity—

- (a) on initial entry; and
- (b) after the initial entry, on request.

Compare: 1987 No 116 s 11(5)

Rights of entry to land in respect of existing works and existing lines

125 Rights of entry to land

Subject to section 126, a network operator may—

- (a) enter land for the purpose of gaining access to any existing works or existing lines owned by the operator; and
- (b) perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing those works or lines.

Compare: 1987 No 116 s 12(1)

126 Conditions of entry to land

- (1) The power to enter land conferred by section 125 is subject to the following conditions:
 - (a) entry to the land must only be made by an officer, employee, or agent of the network operator authorised by it in writing;
 - (b) reasonable notice of the intention to enter must be given to the owner and to the occupier of the land;
 - (c) entry must be made at reasonable times;
 - (d) the person entering must produce evidence of his or her authority and identity—
 - (i) on initial entry; and
 - (ii) after the initial entry, on request.
- (2) The conditions in subsection (1) do not apply if entry on the land is—
 - (a) necessary in circumstances of probable danger to life or property; or
 - (b) immediately necessary to maintain the continuity or safety of the supply of telecommunications.
- (3) If subsection (2) applies, the network operator must, as soon as practicable after entry on the land, give notice to the owner and to the occupier of the land of the fact of the entry on the land and of what was done.

Compare: 1987 No 116 s 12(3)

127 Evidentiary presumption

A certificate under the seal of a network operator containing a statement that a specified instrument, machinery, engine, structure, or other work was erected or constructed before 1 January 1988 under the authority of the Post Office Act 1959 (or any Act repealed by that Act), or that a line was constructed before 1 April 1989 under the authority of this Act, is admissible in evidence in any

proceedings and, in the absence of proof to the contrary, constitutes proof of that statement.

Compare: 1987 No 116 s 12(2)

Interference with lines

128 Request for removal or trimming of trees

If a tree, shrub, or plant on any land or road interferes with, or is likely to interfere with, a line, the network operator who uses the line may request the owner or occupier of the land, or local authority or other person who has control of the road, to remove or trim the tree, shrub, or plant.

Compare: 1987 No 116 s 13(1)

129 Application to District Court

- (1) If an owner, occupier, a local authority, or other person fails to comply with a request made under section 128, the network operator who uses the line may apply to the District Court for an order authorising the network operator to remove or trim the tree, shrub, or plant in respect of which the request was made.
- (2) The network operator must give the owner, occupier, local authority, or other person who fails to comply with the request at least 10 working days' notice of the operator's intention to apply to the District Court under subsection (1).

Compare: 1987 No 116 s 13(2)

130 Court order

On being satisfied that a tree, shrub, or plant on land interferes with, or is likely to interfere with, a line, the District Court may make an order on any terms and conditions (including those relating to notice and time of removal or trimming) that the court thinks fit.

Compare: 1987 No 116 s 13(2)

131 Costs of removal or trimming of trees

If a network operator removes or trims a tree, shrub, or plant on any land or road under the authority of an order made under section 130, the owner, occupier, local authority, or other person to whom notice of the application under section 129(2) was given is liable for the reasonable cost of the work of the network operator.

Compare: 1987 No 116 s 13(3)

132 Removal of trees, etc, in emergency

- (1) If a tree, shrub, or plant on any land or road is, or is likely to, cause imminent danger to, or serious interference with, a line, the network operator may—
 - (a) enter the land or road where the tree, shrub, or plant is rooted or overhangs; and

- (b) do work in respect of the tree, shrub, or plant that is necessary to remove the danger or serious interference, or likely danger or serious interference.
- (2) The network operator must, if it is possible in the circumstances, notify the occupier of the land, or the local authority or other person who has control of the road, as the case may be, of the operator's intention to enter the land or road and carry out work under subsection (1).
- (3) A network operator who is unable to give notice to the relevant persons under subsection (2) must, as soon as practicable after entry on the land, give notice to the relevant persons of the fact of the entry on the land and of what was done.

Compare: 1987 No 116 s 14(1)

133 Production of authority

Every officer, employee, or agent of a network operator who enters land or a road under section 132 must—

- (a) carry evidence of his or her authority and identity, which must be produced on request; or
- (b) work under the immediate control of a person who holds evidence of that person's authority and identity, which must be produced if requested.

Compare: 1987 No 116 s 14(2)

134 Costs of removal of trees, etc, in emergency

If a network operator removes or trims a tree, shrub, or plant on any land or road under section 132, the occupier of the land, or the local authority or other person who has control of the road, as the case may be, is liable for the reasonable cost of the work of the network operator.

Compare: 1987 No 116 s 14(3)

Lines or wireless works on roads

Heading: amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

135 Construction or repair of lines or wireless works on roads

- (1) Except as provided in subsection (2), a network operator may—
 - (a) construct, place, and maintain lines or wireless works in, on, along, over, across, or under any road; and
 - (b) for any of those purposes, open or break up any road, and alter the position of any pipe (not being a main) for the supply of water or gas; and
 - (c) alter, repair, or remove those lines or wireless works or any part of those lines or wireless works.

- (2) A network operator must exercise the powers contained in subsection (1) in accordance with any reasonable conditions that the local authority or other person who has jurisdiction over that road requires.

Compare: 1987 No 116 s 15

Section 135 heading: amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 135(1)(a): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 135(1)(c): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

136 Notice requirement

- (1) Except as provided in section 139, before a network operator proceeds to open or break up any road, the network operator must give notice of the intention to carry out the work to—
- (a) the local authority or other person who has jurisdiction over the road; and
 - (b) any utility operator (as defined in section 4 of the Utilities Access Act 2010) whose pipes, lines, or other structures will or are likely to be affected by the work.

- (2) Every notice must specify the location of the proposed work, the nature of the work to be carried out, and the reasons for it.

Compare: 1987 No 116 s 15A(1), (2)

Section 136(1): substituted, on 6 August 2010, by section 6 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

137 Network operator to be notified of conditions

Not later than 15 working days after the receipt of the written notice of the intention to carry out work, the local authority or other person who has jurisdiction over the road must notify the network operator in writing of any conditions imposed under section 135(2).

Compare: 1987 No 116 s 15A(3)

Section 137: amended, on 6 August 2010, by section 7 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

138 Failure to notify conditions

If a local authority or other person who has jurisdiction over the road fails to notify the network operator of the conditions imposed under section 135(2) within the 15-working day period referred to in section 137, those conditions may not be imposed, and the network operator may commence work.

Compare: 1987 No 116 s 15A(4)

Section 138: amended, on 6 August 2010, by section 8 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

139 Urgency

If work is urgent and necessary because of any defective equipment, or other emergency, the network operator—

- (a) is excused from complying with the requirements of section 136(1) before commencing the work; but
- (b) must give the information required by section 136(2) as soon as practicable after commencing the work.

Compare: 1987 No 116 s 15A(5)

140 Offence to not comply with any of sections 135, 136, and 139

- (1) A network operator who fails to comply with any of sections 135, 136, and 139 commits an offence.
- (2) A network operator who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000.
- (3) In addition to any fine imposed under subsection (2), a court may make any order relating to compensation that it thinks fit.

Compare: 1987 No 116 s 15B

Section 140(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

141 Appeals by network operators to District Court

- (1) A network operator may appeal to the District Court against all or any of the conditions imposed under section 135(2) by the local authority or other person who has jurisdiction over the road.
- (2) An appeal must be made not later than 45 working days after the date of notification of the conditions imposed or within any further time that the District Court may allow.
- (3) In its determination of any appeal, the District Court may confirm, modify, or cancel any or all of the conditions imposed.
- (4) The decision of the District Court in the determination of an appeal under this section is final.

Compare: 1987 No 116 ss 15C, 15D

Section 141(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 141(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 141(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Telephone cabinets, etc, on roads

142 Construction, etc, of telephone cabinets or other similar appliances

- (1) Subject to subsection (2), a network operator may construct, place, and maintain public telephone cabinets, distribution cabinets, or any other similar appliances on a road.
- (2) A network operator must—
 - (a) give notice of its intention to place a cabinet or other appliance on the road to—
 - (i) the local authority or other person who has jurisdiction over the road; and
 - (ii) any utility operator (as defined in section 4 of the Utilities Access Act 2010) whose pipes, lines, or other structures will or are likely to be affected by the work; and
 - (b) comply with any reasonable conditions that are imposed by the local authority or other person who has jurisdiction over that road on which the cabinet or appliance is to be placed; and
 - (c) not intentionally place the cabinet or appliance on the road so that it interferes with the ordinary traffic.
- (3) Every notice under subsection (2)(a) must specify where the cabinet or appliance is to be placed on the road and the reasons for it.

Section 142(2)(a): substituted, on 6 August 2010, by section 9 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

143 Network operator to be notified of conditions

Not later than 15 working days after the receipt of the written notice of the network operator's intention to place a cabinet or appliance on a road under section 142, the local authority or other person who has jurisdiction over that road must notify the network operator in writing of any conditions imposed under section 142(2)(b).

Section 143: amended, on 6 August 2010, by section 10 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

144 Failure to notify conditions

If a local authority or other person who has jurisdiction over a road fails to notify the network operator of the conditions imposed under section 142(2)(b) within the 15-working day period referred to in section 143, those conditions may not be imposed and the network operator may commence work.

Section 144: amended, on 6 August 2010, by section 11 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

145 Urgency

If the telephone cabinet or appliance must be placed on a road urgently and it is necessary because of any defective equipment or other emergency, the network operator—

- (a) is excused from complying with the requirements of section 142(3) before commencing the work; but
- (b) must give the information required by section 142(3) as soon as practicable after placing the telephone cabinet or appliance on that road.

146 Offence not to comply with section 142 or section 145

- (1) A network operator who fails to comply with section 142 or section 145 commits an offence.
- (2) A network operator who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000.
- (3) In addition to any fine imposed under subsection (2), a court may make any order relating to compensation that it thinks fit.

Section 146(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

147 Appeals by network operators to District Court

- (1) A network operator may appeal to the District Court against all or any of the conditions imposed under section 142(2)(b) by the local authority or other person who has jurisdiction over the road.
- (2) An appeal must be made not later than 45 working days after the date of notification of the conditions imposed or within any further time that the District Court may allow.
- (3) In its determination of any appeal, the District Court may confirm, modify, or cancel any or all of the conditions imposed.
- (4) The decision of the District Court in the determination of an appeal under this section is final.

Section 147(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 147(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 147(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Local authority, etc, requiring work to be done

Heading: inserted, on 6 August 2010, by section 12 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

147A Local authority, etc, may require lines, etc, to be moved

- (1) Where a network operator owns lines, cabinets, wireless works, or other similar appliances that are on a road, the local authority or other person having jurisdiction over the road may, by notice in writing, require the network operator to raise, lower, or otherwise alter the position of the lines, cabinets, wireless works, or other similar appliances.
- (2) If the network operator refuses or fails, within a reasonable period, to do the work required, the person requiring the work may do the work or have it done by some other person.
- (3) Before doing work as permitted by subsection (2), the person requiring the work must give notice to the network operator at least 15 working days before the work commences.

Compare: 1992 No 122 s 32; 1992 No 124 s 33

Section 147A: inserted, on 6 August 2010, by section 12 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

Section 147A(1): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

147B Cost of work required under section 147A

- (1) The reasonable cost of all work required to be done under section 147A must be paid by the person that requires the work to be done.
- (2) However, the cost of the work must be paid by the network operator if the reason that the work is required is that the lines, cabinets, wireless works, or other appliances—
 - (a) were constructed contrary to any of the following:
 - (i) this Act or any regulations made under section 157:
 - (ii) the Telecommunications (Residual Provisions) Act 1987:
 - (iii) the Local Government Act 1974 or the Local Government Act 2002, and any predecessor of those Acts:
 - (iv) the Public Works Act 1981:
 - (v) any local or private Act:
 - (vi) any regulations made under any of the enactments referred to in subparagraphs (ii) to (v); or
 - (b) are in a dangerous or unsafe condition.
- (3) A person that requires work to be done under section 147A may not claim for betterment in respect of that work, and no claim for betterment may be made against the person.

- (4) The following provisions apply if the person requiring the work is the New Zealand Transport Agency or the agent of the Minister of Transport:
- (a) the cost of all lines, cabinets, wireless works, other appliances, and associated equipment that are used in carrying out the required work (other than things used only during the course of construction) must be paid by the network operator:
 - (b) if, as a consequence of the requirement, the network operator elects to fix or install any lines, cabinets, wireless works, or other appliances over, under, or through any roading structure (being a bridge, underpass, overpass, culvert, or tunnel) that is being, or is to be, constructed or altered, and if the cost of constructing or altering the roading structure is thereby increased, then the network operator must pay the increase in cost:
 - (c) if, as a consequence of the requirement, the network operator relocates the lines, cabinets, wireless works, or other similar appliances and reconstructs them to specifications different from those of the original lines, cabinets, wireless works, or other appliances, then, if the costs described in paragraph (d)(i) are less than the costs described in paragraph (d)(ii), the network operator is liable to pay the difference:
 - (d) the costs referred to in paragraph (c) are—
 - (i) what it would have cost to relocate and reconstruct the lines, cabinets, wireless works, or other similar appliances as near as reasonably practicable to their original specifications (excluding any costs to which paragraph (a) applies), taking into account—
 - (A) any restrictions or conditions imposed by or under any enactment in relation to the relocation and reconstruction; and
 - (B) the location of the original works and the alternatives reasonably available to the network operator:
 - (ii) the actual cost of the relocation and reconstruction (excluding any costs to which paragraph (a) applies).
- (5) Subsections (1) to (4) apply subject to any agreement between the person requiring the work and the network operator.
- (6) The amount of payment required under this section must be determined—
- (a) by agreement between the person liable for the payment and the person to whom it is payable; or
 - (b) failing such agreement, by arbitration under the Arbitration Act 1996, with 1 arbitrator to be appointed by each party and an umpire to be appointed by those arbitrators before entering upon their reference.

Compare: 1992 No 122 s 33; 1992 No 124 s 34

Section 147B: inserted, on 6 August 2010, by section 12 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

Section 147B(2): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 147B(4)(a): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 147B(4)(b): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 147B(4)(c): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 147B(4)(d)(i): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

147C Relationship with section 54 of Government Roothing Powers Act 1989

Sections 147A and 147B apply despite anything to the contrary in section 54 of the Government Roothing Powers Act 1989.

Compare: 1992 No 122 s 34; 1992 No 124 s 35

Section 147C: inserted, on 6 August 2010, by section 12 of the Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99).

Miscellaneous

148 Alteration to line or wireless works on road requested by owner

- (1) If an owner of land or some other person requires a line, wireless works, or other works on a road to be altered so that the owner or other person has access to, or reasonable use of, the land, the network operator may require the person who makes the request to pay the cost of the alteration.
- (2) A network operator is not entitled to be paid the cost of any improvement to a line that is, or wireless works or other works that are, required to be altered by an owner of land or some other person under subsection (1).

Compare: 1987 No 116 s 16

Section 148 heading: amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 148(1): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 148(2): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

149 Lines must not interfere with public traffic

- (1) A network operator must not intentionally place the wires of a line so that they interfere with the lawful traffic on a road.
- (2) However, wires of a line do not interfere with the lawful traffic on the road if the wires are placed at a height of 5.5 metres or more above the surface of the road where the wires cross a public road, or at a height of 4.25 metres or more elsewhere.

Compare: 1987 No 116 s 17(1)

150 Lines over navigable waters

A network operator must not intentionally place a line so that it interferes with the navigation of navigable waters.

Compare: 1987 No 116 s 17(2)

151 Network operator must avoid interference with traffic

A network operator, in maintaining, repairing, altering, or removing a line that crosses or is along a road, or that is over or under navigable waters, must not cause unnecessary or avoidable interference to the traffic on, or to the lawful use of, any road or navigable waters.

Compare: 1987 No 116 s 17(3)

152 Offence to contravene any of sections 149 to 151

- (1) A network operator who contravenes any of sections 149 to 151 commits an offence.
- (2) A network operator who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000.
- (3) In addition to any fine imposed under subsection (2), a court may make any order relating to compensation that it thinks fit.

Section 152(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

153 Charging for access to road reserve

- (1) Despite anything in this Act or in any other enactment, no local authority or other person who has jurisdiction over any road may require the payment, by or on behalf of a network operator, of any amount of or in the nature of rent in respect of any line, wireless works, or other works constructed in, on, along, over, across, or under that road.
- (2) Nothing in subsection (1) applies in respect of any rate or charge levied under the Rating Powers Act 1988.

Section 153(1): amended, on 1 July 2011, by section 26(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

154 Compensation

- (1) Every person whose property is damaged as a result of the exercise of any of the powers under this subpart is entitled to compensation.
- (2) The amount of the compensation may be agreed between the network operator and the person concerned or, failing agreement, be determined in the manner provided for by the Public Works Act 1981.

Compare: 1987 No 116 s 19

155 Protection of existing works

- (1) Any existing works or existing lines owned by a network operator that are fixed to, or installed over or under, land that is not owned by the network operator are deemed to be lawfully fixed or installed, and continue to be lawfully fixed or installed, until the network operator otherwise decides.
- (2) No person other than the network operator has an interest in any of those works or lines by reason only of having an interest in the land.

Compare: 1987 No 116 s 20

Subpart 3—Access to property, involving rights of multiple parties, to deploy fibre optic media and other technology

Subpart 3: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Preliminary

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155A Purpose

The purpose of this subpart is to enable more people and businesses to obtain the benefits of fibre-to-the-premises and other technology, within a shorter time frame, by—

- (a) recognising that, when more than 1 person's consent is required for an FTTP service provider or a network operator to access a property because each of those persons has some form of legal right in respect of that property, and there are difficulties in obtaining those consents, the process of installing infrastructure (such as fibre optic media) is delayed and opportunities to realise the benefits of that technology are missed; and
- (b) providing for a tiered system of statutory rights of access—
 - (i) that FTTP service providers and network operators may use to access property and carry out installations in those situations; and
 - (ii) that imposes different requirements for different methods of installation in order to ensure that the requirements are appropriate to the methods and their impact on the property; and
- (c) providing for a scheme for efficiently and effectively resolving disputes that may arise about rights and obligations under this subpart.

Section 155A: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155B Overview

- (1) This subpart—

- (a) provides statutory rights of access that FTTP service providers and network operators may use to access private property that is subject to legal rights of multiple persons in order to install, maintain, repair, and upgrade fibre optic media in circumstances where, but for those rights, the service providers or network operators would need to obtain the consent of more than 1 person (an **affected person**) to enter the property and carry out that work (for example, where a driveway is shared by several neighbours, or where a building is a company share property or part of a unit title development); and
- (b) enables the statutory rights of access to be applied to service providers and network operators in order to install, maintain, repair, or upgrade prescribed other technology (*see* sections 155E and 155ZO(1)(b)); and
- (c) sets out general preconditions for the statutory rights of access to apply, including that the installation does not involve affected persons paying for any costs of the installation (*see* section 155J); and
- (d) sets out particular preconditions that an FTTP service provider or a network operator must satisfy before exercising the statutory rights, and provides that those preconditions—
 - (i) depend on whether the method that the service provider or network operator intends to use for installing the fibre optic media or prescribed other technology is prescribed as a category 1 installation or category 2 installation:
 - (ii) require the service provider or network operator to give every affected person, and the person who placed the order with a retail provider for the FTTP service to be installed, a preliminary notice of its intention to enter property and carry out a category 1 installation, but do not require it to obtain the consent of any of those persons (*see* section 155K):
 - (iii) require the service provider or network operator to give every affected person, and the person who placed the order for the FTTP service to be installed, a preliminary notice of its intention to enter a property and carry out a category 2 installation and, unless any affected person objects within the time allowed, deem each affected person to have consented to the entry and installation (*see* sections 155L to 155P):
 - (iv) in the case of a body corporate administered property, require the service provider or network operator to satisfy the preconditions for a category 2 installation, regardless of whether the installation is a category 1 or a category 2 installation (*see* sections 155Q to 155X); and
- (e) provides for the grounds on which an affected person may object to a category 2 installation and, for body corporate administered properties,

- also provides additional grounds for objection (*see* sections 155N and 155T); and
- (f) in the case of a body corporate administered property,—
 - (i) provides a separate statutory right of access for FTTP service providers and network operators to enter the property in order to design installations (*see* section 155Q); and
 - (ii) requires the body corporate to give to all owners of flats and units forming part of the property the body corporate's reasons for objecting to an installation (*see* section 155W); and
 - (g) provides for how FTTP service providers and network operators must exercise their statutory rights of access (*see* sections 155Z to 155ZB); and
 - (h) for non-prescribed methods of installation, confirms that the rights that an FTTP service provider or a network operator has to enter property and carry out work for the purposes of the installation are the rights (if any) that it has under the general law and any relevant enactments (*see* section 155ZC); and
 - (i) provides for statutory rights of access for FTTP service providers and network operators to re-enter property for the purpose of inspecting, maintaining, repairing, or upgrading all or part of a fibre-to-the premises access network if certain preconditions are met (*see* sections 155ZD and 155ZE); and
 - (j) provides for a dispute resolution scheme to be established for resolving disputes relating to the statutory rights of access given by this subpart (*see* sections 155ZG to 155ZN and Schedule 3C); and
 - (k) provides for methods of installation to be prescribed as category 1 or category 2 installations for the purposes of the subpart, depending on the impact that the method of installation may have on the property, and for other matters to be prescribed by regulations for the purposes specified in section 155ZO; and
 - (l) grants the body corporate of a unit title development an exemption from the duty to maintain fibre networks installed as part of the UFB initiative (which would otherwise arise under the Unit Titles Act 2010) (*see* section 155ZP).
- (2) This section is a guide only to the general scheme and effect of this subpart.

Section 155B: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

*Statutory right of access to multi-unit complexes**[Repealed]*

Heading: repealed, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155C Status of examples

- (1) An example used in this subpart is only illustrative of the provision to which it relates. It does not limit the provision.
- (2) If an example and the provision to which it relates are inconsistent, the provision prevails.

Section 155C: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155D Interpretation

- (1) In this subpart, unless the context otherwise requires,—
affected person, in relation to property and a category 1 or category 2 installation,—
 - (a) means a person whose consent an FTTP service provider or a network operator would, but for this subpart, have to obtain before entering the property or carrying out the installation; and
 - (b) does not include the person who placed the order with a retail provider for the FTTP service to be installed

Example

A flat-owning company owns a property comprising a block of 20 flats (and the land on which it is built). It is a company share property.

The flats are situated at the end of a driveway. Three easements over the driveway enable residents of the flats as well as 2 neighbours, each living in a stand-alone house on either side of the driveway, to access their respective properties.

Mark rents one of the flats. He wants an Ultra-fast Broadband connection, so he obtains his landlord's agreement to place an order for an FTTP service to be installed to the flat. Mark, acting as agent for the landlord, places the order with a retail provider.

To get fibre optic media from the road through to Mark's flat, the FTTP service provider has to use a method of installation that depends on the service provider being able to carry out work on the driveway.

The body corporate and the neighbours on either side of the driveway are the only affected persons in relation to the installation. This is because they are the persons whose consent to the entry and installation would be required at law,—

- in the case of the body corporate, as the owner of the property in which the installation is to be carried out and also as a person with rights under an easement over the driveway:

- in the case of each of the 2 neighbours, as persons with rights under their easements over the driveway.

Mark's landlord, on whose behalf Mark is acting when he places the order for an FTTP service, is not an affected person because of the exclusion in paragraph (b). (However, this subpart does expressly provide certain rights for the person with a legal interest in the shared property who has placed the order for the FTTP service to be installed, for example, rights to receive certain notices.)

Mark is not an affected person because he does not have any legal interest in the flat and is therefore not a person whose consent the FTTP service provider would have been required to obtain were it not for this subpart.

body corporate administered property means—

- (a) a company share property:
- (b) a unit title development:
- (c) real property owned under another legal structure (if any) that—
 - (i) comprises 2 or more distinct units (for example, within a building) or a group of buildings used communally; and
 - (ii) is administered by a body corporate

category 1 installation means a method of installation prescribed as a category 1 installation

category 2 installation means a method of installation prescribed as a category 2 installation

company share property means a building (including the land on which it is sited) owned by a flat or office owning company (within the meaning of Part 7A of the Land Transfer Act 1952) that issues licences to shareholders to occupy or use specified residential flats or offices forming part of the building

dispute resolution scheme has the same meaning as in section 155ZG

fibre-to-the-premises access network has the same meaning as in section 156AB

FTTP service means a telecommunications service delivered over fibre optic media to an end-user's premises

FTTP service provider means the owner or operator of a fibre-to-the-premises access network

installing and **carrying out an installation**, in relation to fibre optic media or other prescribed technology, includes maintaining, repairing, and upgrading that media or technology

maintaining, repairing, or upgrading has the same meaning as in section 155ZD(5)

maintenance has the same meaning as in section 117

non-prescribed installation means a method of installation that is not prescribed as a category 1 or a category 2 installation

prescribed means prescribed by regulations made under section 155ZO or clause 16 of Schedule 3C

prescribed other technology means technology prescribed under section 155ZO(1)(b)

property means real property in respect of which more than 1 person has a legal right

UFB initiative has the same meaning as in section 156AB

unit owner includes a person who is a shareholder in a flat or office owning company (within the meaning of Part 7A of the Land Transfer Act 1952) and who has a licence to occupy or use a specified residential flat or office forming part of a building under a licence from the company

unit title development has the same meaning as in section 5(1) of the Unit Titles Act 2010.

- (2) In this subpart, unless the context otherwise requires, a reference to a person who places an order for an FTTP service to be installed is a reference to the owner of the property (or, in the case of a body corporate administered property, the unit owner) to which the order relates, regardless of whether the owner places the order himself or herself or authorises another person (for example, a tenant) to place the order as agent on the owner's behalf.

Section 155D: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155E References to fibre optic media, etc, include other prescribed technology

In this subpart, unless otherwise stated or the context otherwise requires,—

- (a) a reference to an installation of fibre optic media or an FTTP service includes a reference to the installation of a prescribed other technology or a service involving the installation of a prescribed other technology; and
- (b) a reference to a fibre-to-the-premises access network includes a reference to a network—
- (i) that comprises prescribed other technology; or
 - (ii) of which prescribed other technology forms a part.

Section 155E: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Process

[Repealed]

Heading: repealed, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155F Relationship with other statutory rights of access

This subpart does not limit the statutory rights of access for existing works provided for in sections 120 to 127.

Section 155F: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155G Notices under this subpart

A notice required to be given to a person under this subpart must, unless otherwise stated,—

- (a) be in writing; and
- (b) be given in the prescribed manner.

Section 155G: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Nature and application of statutory rights of access under subpart

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155H How long statutory rights of access apply for

The statutory rights of access given by this subpart apply,—

- (a) in relation to FTTP service providers and network operators installing fibre optic media, for the period starting on the date that this subpart comes into force and ending on 1 January 2025; and
- (b) in relation to FTTP service providers and network operators exercising certain ongoing rights of access to installed fibre optic media, for the periods specified in section 155ZD; and
- (c) in relation to network operators and installations of prescribed other technology, for the prescribed period.

Section 155H: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155I Nature of statutory rights of access

- (1) The statutory rights of access given by this subpart are that an FTTP service provider or a network operator may, for the purpose of carrying out a category 1 or category 2 installation of fibre optic media as part of a fibre-to-the-premises access network,—

- (a) enter property at reasonable times, and may enter the property with a person who is, or thing that is, reasonably necessary for the purposes of carrying out the installation; and
 - (b) perform work that is reasonably necessary for the purposes of that installation.
- (2) The statutory rights of access referred to in subsection (1) apply only if—
- (a) the general preconditions stated in section 155J are satisfied (regardless of whether the installation is a category 1 or a category 2 installation); and
 - (b) the FTTP service provider or network operator has complied with the particular preconditions,—
 - (i) for a category 1 installation, stated in section 155K:
 - (ii) for a category 2 installation, stated in section 155L:
 - (iii) for an installation in a body corporate administered property (regardless of whether the installation is a category 1 or a category 2 installation), stated in section 155R.
- (3) If an installation is in a property other than a body corporate administered property and involves both category 1 and category 2 methods of installation, the whole installation must be treated as a category 2 installation and (in addition to complying with the general preconditions stated in section 155J) must comply with the particular preconditions stated in section 155L.
- (4) If an installation involves more than 1 method of installation and all methods are prescribed as category 1 methods, the FTTP service provider or network operator must treat the whole installation as a category 1 installation.
- (5) If an installation involves more than 1 method of installation and all methods are prescribed as category 2 methods, the FTTP service provider or network operator must treat the whole installation as a category 2 installation.
- (6) A further statutory right of access is given to FTTP service providers and network operators for designing installations in body corporate administered properties (*see* section 155Q).

