



# Telecommunications (New Regulatory Framework) Amendment Act 2018

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Commencement see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Telecommunications (New Regulatory Framework) Amendment Act 2018.

**2 Commencement**

- (1) The following provisions come into force on 1 January 2020:

- (a) section 13, in so far as it repeals, in subpart 1 of Part 2 of Schedule 1 of the principal Act, the heading Chorus's unbundled copper local loop network and each item related to the heading:
- (b) section 13, in so far as it repeals, in subpart 1 of Part 2 of Schedule 1 of the principal Act, the heading Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange) and each item related to the heading.
- (2) Section 38, in so far as it repeals subpart 3 of Part 4AA of the principal Act, comes into force on 1 January 2022.
- (3) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

### 3 Principal Act

This Act amends the Telecommunications Act 2001 (the **principal Act**).

## Part 1

### Amendments to definitions and amendments related to copper fixed line access services

#### 4 Section 5 amended (Interpretation)

- (1) In section 5, insert in their appropriate alphabetical order:

**annual CPI adjustment** means, in relation to a price, an annual adjustment to the price that is equal to any percentage movement in the CPI as measured between—

- (a) the CPI for the quarter that ended most recently before the price adjustment; and
- (b) the CPI for the equivalent quarter in the preceding year

**appropriation period** means, in relation to a cost,—

- (a) a financial year; or
- (b) if the cost will be incurred under the authority of a multi-year appropriation or of a multi-year appropriation proposed in any Estimates, the financial years to which the multi-year appropriation applies

**Commission 111 contact code** means a code made by the Commission under section 238

**Commission code** means either of the following:

- (a) a Commission 111 contact code;
- (b) a Commission retail service quality code

**Commission retail service quality code** or **Commission RSQ code** means a retail service quality code made by the Commission under Part 7

**copper fixed line access services** means the following (as they are described in subpart 1 of Part 2 of Schedule 1):

- (a) Chorus's unbundled bitstream access;
- (b) Chorus's unbundled copper low frequency service

**document**, except in section 69XQ, has the same meaning as in section 2(1) of the Commerce Act 1986

**Estimates** means—

- (a) Estimates as defined in section 2(1) of the Public Finance Act 1989; and
- (b) Supplementary Estimates as defined in section 2(1) of that Act

**fibre fixed line access service**—

- (a) means a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider's fibre network; but
- (b) does not include the following:
  - (i) a telecommunications service provided by a regulated fibre service provider (**F**) if the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications);
  - (ii) a telecommunications service provided, in any part other than a part located within an end-user's premises or building, over a copper line;
  - (iii) a telecommunications service used exclusively in connection with a service described in paragraph (ii)

**fibre handover point** means the external network-to-network interface (or equivalent facility) located at the specified point of interconnection for the relevant end-user's premises, building, or other access point that enables access to, and interconnection with, a regulated fibre service provider's fibre network

**fibre network** means a network structure used to deliver telecommunications services over fibre media that connects the user-network interface (or equivalent facility) of an end-user's premises, building, or other access point to a regulated fibre service provider's fibre handover point

**implementation date** means the later of—

- (a) 1 January 2020; and
- (b) any date specified by the Minister in accordance with clause 9 of Part 2 of Schedule 1AA

**industry retail service quality code** or **industry RSQ code** means a retail service quality code made by the Forum

**multi-year appropriation** means an appropriation authorised to apply for more than 1 financial year (*see* section 10 of the Public Finance Act 1989)

**regulated fibre service provider** means a person who is prescribed in regulations made under section 226 as being subject to 1 or both of the following:

- (a) information disclosure regulation:
- (b) price-quality regulation

**retail service quality**, in relation to a telecommunications service, means the quality of retail service provided to an end-user of the service, including in relation to the following:

- (a) customer service and fault service levels:
- (b) installation issues:
- (c) contract issues:
- (d) product disclosure:
- (e) billing:
- (f) the switching process and related information:
- (g) service performance, speed, and availability

**retail service quality code** means a code of conduct relating to retail service quality that applies to the provision of 1 or more types of telecommunications service

**Spark**—

- (a) means Spark New Zealand Limited (the company previously known, before 8 August 2014, as Telecom); and
- (b) includes any of its subsidiaries

**specified fibre area** means an area that has been declared by the Commission, under section 69AB, to be a specified fibre area

**specified point of interconnection** means a point of interconnection prescribed under section 231

**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 (which, to avoid doubt, includes the extension to UFB 2 known as UFB 2+); and
  - (ii) any other extension to the programme

- (2) In section 5, definition of **access provider**, paragraph (b), after “Schedule 3A”, insert “; and”.

- (3) In section 5, definition of **access provider**, after paragraph (b), insert:
- (c) means, in relation to a fibre fixed line access service, the regulated fibre service provider who provides the service
- (4) In section 5, definition of **access seeker**, paragraph (b), after “access seeker”, insert “; and”.
- (5) In section 5, definition of **access seeker**, after paragraph (b), insert:
- (c) means, in section 155ZZD, a person who seeks access to a fibre optic cable that must be provided on an open access basis under that section; and
- (d) means, in relation to a fibre fixed line access service, a person who seeks access to the service from the regulated fibre service provider
- (6) In section 5, definition of **qualified revenue**, after “a specified amount”, insert “and excluding any amount under section 85A”.
- (7) In section 5, replace the definition of **telecommunication** with:
- telecommunication** 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
- (8) In section 5, repeal the definition of **chief executive**.

## 5 Section 6 replaced (Public notice)

Replace section 6 with:

### 6 Public notice

- (1) If, under this Act, the Commission is required to give public notice of a matter, the Commission must—
- (a) notify the matter in the *Gazette*; and
- (b) at all reasonable times, ensure that the full text of the matter is available on an Internet site maintained by or on behalf of the Commission.
- (2) A notification of a matter for the purpose of subsection (1)(a) must include—
- (a) the text of the matter; or
- (b) a summary of the text and a description of where the full text may be viewed on the Internet (for example, an Internet link).
- (3) If a provision of this Act refers to the date on which public notice of a matter is given, the relevant date is the date of its notification in the *Gazette*.
- (4) Despite subsections (1) and (2), nothing in this Act requires the Commission to include in a 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.

**6 Section 19 amended (Commission and Minister must consider purpose set out in section 18 and additional matters)**

In section 19, after “this Part”, insert “, Part 2AA,”.

**7 Section 66 amended (Alterations to Part 2 or Part 3 of Schedule 1)**

- (1) In section 66(a)(v)(A), replace “the applicable initial pricing principle” with “any applicable initial pricing principle”.
- (2) In section 66(c)(vii), replace “the applicable initial pricing principle” with “any applicable initial pricing principle”.

**8 New Part 2AA inserted**

After section 69, insert:

**Part 2AA**  
**Deregulating copper fixed line access services**

Subpart 1—Purpose

**69AA Purpose**

The purpose of this Part is to—

- (a) deregulate copper fixed line access services in areas where fibre fixed line access services are available; and
- (b) provide protections for end-users of copper fixed line access services and certain other designated services in deregulated areas; and
- (c) provide for the Commission to investigate whether the regulation of copper fixed line access services and certain other designated services should be altered.

Subpart 2—Deregulating copper fixed line access services

**69AB Specified fibre areas**

- (1) The Commission must, before 1 January 2020 and at least annually thereafter, carry out an assessment to determine the geographic areas in which a specified fibre service is available to end-users.
- (2) The Commission must, by public notice, declare an area to be a specified fibre area if the Commission determines in an assessment under subsection (1) that a specified fibre service is available to end-users in the area.
- (3) A notice under this section must specify the date on and after which the area is to be a specified fibre area, and that date must not be before 1 January 2020.
- (4) A notice under this section may describe an area by any means, including (without limitation)—

- (a) by use of a map; and
  - (b) by a narrative description of the area.
- (5) The Commission must maintain a record of all specified fibre areas that is available, at all reasonable times, for inspection on the Commission's Internet site in an electronic form that is publicly accessible.
- (6) In this section, **specified fibre service** means either of the following:
- (a) a fibre fixed line access service;
  - (b) a telecommunications service provided by a regulated fibre service provider (**F**) over fibre media where the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications).

#### **69AC Withdrawal of copper fixed line access services**

- (1) This section applies if—
- (a) Chorus is required by a standard terms determination made under section 30M to supply a copper fixed line access service to an access seeker; and
  - (b) Chorus started supplying the service at a time when the end-user's building (or, where relevant, the building's distribution frame) was not located in a specified fibre area; and
  - (c) as a result of a notice under section 69AB,—
    - (i) the end-user's building (or, where relevant, the building's distribution frame) becomes located in a specified fibre area; and
    - (ii) the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice.
- (2) Chorus may stop supplying the service referred to in subsection (1) only if—
- (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
  - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—
- (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
  - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).

#### **69AD Withdrawal of certain designated access services**

- (1) This section applies if—
- (a) Chorus is required by a standard terms determination made under section 30M to supply a relevant service to an access seeker; and

- (b) Chorus started supplying the service at a time when the service was a designated access service; and
  - (c) as a result of section 13 of the Telecommunications (New Regulatory Framework) Amendment Act 2018, the service ceases to be a designated access service on and after 1 January 2020.
- (2) Chorus may stop supplying the service only if—
- (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
  - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—
- (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
  - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).
- (4) In this section, **relevant service** means either of the following:
- (a) Chorus’s unbundled copper local loop network;
  - (b) Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).

#### **69AE Application of certain TSO instruments in specified fibre areas**

Despite anything in this Act, the following TSO instruments cease to apply in relation to an area that becomes a specified fibre area:

- (a) Telecommunications Service Obligations (TSO) Deed for Local Residential Telephone Service (except to the extent that it relates to 111 call services);
- (b) Telecommunications Service Obligations (TSO) Deed for TSO Network Service.

#### **69AF Copper withdrawal code**

- (1) In this Part, **copper withdrawal code** means the code approved under Schedule 2A.
- (2) Schedule 2A sets out the provisions that apply to the copper withdrawal code.

### Subpart 3—Price regulated copper services

#### **69AG Continued application of certain standard terms determinations**

- (1) Subsection (2) applies to a standard terms determination made under section 30M that, immediately before 1 January 2020, applies to 1 or more of the following services:

- (a) Chorus's unbundled bitstream access backhaul:
  - (b) Chorus's unbundled copper local loop network co-location:
  - (c) Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point).
- (2) Despite anything in this Act, during the period starting on 1 January 2020 and ending on the close of the day immediately before the copper review date for the relevant service,—
- (a) the determination continues to apply to the relevant service; and
  - (b) sections 30R and 59 do not apply in respect of the determination.
- (3) For the purposes of subsection (2)(a),—
- (a) the prices that apply are the year 5 prices specified in the determination; and
  - (b) those prices increase or decrease (as appropriate) by an annual CPI adjustment on 16 December in each year (starting on 16 December 2020).
- (4) Subsection (5) applies to a standard terms determination made under section 30M that, immediately before 16 December 2019, applies to 1 or both of the following services:
- (a) Chorus's unbundled bitstream access:
  - (b) Chorus's unbundled copper low frequency service.
- (5) Despite anything in this Act, during the period starting on 16 December 2019 and ending on the close of the day immediately before the copper review date for the relevant service,—
- (a) the determination continues to apply to the relevant service; and
  - (b) sections 30R and 59 do not apply in respect of the determination.
- (6) For the purposes of subsection (5)(a),—
- (a) the prices that apply are the year 5 prices specified in the determination; and
  - (b) those prices increase or decrease (as appropriate) by an annual CPI adjustment on 16 December in each year (starting on 16 December 2020).
- (7) On and after the copper review date for a service referred to in subsection (1) or (4),—
- (a) the standard terms determination for the service continues to apply; and
  - (b) Part 2 (including sections 30R and 59) applies in respect of the determination; and

- (c) unless the maximum prices in the determination are amended in accordance with Part 2, the maximum prices under the determination are those that applied immediately before the copper review date.
- (8) In this section, **copper review date** for a service means the date on which the Commission completes, in relation to the service,—
  - (a) the investigation referred to in section 69AH(1)(a); or
  - (b) any other investigation under Schedule 3 that starts on or after 1 January 2020.

#### Subpart 4—Investigation

#### **69AH Schedule 3 modified for investigation of certain copper services**

- (1) Despite clause 1 of Schedule 3, the Commission must—
  - (a) complete, by no later than 31 December 2025, an investigation under Part 1 of Schedule 3 into whether Schedule 1 should be altered in any of the ways set out in section 66 or 67 in respect of the regulation of the following:
    - (i) copper fixed line access services;
    - (ii) Chorus’s unbundled bitstream access backhaul;
    - (iii) Chorus’s unbundled copper local loop network co-location;
    - (iv) Chorus’s unbundled copper local loop network backhaul (telephone exchange to interconnect point); or
  - (b) provide, within a reasonable time after 31 December 2025, written reasons why there were not reasonable grounds for starting such an investigation.
- (2) An investigation referred to in subsection (1)(a) must be completed in accordance with Part 1 of Schedule 3, except that the 240-working-days deadline referred to in clause 4(1) of Schedule 3 does not apply to the investigation.

#### **9 Section 69XA amended (Interpretation)**

- (1) In section 69XA, definition of **relevant regulated services**, after “access services”, insert “except if those services are services in relation to which the end-user’s building (or, where relevant, the building’s distribution frame) is located in a specified fibre area”.
- (2) In section 69XA, definition of **relevant services**, replace paragraph (b) with:
  - (b) does not include—
    - (i) 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; or

- (ii) any services in relation to which the end-user's building (or, where relevant, the building's distribution frame) is located in a specified fibre area

**10 New section 85A inserted (Certain revenue from broadcasting services must be excluded from qualified revenue)**

After section 85, insert:

**85A Certain revenue from broadcasting services must be excluded from qualified revenue**

- (1) For the purposes of this subpart, the amount of a liable person's qualified revenue must exclude the following amounts (as determined in accordance with any specifications set by the Commission):
  - (a) any amount of revenue that is received by a liable person in relation to a broadcasting service that is supplied to end-users free of charge (for example, revenue derived from a free-to-air radio or television service):
  - (b) any amount of revenue that is received before 1 July 2020 by a liable person in relation to any other broadcasting service.
- (2) The specifications set by the Commission may (without limitation) provide for the apportionment of any amount of revenue if the amount is received in connection with a service referred to in subsection (1) and 1 or more other services.

**11 Section 157 amended (Regulations)**

After section 157(ch), insert:

- (ci) prescribing matters for the purposes of the copper withdrawal code:

**12 Schedule 1AA amended**

In Schedule 1AA, after Part 1, insert the Part 2 set out in Schedule 1 of this Act.

**13 Schedule 1 amended**

Amend Schedule 1 as set out in Schedule 2 of this Act.

**14 New Schedule 2A inserted**

After Schedule 2, insert the Schedule 2A set out in Schedule 3 of this Act.

