

Telecommunications Amendment Bill

Government Bill

As reported from the Finance and Expenditure
Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Telecommunications Amendment Bill and recommends, by majority, that it be passed with the amendments shown.

Introduction

The aim of this bill is to enhance the workability of the Telecommunications Act 2001, which has the stated purpose of regulating the supply of telecommunications services. The amendments in this bill seek to improve the performance of the New Zealand telecommunications services markets in delivering long-term benefits to end-users by introducing

- new processes, and enhancements to existing ones to address specific problems encountered in administering the Act
- a comprehensive regime for the enforcement of regulatory and statutory policies and obligations
- further regulated services such as local loop unbundling, to promote competition in the supply of key telecommunications services
- an information disclosure and accounting separation regime to address information asymmetries between access providers, access seekers and the regulator

- a robust operational separation regime to promote competition in the telecommunications market and facilitate efficient investment in telecommunications infrastructure.

Commencement

The majority recommend in clause 2 of the bill that Part 4B (as inserted by clause 54 of the bill) come into force as provided by the new section 156R, and that the rest of the bill come into force on the day after the date on which it receives the Royal assent.

Part 4B facilitates the establishment of one or more complaints systems for addressing complaints by consumers against service providers. It will come into force on a date to be appointed by Order in Council.

Functions of Commission in relation to sector monitoring and information dissemination

For clarification, the majority recommend that the function in section 9A(1)(c) in clause 7 of the bill should not require the Commerce Commission to release all documents that the Commission produces or acquires under section 9A.

Standard terms determinations for designated access services and specified services

Scoping workshop

Clause 13 of the bill as introduced inserted new section 30E in the Telecommunications Act. It provided that the Commerce Commission may conduct scoping workshops in relation to a designated access service¹ or specified service. The majority recommend that the Commission be required to conduct the scoping workshops so that all parties concerned can have input into the development of a standard terms proposal for a designated or specified service.

Review of standard terms

In clause 13 of the bill, the majority recommend inserting new section 30R(5) so that the Commerce Commission must give public notice of the commencement and result of the review of a standard terms determination. This recommended change is consistent with

¹ “designated access service” means a service described in subpart 1 of Part 2 of Schedule 1 of the Telecommunications Act 2001.

the requirement to give public notice of the draft standard terms determination under the proposed section 30K in clause 13.

Application of standard terms determination

Under proposed section 30S(2) of the Telecommunications Act (clause 13 of the bill), an access-seeker would not be able to seek access to the terms specified in a residual terms determination or a standard terms determination, if the access seeker entered into a commercial agreement with the access provider after the determination, and the agreement was in force for less than one year. To align the requirement with commercial practice, the majority recommend lengthening the timeframe from one year to 18 months.

Pricing review determinations for designated access services

Clause 18 provides that applications for pricing review determinations for designated access services must be given to the Commission not later than 15 working days after notification. The majority consider that the period is too short for the parties concerned to appraise the merits of seeking a final price determination, so the majority recommend extending the timeframe to 25 working days.

Operational separation of Telecom

The bill as introduced proposes an accounting separation regime, which would empower the Commerce Commission to require Telecom New Zealand to disclose information about its retail and wholesale business activities as if those activities were operated as independent companies (section 69C in clause 32).

In clause 32 of the bill, the majority recommend inserting new Part 2AA to provide for an operational separation regime that would operate alongside the accounting separation regime provided for in the bill as drafted. The majority are aware of Telecom's concerns that regulation might lead to sub-optimal outcomes for customers if it limited the ability of Telecom's retail business to compete on an equal footing with other vertically integrated players, but the majority consider it necessary to introduce the operational separation regime to promote competition and efficiency for the long-term benefit of end-users.

The majority recommend that operational separation should not include a requirement that any business units be operated by different owners (new section 69AAC in clause 32). In essence, the

majority recommend inserting section 69AAD(1)(a) requiring that Telecom establish and maintain the following operationally separate business units:

- a fixed network access services business unit (which may provide a wholesale function for those services)
- one or more business units which must provide a wholesale function for all relevant services (except for those that were allowed to be provided by the fixed network access services business unit)
- one or more other business units (for example, retail).

In order to ensure that all the competitors in the telecommunications markets have equivalent access to Telecom's key network services, the majority recommend that Telecom create an operationally separate network access services unit with an independent oversight group. The majority are concerned that Telecom would still have the ability and incentives to favour its own retail units over its competitors if its network access services were not operationally separate from its other wholesale units and its retail units. In our opinion, it is difficult to guarantee a Chinese wall between entities that are not operationally separate.

Minister responsible for managing the process of devising the separation plan

To enable the speedy resolution of issues, the majority recommend that the Minister responsible for the Telecommunications Act 2001, rather than the Telecommunications Commissioner, be in charge of controlling and managing the process of setting an operational separation plan for Telecom.

Requirements of separation plan

In clause 32 of the bill, the majority recommend the insertion of new section 69AAD so that the separation plan must fulfil the following requirements:

- Telecom must operate its fixed network access service business unit at arm's length from its other business units.
- Telecom must operate its wholesale business unit or units at arms length from any business unit that provides retail functions.

- Telecom must operate any business unit that provides retail functions at arms length from any of its fixed network business units.
- Telecom must ensure that all Telecom business units are operated in a way that does not undermine the arm's-length requirements.
- Telecom must ensure transparency and equivalence² in relation to its supply of certain telecommunications services.
- Telecom must ensure that its systems, procedures and processes promote and facilitate compliance with the separation plan.
- The plan must comply with any Ministerial determination.
- Each separation plan given to the Minister must be accompanied by a certificate signed by at least two directors of Telecom certifying that the directors are satisfied that the plan complies with the requirements.

In clause 32 of the bill, the majority recommend inserting new section 69AAF to the effect that the Minister must determine further requirements for the separation plan, and new section 69AAG, which sets out the procedures for such Ministerial determination.

Process for drafting separation plan

The majority propose that Telecom be required to prepare a draft separation plan in consultation with the Minister and to give the draft separation plan to the Minister not later than 20 working days after the Minister's determination is made (new section 69AAH in clause 32). The Minister would be required to invite public comments on the draft separation plan, as soon as practicable after receiving it (new section 69AAI in clause 32). The Minister would then give all the written comments to Telecom, which would be required to give the Minister an amended plan and a summary of how the draft was amended (new section 69AAJ in clause 32).

² In clause 32 of the bill, the majority recommend the insertion of new section 69AAE defining "equivalence" as "equivalence of supply of wholesale telecommunications services and access to Telecom's network so that third party access seekers are treated in the same or an equivalent way to Telecom's own business operations, including in relation to pricing, procedures, operational support, supply of information, and other relevant matters."

As soon as practicable after receiving the amended separation plan, the Minister would be required to either approve or decline to approve it. If the Minister declined to approve the separation plan, the Minister would then be required to indicate the parts of the plan that required amendment and direct Telecom to submit an amended plan (new section 69AAK in clause 32). As soon as practicable after receiving an amended separation plan, the Minister would either approve or amend it. As soon as practicable after Ministerial approval of the separation plan, Telecom would have to publish it (new section 69AAO in clause 32). The majority believe this process would provide the Minister with a high degree of control over any separation plan.

Enforcement of separation plan

In addition to setting out the various requirements of a separation plan, the majority also recommend the insertion of provisions for the mechanisms for monitoring and enforcing the plan in new Part 2AA. The separation undertakings specified in the plan approved by the Minister would be legally binding (new section 69AAN in clause 32). The majority recommend that the Commission be responsible for monitoring and enforcing the operational separation regime after it has come into force.

Information disclosure requirements

The majority recommend some minor changes to the information disclosure requirements prescribed in Part 2A, for consistency with the operational separation regime.

To be more specific about the information disclosure requirements in Part 2A, the majority also recommend the insertion of new clause 69AB providing that the Commission's requirements must be reasonable, having regard to the purpose of Part 2A, the confidentiality of the information in question, and the time required to prepare the information.

Protection of the Commission from liability

The majority recommend deleting section 100D, inserted by clause 50 of the bill as introduced. This section aimed to provide the Commission and its members with immunity from any civil or criminal liability in relation to disclosure under proposed section

100B of the Telecommunications Act. However, the majority consider this section unnecessary. The Commission is sufficiently protected by section 106 of the Commerce Act 1986 and section 15 of the Telecommunications Act, while sections 120–126 of the Crown Entities Act 2004 provide the necessary protection for the members, office holders, and employees of the Commission.

Enforcement provisions

Element of culpability

The majority recommend that breaches under the proposed section 156A (as inserted by clause 54) be limited to cases where misleading or false information is *knowingly* provided, or where the failure to comply is *without reasonable excuse*. In our opinion, culpability should be a qualifier for such breaches, as similar provisions in the Telecommunications Act (section 46 and section 82) and the Commerce Act 1986 (section 57ZJ) require either knowing failure to comply or lack of reasonable excuse.

Civil infringement notice

The majority recommend the insertion of new section 156JA to provide for the Commission's discretion to publish information about a civil infringement notice issued under proposed section 156D of the Telecommunications Act (clause 54 of the bill). However, the majority propose that the notice should be published only after the occurrence of certain specified events (for example, after the close of the window for objections to the notice). The majority believe this amendment will enhance the efficacy of the enforcement provisions by allowing public disclosure of non-compliance.

Pecuniary penalty

In clause 54, the majority recommend inserting new section 156K(3)(aa) so that it provides for the maximum pecuniary penalty for failure, without reasonable excuse, to comply with a separation undertaking under Part 2AA of the bill (\$10 million).