Section 155I: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Code

[Repealed]

Heading: repealed, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155J General preconditions for statutory rights of access to apply

- (1) The general preconditions for the statutory rights of access given by this subpart to apply are that—

- (a) a person has, after the commencement of this subpart, placed an order with a retail provider for an FTTP service to be installed; and
 - (b) the installation involves 1 or more affected persons; and
 - (c) no affected person is liable to pay for the costs of the installation, or part of those costs, without the affected person's express agreement; and
 - (d) the FTTP service provider or network operator carrying out the installation is a member of the dispute resolution scheme.
- (2) In relation to subsection (1)(a), *see* clauses 2 to 5 of Schedule 1AA, which provide for how FTTP service providers and network operators may treat orders for FTTP services placed before the commencement of this subpart (as replaced by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017), for the purpose of obtaining access to property.

Section 155J: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Particular preconditions for category 1 and category 2 installations (in properties other than body corporate administered properties)

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155K Particular preconditions before exercising statutory right of access to carry out category 1 installation

- (1) Before an FTTP service provider or a network operator enters a property and carries out a category 1 installation, the service provider or network operator must first give a preliminary notice to—
 - (a) each affected person; and
 - (b) the person who placed the order with a retail provider for an FTTP service to be installed.
- (2) The preliminary notice must—
 - (a) be given not less than 5 working days before the service provider or network operator enters the property to carry out the installation; and
 - (b) state when the service provider or network operator is intending to enter the property and carry out the installation; and
 - (c) include a general explanation of what will be involved in carrying out the installation; and
 - (d) identify any access areas that the service provider or network operator may want to use when carrying out the installation; and
 - (e) comply with the prescribed requirements (if any).
- (3) This section does not apply to a category 1 installation in a body corporate administered property (*see* sections 155Q and 155R).

Section 155K: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Consumer complaints system

[Repealed]

Heading: repealed, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155L Particular preconditions before exercising statutory right of access to carry out category 2 installation

- (1) Before an FTTP service provider or a network operator enters a property and carries out a category 2 installation under this subpart, the service provider or network operator must—
 - (a) first give a preliminary notice and a high-level design plan of the installation that set out the information described in section 155M to—
 - (i) each affected person; and
 - (ii) the person who placed the order with a retail provider for the FTTP service to be installed; and
 - (b) not have received an objection under section 155N from any affected person.
- (2) This section does not apply to a category 2 installation in a body corporate administered property (*see* section 155R).

Section 155L: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155M Requirements in respect of preliminary notice and design plan for category 2 installations

- (1) The preliminary notice about a category 2 installation given to each person under section 155L(1)(a) must—
 - (a) state when the FTTP service provider or network operator is intending to enter the property and carry out the installation; and
 - (b) include a general explanation of what will be involved in carrying out the installation; and
 - (c) identify any access areas that the service provider or network operator may want to use when carrying out the installation; and
 - (d) set out the grounds on which an affected person may object to the FTTP service provider or network operator entering the property and carrying out the installation under this subpart; and
 - (e) state how an affected person may object and the time within which an objection must be made; and
 - (f) comply with the prescribed requirements (if any).

- (2) The high-level design plan required under section 155L(1)(a) must describe or illustrate—
- (a) where the installation method (or, if more than 1, where each installation method) is to be used on the property; and
 - (b) where the network equipment (if any) associated with that installation method is proposed to be put.

Section 155M: replaced, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Objections to exercise of statutory right of access to carry out category 2 installations

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155N Grounds and time for objecting to exercise of statutory right of access to carry out category 2 installation

- (1) An affected person may object to the FTTP service provider or network operator exercising a statutory right of access to enter property and carry out a category 2 installation, on 1 or more of the following grounds:
 - (a) the person disputes ownership of property that the proposed installation will make use of or disturb:
 - (b) the person can demonstrate that the installation will have a materially negative impact on the value of the person's property:
 - (c) the person can identify ways in which the proposed installation will unreasonably impact on the person's enjoyment of the property, or worsen an existing problem with the property, other than by having a visual impact alone:
 - (d) the person can demonstrate that the proposed installation will impede the person's plans for development of the property:
 - (e) the person has an easement over the property affected and can demonstrate that the proposed installation will have an enduring impact on the terms and conditions of that easement:
 - (f) the prescribed grounds (if any).
- (2) An affected person who wants to object to a network operator exercising a statutory right of access under this section must do so by giving a notice of objection to the FTTP service provider or network operator within 15 working days after receiving the preliminary notice and high-level design plan for the installation under section 155L(1)(a).
- (3) Nothing in this section, or any other provision of this subpart, affects the right of a person to cancel an order that the person has placed for an FTTP service to be installed.

Section 155N: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155O Effect of objection to exercise of statutory right of access for category 2 installation

- (1) If the FTTP service provider, network operator, or person who placed the order with a retail provider for the FTTP service to be installed (in each case, **person A**) disputes the validity of an affected person's objection under section 155N, person A may refer the dispute to the dispute resolution scheme.
- (2) If person A refers the dispute to the dispute resolution scheme, the FTTP service provider or network operator has no statutory right of access to enter the property and carry out the installation unless there is a binding resolution of the dispute under the rules of the scheme or an order of the District Court allows it to exercise that right.

Section 155O: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155P Deemed consent to category 2 installation

Each affected person is deemed to have consented to an FTTP service provider or a network operator entering the property and carrying out a category 2 installation if the preconditions in sections 155J and 155L are satisfied.

Section 155P: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Statutory rights of access to body corporate administered properties

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155Q Statutory right of access to common areas of body corporate administered properties for designing installations

- (1) The statutory right of access given by this section applies after a person has placed an order with a retail provider for an FTTP service to be installed in a body corporate administered property.
- (2) For the purpose of inspecting the property, to design an installation, an FTTP service provider or a network operator—
 - (a) has a statutory right to enter those areas of the property that are owned by the body corporate on behalf of unit owners as common property and that unit owners are able to freely access on a day-to-day basis; and
 - (b) may, with the permission of the body corporate (which must not be unreasonably withheld), enter other areas of the property owned by the body corporate on behalf of unit holders as common property.
- (3) Before entering any area of the property that is not common property (for example, a person's unit in a unit title development or a flat or an office in a building owned by a flat or office owning company within the meaning of Part

7A of the Land Transfer Act 1952), the FTTP service provider or network operator must obtain the permission of the owner or another person who has the legal right to occupy or exclusively use that area of the property.

Example

The owner of an apartment on the top floor of a 3-storey apartment building places an order with a retail provider for an FTTP service to be installed. There are 3 external access ways on the building, one running along the back of each floor, and external staircases that link the access ways. Apartment owners can use these access ways and stairs to move between floors. The FTTP service provider wants to find out whether it will be possible to carry out the installation to the apartment using external conduit alone.

The access ways and staircases are owned and held by the body corporate of the building as common property and there are no barriers restricting free access to those parts of the building. The FTTP service provider therefore has a statutory right to enter the property and inspect the external access ways and staircases up to the top floor for the purposes of finding out whether it will be possible to use external conduit and to design a suitable installation.

Section 155Q: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155R Particular preconditions before exercising statutory right of access to body corporate administered property for carrying out category 1 and 2 installations

Before an FTTP service provider or a network operator enters a body corporate administered property and carries out a category 1 or a category 2 installation in reliance on a statutory right of access under this subpart, the service provider or network operator must—

- (a) first give the body corporate a preliminary notice and high-level design plan in accordance with section 155S; and
- (b) not have received an objection under section 155T.

Section 155R: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155S Requirements in respect of preliminary notice and design plan given to body corporate

- (1) The preliminary notice and high-level design plan given to a body corporate about a category 1 or category 2 installation under section 155R must include the information set out in section 155M as if each reference to an affected person were a reference to the body corporate and each reference to a category 2 installation were a reference to a category 1 or category 2 installation.
- (2) However, in complying with section 155M(1)(d), the statement of grounds for objection must include the grounds stated in section 155T as well as those in section 155N.

Section 155S: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155T Grounds and time for body corporate objecting to statutory right of access to carry out category 1 or category 2 installation

The body corporate may object to a category 1 or category 2 installation under section 155R within the same time and on the same grounds as stated in section 155N as well as on 1 or more of the following additional grounds:

- (a) the body corporate considers that the installation will result in unacceptable disruption to the availability of telecommunications services to unit owners during business hours;
- (b) the body corporate considers that there is a real likelihood the installation as designed would breach 1 or more enactments applying to the body corporate and the property (for example, the Building Code, the Heritage New Zealand Pouhere Taonga Act 2014, or the Health and Safety at Work Act 2015);
- (c) the body corporate considers that the proposed installation will prevent it from meeting its existing contractual obligations and the body corporate can provide documentation confirming this;
- (d) any prescribed grounds.

Section 155T: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155U FTTP service provider or network operator may extend time for body corporate objections

- (1) An FTTP service provider or a network operator may, on its own initiative or at the request of the body corporate, extend the time for a body corporate to object to a category 1 or category 2 installation under section 155T.
- (2) If a body corporate wants to request an extension under this section, it must do so by giving a notice to the FTTP service provider or network operator before the end of the 15-working-day period allowed for objecting under section 155T (as set out in section 155N).
- (3) An FTTP service provider or a network operator must not unreasonably withhold permission if it receives a request for an extension under subsection (2).

Section 155U: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155V Effect of body corporate objections

If an FTTP service provider or a network operator disputes the validity of a body corporate's objection under section 155T,—

- (a) the service provider or network operator may refer the dispute to the dispute resolution scheme; and
- (b) section 155O(2) applies.

Section 155V: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155W Requirement for governing bodies to give unit owners reasons for objections

- (1) A body corporate that objects to an installation under section 155T must notify each unit owner of its reasons for deciding to object.
- (2) The notice must—
 - (a) be in writing; and
 - (b) be given not later than 10 working days after the body corporate lodges its objection.

Section 155W: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155X Deemed consent of body corporate to category 1 or category 2 installation

The body corporate of a body corporate administered property is deemed to have consented to an FTTP service provider or a network operator entering the property and carrying out a category 1 or category 2 installation if the preconditions in sections 155J and 155R are met.

Section 155X: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Exercising statutory rights of access for category 1 and category 2 installations

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155Y Application of sections 155Z to 155ZB

Sections 155Z to 155ZB apply to category 1 and category 2 installations, regardless of the type of property accessed or to be accessed.

Section 155Y: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155Z How statutory rights of access must be exercised

- (1) An FTTP service provider or a network operator must comply with the following requirements when exercising its statutory right of access under this subpart to enter property and carry out an installation:
 - (a) the owner and the occupier of the property must be given reasonable notice of the service provider's or network operator's intention to enter the property to start the installation if,—
 - (i) the FTTP service provider or network operator did not, in the preliminary notice given under section 155K, 155L, or 155R, specify a fixed date for entering the property and carrying out the installation; or

- (ii) the FTTP service provider or network operator specified a date in that preliminary notice but that date has changed; and
 - (b) from the start to the completion of the installation, entry to the property must be made at reasonable times; and
 - (c) entry to the property must be made only by an officer, employee, or agent of the service provider or network operator authorised by it in writing; and
 - (d) the person authorised to enter must produce evidence of his or her authority and identity if asked to do so.
- (2) In subsection (1), **evidence of authority** has the same meaning as in section 118, with any necessary modifications.

Section 155Z: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZA Restrictions on use of access areas during installations, reinstatements, etc

- (1) An FTTP service provider or a network operator using an access area to carry out a category 1 or category 2 installation, or to carry out any of the work specified in subsection (2), may restrict or block other persons from using the access area only for—
- (a) the period or periods of time prescribed (if any); or
 - (b) if no period of time is prescribed, the period of time reasonably necessary to complete the installation or work.
- (2) The work referred to in subsection (1) is—
- (a) reinstating property under section 155ZB; or
 - (b) performing any act or operation under section 155ZD(1)(a); or
 - (c) extending an installation under section 155ZD(1)(b)(i); or
 - (d) permanently reinstating an area under section 155ZD(1)(b)(ii).

Section 155ZA: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZB Obligation to reinstate property

An FTTP service provider or a network operator must, as soon as practicable after completing an installation, reinstate the area of the property impacted or disturbed by the installation as closely as reasonably possible to its original condition before the installation.

Section 155ZB: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Non-prescribed installations

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZC Non-prescribed installations

If an FTTP service provider or a network operator wants to enter property and carry out a non-prescribed installation involving 1 or more affected persons,—

- (a) none of the statutory rights of access under this subpart applies; and
- (b) the service provider or network operator must obtain rights to enter the property and carry out the installation in accordance with the general law and any relevant enactment applying at the time.

Section 155ZC: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Ongoing rights of access to installed fibre infrastructure

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZD Ongoing rights of access

- (1) The rights of access given by this section are for an FTTP service provider or a network operator to,—
 - (a) at any time before or after 1 January 2025, for an indefinite period, re-enter property to perform any act or operation necessary for the purpose of inspecting, maintaining, repairing, or upgrading all or any part of a fibre-to-the-premises access network that the service provider or network operator owns and that was installed (whether by the service provider or network operator who owns the fibre-to-the-premises network at the time of the re-entry or a previous owner) at any time after 1 July 2012; and
 - (b) at any time before 1 January 2025, re-enter property to—
 - (i) extend an installation that forms part of a fibre-to-the-premises access network described in paragraph (a) if the extension does not involve a change to the design plan originally provided under this subpart to affected persons and the person who placed the order for the FTTP service to be installed; or
 - (ii) permanently reinstate an area where, at the time of installing, maintaining, repairing, or upgrading part of the fibre-to-the-premises access network, the service provider or network operator reinstated the property on an interim basis only, until a permanent reinstatement could be undertaken.
- (2) The rights of access apply if—

- (a) the FTTP service provider or network operator who entered the property and carried out the original installation did so after obtaining the consent of more than 1 person, or entered the property under this subpart; and
 - (b) the FTTP service provider or network operator complies with the conditions in section 155ZE; and
 - (c) neither of the circumstances in subsection (3) applies.
- (3) The rights of access given by this section do not apply if—
- (a) the FTTP service provider or network operator has rights of access equivalent to the rights in subsection (1) under 1 or more easements in respect of the part of the fibre-to-the-premises access network that the service provider wants to access; or
 - (b) the part of the fibre-to-the-premises access network that the FTTP service provider or network operator wants to access was installed in breach of legal rights or obligations in that the service provider or network operator that carried out the original installation—
 - (i) failed to obtain all necessary consents for the installation; or
 - (ii) acted outside the terms of 1 or more consents given by persons in respect of the installation.
- (4) To avoid doubt, this section applies, with all necessary modifications, to a network operator and prescribed other technology that is installed in reliance on the rights of access given by this subpart.
- (5) In this section, **maintaining, repairing, or upgrading** includes—
- (a) any repairs and any other activities for the purpose of maintaining, or that have the effect of maintaining, part of the fibre-to-the-premises access network; and
 - (b) the carrying out of any replacement or upgrade of existing works, as long as the land will not be injuriously affected as a result of the replacement or upgrade.

Compare: 1992 No 122 s 23(3)

Section 155ZD: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZE Conditions of ongoing rights

- (1) The rights of access given by section 155ZD are subject to the following conditions:
- (a) entry to the property must be made only by a person who—
 - (i) is an officer, employee, or agent of the FTTP service provider or network operator; and
 - (ii) is authorised by the service provider or network operator, in writing, to make that entry; and

- (b) the owner and the occupier of the property must be given reasonable notice of the intention to enter the property; and
 - (c) entry must be made at reasonable times; and
 - (d) the person entering must produce evidence of his or her authority and identity, if asked to do so; and
 - (e) the property must be reinstated as provided in section 155ZB.
- (2) The conditions in subsection (1) do not apply if entry on the land is—
- (a) necessary in circumstances of probable danger to life or property; or
 - (b) immediately necessary to maintain the continuity or safety of the supply of telecommunications.

Section 155ZE: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Protection of interests in installations

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZF Protection of interests in installations

- (1) This section applies to a category 1 or category 2 installation that forms part of a fibre-to-the-premises access network, including any work in relation to or in connection with the installation, if—
- (a) it is fixed to, or installed under or over, land that is not owned by the FTTP service provider or network operator; and
 - (b) the service provider or network operator carried out the installation after 1 July 2012; and
 - (c) the FTTP service provider or network operator entered the property and carried out the installation after obtaining the required consents or entered the property under this subpart; and
 - (d) neither of the circumstances described in section 155ZD(3) applied in relation to the installation so as to disentitle the FTTP service provider or network operator from exercising the statutory rights of access.
- (2) If this section applies,—
- (a) the installation and work are deemed to be lawfully fixed or installed and continue to be lawfully fixed or installed until the FTTP service provider or network operator decides otherwise; and
 - (b) no person other than the FTTP service provider or network operator has an interest in the installation or work by reason only of having an interest in the land.

Compare: 2001 No 103 s 155

Section 155ZF: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Dispute resolution process

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZG Dispute resolution scheme

- (1) The **dispute resolution scheme** is—
 - (a) the approved scheme defined in clause 2 of Schedule 3C; or
 - (b) the regulated scheme provided for in regulations made under clause 16 of Schedule 3C.
- (2) The procedures for referring disputes to the dispute resolution scheme are as set out in the rules of the dispute resolution scheme.

Compare: 2010 No 116 s 95

Section 155ZG: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZH FTTP service providers and network operators exercising statutory access rights must be members of dispute resolution scheme

- (1) Every FTTP service provider and network operator that relies on a statutory right of access under this subpart (other than an FTTP service provider or network operator and that is referred to in subsection (2)),—
 - (a) in order to install fibre optic media, must be a member of the dispute resolution scheme and must remain a member of the scheme until 1 January 2026;
 - (b) in order to install a prescribed other technology, must be a member of the dispute resolution scheme for the period that—
 - (i) starts on the day after the date on which the order prescribing that technology as other technology for the purposes of this subpart comes into force; and
 - (ii) ends on the date that is 10 years later.
- (2) Subsection (1) does not apply to an FTTP service provider or network operator that relies only on the statutory rights of access given to them by this subpart for the purpose of performing acts or operations necessary for the purpose of inspecting, maintaining, repairing, or upgrading a fibre-to-the-premises access network.
- (3) Despite subsection (1), an FTTP service provider or a network operator does not need to be a member of the dispute resolution scheme if the Minister exempts that person by issuing an individual exemption notice in the *Gazette* that—
 - (a) identifies the person that is exempt from the obligation to be a member; and
 - (b) gives reasons for the exemption.

- (4) The Minister may grant an individual exemption to a person only if he or she is satisfied that membership of the dispute resolution scheme by the person is not necessary in order to meet the purpose of the dispute resolution scheme (as set out in clause 1 of Schedule 3C) because—
 - (a) that person has permanently stopped carrying out installations; and
 - (b) all disputes involving that person that have been referred to the scheme (if any) have been dealt with; and
 - (c) it is unlikely that other disputes involving that person are yet to be referred to the scheme.
- (5) The Minister may amend or revoke an individual exemption by issuing a notice in the *Gazette* that identifies the exempt participant and gives reasons for the amendment or revocation, but only if the Minister—
 - (a) first notifies the exempt person (where possible) of the proposed amendment or revocation and gives the person a reasonable opportunity to comment on the proposal; and
 - (b) is satisfied that the amendment or revocation is necessary or desirable in order to meet the purpose of the dispute resolution scheme.
- (6) The Ministry must ensure that an up-to-date list of all exemptions is available at all reasonable times on an Internet site maintained by or on behalf of the Ministry.
- (7) An exemption that is granted, amended, or revoked under this section is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Compare: 2010 No 116 s 96

Section 155ZH: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZI Disputes may be referred to dispute resolution scheme

- (1) A dispute between the following persons about their rights and obligations under this subpart in relation to an installation may be referred to the dispute resolution scheme by any of the parties to the dispute:
 - (a) a dispute between an FTTP service provider or a network operator and—
 - (i) a person who places an order with a retail provider for an FTTP service to be installed;
 - (ii) the body corporate of a body corporate administered property;
 - (iii) an affected person; and
 - (b) a dispute between a person who places an order with a retail provider for an FTTP service to be installed and an affected person; and

- (c) a dispute between an FTTP service provider or a network operator and a person affected by a re-entry under section 155ZD(1)(b).
- (2) Subsection (1)(b) does not apply if the person who places the order with the retail provider is a unit owner or person occupying a unit in a body corporate administered property.
- (3) Disputes that may be referred to the dispute resolution scheme include disputes about—
 - (a) whether a statutory right of access under this subpart applies for an FTTP service provider or a network operator to enter a property and carry out a proposed installation:
 - (b) the validity of a person's grounds for objecting to an FTTP service provider or a network operator exercising a statutory right of access under this subpart to carry out a category 2 installation (or, in the case of a body corporate administered property, a category 1 or category 2 installation):
 - (c) whether an FTTP service provider or a network operator has complied with requirements under this subpart when exercising a statutory right of access (including the requirement to reinstate property when an installation is completed):
 - (d) other matters provided for in the rules of the scheme.

Example

This example refers to the situation set out in the example in section 155D(1) concerning the meaning given to the term affected person.

The method that the FTTP service provider has to use in order to get fibre optic media from the road to Mark's flat via the driveway is prescribed as a category 2 installation. The FTTP service provider therefore gives the flat-owning company and each of the 2 neighbours a notice and high-level design plan that set out the information required under section 155R.

Within 15 working days after receiving the notice, 1 of the neighbours objects, on the grounds that the work involved may worsen a subsidence problem in one corner of that person's property (section 155N). The body corporate also objects, on the ground that it considers the installation will result in an unacceptable disruption to telephone services, during business hours, for other flat owners (section 155T(a)).

The FTTP service provider is unable to reach an agreed settlement with either the neighbour or the body corporate concerning the validity of their objections and therefore refers each dispute to the dispute resolution scheme. After further unsuccessful attempts to settle each dispute, the FTTP service provider requests that a determination be made on each dispute under the rules of the scheme.

The person determining the disputes concludes that there are no grounds for the body corporate's objection. This determination is binding on the FTTP service provider as a member of the scheme (section 155ZJ(2)) but not on the body corporate, which can, within 5 working days of being notified of the determination, appeal against it to the District Court (sections 155ZK and 155ZL).

However, the neighbour's objection is determined to be valid, meaning that the FTTP service provider cannot exercise a statutory right of access to carry out the installation. This is binding on the FTTP service provider and it cannot appeal to the District Court (section 155ZJ(2)).

The owner of Mark's flat, as the person who placed the order for the installation, does not have a right to refer a dispute to the dispute resolution scheme, either in relation to the body corporate's objection or in relation to the neighbour's objection (subsection (2) of this section). Any dispute between the owner of Mark's flat and the body corporate over the body corporate's objection to the FTTP service provider entering the block of flats and carrying out the installation would be a matter to be resolved in accordance with the relevant provisions (if any) of the owner's licence and the rules of the body corporate (or, if the flat is part of a unit title development instead of a company share property, in accordance with the provisions of Part 4 of the Unit Titles Act 2010).

Mark does not have any right to refer a dispute to the dispute resolution scheme under this section either. He is not the person who placed the order for the installation (see section 155D(2)) and he is not an affected person (see section 155D(1)).

Section 155ZI: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZJ Determinations binding on members and certain other parties

- (1) This section applies if a dispute is referred to the dispute resolution scheme and a determination is made on the dispute under the rules of the scheme.
- (2) The determination is binding on each party to the dispute that is a member of the dispute resolution scheme (except to the extent that it may be modified by the District Court under section 155ZM(3)), and the scheme member has no right of appeal against the determination.
- (3) The determination is binding on each party to the dispute who is not a member of the dispute resolution scheme, except if one of those parties lodges an appeal against the determination under section 155ZK and the court modifies or reverses the determination.

Section 155ZJ: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZK Appeals against determinations

- (1) A party to the dispute that is not a member of the scheme may, within the time allowed under section 155ZL(1), appeal to the District Court against a determination.
- (2) The court may confirm, modify, or reverse the decision appealed against.
- (3) The decision of the court on the appeal is binding on all persons named as parties in the determination, and there is no right of appeal against the court's decision.

Section 155ZK: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZL Procedure on appeal

- (1) An appeal under section 155ZK must be brought and determined in accordance with the rules of court, except that—
 - (a) an appeal must be brought within 5 working days after the determination appealed against is notified to the party wanting to lodge the appeal, or any further time the court allows on an application made before or after that period ends; and
 - (b) the dispute resolution scheme, as the maker of the determination appealed against, is not entitled to be represented at the hearing of the appeal; and
 - (c) the court on appeal may not refer the determination back to the dispute resolution scheme for any purpose.
- (2) The court may hear all evidence provided and representations made by or on behalf of any party to the appeal that the court considers relevant to the appeal, whether or not the evidence would be admissible in a court.

Section 155ZL: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZM Compliance with rules, binding settlements, and determinations

- (1) Members of the dispute resolution scheme and each party to a dispute that is referred to the scheme must comply with the rules of the scheme.
- (2) On the application of the person responsible for the dispute resolution scheme, the District Court may require a member of the dispute resolution scheme or other person who is a party to a dispute to—
 - (a) comply with the rules of the scheme;
 - (b) comply with the terms of a binding settlement or determination made under the rules of the scheme.
- (3) If the District Court is satisfied that the terms of a binding settlement or determination are manifestly unreasonable, the court's order under subsection (2)(b) may modify the terms of the binding settlement or determination, but only to the extent that the modification results in a binding settlement or determination that could have been made under the dispute resolution scheme.
- (4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by the District Court for the payment of a sum of money.
- (5) A reference in this section to a member includes a reference to a person who was a member of the dispute resolution scheme at the relevant time but is no longer a member at the time of the application or order.

Compare: 2010 No 116 s 97

Section 155ZM: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZN Levy for regulated dispute resolution scheme

- (1) This section applies if the dispute resolution scheme is the regulated scheme.
- (2) Every FTTP service provider and network operator that relies on a statutory right of access under this subpart (or a prescribed class of those persons) must pay to the Minister in each financial year or part financial year (as the case may require) a prescribed levy.
- (3) Subsection (2) does not apply to an FTTP service provider or network operator that relies on the statutory rights of access given by section 155ZD(1)(b) only.
- (4) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy.
- (5) The levy must be prescribed on the basis that the costs of establishing and operating the dispute resolution scheme should be met fully out of the levy.
- (6) The Governor-General, in making regulations under this section, has the same powers as those set out in section 11(3).

Section 155ZN: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Regulations and exemption

Heading: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZO Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsections (2) to (4), make regulations for all or any of the following purposes in respect of this subpart:
 - (a) prescribing, for the purposes of section 155G, how notices may or must be given and other matters relating to that procedure (including when the notice is treated as having been received or as having been given for the purposes of this subpart):
 - (b) prescribing other technology for the purposes of this subpart:
 - (c) prescribing how long statutory rights of access apply for a prescribed other technology for the purposes of section 155H(c):
 - (d) prescribing requirements for preliminary notices for the purposes of section 155K(2) or 155M(1):
 - (e) prescribing methods of installation as category 1 installations (including requirements applying to those installations) for the purposes of this subpart:

- (f) prescribing methods of installation as category 2 installations (including requirements applying to those installations) for the purposes of this subpart:
 - (g) prescribing grounds on which affected persons may object to category 2 installations for the purposes of section 155N:
 - (h) prescribing grounds on which the body corporate of a body corporate administered property may object to a category 1 or category 2 installation for the purposes of section 155T:
 - (i) prescribing when grounds for objection apply, do not apply, or apply with modifications:
 - (j) prescribing periods of time for the purposes of section 155ZA, including—
 - (i) different periods of time for each category of installation:
 - (ii) different periods of time for each type of work specified in section 155ZA(2) in relation to each category of installation:
 - (iii) different times in the day during which any prescribed period of time applies:
 - (iv) the number of occasions, during any period of time, that an FTTP service provider may restrict or block other persons from using an access area:
 - (k) prescribing fees payable by members of the dispute resolution scheme in respect of any matter relating to disputes under this subpart, or the manner in which such fees may be calculated:
 - (l) prescribing how information may or must be given to, provided to, or served on any person under this subpart and other matters relating to that procedure (including when the information is treated as received or as having been given, provided, or served for the purposes of this subpart and the regulations):
 - (m) providing for any other matters contemplated for this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Before recommending regulations prescribing other technology under subsection (1)(b), the Minister must—
- (a) consult the persons or organisations that appear to the Minister to be representative of the interests of those persons likely to be substantially affected by the regulations; and
 - (b) be satisfied that the technology proposed—
 - (i) is to be deployed on a large scale; and
 - (ii) will provide benefits to New Zealand; and
 - (iii) cannot be installed without the consent of multiple parties first being obtained and this requirement is preventing, or is likely to pre-

vent, the benefits to New Zealand of the technology being realised.