**15 Schedule 3 amended**

- (1) In Schedule 3, repeal clause 1(4).
- (2) In Schedule 3, clause 1(7), replace "section 156AP" with "sections 69AH, 156AP, and 211".
- (3) In Schedule 3, after clause 1(7), insert:

- (8) Subclause (3) does not apply in relation to the following:
- (a) copper fixed line access services:
  - (b) Chorus's unbundled copper local loop network co-location:
  - (c) Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point):
  - (d) Chorus's unbundled bitstream access backhaul.
- (4) In Schedule 3, clause 3(1), replace “must make reasonable efforts to” with “may”.
- (5) In Schedule 3, repeal clause 3(3).
- (6) In Schedule 3, clause 4(1), replace “make reasonable efforts to do the following things not later than 120 working days” with “do the following things not later than 240 working days”.
- (7) In Schedule 3, after clause 4(4), insert:
- (4A) A failure by the Commission to comply with subclause (1) does not invalidate a final report prepared by the Commission.
- (8) In Schedule 3, repeal clause 5.
- (9) In Schedule 3, clause 7(1)(a), replace “at the end” with “after the end”.
- (10) In Schedule 3, clause 7(1)(b), replace “at the end” with “after the end”.
- (11) In Schedule 3, clause 10(1), replace “must make reasonable efforts to” with “may”.
- (12) In Schedule 3, clause 11(1), replace “make reasonable efforts to do the following things not later than 60 working days” with “do the following things not later than 120 working days”.
- (13) In Schedule 3, after clause 11(4), insert:
- (5) A failure by the Commission to comply with subclause (1) does not invalidate a final report prepared by the Commission.
- (14) In Schedule 3, repeal clause 12.
- 16 Schedule 3A amended**
- (1) In Schedule 3A, clause 5(2), delete “after the Commission has made a recommendation under clause 3(2) in respect of that undertaking”.
- (2) In Schedule 3A, after clause 13(2), insert:
- (3) An access provider must not make more than 1 application in relation to a proposed regulatory change.
- (3) In Schedule 3A, repeal clause 16(3).

## Part 2

### Amendments related to fibre fixed line access services

#### 17 Section 10 amended (Performance of Commission's functions)

- (1) After section 10(1)(a)(iv), insert:
  - (v) make every determination in respect of fibre fixed line access services under Part 6; and
- (2) In section 10(1)(c)(ii), after “make 2”, insert “or more”.
- (3) In section 10(1)(c)(ii), replace “and 2 other” with “and those other”.

#### 18 Section 11 amended (Levy)

In section 11(1), (2), and (3)(d), replace “financial year” with “appropriation period” in each place.

#### 19 Section 12 amended (Levy for first financial year or part financial year)

- (1) Replace the heading to section 12 with “**Levy for appropriation period beginning 1 July 2018**”.
- (2) Repeal section 12(1), (2), and (3).
- (3) After section 12(3), insert:
  - (3A) Every service provider, or class of service providers, specified in regulations made under subsection (4) must pay to the Minister, for the appropriation period beginning on 1 July 2018, 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 Parts 2AA, 6, and 7; and
    - (b) the preparation of the exercise of, and the exercise of, the Commission's powers under Parts 2AA, 6, and 7.
  - (3B) Subsection (3A) applies irrespective of whether that subsection, and the regulations made under subsection (4), come into effect before, on, or after 1 July 2018.
- (4) In section 12(4)(d), replace “financial year” with “appropriation period” in each place.
- (5) After section 12(4), insert:
  - (5) The Minister must not recommend that regulations be made under this section unless the Minister is satisfied that the levy will not require a service provider, or a class of service providers, to pay a levy in respect of the same period under both this section and section 11 for, or in connection with,—
    - (a) the performance of the Commission's functions and duties under Parts 2AA, 6, and 7; or
    - (b) the exercise of the Commission's powers under Parts 2AA, 6, and 7.

**20 Section 15 amended (Application of Commerce Act 1986 and Crown Entities Act 2004)**

In section 15, insert as subsections (2) to (4):

- (2) The following provisions of the Commerce Act 1986 apply, with any necessary modifications, as specified in Part 6 of this Act:
  - (a) section 77 (additional lay members of High Court for purposes of appellate jurisdiction in respect of Commission determinations):
  - (b) sections 79A and 79B:
  - (c) sections 88, 88A, and 90:
  - (d) sections 93 to 97:
  - (e) Schedule 5.
- (3) Sections 88 and 88A of the Commerce Act 1986 apply, with any necessary modifications, as specified in section 156MD.
- (4) For the purposes of subsection (1)(l), the necessary modifications referred to in that subsection include (without limitation) treating a notice under any of sections 10A, 187(1)(c), 193, and 221 of this Act as a notice referred to in section 103(1)(a) of the Commerce Act 1986.

**21 Section 19A amended (Commission to have regard to economic policies of Government)**

In section 19A(1), after “powers under”, insert “Part 6 and”.

**22 New section 156ANA inserted (Amendment or consolidation of undertaking)**

After section 156AN, insert:

**156ANA Amendment or consolidation of undertaking**

- (1) The Minister may approve 1 or both of the following:
  - (a) an amendment to an undertaking, if the amendment is necessary or desirable for the purpose of making the undertaking consistent with this Act:
  - (b) the consolidation of 2 or more undertakings.
- (2) Sections 156AI to 156AK apply, with any necessary modifications, to an amendment or a consolidation as if it were an undertaking.

**23 Section 156AZ amended (Application of provisions in subpart 1)**

In section 156AZ, replace “Sections 156AH to 156AN, 156AO,” with “Sections 156AH to 156AO”.

**24 New Part 6 inserted**

After section 161, insert:

## Part 6

### Fibre fixed line access services

#### Subpart 1—General

#### 162 Purpose

The purpose of this Part is to promote the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes that are consistent with outcomes produced in workably competitive markets so that regulated fibre service providers—

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
- (b) have incentives to improve efficiency and supply fibre fixed line access services of a quality that reflects end-user demands; and
- (c) allow end-users to share the benefits of efficiency gains in the supply of fibre fixed line access services, including through lower prices; and
- (d) are limited in their ability to extract excessive profits.

Compare: 1986 No 5 s 52A

#### 163 Overview

- (1) In this Part,—
  - (a) subpart 1 contains general provisions and defines terms used in this Part;
  - (b) subpart 2 sets out the different types of regulation that apply under this Part and provides for the Commission to make determinations specifying how each type of regulation applies to regulated fibre service providers;
  - (c) subpart 3 relates to input methodologies and provides for the Commission to determine input methodologies applying to the regulation of fibre fixed line access services;
  - (d) subpart 4 relates to information disclosure regulation and provides that certain regulated fibre service providers are required to disclose information in accordance with requirements determined by the Commission;
  - (e) subpart 5 relates to price-quality regulation and provides that certain regulated fibre service providers are required to apply the price-quality paths determined by the Commission;
  - (f) subpart 6 contains provisions relating to the duration of regulatory periods;
  - (g) subpart 7 relates to the Commission carrying out reviews related to the regulatory framework for fibre fixed line access services;
  - (h) subpart 8 contains enforcement provisions and miscellaneous provisions relating to the powers of the Commission, incorporation of material by reference, and the disclosure of commercially sensitive information;

- (i) subpart 9 contains appeal rights:
  - (j) subpart 10 contains order-making and regulation-making powers related to this Part.
- (2) This section is intended only as a guide to the general scheme and effect of this Part.
- Compare: 1986 No 5 ss 52, 52B

#### 164 Interpretation

- (1) In this Part, unless the context otherwise requires,—
- anchor service** means a fibre fixed line access service declared in regulations made under section 227 to be an anchor service
- claw-back** has the meaning set out in section 165
- contract price**, in relation to a service, means the maximum price that may be charged for providing the service in accordance with the contracts between Crown Infrastructure Partners Limited and UFB partners that were entered into as part of the UFB initiative
- Crown financing** means debt or equity financing provided by, or on behalf of, the Crown to a regulated fibre service provider (or a related party) in connection with the deployment of assets under the UFB initiative
- direct fibre access service** means a fibre fixed line access service declared in regulations made under section 228 to be a direct fibre access service
- first regulatory period** has the meaning set out in section 207
- information disclosure requirement** means a requirement that—
- (a) applies to a regulated fibre service provider who is prescribed in regulations made under section 226 as being subject to information disclosure regulation; and
  - (b) is specified in a section 170 determination
- input methodology** means a description of any methodology, process, rule, or matter that includes any of the matters listed in section 176 and that is published by the Commission under section 180
- point-to-multipoint layer 1 service** has the meaning given in section 156AB
- price**—
- (a) means 1 or more of individual prices, aggregate prices, or revenues (whether in the form of specific numbers, or in the form of formulas by which specific numbers are derived); and
  - (b) includes any related terms of payment
- publicly disclose**, in relation to information required to be disclosed under information disclosure regulation, means to disclose information to the public in the manner required by a section 170 determination

**quality dimensions** means measures of the quality of fibre fixed line access services, and may include (without limitation) responsiveness to access seekers and end-users

**section 170 determination** means a determination made by the Commission under section 170 that sets out how information disclosure regulation or price-quality regulation applies to a regulated fibre service provider

**UFB partner** has the meaning set out in section 156AB

**unbundled fibre service** means a point-to-multipoint layer 1 service declared in regulations made under section 229 to be an unbundled fibre service.

- (2) In this Part, the test for related parties is the same as the test in section 69U, applied with any necessary modifications.

### **165 Meaning and application of claw-back**

- (1) A reference to the Commission applying **claw-back** is a reference to the Commission doing either of the following:
- (a) requiring a regulated fibre service provider to lower its prices on a temporary basis in order to allow end-users to be compensated for some or all of any over-recovery that occurred under the prices previously charged by the regulated fibre service provider;
  - (b) allowing a regulated fibre service provider to recover some or all of any shortfall in its revenues that occurred under the prices previously charged by the regulated fibre service provider.
- (2) If the Commission requires a regulated fibre service provider to lower its prices, it must also require that the lowering of prices must be spread over time in order to minimise undue financial hardship to the regulated fibre service provider.
- (3) If the Commission allows a regulated fibre service provider to recover any shortfall, it must require that any recovery must be spread over time in order to minimise price shocks to end-users.

Compare: 1986 No 5 s 52D

### **166 Matters to be considered by Commission and Minister**

- (1) This section applies if the Commission or the Minister is required under this Part to make a recommendation, determination, or decision.
- (2) The Commission or Minister must make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect—
- (a) to the purpose in section 162; and
  - (b) to the extent that the Commission or Minister considers it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

## Subpart 2—Regulating fibre fixed line access services

### 167 Regulation of fibre fixed line access services

- (1) Fibre fixed line access services are regulated as provided for by this Part.
- (2) A regulated fibre service provider must comply with—
  - (a) the requirements of this Part that apply to the regulated fibre service provider; and
  - (b) every section 170 determination that applies to the regulated fibre service provider.
- (3) The following apply in relation to a regulated fibre service provider on and after the date on which the provider is obliged to comply with this Part or (as the case requires) with a section 170 determination:
  - (a) sections 212 to 218; and
  - (b) sections 88, 88A, and 90 of the Commerce Act 1986 (applied with any necessary modifications).
- (4) The Commission may exercise any of its powers under this Act for the purpose of monitoring compliance by regulated fibre service providers with regulation under this Part.

Compare: 1986 No 5 ss 52F, 54E

### 168 Information disclosure regulation

Fibre fixed line access services supplied by a regulated fibre service provider who is prescribed in regulations made under section 226 as being subject to information disclosure regulation are subject to information disclosure regulation under this Part (*see* subpart 4).

### 169 Price-quality regulation

Fibre fixed line access services supplied by a regulated fibre service provider who is prescribed in regulations made under section 226 as being subject to price-quality regulation are subject to price-quality regulation under this Part (*see* subpart 5).

### 170 Determinations by Commission under this section

- (1) The Commission must make determinations under this section specifying how 1 or both of the following apply to regulated fibre service providers:
  - (a) information disclosure regulation;
  - (b) price-quality regulation.
- (2) Determinations must—
  - (a) set out, for each type of regulation, the requirements that apply to each regulated fibre service provider; and

- (b) set out any time frames (including the regulatory periods) that must be complied with or that apply; and
  - (c) specify the input methodologies that apply; and
  - (d) be consistent with this Part.
- (3) It is not necessary for a single determination to address all matters relating to fibre fixed line access services, or to a regulated fibre service provider, and different parts of any determination may come into effect at different times.
- (4) A determination made under this section may require a regulated fibre service provider to comply with the requirements set out in any other determination that has been made under this section in respect of fibre fixed line access services.
- (5) The Commission must, as soon as practicable after making a determination under this section,—
- (a) give a copy of the determination to each regulated fibre service provider to whom the determination relates; and
  - (b) give public notice of the determination.
- (6) A determination under this section 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).

Compare: 1986 No 5 s 52P

#### **171 Determinations must reflect actual costs of Crown financing**

- (1) This section applies if a section 170 determination sets maximum revenues that may be recovered by, or the maximum price or prices that may be charged by, a regulated fibre service provider.
- (2) The Commission must ensure that the maximum revenues, or the maximum price or prices, reflect, in respect of any Crown financing, the actual financing costs incurred by the provider (or a related party) in the regulatory period to which the determination applies.

#### **172 When Commission must make initial section 170 determinations**

- (1) The Commission must, after the date on which the relevant input methodologies are determined under section 178 but before the implementation date, make determinations under section 170 specifying—
- (a) how price-quality regulation applies to regulated fibre service providers during the first regulatory period; and
  - (b) how information disclosure regulation applies to regulated fibre service providers from the start of the first regulatory period.
- (2) A section 170 determination relating to information disclosure regulation may last for more than 1 regulatory period and remains in force until it is revoked.

**173 Amendment of section 170 determination**

- (1) A section 170 determination may be amended in a material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.
- (2) An amendment forms part of the determination it amends.
- (3) An amendment comes into force on the date specified in the amendment, which must be a date on or after the date on which public notice is given under subsection (4)(b).
- (4) The Commission must, as soon as practicable after making an amendment,—
  - (a) give a copy of the amendment to each provider to whom the determination relates; and
  - (b) give public notice of the determination, as amended by the amendment.

Compare: 1986 No 5 s 52Q

**Subpart 3—Input methodologies***Input methodologies***174 Purpose of input methodologies**

The purpose of input methodologies is to promote certainty for regulated fibre service providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of fibre fixed line access services under this Part.

Compare: 1986 No 5 s 52R

**175 How input methodologies apply**

A relevant input methodology relating to the supply of fibre fixed line access services must be applied—

- (a) by each relevant regulated fibre service provider in accordance with the relevant section 170 determination; and
- (b) by the Commission in recommending, deciding, or determining—
  - (i) how regulation under this Part should apply to fibre fixed line access services; or
  - (ii) the prices or quality standards applying to fibre fixed line access services.