The majority also recommend amending proposed section 156L in clause 54 due to two reasons. Firstly, the amended section 156L(1) provides for further penalty for continuing breach of section 156K(1)(a)—failure, without excuse, to comply with a separation undertaking. Secondly, for clarification, new section 156L(2) specifies the period during which further penalty under section 156L(1) may be imposed.

Enforceable matter

The majority recommend that the definition of “enforceable matter” in the proposed section 156M in clause 54 include a separation undertaking under Part 2AA. The majority also recommend that the definition of “party” be amended to include, in the case of a separation undertaking under Part 2AA, any provider of a telecommunications service that is affected by a breach of such an undertaking.

Complaints of breach of enforceable matter

In clause 54, the majority recommend amending the proposed section 156N so that the Commission must consult if it decides to issue a clarification as a result of a complaint that alleges a breach of an enforceable matter. The reason for proposing such a requirement is that a clarification will affect not only the parties to the complaint, but also other parties such as the other players in the telecommunications industry.

Regulation-making powers for complaints resolution system

The majority consider that the regulation-making powers for the complaints resolution system under clause 55 of the bill as introduced are too wide and should be subject to additional statutory limits. The majority therefore recommend prescribing additional matters in clause 54 and rewording clause 55.

The majority recommend inserting new Part 4B in clause 54 to provide for mechanisms for establishing an independent telecommunications consumer complaints resolution system, appointing a consumer complaints adjudicator, and imposing a consumer complaints levy on the applicable service providers. This new Part would also outline the functions, duties, and powers of the consumer complaints adjudicator (sections 156ZB and 156ZC). To allow industry players to have input, the majority propose that before any Order in Council or regulation is made under new Part 4B, the Minister should be required to consult with the persons that the Minister considers will be substantially affected, or their representatives (section 156ZI).

The majority recommend that sections 157(1)(cd) to 157(1)(cg) in clause 55 be amended to limit the regulation-making powers. The new section 157(1)(ce) provides that the Governor-General may make regulations prescribing the procedures or minimum standards to be followed by a consumer complaints adjudicator under a consumer complaints system. The new section 157(1)(cf) provides that the Governor-General may make regulations specifying the time frames within which the procedures or minimum standards prescribed under paragraph (ce) must be followed. The new section

157(1)(cg) provides that the Governor-General may make regulations prescribing requirements and other matters concerning the operation and administration of a consumer complaints system. The majority also recommend in clause 55 that sections 156(1)(ch) and 157(2) be omitted.

Transitional provisions

To enable smooth transition to the new regulatory regime, the majority recommend inserting new clauses 61A, 63, 64 and 65. Clause 61A is a transitional provision for uncompleted determinations under section 27, while clause 63 is a transitional provision for enforcement of determinations and approved codes made before commencement of the Act. New clause 64 provides that any determination on designated access services under Part 2 of Schedule 1 of the Act that are in force continue to apply as if amendments to Part 2 of Schedule 1 had not been enacted. Clause 65 would make the transitional provision for uncompleted investigations under Schedule 3 of the Act.

Standard access principles

The majority recommend the addition of a new standard access principle in clause 5 of Part 1 of Schedule 1 of the bill, which requires an access provider to provide information about a designated access service or specified service upon request. The majority recommend inserting new clause(5)(d) of Part 1 of Schedule 1, to require that the information be provided to access seekers at the same time and in the same detail as the access provider would provide that information had it been requested by one of its own business units.

To prevent the misuse of confidential information, the majority recommend imposing a limitation on the application of the recommended standard access principle. The recommended limitation, to be set out in new clause 6(2) of Part 1 of Schedule 1, would exclude from its coverage the provision of confidential information about identifiable individual customers, and require that any confidential information provided to the access-seeker must be kept confidential to that access seeker.

Unbundled bitstream service

Conditions on access to unbundled bitstream service

Under subpart 1 of Part 2 of Schedule 1 of the bill as introduced, access to the regulated unbundled bitstream service would be subject to the condition that Telecom faces only limited competition or is likely to face lessened competition in a relevant market, unless the Commission requires otherwise. The majority recommend that the condition should not apply in the first three years following the enactment of the bill. The majority consider that this deferment would allow the unbundled bitstream service to be implemented more quickly, and promote its uptake by removing uncertainty about its initial availability.

Pricing principles for unbundled bitstream service

The majority recommend retaining the principle (as set out in subpart 1 of Part 2 of Schedule 1) that the wholesale price for the regulated bitstream service should be guided by the “retail minus pricing principles”. In other words, the wholesale price for the regulated UBS should be set by subtracting a discount, reflecting avoided or actual costs saved, from the retail price. Given that the Commerce Commission has experience in applying the “retail minus pricing principles” to UBS determinations, the majority consider that an unconstrained bitstream determination using the retail minus pricing principles can be made rapidly following the enactment of the bill.

The majority recommend keeping the “retail minus pricing principles” as the initial and the final pricing principle for the regulated bitstream service; but the majority recommend clarifying this principle by stating expressly that the wholesale price for the regulated service should cover the costs of Telecom’s local loop network that would usually be recovered by the access provider from an end-user of its local access and calling service, if no-one is also purchasing a local access and calling service from the access provider in relation to the relevant subscriber line.

This clarification recognises the need to price the “naked digital subscriber line (DSL)”³ form of UBS differently from the “clothed DSL”⁴ form. The majority consider that the wholesale price for the

³ “Naked DSL” means a DSL service provided without requiring the wholesale or retail customer of the DSL service to also purchase an analogue telephone service from Telecom.

⁴ “Clothed DSL” means a DSL service that requires the wholesale or retail customer of the DSL service to also purchase an analogue telephone service from Telecom.

”naked DSL” form of UBS must recover a contribution to the common costs of the line, which would otherwise be recovered by Telecom’s price-capped local access and calling (“homeline”) service or an equivalent service.

Three submitters suggested an alternative pricing principle—a cost-based pricing method. While the majority acknowledged the merits of a cost-based pricing principle, the majority considered that adopting it would significantly delay the implementation of regulated unconstrained bitstream.

Several submitters also suggested that the pricing of UBS should take into account the pricing relativities between UBS and other services such as resale of retail services and alternative network technologies. However, the majority decided that this would lead to unnecessary complexities in the calculation of price.

Local loop unbundling

Local loop unbundling is one of the major features of the bill, and addresses the competitive advantage that Telecom enjoys over other players in the telecommunications industry in respect of fixed-access network infrastructure.

Telecom’s unbundled copper local loop network

The majority recommend clarifying the description of Telecom’s unbundled copper local loop network, and the additional matters that the Commission must consider regarding the application of section 18.

Telecom’s unbundled copper local loop network co-location ⁵ and backhaul ⁶ services

The majority recommend clarifying the description of the co-location service in Part 3 of Schedule 1. To do so, the majority recommend defining the term “access seeker’s equipment” and stating explicitly that the co-location service “includes access to, and the use of, space in, on, or around Telecom’s local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of installing and maintaining the access seeker’s equipment”. In our

⁵ “Co-location” means that an access seeker can place their equipment in locations owned or operated by Telecom. The statutory definition of “co-location” is contained in Part 3 of Schedule 1 of the bill.

⁶ “Backhaul” means the transmission capacity in Telecom’s network that carries the aggregated data from a point in the Telecom’s network to the point of interconnection with the entrant’s network. The statutory definition of “backhaul” is contained in Part 3 of Schedule 1 of the bill.

opinion, these amendments would ensure that third-party suppliers of backhaul can access Telecom's exchanges and cabinets to provide competitive backhaul services, even if they do not have any agreement or determination regarding access to them.

The majority also recommend clarifying the description of Telecom's unbundled copper local loop network backhaul services in Subpart 1 of Part 2 of Schedule 1.

Telecommunications access codes

The majority recommend rewording clause 4(4) (c) of Schedule 2 to narrow down the definition of an eligible person for the purpose of voting on a draft access code.

The majority recommend changing the threshold for a referendum on submitting a draft telecommunications access code to the Commission from 66 percent of eligible persons who voted on the code to 75 percent (clauses 5(d) and 12 of Schedule 2). The majority consider that the 66 percent threshold is too low.

Clause 10B of Schedule 2 of the bill enables the Commission to prepare an amendment to a draft telecommunications access code if it no longer meets the requirements of the Act. For flexibility, the majority recommend that the Commission also be able to request the Telecommunications Industry Forum to prepare such an amendment.

The majority recommend inserting new clause 17 into Schedule 2 of the bill. This new clause would be to allow the Commission to prepare a telecommunications access code in accordance with the provisions of Part 1 of that schedule as if they were a code prepared by the Forum.

Commission's investigation into the need for continued regulation

Clause 30 of the bill introduces a requirement for the Commission to consider every five years whether there are reasonable grounds for commencing an investigation into whether regulation should be removed from a service.

The majority recommend that, if the Commission concludes that there are reasonable grounds for commencing an investigation into whether a designated service or specified service should be omitted from Schedule 1 under section 66(b), it should be required to commence an investigation within 15 working days (clause 1 of Schedule 3 of the bill). The majority believe this amendment would

impose stronger obligations on the Commission to review the continued need for regulation regularly. The majority wish to ensure that Telecom will remain competitive in the rollout of the Next Generation Network. In particular, the Commission ensures that where there is competition (either regionally or nationally) Telecom will not be disadvantaged by being unduly regulated in situations where competitors are not.

Other policy issues not leading to amendments

The majority believe that several policy issues discussed during the hearing of evidence and consideration are noteworthy, although they did not result in any recommended amendments to the bill.