- (3) Before recommending regulations prescribing a method of installation as a category 1 installation under subsection (1)(e), the Minister must be satisfied that the installation will not have any lasting, substantial, physical impact on the property.
- (4) Before recommending regulations prescribing a method of installation as a category 2 installation under subsection (1)(f), the Minister must be satisfied that—
 - (a) any disruption that the installation may cause for users of the property will be temporary; and
 - (b) any lasting, substantial, physical impact that the installation may have on the property is justifiable in support of the mass market roll-out of a telecommunications network.

Examples of category 1 and category 2 installations

Examples of category 1 installations are—

- an installation that uses existing equipment such as ducts or conduit:
- an aerial installation:
- an installation that only disturbs soft surfaces and where those surfaces can easily be restored.

Examples of category 2 installations are—

- micro-trenching where the width of the cut is not more than the prescribed width:
- an installation that is predominantly below the surface, such as directional drilling, where the physical impact is limited to access points, or entry and exit points, that do not exceed the prescribed size:
- open trenching where the size of the trench, once reinstated, is not more than the prescribed size.

-
- (5) A failure to comply with this section does not affect the validity of the regulations made.

Section 155ZO: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZP Exemption from body corporate duties of repair and maintenance

- (1) A body corporate is exempted from any obligation to repair and maintain fibre network equipment installed in its complex if that network was installed as part of the UFB initiative.
- (2) Subsection (1) applies despite—
 - (a) section 138 of the Unit Titles Act 2010:

- (b) the terms of any licence, lease, or other instrument that, but for this section, would require a body corporate to repair and maintain that equipment.

Section 155ZP: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZQ Relationship to other enactments

The provisions of this subpart do not affect or limit the scope or application of any other enactment regulating acts or omissions in relation to accessing property and installing fibre optic media or other technology, except to the extent that the enactment is inconsistent with, or modified by, this Act.

Section 155ZQ: inserted, on 9 June 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

156 Notices to be in writing

[Repealed]

Section 156: repealed, on 1 July 2011, by section 26(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 4—Right of access to use existing electricity works for telecommunications and deploying fibre optic cable

Subpart 4: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZR Purposes

- (1) The overall purpose of this subpart is to make a significant contribution to the work and personal lives of people residing in rural areas of New Zealand, in particular, by enabling existing electricity infrastructure to be used for deploying fibre optic cable and, by that means,—
 - (a) accelerate the roll-out of fibre-to-the-premises in those areas; and
 - (b) enable access to high-speed communications for businesses, for schools, and for individual purposes, including for accessing health, banking, and other services, and for establishing and maintaining social and support networks.
- (2) To those ends, the other purposes of this subpart are to—
 - (a) provide owners of existing works (including power poles, overhead lines, and other infrastructure connected with the generation, conversion, transformation, or conveyance of electricity) with a right to enter rural and other land on which those existing works are situated and use the works for the purposes of deploying, maintaining, and upgrading fibre optic cable for delivering telecommunications services; and

- (b) ensure that the owners of the existing works provide the owners of the land on which those works are situated with direct benefits to offset the impact of the right of entry on the landowner's own property rights; and
- (c) ensure that owners of existing works and third parties are subject to open access obligations enforceable by the Commission and that owners of existing works may be subject to other regulatory action if they are not exercising their rights under this subpart and are refusing third party requests for arrangements enabling third parties to use those rights for deploying fibre optic cable.

Section 155ZR: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZS Interpretation

In this subpart, unless the context otherwise requires,—

breakout point means a point along a fibre optic cable where provision is made for the installation of 1 or more fibre optic connectors

connection point means the primary residence or any other building that a landowner nominates for a fibre connection under this subpart

existing works—

- (a) has the same meaning as in section 2(1) of the Electricity Act 1992; and
- (b) includes works comprising fibre optic cable installed on existing works before 1 December 2016 and used or intended to be used in connection with the conveyance of electricity (for example, fibre optic cable installed for the purposes of monitoring and ensuring control of the electricity network)

fibre optic works—

- (a) means fittings, including fibre optic cable and related materials, used or intended to be used in connection with installing, maintaining, or upgrading any part of a fibre-based network for telecommunications that incorporates fibre optic cable deployed on existing works; and
- (b) means the installation, maintenance, or upgrading of any part of a fibre-based network for telecommunications as described in paragraph (a); but
- (c) does not include fibre optic cable that falls within paragraph (b) of the definition of existing works, unless it is repurposed fibre

layer 1 means layer 1 of the OSI Model, which is normally associated with passive fibre optic network infrastructure

layer 1 service means any service that operates at layer 1

layer 2 means layer 2 of the OSI model, which is normally associated with active fibre optic network infrastructure

layer 2 service means any service that operates at layer 2

maintenance means—

- (a) repairs and other activities for the purpose of maintaining, or that have the effect of maintaining, fibre optic works; and
- (b) the carrying out of any replacement or upgrade of fibre optic works

OSI Model means the 7 layer model of network architecture known as the Open Systems Interconnection Model

point of supply has the same meaning as in section 2(3) of the Electricity Act 1992

repurposed fibre means fibre optic cable that falls within paragraph (b) of the definition of existing works but which, in addition to being used for purposes connected with the conveyance of electricity, may also be used for the purposes of exercising the rights under this subpart

service provider has the same meaning as in section 5

third party means—

- (a) a service provider;
- (b) a network operator.

Compare: 1992 No 122 s 23(3)

Section 155ZS: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZT Right for owners of existing works to enter land and carry out fibre optic works

- (1) An owner of existing works may enter land on which the works are situated for the purpose of accessing those works and carrying out fibre optic works.
- (2) The right of entry is subject to the conditions that the owner of the existing works—
 - (a) complies with the notice requirements in section 155ZZB(2)(c) to (g); and
 - (b) provides the landowner with the capability to connect to a fibre-to-the-premises access network (whether by including, when the fibre optic cable is first being deployed on the existing works, a breakout point in a position that the owner of the existing works considers appropriate, or by any other means suitable for ensuring connectability between the landowner's property and a network); and
 - (c) provides a single fibre connection to the connection point that meets the relevant requirements in section 155ZU.
- (3) The requirements in subsection (2)(b) and (c) do not apply in relation to repurposed fibre.

Section 155ZT: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZU Fibre optic connections that owners of existing works must provide to landowners

Standard connections

- (1) If the distance between the breakout point (or equivalent) and the connection point is 200 metres or less, the owner of the existing works must provide the landowner with a standard connection.
- (2) The owner of the existing works provides a standard connection by aurally installing up to, and including, 200 metres of fibre optic cable between the breakout point (or equivalent) and the connection point, at no cost to the landowner.

Non-standard connections

- (3) If the distance between the breakout point (or equivalent) and the connection point is more than 200 metres, the owner of the existing works must provide the landowner with a non-standard installation.
- (4) The owner of the existing works provides a non-standard installation by—
 - (a) aurally installing up to, and including, 200 metres of fibre optic cable along the distance between the breakout point (or equivalent) and the connection point, at no cost to the landowner; and
 - (b) contributing 50% of the costs of aurally installing fibre optic cable over the remaining distance, up to, and including, 500 metres, between the 200 metres installed under paragraph (a) and the connection point.

Rights and obligations of owner of existing works and landowner where aerial installation not possible

- (5) Despite subsections (1) to (4), if an aerial installation is not practicable and trenching is required at any point,—
 - (a) the landowner must provide, or meet the cost of, that trenching; and
 - (b) the obligation of the owner of the existing works is not affected, except to the extent that, in any place where the fibre optic cable cannot be installed aurally, the landowner is responsible for trenching in that place as provided in paragraph (a).

Variations

- (6) Nothing in this section prevents an owner of existing works and a landowner from entering into an agreement to replace or vary the rights and obligations concerning the installation of a fibre connection to a building on the landowner's property provided for in this section.
- (7) In this section, an **equivalent**, in relation to a breakout point, means any means by which the owner of the existing works provides the landowner with the capability to connect to a fibre-to-the-premises access network, as referred to in section 155ZT(2)(b), other than by including a break-out point.

Section 155ZU: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Third party use of existing works

Heading: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZV Third party use of existing works for carrying out fibre optic works

- (1) An owner of existing works and a third party may enter into an arrangement for the third party to use the owner's existing works for carrying out fibre optic works.
- (2) The right under subsection (1) applies only if the owner of the existing works remains responsible to any landowner on whose land the existing works are situated for the performance of all obligations and the discharge of all liabilities under this subpart relating to fibre optic works.
- (3) Subsection (2) is subject to section 155ZZC(3) (as if the reference to subsection (2) in that section were a reference to subsection (2) of this section).
- (4) Nothing in this section or sections 155ZW to 155ZZC affects an arrangement between the owner of existing works and a third party for the third party to use the existing works for the purposes of carrying out fibre optic works if—
 - (a) the arrangement is entered into before the date of commencement of this subpart; and
 - (b) the third party is not exercising the rights under this subpart.

Section 155ZV: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZW Third party request to use existing works for carrying out fibre optic works

- (1) A third party may request an owner of existing works who is not exercising the rights under this subpart to enter into an arrangement under section 155ZV.
- (2) A request must be made in writing.
- (3) The third party who makes the request must provide to the owner of the existing works any relevant information that the owner considers necessary to properly consider the request.
- (4) However, the third party may choose to withhold any information that the third party considers is commercially sensitive or subject to legal protection and, in that case, must substitute an explanation for the information withheld.

Section 155ZW: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZX Owner of existing works must consider request

- (1) An owner of existing works must consider a request as soon as practicable after receiving it.
- (2) In considering the request, the owner of the existing works must—
 - (a) act in good faith; and

- (b) take into account the purposes of this subpart.

Section 155ZX: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZY Requirements on owner of existing works if request refused

If the owner of the existing works refuses the request, the owner must—

- (a) give a notice to the third party that records the refusal; and
(b) give a copy of the third party's request and the notice under paragraph (a) to the Commission.

Section 155ZY: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZ Minister may intervene

- (1) The Minister may require the Commission to report to the Minister about the information received under section 155ZY concerning—
(a) the requests made to existing works owners by third parties; and
(b) the requests refused.
- (2) The Minister may, after considering the Commission's report, decide whether to recommend that regulation be imposed and, if so, the type or types of regulation.

Section 155ZZ: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Arrangements for third party to use existing works

Heading: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZA Conditions of right under section 155ZV

- (1) For the purpose of ensuring that an arrangement under section 155ZV does not increase the negative impacts for the landowner of having existing works on his or her property, every arrangement entered into under that section is subject to the conditions in subsections (2) and (3).

Condition concerning communications

- (2) The owner of the existing works (and not the third party)—
(a) is the person responsible for all communications with the landowner concerning the existing works, in so far as the communications involve fibre optic works; and
(b) is the only person who may conduct those communications, unless—
(i) the landowner authorises the third party to conduct those communications, either generally or from time to time; or
(ii) it is necessary for the third party to communicate with the landowner because there are circumstances of probable danger to life

or property or it is immediately necessary to maintain the continuity of telecommunications services.

Condition concerning compensation

- (3) The owner of the existing works (and not the third party, except as provided in section 155ZZC(3)) must pay compensation to the landowner for damage, loss, or injury as provided in section 155ZZC.

Section 155ZZA: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Rights and obligations concerning exercise of rights

Heading: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZB Powers and duties of owners of existing works and landowners

- (1) The provisions of the Electricity Act 1992 specified in subsection (2) apply to the owner of existing works and the owner of the land on which those works are situated—
- (a) as if every reference to existing works in those provisions included fibre optic works; and
 - (b) with all other necessary modifications.
- (2) The provisions of the Electricity Act 1992 are—
- (a) section 22 (protection of existing works):
 - (b) section 22A (owners of land not responsible for maintenance):
 - (c) section 23 (rights of entry in respect of existing works):
 - (d) section 23A (line owner must give written notice of intention to maintain or complete existing works):
 - (e) section 23B (line owner must give notice of intention to inspect or operate existing works):
 - (f) section 23C (notice in emergencies):
 - (g) section 23D (land owner may set reasonable conditions on line owner's entry):
 - (h) section 23E (agreements preserved):
 - (i) section 23F (disputes about land access).

Section 155ZZB: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZC Compensation for damage, etc

- (1) Every person who has a right in respect of, or interest in, any land or property that is damaged or injuriously affected by an owner of existing works or a third party exercising any of the statutory rights given by this subpart is entitled to

full compensation for all loss, injury, or damage that the person suffers as a result.

- (2) The owner of the existing works is liable to the landowner for payment of the compensation, regardless of whether the owner of the existing works, a third party within the meaning of section 155ZS, or both those persons were responsible for the loss, injury, or damage.
- (3) However, subsection (2) does not prevent an owner of existing works from claiming an indemnity or a contribution from the third party where the owner of the existing works alleges that the third party was wholly or partly responsible.
- (4) If the landowner and the owner of the existing works are unable to reach an agreement concerning compensation for loss, injury, or damage suffered by the landowner,—
 - (a) a claim for compensation under this section may be made within the time and in the manner specified in the Public Works Act 1981; and
 - (b) the provisions of that Act, as far as they are applicable and with all necessary modifications, apply in relation to claims under this section.

Compare: 1992 No 122 s 57; 2001 No 103 s 154

Section 155ZZC: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Open access obligations

Heading: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZD Services provided using rights under subpart

- (1) An owner of existing works who provides a telecommunications service, relying on the rights under this subpart, using repurposed fibre optic cable must,—
 - (a) where capacity exists, offer a layer 1 service and provide that service on non-discriminatory terms; and
 - (b) if the owner of the existing works elects to offer a layer 2 service, provide that service on an open access basis and on non-discriminatory terms.
- (2) An owner of existing works who provides a telecommunications service, relying on the rights under this subpart, using fibre optic cable other than repurposed fibre optic cable must—
 - (a) offer a layer 2 service and provide that service on an open access basis and on non-discriminatory terms; and
 - (b) if the owner of the existing works elects to provide a layer 1 service, offer that service on an open access basis and on non-discriminatory terms.

- (3) If an owner of existing works enters into an arrangement with a third party under section 155ZV, the third party (and not the owner of the existing works) is under the obligations in this section.
- (4) In this section, **non-discrimination**, in relation to a service, means that the service provider must not treat access seekers differently or, where the service provider supplies itself with a service, must not treat itself differently from other access seekers, except to the extent that a particular difference in treatment is objectively justifiable and does not harm, and is unlikely to harm, competition in any telecommunications market; and **non-discriminatory** has a corresponding meaning.

Section 155ZZD: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZE Power to grant relief in respect of breach of open access obligations

If, on the application of the Commission, it appears to the High Court that an owner of existing works or a third party intends to engage, is engaging, or has engaged in conduct that constitutes, or would constitute, a breach of section 155ZZD, the court may make orders on any terms and conditions that it thinks appropriate, including, without limitation, an order that the existing works owner or third party refrain from, or engage in, a particular conduct.

Section 155ZZE: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZF Undertaking under Part 4AA overrides open access obligations under subpart

If a person uses the rights under this subpart as part of a build of infrastructure under the UFB initiative, the provisions of the deed of undertaking entered into by that person under Part 4AA override the open access obligations in this subpart.

Section 155ZZF: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZG Right of entry does not affect existing works owner's rights and obligations under Electricity Act 1992

The right of entry under section 155ZT does not affect any rights or obligations of the owner of the existing works under the Electricity Act 1992.

Section 155ZZG: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

155ZZH Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—

- (a) prescribe aesthetic standards concerning the way in which fibre optic technology and associated equipment must be installed when exercising the rights under this subpart; and
 - (b) prescribe procedural standards for how communications with landowners are undertaken and how persons exercising the rights given by this subpart must act when on private property; and
 - (c) prescribe protocols for ensuring the interoperability of equipment installed; and
 - (d) prescribe minimum clearance distances for fibre optic works that involve existing works; and
 - (e) impose regulation on the rights given by this subpart, in relation to existing works that the owners of those works may confer on third parties under this subpart.
- (2) The Minister must, before recommending the making of regulations under this section,—
- (a) consult the Minister who is responsible for the administration of the Electricity Act 1992, the owners of existing works (or representatives of those persons) and other persons or their representatives who the Minister considers will be substantially affected by the regulations made in accordance with the recommendation; and
 - (b) in the case of regulations under subsection (1)(e), consult the Commission after taking the steps in section 155ZZ.
- (3) Failure to comply with subsection (2) does not affect the validity of the regulations.

Section 155ZZH: inserted, on 3 May 2017, by section 13 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Part 4AA

Services provided using networks developed with Crown funding: Undertakings regime and Commerce Act 1986 authorisations

Part 4AA: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 1—Preliminary provisions

Subpart 1: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AA Overview

- (1) This Part—
 - (a) requires providers of wholesale telecommunications services that are provided using a fibre optic communications network that is constructed, in whole or in part, with Crown investment funding provided as part of

- the Ultra-fast Broadband Initiative, or that provide access to unbundled elements of such a network, to give enforceable undertakings providing for non-discrimination, equivalence, and other matters in relation to the supply of those services (subpart 2); and
- (b) restricts unbundling of point-to-multipoint layer 1 services before 1 January 2020 in respect of those service providers (section 156AP); and
 - (c) requires those service providers to disclose information concerning costs and other matters in accordance with requirements of the Commission (subpart 3); and
 - (d) enables providers of wholesale telecommunications services provided using a network that is constructed, in whole or in part, with Crown investment funding as part of the Rural Broadband Initiative to give enforceable undertakings that provide for non-discrimination and other matters in relation to those services (subpart 4); and
 - (e) provides certain Commerce Act 1986 authorisations in respect of participation in the Rural Broadband Initiative (subpart 5) and the Ultra-fast Broadband Initiative (subpart 6).
- (2) This section is intended only as a guide to the general scheme and effect of this Part.

Section 156AA: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AB Interpretation

In this Part, unless the context otherwise requires,—

access seeker means a person who seeks access to a relevant service

arm's-length has the meaning set out in section 69D

Crown includes Crown Fibre Holdings Limited

disclose means to supply to the Commission

equivalence, in relation to the supply of a relevant service, means equivalence of supply of the service and access to the service provider's network so that third-party access seekers are treated in the same way to the service provider's own business operations, including in relation to pricing, procedures, operational support, supply of information, and other relevant matters

fibre-to-the-premises access network—

- (a) means a network structure used to deliver telecommunications services over fibre media that connects a powered node in a central office location (an exchange or equivalent powered facility) to an end-user's premises or building, or the optical distribution facility of an end-user's premises or building; and
- (b) includes the powered node in the central office location; and

- (c) includes that part of the overall telecommunications link that connects to the end-user's equipment

information includes any statement, certificate, or other information required to be disclosed under this Part

layer 1 service has the same meaning as in the document *New Zealand Government Ultra-Fast Broadband Initiative Invitation to Participate in Partner Selection Process* dated October 2009 (as amended)

LFC or **local fibre company** means a company through which the investment of the Crown and a UFB partner in relation to a fibre optic communications network is effected, including—

- (a) a company in which the Crown and the UFB partner hold shares; and
(b) a company in which the Crown holds a financial interest pursuant to the selection of that company as a UFB partner

LFC fibre network means a fibre-to-the-premises access network that is owned or operated by an LFC

non-discrimination, in relation to the supply of a relevant service, means that the service provider must not treat access seekers differently, or, where the service provider supplies itself with a relevant service, must not treat itself differently from other access seekers, except to the extent that a particular difference in treatment is objectively justifiable and does not harm, and is unlikely to harm, competition in any telecommunications market

point-to-multipoint layer 1 service means a layer 1 service provided over a network configuration that enables each fibre to provide multiple end-point connections

prescribed means prescribed by the Commission

relevant service—

- (a) in subparts 2 and 3, means a wholesale telecommunications service that is provided using, or that provides access to unbundled elements of, an LFC fibre network; and
(b) in subpart 4, means a wholesale telecommunications service that is provided using, or that provides access to, unbundled elements of a network that is constructed with funding provided, in whole or in part, by the Crown as part of the Rural Broadband Initiative; and
(c) in subpart 7, has the same meaning as in section 156AZE

Rural Broadband Initiative means the programme to develop enhanced broadband infrastructure in non-urban areas of New Zealand with the support of Crown grant funding

service provider means a provider of a relevant service

UFB 2 has the same meaning as in paragraph (b)(i) of the definition of UFB initiative

UFB initiative—

- (a) means the competitive tender programme, known as the Ultra-fast Broadband Initiative, to develop fibre-to-the-premises broadband networks connecting 75% of New Zealand households, with the support of \$1.5 billion of Crown investment funding; and
- (b) includes—
 - (i) the extension to that programme known as UFB 2, to develop fibre-to-the-premises networks connecting at least 80% of New Zealand households; and
 - (ii) any other extension to that programme

UFB partner means a successful tenderer in the UFB initiative

undertaking means an undertaking under this Part.

Section 156AB: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156AB **relevant service** paragraph (b): amended, on 3 May 2017, by section 14(1) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 156AB **relevant service** paragraph (c): inserted, on 3 May 2017, by section 14(2) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 156AB **UFB 2**: inserted, on 3 May 2017, by section 14(3) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 156AB **UFB initiative**: replaced, on 3 May 2017, by section 14(3) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Subpart 2—Undertakings relating to networks developed with Crown funding as part of UFB initiative

Subpart 2: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AC Purposes

The purposes of this subpart are to—

- (a) promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and
- (b) require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and
- (c) facilitate efficient investment in telecommunications infrastructure and services.

Section 156AC: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Requirements for undertakings

Heading: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AD Main requirements for undertakings

- (1) An LFC must enter into an undertaking in accordance with this subpart.
- (2) The undertaking must—
 - (a) be executed by the LFC; and
 - (b) provide for the LFC to supply unbundled layer 1 services on all parts of its fibre-to-the-premises access network on and after the specified date; and
 - (c) provide for the LFC to—
 - (i) achieve non-discrimination in relation to the supply of relevant services; and
 - (ii) design and build the LFC fibre network in a way that enables equivalence in relation to the supply of unbundled layer 1 services to be achieved on and after the specified date; and
 - (iii) achieve equivalence in relation to the supply of unbundled layer 1 services on and after the specified date; and
 - (d) provide for the LFC to deal with the UFB partner on arm's-length terms (unless the UFB partner and the LFC are not separate entities); and
 - (e) provide for the LFC to maximise the use of standard terms for the supply of services through the use of template, or model, agreements; and
 - (f) provide for access seekers to have the same access to information from the LFC; and
 - (g) specify rules for the treatment of confidential information relating to access seekers; and
 - (h) provide for disclosure of relevant information to the Commission, to support the Commission's assessment of compliance with the undertaking; and
 - (i) provide for any other matters required by a determination of the Minister under section 156AE.
- (3) An undertaking may specify a mechanism for resolution, by a suitably qualified and experienced independent person, of any disputes that arise between the LFC and access seekers after the undertaking is approved.
- (4) Subsection (3) does not limit the further matters that may be included in an undertaking.
- (5) However, an undertaking must not—
 - (a) provide for rules or obligations in respect of services that are not relevant services (including layer 1 services); or

- (b) specify the price or non-price terms of supply for any telecommunications service.
- (6) In this section,—
- specified date** means,—
- (a) in relation to UFB 1 LFCs, 1 January 2020, unless paragraph (c) applies; and
- (b) in relation to UFB 2 LFCs, 1 January 2026; and
- (c) in relation to UFB 1 LFCs that win contracts for UFB 2,—
- (i) 1 January 2020 for the UFB 1 part of the relevant network; and
- (ii) 1 January 2026 for the UFB 2 part of the relevant network

UFB 1 has the same meaning as in paragraph (a) of the definition of UFB initiative in section 156AB.

Section 156AD: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156AD(2)(b): amended, on 3 May 2017, by section 15(1) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 156AD(2)(c)(ii): amended, on 3 May 2017, by section 15(1) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 156AD(2)(c)(iii): amended, on 3 May 2017, by section 15(1) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 156AD(6): inserted, on 3 May 2017, by section 15(2) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

156AE Minister may determine further requirements for undertakings

- (1) The Minister may determine further requirements with which an undertaking must comply.
- (2) The further requirements may—
- (a) specify the relevant services, or types of relevant services, to which the requirements in section 156AD apply, and how they are to apply; and
- (b) include further matters that must be addressed in the undertaking, and minimum requirements for the undertaking.
- (3) Any further requirements determined by the Minister under this section do not apply to an undertaking that has already been approved by the Minister.

Section 156AE: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AF Minister must issue and consult on draft determination

Before making a determination under section 156AE, the Minister must prepare a draft determination and consult on that draft with those persons that the Minister considers have a material interest in the determination.

Section 156AF: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AG Procedural requirements for determination

- (1) The Minister must notify a determination made under section 156AE in the *Gazette* as soon as practicable after it is made.
- (2) The notice in the *Gazette*—
 - (a) need not contain the determination:
 - (b) must give a brief description of the nature of the determination:
 - (c) must state where copies of the determination are available for inspection and purchase.
- (3) The Minister must make the determination available to the public by making copies of it available—
 - (a) for inspection, free of charge,—
 - (i) at the head office of the Ministry (during office hours); and
 - (ii) on the Internet in an electronic form that is publicly accessible (at all reasonable times); and
 - (b) for purchase at a reasonable price.
- (4) A determination is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (5) *[Repealed]*

Section 156AG: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156AG(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 156AG(5): repealed, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Process for submission and consideration of undertakings

Heading: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AH LFC must submit undertaking for approval by Minister

An LFC must submit an undertaking for approval by the Minister by sending the undertaking in writing to the Minister.

Section 156AH: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AI Minister may approve or decline undertaking

- (1) The Minister may, by notice in writing to the LFC who submitted the undertaking,—
 - (a) approve the undertaking; or
 - (b) decline to approve the undertaking.

- (2) The Minister must not approve the undertaking unless the Minister is satisfied that it meets the requirements in section 156AD.
- (3) If the Minister declines to approve the undertaking, the Minister—
 - (a) must give reasons for not approving the undertaking; and
 - (b) may invite the LFC to submit an amended undertaking for approval by the Minister.
- (4) Subsections (1) and (3) and section 156AH apply to an amended undertaking.
- (5) The Minister must notify his or her approval of an undertaking by notice in the *Gazette*.

Section 156AI: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Implementation of undertakings

Heading: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AJ Implementation of undertaking

On and from the date that the Minister's approval of an undertaking is notified in accordance with section 156AI(5), the undertaking takes effect as if it were a deed that is—

- (a) properly executed by, and binding on, the LFC; and
- (b) given in favour of the Crown.

Section 156AJ: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AK LFC must publish undertaking

- (1) As soon as practicable after the Minister's approval of an undertaking is notified, the LFC must publish the undertaking on an Internet site maintained by or on behalf of the LFC so that it is publicly accessible at all reasonable times.
- (2) The LFC must make a copy of the undertaking available for inspection free of charge at its registered office.

Section 156AK: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Variation and termination of undertakings

Heading: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AL Variation of undertaking

- (1) The Minister may, on the recommendation of the Commission, approve a variation of an undertaking.
- (2) The Commission must not make a recommendation under subsection (1) unless—

- (a) the LFC who gave the undertaking has submitted a request for the variation to the Commission; and
- (b) the Commission has consulted with interested parties; and
- (c) the Commission is satisfied that the variation would best give effect to the purposes of this subpart.

Section 156AL: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AM Procedure for variation of undertaking

- (1) An LFC may submit a request for a variation of an undertaking under section 156AL by sending the proposed variation in writing to the Commission.
- (2) The Commission must notify the LFC in writing of whether it proposes to recommend that the Minister approve the variation.
- (3) The notice under subsection (2)—
 - (a) must set out the reasons for the Commission’s decision; and
 - (b) may invite the LFC to submit an amended variation for consideration, if the Commission does not propose to recommend that the Minister approve the variation.
- (4) The Commission must make reasonable efforts to give the notice not later than 30 working days after the Commission receives the request for the variation from the service provider.
- (5) Sections 156AI to 156AK apply, with all necessary modifications, to a variation of an undertaking as if the variation were an undertaking.

Section 156AM: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AN Clarification of undertaking

The Commission may amend an undertaking to clarify it if—

- (a) the Commission, on the application of the LFC who gave the undertaking, considers that the undertaking requires clarification; and
- (b) the clarification is not material.

Section 156AN: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AO Termination of undertaking

- (1) An undertaking may be terminated by mutual agreement between the LFC and the Minister.
- (2) The Minister may request the Commission to recommend whether an undertaking should be terminated under this section.
- (3) The Commission may, in response to a request under subsection (2) or on its own initiative, recommend to the Minister that an undertaking be terminated

under this section, if the Commission considers that the termination would best promote the purposes of this subpart.