Compare: 1986 No 5 s 52S

**176 Matters covered by input methodologies**

- (1) The input methodologies relating to fibre fixed line access services must include, to the extent applicable to the type of regulation under consideration,—

- (a) methodologies for evaluating or determining the following matters in respect of the supply of the fibre fixed line access services:
    - (i) cost of capital;
    - (ii) valuation of assets, including depreciation, and treatment of revaluations;
    - (iii) allocation of common costs (for example, between activities, businesses, access seekers, regulated services, or geographic areas);
    - (iv) treatment of taxation; and
  - (b) quality dimensions; and
  - (c) regulatory processes and rules, such as—
    - (i) the specification and definition of prices, including identifying any costs that can be passed through to prices (which may not include the legal costs of any appeals against input methodology determinations under this Part); and
    - (ii) identifying circumstances in which a price-quality path may be reconsidered within a regulatory period; and
  - (d) methodologies for capital expenditure projects, including the following:
    - (i) requirements that must be met by the regulated fibre service provider, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of consultation and agreement with other parties (including access seekers or end-users); and
    - (ii) the criteria the Commission will use to evaluate capital expenditure proposals; and
    - (iii) time frames and processes for evaluating capital expenditure proposals, including what happens if the Commission does not comply with those time frames.
- (2) Every input methodology must, as far as is reasonably practicable,—
- (a) set out the matters listed in subsection (1) in sufficient detail so that each affected regulated fibre service provider is reasonably able to estimate the material effects of the methodology on the provider; and
  - (b) set out how the Commission intends to apply the input methodology to fibre fixed line access services; and
  - (c) be consistent with the other input methodologies that relate to fibre fixed line access services.
- (3) Any methodologies referred to in subsection (1)(a)(ii) that relate to establishing the initial value of fibre assets (as defined in section 177) must be determined in accordance with section 177.

Compare: 1986 No 5 ss 52T, 54S

**177 Initial value of fibre assets**

- (1) The initial value of a fibre asset is calculated by—
  - (a) taking the cost—
    - (i) incurred by a regulated fibre service provider in constructing or acquiring the fibre asset, net of specified capital contributions; or
    - (ii) if the fibre asset was owned by Chorus before 1 December 2011, recorded by Chorus for the fibre asset in its published general purpose financial statements as of 1 December 2011; and
  - (b) adjusting that cost for accumulated depreciation and impairment losses (if any) recognised by the regulated fibre service provider (ignoring any accounting adjustment for Crown financing), as at the implementation date, under generally accepted accounting practice in New Zealand.
- (2) Each regulated fibre service provider is treated, as at the implementation date, as owning a fibre asset with an initial value equal to the financial losses, as determined by the Commission, incurred by the provider in providing fibre fixed line access services under the UFB initiative for the period starting on 1 December 2011 and ending on the close of the day immediately before the implementation date.
- (3) In determining the financial losses under subsection (2), the Commission—
  - (a) must take into account any accumulated unrecovered returns on investments made by the provider under the UFB initiative; and
  - (b) in respect of any Crown financing provided in connection with those investments, must refer to the actual financing costs incurred by the provider (or a related party).
- (4) It is not the intention of subsections (2) and (3) that regulated fibre service providers should be protected from all risk of not fully recovering those financial losses through prices over time.
- (5) To avoid doubt, the initial value of a fibre asset determined under this section includes the costs incurred by the provider in relation to the asset—
  - (a) as a direct result of meeting specific requirements of the UFB initiative; and
  - (b) for both standard connections and non-standard connections.
- (6) In this section,—

**accumulated unrecovered returns** means the sum (adjusted to reflect the present value, as calculated in the manner that the Commission thinks fit, at the implementation date) of the unrecovered returns on investments for each financial year, or part financial year, that starts on or after 1 December 2011 and ends before the close of the day immediately before the implementation date

**fibre asset** means an asset that is—

  - (a) constructed or acquired by a regulated fibre service provider; and

- (b) employed in the provision of fibre fixed line access services (whether or not the asset is also employed in the provision of other services)

**specified capital contribution—**

- (a) means a capital contribution received by a regulated fibre service provider from 1 or more of the following:
- (i) an access seeker:
  - (ii) an end-user:
  - (iii) any other person, as determined by the Commission; but
- (b) does not include any Crown financing

**standard connection** and **non-standard connection** have the meanings set out in section 155ZU.

**178 When input methodologies must be determined**

- (1) The Commission must, not later than the implementation date, determine the input methodologies referred to in section 176 for fibre fixed line access services.
- (2) The Commission may, at any time after the implementation date, determine further input methodologies for fibre fixed line access services.

Compare: 1986 No 5 s 52U

**179 Commission process for determining input methodologies**

- (1) When the Commission begins work on an input methodology, it must give public notice of its intention to do so that—
- (a) outlines the process that will be followed; and
  - (b) sets out the proposed time frames.
- (2) During the course of its work on an input methodology, the Commission—
- (a) must give public notice of the draft methodology; and
  - (b) must give interested persons a reasonable opportunity to give their views on that draft methodology; and
  - (c) may hold 1 or more conferences; and
  - (d) must have regard to any views received from interested persons within any time frames set.
- (3) Any work done or action taken (including any consultation) by the Commission on input methodologies before this section commences may be taken into account as part of the work required to be done by the Commission to comply with the requirements of subsections (1) and (2).

Compare: 1986 No 5 s 52V

**180 Publication of input methodologies**

- (1) The Commission must give public notice of every input methodology, and every amendment to an input methodology,—
  - (a) within 10 working days after the Commission determines the input methodology or amendment; and
  - (b) if the input methodology or amendment is determined by the High Court on appeal, within 10 working days after the Commission receives a copy of the decision of the High Court.
- (2) For the purposes of the public notice given under section 6, the full text of the matter must include the reasons for determining the methodology.
- (3) An input methodology or amendment 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).

Compare: 1986 No 5 s 52W

**181 Changes to input methodologies**

- (1) If the Commission proposes to amend an input methodology to make a material change, section 179 applies as if the amendment were a new input methodology.
- (2) The Commission may amend an input methodology to make a non-material change without complying with section 179.
- (3) If the Commission proposes to revoke an input methodology, the Commission—
  - (a) must give public notice of its intention to do so that—
    - (i) outlines the process that will be followed; and
    - (ii) sets out the proposed time frames; and
  - (b) must give interested persons a reasonable opportunity to give their views on the proposed revocation; and
  - (c) may hold 1 or more conferences; and
  - (d) must have regard to any views received from interested persons within any time frames set.
- (4) The Commission must give public notice of the revocation of an input methodology within 10 working days after the input methodology is revoked.

Compare: 1986 No 5 s 52X

**182 Review and date of publication of input methodologies**

- (1) The Commission must review each input methodology no later than 7 years after its date of publication and, after that, at intervals of no more than 7 years.
- (2) The **date of publication** of an input methodology is—

- (a) the date on which public notice of the methodology is given under section 180(1)(a); or
  - (b) if a later public notice is given under section 180(1)(b), the date of that notice.
- (3) Section 179 applies, with any necessary modifications, as if the review were a new input methodology.
- (4) Section 180 (or, if relevant, section 181(4)) applies if, after a review, an input methodology is replaced, amended, or revoked.

Compare: 1986 No 5 s 52Y

### *Appeals against input methodology determinations*

#### **183 Appeals against input methodology determinations**

- (1) Any person who gave views on an input methodology determination to the Commission as part of the process under section 179, and who, in the opinion of the High Court, has a significant interest in the matter, may appeal to the High Court against the determination.
- (2) In this section and section 184, **input methodology determination** means any of the following:
- (a) the initial determination of an input methodology;
  - (b) any determination by the Commission that amends or revokes the input methodology;
  - (c) any determination by the Commission of an input methodology after a review of the input methodology.
- (3) In determining an appeal against an input methodology determination, the court may do any of the following:
- (a) decline the appeal and confirm the input methodology, or the revocation of the input methodology, set out in the determination;
  - (b) allow the appeal by—
    - (i) amending the input methodology; or
    - (ii) revoking the input methodology and substituting a new one; or
    - (iii) referring the input methodology determination back to the Commission with directions as to the particular matters that require amendment; or
    - (iv) if the revocation of an input methodology is not confirmed, confirming that the input methodology still applies.
- (4) The court may exercise its powers under subsection (3)(b) only if it is satisfied that the amended, substituted, or confirmed input methodology is (or will be, in the case of subsection (3)(b)(iii)) materially better in—

- (a) meeting the purpose of this Part or the purpose in section 174, or both; and
  - (b) to the extent that the court considers it relevant, promoting workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.
- (5) If the court allows an appeal, the Commission may seek clarification from the court on any matter for the purpose of implementing the court's decision.
- (6) There is a right of appeal under section 97 of the Commerce Act 1986 to the Court of Appeal from any decision or order of the High Court under this section on a point of law only.

Compare: 1986 No 5 s 52Z

#### **184 Process for appeals**

- (1) An appeal under section 183(1) must be brought within 20 working days after the date on which public notice of the input methodology is given.
- (2) The appeal must be by way of rehearing and must be conducted solely on the basis of the documentary information and views that were before the Commission when it made its determination, and no party may introduce any new material during the appeal.
- (3) The High Court must sit with 2 lay members (unless the court considers that only 1 is required).
- (4) Each of the lay members must have relevant experience and be appointed from the pool of people appointed under section 77 of the Commerce Act 1986 to be members of the court for the purpose of hearing the appeal.
- (5) Section 77 of the Commerce Act 1986 applies, and section 77(14) of that Act is not limited by subsection (3) of this section.

Compare: 1986 No 5 s 52ZA

#### **185 Input methodology applies pending outcome of appeal**

- (1) The High Court may not stay the application of section 175 with respect to any input methodology until any appeal against it is finally determined.
- (2) Section 175 continues to apply with respect to every input methodology until any appeal against the input methodology is finally determined.

Compare: 1986 No 5 s 53

### Subpart 4—Information disclosure regulation

#### **186 Purpose of information disclosure regulation**

The purpose of information disclosure regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of this Part is being met.

Compare: 1986 No 5 s 53A

**187 Effect of being subject to information disclosure regulation**

- (1) A regulated fibre service provider who is subject to information disclosure regulation must—
  - (a) publicly disclose information in accordance with the information disclosure requirements set out in the relevant section 170 determination; and
  - (b) supply to the Commission a copy of all information disclosed in accordance with the section 170 determination, within 5 working days after the information is first made available to the public; and
  - (c) supply to the Commission, in accordance with a written notice by the Commission, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring the regulated fibre service provider's compliance with the section 170 determination.
- (2) If a regulated fibre service provider is subject to information disclosure regulation, the Commission—
  - (a) may monitor and analyse all information disclosed in accordance with the information disclosure requirements; and
  - (b) must, as soon as practicable after any information is publicly disclosed, publish (on an Internet site maintained by or on behalf of the Commission) a summary and an analysis of that information for the purpose of promoting greater understanding of the performance of individual regulated fibre service providers, their relative performance, changes in their performance over time, and their ability to extract excessive profits.
- (3) To avoid doubt, the Commission may, as part of a summary and an analysis, include an analysis of how effective the information disclosure requirements imposed on the regulated fibre service providers are in promoting the purpose in section 162.
- (4) In complying with subsection (2)(b), 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.

Compare: 1986 No 5 s 53B

**188 Section 170 determination to set out information disclosure requirements**

- (1) A section 170 determination relating to fibre fixed line access services that are subject to information disclosure regulation must specify the following:
  - (a) the regulated fibre service providers to which it applies;
  - (b) the information to be disclosed;
  - (c) the manner in which the information is to be disclosed;
  - (d) the form of disclosure;
  - (e) when, and for how long, information must be disclosed;

- (f) the input methodologies that apply:
  - (g) any other methodologies that are required in the preparation or compilation of the information.
- (2) Information required to be disclosed may include (without limitation) 1 or more of the following:
- (a) financial statements (including projected financial statements):
  - (b) asset values and valuation reports:
  - (c) prices, terms and conditions relating to prices, and pricing methodologies:
  - (d) contracts:
  - (e) transactions with related parties:
  - (f) financial and non-financial performance measures:
  - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements:
  - (h) asset management plans:
  - (i) quality performance measures and statistics:
  - (j) assumptions, policies, and methodologies used or applied in these or other areas:
  - (k) consolidated information that includes information about unregulated services, in which case section 189 applies:
  - (l) information related to 1 or more parts of a fibre network.
- (3) The section 170 determination may do 1 or more of the following:
- (a) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration:
  - (b) require independent audits of disclosed information:
  - (c) require the retention of data on which disclosed information is based, and associated documentation:
  - (d) exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions:
  - (e) provide for transitional provisions:
  - (f) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of information disclosure regulation.
- (4) The section 170 determination may not require a regulated fibre service provider to publicly disclose any provision of an existing contract that, immediately before the fibre fixed line access services became subject to information

disclosure regulation, was not required by or under any other enactment to be publicly disclosed.

Compare: 1986 No 5 s 53C

### **189 Consolidated information may also be required**

- (1) The purpose of this section is to enable the Commission to monitor compliance with information disclosure regulation applying to fibre fixed line access services.
- (2) A section 170 determination may require information referred to in subsection (3) to be disclosed only to the extent required to enable the purpose in subsection (1) to be met.
- (3) If a regulated fibre service provider provides services that are not subject to regulation under this Part (**other services**), the provider may be required to disclose—
  - (a) consolidated financial statements, and any other information referred to in section 188, for all businesses (including those related to the supply of other services) undertaken by that provider; and
  - (b) consolidated financial statements, and any other information referred to in section 188, for the supply of all other services in aggregate; and
  - (c) reconciliation of information provided under paragraphs (a) and (b) with information disclosed in accordance with information disclosure requirements applying to the fibre fixed line access services; and
  - (d) reconciliation of information disclosed under Part 4 of the Commerce Act 1986 with information disclosed in accordance with information disclosure requirements applying to the fibre fixed line access services.
- (4) If a regulated fibre service provider supplies goods or services that are regulated under Part 4 of the Commerce Act 1986, the Commission may require the provider to provide consolidated information and performance measures relating to all, or any combination of, those goods or services and the services regulated under this Part.

Compare: 1986 No 5 s 53D

### **190 Charge for providing copies to public**

- (1) A person who is required, by a section 170 determination, to provide copies of statements and information to the public on request may charge for providing those copies.
- (2) The charge must be no more than is reasonably required to recover the costs of providing those copies.

Compare: 1986 No 5 s 53E

**191 Limited exception to obligation to apply input methodologies**

- (1) Despite section 175, a regulated fibre service provider who is subject only to information disclosure regulation does not have to apply input methodologies for evaluating or determining the cost of capital.
- (2) However, to avoid doubt, subsection (1) does not affect anything else in this subpart, and in particular does not affect—
  - (a) section 187(2) (which means the Commission may use the input methodologies referred to in subsection (1) to monitor and analyse information); or
  - (b) section 188(2) (which means that a regulated fibre service provider may still be required to disclose information about the methodologies for evaluation or determining the cost of capital that it does in fact use).