Civil regime versus criminal regime

The majority considered the issue as to whether the bill should be enforced under a criminal regime rather than the proposed civil regime. The Legislation Advisory Committee raised the issue in view of the high maximum pecuniary penalty for any of the breaches set out in the new section 156K(1) (clause 54 of the bill).

The majority recommend retaining the civil enforcement regime for the following reasons:

- The civil enforcement regime is based on, and is consistent with, precedents for regulatory enforcement regimes.
- The enforcement regime aims primarily to encourage regulatory compliance and remove any potential commercial incentives for non-compliance.
- The criminal standard of proof, which is higher than the civil standard of proof, would make breaches more difficult to prove and would probably risk the policy objective of removing potential commercial incentives for non-compliance. This is a particular concern in the telecommunications industry, which is characterised by large information asymmetries between the regulator, access seekers, and access providers.
- The majority are also concerned that criminal proceedings are usually expensive and time-consuming.

No merits review of decisions

At present, decisions made by the Commission under the Telecommunications Act 2001 can be appealed only on the basis of points of law. In other words, the decisions are not subject to merits review. The bill retains this position.

Although some submitters suggested that decisions under the Telecommunications Act 2001 should be subject to merits review, the majority consider that appeals for decisions made under the Act should be confined to points of law, for several reasons. Firstly, the Commission is a specialist body, so is best placed to determine technical and factual issues. Secondly, the limitation is intended to prevent protracted reviews, which would frustrate the timely resolution of industry disputes and the emergence of more competition in telecommunications markets. Thirdly, considering the introduction of merits review would require a substantial policy process. The majority note that this issue is common regarding laws that cover the regulatory functions of the Commerce Commission, such as the Commerce Act 1986. At present, the Ministry of Economic Development is conducting a review of Parts 4, 4A and 5 of the Commerce Act 1986, which includes examining the issue of merits review. To avoid duplication of the substantive policy process, the majority suggest that the Ministry should revisit the issue after completing its review of the Commerce Act 1986.

Pricing principle for local loop unbundling

The majority recommend no change to the proposed final pricing principle for local loop unbundling in Part 3 of Schedule 1 of the bill, because the majority believe it will allow industry players to choose the most efficient means of delivering telecommunications services to the market. The proposed final pricing principle for unbundling is total service long run incremental cost (TSLRIC), a cost-based pricing methodology. Some submitters suggested that the pricing of unbundling should take into account pricing relativities between Telecom's local-loop service and a comparable service provided by a competing access network infrastructure. Otherwise, there would be no incentive for Telecom or the other telecommunications companies to invest in an alternative access network infrastructure, as the wholesale price for local loop access might be set at a level that is artificially attractive compared with the cost of an alternative infrastructure.

However, the majority consider that the submitters' proposal would be likely to result in inefficient market outcomes. As the submitter's proposal would implicitly link the pricing of unbundling to the cost of deploying alternative infrastructure, it would distort price signals and would thus lead to an inefficient level of investment in alternative infrastructure. In addition, the majority are concerned that the proposal would create significant difficulties and delay in the implementation of local loop unbundling.

Since the proposed final pricing principle aims to promote efficient investment, the majority are concerned that it might reduce or eliminate incentives to purchase and invest in the local loop in areas where broadband is not commercially viable, especially rural areas. Recognising our concerns about the availability and quality of rural broadband, the Ministry of Economic Development assures us that further policy work is being undertaken in respect of these rural broadband issues, including a review of the Telecommunications Service Obligations and the development of a rural broadband strategy in the next Budget.

Compensating Telecom for unbundling

Some submitters assert that regulating local loop unbundling is a taking of Telecom's property rights without compensation. However, in our opinion, it is not. There are many precedents for this type of regulatory action where a company with market power is required to provide competitors with access to its network or faces controls over the prices it can charge. Moreover, Telecom will be paid a price based on the efficient costs of providing the unbundled local loop. The majority also noted that when Telecom shares were initially offered for sale the Government reserved the right to introduce further regulation if effective competition did not emerge. The majority therefore propose that the bill does not need to provide for additional compensation to Telecom or to expressly state that no such compensation is payable.

Fibre rollout investment

One submitter noted that it is important to increase the amount of optical fibre in the access network so as to improve the performance of the telecommunications industry in New Zealand. The submitter was concerned that the bill would not be adequate in terms of promoting investment in fibre in the access network. The majority acknowledge the submitter's concerns and the importance of investment in fibre networks, and the Ministry of Economic Development informs us that the Government has a number of policies to encourage such investment.

Act Party's minority view

The Act Party opposes the bill as an uncompensated taking of property rights that will discourage investment in New Zealand, and will not deliver the promised benefit.

Appendix

Committee process

The Telecommunications Amendment Bill was referred to the committee on 29 June 2006. The committee called for submissions on the bill and accepted an invitation from the Minister of Communications to consider the associated issue of operational and structural separation of Telecom. The closing date for submissions was 11 August 2006. We received and considered 34 submissions from interested groups and individuals and heard evidence from 22 of the submitters. In particular, we wish to acknowledge the submission of Bronwyn Howell who provided us with a well researched critique of the Government's "stocktake" findings.

We received advice from the Ministry of Economic Development.

Committee membership

Shane Jones (Chairperson)

Gordon Copeland

Jeanette Fitzsimons

Craig Foss

Hon Mark Gosche

Hon George Hawkins

Hone Harawira

Rodney Hide

John Key

Dr the Hon Lockwood Smith (Deputy Chairperson)

Hon Paul Swain

Chris Tremain

R Doug Woolerton

Hon Maurice Williamson replaced Craig Foss for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon David Cunliffe

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Consequential amendments

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Telecommunications Amendment Act **2006**.

Struck out (majority)

2 Commencement

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

5

New (majority)

2 Commencement

(1) **Part 4B** of the Telecommunications Act 2001 (as inserted by **section 54** of this Act) comes into force as provided in **section 156R** of that Act.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

10

3 Principal Act amended

This Act amends the Telecommunications Act 2001.

Part 1 Amendments to principal Act

4 Overview

- (1) Section 4(c)(ii) is amended by inserting “prepared by the Commission on its own initiative or” after “(Schedule 2)”. 5
- (2) Section 4(e) is amended by omitting “Schedule 3”, and substituting “Schedules 3 and **3A**”.
- (3) Section 4 is amended by inserting the following *<paragraph>* *<paragraphs>* after paragraph (e): 10
- “(ea) provisions *<about the preparation and disclosure of information>* *<requiring the operational separation of Telecom>* are set out in Part *<2A>* *<2AA>*; and

New (majority)

“(eb) provisions about the preparation and disclosure of information are set out in **Part 2A**; and”.

- (4) Section 4 is amended by inserting, after paragraph (g): 15
- “(ga) enforcement provisions are set out in **Part 4A**; and

New (majority)

“(gb) provisions facilitating the establishment of 1 or more complaints systems for the purpose of addressing complaints by consumers against service providers are set out in **Part 4B**; and”. 20

5 Interpretation

- (1) Section 5 is amended by repealing the definition of **access provider** and substituting the following definition: 25
- “**access provider**—
- “(a) means, in relation to a designated service or specified service, the person named or described in Part 2, or Part 3, of Schedule 1 as the access provider for the designated service or specified service; and 25
- “(b) means, in relation to a service that is supplied under a registered undertaking, the person that provided the undertaking under **Schedule 3A**”. 30

- (2) Section 5 is amended by repealing the definition of **access seeker** and substituting the following definition:
- “**access seeker**—
- “(a) means, in relation to a designated service or specified service, the person named or described in Part 2, or Part 3, of Schedule 1 as the access seeker for the designated service or specified service; and 5
- “(b) means, in relation to a service that is supplied under a registered undertaking, a service provider who seeks access to the service and who complies with any conditions set out in the registered undertaking for eligibility as an access seeker”. 10

Struck out (majority)

- (3) Section 5 is amended by repealing the definition of **eligible person** and substituting the following definition: 15
- “**eligible person** means a person who is entitled to register with the Commission as an eligible person under **clause 4(4)** of Schedule 2”.
- (4) Section 5 is amended by repealing the definition of **financial year** and substituting the following definition: 20
- “**financial year**, in relation to a TSO provider, means a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year during some or all of which a TSO provider supplies services under a TSO instrument”.
- (5) The definition of **liable person** in section 5 is amended by omitting “TSP” and substituting “TSO provider”. 25
- (6) Section 5 is amended by inserting the following definition in its appropriate alphabetical order: 30
- “**liable person’s TSO-qualified revenue** means the amount of revenue that, during the financial year, each liable person receives for supplying all or any of the following:
- “(a) telecommunications services by means of its PSTN:
- “(b) telecommunications services by means that rely primarily on the existence of its PSTN or any other PSTN:

Struck out (majority)

“(c) other services associated with **paragraph (a) or (b)** in respect of a PSTN number in New Zealand (for example, directory listings and advertising)

New (majority)

“(c) directory services in respect of PSTN numbers”.

- (7) The definition of **local loop network** in section 5 is repealed. 5
- (8) Section 5 is amended by repealing the definition of **party or parties** and substituting the following definition:
- “**party or parties** means,—
- “(a) for a determination made under section 27 or a residual terms determination made under **section 30ZB**, the access seeker and the access provider of the service; and 10
- “(b) for a standard terms determination made under **section 30M**, a designated multinet network service determination made under section 39, or an approved code under Schedule 2, all access seekers and all access providers 15
- of the service (whether they became an access seeker or an access provider before or after the determination was made or the code was approved); and
- “(c) for a registered undertaking under **Schedule 3A**, the access provider of the service and the Commission”. 20
- (9) Section 5 is amended by inserting the following definition in its appropriate alphabetical order:
- “**registered undertaking** has the meaning set out in **clause 1 of Schedule 3A**”.
- (10) The definition of **specified amount** in section 5 is amended by 25
- omitting “section 70(5)” and substituting “**section 71A**”.