Section 156AO: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Effect of undertakings in relation to unbundling of certain services

Heading: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AP Commission may not recommend or investigate unbundling of point-to-multipoint layer 1 services

- (1) The Commission must not, before the close of 31 December 2019, provide a final report to the Minister recommending the unbundling of any point-to-multipoint layer 1 service that is provided by an LFC that is subject to a binding undertaking.
- (2) The Commission must not, before the close of 31 December 2018, commence an investigation into the unbundling of any point-to-multipoint layer 1 service provided by an LFC that is subject to a binding undertaking.
- (3) An LFC is subject to a binding undertaking for the purposes of this section if it has entered into an undertaking that has been approved by the Minister under this subpart and that is still in force.

Section 156AP: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Enforcement of undertakings

Heading: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AQ Enforcement and remedies under Part 4A

Sections 156L, 156M, and 156O to 156R apply to an undertaking under this subpart as provided in Part 4A.

Section 156AQ: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AR Power of court to grant relief in respect of undertakings

- (1) If, on the application of the Commission, it appears to the High Court that an LFC intends to engage, or is engaging, or has engaged, in conduct that constitutes, or would constitute, a breach of the terms of an undertaking, the court may make any orders on any terms and conditions that it thinks appropriate, including, without limitation, an order to—
 - (a) restrain the LFC from engaging in conduct that constitutes, or would constitute, the breach:
 - (b) require the LFC to do a particular act or thing:
 - (c) require the LFC to comply with the terms of the undertaking.

- (2) In any proceeding under this section, the Commission, on the order of the court, may obtain discovery and administer interrogatories.
- (3) The court may at any time rescind or vary an order made under this section.

Section 156AR: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AS Interrelationship of remedies

- (1) Nothing in this Part or Part 4A limits or affects any right, duty, liability, or remedy in respect of an undertaking that exists or is available apart from this Part or Part 4A.
- (2) Any right of action or other remedy available under this Part or Part 4A in respect of an undertaking may be taken, proceeded with, or heard in conjunction with any other action or remedy available under this Act or otherwise.
- (3) However, in determining whether to order a person to pay a penalty, compensation, or damages in respect of an undertaking, the court must have regard to—
 - (a) whether that person has already been ordered to pay a penalty, compensation, or damages for the same matter; and
 - (b) if so, the amount and effect of that first order.

Section 156AS: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 3—Information disclosure by LFCs with undertakings

Subpart 3: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AT Purpose

The purpose of this subpart is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand by requiring LFCs who have given undertakings in relation to certain services to provide reliable and timely information to the Commission to enable it to record over time the costs and characteristics of LFC fibre networks to inform the Commission's statutory processes and determinations.

Section 156AT: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AU Commission must require disclosure by LFCs

- (1) The Commission must require LFCs to prepare and disclose information, annually, about the costs and characteristics of relevant services and the LFC fibre networks used to provide, or comprised of, relevant services.
- (2) The Commission may require the LFCs to prepare and disclose information consisting of, or about, the following things, as part of the information required under this section:
 - (a) financial statements:

- (b) asset valuations and valuation reports:
 - (c) prices, terms, and conditions:
 - (d) costs and cost allocation methodologies:
 - (e) contracts:
 - (f) transactions with related parties (as if the test for related parties were the same as the test in section 79), including prices and methodologies in relation to such transactions:
 - (g) financial and non-financial performance measures:
 - (h) plans and forecasts:
 - (i) transfer payments (whether actual or notional) amongst prescribed business activities:
 - (j) network capacity information:
 - (k) characteristics of relevant services:
 - (l) policies and methodologies in the areas referred to in paragraphs (a) to (k) or other areas.
- (3) The Commission may, as part of the information required under this section,—
- (a) define the prescribed business activities and prescribed services in respect of which the LFC must prepare and disclose information:
 - (b) require the LFC to adopt, in the preparation or compilation of that information, any methodology that is required by the Commission (including the allocation methodology that must be used for preparing the financial statements and allocating the costs):
 - (c) require the LFC to disclose the manner in which methodologies have been applied:
 - (d) prescribe the information that must be included in the financial statements to be prepared and disclosed.
- (4) The LFCs must prepare and disclose the information required under this section in accordance with the Commission's requirements.
- (5) To avoid doubt, nothing in this subpart requires an LFC to prepare and disclose information about the operation of all or any of its network or wholesale activities as if those activities were operated as independent or unrelated companies.

Section 156AU: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AV Further powers of Commission relating to information disclosure

The Commission may, in making requirements under section 156AU,—

- (a) prescribe the form and manner in which information must be disclosed:
- (b) specify a time or date, or times or dates, as at which information must be disclosed:

- (c) require the disclosure of assumptions made in the preparation of the information:
- (d) require the audit of disclosed information:
- (e) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in a prescribed form and manner, by persons belonging to any specified class of persons:
- (f) set rules about when and for how long information must be disclosed:
- (g) require the retention of data on which disclosed information is based and associated documentation:
- (h) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements:
- (i) provide for transitional provisions:
- (j) make requirements from time to time (for example, more than once a year):
- (k) make requirements in respect of all or part of the relevant business.

Section 156AV: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AW Commission may publish reports, etc, on information collected

- (1) The Commission may publish reports on, and summaries and analyses of, information collected under this subpart for the purpose of informing the industry and the public of current developments and emerging trends in relation to LFC fibre-to-the-premises access networks.
- (2) The publication may be in any form that the Commission considers fit.
- (3) In exercising its power under this section, the Commission must ensure that it protects the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.

Section 156AW: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 4—Undertakings relating to networks developed with Crown funding as part of Rural Broadband Initiative

Subpart 4: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AX Interpretation of this subpart

In this subpart, unless the context otherwise requires,—

relevant service means a service that is provided using, or that provides access to the unbundled elements of, a network that was constructed with funding pro-

vided, in whole or in part, by the Crown as part of the Rural Broadband Initiative

service provider means a provider of a relevant service.

Section 156AX: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AY Requirements for undertakings under this subpart

- (1) A service provider may enter into an undertaking.
- (2) The undertaking must—
 - (a) provide for the service provider to achieve non-discrimination in relation to supply of relevant services; and
 - (b) provide for the disclosure of relevant information to the Commission, to support the Commission's assessment of compliance with the undertaking.
- (3) An undertaking may specify a mechanism for resolution, by a suitably qualified and experienced independent person, of any disputes that arise between the service provider and access seekers after the undertaking is approved.
- (4) Subsection (3) does not limit the further matters that may be included in an undertaking.

Section 156AY: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AZ Application of provisions in subpart 1

Sections 156AH to 156AN, 156AO, and 156AQ to 156AS, with all necessary modifications, apply to an undertaking under this subpart as if every reference in those sections to an LFC were a reference to a service provider.

Section 156AZ: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 5—Commerce Act 1986 authorisations in respect of Rural Broadband Initiative

Subpart 5: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AZA Restrictive trade practices authorisations in respect of Telecom and Vodafone participation in Rural Broadband Initiative

- (1) The following are authorised:
 - (a) the joint Telecom–Vodafone proposal made on 12 November 2010 in response to the Rural Broadband Initiative request for proposals issued on 26 August 2010; and
 - (b) any contract that is entered into between the Crown and Telecom, or the Crown and Vodafone, to provide funding to Telecom or Vodafone in accordance with the Rural Broadband Initiative.

- (2) In this section, unless the context otherwise requires,—
Vodafone means Vodafone New Zealand Limited and its subsidiaries.
- (3) The authorisations apply to any contract, arrangement, or understanding that is entered into before the date on which this section comes into force as if the authorisation were in force at the time of entry.
- (4) The authorisations do not apply to a contract, arrangement, or understanding that is entered into later than 6 months after the date on which this section comes into force.
- (5) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 58(1), (2), (5), and (6) of the Commerce Act 1986.
- (6) Sections 65 and 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.
- (7) The effect of the authorisations is the same as that stated in section 58A(1) and (2) of the Commerce Act 1986.

Section 156AZA: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 6—Commerce Act 1986 authorisations in respect of Ultra-fast Broadband Initiative

Subpart 6: added, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AZB Interpretation for this subpart

In this subpart, unless the context otherwise requires,—

fibre optic network assets means ducting, fibre optic cabling, and related electronic equipment, together with other related equipment, that is used in connection with telecommunication over a fibre-based network

Telecom includes Chorus and a successor to Telecom or Chorus

telecommunications network company means a company that owns or operates a network.

Section 156AZB: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156AZC Restrictive trade practices authorisations in respect of participation in Ultra-fast Broadband Initiative

- (1) The following are authorised:
 - (a) any contract, arrangement, or understanding between the Crown and Telecom that is necessary to give effect to the selection of Telecom as a UFB partner in a particular region or regions; and
 - (b) any contract, arrangement, or understanding that is part of the arrangement with the Crown under the UFB initiative in a particular region or

regions, under which Telecom or a UFB partner transfers fibre optic network assets to a local fibre company owned partially by the Crown.

- (2) The authorisations—
- (a) apply to any contract, arrangement, or understanding that is entered into before the date on which this section comes into force as if the authorisations were in force at the time of entry; but
 - (b) do not apply to any contract, arrangement, or understanding that is entered into more than 2 years after the date on which this section comes into force.
- (2A) Despite subsection (2), the authorisations—
- (a) apply to any contract, arrangement, or understanding that is entered into in respect of UFB 2 before the date on which this subsection comes into force, as if the authorisation were in force at the time of the entry; but
 - (b) do not apply to any contract arrangement or understanding in respect of UFB 2 that is entered into more than 2 years after the date on which this subsection comes into force.
- (3) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 58(1), (2), (5), and (6) of the Commerce Act 1986.
- (4) Sections 65 and 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.
- (5) The effect of the authorisations is the same as that stated in section 58A(1) and (2) of the Commerce Act 1986.

Section 156AZC: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156AZC(2A): inserted, on 3 May 2017, by section 16 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

156AZD Business acquisition authorisations in respect of participation in Ultra-fast Broadband Initiative

- (1) The following are authorised:
- (a) any acquisition by a UFB partner or a local fibre company owned partially by the Crown of the fibre optic network assets or undertaking of any telecommunications network company as part of an arrangement with the Crown under the UFB initiative; and
 - (b) any acquisition by a UFB partner of the shares of any telecommunications network company (whether on a minority or an equal basis or otherwise) as part of an arrangement with the Crown, or with the Crown and another UFB partner, under the UFB initiative; and

- (c) any acquisition by the Crown of shares in, or assets of, Telecom pursuant to the selection of Telecom as a UFB partner in a particular region or regions.
- (2) The authorisations do not apply to any acquisition that is made more than 2 years after the date on which this section comes into force, except an acquisition under UFB 2.
- (2A) The authorisations—
 - (a) apply to any acquisition under UFB 2 that is made before the date on which this subsection comes into force, as if the authorisation were in force at the time the acquisition was made; but
 - (b) do not apply to any acquisition under UFB 2 that is made more than 2 years after the date on which this subsection comes into force.
- (3) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 67(3)(b) of the Commerce Act 1986 on the date on which this section comes into force.
- (3A) However, if the authorisations are for any acquisitions under UFB 2, the authorisations must be treated as if they were authorisations granted by the Commission under section 67(3)(b) of the Commerce Act 1986 on the date on which this subsection comes into force.
- (4) Sections 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.
- (5) The effect of the authorisations is the same as that stated in section 69 of the Commerce Act 1986.

Section 156AZD: inserted, on 1 July 2011, by section 81 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156AZD(2): amended, on 3 May 2017, by section 17(1) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 156AZD(2A): inserted, on 3 May 2017, by section 17(2) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Section 156AZD(3A): inserted, on 3 May 2017, by section 17(3) of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Subpart 7—Commerce Act 1986 authorisations in respect of Rural Broadband Initiative 2 and Mobile Black Spot Fund

Subpart 7: inserted, on 18 August 2017, by section 18 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

156AZE Interpretation for this subpart

In this subpart, unless the context otherwise requires,—

MBSF means the Mobile Black Spot Fund announced by the Minister on 12 March 2015

RBI2 means the extension of the Rural Broadband Initiative announced by the Minister on 12 March 2015

relevant service means,—

- (a) in relation to RBI2, a wholesale telecommunications service that is provided using, or that provides access to, infrastructure forming part of a broadband network where infrastructure was constructed with funding provided, in whole or in part, by the Crown as part of RBI2; and
- (b) in relation to MBSF, a wholesale service that is provided using, or that provides access to, a cellular mobile telephone network constructed, in whole or in part, with money provided by the Crown as part of the MBSF

service provider means a provider of a relevant service.

Section 156AZE: inserted, on 18 August 2017, by section 18 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

156AZF Restrictive trade practices authorisations in respect of transactional arrangements for RBI2 and MBSF

- (1) Any contract, arrangement, or understanding between the Crown and 1 or more service providers to provide funding for those service providers, in accordance with RBI2 or the MBSF, is authorised.
- (2) The authorisation applies to any contract, arrangement, or understanding that is entered into before the date on which this section comes into force as if the authorisation were in force at the time that it was entered into.
- (3) The authorisation does not apply to a contract, arrangement, or understanding that is entered into later than 6 months after the date on which this section comes into force.
- (4) The authorisation must be treated as if it were an authorisation granted by the Commission under section 58(1), (2), (5), and (6) of the Commerce Act 1986.
- (5) Sections 65 and 91 to 97 of the Commerce Act 1986 do not apply to the authorisation.
- (6) The effect of the authorisation is the same as the effect stated in section 58A(1) and (2) of the Commerce Act 1986.

Section 156AZF: inserted, on 18 August 2017, by section 18 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Part 4A Enforcement

Part 4A: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Subpart 1—Enforcement of statutory and regulatory provisions

Subpart 1: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Preliminary

Heading: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156A Application of section 156B

- (1) Section 156B applies to a person who commits any of the following breaches:
 - (a) fails, without reasonable excuse, to comply with section 22A:
 - (b) fails, without reasonable excuse, to comply with a notice under section 30F requiring a standard terms proposal to be submitted to the Commission:
 - (c) knowingly submits a standard terms proposal that fails to comply with section 30G:
 - (d) fails, without reasonable excuse, to comply with a notice under section 45 or a notice requirement (if any) set out in subpart 1 of Part 2 of Schedule 1 in respect of the applicable final pricing principle:
 - (e) fails, without reasonable excuse, to provide to the Commission not later than the time specified by it—
 - (i) the statement referred to in section 45(2)(b)(i):
 - (ii) all the information referred to in section 45(2)(b)(ii):
 - (f) knowingly provides false or misleading information or documents under section 45 or under the notice requirement (if any) set out in subpart 1 of Part 2 of Schedule 1 in respect of the applicable final pricing principle:
 - (fa) fails, without reasonable excuse, to comply with section 69F:
 - (fb) fails, without reasonable excuse, to comply with a notice under section 69H:
 - (g) fails, without reasonable excuse, to comply with an information disclosure requirement made under section 69ZC(4), 69ZF(2), or 156AU:
 - (h) knowingly provides false or misleading information or documents under Part 2B:
 - (i) fails, without reasonable excuse, to provide to the Commission, not later than the time specified by it, the information or documents referred to in section 81(2):

- (ia) knowingly provides or signs a false or misleading certificate under section 81:
 - (ib) knowingly provides false or misleading information or documents under section 81:
 - (j) fails, without reasonable excuse, to comply with section 82:
 - (ja) knowingly provides false or misleading information or documents under section 82:
 - (k) fails, without reasonable excuse, to comply with section 83:
 - (l) knowingly provides false or misleading information or documents under section 83:
 - (la) fails, without reasonable excuse, to comply with section 94D:
 - (lb) knowingly provides false or misleading information or documents under section 94D:
 - (lba) fails, without reasonable excuse, to comply with section 94EA:
 - (lbb) knowingly provides false or misleading information under section 94EA:
 - (lc) fails, without reasonable excuse, to comply with a requirement of the Commission under section 100BA(3):
 - (ld) knowingly provides false or misleading information or documents under section 100BA:
 - (m) fails, without reasonable excuse, to comply with section 111A:
 - (ma) fails, without reasonable excuse, to comply with section 156AK:
 - (n) fails, without reasonable excuse, to comply with any regulations made under section 157(ch) in relation to emergency call services.
- (2) Section 156B also applies as provided in—
- (a) section 69L:
 - (b) section 69T.

Section 156A: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156A(1)(fa): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 64(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(fb): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 64(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(g): amended, on 1 July 2011, by section 82(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(i): substituted, on 1 July 2011, by section 24(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(ia): inserted, on 1 July 2011, by section 24(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(ib): inserted, on 1 July 2011, by section 24(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(j): substituted, on 1 July 2011, by section 24(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(ja): inserted, on 1 July 2011, by section 24(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(la): inserted, on 1 July 2011, by section 24(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(lb): inserted, on 1 July 2011, by section 24(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(lba): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 60 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(lbb): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 60 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(lc): inserted, on 1 July 2011, by section 24(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(ld): inserted, on 1 July 2011, by section 24(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(1)(ma): amended, on 1 July 2011, by section 82(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156A(2): added, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 64(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156B Enforcement actions that Commission may take

- (1) The Commission may take either of the following actions against a person to whom this section applies:
 - (a) serve a civil infringement notice on the person under section 156D; or
 - (b) apply to the High Court for an order, under section 156L, requiring the person to pay a pecuniary penalty to the Crown.
- (2) This section does not limit any power conferred on the Commission by or under section 15 or any other enactment.

Section 156B: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156C Matters that Commission must take into account in deciding what enforcement action to take

In making a decision about what action to take under section 156B, the Commission must take into account the following matters:

- (a) the seriousness of the alleged breach:
- (b) the circumstances in which the alleged breach took place:

- (c) whether or not the person who is alleged to have committed the breach has previously committed a breach of that kind or has engaged in any similar conduct:
- (d) the culpability of the person who is alleged to have committed the breach:
- (e) the nature and extent of any commercial gain resulting from the alleged breach:
- (f) the nature and extent of any loss or damage suffered by any person as a result of the alleged breach.

Section 156C: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Civil infringement notice

Heading: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156D Civil infringement notice

- (1) A civil infringement notice must be served within 12 months after the day on which a breach of any of the provisions set out in section 156A is alleged to have been committed.
- (2) A civil infringement notice must be in the prescribed form and must contain the following particulars:
 - (a) sufficient details to inform the person issued with the notice of the time, manner, and nature of the alleged breach:
 - (b) the amount of the pecuniary penalty prescribed to be paid for the alleged breach:
 - (c) the address at which the pecuniary penalty may be paid or an explanation of how payment of the pecuniary penalty is to be made, or both:
 - (d) the time within which the pecuniary penalty must be paid:
 - (e) a statement of what may happen if the person does not pay the pecuniary penalty by that time:
 - (f) a statement of the person's right to object, under section 156E, to the notice:
 - (g) any other prescribed information (if any).

Section 156D: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156E Objection to civil infringement notice

- (1) A person who has been served with a civil infringement notice may make a written objection to the Commission on either or both of the following grounds:
 - (a) that the person has not committed the alleged breach:

- (b) that the amount of the pecuniary penalty specified in the notice is excessive having regard to the nature of the alleged breach.
- (2) An objection must—
 - (a) contain the prescribed information; and
 - (b) be made within the prescribed time and in the prescribed manner.

Section 156E: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156F Commission must consider objection

- (1) The Commission must—
 - (a) consider every objection made in accordance with section 156E; and
 - (b) decide whether to refuse or accept an objection within 10 working days after the date on which the objection is made; and
 - (c) promptly give written notice of its decision and the reasons for its decision to the person who made the objection.
- (2) If the Commission refuses the objection, the notice under subsection (1)(c) must also contain the following particulars:
 - (a) the address at which the pecuniary penalty may be paid or an explanation of how payment of the pecuniary penalty is to be made, or both;
 - (b) a time within which the pecuniary penalty must be paid;
 - (c) a statement of what may happen if the person does not pay the pecuniary penalty by that time;
 - (d) a statement of the person's right to appeal, under section 156I, against the Commission's decision to refuse the objection.
- (3) If the Commission accepts the objection, the notice under subsection (1)(c) must also contain a statement that the civil infringement notice has been withdrawn.

Section 156F: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156G Effect of withdrawal of civil infringement notice

- (1) A person who has been served with a civil infringement notice is discharged from any liability for a breach specified in the notice if the Commission withdraws the notice—
 - (a) on its own initiative; or
 - (b) in accordance with section 156F(3).
- (2) The Commission must refund the pecuniary penalty specified in a civil infringement notice if the notice is withdrawn after the penalty was paid.

Section 156G: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156H Consequence of not paying pecuniary penalty specified in civil infringement notice

- (1) The consequence specified in subsection (2) applies if a person—
 - (a) is served with a civil infringement notice; and
 - (b) fails to pay the whole, or any part, of the pecuniary penalty on or before the later of the time specified in that notice or in the notice under section 156F(1)(c).
- (2) The consequence is that the Commission may recover from the person, as a debt due to the Commission, in the District Court,—
 - (a) the unpaid portion of the pecuniary penalty; and
 - (b) the actual and reasonable costs of recovery awarded against the person by that court.
- (3) In any proceedings for the recovery of a debt under this section, the District Court must not enter judgment in favour of the Commission unless it is satisfied that the circumstances referred to in subsection (1) exist.

Section 156H: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156H(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

156I Right to appeal

- (1) A person may appeal to the District Court if the person is dissatisfied with a decision of the Commission to refuse the person's objection to a civil infringement notice.
- (2) An appeal under subsection (1) must be brought within 20 working days after the date on which the notice under section 156F(1)(c) is given.
- (3) An appeal under subsection (1) does not operate as a stay of the civil infringement notice.

Section 156I: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156I(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

156J Decision on appeal

- (1) The District Court must determine an appeal under section 156I by dismissing or allowing the appeal.
- (2) If the District Court dismisses an appeal, the dismissal must be taken to be an order for the payment of the pecuniary penalty specified in the civil infringement notice to which the decision under appeal relates.
- (3) If the District Court allows an appeal, it may make an order that the pecuniary penalty specified in the civil infringement notice to which the decision under appeal relates—

- (a) is varied or cancelled; or
- (b) is to be refunded to the person, if the appeal is allowed after the penalty was paid to the Commission or was recovered as a debt due to the Commission under section 156H.

Section 156J: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156J(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

156K Commission may publish information about issue of civil infringement notice

- (1) The Commission may, in any manner that it thinks fit, publish a notice that contains information or statements to the following effect:
 - (a) a statement that a person has been served with a civil infringement notice under this Act:
 - (b) the name of the person concerned:
 - (c) the nature of the breach in respect of which the civil infringement notice was issued:
 - (d) the amount of the pecuniary penalty prescribed to be paid for the breach:
 - (e) any other prescribed information.
- (2) The Commission must not exercise its powers under subsection (1)—
 - (a) before the close of the prescribed time for making an objection under section 156E in respect of the relevant civil infringement notice; or
 - (b) if an objection is made under section 156E before the close of that prescribed time and the Commission refuses the objection, before the close of the period for bringing an appeal under section 156I in respect of the relevant civil infringement notice; or
 - (c) if the Commission withdraws the relevant civil infringement notice under section 156F; or
 - (d) if an appeal under section 156I is brought in respect of the relevant civil infringement notice during that appeal period and the District Court allows the appeal by cancelling the pecuniary penalty specified in that notice.

Section 156K: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Pecuniary penalty

Heading: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156L Pecuniary penalty

- (1) The High Court may order a person to pay to the Crown any pecuniary penalty that the court determines to be appropriate if the High Court is satisfied, on the application of the Commission, that—
 - (a) the person has failed, without reasonable excuse, to comply with an undertaking under Part 2A; or
 - (ab) the person has failed, without reasonable excuse, to comply with an undertaking under Part 4AA; or
 - (b) the person has committed a breach of any of the provisions set out in section 156A.
- (2) In determining an appropriate remedy to be imposed under this section, the High Court must have regard to all relevant matters, including—
 - (a) the nature and extent of any commercial gain; and
 - (b) if subsection (1)(ab) applies, the size of the service provider.
- (3) The amount of any pecuniary penalty for each act or omission must not exceed—
 - (a) \$10 million for a breach referred to in subsection (1)(a); and
 - (ab) \$10 million for a breach referred to in subsection (1)(ab) (Part 4AA undertakings—UFB and RBI); and
 - (b) \$10 million for a breach referred to in section 69L (failure to comply with or amend sharing arrangements); and
 - (ba) \$10 million for a breach referred to in section 69T (line of business restrictions); and
 - (bb) \$10 million for a breach referred to in section 69XG (Chorus undertakings); and
 - (bc) \$1 million for a breach referred to in section 156A(fa) (obligation in section 69F to notify sharing arrangements); and
 - (bd) \$1 million for a breach referred to in section 156A(fb) (obligation in section 69H to comply with Commission’s investigation, etc, powers); and
 - (c) \$300,000 in any other case.
- (4) The standard of proof in proceedings under this section is the standard of proof that applies in civil proceedings.
- (5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the breach was discovered or ought reasonably to have been discovered.

- (6) If conduct by a person constitutes a breach of 2 or more provisions referred to in subsection (1), proceedings may be commenced under this section against that person in relation to the breach of any 1 or more of those provisions.
- (7) However, no person is liable to more than 1 pecuniary penalty under this section for the same conduct.

Section 156L: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156L(1)(a): amended, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 65(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156L(1)(ab): inserted, on 1 July 2011, by section 83(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156L(2): substituted, on 1 July 2011, by section 83(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156L(3)(ab): inserted, on 1 July 2011, by section 83(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156L(3)(b): substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 65(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156L(3)(ba): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 65(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156L(3)(bb): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 65(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156L(3)(bc): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 65(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156L(3)(bd): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 65(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156M Further penalty may be imposed for continuing breach

- (1) In addition to a pecuniary penalty imposed under section 156L, the High Court may, for a continuing breach of any of the provisions referred to in section 156L(1), impose for each day or part of a day during which the breach continues a further penalty of—
 - (a) \$500,000 for a breach referred to in section 156L(1)(a); and
 - (aa) \$500,000 for a breach referred to in section 69L; and
 - (ab) \$500,000 for a breach referred to in section 69T; and
 - (ac) \$50,000 for a breach referred to in section 156A(fa) or (fb); and
 - (b) \$50,000 for a breach referred to in section 156A(g) in relation to an information disclosure requirement made under section 69ZC(4) or 69ZF(2); and
 - (c) \$10,000 for any other case.

- (2) To avoid doubt, any further penalty under subsection (1) may be imposed only in respect of the period that—
- (a) begins on the day on which the pecuniary penalty was imposed under section 156L; and
 - (b) ends on the day on which the breach is remedied.

Section 156M: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156M(1)(aa): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 66 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156M(1)(ab): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 66 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156M(1)(ac): inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 66 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156M(1)(b): amended, on 1 July 2011, by section 50 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 2—Enforcement of determinations, approved codes, and undertakings

Subpart 2: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Subpart 2 heading: amended, on 1 July 2011, by section 84 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156N Interpretation

In sections 156O to 156R,—

enforceable matter means any of the following:

- (a) a determination made under section 27:
- (b) a standard terms determination made under section 30M:
- (c) a residual terms determination made under section 30ZB:
- (d) a designated multinet network service determination made under section 39:
- (e) an undertaking under Part 2A:
- (ea) an undertaking under Part 4AA:
- (f) an approved code under Schedule 2:
- (g) a registered undertaking under Schedule 3A

party means a party to an enforceable matter and includes, in the case of an undertaking under Part 2A or 4AA, any provider of a telecommunications service that is affected by a breach of the undertaking.

Section 156N: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156N **enforceable matter** paragraph (e): amended, on 1 July 2011, by section 85(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156N **enforceable matter** paragraph (ea): inserted, on 1 July 2011, by section 85(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156N **party**: substituted, on 1 July 2011, by section 85(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156O Complaints of breach of enforceable matter

- (1) The following persons may make a written complaint to the Commission alleging a breach of an enforceable matter:
 - (a) an access seeker or an access provider of a designated service or a specified service:
 - (b) in the case of an undertaking under Part 2A or 4AA, a party.
- (2) As soon as reasonably practicable after receiving a complaint, the Commission must consider the complaint to decide—
 - (a) whether to take no action on the complaint; or
 - (b) whether to take either or both of the following actions:
 - (i) to amend the enforceable matter for the purpose of making a clarification (if the complaint relates, or appears to relate, to a dispute over the interpretation of the terms or conditions of the enforceable matter and the dispute has not previously been submitted to any dispute resolution procedure that is included in the enforceable matter):
 - (ii) to take, or join another party in taking, enforcement action for the enforceable matter in the High Court under section 156P.
- (3) In deciding whether to take the action referred to in subsection (2)(b)(i), the Commission must consult with interested parties.
- (4) In deciding whether to take the action referred to in subsection (2)(b)(ii), the Commission—
 - (a) must consider,—
 - (i) in the case of a complaint by a person referred to in subsection (1)(a), the purpose set out in section 18; and
 - (ii) in the case of a complaint by a party relating to an undertaking under Part 2A, the purpose set out in section 69W; and
 - (iii) in the case of a complaint by a party relating to an undertaking under Part 4AA, the purposes set out in section 156AC; and
 - (b) may consider the financial means of the complainant.
- (5) For the purposes of subsection (2)(b)(i), section 58 applies to the enforceable matter with any necessary modifications.
- (6) The Commission must promptly give written notice to the complainant of the Commission's decision on the complaint.