Compare: 1986 No 5 s 53F

**Subpart 5—Price-quality regulation****192 Purpose of price-quality regulation**

The purpose of price-quality regulation is to regulate the price and quality of fibre fixed line access services provided by regulated fibre service providers.

Compare: 1986 No 5 s 53K

**193 Effect of being subject to price-quality regulation**

- (1) A regulated fibre service provider who is subject to price-quality regulation in respect of fibre fixed line access services must—
  - (a) apply the price-quality paths set by the Commission in a section 170 determination in respect of those services; and
  - (b) comply with sections 198 to 201.
- (2) For the purpose of monitoring compliance with this section, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated fibre service provider requiring it to provide any or all of the following:
  - (a) a written statement that states whether the provider has complied with the price-quality paths applying to that provider;
  - (b) a report on the written statement referred to in paragraph (a) that is signed by an auditor in accordance with any form specified by the Commission;
  - (c) sufficient information to enable the Commission to properly determine whether a price-quality path has been complied with:

- (d) a certificate, in the form specified by the Commission and signed by at least 1 director of the provider, confirming the truth and accuracy of any information provided under this section.

Compare: 1986 No 5 ss 53L, 53N

#### **194 Section 170 determination to set out price-quality path requirements**

- (1) A section 170 determination relating to fibre fixed line access services that are subject to price-quality regulation must specify the price-quality paths that apply to a regulated fibre service provider.
- (2) A price-quality path must specify the following:
  - (a) the regulatory period to which it applies:
  - (b) in relation to prices, 1 or both of the following:
    - (i) the maximum price or prices that may be charged by a regulated fibre service provider:
    - (ii) the maximum revenues that may be recovered by a regulated fibre service provider:
  - (c) the quality standards that must be met by a regulated fibre service provider:
  - (d) the date or dates on which the price-quality path (or any part of it) takes effect:
  - (e) the date or dates by which compliance must be demonstrated in accordance with section 193(2).
- (3) A price-quality path may include incentives for a regulated fibre service provider to maintain or improve its quality of supply, and those incentives may include (without limitation) any of the following:
  - (a) penalties by way of a reduction in the provider's maximum prices or revenues based on whether, or by what amount, the provider fails to meet the required quality standards:
  - (b) rewards by way of an increase in the provider's maximum prices or revenues based on whether, or by what amount, the provider meets or exceeds the required quality standards:
  - (c) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards:
  - (d) reporting requirements, including special reporting requirements in asset management plans, if the provider fails to meet the quality standards.
- (4) Quality standards may, subject to any relevant input methodologies, be prescribed in any way the Commission considers appropriate (such as targets, bands, or formulas).

- (5) A price-quality path does not apply to a regulated fibre service provider until the date specified in the relevant section 170 determination.

Compare: 1986 No 5 ss 53M, 53O

**195 Maximum revenues specified in initial price-quality paths**

- (1) Despite section 194(2)(b), the Commission must, in the price-quality paths for each regulatory period that starts before the reset date,—
- (a) specify the maximum revenues that may be recovered by a regulated fibre service provider; and
  - (b) not specify the maximum price or prices that may be charged by a regulated fibre service provider.
- (2) In this section and section 196, **reset date** means the date declared, in an order made under section 225, to be the reset date.

**196 Wash-up mechanism for maximum revenues specified in initial price-quality paths**

- (1) This section applies when the Commission specifies, in the price-quality paths for each regulatory period that starts before the reset date (except the first regulatory period), the maximum revenues that may be recovered by a regulated fibre service.
- (2) The Commission must, in calculating the maximum revenues, apply a wash-up mechanism that provides for any over-recovery or under-recovery of revenue by the regulated fibre service provider during the previous regulatory period to be applied in a manner that is equivalent in present value terms (as calculated in the manner that the Commission thinks fit) over 1 or more future regulatory periods.
- (3) To avoid doubt, the Commission may, but is not required to, apply the wash-up mechanism referred to in subsection (2) in a price-quality path for a regulatory period that starts on or after the reset date.

**197 Smoothing revenues and prices**

- (1) This section applies when the Commission specifies maximum prices or maximum revenues for the purpose of section 194(2)(b).
- (2) The Commission must calculate the maximum price or revenue in a manner that is equivalent in present value terms (as calculated in the manner that the Commission thinks fit) over 2 or more regulatory periods (for example, by altering depreciation) if, in the Commission's opinion, it is necessary or desirable to do so to minimise any undue financial hardship to a regulated fibre service provider or to minimise price shocks to end-users.

**198 Anchor services**

- (1) A regulated fibre service provider who is subject to price-quality regulation must provide an anchor service if an anchor service has been declared.

- (2) The service must be provided—
- (a) in accordance with any prescribed description of the service; and
  - (b) in accordance with any prescribed conditions; and
  - (c) during any prescribed period for the service; and
  - (d) at a price that is no greater than any prescribed maximum price.

**199 Direct fibre access services**

- (1) A regulated fibre service provider who is subject to price-quality regulation must provide a direct fibre access service if a direct fibre access service has been declared.
- (2) The service must be provided—
- (a) in accordance with any prescribed description of the service; and
  - (b) in accordance with any prescribed conditions; and
  - (c) during any prescribed period for the service; and
  - (d) at a price that is no greater than any prescribed maximum price.

**200 Unbundled fibre services**

- (1) A regulated fibre service provider who is subject to price-quality regulation must provide an unbundled fibre service if an unbundled fibre service has been declared.
- (2) The service must be provided—
- (a) in accordance with any prescribed description of the service; and
  - (b) in accordance with any prescribed conditions; and
  - (c) during any prescribed period for the service; and
  - (d) at a price that is no greater than any prescribed maximum price.

**201 Geographically consistent pricing**

A regulated fibre service provider who is subject to price-quality regulation must, regardless of the geographic location of the access seeker or end-user, charge the same price for providing fibre fixed line access services that are, in all material respects, the same.

**202 Exceptions from section 201 for trials**

- (1) Nothing in section 201 applies in relation to a trial of a fibre fixed line access service.
- (2) The provision of a service is a trial if the service—
- (a) is offered by the provider for no more than 1 year; and
  - (b) is provided under an agreement with end-users that clearly states the end date for the service; and

- (c) is provided to no more than 1,000 end-users over the whole period in which it is offered.

### **203 Making new section 170 determination**

- (1) Before the end of each regulatory period, the Commission must make a new section 170 determination specifying the price-quality paths that will apply for the following regulatory period.
- (2) In making a new section 170 determination, the Commission must consult with interested parties in relation to the requirements listed in section 194.

Compare: 1986 No 5 s 53P

### **204 What happens to price-quality path if input methodologies change**

- (1) A price-quality path may not be reopened within a regulatory period on the grounds of a change in an input methodology, except as provided in subsection (2).
- (2) A price-quality path must be reopened by the Commission, and a new price-quality path made by amending the relevant section 170 determination in accordance with section 173, if—
  - (a) an input methodology changes as a result of an appeal under section 183; and
  - (b) had the changed methodology applied at the time the price-quality path was set, it would have resulted in a materially different path being set.
- (3) When making a new price-quality path under subsection (2), the Commission must apply claw-back.

Compare: 1986 No 5 s 53ZB

### **205 Application of Commerce Act 1986**

Part 2 of the Commerce Act 1986 does not apply in respect of—

- (a) a price for a fibre fixed line access service provided by a regulated fibre service provider if—
  - (i) that service is subject to a prescribed maximum price under this Part (whether in this Part, in regulations made under this Part, or in a section 170 determination); and
  - (ii) the price is the same as the prescribed maximum price; and
- (b) any matter necessary for giving effect to the prescribed maximum price referred to in paragraph (a).

### **206 Modification of undertakings under section 156AD**

- (1) A regulated service provider is not required to achieve price equivalence in relation to the supply of an unbundled layer 1 service to the extent that the service is an input to a relevant service.

- (2) This section applies—
- (a) on and after the implementation date; and
  - (b) despite any undertaking entered into by a regulated fibre service provider in accordance with section 156AD(2)(c).

- (3) In this section,—

**layer 1 service** has the meaning set out in section 156AB

**price equivalence** means equivalence (as defined in section 156AB) in relation to pricing

**relevant service** means a service that is subject to a prescribed maximum price under this Part (whether in this Part, in regulations made under this Part, or in a section 170 determination) that is not a cost-based price.

### Subpart 6—Regulatory periods

#### 207 Regulatory periods

- (1) The first regulatory period starts on the implementation date and lasts for a period of 3 years.
- (2) The duration of subsequent regulatory periods must be determined by the Commission and must be between 3 and 5 years.
- (3) The Commission must notify the duration of each new regulatory period in a section 170 determination.

### Subpart 7—Reviews

#### 208 Anchor services review

- (1) The Commission may, before the start of each regulatory period (including the first regulatory period), review whether, and how effectively, an anchor service meets the purpose of anchor services in subsection (7).
- (2) A review must consider the following in respect of an anchor service:
  - (a) any prescribed description of the service:
  - (b) any prescribed conditions that apply to the service:
  - (c) any prescribed period for the service:
  - (d) any prescribed maximum price for the service.
- (3) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received.
- (4) The Commission must make a recommendation to the Minister after a review for the purposes of section 227.

- (5) The Commission must not recommend a change to the description of an anchor service unless the service (with the amended description) meets the purpose in subsection (7).
- (6) The Commission must not recommend a change to the prescribed maximum price of an anchor service unless,—
  - (a) if the recommendation is made before the start of the first regulatory period, the recommended maximum price is based on the contract price for the service immediately before the implementation date, with an annual CPI adjustment mechanism; and
  - (b) if the recommendation is made after the start of the first regulatory period, the recommended maximum price is a cost-based price.
- (7) The purpose of anchor services is—
  - (a) to ensure that baseband equivalent voice and basic broadband services are available to end-users at reasonable prices; and
  - (b) to act as an appropriate constraint on the price and quality of other fibre fixed line access services.

#### **209 Price-quality review**

- (1) The Commission may, on or after the date that is 3 years after the implementation date and at intervals of no less than 5 years thereafter, review how effectively the regulatory provisions in sections 195, 199, and 200 meet the purpose in section 162.
- (2) A review must consider 1 or more of the following:
  - (a) whether price-quality paths should, with effect from the start of a future regulatory period, continue to be required to specify the maximum revenues that may be recovered by a regulated fibre service provider (*see* sections 195 and 196):
  - (b) whether any of the matters prescribed under section 228(2) should be amended and, if so, how they should be prescribed instead (if at all):
  - (c) whether a point-to-multipoint layer 1 service supplied to end-users' premises or buildings should be declared under section 229(1) to be an unbundled fibre service and, if so, how the matters set out in section 229(2) should be prescribed (if at all):
  - (d) whether any of the matters prescribed under section 229(2) should be amended, and, if so, how they should be prescribed instead (if at all).
- (3) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received.
- (4) The Commission must make a recommendation to the Minister following a review for the purposes of section 225, 228, or 229 (as appropriate).

- (5) The Commission must not recommend a prescribed maximum price for an unbundled fibre service or a direct fibre access service unless the maximum price is a cost-based price.

### **210 Deregulation review**

- (1) The Commission may, at any time after the implementation date, review how 1 or more fibre fixed line access services are regulated under this Part if the Commission has reasonable grounds to consider that those services—
- (a) should no longer be regulated under this Part; or
  - (b) should no longer be subject to price-quality regulation under this Part.
- (2) For the purposes of subsection (1), the Commission may, without limitation, describe a service under review with reference to any 1 or more of the following:
- (a) the geographic area in which the service is supplied;
  - (b) the service's end-users;
  - (c) the service providers who seek access to the service;
  - (d) the technical specifications of the service;
  - (e) any other circumstances in which the service is supplied.
- (3) The Commission must, before the start of each regulatory period (except the first regulatory period), consider whether there are reasonable grounds to start a review.
- (4) A review may consider the following:
- (a) whether competition to 1 or more fibre fixed line access services has increased or decreased in a relevant market;
  - (b) the impact of any increase or decrease on the ability of regulated fibre service providers to exercise substantial market power;
  - (c) whether the purpose of this Part would be better met if 1 or more fibre fixed line access services—
    - (i) were no longer regulated under this Part; or
    - (ii) were no longer subject to price-quality regulation under this Part.
- (5) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received.
- (6) The Commission must make a recommendation to the Minister after a review.

### **211 Application of Schedule 3**

Despite clause 1 of Schedule 3, the Commission must not commence an investigation under Schedule 3 in relation to fibre fixed line access services.

## Subpart 8—Enforcement and miscellaneous provisions

**212 Pecuniary penalty for contravening information disclosure requirement**

- (1) The High Court may, on application by the Commission, order any person to pay a pecuniary penalty to the Crown if the court is satisfied that the person—
- (a) has contravened any information disclosure requirement (as defined in section 164(1)); or
  - (b) has attempted to contravene any such requirement; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene any such requirement; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any such requirement; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or
  - (f) has conspired with any other person to contravene any such requirement.
- (2) In subsection (1) and section 214, a reference to **contravening an information disclosure requirement** includes all or any of the following:
- (a) failing to disclose information required to be disclosed:
  - (b) failing to disclose information in the form or within the time required:
  - (c) disclosing information that is false or misleading under an information disclosure requirement.
- (3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or \$5,000,000 in the case of a body corporate.
- (4) In determining the amount of pecuniary penalty, the court must have regard to all relevant matters, including—
- (a) the nature and extent of the contravention; and
  - (b) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and
  - (c) whether the person has previously been found by the court in proceedings under this Part to have engaged in similar conduct.
- (5) A regulated fibre service provider may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- (6) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

Compare: 1986 No 5 s 86

**213 Order requiring information disclosure requirement to be complied with**

- (1) The High Court may, on application by the Commission, order a regulated fibre service provider to comply with an information disclosure requirement that applies to the provider.
- (2) An order under this section must specify the date by which, or period within which, the provider must comply with the requirement.

Compare: 1986 No 5 s 86A

**214 Offences relating to information disclosure regulation**

- (1) A person commits an offence if—
  - (a) the person, knowing that particular fibre fixed line access services are subject to information disclosure regulation, intentionally contravenes any information disclosure requirement relating to those services; or
  - (b) the person is subject to an order under section 213 and fails to comply with the order by the date, or within the period, specified.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate.