New (majority)

- (10A) Section 5 is amended by inserting the following definitions in their appropriate alphabetical order:

New (majority)

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

“**TSO cost calculation determination** means a determination prepared by the Commission in accordance with **sections 92 to 93E**”

5

- (11) Section 5 is amended by repealing the definition of **TSP or telecommunications service provider** and inserting the following definitions in their appropriate alphabetical order:

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

10

“**TSO provider’s TSO-qualified revenue** means the amount of revenue that, during the financial year, each TSO provider receives for supplying all or any of the following:

15

“(a) telecommunications services by means of its PSTN:

“(b) telecommunications services by means that rely primarily on the existence of its PSTN or any other PSTN:

Struck out (majority)

“(c) other services associated with **paragraph (a) or (b)** in respect of a PSTN number in New Zealand (for example, directory listings and advertising)

20

New (majority)

“(c) directory services in respect of PSTN numbers”.

6 Telecommunications access codes

Section 7 is amended by repealing subsection (1) and substituting the following subsection:

25

- “(1) In this Act, **telecommunications access code** means an access code for 1 or more—

“(a) designated services or specified services:

“(b) services supplied under a registered undertaking.”

7 New section 9A inserted

The following section is inserted after section 9:

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

- “(1) In addition to the other functions conferred on the Commission by this Act, the Commission—
- “(a) must monitor competition in telecommunications markets and the performance and development of telecommunications markets; and
 - “(b) may conduct inquiries, reviews, and studies (including international benchmarking) into any matter relating to the telecommunications industry or the long-term benefit of end-users of telecommunications services within New Zealand; and
 - “(c) must make available reports, summaries, and information about the things referred to in paragraphs (a) and (b).

New (majority)

- “(2) The function in subsection (1)(c) does not require the Commission to release all documents that the Commission produces or acquires under this section.

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

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

- (1) Section 19 is amended by omitting “Schedules 1 to 3” and substituting “Schedules 1, 3, and **3A**”.
- (2) Section 19(c) is amended by omitting “Commissioner” and substituting “Commission”.

9 New section 19A inserted

The following section is inserted after section 19:

“19A Commission to have regard to economic policies of Government

- “(1) In the exercise of its powers under Schedule 3, the Commission must have regard to any economic policies of the Government that are transmitted, in writing, to the Commission by the Minister.

- “(2) The Minister must, as soon as practicable after transmitting a statement of economic policy of the Government to the Commission under **subsection (1)**,—
- “(a) arrange for a copy of that statement to be published in the *Gazette*; and 5
- “(b) present a copy of that statement to the House of Representatives.
- “(3) To avoid doubt, a statement of economic policy of the Government transmitted to the Commission under this section is not a direction for the purposes of Part 3 of the Crown Entities Act 2004.” 10
- 10 When application may not be made**
- (1) Section 22(a) and (b) are repealed.
- (2) Section 22 is amended by inserting the following paragraph after paragraph (c): 15
- “(ca) the standard terms development process for the service is proceeding or a standard terms determination for the service is in force; or”.
- (3) Section 22 is amended by adding the following subsections as subsections (2) to (4): 20
- “(2) However, **subsection (1)(ca)** does not prevent a person from applying for a residual terms determination under **section 30V**.
- “(3) The Commission may investigate whether subsection (1)(d) applies either at the time—
- “(a) it receives an application made under section 20; or 25
- “(b) it prepares a determination under section 27.
- “(4) However, if the Commission is satisfied, at any time, that the applicable conditions in relation to the service have not been met, the Commission must discontinue—
- “(a) all of its investigation; or 30
- “(b) as the case may be, that part of its investigation that relates to the market in which those conditions have not been met.”

11 New section 22A inserted

The following section is inserted after section 22:

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

- “(1) This section applies if an access seeker of a designated access service or specified service applies for a determination under section 27 while an agreement is in force between that access seeker and the access provider of the service for the supply of that service or of any other service. 5
- “(2) The access provider must not, as a direct or indirect result of the access seeker making the application for the determination, act in a way that is, or is likely to be, prejudicial to the interests of the access seeker. 10
- “(3) The access provider may discontinue the supply of the service under the agreement only if— 15
- “(a) a determination is made under section 27 for that service or a comparable service; and
- “(b) the access provider begins to supply the service on the terms specified in the determination.
- “(4) **Subsection (3)** does not apply if, before the date on which the determination is made, the agreement— 20
- “(a) has already expired; or
- “(b) has been terminated for a reason that is unrelated to the making of the application.
- “(5) If there is any inconsistency between the determination and the agreement, the determination prevails.” 25

12 Matters to be included in determination

Section 30 is amended by adding the following subsection as subsection (2):

- “(2) To avoid doubt, a determination may also include, without limitation, terms concerning any or all of the following matters: 30
- “(a) dispute resolution procedures:
- “(b) the consequences of a breach of the determination (including provision for set-off or withholding rights, or liquidated damages): 35
- “(c) suspension and termination of the service:
- “(d) procedures for, or restrictions on, assignment of the service.”

- 13 New subpart 2A inserted**
The following subpart is inserted after section 30:
- “Subpart 2A—Standard terms determinations for designated access services and specified services
- “Preliminary* 5
- “30A Overview of subpart**
- “(1) This subpart enables the Commission to make, as an alternative to a determination made under section 27, a determination of the terms on which a designated access service or specified service must be supplied with reference to all access seekers and all access providers of the service. 10
- “(2) Accordingly, this subpart—
- “(a) provides a process for the development of standard terms for the supply of the service (**sections 30C to 30J**):
- “(b) provides for the Commission to make, and review, a standard terms determination (**sections 30K to 30R**): 15
- “(c) specifies how a standard terms determination is to apply (**section 30S**):
- “(d) clarifies the interface between a determination made under section 27 and a standard terms determination (**section 30T**): 20
- “(e) provides a mechanism that allows parties to a standard terms determination to apply for a residual terms determination if they wish to adjust, as between themselves, the application of terms specified in the standard terms determination (**sections 30U to 30ZD**). 25
- “(3) This section is intended only as a guide to the general scheme and effect of this subpart.
- “30B Interpretation**
- In this subpart,— 30
- “**change in circumstances**, in relation to the price payable for a service, means any change in relevant circumstances since the last date on which that price was calculated (for example, any change to the terms of the service)
- “**regulated terms** means the terms set by any New Zealand or overseas regulator for any telecommunications service. 35

*“Standard terms development process***“30C When standard terms development process may be initiated**

- “**(1)** The Commission may, on its own initiative, initiate the standard terms development process for a designated access service or specified service. 5
- “**(2)** However, the Commission may not initiate that standard terms development process if the applicable conditions in relation to the service (if any) have not been met.
- “**(3)** The Commission may investigate whether the applicable conditions in relation to the service have been met either— 10
- “**(a)** before deciding to initiate the standard terms development process; or
- “**(b)** at the time it prepares a standard terms determination under **section 30M**. 15
- “**(4)** However, if the Commission is satisfied, at any time, that the applicable conditions in relation to the service have not been met, the Commission must discontinue—
- “**(a)** all of its investigation; or
- “**(b)** as the case may be, that part of its investigation that relates to the market in which those conditions have not been met. 20
- “**(5)** For the purposes of **subsection (1)**, the Commission may, if it considers it appropriate in the circumstances, initiate a single combined standard terms development process for 2 or more designated access services or specified services. 25

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

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

“30E <Scoping> <Commission must conduct scoping> workshop <may be conducted in certain cases>

- “**(1)** The Commission <may, if it considers it appropriate,> <must> conduct 1 or more scoping workshops in relation to a designated access service or specified service. 35

- “(2) The purpose of a scoping workshop is to provide the Commission with information to assist it in specifying—
- “(a) a reasonable period of time within which an access provider must submit a standard terms proposal under **section 30F**; and 5
- “(b) any additional requirements for that proposal under **section <30G(1)(f)> <30F(1A)>**.
- “(3) A scoping workshop must be—
- “(a) open to all parties to the standard terms determination; and 10
- “(b) conducted by an employee or agent of the Commission in a manner, and within the time, that the Commission thinks fit.
- “(4) To avoid doubt, this section does not prevent the Commission from conducting a workshop in relation to any other matter, nor does it affect the matters that may be considered by the Commission in any other workshop. 15

“Standard terms proposal

“30F Call for standard terms proposal

- “(1) After giving public notice under **section 30D** and *< if applicable, after >* conducting a scoping workshop under **section 30E**, the Commission must— 20
- “(a) give written notice to 1 or more access providers of the designated access service or specified service requiring them to submit to the Commission, by the date specified in the notice, a standard terms proposal that complies with **section 30G**; and 25
- “(b) give public notice of that *<request> <requirement>*.

New (majority)

- “(1A) The Commission may include in the written notice under **subsection (1)(a)** any additional requirements that it thinks fit to specify, having regard to any relevant matters (for example, the terms and conditions of any commercial agreement or regulated terms for any service in New Zealand or overseas). 30

New (majority)

“(1B) An access provider of the designated access service or specified service to whom written notice is given under **subsection (1)(a)** must comply with the requirement or requirements contained in that notice.