- (7) Subsection (2)(b)(i) does not apply in the case of an undertaking under Part 2A or 4AA.

Section 156O: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156O(1): substituted, on 1 July 2011, by section 86(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156O(1)(b): substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 67(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156O(4): substituted, on 1 July 2011, by section 86(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156O(4)(a)(ii): substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 67(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Section 156O(7): substituted, on 1 July 2011, by section 86(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156P Enforcement by High Court

- (1) An enforceable matter may be enforced by a party or the Commission, or both, filing it in the prescribed form in the Wellington Registry of the High Court.
- (2) The Commission may,—
- (a) for a breach of a determination made under section 27 or a standard terms determination made under section 30M, enforce the enforceable matter only if it has received a complaint of the breach under section 156O; and
 - (b) for a breach of a designated multinet network service determination, an approved code, a registered undertaking, an undertaking under Part 2A or 4AA, enforce the enforceable matter on its own initiative (whether or not it has received a complaint of the breach under section 156O).
- (3) An enforceable matter filed in the High Court under subsection (1) is enforceable as a judgment of the High Court in its civil jurisdiction.
- (4) An enforceable matter is enforceable in accordance with subsection (3) during the period in which the matter continues in force.
- (5) A party who has filed a determination under subsection (1) must file in the prescribed form in the High Court any clarification of the determination under section 58 or reconsideration of the determination under section 59.

Section 156P: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 156P(2)(b): amended, on 1 July 2011, by section 87 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

156Q Remedies for breach of enforceable matter

- (1) This section applies if an enforceable matter is filed in the High Court under section 156P(1).

- (2) On the application of the Commission, the High Court may, in addition to any other remedies available to the court, order any person to pay to the Crown any pecuniary penalty that the court determines to be appropriate if satisfied that—
 - (a) the person has committed a breach of the enforceable matter; and
 - (b) the amount of any compensatory damages that the court can award against that person for the breach is less than the value of any commercial gain resulting from the breach.
- (3) The standard of proof in any proceedings under this section is the standard of proof that applies in civil proceedings.
- (4) Proceedings under this section may be commenced within 3 years after the matter giving rise to the breach was discovered or ought reasonably to have been discovered.

Section 156Q: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

156R Limit on amount of pecuniary penalty

The amount of any pecuniary penalty imposed under section 156Q(2) must not exceed the value of any commercial gain resulting from the breach of the enforceable matter, less the amount of any compensatory damages that the court decides to award against the person who has committed the breach.

Section 156R: inserted, on 22 December 2006, by section 54 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Part 5 Miscellaneous

157AA Minister must review regulatory framework

- (1) The Minister must, not later than 30 September 2016, commence a review of the policy framework for regulating telecommunications services in New Zealand, taking account of the market structure and technology developments and competitive conditions in the telecommunications industry at the time of the review, including the impact of fibre, copper, wireless, and other telecommunications network investment.
- (2) The review must—
 - (a) consider whether the existing regulatory framework under the Telecommunications Act 2001 is the most effective means to—
 - (i) promote competition for the long-term benefit of end-users; and
 - (ii) promote the legitimate commercial interests of access providers and access seekers; and
 - (iii) encourage efficient investment for the long-term benefit of end-users, by—

- (A) providing investors with an expectation of a reasonable return on their investment; and
 - (B) providing sufficient regulatory stability, transparency, and certainty to enable businesses to make long-term investments; and
 - (iv) support innovation in telecommunications markets, or deregulation where sufficient competition exists; and
 - (b) assess whether alternative regulatory frameworks, including (without limitation) generic price control, would be a preferable and more effective means of achieving these outcomes.
- (3) In carrying out the review, the Minister must—
- (a) consult with interested parties, including the Commission, industry participants, consumers, and Māori; and
 - (b) take into account—
 - (i) the extent of network coverage of services provided on fibre, copper, wireless, and other telecommunications networks; and
 - (ii) the level of investment in fibre, copper, wireless, and other telecommunications networks, and the ability of access providers to recover that investment within a reasonable period; and
 - (iii) the ability of access providers to achieve, within a reasonable period, reasonable rates of return on their investment in telecommunications networks that adequately reflect the risks assumed by those access providers when the relevant investments were made; and
 - (iv) the level of competition in relevant telecommunications markets; and
 - (v) the effects of the regulatory framework under this Act on investment in fibre, copper, wireless, and other telecommunications networks, and on outcomes for end-users; and
 - (vi) the sustainability of the regulatory framework under this Act, given developments in technology and convergence of traditional telecommunications markets; and
 - (vii) the importance of any regulatory intervention being proportionate, having regard to the problems being addressed, the size of the relevant market, and the number and size of the potentially regulated entities; and
 - (viii) developments in wireless solutions and whether they should be part of any telecommunications regulation; and
 - (ix) experience in comparable jurisdictions and economic relations with Australia, weighed against what is appropriate for New Zealand.

land conditions and the make-up and history of New Zealand's telecommunications markets; and

(x) any other matters that the Minister considers relevant.

- (4) The Minister must use his or her best endeavours to ensure that the review is completed no later than 31 March 2019.

Section 157AA: inserted, on 1 July 2011, by section 25 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

157 Regulations

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

- (a) prescribing matters in respect of which fees are payable under this Act and the amounts of those fees:
- (b) authorising the Commission in its discretion, or on any grounds that may be prescribed, to refund, in whole or in part, any prescribed fee that has been paid under this Act:
- (c) prescribing forms for the purposes of this Act:
- (ca) prescribing the form in which a civil infringement notice must be served under section 156D:
- (cb) prescribing the amount of the pecuniary penalty that must be specified in a civil infringement notice under section 156D(2)(b) (which may not exceed \$2,000):
- (cc) prescribing the time within and the manner in which a written objection to a civil infringement notice must be made under section 156E and the information to be included in that written objection:
- (cd) prescribing any other information that a notice published by the Commission under section 156K may contain:
- (ce) prescribing the procedures or minimum standards to be followed by a consumer complaints adjudicator in dealing with complaints under a consumer complaints system:
- (cf) specifying the time frames within which the procedures or minimum standards prescribed under paragraph (ce) must be followed:
- (cg) prescribing requirements and other matters concerning the operation and administration of a consumer complaints system:
- (ch) setting out minimum requirements for emergency call services and specifying which persons are subject to those requirements:
- (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Section 157(ca): inserted, on 22 December 2006, by section 55 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 157(cb): inserted, on 22 December 2006, by section 55 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 157(cc): inserted, on 22 December 2006, by section 55 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 157(cd): inserted, on 22 December 2006, by section 55 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 157(ce): inserted, on 22 December 2006, by section 55 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 157(cf): inserted, on 22 December 2006, by section 55 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 157(cg): inserted, on 22 December 2006, by section 55 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Section 157(ch): inserted, on 22 December 2006, by section 55 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

158 Enactments amended

The enactments specified in Schedule 4 are amended in the manner indicated in that schedule.

159 Certain provisions in 1987 Act repealed

- (1), (2) *Amendment(s) incorporated in the Act(s).*
- (3) After the commencement of this Act, the 1987 Act is called the Telecommunications (Residual Provisions) Act 1987.
- (4) *Amendment(s) incorporated in the Act(s).*

160 Transitional provision for declarations made under section 2A of 1987 Act

- (1) Despite the repeal of section 2A of the 1987 Act by section 159, every declaration made under section 2A of the 1987 Act and in force immediately before the commencement of this Act continues in force and has full effect until the declaration is revoked,—
 - (a) in the case of a declaration made by Order in Council, by the Governor-General by Order in Council made on the recommendation of the Minister; or
 - (b) in the case of a declaration made by the Minister, by the Minister by notice in the *Gazette*.
- (2) The Minister must make a recommendation under subsection (1)(a) or revoke a declaration under subsection (1)(b) (as the case may be) if the Minister is satisfied that the network operator has ceased to provide—
 - (a) facilities for telecommunication between 10 or more other persons that enable at least 10 of those persons to communicate with each other; or
 - (b) facilities for broadcasting to 500 or more other persons that enable programmes to be transmitted along a line or lines to each of those persons.

- (3) A notice in the *Gazette* under subsection (1)(b) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 160(3): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

161 Transitional provision relating to repeal of section 5C of 1987 Act

Despite any enactment or rule of law, any requirements under Part 2 or regulation 7 of the Telecommunications (Information Disclosure) Regulations 1999 (SR 1999/383) with which Telecom had to comply before the repeal of section 5C of the 1987 Act cease to have effect as if those regulations had not been made.

Schedule 1AA

Transitional, savings, and related matters

s 7A

Schedule 1AA: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Part 1

Provisions relating to Telecommunications (Property Access and Other Matters) Amendment Act 2017

Schedule 1AA Part 1: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

1 Interpretation

In this Part,—

amendment Act means the Telecommunications (Property Access and Other Matters) Amendment Act 2017

commencement date means the date on which new subpart 3 of Part 4 comes into force

consent process, in relation to an installation, means the process of sending to each affected party a request for that person's consent to the FTTP service provider or network operator entering the relevant property and carrying out the installation

new subpart 3 of Part 4 means subpart 3 of Part 4 of the principal Act as replaced by section 13 of the amendment Act

principal Act means the Telecommunications Act 2001.

Schedule 1AA clause 1: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Orders for FTTP services placed before commencement of new subpart 3 of Part 4: transitional provisions

Heading: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

2 Application of clauses 3 to 5 to installations ordered before commencement date

Clauses 3 to 5 apply to an FTTP service provider or a network operator and an installation of an FTTP service where—

- (a) the order for the installation was placed with a retail provider before the commencement date; and
- (b) the installation is prescribed as a category 1 or category 2 installation for the purposes of new subpart 3 of Part 4.

Schedule 1AA clause 2: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

3 New subpart 3 of Part 4 applies if consent process not begun as at commencement date

If the consent process has not begun as at the commencement date, then, despite section 155J(1)(a), new subpart 3 of Part 4 applies as if the order had been placed after the commencement date.

Schedule 1AA clause 3: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

4 FTTP service provider or network operator may elect to use statutory procedure

(1) If the consent process has begun as at the commencement date but no affected person has responded to the request for consent by that date, the FTTP service provider or network operator may elect to—

- (a) obtain the necessary consents by continuing the process already begun; or
- (b) meet the preconditions for exercising a statutory right of access under new subpart 3 of Part 4 by—
 - (i) giving affected persons the notice and the further information required under section 155K, 155L, or 155R (whichever applies) as documents in substitution for the request for consent previously made; and
 - (ii) proceeding in accordance with new subpart 3 of Part 4.

(2) Subclause (1)(b) does not affect the application of section 155J (general preconditions for statutory rights of access to apply) except to the extent that section 155J(1)(a) requires the order for the installation to have been placed after the commencement date.

Schedule 1AA clause 4: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

5 Consent process begun and some responses received

(1) If, as at the commencement date, the consent process has begun and 1 or more affected persons have given their consent but others have not responded to the request for consent, the FTTP service provider or network operator may elect to—

- (a) obtain the consents of those who have not responded, by continuing the process already begun; or
- (b) meet the preconditions for exercising a statutory right of access under new subpart 3 of Part 4 by—
 - (i) giving to the affected persons who have not responded the notice and the further information required under section 155K, 155L, or

- 155R (whichever applies) as documents in substitution for the request for consent given before the commencement date; and
- (ii) proceeding in accordance with new subpart 3 of Part 4 in respect of those persons.
- (2) The FTTP service provider or network operator may, at its discretion, accept an affected person's retraction of his or her consent given before the commencement date.
- (3) Subclause (1)(b) does not affect the application of section 155J (general preconditions for statutory rights of access to apply) except to the extent that section 155J(1)(a) requires the order for the installation to have been placed after the commencement date.

Schedule 1AA clause 5: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Exercise of Minister's powers in connection with dispute resolution scheme

Heading: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

6 Action taken by Minister on dispute resolution scheme

- (1) Subclause (2) applies if, before the commencement of sections 13, 20, and 21 of the amendment Act, any action is taken by or on behalf of the Minister in doing any of the following:
- (a) notifying in the *Gazette* the information that a person applying for approval of a scheme as the dispute resolution scheme must include in an application:
- (b) seeking and accepting applications for approval of a scheme as the approved scheme:
- (c) consulting industry bodies and other persons that the Minister considers would be likely to be substantially affected by a potential approval:
- (d) approving a scheme as the approved scheme.
- (2) The action taken is deemed to have been taken by the Minister under, and for the purposes of, clauses 3 to 5 of Schedule 3C of the principal Act and bringing the amendment Act into operation.

Schedule 1AA clause 6: inserted, on 3 May 2017, by section 20 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Schedule 1

Designated services and specified services

ss 4, 5, 10, 19, 29, 45, 46, 49(a), 52(a), 66–68

Part 1

Preliminary

Subpart 1—Interpretation and application provisions

1 Interpretation

In this schedule, unless the context otherwise requires,—

actual costs saved means the net costs saved by supplying the service on a wholesale rather than a retail basis to the access seeker

avoided costs saved means the difference in the access provider's costs between supplying the service on a wholesale basis only and supplying the service on both a wholesale and retail basis, including a share of retail-specific fixed costs

Chorus's local telephone exchange means a local telephone exchange (or equivalent facility) where Chorus's local loop network terminates, whether that local telephone exchange is owned and operated by Chorus or by any other person

fixed telecommunications network means—

- (a) any lines between a user's premises and the local telephone exchange or equivalent facility:
- (b) any fixed PSTN:
- (c) any telecommunications links between fixed PSTNs:
- (d) any fixed PDN:
- (e) any telecommunications links between fixed PDNs:
- (f) any value-added telecommunications services associated with telecommunications services provided by those assets

forward-looking common costs—

- (a) means those costs efficiently incurred by the service provider in providing the service that are not directly attributable to providing an additional unit to that service; but
- (b) does not include any costs incurred by the service provider in relation to a TSO instrument

geographically averaged price means a price that is calculated as an average of all geographically non-averaged prices for a designated service throughout the geographical extent of New Zealand

local loop network means that part of Chorus's copper network that connects the end-user's building (or, where relevant, the building's distribution frame) to the handover point in Chorus's local telephone exchange (including where it passes through a distribution cabinet) or distribution cabinet (or equivalent facility)

third generation cellular telephone network means a cellular telephone network based on the IMT 2000 set of radio technology standards as recognised by the International Telecommunication Union

TSLRIC, in relation to a telecommunications service,—

- (a) means the forward-looking costs over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, the service, taking into account the service provider's provision of other telecommunications services; and
- (b) includes a reasonable allocation of forward-looking common costs.

Schedule 1 clause 1 **Chorus's local telephone exchange**: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 68 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Schedule 1 clause 1 **geographically averaged price**: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 68 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Schedule 1 clause 1 **local loop network**: substituted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 68 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

2 Application of Baumol-Willig rule

- (1) To avoid doubt, the Baumol-Willig rule does not apply in respect of any applicable initial pricing principle or any applicable final pricing principle that provides for a forward-looking cost-based pricing method as a possible pricing principle.
- (2) For the purposes of subclause (1), the **Baumol-Willig rule** means the pricing rule known as the Baumol-Willig rule as referred to in *Telecom Corporation of New Zealand Ltd v Clear Communications Ltd* (1994) 6 TCLR 138, PC.

3 Application of retail price minus avoided costs saved pricing principle

- (1) In relation to a telecommunications service, in applying an applicable initial pricing principle or an applicable final pricing principle that takes a retail price for the service and subtracts any avoided costs saved by the applicable access provider of the service, the applicable access provider is not entitled to recover

any of the following things in respect of those costs that form part of the avoided costs saved associated with its retail operations:

- (a) inefficiencies in the provision of the service giving rise to higher costs;
 - (b) profits in excess of what would represent a reasonable return (including reasonable profit) on capital invested.
- (2) Subclause (1) is for the avoidance of doubt.

4 Application of pricing principles for designated interconnection access services

In applying an applicable initial pricing principle or an applicable final pricing principle, the Commission may choose different pricing principles for different call types of voice and data calls (including dial-up Internet data calls) or calls with significantly different characteristics for designated interconnection access services.

4A Application of pricing principles for Chorus's unbundled copper local loop network and Chorus's unbundled bitstream access

In applying the initial pricing principle or the final pricing principle for the following designated services, the Commission must determine a geographically averaged price:

- (a) Chorus's unbundled bitstream access service;
- (b) Chorus's unbundled copper local loop network service.

Schedule 1 clause 4A: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 68 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

4B Application of pricing principles for designated access services

In applying an applicable initial pricing principle or an applicable final pricing principle, the Commission must ensure that an access provider of a designated service does not recover costs that the access provider is recovering in the price of a designated or specified service provided under a determination prepared under section 27 or 30M or a designated or specified service provided on commercial terms.

Schedule 1 clause 4B: inserted, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 68 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Subpart 2—Standard access principles for designated access services and specified services

5 Standard access principles for designated access services and specified services

The following standard access principles apply to designated access services and specified services:

- (a) *principle 1*: the access provider must provide the service to the access seeker in a timely manner:
- (b) *principle 2*: the service must be supplied to a standard that is consistent with international best practice:
- (c) *principle 3*: the access provider must provide the service on terms and conditions (excluding price) that are consistent with those terms and conditions on which the access provider provides the service to itself:
- (d) *principle 4*: the access provider must, if requested, provide an access seeker with information about a designated access service or specified service at the same level of detail, and within the same time frame, that the access provider would provide that information had it been requested by one of its own business units.

Schedule 1 clause 5(d): added, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

6 Limits on application of standard access principles set out in clause 5

- (1) Principles 1 to 4 set out in clause 5 are limited by the following factors:
 - (a) reasonable technical and operational practicability having regard to the access provider's network:
 - (b) network security and safety:
 - (c) existing legal duties on the access provider to provide a defined level of service to users of the service:
 - (d) the inability, or likely inability, of the access seeker to comply with any reasonable conditions on which the service is supplied:
 - (e) any request for a lesser standard of service from an access seeker.
- (2) Principle 4 set out in clause 5—
 - (a) does not extend to any information about identifiable individual customers of the access provider; and
 - (b) is subject to the requirement that any confidential information provided to the access seeker, in accordance with that principle, must be kept confidential to that access seeker.

Schedule 1 clause 6(1): amended, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 clause 6(2): added, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Part 2 Designated services

Subpart 1—Designated access services

Interconnection with a fixed PSTN

<i>Description of service:</i>	Origination and termination (and their associated functions) of voice and data calls (including dial-up Internet calls) on a fixed PSTN
<i>Conditions:</i>	Nil
<i>Access provider:</i>	A person who operates a fixed PSTN
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Benchmarking against interconnection prices in comparable countries that result from the application to networks that are similar to the access provider's fixed PSTN of— (a) a forward-looking cost-based pricing method; or (b) if the Commission considers that a forward-looking cost-based pricing method does not best give effect to the purpose set out in section 18, whichever of the following methods that the Commission considers best gives effect to that purpose: (i) a pure bill and keep method; or (ii) a pure bill and keep method applied to two-way traffic in balance (or to a specified margin of out-of-balance traffic) and a forward-looking cost-based pricing method applied to out-of-balance traffic (or traffic beyond a specified out-of-balance margin)
<i>Final pricing principle:</i>	Either— (a) TSLRIC; or (b) if the Commission considers that TSLRIC does not best give effect to the purpose set out in section 18, whichever of the following methods that the Commission considers best gives effect to that purpose: (i) a pure bill and keep method; or (ii) a pure bill and keep method applied to two-way traffic in balance (or to a specified margin of out-of-balance traffic) and TSLRIC applied to out-of-balance traffic (or traffic beyond a specified out-of-balance margin)
<i>Requirement referred to in section 45 for final pricing principle:</i>	If TSLRIC is the final pricing principle, the Commission must, by notice in writing, require the access provider to calculate the price payable for the service in accordance with TSLRIC and any regulations relating to that principle not later than the time specified in the notice
<i>Additional matters that must be considered regarding application of section 18:</i>	In applying the initial pricing principle and final pricing principle, the Commission must consider—

- (a) incentives to terminate dial-up Internet traffic and other similar one-way traffic streams must be efficient; and
- (b) the effect of any obligation under the TSO instrument to provide price-capped unlimited calls

Retail services offered by means of a fixed telecommunications network

Description of service applicable before the expiry of 3 years from separation day:

A retail service that satisfies both of the following:

- (a) any of the following:
 - (i) a non-price-capped local access and calling service; or
 - (ii) a non-price-capped retail service (and its associated functions) supplying an access and calling service in a different form to the service described in subparagraph (i) (and including, for the avoidance of doubt, a service supplying ISDN digital access, or Centrex-based access or facsimile); or
 - (iii) a value-added non-price-capped retail service that is supplied in conjunction with a service described in subparagraph (i) or (ii) above or a price-capped residential local access and calling service; and
- (b) a retail service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets:
 - (i) all markets in which Telecom faces limited, or is likely to face lessened, competition for that service;
 - (ii) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for that service as determined by the Commission

Description of service applicable after the expiry of 3 years from separation day:

A retail service that satisfies both of the following:

- (a) either of the following:
 - (i) a non-price-capped retail service (and its associated functions) supplying an access and calling service in a different form to a local access and calling service (and including, for the avoidance of doubt, a service supplying ISDN digital access, or Centrex-based access or facsimile); or
 - (ii) a value-added non-price-capped retail service that is supplied in conjunction with a service described in subparagraph (i) above or a local access and calling service; and
- (b) a retail service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets:
 - (i) all markets in which Telecom faces limited, or is likely to face lessened, competition for that service;
 - (ii) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for that service as determined by the Commission

Access provider:

Telecom

<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Either— (a) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of these services, in the case of a service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; or (b) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus actual costs saved pricing in respect of these services, in the case of a service offered by Telecom in markets in which Telecom does not face limited, or lessened, competition for that service
<i>Final pricing principle:</i>	Either— (a) average or best retail price minus a discount comprising avoided costs saved pricing, in the case of a service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; or (b) average or best retail minus a discount comprising actual costs saved, in the case of a service offered by Telecom in markets in which Telecom does not face limited, or lessened, competition for that service
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Local access and calling service offered by means of fixed telecommunications network

<i>Description of service applicable before the expiry of 3 years from separation day:</i>	A price-capped residential local access and calling service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets: (a) all markets in which Telecom faces limited, or is likely to face lessened, competition for the service: (b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for price-capped residential local access and calling service as determined by the Commission
<i>Description of service applicable after the expiry of 3 years from separation day:</i>	A local access and calling service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets: (a) all markets in which Telecom faces limited, or is likely to face lessened, competition for the service: (b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for the service as determined by the Commission

<i>Conditions applicable before the expiry of 3 years from separation day:</i>	That either— <ul style="list-style-type: none"> (a) Telecom faces limited, or is likely to face lessened, competition in a market for a price-capped residential local access and calling service offered by Telecom to end-users; or (b) Telecom does not face limited, or is not likely to face lessened, competition for a price-capped residential local access and calling service offered by Telecom to end-users, and the Commission has decided to require a local access and calling service to be wholesaled
<i>Conditions applicable after the expiry of 3 years from separation day:</i>	That either— <ul style="list-style-type: none"> (a) Telecom faces limited, or is likely to face lessened, competition in a market for a local access and calling service offered by Telecom to end-users; or (b) Telecom does not face limited, or is not likely to face lessened, competition for a local access and calling service offered by Telecom to end-users, and the Commission has decided to require a local access and calling service to be wholesaled
<i>Access provider:</i>	Telecom
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles</i>	The limits set out in clause 6
<i>Initial pricing principle applicable before the expiry of 3 years from separation day</i>	Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus 2%
<i>Initial pricing principle applicable after the expiry of 3 years from separation day:</i>	For a price-capped residential local access and calling service, either— <ul style="list-style-type: none"> (a) Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus 2%; or (b) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service For a non-price-capped local access and calling service, either— <ul style="list-style-type: none"> (a) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of these services, in the case of a service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; or (b) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus actual costs saved pricing in respect of these services, in the case of a service offered by Telecom in markets in which Telecom

does not face limited, or lessened, competition for that service; or

- (c) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service; or
- (d) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (b) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service

Final pricing principle applicable before the expiry of 3 years from separation day

Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus actual costs saved

Final pricing principle applicable after the expiry of 3 years from separation day:

For a price-capped local access and calling service, either—

- (a) Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus actual costs saved; or
- (b) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service

For a non-price-capped local access and calling service, either—

- (a) average or best retail price minus a discount comprising avoided costs saved pricing, in the case of a service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; or
- (b) average or best retail price minus a discount comprising actual costs saved, in the case of a service offered by Telecom in markets in which Telecom does not face limited, or is not likely to face lessened, competition for that service; or
- (c) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service; or
- (d) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (b) minus the price for Chorus's full unbundled copper local loop network plus the relevant price

(if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service

Requirement referred to in section 45 or final pricing principle: Nil

Additional matters that must be considered regarding application of section 18: Nil

Retail services offered by means of a fixed telecommunications network as part of bundle of retail services

Description of service: A retail service that—

(a) is, or has previously been, offered separately by Telecom to end-users by means of a fixed telecommunications network; and

(b) is offered by Telecom to end-users as part of a bundle of retail services—

(i) in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; and

(ii) if the effect of the bundled price is likely to significantly reduce the ability of an efficient rival to contest the market

Conditions: Nil

Access provider: Telecom

Access seeker: A service provider who seeks access to the service

Access principles: The standard access principles set out in clause 5

Limits on access principles: The limits set out in clause 6

Initial pricing principle: The wholesale price for the retail service is—

(a) in the case of Telecom's price-capped residential access and calling service, the amount calculated using the following formula:

$$a \times \left(\frac{100 - b}{100} \right) = c$$

where—

- a is the imputed retail price for the service. The imputed retail price must—
- (i) be based on the observed discount of the bundle relative to the total price of the services offered separately; and
- (ii) take into account any price difference that arises from the lower cost of providing the services as a bundle, the lower cost of quantity supply, any difference in the cost of providing the services between different markets, and from any other difference in cost
- b is a 2% discount

- c is the wholesale price
- (b) in the case of any other telecommunications service offered by Telecom in a bundle of retail services by means of its fixed telecommunications network, the amount calculated using the following formula:

$$a \times \left(\frac{100 - b}{100} \right) = c$$

where—

- a is the imputed retail price for the service. The imputed retail price must—
- (i) be based on the observed discount of the bundle relative to the total price of the services offered separately; and
 - (ii) take into account any price difference that arises from the lower cost of providing the services as a bundle, the lower cost of quantity supply, any difference in the cost of providing the services between different markets, and from any other difference in cost
- b is the discount (as a percentage) off the imputed retail price for the service. The discount must be benchmarked against discounts applied to comparable retail services in comparable countries that apply retail price minus avoided costs saved or equivalent pricing
- c is the wholesale price

Final pricing principle:

The wholesale price for the retail service is the amount calculated using the following formula:

$$a - b = c$$

where—

- a is the imputed retail price for the service. The imputed retail price must—
- (a) be based on the observed discount of the bundle relative to the total price of the services offered separately; and
 - (b) take into account any price difference that arises from the lower cost of providing the services as a bundle, the lower cost of quantity supply, any difference in the cost of providing the services between different markets, and from any other difference in cost
- b is the discount off the imputed retail price for the service. The discount must be determined by using,—
- (a) in the case of a non price-capped service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service, avoided costs saved pricing; or
 - (b) in the case of Telecom's price-capped residential access and calling service in which Telecom faces limited, or is likely to face lessened, competition for that service, actual costs saved pricing

	c	is the wholesale price
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil	
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil	
Chorus's unbundled bitstream access		
<i>Description of service:</i>		A digital subscriber line enabled service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, that part of a fixed PDN that connects the end-user's building (or, where relevant, the building's distribution frame) to a first data switch (or equivalent facility), other than a digital subscriber line access multiplexer (DSLAM)
		To avoid doubt, unless otherwise requested by the access seeker, the supply of this service must not be conditional on a requirement that the access seeker, end-users, or any other person must purchase any other service from the access provider
<i>Conditions:</i>		That either—
	(a)	Chorus faces limited, or is likely to face lessened, competition in a relevant market; or
	(b)	Chorus does not face limited, or is not likely to face lessened, competition in a relevant market, and the Commission has decided to require Chorus's unbundled bitstream access to be wholesaled in that market
<i>Access provider:</i>		Chorus
<i>Access seeker:</i>		A service provider who seeks access to the service
<i>Access principles:</i>		The standard access principles set out in clause 5
<i>Limits on access principles:</i>		The limits set out in clause 6 and the additional limit that Chorus is only required to provide access to the trunk side of the first data switch or equivalent facility (for which purpose a DSLAM is not an equivalent facility)
<i>Initial pricing principle applicable before the expiry of 3 years from separation day:</i>		Retail price (as imputed by the Commission, having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of the service
		Plus, if no person is also purchasing a local access and calling service from Telecom in relation to the relevant subscriber line, all or any of the costs of Chorus's local loop network that would usually be recovered by Telecom from an end-user of its local access and calling service, as determined by benchmarking against comparable countries (unless the Commission considers that the price already takes into account all of the relevant costs)
<i>Initial pricing principle applicable after the expiry of 3 years from separation day:</i>		The price for the designated access service entitled Chorus's unbundled copper local loop network plus benchmarking additional costs incurred in providing the unbundled bitstream access service against prices in comparable countries that use a forward-looking cost-based pricing method