Compare: 1986 No 5 s 86B

**215 Pecuniary penalty for contravening price-quality requirements**

- (1) The High Court may, on application by the Commission, order a person to pay a pecuniary penalty to the Crown if the court is satisfied that the person—
  - (a) has contravened any price-quality requirement applying to fibre fixed line access services; or
  - (b) has attempted to contravene any such requirement; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene any such requirement; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any such requirement; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or
  - (f) has conspired with any other person to contravene any such requirement.
- (2) In subsection (1) and sections 216 to 218, a reference to **contravening a price-quality requirement**—
  - (a) refers to a requirement imposed—
    - (i) by a determination made under section 170 in relation to fibre fixed line services that are subject to price-quality regulation imposed under Part 6; or

- (ii) by section 193(1)(b); and
- (b) includes 1 or more of the following:
  - (i) failing to comply with a requirement for prices, whether by charging a price for a service that is higher than the maximum price permitted, or by receiving more revenue than is permitted, or in any other way:
  - (ii) failing to comply with any quality standards required under the price-quality regulation:
  - (iii) failing to comply with any requirement in sections 198 to 201.
- (3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or \$5,000,000 in the case of a body corporate.
- (4) In setting the amount of pecuniary penalty, the court must take into account all of the following matters:
  - (a) the nature and extent of the contravention:
  - (b) the nature and extent of any loss or damage suffered by any person as a result of the contravention:
  - (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence):
  - (d) whether or not the person has previously been found by the court in proceedings under this Part to have engaged in similar conduct.
- (5) A regulated fibre service provider may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- (6) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

Compare: 1986 No 5 s 87

## **216 Compensation for contravention of price-quality requirement**

- (1) If the High Court orders a person to pay a pecuniary penalty under section 215 in respect of the contravention of a price-quality requirement, the court may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (an **aggrieved person**).
- (2) An application for an order under this section may be made by the Commission or any aggrieved person.
- (3) The application must be made within 1 year of the date of the pecuniary penalty order.
- (4) The court may make an order under this section whether or not any aggrieved person is party to the proceedings.

- (5) In proceedings under this section, the court may make such orders as to cost as it thinks fit.

Compare: 1986 No 5 s 87A

### **217 Offence relating to price-quality regulation**

- (1) A person commits an offence if—
- (a) the person, knowing that particular fibre fixed line access services are subject to price-quality regulation, intentionally contravenes a price-quality requirement in respect of the services; or
  - (b) the person is subject to an order under section 218(1)(b) and fails to comply with the order.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate.

Compare: 1986 No 5 s 87B

### **218 Injunction and other orders relating to price-quality regulation**

- (1) If the High Court is satisfied that fibre fixed line access services that are subject to price-quality regulation are being provided, or are likely to be provided, in contravention of any price-quality requirement applying with respect to those services, the court may do 1 or both of the following:
- (a) grant an injunction restraining any provider of those services from providing them in contravention of the price-quality requirement;
  - (b) make an order requiring the provider to provide the services in accordance with the price-quality requirement applying to them.
- (2) An application for an injunction or order under this section may be made by any person.

Compare: 1986 No 5 s 87C

### **219 Proceedings for pecuniary penalties**

The following sections of the Commerce Act 1986 apply in relation to proceedings for pecuniary penalties under this Part:

- (a) section 79A;
- (b) section 79B (except that the relevant offences are those in sections 214 and 217 of this Act).

### **220 Evidence not otherwise admissible**

In the exercise of its jurisdiction under this Part, except in respect of criminal proceedings and proceedings for pecuniary penalties, the High Court may receive in evidence any statement, document, or information that would not be

otherwise admissible but that may in its opinion assist it to deal effectively with the matter.

Compare: 1986 No 5 s 79

## **221 Powers of Commission under this Part**

- (1) For the purpose of carrying out its functions and exercising its powers under this Part, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, do any of the following:
- (a) consult any person the Commission considers may assist it:
  - (b) investigate any of the following:
    - (i) how effectively and efficiently a regulated fibre service provider is providing fibre fixed line access services:
    - (ii) how any formula, methodology, or price-quality path being considered by the Commission may be applied, or how any formula, methodology, or price-quality provision determined or authorised by the Commission has been applied, in considering proposed prices, revenue, or quality standards:
    - (iii) how any conditions relating to the quality of fibre fixed line access services may be, or are being, fulfilled:
  - (c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years:
  - (d) use any information previously disclosed to the Commission under this Act or the Commerce Act 1986:
  - (e) by notice in writing, require any regulated fibre service provider—
    - (i) to prepare and produce forecasts, forward plans, or other information; and
    - (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:
  - (f) by notice in writing, require any specified person who the Commission has reason to believe may have information or documents relevant to the investigation, audit, or inquiry, at the time and place specified in the notice, to do 1 or both of the following:
    - (i) produce or supply to the Commission documents and information in relation to the fibre fixed line access services, or the prices or operations of the person in respect of the services:
    - (ii) answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:

- (g) by notice in writing, require any regulated fibre service provider, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or from a member of a class of appropriately qualified persons, as determined by the Commission in relation to the matters in paragraph (b), (c), (e), or (f)(i).
- (2) In this section, **specified person** means any of the following:
- (a) a regulated fibre service provider:
  - (b) a person who used to be a regulated fibre service provider:
  - (c) a retail service provider:
  - (d) an agency associated with the supply of fibre fixed line access services.

Compare: 1986 No 5 s 53ZD

## 222 Power to exempt disclosure of commercially sensitive information

- (1) The Commission may, on application, exempt any person, in respect of any information or class of information that the Commission considers to be commercially sensitive, from any obligation to make that information available to the public as part of the requirements of information disclosure regulation or price-quality regulation.
- (2) The Commission may grant the exemption on any terms and conditions that it thinks fit.
- (3) The Commission must give public notice of the exemption.
- (4) The exemption takes effect from the date specified in the exemption (which must not be earlier than the date on which public notice is given).
- (5) The Commission's reasons for granting an exemption (including why it is appropriate) must be published together with the exemption.
- (6) The Commission must keep a list of all current exemptions made by it under this section and must make the list available—
- (a) for public inspection free of charge during normal office hours of the Commission at the offices of the Commission; and
  - (b) on an Internet site maintained by or on behalf of the Commission.
- (7) The Commission may vary or revoke an exemption in the same way as it may grant the exemption, and this section applies with all necessary modifications.
- (8) The breach of a term or condition of an exemption is a breach of the obligation to which the exemption relates.
- (9) An exemption under this section 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.

Compare: 1986 No 5 s 53ZG

**223 Material may be incorporated by reference**

Schedule 5 of the Commerce Act 1986 applies with any necessary modifications if the Commission wishes to incorporate material by reference in 1 or both of the following:

- (a) a section 170 determination:
- (b) an input methodology.

Compare: 1986 No 5 s 53ZF

**Subpart 9—Appeals from Commission determinations****224 Appeals in relation to Commission determinations**

- (1) A regulated fibre service provider or any other person may appeal to the High Court under this subsection against any determination of the Commission under this Part, other than the following:
  - (a) a section 170 determination, or any part of a section 170 determination, that sets out how information disclosure regulation applies to a regulated fibre service provider:
  - (b) an input methodology determination under subpart 3 (for which a separate appeal right is given under that subpart).
- (2) An appeal against a section 170 determination under subsection (1) may not include an appeal against all or part of an input methodology, whether on a point of law or any other ground.
- (3) A person may appeal to the High Court under this subsection on a question of law against any determination of the Commission under this Part (including a determination referred to in subsection (1)), except if the person has appealed, or is able to appeal, on the question of law against the determination under section 183.
- (4) An appeal under this section must be made by giving notice of appeal within 20 working days after the date of the determination appealed against or within such further time as the court may allow.
- (5) Sections 77 and 93 to 97 of the Commerce Act 1986 apply with any necessary modifications in respect of an appeal under this section.
- (6) To avoid doubt, a recommendation to the Minister by the Commission is not a determination for the purposes of this section.

Compare: 1986 No 5 s 91

**Subpart 10—Orders and regulations****225 Order for reset date**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare a date to be the reset date for the purpose of sections 195 and 196.

- (2) The power to make an order made under this section may be exercised only once.
- (3) The Minister must not recommend that an order be made under this section unless the Commission has, after a review under section 209, recommended that the order be made.

## **226 Persons subject to regulation under Part 6**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing a person who provides fibre fixed line access services as being subject to 1 or both of the following:
  - (a) information disclosure regulation:
  - (b) price-quality regulation.
- (2) Regulations made under this section must—
  - (a) state the name of the person; and
  - (b) describe the services in respect of which the person is subject to information disclosure regulation, price-quality regulation, or both.
- (3) For the purposes of subsection (2)(b), the regulations may, without limitation other than subsection (4)(b), describe a service with reference to any 1 or more of the following:
  - (a) the geographic area in which the service is supplied:
  - (b) the service's end-users:
  - (c) the service providers who seek access to the service:
  - (d) the technical specifications of the service:
  - (e) any other circumstances in which the service is supplied.
- (4) The Minister must not recommend that regulations be made under this section unless—
  - (a) the Commission has consulted with interested persons; and
  - (b) the Commission has recommended to the Minister that the regulations be made.
- (5) Subsection (4) applies unless the Minister is recommending regulations to which either or both of the following apply:
  - (a) the regulations have no more than a minor effect:
  - (b) the regulations correct errors or make similar technical amendments.
- (6) The Minister must not recommend that regulations be made to prescribe a person as being subject to information disclosure regulation, price-quality regulation, or both unless the Commission has advised that it is satisfied that the person provides fibre fixed line access services in a market where the person can exercise a substantial degree of market power.

- (7) If, in accordance with regulations made under this section, a person is subject to information disclosure regulation or price-quality regulation (or both) in respect of 1 or more fibre fixed line access services, the regulations apply to any subsidiary of, or successor to, the person in respect of those services.
- (8) For the purposes of subsection (4)(a), the Commission has **consulted with interested persons** if it has complied with section 210(5) in relation to the proposed change to be implemented through the regulations.
- (9) In this section, a reference to **a person who provides fibre fixed line access services** includes a person who provides services that would be fibre fixed line access services if the person was already subject to information disclosure regulation or price-quality regulation under this Part.

## 227 Anchor services

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations declaring a fibre fixed line access service to be an anchor service.
- (2) The regulations may, in relation to the service, prescribe all or any of the following:
  - (a) a description of the service; and
  - (b) any conditions; and
  - (c) the period during which a regulated fibre service provider who is subject to price-quality regulation must provide the service; and
  - (d) the maximum price that a regulated fibre service provider who is subject to price-quality regulation may charge for providing the service.
- (3) For the purposes of subsection (2)(a), the regulations may, without limitation other than subsection (4), describe a service with reference to any 1 or more of the following:
  - (a) the geographic area in which the service must be supplied;
  - (b) the service's end-users;
  - (c) the service providers who seek access to the service;
  - (d) the technical specifications of the service;
  - (e) any other circumstances in which the service must be supplied.
- (4) The Minister must not recommend that regulations be made under this section unless the Commission has, after a review under section 208, recommended that the regulations be made.
- (5) Subsection (4) applies unless the Minister is recommending regulations to which either or both of the following apply:
  - (a) the regulations have no more than a minor effect;
  - (b) the regulations correct errors or make similar technical amendments.

- (6) *See* clause 14 of Schedule 1AA for requirements relating to the first regulations made under this section.

## **228 Direct fibre access services**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations declaring a fibre fixed line access service to be a direct fibre access service.
- (2) The regulations may, in relation to a direct fibre access service, prescribe all or any of the following:
- (a) a description of the service; and
  - (b) any conditions; and
  - (c) the period during which a regulated fibre service provider who is subject to price-quality regulation must provide the service; and
  - (d) the maximum price that a regulated fibre service provider who is subject to price-quality regulation may charge for providing the service.
- (3) For the purposes of subsection (2)(a), the regulations may, without limitation other than subsection (4), describe a service with reference to any 1 or more of the following:
- (a) the geographic area in which the service must be supplied;
  - (b) the service's end-users;
  - (c) the service providers who seek access to the service;
  - (d) the technical specifications of the service;
  - (e) any other circumstances in which the service must be supplied.
- (4) The Minister must not recommend that regulations be made under this section unless the Commission has, after a review under section 209, recommended that the regulations be made.
- (5) Subsection (4) applies unless the Minister is recommending regulations to which 1 or more of the following apply:
- (a) the regulations have no more than a minor effect;
  - (b) the regulations correct errors or make similar technical amendments;
  - (c) the regulations are allowed under subsection (6).
- (6) If a review has not been carried out under section 209, the Minister may recommend that regulations be made under subsection (2)(d) if the Minister is satisfied that the regulations will prescribe a maximum price by reference to the contract price of the service immediately before the implementation date, with an annual CPI adjustment mechanism.
- (7) *See* clause 15 of Schedule 1AA for requirements relating to the first regulations made under this section.

**229 Unbundled fibre services**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations declaring a point-to-multipoint layer 1 service supplied to end-users' premises or buildings to be an unbundled fibre service.
- (2) The regulations may, in relation to an unbundled fibre service, prescribe all or any of the following:
  - (a) a description of the service;
  - (b) any conditions;
  - (c) the period during which the service must be provided;
  - (d) the maximum price that may be charged for the service, which must be a cost-based price.
- (3) For the purposes of subsection (2)(a), the regulations may, without limitation other than subsection (4), describe a service with reference to any 1 or more of the following:
  - (a) the geographic area in which the service must be supplied;
  - (b) the service's end-users;
  - (c) the service providers who seek access to the service;
  - (d) the technical specifications of the service;
  - (e) any other circumstances in which the service must be supplied.
- (4) The Minister must not recommend that regulations be made under this section unless the Commission has, after a review under section 209, recommended that the regulations be made.
- (5) Subsection (4) applies unless the Minister is recommending regulations to which either or both of the following apply:
  - (a) the regulations have no more than a minor effect;
  - (b) the regulations correct errors or make similar technical amendments.
- (6) Despite subsection (1), the Minister must not recommend that a service be declared, before 1 January 2026, to be an unbundled fibre service if the service is provided over a fibre network developed as part of UFB 2 (as defined in section 156AB).
- (7) *See* clause 16 of Schedule 1AA for requirements relating to the first regulations made under this section.

**230 Regulations under sections 228 and 229 may modify undertaking under section 156AD**

- (1) This section applies if the Governor-General makes regulations under section 228 or 229.

- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make further regulations to discharge an LFC from its obligation to supply a service under an undertaking entered into in accordance with section 156AD.
- (3) For the purposes of subsection (2), the regulations may describe the service with reference to any 1 or more of the following:
  - (a) the geographic area in which the service is supplied:
  - (b) the service's end-users:
  - (c) the service providers who seek access to the service:
  - (d) the technical specifications of the service:
  - (e) any other circumstances in which the service is supplied.
- (4) In this section, **LFC** has the meaning given in section 156AB.

### **231 Specified points of interconnection**

- (1) The Commission may, by public notice, prescribe points of interconnection for the purposes of establishing fibre handover points.
- (2) The notice may prescribe a point of interconnection by reference to 1 or more of the following:
  - (a) a regulated fibre service provider's network:
  - (b) a geographical location:
  - (c) the UFB initiative.
- (3) The Commission may amend or revoke a notice in the manner in which it was made.
- (4) However, the Commission must not amend a specified point of interconnection unless the amendment—
  - (a) is for an appropriate technical purpose; and
  - (b) is consistent with the purpose in section 162.
- (5) The first notice made under this section—
  - (a) must prescribe points of interconnection based on the points of interconnection that apply as at the close of 31 December 2019 under the UFB initiative; and
  - (b) may prescribe additional points of interconnection.
- (6) A notice under this section 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.