Struck out (majority)

“(2) The written notice under **subsection (1)(a)** must be accompanied by a copy of **section 30G**, including a copy of any additional requirements that the Commission specifies under **section 30G(1)(f)** (if any).

5

New (majority)

“(2) The written notice under **subsection (1)(a)** must be accompanied by a copy of—

“(a) **section 30G**; and

“(b) any additional requirements that the Commission specifies under **subsection (1A)**.

10

“30G Requirements for standard terms proposal

“(1) A standard terms proposal must—

“(a) specify sufficient terms to allow, without the need for the access seeker to enter into an agreement with the access provider, the designated access service or specified service to be *⟨supplied after the period⟩* ⟨made available within the time frames⟩ specified under **paragraph (c)**; and

“(b) provide an explanation of, and reasons for, those terms; and

15

20

Struck out (majority)

“(c) state a specified period of time after which the service must be made available by the access provider, which is a period that begins on—

25

Struck out (majority)

- “(i) the date on which public notice of the standard terms determination is given under **section 30M(c)**;
 “(ii) the date on which a request is made by the access seeker under **section 30S**; and

New (majority)

- “(c) state the time frames within which the access provider must make the service available to— 5
 “(i) every person who is already an access seeker when the standard terms determination is made; and
 “(ii) every person who becomes an access seeker after the standard terms determination is made; and 10
 “(d) be consistent with the description of the service in Part 2 or Part 3 of Schedule 1, as the case may be; and
 “(e) be consistent with the applicable access principles and any limits on those applicable access principles; and 15

Struck out (majority)

- “(f) include any additional requirements that the Commission may specify having regard to any relevant matters (for example, the terms and conditions of any commercial agreement or regulated terms for any service in New Zealand or overseas). 20

New (majority)

- “(f) comply with any additional requirements that the Commission has specified under **section 30F(1A)**.
 “(2) The terms referred to in **subsection (1)(a)**—
 “(a) must include the price payable for the supply of the service if that price has been determined in accordance with the applicable initial pricing principle or the applicable final pricing principle in a previous determination made under section 27; or 25

- “(b) must not include that price if that is not the case.
- “(3) The Commission may refuse to consider a standard terms proposal that—
- “(a) fails to comply with this section:
- “(b) is submitted late. 5
- “30H Failure to submit standard terms proposal**
- “(1) If an access provider of a designated access service or specified service fails to submit, in response to a notice under **section 30F**, a standard terms proposal that complies with **section 30G**, the Commission may— 10
- “(a) give written notice to another access provider, or an access seeker of the service requesting that access provider or, as the case may be, that access seeker to submit to the Commission, by a further date specified in the notice, a standard terms proposal that complies with **section 30G**: 15
- “(b) prepare a draft standard terms determination under **section 30K** even though it has not received a standard terms proposal from an access provider or an access seeker of the service. 20

Struck out (majority)

- “(2) The written notice under **subsection (1)(a)** must be accompanied by a copy of **section 30G**, including a copy of any additional requirements that the Commission specifies under **section 30G(1)(f)** (if any).

New (majority)

- “(2) The written notice under **subsection (1)(a)** must be accompanied by a copy of— 25
- “(a) **section 30G**; and
- “(b) any additional requirements that the Commission specifies under **section 30F(1A)**.

“30I Receipt of standard terms proposal

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

- “(a) notify all parties to the determination in writing that the proposal has been received: 5
- “(b) give public notice of the receipt of the proposal:
- “(c) include in the public notice—
 - “(i) information about where a copy of the proposal may be viewed and obtained; and 10
 - “(ii) the closing date for submissions on the proposal.

“30J Requirement for submissions

A submission to the Commission on a standard terms proposal—

- “(a) may be made about any matter to which the proposal relates; but 15
- “(b) must set out the wording of any additional or alternative terms that are proposed to be included in the standard terms determination.

“Draft standard terms determination 20

“30K Draft standard terms determination

- “(1) The Commission must make reasonable efforts to do the following things not later than 60 working days after the closing date for submissions on a standard terms proposal:
 - “(a) determine the terms on which the service must be supplied; and 25
 - “(b) prepare a draft standard terms determination containing those terms; and
 - “(c) provide a copy of the draft standard terms determination to all parties to the determination; and 30
 - “(d) give public notice of the draft standard terms determination; and
 - “(e) include in the public notice the closing date for submissions.
- “(2) A draft standard terms determination for a designated access service must also include,— 35

- “(a) if the price <or prices> payable for the service <has> <have> been determined in accordance with the applicable final pricing principle in a determination made under section 51, either of the following: 5
- “(i) that price <or those prices>; or
- “(ii) an updated calculation of that price <or those prices> if the Commission considers it to be necessary because of a change in circumstances; or
- “(b) if **paragraph (a)** does not apply, and the price <or prices> payable for the service <has> <have> been determined in accordance with the applicable initial pricing principle in a determination made under section 27, any of the following: 10
- “(i) that price <or those prices>; or 15
- “(ii) an updated calculation of that price <or those prices> if the Commission considers it to be necessary because of a change in circumstances; or
- “(iii) if the price <or prices> referred to in **subparagraph (i) or (ii)** <is> <are> higher than the existing price <most commonly> charged by the <relevant> access provider <to the majority of its access seekers> for the service, that existing price; or 20
- “(c) if neither **paragraph (a)** nor **paragraph (b)** applies, the price <or prices> determined by the Commission in accordance with the applicable initial pricing principle. 25

“30L Consultation or conferences

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

“Standard terms determination” 35

“30M Standard terms determination

As soon as practicable after completing any consultation or conferences under **section 30L**, or if there is no consultation or

there are no conferences, after the closing date for submissions under **section 30K(1)(e)**, the Commission must—

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

5

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

“(1) The Commission may, if it considers it appropriate in the circumstances, comply with **section 30M(a)** by preparing—

10

“(a) a standard terms determination relating to 2 or more designated access services or specified services that contains—

“(i) terms of general application to all the services to which the standard terms determination relates; and

15

“(ii) a separate schedule for each of those services that includes terms of specific application to that service; or

“(b) a separate standard terms determination for each designated access service or specified service.

20

“(2) Instead of preparing a standard terms determination in each case, the Commission may also comply with **section 30M(a)** by adding a separate schedule that contains terms of specific application to a particular designated access service or specified service to an existing standard terms determination of the kind referred to in **subsection (1)(a)**.

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

“(1) A standard terms determination must—

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“(a) specify sufficient terms to allow, without the need for the access seeker to enter into an agreement with the access provider, the designated access service or specified service to be *⟨supplied after the period⟩* ⟨made available within the time frames⟩ specified under **paragraph (b)**; and

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Struck out (majority)

- “(b) state a specified period of time after which the service must be made available by the access provider, which is a period that begins on—
- “(i) the date on which public notice of the standard terms determination is given under **section 30M(c)**;
 - “(ii) the date on which a request is made by the access seeker under **section 30S**; and

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New (majority)

- “(b) state the time frames within which the access provider must make the service available to—
- “(i) every person who is already an access seeker when the standard terms determination is made; and
 - “(ii) every person who becomes an access seeker after the standard terms determination is made; and

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“(c) specify the reasons for the standard terms determination; and

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“(d) specify the terms and conditions (if any) on which the standard terms determination is made; and

“(e) specify the actions (if any) that a party to the standard terms determination must take or refrain from taking.

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“(2) To avoid doubt, a standard terms determination may also include, without limitation, terms concerning any or all of the following matters:

“(a) dispute resolution procedures:

“(b) the consequences of a breach of the determination (including provision for set-off or withholding rights, or liquidated damages):

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“(c) suspension and termination of the service:

“(d) procedures for, or restrictions on, assignment of the service.

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“(3) The Commission must identify which of the terms (if any) specified in a standard terms determination are allowed to be varied, on an application made under **section 30V** by a party to that determination, under a residual terms determination.

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

- “(1) In addition to the matters set out in **section 300**, a standard terms determination for a designated access service must also include,— 5
- “(a) if the price <or prices> payable for the service <has> <have> been determined in accordance with the applicable final pricing principle in a determination made under section 51, either of the following: 10
- “(i) that price <or those prices>; or
- “(ii) an updated calculation of that price <or those prices> if the Commission considers it to be necessary because of a change in circumstances; or
- “(b) if **paragraph (a)** does not apply<,> and the price <or prices> payable for the service <has> <have> been determined in accordance with the applicable initial pricing principle in a determination made under section 27, any of the following: 15
- “(i) that price <or those prices>; or 20
- “(ii) an updated calculation of that price <or those prices> if the Commission considers it to be necessary because of a change in circumstances; or
- “(iii) if the price <or prices> referred to in **subparagraph (i) or (ii)** <is> <are> higher than the existing price <most commonly> charged by the <relevant> access provider <to the majority of its access seekers> for the service, that existing price; or 25
- “(c) if neither **paragraph (a)** nor **paragraph (b)** applies, the price <or prices> determined by the Commission in accordance with the applicable initial pricing principle. 30
- “(2) A standard terms determination for a designated access service may also include any other terms concerning the price for the service that the Commission considers relevant. 35

“30Q Standard terms determination not to include expiry date

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

“30R Review of standard terms determination

- “(1) The Commission may, on its own initiative, commence a review, at any time, of all or any of the terms specified in a standard terms determination.
- “(2) The Commission may replace a standard terms determination or vary, add, or delete any of its terms, if it considers it necessary to do so after conducting a review. 5
- “(3) In exercising the power conferred by **subsection (2)**, the Commission may specify how and when a replacement standard terms determination, or a variation, addition, or deletion of terms specified in the determination, takes effect in relation to— 10
- “(a) the initial standard terms determination;
- “(b) any relevant residual terms determination.