<i>Final pricing principle applicable before the expiry of 3 years from separation day:</i>	Either— (a) retail price (as imputed by the Commission, having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount comprising avoided costs saved, in a case where Chorus faces limited, or is likely to face lessened, competition in a relevant market; or (b) retail price (as imputed by the Commission, having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount comprising actual costs saved, in a case where Chorus does not face limited, or lessened, competition in a relevant market Plus, in either case, if no person is also purchasing a local access and calling service from Telecom in relation to the relevant subscriber line, all or any of the costs of Chorus's local loop network that would usually be recovered by Telecom from an end-user of its local access and calling service, as determined by identifying the relevant costs (unless the Commission considers that the price already takes into account all of the relevant costs)
<i>Final pricing principle applicable after the expiry of 3 years from separation day:</i>	The price for Chorus's unbundled copper local loop network plus TSLRIC of additional costs incurred in providing the unbundled bitstream access service
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	The Commission must consider relativity between this service and Chorus's unbundled copper local loop network service (to the extent that terms and conditions have been determined for that service)

Chorus's unbundled bitstream access backhaul

<i>Description of service:</i>	A service (and its associated functions, including the associated functions of operational support systems) that provides transmission capability (whether the transmission capacity is copper, fibre, or anything else) between the trunk side of a first data (or equivalent facility), other than a DSLAM, that is connected to the end-user's building (or, where relevant, the building's distribution frame) and the access seeker's nearest available point of interconnection
<i>Conditions:</i>	That either— (a) Chorus faces limited, or is likely to face lessened, competition in a market for transmission capacity between the first data switch (or equivalent facility) and the access seeker's nearest available point of interconnection; or (b) Chorus does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between the first data switch (or equivalent facility) and the access seeker's nearest available point of interconnection, and the Commission has decided to require Chorus's unbundled bitstream access to be wholesaled in that market
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service

<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Chorus's unbundled copper local loop network

<i>Description of service:</i>	A service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, Chorus's copper local loop network (including any relevant line in Chorus's local telephone exchange or distribution cabinet)
<i>Conditions:</i>	Nil
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service, except, until 3 years after separation day, Telecom
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	The Commission must consider relativity between this service and Chorus's unbundled bitstream access service (to the extent that the terms and conditions have been determined for that service)

Chorus's unbundled copper local loop network co-location

<i>Description of service:</i>	<p>A service (and its associated functions, including the associated functions of operational support systems) that provides co-location facilities for an access seeker's equipment, and access to the handover point, at Chorus's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of providing access to, and interconnection with,—</p> <ol style="list-style-type: none"> (a) Chorus's unbundled copper local loop network (including any necessary supporting equipment); and (b) Chorus's unbundled copper low frequency service (including any necessary supporting equipment) <p>To avoid doubt, the same instance of this service can be used to support both Chorus's unbundled copper local loop network and Chorus's unbundled copper low frequency service</p>
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	<p>To avoid doubt, access seeker equipment includes the equipment of any person other than the access seeker (including any line) if that equipment is being used to support the provision of backhaul for the access seeker</p> <p>To avoid doubt, this service includes access to, and the use of, space in, on, or around Chorus's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of installing and maintaining the access seeker's equipment</p>
<i>Conditions:</i>	Nil
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6 and the additional limit of the interests of other service providers who are co-located in the relevant facilities
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil
Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)	
<i>Description of service:</i>	A service (and its associated functions, including the associated functions of operational support systems) that provides transmission capacity in a network (whether the transmission capacity is copper, fibre, or anything else) between the handover point in Chorus's distribution cabinet (or equivalent facility) and the handover point in Chorus's local telephone exchange for the purposes of providing access to, and interconnection with, Chorus's unbundled copper local loop network (including any necessary supporting equipment)
<i>Conditions:</i>	Nil
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil

Additional matters that must be considered regarding application of section 18: Nil

Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

Description of service: A service (and its associated functions, including the associated functions of operational support systems) that provides transmission capacity in a network (whether the transmission capacity is copper, fibre, or anything else) between the handover point in Chorus's local telephone exchange and the access seeker's nearest available point of interconnection for the purposes of providing access to, and interconnection with,—

- (a) Chorus's unbundled copper local loop network (including any necessary supporting equipment); and
- (b) Chorus's unbundled copper low frequency service (including any necessary supporting equipment)

To avoid doubt, the same instance of this service can be used to support both Chorus's unbundled copper local loop network and Chorus's unbundled copper low frequency service

Conditions: That either—

- (a) Chorus faces limited, or is likely to face lessened, competition in a market for transmission capacity between Chorus's local telephone exchange and the access seeker's nearest available point of interconnection; or
- (b) Chorus does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between Chorus's local telephone exchange and the access seeker's nearest available point of interconnection, and the Commission has decided to require Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point) to be wholesaled in that market

Access provider: Chorus

Access seeker: A service provider who seeks access to the service

Access principles: The standard access principles set out in clause 5

Limits on access principles: The limits set out in clause 6

Initial pricing principle: Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method

Final pricing principle: TSLRIC

Requirement referred to in section 45 or final pricing principle: Nil

Additional matters that must be considered regarding application of section 18: Nil

Chorus's unbundled copper low frequency service

Description of service: A service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, the low frequency (being the frequency band

	between 300 and 3400 Hz) in Chorus's copper local loop network (including any relevant line in Chorus's local telephone exchange or distribution cabinet) that connects the end-user's building (or, where relevant, the building's distribution frame) to the handover point in Chorus's local telephone exchange
<i>Conditions</i>	<p>Chorus's unbundled copper low frequency service is only available where Chorus's local loop that connects the end-user's building (or, where relevant, the building's distribution frame) to the handover point in Chorus's local telephone exchange remains in place</p> <p>To avoid doubt, there is no obligation on Chorus that Chorus's copper network that connects a cabinet (or equivalent facility) and Chorus's local telephone exchange remain in place or be maintained if that part of Chorus's copper network is only being used to provide Chorus's unbundled copper low frequency services</p>
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Either— <ol style="list-style-type: none">the geographically averaged price for Chorus's full unbundled copper local loop network; orif a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the cost of any additional elements of Chorus's local loop network that are not recovered in the price for Chorus's unbundled bitstream access service
<i>Final pricing principle:</i>	Either— <ol style="list-style-type: none">the geographically averaged price for Chorus's full unbundled copper local loop network; orif a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the TSLRIC of any additional elements of Chorus's local loop network that are not recovered by the price for Chorus's unbundled bitstream access service
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Mobile termination access services (MTAS)

<i>Description of service:</i>	Termination (and its associated functions) on a cellular mobile telephone network of any, or any combination, of the following: <ol style="list-style-type: none">voice calls originating on a fixed telephone network;voice calls originating on another cellular mobile telephone network;short-message-service (SMS) originating on another cellular mobile telephone network
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	For the avoidance of doubt, these services include the termination of internationally originated voice calls and SMS, and voice-over-Internet-protocol-originated voice calls, where these are handed over at a mobile switching centre in New Zealand
<i>Conditions:</i>	Nil
<i>Access provider:</i>	A person who operates a cellular mobile telephone network
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Benchmarking against the costs of providing similar services in comparable countries that result from the application of— <ul style="list-style-type: none"> (a) a forward-looking cost-based methodology; or (b) if the Commission considers that a forward-looking cost-based methodology does not best give effect to the purpose set out in section 18, whichever of the following methods that the Commission considers best gives effect to that purpose: <ul style="list-style-type: none"> (i) a pure bill and keep method; or (ii) a pure bill and keep method applied to two-way traffic in balance (or to a specified margin of out-of-balance traffic) and a forward-looking cost-based methodology applied to out-of-balance traffic (or traffic beyond a specified out-of-balance margin)
<i>Final pricing principle:</i>	Either— <ul style="list-style-type: none"> (a) TSLRIC; or (b) if the Commission considers that TSLRIC does not best give effect to the purpose set out in section 18, whichever of the following methods that the Commission considers best gives effect to that purpose: <ul style="list-style-type: none"> (i) a pure bill and keep method; or (ii) a pure bill and keep method applied to two-way traffic in balance (or to a specified margin of out-of-balance traffic) and TSLRIC applied to out-of-balance traffic (or traffic beyond a specified out-of-balance margin)
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding the application of section 18:</i>	Nil

Schedule 1 Part 2 subpart 1: amended, on 30 November 2011 (being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36), by section 68 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Schedule 1 Part 2 subpart 1: amended, on 30 June 2011, by clause 3(2) of the Telecommunications (Retail Services and Bundle of Retail Services) Order 2011 (SR 2011/200).

Schedule 1 Part 2 subpart 1: amended, on 23 September 2010, by clause 3 of the Telecommunications (Mobile Termination Access Services) Order 2010 (SR 2010/262).

Subpart 2—Designated multinet network services

Local telephone number portability service

- Description of service:* A service that enables an end-user of a fixed telephone network service to change providers of that service but to retain the same telephone number within a local calling area
- Conditions:* Nil
- Access provider:* Every person who operates—
- (a) a PSTN to which numbers have been allocated; and
 - (b) a telephone service that relates to that number portability service
- Access seeker:* Any person who—
- (a) operates a PSTN to which numbers have been allocated; and
 - (b) operates a telephone service that relates to that number portability service; and
 - (c) seeks access to that number portability service

Cellular telephone number portability service

- Description of service:* A service that enables an end-user of a cellular telephone network service to change providers of that service but to retain the same telephone number (including the same cellular network access code)
- Conditions:* Nil
- Access provider:* Every person who operates—
- (a) a PSTN to which numbers have been allocated; and
 - (b) a telephone service that relates to that number portability service
- Access seeker:* Any person who—
- (a) operates a PSTN to which numbers have been allocated; and
 - (b) operates a telephone service that relates to that number portability service; and
 - (c) seeks access to that number portability service

National toll-free telephone number portability service

[Expired]

Telecom's fixed PSTN to mobile carrier pre-selection service

[Expired]

Schedule 1 **Access to, and interconnection with, Telecom's fixed PDN**: repealed, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 **Bundle of retail services offered by means of Telecom's fixed telecommunications network**: substituted, on 8 January 2004, by clause 3 of the Telecommunications (Initial Pricing Principle) Order 2003 (SR 2003/357).

Schedule 1 **Interconnection with fixed PSTN other than Telecom's**: amended, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 **National toll-free telephone number portability service**: expired, on 21 December 2006, by section 65(1)(a).

Schedule 1 **Telecom's fixed PDN backhaul**: repealed, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 **Telecom's fixed PSTN to mobile carrier pre-selection service**: expired, on 21 December 2006, by section 65(1)(a).

Schedule 1 **Telecom's unbundled bitstream access**: inserted, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 **Telecom's unbundled bitstream access backhaul**: inserted, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 **Telecom's unbundled copper local loop network**: inserted, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 **Telecom's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)**: inserted, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 **Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point)**: inserted, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 1 **Telecom's unbundled copper local loop network co-location**: inserted, on 22 December 2006, by section 56 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Part 3 Specified services

National Roaming

Description of service:

A service (and its associated functions) that enables transmission of cellular mobile traffic by means of the access provider's cellular mobile telephone network between (but not including) the cellular mobile device of the access seeker's end-user and the access seeker's handover point (or equivalent facility) and that enables an end-user who subscribes to an access seeker's cellular mobile service to use services (except value-added services) within the area where the access provider has a cellular mobile telephone network, but which is outside the coverage area of the access seeker's cellular mobile telephone network

Conditions:

All of the following:

- (a) the access seeker must have rolled out a cellular mobile telephone network that—
 - (i) comprises at least 100 cellsites (each of which provides wide area coverage and delivers cellular mobile services to both outdoor and indoor areas and where service in areas of coverage of that cellsite will be lost if the cellsite is switched off); or
 - (ii) covers at least 10% of the New Zealand population:
- (b) the cellular mobile telephone networks of the access seeker and the access provider must be technically compatible and be able to interconnect with each other:
- (c) the Commission must have approved a plan for the access seeker. That plan must include—
 - (i) the establishment of roll-out milestones to be met by the access seeker to continue to access the national roaming service; and
 - (ii) provision for roll-out of a cellular mobile telephone network that provides cellular mobile services to at least 65% of the New Zealand population:

- (d) the Commission must be satisfied that the access seeker has the capability to comply with the agreed network roll-out plan:
- (e) the services (other than value-added services) for which transmission is sought must each be offered by the access provider to its end-users and be generally available to the access seeker's end-users from the access seeker's own cellular mobile telephone network (that is, the effect of roaming must be to increase the coverage area for the access seeker's end-users)

Access provider:

A cellular mobile telephone network operator who operates a cellular mobile telephone network

Access seeker:

A cellular mobile telephone network operator (except Telecom or Vodafone New Zealand Limited or their successors or subsidiaries) that holds sufficient radio spectrum rights to enable that operator to roll out a cellular mobile telephone network that provides cellular mobile services to at least 65% of the New Zealand population

Access principles:

The standard access principles set out in clause 5

Limits on access principles:

The limits set out in clause 6 and additional limits, which must be set by taking the following matters into account:

- (a) whether the access provider has, for each relevant cellsite within an area, sufficient available capacity to provide the service, taking into account its reasonable anticipated requirements for capacity at that cellsite:
- (b) all legal requirements and all existing contractual obligations that the access provider has with third parties:
- (c) the requirement on the access provider to provide the service to the access seeker will cease on the earlier of—
 - (i) any failure by the access seeker to comply with the agreed network roll-out plan, as determined by the Commission; or
 - (ii) any other events specified by the Commission in its determination

Additional matters that must be considered regarding application of section 18:

The Commission must establish roll-out milestones and roll-out thresholds that ensure that the access seeker has strong incentives to roll out its cellular mobile telephone network in an efficient and timely manner

Co-location on cellular mobile transmission sites

Description of service:

A service that enables co-location of cellular mobile telephone network transmission and reception equipment (including any necessary supporting equipment on or with the following facilities (**relevant facilities**)):

- (a) any towers, poles, masts, or other similar structures—
 - (i) that are used for the transmission or reception of telecommunications via a cellular mobile telephone network; and
 - (ii) that are owned, managed, or leased by the access provider:
- (b) all sites, buildings, or utility services that are associated with the kinds of structures referred to in paragraph (a)

<i>Conditions:</i>	Nil
<i>Access provider:</i>	Every person who operates a cellular mobile telephone network
<i>Access seeker:</i>	Any person who— <ul style="list-style-type: none"> (a) operates, or is likely to operate, a cellular mobile telephone network; and (b) seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6 and additional limits, which must be set by taking the following matters into account: <ul style="list-style-type: none"> (a) the access provider's current and reasonable forecast requirements for capacity on the relevant facilities; (b) the management of existing or potential radio spectrum interference arising from use of the relevant facilities; (c) all relevant requirements under the Resource Management Act 1991; (d) all relevant health and safety requirements under any enactment; (e) all existing contractual obligations to third parties, including lessors of land on which relevant facilities are located; (f) the interests of third parties who use the relevant facilities
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Co-location of equipment for fixed telecommunications services at sites used by Broadcast Communications Limited
[Expired]

Schedule 1 **Co-location of equipment for fixed telecommunications services at sites used by Broadcast Communications Limited**: expired, on 21 December 2006, by section 65(1)(a).

Schedule 1 **National Roaming**: substituted, on 11 September 2008, by clause 3 of the Telecommunications (National Roaming) Order 2008 (SR 2008/251).

Schedule 2 Telecommunications access codes

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Part 2

Telecommunications access codes prepared by Commission

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Part 1

Telecommunications access codes prepared by Forum

Schedule 2 Part 1 heading: inserted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

1 Forum may prepare code

- (1) The Forum may, on its own initiative or if invited to do so by the Commission, prepare 1 or more telecommunications access codes for approval by the Commission.
- (2) The Commission may issue guidelines to the Forum on any matters relating to telecommunications access codes, including advice on what matters are appropriately dealt with by those codes.

Schedule 2 clause 1(2): added, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

2 Requirements for draft codes for designated access services and specified services

- (1) A draft code for 1 or more designated access services or specified services may only provide for procedures, requirements, and other matters, not inconsistent with this Act, that relate to an aspect or aspects of the supply of that service or those services.
- (2) A draft code to which subclause (1) applies must—
 - (a) be consistent with applicable access principles and any regulations made in respect of the applicable access principles; and
 - (b) be consistent with the purpose set out in section 18; and
 - (c) comply with the Commerce Act 1986; and
 - (d) not directly provide for the implementation of initial and final pricing principles and any regulations relating to those principles.

Schedule 2 clause 2(1): substituted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

3 Requirements for draft codes for designated multi-network services

- (1) A draft code for 1 or more designated multi-network services may only provide for procedures, requirements, and other matters, not inconsistent with this Act, in respect of—
 - (a) the functions that must be performed by a system for determining the service;
 - (b) the standard to which those functions must be performed.
- (2) A draft code to which subclause (1) applies must—
 - (a) be consistent with the purpose set out in section 18; and
 - (b) comply with the Commerce Act 1986; and

- (c) not directly provide for the apportionment of the cost of delivering the service between the access seeker and all access providers of the service.

3A Requirements for draft codes for services supplied under registered undertaking

- (1) A draft code for 1 or more services supplied under a registered undertaking may only provide for procedures, requirements, and other matters, not inconsistent with this Act, that relate to an aspect or aspects of the supply of that service or those services.
- (2) A draft code to which subclause (1) applies must—
 - (a) be consistent with the purpose set out in section 18; and
 - (b) comply with the Commerce Act 1986; and
 - (c) not provide for any matter relating to the price of the service.

Schedule 2 clause 3A: inserted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

4 Forum must arrange referendum on draft code

- (1) Before a draft code is submitted to the Commission for approval, the Forum must hold a referendum on the draft code.
- (2) The Forum must take all practicable steps to invite, for the purpose of voting on a draft code, all eligible persons who are, in the opinion of the Commission, affected or likely to be affected by the draft code.
- (3) The Forum may otherwise determine the way in which the referendum is conducted.
- (3A) All eligible persons who are, in the opinion of the Commission, affected or likely to be affected by the draft code may vote in the referendum.
- (4) The following persons are entitled to register with the Commission as eligible persons:
 - (a) a person who provides a telecommunications service by means of some component of a PTN that is operated by that person:
 - (b) an access seeker or access provider of—
 - (i) a designated service or specified service; or
 - (ii) a service supplied under a registered undertaking:
 - (c) any other person whom the Commission determines has a material interest in a draft code because that person is about to become, within the foreseeable future, a person referred to in paragraph (a) or (b).
- (5) A person entitled to register with the Commission under subclause (4) may be a member of the Forum for the purposes of this Act.

Schedule 2 clause 4(2): substituted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 4(3): substituted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 4(3A): inserted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 4(4): substituted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 4(4)(a): amended, on 1 July 2011, by section 26(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

5 Draft code may be submitted to Commission

The Forum may submit to the Commission a draft code, along with a statement—

- (a) that identifies the designated service or specified service to which the draft code applies; and
- (b) that identifies every relevant applicable access principle; and
- (c) that the draft code meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require); and
- (d) that either the draft code—
 - (i) has the support of all eligible persons who voted on the draft code; or
 - (ii) is supported by at least 75% of eligible persons who voted on the draft code; and
- (e) that identifies any cost implications in relation to the draft code; and
- (f) that indicates how any cost will be apportioned between eligible persons to whom the draft code applies; and
- (g) that sets out how the apportionment is consistent with the purpose set out in section 18.

Schedule 2 clause 5(c): amended, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 5(d): substituted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

6 Commission must consider whether consultation on draft code is needed

- (1) The Commission must make reasonable efforts to consider whether or not consultation on the draft code is needed not later than 10 working days after the date on which the Commission received the draft code.
- (2) The Commission need not do any of the things set out in clause 7(1) if the Commission is satisfied that the Forum has—
 - (a) published a notice of the draft code, or caused a notice of the draft code to be published, in the *Gazette*; and
 - (b) at all reasonable times, made the draft code available for inspection on the Forum's website in an electronic form that is publicly accessible; and

- (c) included in the notice of the draft code the closing date for submissions, which must not be later than 20 working days after the date of giving the notice in the *Gazette*; and
- (d) given to the Commission copies of all submissions on the draft report.

7 Consultation process on draft code

- (1) Immediately after the Commission considers that consultation on the draft code is needed, the Commission—
 - (a) may request the Forum to consult with any person or group specified by the Commission;
 - (b) must consult with every eligible person who has voted against the draft code; and
 - (c) must give public notice of the draft code.
- (2) A person is entitled to make submissions to the Commission not later than 20 working days after the date on which public notice of the draft code is given.

8 Variation of draft code

- (1AA) This clause applies if the draft code has been prepared by the Forum under clause 1.
- (1) The Commission must make reasonable efforts to consider whether or not the draft code meets all of the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require) at least 20, but not later than 40, working days after the closing date for submissions under clause 7(2).
- (2) If the Commission considers that the draft code does not meet all of the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require), the Commission—
 - (a) must not approve the draft code; and
 - (b) must return to the Forum the draft code, along with the Commission's reasons why the draft code does not meet a particular requirement; and
 - (c) must, if the draft code does not comply with the Commerce Act 1986, advise the Forum that an authorisation granted by the Commission in accordance with that Act is needed before the draft code may be approved under this Act.
- (3) If the Forum resubmits the draft code to the Commission, clauses 1 to 7 and subclauses (1) and (2) again apply to the resubmitted code.

Schedule 2 clause 8(1AA): inserted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 8(1): amended, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 8(2): amended, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

9 When Commission must approve draft code

[Repealed]

Schedule 2 clause 9: repealed, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

10 Commission's discretion to approve draft code

The Commission may approve a draft code if the Commission is satisfied that—

- (a) the draft code meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require); and
- (b) all the consultation referred to in clause 7(1) has been carried out; and
- (c) *[Repealed]*

Schedule 2 clause 10(a): amended, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 10(c): repealed, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

10A Commission must refuse to approve draft code in certain cases

Despite clauses 9 and 10, the Commission must refuse to approve a draft code if it is satisfied that the draft code deals with a matter that is more appropriately dealt with in—

- (a) a determination under section 27; or
- (b) a standard terms determination under section 30M; or
- (c) a designated multinet network service determination under section 39.

Schedule 2 clause 10A: inserted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

10B Amendment of draft code

- (1) This clause applies only if the Commission considers that, because of a change in circumstances, a draft code submitted to it no longer meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require).
- (2) The Commission may prepare, or request the Forum to prepare, a specific amendment to the draft code to ensure that it meets all of those requirements.
- (3) If the Commission prepares the amendment, the Commission must—
 - (a) ensure that the consultation referred to in clause 7(1) has been carried out on the amended draft code; and
 - (b) decide, as soon as practicable after paragraph (a) has been complied with, whether to approve the amended draft code under clause 10.

Schedule 2 clause 10B: inserted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

11 Expiry of approved code

- (1) An approved code expires, in whole or part (as the case may be), on the revocation of the relevant applicable access principle.
- (2) An approved code expires on the revocation or expiry of the designated service or specified service to which the approved code applies.

12 Revocation of approved codes

- (1) The Commission must, on the request of all eligible persons, revoke an approved code.
- (2) The Commission may revoke an approved code if—
 - (a) requested to do so by 75% of eligible persons who voted on the approved code; and
 - (b) the Commission considers that, because of a change in circumstances, an approved code no longer meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require).
- (3) Despite subclause (2), the Commission may revoke an approved code if it is satisfied that to do so best gives, or is likely to best give, effect to the purpose set out in section 18.

Schedule 2 clause 12(2)(a): substituted, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 12(2)(b): amended, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 2 clause 12(3): added, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

13 Amendment of approved codes

An approved code may be—

- (a) amended in the same manner that it was approved; or
- (b) amended by the Commission in accordance with clause 14.

14 Amendment of approved code initiated by Commission

- (1) This clause and clause 13 apply only if the Commission considers that, because of a change in circumstances, an approved code no longer meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require).
- (2) The Commission may request the Forum to prepare a specific amendment to an approved code for submission to it within a specified time.
- (3) If the Forum complies with the Commission's request under subclause (2), the same procedure that applies to draft codes must be followed.

Schedule 2 clause 14(1): amended, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

15 Consequences of not complying with Commission's request under clause 14(2)

- (1) If the Forum does not comply within a reasonable period with the Commission's request under clause 14(2), the Commission may prepare the amendment.
- (2) If the Commission prepares the amendment, the Commission must—
 - (a) ensure that—
 - (i) the amendment meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require); and
 - (ii) the consultation referred to in clause 7(1) has been carried out; and
 - (b) approve the amendment as soon as practicable after paragraph (a) has been complied with.

Schedule 2 clause 15(2)(a)(i): amended, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

16 Public notice of approved codes

The Commission must give public notice of—

- (a) every approved code; and
- (b) every revocation of an approved code.

Part 2**Telecommunications access codes prepared by Commission**

Schedule 2 Part 2: added, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

17 Commission may prepare code

- (1) The Commission may, on its own initiative, prepare 1 or more telecommunications access codes in relation to any matter that is not already provided for by an approved code.
- (2) This clause does not limit clause 1.
- (3) For the purposes of this clause, the provisions of Part 1 of this schedule, so far as they are applicable and with any necessary modifications, apply to a code prepared by the Commission as if it were a code prepared by the Forum under that Part.

Schedule 2 clause 17: added, on 22 December 2006, by section 57 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 3 Procedure for altering regulated services

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Part 1

Procedure for designated services or specified services (except specified services that are to become designated services)

1 Commission's investigation

- (1) The Commission may, on its own initiative or if requested to do so in writing by the Minister, commence an investigation into whether or not Schedule 1 should be altered in any of the ways set out in section 66 or 67 (the **proposed alteration**) if the Commission is satisfied that there are reasonable grounds for an investigation into the matter.
- (2) If an investigation has been requested by the Minister and the requirements set out in subclause (1) have been met, the Commission must commence the investigation not later than 10 working days after receiving the Minister's written request.
- (3) Despite subclause (1), the Commission must consider, at intervals of not more than 5 years after the date on which a designated service or specified service came into force, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from Schedule 1 under section 66(b).
- (4) The Commission must not consider the matter under subclause (3) earlier than 12 months before the end of each 5-year interval referred to in that subclause.
- (5) If the Commission decides that there are reasonable grounds for commencing an investigation into whether a designated service or specified service should be omitted from Schedule 1 under section 66(b), the Commission must commence the investigation not later than 15 working days after making that decision.
- (6) The Commission must give public notice of the commencement of an investigation under this clause.
- (7) This clause is subject to section 156AP.

Schedule 3 clause 1: substituted, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 3 clause 1(7): added, on 1 July 2011, by section 88 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

2 Draft report

- (1) After public notice of the investigation has been given, the Commission must—
 - (a) prepare a draft report; and
 - (b) give public notice of the draft report; and
 - (c) include in the public notice—

- (i) the closing date for submissions, which must not be later than 20 working days after the date of giving public notice; and
 - (ii) the date of any public hearing to be held under clause 3.
- (2) The draft report must—
 - (a) include the detail of the proposed alteration; and
 - (b) identify any recommendations that the Commission considers to be sufficiently related to each other that they ought to be considered together.

Schedule 3 clause 2(2): substituted, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

3 Conferences or public hearing

- (1) The Commission must make reasonable efforts to do either of the following things not later than 10 working days after the closing date for submissions:
 - (a) hold conferences in relation to the proposed alteration:
 - (b) hold a public hearing in relation to the proposed alteration if the Commission is satisfied that it is in the public interest to do so.
- (2) The Commission may invite a person who has a material interest in the proposed alteration to attend a conference held under subclause (1).
- (3) Despite subclause (1), the Commission may dispense with holding conferences or a public hearing if the alteration is of a kind listed in section 66(c) or section 67.