### Part 3

#### Amendments related to consumer matters, consequential amendments, and other miscellaneous amendments

##### Subpart 1—Amendments related to consumer matters

###### *Monitoring and information dissemination*

**25 Section 9A replaced (Functions of Commission in relation to sector monitoring and information dissemination)**

Replace section 9A with:

**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 monitor compliance with the Commission 111 contact code; and
  - (d) must make available reports, summaries, and information about the things referred to in paragraphs (a) to (c); and
  - (e) must monitor retail service quality in relation to telecommunications services; and
  - (f) must make available reports, summaries, and information about retail service quality in a way that informs consumer choice.
- (2) The functions in subsection (1)(d) and (f) do not require the Commission to release all documents that the Commission produces or acquires under this section or section 10A.

**26 New section 10A inserted (Power to require supply of information to support functions of monitoring and reporting on retail service quality)**

After section 10, insert:

**10A Power to require supply of information to support functions of monitoring and reporting on retail service quality**

For the purpose of carrying out its functions under section 9A(1)(e) and (f), the Commission may, in addition to exercising any of its other powers under this

Act, by notice in writing, require any provider of telecommunications services to—

- (a) prepare and produce forecasts, forward plans, historical information, or other information; and
- (b) apply any methodology or format specified by the Commission in the preparation of forecasts, forward plans, historical information, or other information.

*Line of business restrictions*

**27 New sections 69SA and 69SB inserted**

After section 69S, insert:

**69SA Exemptions from sections 69R and 69S**

- (1) The Commission may, on the terms and conditions (if any) that it thinks fit, grant an exemption from compliance with—
  - (a) any prohibition referred to in section 69R that is included in an undertaking referred to in that section; or
  - (b) any provision or provisions of section 69S.
- (2) An exemption may be granted in whole or in part (for example, there could be a complete exemption from a prohibition or provision or an exemption that applies only to 1 or more particular services).
- (3) The Commission must not grant an exemption unless—
  - (a) it is satisfied that the exemption is consistent with the purpose set out in section 69A; and
  - (b) it has had regard to whether the exemption will harm, or is likely to harm, competition in any telecommunications market; and
  - (c) it has consulted the persons or organisations that appear to the Commission to be representative of the interests of those persons likely to be substantially affected by the exemption.
- (4) This section applies on and after the implementation date.
- (5) Section 69SB applies to exemptions granted under this section.

**69SB Other provisions relating to exemptions**

- (1) An exemption 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.
- (2) The Commission must give public notice of the exemption as soon as practicable after the exemption is granted.
- (3) The Commission's reasons for granting an exemption (including why it is appropriate) must be published together with the exemption.

- (4) The breach of a term or condition of an exemption is,—
- (a) in the case of an exemption under section 69SA(1)(a), a breach of the undertaking required under section 69R:
  - (b) in the case of an exemption under section 69SA(1)(b), a breach of section 69S.
- (5) The Commission may vary or revoke an exemption in the same way as it may grant the exemption (with the provisions of section 69SA and this section applying with all necessary modifications).

### *Enforcement*

#### **28 Section 156A amended (Application of section 156B)**

After section 156A(1)(n), insert:

- (o) fails, without reasonable excuse, to comply with a Commission RSQ code:
- (p) fails, without reasonable excuse, to comply with the Commission 111 contact code:
- (q) fails, without reasonable excuse, to comply with the copper withdrawal code.

#### **29 Section 156B amended (Enforcement actions that Commission may take)**

- (1) In section 156B(1), replace “either” with “1”.
- (2) In section 156B(1)(b), after “Crown”, insert “; or”.
- (3) After section 156B(1)(b), insert:
  - (c) in relation a person who commits a breach referred to in section 156A(1)(o), (p), or (q), accept an undertaking under section 156CA.
- (4) After section 156B(1), insert:
  - (1A) The Commission may, in addition to or instead of taking action under subsection (1), take 1 or both of the following actions against a person who commits a breach referred to in section 156A(1)(o):
    - (a) apply to the High Court for an order under section 156MA:
    - (b) apply to the High Court for an order under section 156MB.
  - (1B) The Commission may, in addition to or instead of taking action under subsection (1), take 1 or both of the following actions against a person who commits a breach referred to in section 156A(1)(q):
    - (a) apply to the High Court for an order under section 156MC:
    - (b) apply to the High Court for an order under section 156MD.

#### **30 New section 156BA inserted (Enforcement actions that end-user may take)**

After section 156B, insert:

**156BA Enforcement actions that end-user may take**

- (1) If a person commits a breach referred to in section 156A(1)(q), an end-user (as referred to in clause 1 of Schedule 2A) may take 1 or both of the following actions against the person:
  - (a) apply to the High Court for an order under section 156MC;
  - (b) apply to the High Court for an order under section 156MD.
- (2) An end-user may take the action referred to in subsection (1) whether or not the Commission has taken action against the person under section 156B in respect of the breach.

**31 New sections 156CA and 156CB and cross-heading inserted**

After section 156C, insert:

*Enforceable undertakings in relation to Commission RSQ code or copper withdrawal code*

**156CA Commission may accept undertakings**

- (1) The Commission may accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the enforcement of a Commission RSQ code or the copper withdrawal code.
- (2) The person may withdraw or vary the undertaking with the consent of the Commission.

Compare: 1986 No 121 s 46A

**156CB Enforcement of undertakings**

- (1) If the Commission considers that a person who has given an undertaking under section 156CA has, without reasonable excuse, breached a term of that undertaking, the Commission may apply to the High Court for an order under subsection (2).
- (2) The High Court may make any of the following orders if it is satisfied that the person has, without reasonable excuse, breached a term of the undertaking:
  - (a) an order directing the person to comply with the term;
  - (b) an order directing the person to pay to the Crown—
    - (i) an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach; or
    - (ii) any pecuniary penalty that the court determines to be appropriate (up to the maximum amount specified in section 156L(3)(c));
  - (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach:

- (d) an order for any consequential relief that the court thinks appropriate.
- (3) Section 156L(4) to (7) applies with any necessary modifications in respect of proceedings under this section.

Compare: 1986 No 121 s 46B

### 32 New sections 156MA to 156MD and cross-headings inserted

After section 156M, insert:

#### *Additional remedies in relation to breach of Commission RSQ code*

##### **156MA Order to disclose information or publish advertisement**

- (1) The High Court may make 1 or both of the following orders if the High Court is satisfied, on the application of the Commission, that a person has committed a breach referred to in section 156A(1)(o):
  - (a) an order requiring that person, or any other person involved in the breach, to disclose to the public, or to a particular person or class of persons, the information or class of information that is specified in the order, being information that is in the possession of the person to whom the order is directed or to which that person has access:
  - (b) an order requiring that person, or any other person involved in the breach, to publish corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.
- (2) The information must be disclosed or published—
  - (a) in the manner and at the times that are specified in the order; and
  - (b) at the person's own expense.
- (3) The High Court may hear and determine an application in conjunction with any other proceedings under this Part.

Compare: 1986 No 121 s 42

##### **156MB Other orders for breach of Commission code**

- (1) The High Court may make 1 or more of the following orders if the High Court is satisfied, on the application of the Commission, that a person (**person X**) has committed a breach referred to in section 156A(1)(o) or (p):
  - (a) an order directing person X to refund money or return property to any other person:
  - (b) an order directing person X to pay to any other person the amount of any loss or damage caused to that other person by the conduct of person X:
  - (c) an order directing person X, at person X's own expense, to supply a service to any other person:

- (d) an order declaring all or part of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,—
  - (i) to be void; and
  - (ii) if the court thinks fit, to have been void at all times on and after a date specified in the order, which may be before the date on which the order is made:
- (e) an order in respect of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,—
  - (i) varying the contract or the arrangement in the manner specified in the order; and
  - (ii) if the court thinks fit, declaring the varied contract or arrangement to have had effect on and after a date specified in the order, which may be before the date on which the order is made.
- (2) The High Court may hear and determine an application under subsection (1) in conjunction with any other proceedings under this Part.

Compare: 1986 No 121 s 43

*Additional remedies in relation to breach of copper withdrawal code*

**156MC Other orders for breach of copper withdrawal code**

- (1) The High Court may make 1 or both of the following orders if the High Court is satisfied, on the application of the Commission or an end-user, that a person has committed a breach referred to in section 156A(1)(q):
  - (a) an order directing the person to pay to an end-user the amount of any loss or damage caused to the end-user by the conduct of the person:
  - (b) an order directing the person, at the person's own expense, to supply a service to an end-user.
- (2) The High Court may hear and determine an application under subsection (1) in conjunction with any other proceedings under this Part.
- (3) An order under subsection (1)(b) must not be inconsistent with a restriction that applies under subpart 3 of Part 2A.

Compare: 1986 No 121 s 43

**156MD Injunctions for breach of copper withdrawal code**

- (1) If the High Court is satisfied, on the application of the Commission or an end-user, that a person has committed a breach referred to in section 156A(1)(q), the court may grant an injunction restraining the person from engaging in conduct that constitutes or would constitute a breach of the copper withdrawal code.

- (2) The High Court may hear and determine an application under subsection (1) in conjunction with any other proceedings under this Part.
  - (3) Sections 88 and 88A of the Commerce Act 1986 apply with any necessary modifications in relation to an injunction granted under this section.
- Compare: 1986 No 5 s 81

*Amendments to provisions inserted by Telecommunications Amendment Act  
(No 2) 2006*

**33 Section 156T replaced (Process to apply before Part may be commenced)**

Replace section 156T with:

**156T Process to apply before Part may be commenced**

- (1) The Minister may recommend the making of an Order in Council under section 156S(1) only if the Minister is satisfied, at the time of making the recommendation, that any of the following applies:
  - (a) no industry-based complaints resolution system has been established;
  - (b) an industry-based complaints resolution system has been established, but in the Minister's opinion it has failed to achieve the purpose of this Part set out in section 156U and the objectives of a consumer complaints system set out in section 156X;
  - (c) the provisions being brought into force by the Order in Council are necessary to implement Government policy;
  - (d) the Commission has reported to the Minister under section 246(5)(c) that, in relation to an industry dispute resolution scheme (as defined in Part 7),—
    - (i) the scheme fails to achieve the purpose set out in section 247; or
    - (ii) the scheme provider fails to achieve the purpose set out in section 248.
- (2) The Minister may not recommend the making of an Order in Council under subsection (1) unless the Minister is satisfied that appropriate consultation has been carried out in accordance with section 156ZJ.

**34 Section 156UA amended (Appointment of consumer complaints system)**

Replace section 156UA(2) with:

- (2) To avoid doubt, this Part does not preclude—
  - (a) the existence of 1 or more industry-based complaints resolution systems in addition to 1 or more systems appointed under this Part; and
  - (b) the dispute resolution scheme provider for a Commission RSQ code being the person responsible for a consumer complaints system.

**35 Section 156Y amended (Requirements for consumer complaints system)**

After section 156Y(3), insert:

- (4) To avoid doubt, a consumer complaints system may resolve complaints by consumers against service providers in relation to a Commission RSQ code.

*Retail service quality codes***36 New Part 7 inserted**

After section 231 (as inserted by section 24 of this Act), insert:

**Part 7**  
**Consumer matters**

**232 Interpretation**

In this Part, unless the context otherwise requires,—

**consumer** means, in relation to a telecommunications service, the end-user of the service

**industry dispute resolution scheme**—

- (a) means—
- (i) the Telecommunications Dispute Resolution scheme established by the Forum; and
  - (ii) any other dispute resolution scheme that has been set up by the telecommunications industry and deals with consumer complaints; but
- (b) excludes a dispute resolution scheme as defined in clause 2 of Schedule 3C

**scheme member** means a member of an industry dispute resolution scheme

**scheme provider** means the person responsible for an industry dispute resolution scheme.

*Retail service quality codes***233 Purpose of retail service quality code**

The purpose of a retail service quality code is to improve retail service quality to reflect the demands of end-users of telecommunications services.

**234 Commission may issue guidelines**

The Commission may issue guidelines to the telecommunications industry on any matters relating to retail service quality codes, including advice on what matters are appropriately dealt with by retail service quality codes.

**235 Commission review of industry retail service quality codes**

- (1) The Commission may, at any time, review an industry retail service quality code.
- (2) The Commission may require the following persons to provide the Commission with any information relevant to the industry retail service quality code under review:
  - (a) the Forum;
  - (b) service providers to whom the code applies.
- (3) After each review, the Commission must—
  - (a) advise the Forum, the dispute resolution provider for the code (if any), and the Minister of any recommendations for improving the code and of any recommendations for creating a new code; and
  - (b) advise the Minister of whether any previous recommendations have been implemented; and
  - (c) advise the Minister of whether, in the Commission's opinion,—
    - (i) the code fails to achieve the purpose set out in section 233; or
    - (ii) a Commission RSQ code would better achieve the purpose set out in section 233.

**236 Commission retail service quality code**

- (1) The Commission may make a retail service quality code in relation to the provision of 1 or more types of telecommunications service only if—
  - (a) no industry retail service quality code has been made in relation to the service; or
  - (b) an industry retail service quality code has been made in relation to the service, but in the Commission's opinion—
    - (i) the code fails to achieve the purpose set out in section 233; or
    - (ii) a Commission RSQ code would better achieve the purpose set out in section 233.
- (2) If the Commission intends to make a Commission RSQ code, the Commission must, before making the code, provide a report to the Minister containing the reasons for making the code and the provision of this section that applies.

**237 Contents of Commission retail service quality code**

- (1) A Commission RSQ code must—
  - (a) specify which telecommunications services it applies to; and
  - (b) specify which telecommunications service providers it applies to; and
  - (c) promote the purpose set out in section 233.
- (2) A Commission retail service quality code may—

- (a) impose binding obligations on telecommunications service providers that provide retail telecommunications services covered by the code; and
- (b) contain any other provisions that are necessary or desirable.