Struck out (majority)

- “(4) The Commission— 15
- “(a) may conduct a review in the manner, and within the time, that it thinks fit; but
- “(b) must consult all parties to the determination.

New (majority)

- “(4) The Commission may conduct a review in the manner, and within the time, that it thinks fit. 20
- “(5) The Commission must—
- “(a) consult all parties to the determination on the review; and
- “(b) give public notice of the commencement of the review; and 25
- “(c) include in the public notice under **paragraph (b)** the closing date for submissions; and
- “(d) give public notice of the result of the review.

“Application of standard terms determination

- “30S Application of standard terms determination** 30
- “(1) If the Commission has made a standard terms determination for a designated access service or specified service,—

- “(a) an access seeker of the service may request an access provider in writing to supply the service on the terms specified in that determination; and
- “(b) the access provider must comply with the request.
- “(2) However, **subsection (1)** does not apply if,— 5
- “(a) after the date on which the standard terms determination for the service was made, the access seeker and the access provider entered into an agreement for the supply of the service; and
- “(b) it is less than *<1 year>* *<18 months>* since the date on which that agreement came into force. 10
- “(3) In complying with a request from an access seeker under **subsection (1)**, the access provider must, if the Commission has made a residual terms determination for the service under **section 30ZB** in relation to that access seeker and that access provider, supply the service to that access seeker on the terms specified in that determination, as well as on the terms specified in the standard terms determination. 15
- “(4) However, if there is any inconsistency between the terms specified in a residual terms determination in relation to that access seeker and that access provider and the terms specified in a standard terms determination, the terms specified in the residual terms determination prevail. 20
- “30T Effect of standard terms determination on determination made under section 27 25**
- “(1) This section applies if—
- “(a) a determination for a designated access service or specified service is made under section 27; and
- “(b) that determination is still in force at the time a standard terms determination is made for the service. 30
- “(2) An access seeker of the service who is a party to the determination made under section 27 may request the access provider in writing to supply the service on the terms specified in the standard terms determination.
- “(3) The access provider must comply with the request. 35
- “(4) The determination made under section 27 expires on the date on which the access provider begins to supply the service on the terms specified in the standard terms determination.

*“Residual terms determination***“30U Purpose of residual terms determination**

- “(1) The purpose of a residual terms determination is to allow the Commission, on the application of a party to a standard terms determination, to adjust the terms for the supply of a designated access service or specified service that are specified in the standard terms determination. 5
- “(2) To that end, a residual terms determination may—
- “*(a)* address matters that were not addressed in the standard terms determination; and 10
- “*(b)* vary any terms in the standard terms determination that the Commission has identified under **section 300(3)** as being allowed to be varied.

“30V Application for residual terms determination

- “(1) An access seeker of a designated access service or specified service who is a party to a standard terms determination may apply to the Commission for a residual terms determination of any terms on which the service must be supplied. 15
- “*(2)* If an access seeker applies for a residual terms determination under **subsection (1)**, the access provider of the service may also apply to the Commission for a residual terms determination of any terms on which the access provider considers the service must be supplied. 20
- “*(3)* To avoid doubt, an application under this section—
- “*(a)* may only be made if the Commission has made a standard terms determination for the service; and 25
- “*(b)* may seek either or both of the following:
- “*(i)* a determination of matters that were not addressed in the standard terms determination:
- “*(ii)* a variation of any terms in the standard terms determination that the Commission has identified under **section 300(3)** as being allowed to be varied. 30

“30W When application may not be made

- “*(1)* Despite **section 30V**, no person may apply for a residual terms determination if— 35
- “*(a)* all of the following apply:
- “*(i)* the persons who would otherwise be parties to the determination have an agreement for the supply of the service; and

- “(ii) that agreement was entered into after the date on which the relevant standard terms determination was made; and
- “(iii) it is less than *<1 year>* *<18 months>* since the date on which that agreement came into force; or 5
- “(b) that person has not made reasonable attempts to negotiate the terms that are sought in the application for the residual terms determination with the person who would otherwise be a party to that determination; or
- “(c) that person has previously applied for a residual terms determination for the service and it is less than *<1 year>* *<18 months>* since the date on which that determination was made; or 10
- “(d) it is less than *<1 year>* *<18 months>* since the date on which the access provider began to supply the service on the terms specified in the standard terms determination in accordance with a request made by the access seeker under **section 30S(1)**; or 15
- “(e) the applicable conditions in relation to the service (if any) have not been met. 20
- “(2) However, **subsection (1)(d)** does not prevent an access seeker from applying for a residual terms determination at any time before the access provider begins to supply the service on the terms specified in a standard terms determination in accordance with a request made by the access seeker under **section 30S(1)**. 25

“30X Requirements for application

An application made under **section 30V** must—

- “(a) be in writing; and
- “(b) be given in the prescribed manner, if any; and 30
- “(c) contain the prescribed information, if any; and
- “(d) be accompanied by the prescribed fee, if any.

“30Y Commission must notify parties

On receiving an application made in accordance with **section 30X**, the Commission must— 35

- “(a) notify the parties to the determination in writing that the application has been received; and
- “(b) provide a copy of the application to the other party to the determination; and

- “(c) request the parties to the determination to comment on the matter by written notice to the Commission not later than 10 working days after receipt of the notice from the Commission.
- “**30Z Commission must decide whether to investigate** 5
- “(1) The Commission must make reasonable efforts to do the following things not later than 10 working days after the date by which the parties may comment on the application:
- “(a) decide whether or not to investigate the matter:
- “(b) give written notice of its decision to the parties: 10
- “(c) give public notice of its decision:
- “(d) request the parties to the residual terms determination to make submissions on the matter by written notice to the Commission not later than 10 working days after receipt of the notice of decision from the Commission. 15
- “(2) **Subsection (1)(d)** applies only if the Commission has decided under **subsection (1)(a)** to investigate the matter.
- “**30ZA Consultation or conferences**
- If the Commission considers that persons other than the parties to the determination have a material interest in the residual terms determination, the Commission may either consult those persons or hold conferences in relation to the matter. 20
- “**30ZB Preparation of residual terms determination**
- After investigating the matter, the Commission must— 25
- “(a) prepare a residual terms determination; and
- “(b) give a copy of the determination to the parties to the determination; and
- “(c) give public notice of the determination.
- “**30ZC Requirements for residual terms determination** 30
- A residual terms determination must, in the opinion of the Commission,—
- “(a) be made in accordance with—
- “(i) the applicable access principles and any limits on those applicable access principles; and 35

- “(ii) any regulations made in respect of the applicable access principles and any limits on those applicable access principles; and
“(b) comply with any relevant approved codes.
- “30ZD Matters to be included in residual terms determination** 5
A residual terms determination must include—
“(a) the terms on which the service must be supplied; and
“(b) the reasons for the determination; and
“(c) the terms and conditions (if any) on which the determination is made; and 10
“(d) the actions (if any) that a party to the determination must take or refrain from taking; and
“(e) the expiry date of the determination.”
- 14 New heading and section 31AA inserted** 15
The following heading and section are inserted after the subpart 3 heading in Part 2:
“Commission may initiate process for designated multinetwork service determination on own initiative
- “31AA Commission may initiate process for designated multinetwork service determination on own initiative** 20
“(1) The Commission may, on its own initiative, initiate the process for a determination of—
“(a) the functions that must be performed by a system for delivering a designated multinetwork service and the standard to which those functions must be performed; and 25
and
“(b) the formula for how the cost of delivering the service must be apportioned between the access seeker and all access providers of the service. 30
“(2) The Commission may decide to initiate that process only if it is satisfied that there are reasonable grounds for doing so.”

- 15 New section 34 substituted**
Section 34 is repealed and the following section substituted:
- “34 Commission must notify parties**
On initiating the process for a designated multinet network service determination under **section 31AA** or on receiving an application made in accordance with section 33, the Commission must—
- “(a) notify all the parties to the determination in writing that it has initiated that process or received the application, as the case may be; and
 - “(b) for an application made in accordance with section 33, provide a copy of the application to all access providers of the service; and
 - “(c) request all the parties to the determination to comment on the matter by written notice to the Commission not later than 10 working days after receipt of the notice from the Commission.”
- 16 Commission must decide whether to investigate**
Section 35 is amended by omitting “application” and substituting “matter”.
- 17 Application**
- (1) Section 42 is amended by inserting “or **section 30M**” after “section 27” wherever it appears.
 - (2) Section 42 is amended by inserting, after subsection (1), the following subsection:
“(1A) However, subsection (1) does not apply in relation to a determination made under **section 30M** if the price to be paid for the service was included in that determination under **section 30P(1)(a)**.”
- 18 Requirements for application**
- Section 43 is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) be given to the Commission not later than ~~15~~ 25 working days after,—
 - “(i) for a determination made under section 27, the date on which the person received the copy of the determination; and

“(ii) for a standard terms determination made under **section 30M**, the date on which public notice of that determination is given under **section 30M(c)**.”

- 19 Commission’s requirements on receiving application** 5
Section 44(b) is amended by omitting “party to the determination” and substituting “party or parties to the determination (as the case requires)”.
- 20 Access provider to calculate price on request**
(1) Section 45(1) is amended by omitting “the access provider”, and substituting “an access provider”. 10
(2) Section 45(2) is amended by omitting “the access provider” where it first appears, and substituting “an access provider”.
(3) Section 45(2)(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
“(ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission.” 15
- 21 Section 46 repealed**
Section 46 is repealed.
- 22 Matters to be included in draft determination** 20
Section 49(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
“(ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission; and”. 25
- 23 Matters to be included in determination**
Section 52(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
“(ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission; and”. 30
- 24 Applicant may withdraw**
Section 54(1) is amended by inserting “a standard terms determination or” after “except”.