4 Final report of recommendation of Commission

- (1) The Commission must make reasonable efforts to do the following things not later than 120 working days after the date of giving public notice under clause 1(6):
 - (a) prepare a final report regarding the proposed alteration:
 - (b) deliver the report to the Minister.
- (2) In preparing the final report, the Commission must consider—
 - (a) all submissions made on the draft report; and
 - (b) all information and opinions presented or expressed at the public hearing (if any) on the draft report.
- (3) A final report must include—
 - (a) the detail of the proposed alteration; and
 - (b) a recommendation by the Commission as to—
 - (i) whether or not the proposed alteration should be made:
 - (ii) in the case of a proposed alteration to a designated service, whether or not the Minister's decision regarding the proposed alteration

should be deferred for any period that the Commission thinks fit;
and

- (c) the reasons for the Commission's recommendation; and
 - (d) the majority view and any dissenting views of the members of the Commission regarding the recommendation.
- (4) The Commission may, if it thinks fit, identify any recommendations included in the final report that it considers to be sufficiently related to each other that they ought to be considered together by the Minister.
- (5) This clause is subject to section 156AP.

Schedule 3 clause 4(1): amended, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 3 clause 4(3)(d): substituted, on 1 July 2011, by section 26(1) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Schedule 3 clause 4(4): added, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 3 clause 4(5): added, on 1 July 2011, by section 88 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

5 Commission must give written reasons for not meeting time limit

If, despite making reasonable efforts, the Commission is unable to do all of the things set out in clause 4(1) within the time limit specified in that subclause, the Commission must give to the Minister written reasons for not meeting that time limit.

5A Minister may request clarification of final report

- (1) After receiving a final report under clause 4, the Minister may request that the Commission—
- (a) clarify any aspect of the report:
 - (b) provide any additional information that is necessary to understand the nature and implications of the Commission's recommendations that are included in the final report.
- (2) The Commission must comply with a request made under subclause (1) within a period and in a manner agreed between the Commission and the Minister.
- (3) Subclause (1) does not authorise the Minister to require the Commission to undertake any further analysis of, or investigation into, any matter included in the final report.

Schedule 3 clause 5A: inserted, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

6 Decision by Minister on Commission's recommendations

- (1) In considering a final report under clause 4, the Minister must—

- (a) consider together any recommendations that the Commission has, under clause 4(4), identified in its final report to be sufficiently related to each other (a **set of related recommendations**); and
 - (b) consider separately any other recommendations.
- (2) The Minister may—
- (a) accept or reject—
 - (i) each set of related recommendations:
 - (ii) each of the other recommendations:
 - (b) require the Commission to reconsider, for any reasons specified by the Minister,—
 - (i) any set of related recommendations or any aspect of that set of related recommendations:
 - (ii) any of the other recommendations or any aspect of those other recommendations.

Schedule 3 clause 6: substituted, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

7 **Deferral of Minister's decision**

- (1) If the Minister accepts the Commission's recommendation that the Minister's decision be deferred for any period that the Commission thinks fit,—
- (a) the Minister must refer the recommendation back to the Commission for a report at the end of the period on whether the recommendation should be amended; and
 - (b) the Commission must, at the end of that period,—
 - (i) prepare a draft report stating that the period has expired and setting out any amendments it wishes to make to the recommendation; or
 - (ii) prepare a final report that includes a recommendation that the Minister should accept an undertaking under Schedule 3A and deliver that report to the Minister.
- (2) If subclause (1)(b)(i) applies, the Commission must also—
- (a) give public notice of the draft report; and
 - (b) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice; and
 - (c) prepare, as soon as is reasonably practicable after the closing date for submissions, a final report to the Minister that contains the matters set out in the draft report and summarises, and makes recommendations on, the submissions received on the draft report.

- (3) Clause 6 again applies to the report referred to in subclause (1)(b)(ii) or (2)(c), as the case may be.

Schedule 3 clause 7: substituted, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Part 2

Procedure for specified services to become designated services

8 Commission's investigation

- (1) The Commission may, on its own initiative or if requested to do so in writing by the Minister, commence an investigation into whether or not Schedule 1 should be altered by—
- (a) omitting a telecommunications service from Part 3 (the **proposed omission**); and
 - (b) adding it to Part 2 (the **proposed addition**).
- (2) The Commission may commence an investigation only if it is satisfied that there are reasonable grounds for it.
- (3) If an investigation has been requested by the Minister and the requirement set out in subclause (2) has been met, the Commission must commence the investigation not later than 10 working days after receiving the Minister's written request.
- (4) The Commission must give public notice of the commencement of the investigation.

9 Draft report

- (1) After public notice of the investigation has been given, the Commission must—
- (a) prepare a draft report; and
 - (b) give public notice of the draft report; and
 - (c) include in the public notice—
 - (i) the closing date for submissions, which must not be later than 15 working days after the date of giving public notice; and
 - (ii) the date of any public hearing to be held under clause 10.
- (2) The draft report must include the detail of the proposed omission and addition.

10 Conferences or public hearing

- (1) The Commission must make reasonable efforts to do either of the following things not later than 10 working days after the closing date for submissions:
- (a) hold conferences in relation to the proposed omission and addition:

- (b) hold a public hearing in relation to the proposed omission and addition if the Commission is satisfied that it is in the public interest to do so.
- (2) The Commission may invite a person who has a material interest in the proposed omission and addition to attend a conference held under subclause (1).

11 Final report of recommendation of Commission

- (1) The Commission must make reasonable efforts to do the following things not later than 60 working days after the date of giving public notice under clause 8(4):
 - (a) prepare a final report regarding the proposed omission and addition:
 - (b) deliver the report to the Minister.
- (2) In preparing the final report, the Commission must consider—
 - (a) all submissions made on the draft report; and
 - (b) all information and opinions presented or expressed at the public hearing (if any) on the draft report.
- (3) A final report must include—
 - (a) the detail of the proposed omission and addition; and
 - (b) a recommendation by the Commission as to—
 - (i) whether or not the proposed omission and addition should be made;
 - (ii) whether or not the Minister's decision regarding the proposed omission and addition should be deferred for any period that the Commission thinks fit; and
 - (c) the reasons for the Commission's recommendation; and
 - (d) the views of 2 members of the Commission (other than the Telecommunications Commissioner) regarding the recommendation.
- (4) The Commission may, if it thinks fit, identify any recommendations included in the final report that it considers to be sufficiently related to each other that they ought to be considered together by the Minister.

Schedule 3 clause 11(4): added, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

12 Commission must give written reasons for not meeting time limit

If, despite making reasonable efforts, the Commission is unable to do all of the things set out in clause 11(1) within the time limit specified in that subclause, the Commission must give to the Minister written reasons for not meeting that time limit.

12A Minister may request clarification of final report

- (1) After receiving a final report under clause 11, the Minister may request that the Commission—

- (a) clarify any aspect of the report:
 - (b) provide any additional information that is necessary to understand the nature and implications of the Commission's recommendations that are included in the final report.
- (2) The Commission must comply with a request made under subclause (1) within a period and in a manner agreed between the Commission and the Minister.
- (3) Subclause (1) does not authorise the Minister to require the Commission to undertake any further analysis of, or investigation into, any matter included in the final report.

Schedule 3 clause 12A: inserted, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

13 Decision by Minister on Commission's recommendations

- (1) In considering a final report under clause 11, the Minister must—
- (a) consider together any recommendations that the Commission has, under clause 11(4), identified in its final report to be sufficiently related to each other (**a set of related recommendations**); and
 - (b) consider separately any other recommendations.
- (2) The Minister may—
- (a) accept or reject—
 - (i) each set of related recommendations:
 - (ii) each of the other recommendations:
 - (b) require the Commission to reconsider, for any reasons specified by the Minister,—
 - (i) any set of related recommendations or any aspect of that set of related recommendations:
 - (ii) any of the other recommendations or any aspect of those other recommendations.
- (3) If the Commission makes a recommendation in the final report that the proposed omission and addition should be made, the Minister must make a decision under subclause (2) within 6 months after—
- (a) the date on which the Minister receives that report; or
 - (b) as the case may be, the date on which the Commission complies with a request under clause 12A.

Schedule 3 clause 13: substituted, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

14 Deferral of Minister's decision

- (1) If the Minister accepts the Commission's recommendation that the Minister's decision be deferred for any period that the Commission thinks fit,—

- (a) the Minister must refer the recommendation back to the Commission for a report at the end of the period on whether the recommendation should be amended; and
- (b) the Commission must, at the end of that period,—
 - (i) prepare a draft report stating that the period has expired and setting out any amendments it wishes to make to the recommendation; or
 - (ii) prepare a final report that includes a recommendation that the Minister should accept an undertaking under Schedule 3A and deliver that report to the Minister.
- (2) If subclause (1)(b)(i) applies, the Commission must also—
 - (a) give public notice of the draft report; and
 - (b) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice; and
 - (c) prepare, as soon as is reasonably practicable after the closing date for submissions, a final report to the Minister that contains the matters set out in the draft report and summarises, and makes recommendations on, the submissions received on the draft report.
- (3) Clause 6 applies to the report referred to in subclause (1)(b)(ii) or (2)(c), as the case may be.

Schedule 3 clause 14: substituted, on 22 December 2006, by section 58 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

Schedule 3A Undertakings

s 68A

Schedule 3A: inserted, on 22 December 2006, by section 59 of the Telecommunications Amendment Act (No 2) 2006 (2006 No 83).

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Preliminary

1 Interpretation

In this schedule, unless the context otherwise requires,—

final report means the report that—

- (a) is prepared in accordance with clause 4 of Schedule 3 or, as the case may be, clause 11 of that schedule; and
- (b) includes the Commission’s recommendation on—
 - (i) a proposed regulatory change:
 - (ii) as the case may be, an undertaking

proposed addition has the meaning set out in clause 8(1)(b) of Schedule 3

proposed alteration has the meaning set out in clause 1(1) of Schedule 3

proposed omission has the meaning set out in clause 8(1)(a) of Schedule 3

proposed regulatory change means—

- (a) a proposed alteration; or
- (b) as the case may be,—
 - (i) a proposed omission:
 - (ii) a proposed addition

register means the register of undertakings established and maintained by the Commission under clause 10(1)

registered undertaking means an undertaking that is entered in the register

service means the telecommunications service to which either or both of the following relate:

- (a) a proposed regulatory change:
- (b) an undertaking

undertaking has the meaning set out in clause 3.

Purpose of clauses 3 to 16

2 Purpose of clauses 3 to 16

The purpose of clauses 3 to 16 is to provide, as an alternative to a proposed regulatory change, a mechanism for an access provider to supply a service to all access seekers—

- (a) on a voluntary basis that avoids the need for regulation; and
- (b) on terms and conditions agreed between the access provider and the Commission.

*Acceptance and registration of undertakings***3 Commission may accept undertaking**

- (1) While the Commission is considering a proposed regulatory change, the Commission may accept an offer from an access provider to supply a service to all access seekers on the terms and conditions of a written undertaking (an **undertaking**).
- (2) If the Commission accepts an undertaking, a final report may include—
 - (a) a recommendation by the Commission that the Minister should accept the undertaking; and
 - (b) any of the following recommendations by the Commission:
 - (i) that the proposed regulatory change should be made;
 - (ii) that the proposed regulatory change should not be made;
 - (iii) that the Minister's decision on the proposed regulatory change should be deferred.
- (3) However, an undertaking that the Commission accepts under subclause (2) has no legal effect unless it is registered under clause 6.
- (4) For the purposes of subclause (2), clauses 4, 6, and 7 of Schedule 3 or, as the case may be, clauses 11, 13, and 14 of that schedule apply with any necessary modifications.

4 Criteria for undertaking

The Commission must not make a recommendation under clause 3(2) unless the Commission is satisfied that the undertaking—

- (a) complies with this Act and any regulations made under this Act; and
- (b) complies with the standard access principles set out in clause 5 of Schedule 1 and any limits on those standard access principles set out in clause 6 of that schedule.

5 Requirements for undertaking

- (1) An undertaking must—
 - (a) be signed or executed by the relevant access provider; and
 - (b) specify the terms and conditions of the supply of the service; and
 - (c) specify the date by which those terms or conditions must be complied with by the relevant access provider; and
 - (d) specify a mechanism for the resolution by the Commission or a suitably qualified and experienced independent person of any issues or disputes that arise after the undertaking is registered; and
 - (e) provide for any other prescribed matters.

- (2) An undertaking must not be amended after the Commission has made a recommendation under clause 3(2) in respect of that undertaking.

6 Commission must register undertaking if Minister accepts Commission's recommendation

If the Minister accepts the Commission's recommendation that the Minister should accept an undertaking, the Commission must—

- (a) enter in the register—
- (i) the name of the relevant access provider; and
 - (ii) any other information specified in clause 12; and
- (b) give written notice of the registration to the relevant access provider; and
- (c) give public notice of the registration.

7 Expiry of registration of undertaking

- (1) The registration of an undertaking is effective for—
- (a) a period of 5 years from the date of registration; and
 - (b) any further period that the Commission and the relevant access provider may agree.
- (2) The Commission must consult with every person who has a material interest in the matter before agreeing to a further period under subclause (1)(b).
- (3) Despite subclause (1), the Commission may make a recommendation in the final report to the Minister that, having regard to the matters specified in subclause (4), the registration of an undertaking should expire earlier than the 5-year period referred to in subclause (1).
- (4) The matters are—
- (a) the reasonable needs of potential access seekers; and
 - (b) the commercial lifetime of the service delivery technology concerned; and
 - (c) any other factors that the Commission thinks relevant.
- (5) Despite anything in this clause, the registration of an undertaking expires on the date that the proposed regulatory change is made.
- (6) This clause does not require the Commission to commence an investigation into a proposed regulatory change on the expiry of the registration of an undertaking.

*Effect of registration of undertaking***8 Effect of registration of undertaking**

- (1) A registered undertaking provides a basis for preparing and approving a telecommunications access code in relation to the supply of the service even though the access provider would not otherwise be subject to that code.
- (2) A registered undertaking—
 - (a) does not prevent the Commission from—
 - (i) commencing or continuing an investigation into a proposed regulatory change; or
 - (ii) making a recommendation to the Minister that a proposed regulatory change should be made; and
 - (b) does not prevent the Minister from—
 - (i) requesting that the Commission commence or continue an investigation into a proposed regulatory change; or
 - (ii) accepting the Commission's recommendation that a proposed regulatory change should be made.

9 Part 2 of Commerce Act 1986 does not apply to registered undertaking

Part 2 of the Commerce Act 1986 does not apply in respect of—

- (a) a registered undertaking; and
- (b) any matter necessary for giving effect to a registered undertaking.

*Register***10 Register of undertakings**

- (1) For the purposes of this schedule, the Commission must establish and maintain a register of undertakings.
- (2) The register may be—
 - (a) an electronic register; or
 - (b) kept in any other manner that the Commission thinks fit.

11 Other duties and powers of Commission in relation to register

- (1) The Commission must ensure that the register is open for public inspection, at all reasonable times,—
 - (a) at the head office of the Commission and at any other place that the Commission determines to be necessary or appropriate:
 - (b) on the Commission's website in an electronic form that is publicly accessible.

- (2) The Commission may, at any time, make any amendments to the register that are necessary to—
- (a) reflect any changes in the information specified in clause 13; or
 - (b) correct a mistake caused by any error or omission on the part of the Commission.

12 Contents of register

The register must, in relation to every registered undertaking, contain all of the following:

- (a) particulars of the relevant access provider:
- (b) the date of registration of the undertaking:
- (c) the terms and conditions of the supply of the service:
- (d) particulars of, or a description of the class of, the access seekers to whom the service is to be supplied:
- (e) any other particulars that may be prescribed.

Process for making undertaking

13 Process for making undertaking

- (1) An access provider who wishes to make an undertaking must apply to the Commission in accordance with clause 14.
- (2) The Commission must deal with the application—
 - (a) in accordance with clauses 15(2) and 16:
 - (b) in the prescribed manner, if any.

14 Requirements for application

An application under clause 13 must—

- (a) be in writing; and
- (b) be given in the prescribed manner, if any; and
- (c) contain the prescribed information, if any; and
- (d) be accompanied by the prescribed fee, if any.

15 Timing of application

- (1) An application under clause 13—
 - (a) may be made after the date on which public notice is given under clause 1(3) of Schedule 3; but
 - (b) must be made not later than 40 working days after the date on which the Commission commences an investigation into the proposed regulatory change under clause 1 of Schedule 3.
- (2) The Commission must not consider a late application.

16 Commission must invite submissions

- (1) After receiving an application under clause 13, the Commission must—
 - (a) give public notice of the application; and
 - (b) invite persons who have a material interest in the proposed regulatory change to make written submissions on the application by the closing date specified in the public notice; and
 - (c) consider those submissions.
- (2) The closing date for submissions must not be earlier than 10 working days after the date on which public notice is given under subclause (1)(a).
- (3) Before determining the application, the Commission must give the access provider who made the application a reasonable opportunity to amend it in light of any submissions received by the Commission under this clause.

Schedule 3B

Annual telecommunications development levy

ss 85, 92

Schedule 3B: inserted, on 1 July 2011, by section 27 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27).

Financial year	Telecommunications development levy (\$)
2010/11	50 million
2011/12	50 million
2012/13	50 million
2013/14	50 million
2014/15	50 million
2015/16	50 million
2016/17	50 million
2017/18	50 million
2018/19	50 million
2019/20	10 million
2020/21 and each subsequent financial year	the inflation-adjusted specified telecommunications development levy

The inflation-adjusted specified telecommunications development levy must be calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

- a is the CPI index number for the last quarter of the financial year preceding the relevant financial year
- b is the CPI index number for the last quarter of the financial year that is 1 year before the financial year preceding the relevant financial year
- c is the telecommunications development levy for the financial year preceding the relevant financial year.

Schedule 3B table: amended, on 28 May 2015, by section 4 of the Telecommunications (Development Levy) Amendment Act 2015 (2015 No 54).

Schedule 3C

Dispute resolution scheme

ss 155ZG, 155ZH

Schedule 3C: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

1 Purpose of dispute resolution scheme

- (1) The purpose of the dispute resolution scheme is to ensure that, if 2 or more persons have a dispute within section 155ZI in relation to an installation, they have access to a dispute resolution scheme for resolving that dispute.
- (2) To achieve the purpose, a scheme is to be established that—
 - (a) provides for a range of dispute resolution processes, including facilitative, evaluative, and determinative processes, so that—
 - (i) each dispute can be resolved through the process assessed to be the most appropriate to the particular dispute, having regard to the nature and circumstances of that dispute; and
 - (ii) if the dispute cannot be resolved by agreement between the parties, the dispute is determined by a neutral third party whose decision is legally binding on the FTTP service provider or a network operator (if either is a party to the dispute); and
 - (iii) the scheme combines both formality and flexibility in a manner most likely to achieve the purposes referred to in paragraph (b); and
 - (b) provides for disputes to be assessed promptly after they are received for the purposes of—
 - (i) identifying the process that is the most appropriate for resolving the dispute; and
 - (ii) ensuring that the dispute is resolved within the time provided in the rules of the scheme, whether by agreement between the parties or determination by a neutral third party.

Schedule 3C clause 1: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

2 Interpretation

In this schedule, unless the context otherwise requires,—

affected person has the same meaning as in section 155D

approved scheme is the disputes resolution scheme approved by the Minister under clause 5 (provided that the scheme's approval has not been withdrawn)

dispute resolution scheme, at any time, means whichever of the following is in force under this schedule at the time:

- (a) the approved scheme:

(b) the regulated scheme

installation includes a proposed installation, an installation being carried out, and an installation that is completed (or claimed or disputed to be completed)

member, in relation to the dispute resolution scheme, means an FTTP service provider or a network operator

provider,—

(a) in relation to a scheme, means the person responsible for that scheme; and

(b) in relation to a proposed scheme, means the person proposed to be responsible for that scheme

regulated scheme means the scheme provided for in regulations made under clause 16.

Schedule 3C clause 2: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Approved scheme: approval and withdrawal of approval

Heading: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

3 Application for approval

(1) The provider of a scheme may apply to the Minister for approval of the scheme as the approved scheme.

(2) The application must include—

(a) the rules of the scheme; and

(b) any other information that the Minister, by notice in the *Gazette*, prescribes as being required to be included in an application under this clause; and

(c) the prescribed fee (if any).

(3) The Minister may ask an applicant to supply any further information or documentation in support of the application.

Compare: 2008 No 97 s 51; 1992 No 122 s 4

Schedule 3C clause 3: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

4 Mandatory considerations for approval

(1) When considering an application under clause 3, the Minister must have regard to the following considerations in light of the principles listed in subclause (2):

(a) whether the scheme is capable of meeting the purpose of the dispute resolution scheme as set out in clause 1:

(b) the views of persons who are required to be members:

- (c) whether the scheme is capable of dealing with the wide range of disputes that persons and entities are entitled to refer to it:
 - (d) whether the applicant has adequate funding to enable it to operate the scheme according to its purpose and in accordance with its rules:
 - (e) whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme:
 - (f) whether the rules of the scheme are adequate and comply with—
 - (i) the principles listed in subclause (2); and
 - (ii) the requirements of clause 12 (rules of approved scheme).
- (2) The principles are—
- (a) accessibility:
 - (b) independence:
 - (c) fairness:
 - (d) accountability:
 - (e) efficiency:
 - (f) effectiveness.

Compare: 2010 No 116 s 5

Schedule 3C clause 4: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

5 Minister must decide application for approval

- (1) After considering an application made under clause 4, the Minister may—
 - (a) approve the scheme as the approved scheme; or
 - (b) decline the application.
- (2) The Minister may decide whether to approve the scheme or decline the application only after consulting—
 - (a) the industry bodies (if any) for the telecommunications industry; and
 - (b) any other persons (or their representatives) that the Minister considers are likely to be substantially affected by the approval.
- (3) A failure to consult the persons referred to in subclause (2) does not affect the validity of any approval of the scheme.
- (4) The Minister may approve a scheme if there is already another approved scheme, but in that case the approval does not take effect until the approval of the other scheme is withdrawn.

Compare: 2010 No 116 s 6

Schedule 3C clause 5: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

6 Decision must be notified and publicised

The Minister must, as soon as practicable after deciding an application,—

- (a) notify the applicant of the decision; and
- (b) if the decision is to approve the application, ensure that the approval is publicised.

Compare: 2010 No 116 s 7

Schedule 3C clause 6: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

7 Rules of approved scheme not to change without ministerial approval

- (1) The rules of the approved scheme must not be changed unless the Minister approves the change.
- (2) If the provider of the approved scheme notifies the Minister of a proposed rule change, the rule change is deemed to be approved by the Minister 45 working days after the date of notification, unless the Minister declines approval within that 45-day period.
- (3) Despite subclause (2),—
 - (a) the Minister may require the provider of the approved scheme to provide further information before the Minister decides whether to approve or decline the proposed rule change; and
 - (b) if the Minister requires further information to be provided, the rule change is deemed to be approved by the Minister 45 working days after the Minister receives that information, unless the Minister declines approval within the 45-day period.
- (4) The Minister may decline approval for a rule change only on the grounds that, if the rules were changed as proposed, they would not comply with the principles listed in clause 4(2) or the purpose in clause 1.

Compare: 2010 No 116 s 8

Schedule 3C clause 7: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

8 Notice of intention to withdraw approval

- (1) If the Minister proposes to withdraw approval for an approved scheme, the Minister must notify the provider.
- (2) The Minister's notice must—
 - (a) state that the Minister intends to withdraw approval of the scheme; and
 - (b) identify which of the 1 or more grounds described in subclause (3) apply; and
 - (c) state why the Minister considers those grounds apply; and
 - (d) specify the notice period, which must be at least 3 months, during which the provider may object, under clause 9, to the intended withdrawal.

- (3) The only grounds for withdrawing approval are as follows:
- (a) the scheme is not, or is no longer, capable of meeting the purpose of the dispute resolution scheme as set out in clause 1:
 - (b) there has been a loss of broad support for the scheme:
 - (c) there has been a failure to comply with the rules of the scheme:
 - (d) the provider has not publicised the rules as required by clause 12(2):
 - (e) the provider has not supplied the Minister with either or both of the following:
 - (i) a report of a review as required by clause 14:
 - (ii) any further information requested by the Minister under clause 15:
 - (f) the provider has not notified the Minister before changing the rules of the scheme as required by clause 7:
 - (g) the scheme no longer complies with the principles listed in clause 4(2).
- (4) The Minister's notice may require the provider to—
- (a) notify all members of the Minister's intention to withdraw approval of the scheme; or
 - (b) provide the Minister with a list of the names and business addresses of current members so that the Minister can, if the Minister wishes, notify all members of the Minister's intention to withdraw the scheme's approval.

Compare: 2010 No 116 s 9

Schedule 3C clause 8: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

9 Objection to withdrawal of approval

- (1) During the notice period, the provider may object (with reasons) to the proposed withdrawal of approval.
- (2) The Minister must consider any objection that is received before the end of the notice period.

Compare: 2010 No 116 s 10

Schedule 3C clause 9: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

10 Withdrawal of approval

- (1) If the Minister has given notice of intention to withdraw his or her approval, the Minister may withdraw the approval at any time after the expiry of the notice period.
- (2) When considering whether to withdraw approval, the Minister must have regard to the considerations referred to in clause 4(1) in light of the principles listed in clause 4(2).

- (3) The Minister must, as soon as practicable, withdraw the approval of an approved dispute resolution scheme if the provider requests that it be withdrawn, in which case the scheme is no longer approved from the date that is 6 months after the date of withdrawal of approval.

Compare: 2010 No 116 s 11

Schedule 3C clause 10: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

11 Effect of withdrawal of approval

On the date that the withdrawal of approval of a scheme takes effect, the members of the scheme become members of—

- (a) any other approved scheme that is approved with effect from that date;
or
(b) the regulated scheme.

Compare: 2010 No 116 s 12

Schedule 3C clause 11: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Approved scheme: rules and obligations

Heading: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

12 Rules of approved scheme

- (1) The rules of the approved scheme must provide for, or set out, the following:
- (a) who may refer disputes to the scheme for resolution:
- (b) how disputes may be referred to the scheme:
- (c) the kinds of disputes that the scheme will deal with:
- (d) when a dispute referred to the scheme may be investigated under the scheme:
- (e) that any investigation as part of a process for resolving a dispute must be undertaken in a way that is consistent with the rules of natural justice:
- (f) when a neutral third party may make a determination on a dispute referred to the scheme:
- (g) that a hearing for the purposes of making a determination on a dispute is to be conducted on the papers, unless the person making the determination thinks that an oral hearing is required:
- (h) the procedure for conducting a hearing on the papers:
- (i) the time within which a determination on a dispute is to be made:
- (j) that a determination must be made in writing and include the reasons of the decision maker:

- (k) that, in relation to a dispute, any information may be considered and any inquiry may be made, that is fair and reasonable in the circumstances:
 - (l) the kinds of remedial action that the scheme may require FTTP service providers or network operators to take in order to resolve disputes (for example, a requirement to compensate up to a certain amount stated in the rules, or to carry out reinstatement work, or, in the case of an affected person, to consent to a category 2 installation):
 - (m) when parties to a dispute are bound by an agreement or a determination under the scheme and what rights parties to a dispute (other than scheme members) have to appeal against a determination:
 - (n) that the scheme may stop investigating and resolving a dispute if any party to the dispute takes alternative court action against another party to the dispute:
 - (o) that the scheme will not charge any person (other than a scheme member) a fee for an investigation or assistance to resolve a dispute (including by determination, if the parties to the dispute are unable to resolve the dispute by agreement):
 - (p) how the provider will promote knowledge about, and access to, the scheme to members and persons entitled to make a complaint.
- (2) The responsible person of the approved scheme must publicise the rules.

Compare: 2010 No 116 s 13

Schedule 3C clause 12: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

13 List of members

The provider of the approved scheme must maintain and publicise a list of current members of the scheme.

Compare: 2010 No 116 s 14

Schedule 3C clause 13: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

14 Five-yearly review

- (1) The provider of the approved scheme must ensure that, 2 years after the scheme starts and at least every 5 years after that, a review of the scheme is carried out and a report of the review is provided to the Minister within 3 months of its completion.
- (2) The report may be of an independent review or a review by the provider, whichever the Minister thinks appropriate, having regard to all the circumstances at the time, including the likely costs associated with an independent review and whether those are justified, having regard to the scheme's operations and performance.

Compare: 2010 No 116 s 15

Schedule 3C clause 14: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

15 Provision of information

- (1) The provider of the approved scheme must, on request by the Minister, provide information on the following:
 - (a) matters relating to any information or reports that the provider of the approved scheme is required to provide under the rules of the scheme;
 - (b) the scheme's compliance with the principles listed in clause 4(2).
- (2) Nothing in this clause or clause 14 authorises a breach of the Privacy Act 1993 or any obligation of confidentiality.