*Commission 111 contact code*

**238 Commission 111 contact code**

- (1) The Commission must make a code for the purpose of ensuring that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.
- (2) The code must be made before the implementation date.
- (3) The code must—
  - (a) specify which telecommunications services it applies to; and
  - (b) require the providers of those services to inform consumers about the options available for vulnerable consumers; and
  - (c) prescribe a process (or processes) for a consumer of those services, or a person on their behalf, to demonstrate that they—
    - (i) are a vulnerable consumer; or
    - (ii) will become a vulnerable consumer; and
  - (d) require the providers of those services to supply vulnerable consumers, at no cost to the consumers, with an appropriate means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure; and
  - (e) specify the minimum period for the purposes of paragraph (d).
- (4) The code may do 1 or more of the following:
  - (a) specify classes of people that must be considered vulnerable consumers:
  - (b) specify appropriate means for vulnerable consumers, or persons on their behalf, to contact emergency services:
  - (c) contain any other provisions that are necessary or desirable to achieve the purpose in subsection (1).
- (5) In this section,—

**minimum period** means the minimum period specified under subsection (3)(e)

**specified telecommunications service** means a telecommunications service specified in the Commission 111 contact code as a service to which the code applies

**vulnerable consumer** means a consumer of a specified telecommunications service who—

- (a) is at particular risk of requiring the 111 emergency service (for example, due to a known medical condition); and

- (b) does not have a means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure.

*Process for making Commission codes*

**239 Process for making or amending Commission code**

- (1) In order to make a Commission code, the Commission must—
  - (a) give public notice of the process that will be followed to make the code; and
  - (b) consult with interested persons; and
  - (c) give public notice of a draft code.
- (2) If the code is a Commission 111 contact code, **interested persons** includes the following:
  - (a) the New Zealand Police;
  - (b) Fire and Emergency New Zealand;
  - (c) the Director of Civil Defence Emergency Management;
  - (d) every provider of an initial call answering point for the 111 emergency service.
- (3) A person is entitled to make submissions to the Commission not later than 30 working days after the date on which public notice of the draft code is given.
- (4) The Commission may make the code only if the Commission is satisfied that the draft code meets all the requirements set out in this Part.
- (5) The Commission may amend or revoke a code if the Commission considers that the code no longer meets all the requirements set out in this Part.
- (6) The same procedure that applies to making a code in subsections (1) to (4) must be followed to make an amendment or a revocation, with any necessary modifications.
- (7) The Commission must give public notice of every code that is made and every amendment or revocation of those codes.

*Dispute resolution schemes*

**240 Dispute resolution scheme**

- (1) The dispute resolution scheme for all Commission codes is—
  - (a) an industry dispute resolution scheme; or
  - (b) if Part 4B comes into force in accordance with section 156S, a consumer complaints system—
    - (i) that is appointed under that Part; and
    - (ii) that the Minister declares under this section to be the dispute resolution scheme for Commission codes.

- (2) A scheme provider for an industry dispute resolution scheme must, on request by the Minister or the Commission, provide information on matters relating to any information or reports relevant to the administration of a Commission code.
- (3) Sections 241 to 245 apply unless Part 4B comes into force.

#### **241 Disputes may be referred to industry dispute resolution scheme**

- (1) A dispute between a consumer and a telecommunications service provider about their rights and obligations under a Commission code may be referred to an industry dispute resolution scheme by any of the parties to the dispute.
- (2) Disputes that may, depending on the relevant Commission code, be referred to an industry dispute resolution scheme include disputes about the following:
  - (a) installation times:
  - (b) how consumer complaints are handled:
  - (c) other matters provided for in the code or by the industry dispute resolution scheme.

Compare: 2001 No 103 s 155ZI

#### **242 Determinations binding on scheme members and certain other parties**

- (1) This section applies if a dispute is referred to an industry 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 who is a scheme member (except to the extent that it may be modified by the District Court under section 245(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 scheme member, except if one of those parties lodges an appeal against the determination under section 243 and the court modifies or reverses the determination.

Compare: 2001 No 103 s 155ZJ

#### **243 Appeals against determinations**

- (1) A consumer or any other party to the dispute who is not a scheme member may, within the time allowed under section 244(1), appeal to the District Court against a determination.
- (2) The court may confirm, modify, or reverse the determination 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.

Compare: 2001 No 103 s 155ZK

**244 Procedure on appeal**

- (1) An appeal under section 243 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 industry 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 industry 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 otherwise be admissible in a court.

Compare: 2001 No 103 s 155ZL

**245 Compliance with rules, binding settlements, and determinations**

- (1) Members of an industry 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 an application of the scheme provider for an industry dispute resolution scheme, the District Court may require a scheme member or other person who is a party to a dispute to do any of the following:
  - (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 industry dispute resolution scheme.
- (4) If an order requiring a scheme 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 scheme member includes a reference to a person who was a member of the industry dispute resolution scheme at the relevant time but is no longer a member at the time of the application or order.

Compare: 2001 No 103 s 155ZM

*Commission review of industry dispute resolution schemes***246 Commission review of industry dispute resolution schemes**

- (1) The Commission must review each industry dispute resolution scheme at least once every 3 years.
- (2) As part of a review of a scheme, the Commission may, without limitation, consider the following:
  - (a) the purpose of the scheme:
  - (b) the scheme provider:
  - (c) the dispute resolution provider for the scheme:
  - (d) the effectiveness of the scheme in resolving complaints by consumers against service providers:
  - (e) the adequacy of the scheme rules:
  - (f) whether the scheme rules comply with the following principles:
    - (i) accessibility:
    - (ii) independence:
    - (iii) fairness:
    - (iv) accountability:
    - (v) efficiency:
    - (vi) effectiveness:
  - (g) whether any recommendations for improving the scheme made under subsection (4) have been implemented:
  - (h) the purpose of the dispute resolution provider for the scheme:
  - (i) the procedures that are used for receiving, investigating, and resolving complaints:
  - (j) how promptly complaints are dealt with.
- (3) The Commission may require the following persons to provide the Commission with any information relevant to the matters included in subsection (2):
  - (a) the dispute resolution provider for the scheme:
  - (b) the scheme provider:
  - (c) a scheme member.
- (4) After each review, the Commission must provide a report to the scheme provider on any recommendations for improving the scheme and when the recommendations should be implemented.
- (5) If the Commission considers that any recommendations made under subsection (4) have not been implemented satisfactorily, the Commission must provide a report to the Minister on—

- (a) the recommendations for improving the scheme made under subsection (4); and
  - (b) whether those recommendations have been implemented; and
  - (c) whether, in the Commission's opinion,—
    - (i) the scheme fails to achieve the purpose set out in section 247; or
    - (ii) the dispute resolution provider for the scheme fails to achieve the purpose set out in section 248.
- (6) If the Commission proposes to report, under subsection (5)(c), that a scheme fails to achieve the purpose set out in section 247 or that the dispute resolution provider for the scheme fails to achieve the purpose in section 248, the Commission must give the following persons 20 working days to make submissions on a draft report:
- (a) the dispute resolution provider for the scheme;
  - (b) the scheme provider;
  - (c) a scheme member.

#### **247 Purpose of dispute resolution scheme**

The purpose of a dispute resolution scheme is to ensure that, if a consumer has a dispute with a service provider in relation to a Commission code or an industry retail service quality code, the consumer has access to a dispute resolution scheme for resolving that dispute in accordance with the principles set out in section 246(2)(f).

#### **248 Purpose of dispute resolution provider**

The purpose of a dispute resolution provider, in relation to a dispute resolution scheme for a Commission code or an industry retail service quality code, is—

- (a) to operate the scheme; and
- (b) to administer the relevant code; and
- (c) to manage consumer complaints relating to the code; and
- (d) to investigate disputes relating to the code; and
- (e) to promote awareness of the scheme and the code; and
- (f) to monitor compliance with the scheme and the code; and
- (g) to enforce the provisions of the scheme and the code.

#### **249 Interrelationship of remedies**

- (1) Nothing in this Part limits or affects any right, duty, liability, or remedy that exists or is available apart from this Part.
- (2) Any right of action or other remedy available under, or in connection with, this Part 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, 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.
- Compare: 2001 No 103 s 156AS

## Subpart 2—Consequential and other miscellaneous amendments

### 37 Amendments to replace references to Telecom

- (1) In the provisions specified in Part 1 of Schedule 4, replace “Telecom” with “Spark” in each place.
- (2) In the provisions specified in Part 2 of Schedule 4, replace “Telecom’s” with “Spark’s” in each place.

### 38 Repeals

Repeal the provisions specified in Schedule 5.

### 39 Consequential amendments to principal Act

- (1) In section 5, definition of **existing works**, paragraph (a), replace “and” with “but”.
- (2) In section 5, definition of **existing works**, repeal paragraph (b).
- (3) In section 5, definition of **party**, paragraph (a), delete “or a residual terms determination made under section 30ZB”.
- (4) In section 102(1), delete “and broadcasting markets”.
- (5) In section 103(a), after “telecommunication”, insert “(other than facilities used exclusively for broadcasting)”.
- (6) In section 107(1)(c), delete “or section 113”.
- (7) In section 155D(1), delete the definition of **UFB initiative**.
- (8) In section 156AB, delete the definition of **UFB initiative**.
- (9) In section 156AD(6), definition of **UFB 1**, delete “in section 156AB”.
- (10) In section 156A(1)(g), delete “69ZC(4), 69ZF(2), or”.
- (11) In section 160(2)(a), after “telecommunication”, insert “(other than facilities used exclusively for broadcasting)”.

### 40 Consequential amendments to other Acts

Amend the enactments specified in Schedule 6 as set out in that schedule.

### 41 Miscellaneous amendments

- (1) In section 69C, definition of **sharing arrangement**, paragraph (a), replace “between Telecom and Chorus” with “between Spark and Chorus”.

- (2) In section 153(2), replace “Rating Powers Act 1988” with “Local Government (Rating) Act 2002”.
- (3) In section 156AZB, definition of **Telecom**, replace “Chorus and a successor to Telecom or Chorus” with “Chorus, Spark, and a successor to Chorus or Spark”.
- (4) In section 156AZC(2)(a), replace “on which” with “that is 2 years after”.
- (5) In section 156AZC(2A)(a), replace “on which” with “that is 2 years after”.
- (6) In section 156AZD(2A)(a), replace “on which” with “that is 2 years after”.

## Schedule 1

### New Part 2 inserted into Schedule 1AA

s 12

#### Part 2

#### Provisions relating to Telecommunications (New Regulatory Framework) Amendment Act 2018

##### 7 Interpretation

In this Part,—

**LFC** has the meaning set out in section 156AB

**UFB contract** means a contract between Crown Infrastructure Partners Limited and a UFB partner that was entered into as part of the UFB initiative

**UFB partner** has the meaning set out in section 156AB.

##### 8 Public notice

- (1) A notice given, or purportedly given, by the Commission in accordance with former section 6 must be treated as having been properly given in accordance with that section.
- (2) Former section 6 continues to apply, and section 6 does not apply, in relation to a notice given, or purportedly given, in accordance with former section 6.
- (3) In subclause (1), **former section 6** means section 6 as in force immediately before the commencement of section 5 of the Telecommunications (New Regulatory Framework) Amendment Act 2018.

##### 9 Implementation date

- (1) The Minister may, at any time before the implementation date, defer the implementation date by up to 2 years if the Commission makes a written request for a deferral.
- (2) However, the Minister may defer the implementation date only once.
- (3) The Minister must notify a deferral, and specify the new implementation date, in the *Gazette*.
- (4) Subclause (5) applies if the implementation date is deferred.
- (5) During the period starting on 1 December 2019 and ending on the close of the day immediately before the new implementation date, each specified contract continues in force to the extent that it relates to any of the following:
  - (a) services that Crown Infrastructure Partners Limited and a UFB partner or an LFC agreed would be offered and provided to access seekers by that UFB partner or LFC:

- (b) pricing of those services, including terms relating to maximum prices (but *see* subclause (6)):
  - (c) service levels for those services, including service default payments and the measurement and calculation of service levels:
  - (d) reporting obligations of a UFB partner or an LFC that relate to the matters specified in paragraphs (a) to (c).
- (6) A UFB partner or an LFC may, on 1 July of each year (starting on 1 July 2020), apply an annual CPI adjustment to a maximum price continued by subclause (5)(b).

- (7) In this clause,—

**access seeker** means a person who seeks access to a wholesale telecommunications service that is provided using, or that provides access to unbundled elements of, a fibre network

**maximum price** means the maximum price a UFB partner or an LFC is able, under the terms of a specified contract, to charge for providing a service

**specified contract** means a contract or deed (as in force immediately before 1 December 2019 and as amended from time to time) between Crown Infrastructure Partners Limited and a UFB partner or an LFC that was entered into as part of the UFB initiative.

#### **10 Information disclosure under subpart 3 of Part 4AA**

- (1) An LFC is not required to comply with any information disclosure requirements under subpart 3 of Part 4AA in respect of any period during which the LFC is also subject to information disclosure regulation under Part 6.
- (2) However, an LFC must continue to prepare and disclose information in accordance with section 156AU in respect of any disclosure period for the LFC that starts before the implementation date but ends on or after the implementation date.
- (3) In this clause, **disclosure period** means the period of time, set by the Commission under section 156AU, in respect of which the LFC is required to disclose information under subpart 3 of Part 4AA.

#### **11 Application of requirement for geographically consistent pricing under section 201**

- (1) This clause applies if a price for a fibre fixed line access service was agreed under a contract entered into before the commencement date.
- (2) For the period to which the price, or the price as adjusted under the contract, applies,—
  - (a) section 201 does not apply in relation to the price or adjusted price; and
  - (b) the price set out in the contract, with any adjustments permitted by the contract, continues to apply.

(3) This clause ceases to apply on the date that is 3 years after the commencement date.

(4) In this clause,—

**commencement date** means the date on which section 201 comes into force

**the contract** means the contract as at the commencement date.

## **12 Anchor services review before first regulatory period**

(1) Despite section 208(2)(c), if the Commission starts a review under section 208 before the start of the first regulatory period, the review must not consider the prescribed period for an anchor service.

(2) If the Commission starts a review under section 208 before the start of the first regulatory period, the Commission must not recommend prescribing a description of the service that is, or conditions of the service that are, materially different from the terms set out in a UFB contract.

## **13 Procedural requirements for regulations made under section 226 before first regulatory period**

Section 226(4) and (6) does not apply in relation to any regulations made under section 226(1) that come into force before the start of the first regulatory period.

## **14 Requirements for initial regulations made under section 227 (anchor services)**

(1) This clause applies in relation to the first regulations made under section 227.

(2) Despite section 227(4), the Minister may recommend that regulations be made under section 227 even though the Commission has not carried out a review under section 208 or recommended that the regulations be made.

(3) However, the Minister must not recommend that regulations be made to prescribe a description of the service that is, or conditions of the service that are, materially different from the terms set out in a UFB contract.

(4) The Minister must not recommend the making of regulations under section 227(2)(d) unless the Minister is satisfied that the regulations will prescribe a maximum price that is based on the maximum price that may be charged for providing the service under a UFB contract, with an annual CPI adjustment mechanism.

## **15 Requirements for initial regulations made under section 228 (direct fibre access services)**

(1) This clause applies in relation to the first regulations made under section 228.

(2) Despite section 228(4), the Minister may recommend that regulations be made under section 228 even though the Commission has not carried out a review under section 209 or recommended that the regulations be made.

- (3) However, the Minister must not recommend that regulations be made to prescribe a description of the service that is, or conditions of the service that are, materially different from the terms set out in a UFB contract.