- 25 Commission's costs**
Section 55 is amended by adding the following subsection as subsection (2):
- “(2) The Commission's costs in relation to a standard terms determination, or a pricing review determination in relation to a standard terms determination, may be met— 5
“(a) in the manner provided under subsection (1); or
“(b) by way of a levy under section 11; or
“(c) by a combination of the ways referred to in paragraphs (a) and (b).” 10
- 26 Clarification of determination**
Section 58(1)(b) is repealed.
- 27 Reconsideration of determination**
Section 59(1)(b) is repealed.
- 28 Section 61 repealed** 15
Section 61 is repealed.
- 29 New section 62 substituted**
Section 62 is repealed and the following section substituted:
- “**62 Expiry of determinations** 20
Every determination expires on the earlier of—
“(a) the expiry date stated in the determination (if any); or
“(b) the date on which the designated service or specified service to which the determination applies ceases to have that status because it has been omitted from Schedule 1 under section 66(b).” 25
- 30 Sections 64 and 65 repealed**
Sections 64 and 65 are repealed.
- 31 New sections 68 and 68A substituted**
Section 68 is repealed and the following sections are substituted: 30

“68 Minister’s recommendation subject to procedure in Schedule 3	
“(1) The Minister must not make a recommendation under section 66 or 67 unless the Minister accepts the Commission’s recommendation that the proposed alteration be made.	5
“(2) The Commission’s recommendation must be made in accordance with the procedure set out in—	
“(a) Part 2 of Schedule 3 for a telecommunications service that is omitted from Part 3 of Schedule 1 and is added to Part 2 of that schedule; or	10
“(b) Part 1 of Schedule 3 in any other case.	
“(3) This section does not prevent the Minister from making a recommendation under section 66 or 67 to amend the detail of a proposed alteration so long as the recommendation—	
“(a) implements the effect of the Commission’s recommendation on the proposed alteration; and	15
“(b) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail).	
“68A Application of Schedule 3A	20
“(1) Schedule 3A applies if Schedule 3 applies.	
“(2) However, Schedule 3A does not limit Schedule 3.”	
32 New <Part> <Parts 2AA and> 2A inserted	
The following <Part is> <Parts are> inserted after Part 2:	
New (majority)	
“Part 2AA	25
“Operational separation of Telecom	
<i>“Preliminary provisions</i>	
“69AA Purposes	
The purposes of this Part are—	
“(a) to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and	30

New (majority)

“(b) to require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and	
“(c) to facilitate efficient investment in telecommunications infrastructure and services.	5
“69AAB Overview	
“(1) The main features of this Part are that it—	
“(a) provides for a robust operational separation of Telecom to achieve the purposes of this Part; and	
“(b) sets the process for the Minister and Telecom to settle a separation plan following public comments.	10
“(2) This section is intended only as a guide to the general scheme and effect of this Part.	
“69AAC Interpretation	
In this Part, unless the context otherwise requires,—	15
“Minister’s determination means a determination made under section 69AAF	
“Ministry means the Ministry that is responsible for administering this Act	
“operational separation—	20
“(a) includes the way in which business units are managed or structured, and the type of relationships, dealings, and transactions the units have:	
“(b) does not include a requirement that any business unit must be operated by different owners:	25
“(c) may include business units being operated in different companies but only if Telecom wishes	
“publish means to publish on an Internet website in an electronic form that is publicly accessible (at all reasonable times)	
“relevant services means any telecommunications services, or types of telecommunications services, specified in a Minister’s determination	30
“separation plan means the plan that is required under this Part	

New (majority)

“separation undertaking means any instrument that is designed to promote the purposes of this Part and that is identified as a separation undertaking in the separation plan approved under this Part.

“Requirements for separation plan” 5

“69AAD Main requirements for separation plan

- “(1)** The separation plan must require a robust operational separation of Telecom, including undertakings to achieve the following in respect of relevant services:
- “(a)** Telecom must establish and maintain the following business units: 10
- “(i)** a fixed network access service business unit (which may provide a wholesale function for those services); and
- “(ii)** 1 or more business units which must provide a wholesale function for all relevant services (except to the extent that a wholesale function is provided in accordance with **subparagraph (i)**); and 15
- “(iii)** 1 or more business units that provide 1 or more other functions (for example, retail); and 20
- “(b)** Telecom must operate its fixed network access service business unit on a stand alone basis, at arms length from any other Telecom business unit; and
- “(c)** Telecom must operate its wholesale business unit or units at arms length from any business unit that provides retail functions; and 25
- “(d)** Telecom must operate any business unit that provides retail functions at arms length from any of Telecom’s fixed network business units (whether access service units or other fixed network units); and 30
- “(e)** Telecom must ensure that all Telecom business units are operated in a way that does not undermine the requirements in **paragraphs (b) to (d)**; and
- “(f)** Telecom must ensure transparency and equivalence in relation to the supply by Telecom of relevant services; and 35
- “(g)** Telecom must be responsive in meeting its wholesale customers’ needs in relation to relevant services; and

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- “(h) Telecom must have systems, procedures, and processes that require—
- “(i) compliance with the separation plan; and
 - “(ii) monitoring of, and reporting on, compliance with the separation plan by an independent oversight group that has a majority of members that are independent of Telecom; and 5
 - “(iii) the development of performance measures relating to compliance with the separation plan; and
 - “(iv) audit, and other checks, of compliance with the separation plan. 10
- “(2) The separation plan must specify a separation day or a method of determining the separation day.
- “(3) Each separation plan given to the Minister by Telecom under any provision of this Part must be accompanied by a certificate signed by at least 2 directors of Telecom certifying that the directors are satisfied that the plan complies with this Part and any Minister’s determination. 15
- “(4) This Part does not require separation undertakings to be given in respect of services other than relevant services. 20
- “69AAE Meaning of equivalence**
- Section 69AAD(1)(f)** requires equivalence of supply of wholesale telecommunications services and access to Telecom’s network so that third party access seekers are treated in the same or an equivalent way to Telecom’s own business operations, including in relation to pricing, procedures, operational support, supply of information, and other relevant matters. 25
- “69AAF Minister must determine further requirements for separation plan**
- “(1) The Minister must determine further requirements with which the separation plan must comply. 30
- “(2) These further requirements may include—
- “(a) the objectives and outcomes that the separation undertakings are required to give effect to; and
 - “(b) the telecommunications services, or types of telecommunications services, to which equivalence and the 35

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- other requirements in **section 69AAD** are to apply, and how they are to apply; and
- “(c) the matters that must be addressed in the separation undertakings, and the minimum requirements for those undertakings. 5
- “(3) In specifying the relevant services under **subsection (2)(b)**, the Minister is not required to list individual named services and may instead—
- “(a) provide a general description of the type or class of service, for example, all broadband services: 10
- “(b) provide a general description of the parts of the Telecom network that are used to deliver the service, for example, the fixed PSTN:
- “(c) specify that all or any services that may from time to time be listed in Schedule 1 are relevant services: 15
- “(d) specify that all or any services that may from time to time be subject to a registered undertaking in accordance with **Schedule 3A** are relevant services:
- “(e) provide a mechanism for including new services that are similar to, or replacements for, any relevant services: 20
- “(f) specify that certain services, or types of services, are not relevant services.
- “(4) The Minister may amend the determination made under this section, or make a further determination under this section, at any time. 25
- “69AAG How Ministerial determination of further requirements may be made**
- “(1) The Minister must make a determination under **section 69AAF** by notice in writing to Telecom. 30
- “(2) The Minister must, by notice in the *Gazette*, state—
- “(a) a brief description of the nature of the determination; and
- “(b) where copies of the determination are available for inspection and purchase. 35

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- “(3) The notice in the *Gazette* need not contain the determination.
- “(4) The Minister must make the determination available to the public by making copies of it available—
- “(a) for inspection, free of charge,—
- “(i) at the head office of the Ministry (during ordinary office hours); and 5
- “(ii) on an Internet website in an electronic form that is publicly accessible (at all reasonable times); and
- “(b) for purchase at a reasonable price. 10
- “(5) A determination is deemed to be a regulation for the purpose of the Regulations (Disallowance) Act 1989 but not for the purpose of the Acts and Regulations Publication Act 1989.
- “(6) The Minister must present a copy of the determination to the House of Representatives in accordance with section 4 of the Regulations (Disallowance) Act 1989. 15

“Process for settling separation plan

“69AAH Preparation of draft separation plan

- “(1) Telecom must prepare a draft separation plan, in consultation with the Minister, that complies with this Part and any Minister’s determination. 20
- “(2) Telecom must give the draft separation plan to the Minister not later than 20 working days after the Minister first makes a determination under **section 69AAF** (or a later date that the Minister may allow). 25

“69AAI Minister must invite public comments on draft separation plan

- “(1) The Minister must publish a notice, as soon as practicable after receiving the draft separation plan,—
- “(a) stating that a draft separation plan has been prepared; and 30
- “(b) stating that a copy of the draft is available on Telecom’s Internet website and the Ministry’s Internet website throughout the period of 20 working days after the publishing of the notice; and 35

New (majority)

- “(c) inviting persons to give written comments about the draft plan to the Minister by a specified date, which must be 20 working days after the publishing of the notice.
- “(2) Telecom and the Ministry must publish the draft plan in accordance with the notice. 5
- “69AAJ Amendment of separation plan after public comments**
- “(1) The Minister must, as soon as practicable after the date specified in **section 69AAI(1)(c)**, give Telecom a copy of all written comments that the Minister receives under that section. 10
- “(2) Telecom must, in consultation with the Minister, prepare an amended separation plan.
- “(3) Telecom must, not later than 15 working days after the date specified in **section 69AAI(1)(c)** (or a later date that the Minister may allow), give to the Minister— 15
- “(a) an amended separation plan; and
- “(b) a summary of how (if at all) the draft separation plan was amended as a result of the public comments.
- “69AAK Minister may approve, or decline to approve, separation plan** 20
- “(1) The Minister must, as soon as practicable after receiving the amended separation plan under **section 69AAJ(3)**, by notice in writing to Telecom,—
- “(a) approve the separation plan; or 25
- “(b) decline to approve the separation plan.
- “(2) If the Minister declines to approve the separation plan,—
- “(a) the Minister must indicate the parts of the separation plan that require amendment; and
- “(b) the Minister must direct Telecom to prepare and submit a further amended separation plan; and 30
- “(c) Telecom must, in consultation with the Minister, prepare a further amended separation plan and give it to the Minister not later than 15 working days after the date on

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which approval was declined (or a later date that the Minister may allow).