Compare: 2010 No 116 s 17

Schedule 3C clause 15: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Regulated scheme: rules of scheme and appointment of provider

Heading: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

16 Regulations setting out rules of regulated schemes

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the regulated scheme.
- (2) The regulations must—
 - (a) set out the rules of the scheme, which must comply with clause 12; and
 - (b) be consistent with the purpose in clause 1.
- (3) Before recommending that regulations be made, the Minister must consult—
 - (a) the industry bodies (if any) for the telecommunications industry; and
 - (b) any other persons (or their representatives) that the Minister considers are likely to be substantially affected by the recommendation.
- (4) However, a failure to consult the persons referred to in subclause (3) does not affect the validity of the regulations.

Compare: 2010 No 116 s 18

Schedule 3C clause 16: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

17 Order in Council appointing provider of regulated scheme

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint a person to provide the regulated scheme.
- (2) The Minister may make a recommendation under this clause only if the Minister is satisfied that the person appointed as the provider—
 - (a) is a formally constituted dispute resolution body; and

- (b) is capable of providing the scheme in accordance with the purpose in clause 1 and the rules of the scheme.

Compare: 2010 No 116 s 19

Schedule 3C clause 17: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

18 Notice of intention to revoke appointment

- (1) An appointment made by Order in Council may not be revoked on the ground that the Minister has approved, or intends to approve, an approved scheme under clause 5 unless the Minister has given the scheme provider at least 3 months' notice in writing of the intention to revoke the appointment.
- (2) Nothing in this clause limits the grounds on which the Minister may otherwise recommend the revocation of any appointment.

Compare: 2010 No 116 s 20

Schedule 3C clause 18: inserted, on 3 May 2017, by section 21 of the Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16).

Schedule 4 Enactments amended

s 158

Commerce Act 1986 (1986 No 5)

Amendment(s) incorporated in the Act(s).

Commerce Amendment Act 2001 (2001 No 32)

Amendment(s) incorporated in the Act(s).

Crimes Act 1961 (1961 No 43)

Amendment(s) incorporated in the Act(s).

Electricity Act 1992 (1992 No 122)

Amendment(s) incorporated in the Act(s).

Gas Act 1992 (1992 No 124)

Amendment(s) incorporated in the Act(s).

Mercantile Law Act 1908 (1908 No 117)

Amendment(s) incorporated in the Act(s).

Public Works Act 1981 (1981 No 35)

Amendment(s) incorporated in the Act(s).

Resource Management Act 1991 (1991 No 69)

Amendment(s) incorporated in the Act(s).

Submarine Cables and Pipelines Protection Act 1996 (1996 No 22)

Amendment(s) incorporated in the Act(s).

Telecommunications Amendment Act (No 2) 2006

Public Act	2006 No 83
Date of assent	18 December 2006
Commencement	see section 2

1 Title

This Act is the Telecommunications Amendment Act (No 2) 2006.

2 Commencement

- (1) Part 4B of the Telecommunications Act 2001 (as inserted by section 54 of this Act) comes into force as provided in section 156S of that Act.
- (2) The rest of this Act comes into force on 22 December 2006.

Part 2

Consequential amendments and transitional provisions

Transitional provisions

62 Transitional provision for uncompleted determinations under section 27

- (1) This section applies if, before the commencement of this Act, the Commission was—
 - (a) considering an application under section 20 for a determination of all or some of the terms on which a designated access service or specified service must be supplied;
 - (b) otherwise in the process of investigating or preparing a determination under section 27 of all or some of those terms.
- (2) The Commission may continue and complete the matter in accordance with—
 - (a) subpart 2 of Part 2 of the principal Act (as if this Act had not been enacted); or
 - (b) subpart 2A of Part 2 of the principal Act (as inserted by this Act) as if the determination under section 27 were a standard terms determination.
- (3) For the purposes of subsection (2)(b), the provisions of subpart 2A of Part 2 of the principal Act (as inserted by this Act) apply with any necessary modifications.

63 Transitional provision for TSO determinations

Despite the amendments made by this Act to the principal Act, the principal Act continues to apply as if those amendments had not been made in respect of any TSO determinations that were commenced, but not completed, before the commencement of this Act.

64 Transitional provision for enforcement of determinations and approved codes made before commencement of this Act

- (1) This section applies to any of the following matters that were made or approved before the commencement of this Act:
 - (a) a determination under section 27;
 - (b) an approved code under Schedule 2.
- (2) A matter to which this section applies may be enforced in accordance with subpart 2 of Part 4A of the principal Act.
- (3) For the purposes of subsection (2),—
 - (a) the definition of **enforceable matter** in section 156N of the principal Act must be read as if—
 - (i) the reference in paragraph (a) of that definition to a determination made under section 27 were a reference to that determination whether made before or after the commencement of this Act; and
 - (ii) the reference in paragraph (f) of that definition to an approved code under Schedule 2 were a reference to that code whether approved before or after the commencement of this Act; and
 - (b) the other provisions of subpart 2 of Part 4A of the principal Act apply with any necessary modifications.

65 Transitional provision for descriptions of services in existing determinations

Despite the amendments made to the designated access services under Part 2 of Schedule 1 of this Act, any determinations relating to those services that are in force before the commencement of this Act continue to apply according to their terms as if those amendments had not been enacted.

66 Transitional provision for uncompleted Schedule 3 investigations

- (1) This section applies to investigations under Schedule 3 of the principal Act that were commenced, but not completed, before the commencement of this Act.
- (2) The Commission may continue and complete an investigation to which this section applies in accordance with—
 - (a) Schedule 3 of the principal Act (as if this Act had not been enacted); or
 - (b) Schedule 3 of the principal Act (as amended by this Act).

Infrastructure (Amendments Relating to Utilities Access) Act 2010

Public Act 2010 No 99
Date of assent 5 August 2010
Commencement see section 2

1 Title

This Act is the Infrastructure (Amendments Relating to Utilities Access) Act 2010.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Transitional provision

28 Transitional provision

To avoid doubt, the amendments made by this Act are intended to apply prospectively only and do not apply to or affect any notice given, request made, condition proposed or agreed to, or any other thing done before this Act comes into force.

Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011

Public Act	2011 No 27
Date of assent	30 June 2011
Commencement	see section 2

1 Title

This Act is the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011.

2 Commencement

- (1) This Act, except subpart 2 of Part 2 and sections 52 to 68, comes into force on the day after the date on which it receives the Royal assent.
- (2) Subpart 2 of Part 2 and sections 52 to 68 come into force on separation day, but only if an Order in Council has been made under section 36.
- (3) Telecom must publish the date of separation day in the *Gazette* as soon as practicable after it is known.
- (4) **Separation day** has the meaning set out in section 69B of the principal Act (as inserted by section 51 of this Act).

Part 1

Telecommunications service obligations and general matters

Subpart 2—Savings and transitional issues

28 Savings provision for financial years up to and including 2009/10 financial year

The principal Act continues to apply, as if this Act had not been passed, to—

- (a) all TSO instruments, deemed TSO instruments, TSO providers, and liable persons for the financial year ended 30 June 2010 and all prior financial years; and
- (b) every decision or determination relating to a TSO instrument or deemed TSO instrument made, or required to be made, by the Commission in respect of the financial year ended 30 June 2010 and all prior financial years.

29 Transitional provision concerning liability allocation determination for 2010/11 financial year

- (1) This section applies in respect of the financial year ended 30 June 2011.
- (2) For the purposes of subpart 2 of Part 3 of the principal Act,—

- (a) the definition of liable person (as substituted by this Act) does not apply; and
 - (b) **liable person** means—
 - (i) a person—
 - (A) who is identified by the Commission as a liable person in its final cost allocation determination, for the financial year ended 30 June 2010, in relation to the deemed TSO instrument known as the Telecommunications Service Obligations (TSO) Deed for Local Residential Telephone Service; and
 - (B) whose qualified revenue for the financial year ended 30 June 2010 is equal to or greater than \$5 million; and
 - (ii) Telecom; and
 - (c) the definition of qualified revenue (as substituted by this Act) does not apply; and
 - (d) **qualified revenue** means the amount of revenue (as determined in accordance with any specifications set by the Commission) that, during the financial year, each liable person received from supplying all or any of the following:
 - (i) telecommunications services by means of its PSTN;
 - (ii) telecommunications services by means that rely primarily on the existence of its PSTN or any other PSTN;
 - (iii) directory services in respect of PSTN numbers; and
 - (e) sections 81(1) and 82 do not apply.
- (3) For the avoidance of doubt,—
- (a) section 81(2) and (3) apply for the purpose of determining whether a person is a liable person, within the meaning of subsection (2)(b)(i) of this section, to whom subpart 2 of Part 3 of the principal Act applies in respect of the financial year ended 30 June 2011; and
 - (b) except as provided in subsections (1) and (2) of this section, subpart 2 of Part 3 of the principal Act (as substituted by this Act) otherwise applies in respect of the financial year ended 30 June 2011.

30 Transitional provision concerning information about deemed TSO instruments to be included in TSO cost calculation determinations

Section 100BA of the principal Act (as inserted by this Act) does not apply in respect of any TSO charge received by a TSO provider before the 2010/11 financial year.

Part 2

Structural separation of Telecom

Subpart 1—Preparation for separation of Telecom

31 Interpretation of this subpart

For the purposes of this subpart, the terms defined in Part 2A of the principal Act (as substituted by section 51 of this Act, were that section in force) and used, but not defined, in this subpart have the same meanings as set out in that Part, with necessary modifications.

Approval of asset allocation plan

32 Preparation of asset allocation plan

- (1) Telecom must prepare an asset allocation plan and submit it to the Minister and the Commission not later than 40 working days after the date on which this section comes into force.
- (2) The asset allocation plan must meet the information requirements in subsection (3).
- (3) The asset allocation plan must—
 - (a) specify how the assets and liabilities of Telecom as at 5 working days before the plan is submitted are intended to be allocated between Telecom and Chorus (which obligation may be met by specifying categories of assets and liabilities, rather than every individual asset and liability, if the categorisation is reasonable and enables the Minister to understand where the assets and liabilities will be held after separation day); and
 - (b) specify how each asset, or category of assets, will be used to provide telecommunications services to the market; and
 - (c) specify the key terms of all intended material sharing arrangements.
- (4) **Material**, in this section and section 37, must be determined having regard to the degree of importance of the matter, in terms of its likely impact on, and likely consequences for, the provision of telecommunications services to the market.

33 Updating of asset allocation plan before approval

Telecom may, by notice in writing to the Minister, make changes to the asset allocation plan in order to update it at any time before the Minister approves the plan.

34 Decision of Minister concerning approval of asset allocation plan

- (1) The Minister must, as soon as practicable after receiving the asset allocation plan,—

- (a) decide whether to recommend or decline to recommend the making of an Order in Council approving the plan under section 36; and
 - (b) notify Telecom of the Minister's decision.
- (2) Before making a decision under subsection (1), the Minister may consult the Commission.
- (3) The Minister may decline to recommend the making of an Order in Council under section 36 only if the Minister is not satisfied that the plan meets the information requirements set out in section 32(3).

35 Variation of asset allocation plan

- (1) If the Minister declines to recommend the making of an Order in Council approving the asset allocation plan,—
 - (a) the Minister must give reasons to Telecom for not recommending approval of the plan; and
 - (b) the Minister must invite Telecom to submit a revised plan; and
 - (c) Telecom must submit any revised plan not later than 15 days after the Minister notifies the Minister's decision under section 34, or any further time that the Minister may allow.
- (2) Sections 32(2) and (3) and 34 and subsection (1) of this section apply, with all necessary modifications, to a revised asset allocation plan as if it were an asset allocation plan.

36 Asset allocation plan approved by Order in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve the asset allocation plan.
- (2) An Order in Council under this section may be made only before separation day.
- (3) An Order in Council under this section must identify, but need not contain, the asset allocation plan.

37 Telecom must make overview of asset allocation plan publicly available

- (1) Telecom must, as soon as practicable after approval of the asset allocation plan under section 36 but no later than separation day, make an overview of the plan publicly available.
- (2) The overview must provide sufficient information about the intended allocation of assets and liabilities and sharing arrangements to enable a reasonable person to understand the material aspects of the asset allocation plan.
- (3) The requirements in subsections (1) and (2) do not require Telecom to disclose any confidential commercial information.
- (4) In this section, **publicly available** means available at all reasonable times, free of charge, on an Internet site maintained by or on behalf of Telecom.

38 Telecom must update Minister and overview on day before separation day

Telecom must, on the day before separation day,—

- (a) make changes to the asset allocation plan in order to update it to take account of—
 - (i) assets acquired, and liabilities incurred, since the date on which the plan was submitted or approved; and
 - (ii) trivial differences between the plan as approved and the demerger arrangement; and
- (b) notify the Minister in writing of the changes made; and
- (c) update the overview made available under section 37 to take account of that information.

39 Demerger must be in accordance with asset allocation plan

- (1) Telecom must ensure that the demerger of Telecom and Chorus under the demerger arrangement is carried out in accordance with, and gives full effect to, the asset allocation plan as approved under section 36.
- (2) The High Court may order Telecom to pay to the Crown a pecuniary penalty not exceeding \$10 million if the court is satisfied, on the application of the chief executive of the Ministry, that Telecom has failed, without reasonable excuse, to comply with subsection (1) as at separation day.
- (3) Telecom has a reasonable excuse for the purpose of subsection (2) to the extent that the failure to comply is because of a matter notified to the Minister under section 38(b).
- (4) Section 156L(2), (4), and (5) of the principal Act apply with all necessary modifications to proceedings under this section.

Approval of Chorus undertakings

40 Minister must consider purposes in section 69W

In making a decision under sections 42 and 43, the Minister must consider the purposes set out in section 69W and make the decision that the Minister considers best gives, or is best likely to give, effect to the purposes set out in that section.

41 Chorus must submit undertakings for approval by Minister

Chorus must submit draft undertakings that comply with section 69XB of the principal Act (were that section in force) not later than 20 working days after the date on which this section comes into force or any later date, before separation day, that the Minister may allow.

42 Minister may approve or decline to approve undertakings

- (1) The Minister must, as soon as practicable after receiving the undertakings, by notice in writing to Chorus,—
 - (a) approve the undertakings; or
 - (b) decline to approve the undertakings.
- (2) The Minister must consult the Commission, and may consult any other person that the Minister considers has a material interest, before deciding whether to approve or decline to approve the undertakings.
- (3) If the Minister declines to approve the undertakings, the Minister must—
 - (a) give reasons to Chorus for not approving the undertakings; and
 - (b) direct Chorus to prepare and submit amended undertakings.
- (4) Chorus must submit amended undertakings to the Minister not later than 15 working days after the date on which approval of the undertakings was declined, or any later date that the Minister may allow.
- (5) The Minister must notify his or her approval of an undertaking by notice in the *Gazette*.

43 Approval of amended undertakings

- (1) As soon as practicable after receiving amended undertakings, the Minister must—
 - (a) approve the undertakings by notice in writing to Chorus; or
 - (b) if the Minister considers that the amended undertakings require further amendment, make any amendments to the undertakings that the Minister considers necessary to give better effect to the purpose and requirements in sections 69W and 69XB of the principal Act.
- (2) Before making any amendments to the undertakings under this section, the Minister must advise Chorus of the Minister's intention to do so and must give Chorus a reasonable opportunity to make submissions on the matter.
- (3) The Minister must give notice in writing to Chorus of the approval of the amended undertakings, accompanied by a copy of the undertakings as approved.
- (4) The Minister must notify his or her approval of an undertaking by notice in the *Gazette*.

44 Failure to submit undertakings

- (1) The Minister must arrange for undertakings or revised undertakings (as the case may be) to be prepared, and the Minister has all the powers necessary for that purpose, if—
 - (a) Chorus has not submitted the undertakings required under section 41 within the time specified in that section; or

- (b) Chorus has not given the Minister revised undertakings within the time specified in section 42(4).
- (2) Section 69XB of the principal Act and section 43(1), (3), and (4) apply to undertakings prepared under subsection (1) as if the undertakings were amended undertakings submitted by Chorus to the Minister.
- (3) If, as a result of the default of Chorus, the Minister acts under subsection (1) the Minister is entitled to be reimbursed for all costs and expenses incurred by the Minister in taking the action.

Notice of separation day

45 Telecom must give notice of separation day and provide information

- (1) Telecom must make the following information publicly available for a period of not less than 1 month before separation day:
 - (a) the date of separation day:
 - (b) for each designated service or specified service in respect of which Telecom is an access provider immediately before separation day, which entity (Telecom or Chorus) will provide the service and which entity will be subject to the obligations under this Act in respect of that service after separation day.
- (2) In this section, **publicly available** has the same meaning as in section 37, and the information referred to in that section may be combined with the information referred to in this section.

Approval of proposals for tax purposes

46 Proposals may be approved for tax purposes by Orders in Council

- (1) The Governor-General may, by Order in Council made on the advice of the Minister of Revenue, approve a proposal signed by or on behalf of Telecom Corporation of New Zealand Limited and ChorusCo.
- (2) The proposal may provide for 1 or more of the following matters:
 - (a) specify a day and a purpose relevant to sections 69XO to 69XZ for the purposes of the definition of **appointed day** in section 69XM:
 - (b) specify a list of assets and liabilities in accordance with subsections (3) and (4) for the purpose of the definition of **designated assets and liabilities** in section 69XM:
 - (c) prescribe the manner in which the volume weighted average price is to be calculated for the purposes of section 69XP(6):
 - (d) amend an earlier proposal with effect from the date on which the earlier proposal took effect or from a later date, if appropriate.
- (3) A list of assets and liabilities may be in the form of references to ledgers or registers maintained by a Telecom company or a Chorus company, or be in any

other form, and be accompanied by any other information, that is reasonable and appropriate.

- (4) A designated asset or designated liability may consist of part only of an asset or liability.
- (5) An Order in Council under this section must identify, but need not contain, the proposal.
- (6) In this section, the references to sections 69XO to 69XZ, 69XM, and 69XP are references to those sections of the principal Act as inserted by section 51 of this Act, were section 51 and each of those sections in force.

Subpart 3—Consequential amendments, saving, transitional provisions, and miscellaneous matters

Transitional provision relating to TSO obligations

69 TSO provider cannot request TSO cost calculation determination under section 94 for financial year in which separation day occurs

- (1) Despite section 94, a TSO provider under a TSO instrument that does not contain a specified amount may not notify the Commission that it wishes to invoke the procedure in sections 94D to 94K for the preparation of a TSO cost calculation determination for the financial year in which separation day occurs.
- (2) To avoid doubt, for the financial year in which separation day occurs, the TSO charges for a TSO instrument that does not contain a specified amount are deemed to be zero as provided in section 94C.

Transitional provision relating to shared asset arrangements

70 Minister may grant exemptions in relation to shared asset arrangements

The Minister may grant an exemption under section 69N of the principal Act (as inserted by section 51 of this Act) as if those sections were in force.

Saving and transitional provisions relating to designated access services

71 Standard terms determinations continue to apply

- (1) Each standard terms determination referred to in the first column of the following table remains in force and continues to apply as if the determination were a determination made by the Commission for the designated access service set out in the second column of that table opposite that determination:

Standard terms determination	Designated access service
Standard terms determination for Telecom's unbundled bitstream access, 12 December 2007	Chorus's unbundled bitstream access
Standard terms determination for Telecom's unbundled bitstream access backhaul service, 27 June 2008	Chorus's unbundled bitstream access backhaul

Standard terms determination

Standard terms determination for Telecom's unbundled copper local loop network service, 7 November 2007

Standard terms determination for the designated services of Telecom's unbundled copper local loop network service (Sub-loop UCLL), Telecom's unbundled copper local loop network co-location service (Sub-loop Co-location) and Telecom's unbundled copper local loop network backhaul service (Sub-loop backhaul), 18 June 2009 (the **Sub-loop services standard terms determination**)

Standard terms determination for Telecom's unbundled copper local loop network co-location service, 7 November 2007

Sub-loop services standard terms determination

Sub-loop services standard terms determination

Standard terms determination for Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) service, 27 June 2008

Designated access service

Chorus's unbundled copper local loop network

Chorus's unbundled copper local loop network co-location

Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)

Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

- (2) Part 2 of the principal Act applies to each standard terms determination accordingly.
- (3) Subsections (1) and (2) are subject to sections 72 to 79.

72 General provision concerning reviews of standard terms determinations for purpose of implementing amendments to Schedule 1 of principal Act

- (1) The Commission may review any standard terms determination referred to in section 71 under section 30R for the purpose of making any changes to the determination that the Commission considers necessary to implement the amendments made by this Act to Schedule 1 of the principal Act—
 - (a) before the relevant amendments come into force or take effect; and
 - (b) as if the relevant amendments were in force or had taken effect.
- (2) However,—
 - (a) the Commission must review the standard terms determination for Telecom's unbundled bitstream access dated 12 December 2007 before separation day, as referred to in section 73(1); and
 - (b) the Commission must make reasonable efforts to conduct a review of certain determinations—
 - (i) before separation day, as referred to in section 73(2); and

- (ii) before the expiry of 1 year from separation day, as referred to in section 77; and
- (c) the Commission may not make a replacement determination under section 30R(2); and
- (d) any variation of, addition to, or deletion of terms in a determination for the purpose of implementing an amendment made by this Act to the principal Act may not come into force or take effect until the relevant amendment comes into force or takes effect; and
- (e) on conducting any review of the standard terms determination for Telecom's unbundled copper local loop network service dated 7 November 2007 and the Sub-loop services standard terms determination, the Commission's powers under section 30R are subject to section 73(3).

73 Commission must complete reviews of standard terms determinations for certain designated access services before separation day

- (1) The Commission must review the standard terms determination for Telecom's unbundled bitstream access dated 12 December 2007 before separation day for the purpose of making any changes to the determination that may be necessary for the purpose of implementing clause 4A of subpart 1 of Part 1 of Schedule 1 of the principal Act from the close of the day before separation day.
- (2) The Commission must make reasonable efforts to do the following before separation day:
 - (a) review each of the standard terms determinations referred to in the first column of the table in subsection (5) for the purpose of making any changes or (in the case of the standard terms determination for Telecom's unbundled bitstream access) any further changes that may be necessary in order for the determination to apply to the designated access service set out opposite that determination in the second column of that table from the close of the day before separation day; and
 - (b) review the standard terms determination for Telecom's unbundled copper local loop network dated 7 November 2007 (in this section, the **unbundled copper local loop network determination**) and the Sub-loop services standard terms determination for the purpose of making any changes to those determinations that may be necessary for the purpose of implementing clause 4A of subpart 1 of Part 1 of Schedule 1; and
 - (c) give public notice of the results of each review.
- (3) However, no variation of, addition to, or deletion of terms in the unbundled copper local loop network determination or the Sub-loop services standard terms determination that relates to the implementation of clause 4A of subpart 1 of Part 1 of Schedule 1 may take effect before the expiry of 3 years from separation day.

- (4) To avoid doubt, clause 4A of subpart 1 of Part 1 of Schedule 1 of the principal Act applies to Chorus's unbundled bitstream access service on and after separation day and any changes made to the standard terms determination in accordance with subsection (1) for the purpose of implementing that clause take effect from the close of the day before separation day.

- (5) The table referred to in subsection (2) is—

Standard terms determination

Standard terms determination for Telecom's unbundled bitstream access, 12 December 2007

Standard terms determination for Telecom's unbundled copper local loop network co-location service, 7 November 2007

Standard terms determination for Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) service, 27 June 2008

Designated access service

Chorus's unbundled bitstream access (excluding the initial and the final pricing principles applicable after the expiry of 3 years from separation day)

Chorus's unbundled copper local loop network co-location

Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

74 Commission must make standard terms determination for Chorus's unbundled copper low frequency service before separation day

- (1) The Commission must make reasonable efforts to make a standard terms determination under section 30M for Chorus's unbundled copper low frequency service before separation day.
- (2) The standard terms determination must—
- (a) be made in accordance with the procedure and requirements set out in sections 30D to 30Q; and
 - (b) apply from the close of the day before separation day.

Further transitional provisions relating to Chorus's unbundled bitstream access service

75 Certain clauses of standard terms determination do not apply to Chorus's unbundled bitstream access service

Despite section 71(1), the following clauses of Schedule 2 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007 do not apply to Chorus's unbundled bitstream access service from the close of the day before separation day:

- (a) clause 4 (adjustment to basic UBA monthly (with POTS) charge):
- (b) clause 4B (quarterly adjustment to early termination charge):
- (c) clause 5 (adjustment to enhanced UBA monthly (with POTS) charge):
- (d) clause 6 (adjustment to enhanced UBA service (without POTS) charges).

76 Certain provisions of Part 2 and Schedule 3 of principal Act do not apply in relation to Chorus's unbundled bitstream access service

Despite section 71(2), the following provisions of the principal Act do not apply in relation to Chorus's unbundled bitstream access service for the period starting on separation day and ending 3 years after separation day:

- (a) section 30R (review of standard terms determination), except as provided in sections 73 and 77:
- (b) section 30V (application for residual terms determination):
- (c) section 59 (reconsideration of determination):
- (d) clause 1(1) and (5) of Schedule 3 (Commission's investigation).

77 Review of standard terms determination for unbundled bitstream access service before expiry of 1 year from separation day

- (1) The Commission must make reasonable efforts to do the following before the expiry of 1 year from separation day:
 - (a) review the standard terms determination for Chorus's unbundled bitstream access service under section 30R for the purpose of making any changes that may be necessary in order to implement the initial and final pricing principles applicable after the expiry of 3 years from separation day; and
 - (b) give public notice of the result of the review.
- (2) To avoid doubt, no variation of, addition to, or deletion of terms specified in the standard terms determination as a result of the Commission's review in accordance with subsection (1) may take effect before the expiry of 3 years from separation day.

78 Party to standard terms determination for Chorus's unbundled bitstream access service may apply for pricing review

- (1) A party to the standard terms determination for Chorus's unbundled bitstream access service may apply for a pricing review under section 42 as if the review under section 77(1)(a) were a determination made under section 30M regarding the price payable for the service.
- (2) The pricing review application must be made in accordance with section 43, except that section 43(b)(ii) (which relates to the time within which an application under section 42 must be made) does not apply and the application must be given to the Commission not later than 25 working days after the Commission gives public notice of the review in accordance with section 77(1)(b).
- (3) The Commission must make reasonable efforts to complete the pricing review determination before the expiry of 3 years from separation day.

79 Chorus's unbundled bitstream access prices grandfathered

- (1) This section applies in relation to a subscriber line if an access seeker is being supplied with a UBA service in relation to that subscriber line before separation day.
- (2) Chorus must, for the period starting on separation day and ending 3 years after separation day, provide each service component identified in items 2.1 to 2.8 of Schedule 2 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007 at whichever of the following is the lower:
 - (a) the price that applies under the determination for the date on which this Act receives the Royal assent, if that price is set out in the standard terms determination before the day before separation day;
 - (b) the price set out in the standard terms determination on the day before separation day.
- (3) From the end of the period referred to in subsection (2), the initial pricing principle or the final pricing principle (whichever applies) for Chorus's unbundled bitstream access service applies to unbundled bitstream access services purchased by access seekers before separation day.
- (4) In this section, **UBA service** has the meaning set out in clause 1 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007.

Miscellaneous

80 Operational separation undertakings cease to have effect

The separation undertakings given by Telecom in favour of the Crown for the purposes of Part 2A (before its repeal and substitution by this Act) cease to have legal effect from the close of the day before separation day.

Reprints notes

1 *General*

This is a reprint of the Telecommunications Act 2001 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Telecommunications (Property Access and Other Matters) Amendment Act 2017 (2017 No 16)
District Court Act 2016 (2016 No 49): section 261
Telecommunications (Development Levy) Amendment Act 2015 (2015 No 54)
Telecommunications Amendment Act 2013 (2013 No 136)
Telecommunications (Interception Capability and Security) Act 2013 (2013 No 91): section 123
Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8
Legislation Act 2012 (2012 No 119): section 77(3)
Telecommunications (International Co-operation) Amendment Act 2012 (2012 No 87)
Search and Surveillance Act 2012 (2012 No 24): section 339
Criminal Procedure Act 2011 (2011 No 81): section 413
Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27)
Telecommunications (Retail Services and Bundle of Retail Services) Order 2011 (SR 2011/200)
Telecommunications (Mobile Termination Access Services) Order 2010 (SR 2010/262)
Infrastructure (Amendments Relating to Utilities Access) Act 2010 (2010 No 99): sections 5–12
Telecommunications Amendment Act 2010 (2010 No 90)
Telecommunications (National Roaming) Order 2008 (SR 2008/251)
Telecommunications Amendment Act (No 2) 2006 (2006 No 83)
Telecommunications Amendment Act 2005 (2005 No 70)
Crown Entities Act 2004 (2004 No 115): section 200
Telecommunications (Initial Pricing Principle) Order 2003 (SR 2003/357)
Supreme Court Act 2003 (2003 No 53): section 48(2)

Crimes Amendment Act 2003 (2003 No 39): section 35

Local Government Act 2002 (2002 No 84): section 262

Telecommunications Act 2001 (2001 No 103): section 65(1)(a)