**16 Procedural requirements for initial regulations made under section 229 (unbundled fibre services)**

Section 229(4) does not apply in relation to the first regulations made under section 229.

## Schedule 2

### Amendments to Schedule 1

s 13

**Part 2, subpart 1, under the heading Retail services offered by means of a fixed telecommunications network**

Repeal the item relating to Description of service applicable before the expiry of 3 years from separation day.

In the item relating to Description of service applicable after the expiry of 3 years from separation day, in the first column, delete “*applicable after the expiry of 3 years from separation day*”.

**Part 2, subpart 1, under the heading Local access and calling service offered by means of fixed telecommunications network**

Repeal each of the following items:

- (a) item relating to Description of service applicable before the expiry of 3 years from separation day:
- (b) item relating to Conditions applicable before the expiry of 3 years from separation day:
- (c) item relating to Initial pricing principle applicable before the expiry of 3 years from separation day:
- (d) item relating to Final pricing principle applicable before the expiry of 3 years from separation day.

In the item relating to Description of service applicable after the expiry of 3 years from separation day, in the first column, delete “*applicable after the expiry of 3 years from separation day*”.

In the item relating to Conditions applicable after the expiry of 3 years from separation day, in the first column, delete “*applicable after the expiry of 3 years from separation day*”.

In the item relating to Initial pricing principle applicable after the expiry of 3 years from separation day, in the first column, replace “*after the expiry of 3 years from separation day*” with “*before 16 December 2019*”.

After the item relating to Initial pricing principle applicable after the expiry of 3 years from separation day, insert:

<i>Initial pricing principle applicable on and after 16 December 2019</i>	For a price-capped residential local access and calling service, either—
	(a) Spark’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

**Part 2, subpart 1, under the heading Local access and calling service offered by means of fixed telecommunications network—*continued***

- (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 \$31.68, with an annual CPI adjustment applied on 16 December in each year
- For a non-price-capped local access and calling service, 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 Spark in markets in which Spark 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 Spark in markets in which Spark 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 \$31.68, with an annual CPI adjustment applied on 16 December in each year; 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 \$31.68, with an annual CPI adjustment applied on 16 December in each year

In the item relating to Final pricing principle applicable after the expiry of 3 years from separation day, in the first column, replace “*after the expiry of 3 years from separation day*” with “*before 16 December 2019*”.

After the item relating to Final pricing principle applicable after the expiry of 3 years from separation day, insert:

*Final pricing principle applicable on and after 16 December 2019*

- For a price-capped residential local access and calling service, either—
- (a) Spark’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 \$31.68, with an annual CPI adjustment applied on 16 December in each year
- 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 Spark in markets in which Spark 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 Spark in markets in which Spark does not face limited, or is not likely to face lessened, competition for that service; or

**Part 2, subpart 1, under the heading Local access and calling service offered by means of fixed telecommunications network—*continued***

- |     |   |
|-----|---|
| (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 \$31.68, with an annual CPI adjustment applied on 16 December in each year; 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 \$31.68, with an annual CPI adjustment applied on 16 December in each year     |

**Part 2, subpart 1, under the heading Chorus's unbundled bitstream access**

In the item relating to Conditions, replace “That either—” with “The end-user's building (or, where relevant, the building's distribution frame) is not located in a specified fibre area, and either—”.

Repeal each of the following items:

- (a) item relating to Initial pricing principle applicable before the expiry of 3 years from separation day:
- (b) item relating to Final pricing principle applicable before the expiry of 3 years from separation day.

In the item relating to Initial pricing principle applicable after the expiry of 3 years from separation day, in the first column, replace “*after the expiry of 3 years from separation day*” with “*before 16 December 2019*”.

In the item relating to Final pricing principle applicable after the expiry of 3 years from separation day, in the first column, replace “*after the expiry of 3 years from separation day*” with “*before 16 December 2019*”.

After the item relating to Final pricing principle applicable after the expiry of 3 years from separation day, insert:

<i>Initial pricing principle applicable on and after 16 December 2019</i>	The year 5 prices specified in Schedule 2 of the Commission's standard terms determination for Chorus's unbundled bitstream access service, with an annual CPI adjustment applied on 16 December in each year
<i>Final pricing principle applicable on and after 16 December 2019</i>	The year 5 prices specified in Schedule 2 of the Commission's standard terms determination for Chorus's unbundled bitstream access service, with an annual CPI adjustment applied on 16 December in each year

**Part 2, subpart 1, under the heading Chorus's unbundled bitstream access backhaul**

In the item relating to Initial pricing principle, in the first column, after “*principle*”, insert “*applicable before 1 January 2020*”.

In the item relating to Final pricing principle, in the first column, after “*principle*”, insert “*applicable before 1 January 2020*”.

After the item relating to Final pricing principle, insert:

**Part 2, subpart 1, under the heading Chorus’s unbundled bitstream access backhaul—continued***Initial pricing principle applicable on and after 1 January 2020*

The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled bitstream access backhaul service, with an annual CPI adjustment applied on 1 January in each year

*Final pricing principle applicable on and after 1 January 2020*

The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled bitstream access backhaul service, with an annual CPI adjustment applied on 1 January in each year

**Part 2, subpart 1, under the heading Chorus’s unbundled copper local loop network**

Repeal the heading and each item related to the heading.

**Part 2, subpart 1, under the heading Chorus’s unbundled copper local loop network co-location**In the item relating to Initial pricing principle, in the first column, after “*principle*”, insert “*applicable before 1 January 2020*”.In the item relating to Final pricing principle, in the first column, after “*principle*”, insert “*applicable before 1 January 2020*”.

After the item relating to Final pricing principle, insert:

*Initial pricing principle applicable on and after 1 January 2020*

The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled copper local loop network co-location service, with an annual CPI adjustment applied on 1 January in each year

*Final pricing principle applicable on and after 1 January 2020*

The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled copper local loop network co-location service, with an annual CPI adjustment applied on 1 January in each year

**Part 2, subpart 1, under the heading Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)**

Repeal the heading and each item related to the heading.

**Part 2, subpart 1, under the heading Chorus’s unbundled copper local loop network backhaul (telephone exchange to interconnect point)**In the item relating to Initial pricing principle, in the first column, after “*principle*”, insert “*applicable before 1 January 2020*”.In the item relating to Final pricing principle, in the first column, after “*principle*”, insert “*applicable before 1 January 2020*”.

After the item relating to Final pricing principle, insert:

*Initial pricing principle applicable on and after 1 January 2020*

The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled copper local loop network backhaul (telephone exchange to

**Part 2, subpart 1, under the heading Chorus’s unbundled copper local loop network backhaul (telephone exchange to interconnect point)—*continued***

<i>Final pricing principle applicable on and after 1 January 2020</i>	interconnect point) service, with an annual CPI adjustment applied on 1 January in each year The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled copper local loop network backhaul (telephone exchange to interconnect point) service, with an annual CPI adjustment applied on 1 January in each year
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**Part 2, subpart 1, under the heading Chorus’s unbundled copper low frequency service**

Replace the item relating to Conditions with:

<i>Conditions</i>	Chorus’s unbundled copper low frequency service is only available where— (a) 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; and (b) the end-user’s building (or, where relevant, the building’s distribution frame) is not located in a specified fibre area  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
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In the item relating to Initial pricing principle, in the first column, after “*principle*”, insert “*applicable before 16 December 2019*”.

In the item relating to Final pricing principle, in the first column, after “*principle*”, insert “*applicable before 16 December 2019*”.

After the item relating to Final pricing principle, insert:

<i>Initial pricing principle applicable on and after 16 December 2019</i>	The year 5 prices specified in Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled copper low frequency service, with an annual CPI adjustment applied on 16 December in each year
<i>Final pricing principle applicable on and after 16 December 2019</i>	The year 5 prices specified in Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled copper low frequency service, with an annual CPI adjustment applied on 16 December in each year

### Schedule 3

#### New Schedule 2A inserted

s 14

#### Schedule 2A

##### Copper withdrawal code

s 69AF

##### 1 Copper withdrawal code

- (1) The Commission, or the Forum if requested to do so by the Commission, must prepare a code to be known as the copper withdrawal code, setting out minimum consumer protection requirements for end-users of the following:
  - (a) copper fixed line access services in areas that are, or will become, specified fibre areas;
  - (b) Chorus's unbundled copper local loop network;
  - (c) Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).
- (2) The code must be prepared before the implementation date.
- (3) The minimum requirements that the code must include are that, before Chorus is permitted to stop supplying a copper service under section 69AC or 69AD,—
  - (a) the end-user in relation to the service must be able to—
    - (i) access a fibre service; and
    - (ii) have a connection to the fibre service installed—
      - (A) within a reasonable time frame; and
      - (B) whether the connection is standard or non-standard, at no cost to the end-user; and
  - (b) Chorus must give the end-user, the access seeker, and the relevant fibre service provider reasonable notice of the proposed withdrawal of the copper service; and
  - (c) the functionality provided by the services that are to be withdrawn must, apart from legacy services, be available to the end-user over a fibre service; and
  - (d) Chorus must provide the end-user with information about—
    - (i) the withdrawal of the copper services; and
    - (ii) the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure; and

- (e) Chorus must, if it is reasonably practicable to do so, provide the end-user with information about the fibre services available to the end-user; and
  - (f) if an anchor service is declared under section 227, the anchor service (or a commercial equivalent) must be available at the end-user's premises; and
  - (g) a Commission 111 contact code must be in force; and
  - (h) any other prescribed matters must be complied with.
- (4) The code may contain any other provisions that the Commission or the Forum (as appropriate) considers are necessary or desirable.
- (5) In this clause,—
- anchor service** has the meaning set out in section 164(1)
- fibre service** means—
- (a) a fibre fixed line access service; or
  - (b) a telecommunications service provided over a fibre-to-the-premises access network
- legacy service** means the services (if any) specified in the copper withdrawal code as legacy services
- standard connection** and **non-standard connection** have the meanings set out in section 155ZU.

## 2 Consultation process on code

- (1) The Commission or the Forum (as appropriate) must—
- (a) notify the process that will be followed to make the code; and
  - (b) consult with interested persons; and
  - (c) give public notice of a draft code.
- (2) A person is entitled to make submissions to the Commission or the Forum (as appropriate) before the date that is 30 working days after the date on which public notice of the draft code is given (the **due date**).
- (3) The Commission or the Forum (as appropriate) must have regard to any submissions received before the due date.

## 3 Commission's discretion to approve draft code

The Commission may approve a draft code if the Commission is satisfied that the draft code meets all the requirements set out in this Act.

## 4 Amendment of approved code initiated by Commission

- (1) The Commission may prepare an amendment to the approved code or revoke the approved code if the Commission considers that the approved code no longer meets all the requirements set out in this Act.

(2) The same procedure that applies to making a code in clauses 2 and 3 must be followed to make an amendment or a revocation.

**5 Public notice of approved code**

The Commission must give public notice of—

- (a) the approved code; and
- (b) every amendment or revocation of the approved code.

## Schedule 4

### Replacing references to “Telecom” or “Telecom’s”

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#### Part 1

##### Replacing references to “Telecom” with “Spark”

Section 69C, definition of **sharing arrangement**, paragraph (c)(vii)

Section 69E(1) and (2)

Section 69F(1)

Section 69G

Section 69H(1) and (2)

Section 69I(1)

Section 69K(2)

Section 69M(1) and (2)

Section 69N(7)

Section 69U(3)

Section 69XK(2)

Section 105(1) and (1A)

Section 111A(2)

Parts 2 and 3 of Schedule 1

#### Part 2

##### Replacing references to “Telecom’s” with “Spark’s”

Part 2 of Schedule 1

## Schedule 5

### Repeals

s 38

Section 4(eb)

Section 22(2)

Section 30A(2)(e)

Section 30O(3)

Section 30R(3)(b)

Section 30S(3) and (4)

Sections 30U to 30ZD and the cross-heading above section 30U

Part 2B

Section 101A

Section 113

Subpart 3 of Part 4AA

Subpart 5 of Part 4AA

Section 156A(1)(h)

Section 156M(1)(b)

Section 156N, definition of **enforceable matter**, paragraph (c)

Section 157AA

Section 158 and Schedule 4

Section 159

Section 161

## Schedule 6

### Consequential amendments to other Acts

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#### **Contract and Commercial Law Act 2017 (2017 No 5)**

In section 312(2), replace the definition of **network** with:

**network** has the same meaning as in section 3 of the Telecommunications (Interception Capability and Security) Act 2013

#### **Crimes Act 1961 (1961 No 43)**

In section 216K(4), definition of **network operator**, replace “section 3(1)” with “section 3”.

#### **Films, Videos, and Publications Classification Act 1993 (1993 No 94)**

In section 122A, definition of **network operator**, replace “section 3(1)” with “section 3”.

#### **Intelligence and Security Act 2017 (2017 No 10)**

In section 144, definition of **business records**, paragraph (a)(i)(G), replace “section 3(1)” with “section 3”.

In section 144, replace the definition of **telecommunication** with:

**telecommunication** has the meaning given to it by section 3 of the Telecommunications (Interception Capability and Security) Act 2013

In section 144, definition of **telecommunications network operator**, replace “section 3(1)” with “section 3”.

#### **National Animal Identification and Tracing Act 2012 (2012 No 2)**

In Schedule 2, clause 1(1), definition of **call associated data**, replace “section 3(1)” with “section 3”.

In Schedule 2, clause 1(1), definition of **network operator**, replace “section 3(1)” with “section 3”.

#### **Search and Surveillance Act 2012 (2012 No 24)**

In section 55(3)(g), replace “section 3(1)” with “section 3”.

In section 70, definitions of **call associated data** and **network operator**, replace “section 3(1)” with “section 3”.

#### **Telecommunications (Interception Capability and Security) Act 2013 (2013 No 91)**

In section 3(1), insert the following definitions in their appropriate alphabetical order:

**network** means a system comprising telecommunication links to permit telecommunication

**Telecommunications (Interception Capability and Security) Act 2013 (2013 No 91)**—*continued***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; but
- (b) does not include any conveyance that constitutes broadcasting (within the meaning of section 2(1) of the Broadcasting Act 1989)

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

**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

Repeal section 3(2).

**Unsolicited Electronic Messages Act 2007 (2007 No 7)**

In section 4(1), replace the definition of **telecommunication** with:

**telecommunication** has the same meaning as in section 3 of the Telecommunications (Interception Capability and Security) Act 2013

**Legislative history**

8 August 2017	Introduction (Bill 293–1)
16 August 2017	First reading and referral to Commerce Committee
8 November 2017	Reinstated before Economic Development, Science and Innovation Committee
4 May 2018	Reported from Economic Development, Science and Innovation Committee (Bill 293–2)
18 September 2018	Second reading
30 October 2018	Committee of the whole House (Bill 293–3)
6 November 2018	Third reading
12 November 2018	Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.