Compare: 2001 No 51 ss 55, 56; 2003 No 40 ss 31, 32

“69AAL Minister may amend separation plan to give better effect to this Part

5

“(1) As soon as practicable after receiving an amended separation plan under **section 69AAK(2)(c)**, the Minister must—

“(a) approve the plan; or

“(b) make any amendments to the plan that the Minister considers would be desirable to give better effect to the purposes of this Part or any requirements under this Part, and approve the plan (as amended).

10

“(2) Before making amendments to a separation plan, the Minister must advise Telecom of the Minister’s intention to do so and must give Telecom a reasonable opportunity to make submissions on the matter.

15

“(3) The Minister must give notice in writing to Telecom of the approval of the plan, accompanied by a copy of the plan as approved.

Compare: 2001 No 51 s 57; 2003 No 40 s 33

20

“69AAM Failure to submit separation plan

“(1) The Minister must arrange for a separation plan to be prepared, and the Minister has all the powers necessary for that purpose, if Telecom does not give to the Minister—

“(a) a draft separation plan within the time specified in **section 69AAH(2)**; or

“(b) an amended separation plan within the time specified in **section 69AAJ(3) or 69AAK(2)(c)**.

25

“(2) This Part applies to a separation plan prepared under **subsection (1)** with necessary modifications.

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“(3) The Minister and the Ministry are entitled to be reimbursed by Telecom for the costs and expenses that they incur in taking action under **subsection (1)**.

Compare: 2001 No 51 s 58; 2003 No 40 s 34

New (majority)*“Implementation of separation plan***“69AAN Implementation of separation plan**

On and from the separation day identified in the separation plan approved by the Minister under any provision of this Part, the separation undertakings identified in that plan take effect as, or as if they were, a deed that is— 5

- “(a) properly executed by, and binding on, Telecom; and
- “(b) given in favour of the Crown.

“69AAO Telecom must publish separation plan

As soon as practicable after the Minister approves the separation plan, Telecom must publish the plan. 10

“69AAP Employees

“(1) This section has effect only to the extent that—

- “(a) an employee is transferred within Telecom to a new business unit under the implementation of the separation plan; and 15
- “(b) the separation plan applies this section to the employee (whether by reference to a class of employees or otherwise).

“(2) For the avoidance of doubt,— 20

- “(a) the implementation of the separation plan under this Part does not affect any employment agreement between Telecom and an employee of Telecom; and
- “(b) the employee of Telecom continues to be an employee of Telecom and, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of the employee, his or her employment agreement is unbroken and the period of his or her service with Telecom and every other period of service that is recognised by Telecom as his or her continuous service, continues to be recognised; and 25 30
- “(c) the terms and conditions of the employment of the employee with Telecom are (until varied) identical to the terms and conditions of his or her employment before the implementation of the separation plan and are capable of variation in the same manner; and 35

New (majority)

“(d) the employee is not entitled to receive any payment or other benefit by reason only of the implementation of the separation plan.

Compare: 2001 No 51 s 61

“*Statutory provisions for enforcement of separation plan* 5

“69AAQ Enforcement and remedies under Part 4A

Sections 156K, 156L, and sections 156N to 156Q apply to a separation undertaking as provided in **Part 4A**.

“69AAR Power of Court to grant relief in respect of separation undertakings 10

“(1) If, on the application of the Commission, it appears to the High Court that Telecom intends to engage, or is engaging, or has engaged, in conduct that constitutes, or would constitute, a breach of the terms of a separation undertaking, the Court may make any orders on any terms and conditions that it thinks appropriate, including, without limitation,— 15

“(a) an order to—

“(i) restrain Telecom from engaging in conduct that constitutes, or would constitute, the breach:

“(ii) require Telecom to do a particular act or thing: 20

“(iii) require Telecom to comply with the terms of the separation undertaking:

“(b) an interim order.

“(2) In any proceeding under this section, the Commission, on the order of the Court, may obtain discovery and administer interrogatories. 25

“(3) The Court may at any time rescind or vary an order made under this section.

“69AAS Interrelationship of remedies

“(1) Nothing in this Part or **Part 4A** limits or affects any right, duty, liability, or remedy in respect of a separation undertaking that exists or is available apart from this Part or **Part 4A**. 30

“(2) Any right of action or other remedy available under this Part or **Part 4A** in respect of a separation undertaking may be taken,

New (majority)

proceeded with, or heard in conjunction with any other action or remedy available under this Act or otherwise.

“(3) However, in determining whether to order a person to pay a penalty, compensation, or damages in respect of a separation undertaking, the Court must have regard to—

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“(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.

“Variation of separation plan

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“69AAT Variation of separation plan

Sections 69AAU to 69AAX apply if Telecom or the Minister wish to vary the separation plan at any time, and for any reason, after the separation plan is implemented.

“69AAU Variation by agreement

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“(1) Telecom and the Minister may agree to a variation to the separation plan, and implement the varied separation plan.

“(2) **Sections 69AAN to 69AAS** apply to the variation, and the amended separation undertakings that result.

“69AAV Variation by Minister

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If the Minister proposes a variation to the separation plan with which Telecom does not agree,—

“(a) the Minister may amend any determination made under **section 69AAF**, or make a further determination under that section, specifying the Minister’s requirement; and

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“(b) Telecom must prepare a variation to the separation plan within the time that the Minister requires; and

“(c) **sections 69AAH to 69AAS** apply to the variation, and the amended separation undertakings that result.

“69AAW Variation by Telecom

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If Telecom proposes a variation to the separation plan with which the Minister does not agree,—

“(a) the separation plan cannot be so varied; and

New (majority)

“(b) the Minister must give notice in writing to Telecom of the reasons for the Minister’s refusal to agree.

“69AAX Commission may request variation

“(1) The Commission may request the Minister to propose a variation to the separation plan. 5

“(2) The request may be made at any time and for any reason.

“(3) **Sections 69AAU and 69AAV** apply if the Minister agrees to propose the variation.

“Part 2A**“Information disclosure requirements 10****“69A Purpose**

The purpose of this Part is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand by requiring that reliable and timely information prescribed by the Commission is made publicly available— 15

“(a) by Telecom, so that a wide range of people are informed about the operation and behaviour of Telecom’s <network,> wholesale<,> and retail business activities and services; and 20

“(b) by access providers, including Telecom, so that a wide range of people are informed about the operation and behaviour of prescribed businesses that provide prescribed services, in order to monitor and facilitate compliance with prescribed applicable access principles. 25

Compare: 1986 No 5 s 57T(1)

New (majority)**“69AB Parameters of Part**

The Commission’s requirements under this Part must be reasonable, having regard to the purpose of this Part, the confidentiality of the information in question, and the time required to prepare the information. 30

“69B Interpretation

In this Part, unless the context otherwise requires,—

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

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

“**prescribed** means prescribed by the Commission.

Compare: 1986 No 5 s 57T(6)

“69C Accounting separation of Telecom

“(1) The Commission must require Telecom to prepare and disclose information about the operation and behaviour of <all or any of> its <network,> wholesale <and><, or> retail business activities as if those activities were operated as independent or unrelated companies.

Struck out (majority)

“(2) The Commission may—

“(a) allocate any of Telecom’s business activities (or any part of any of Telecom’s business activities) to either the wholesale or the retail category in any way that it thinks fit (for example, without regard to the way in which Telecom allocates activities to those categories or to the usual meanings of the words wholesale and retail); and

“(b) require Telecom to prepare and disclose separate information about all or part of separate prescribed business activities or separate prescribed services, within the wholesale and retail categories.

New (majority)

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|---|----|
| <p>“(2) The Commission may require Telecom to prepare and disclose separate information about all or part of separate prescribed business activities or separate prescribed services, within the network, wholesale, or retail categories.</p> | |
| <p>“(2A) Any requirements under this section must be finalised only after a separation plan has been approved under Part 2AA, and must be consistent with that separation plan.</p> | 5 |
| <p>“(3) The Commission may require Telecom to prepare and disclose information consisting of, or about, the following things, as part of the information required under this section:</p> | 10 |
| <p>“(a) financial statements:</p> | |
| <p>“(b) asset valuations and valuation reports:</p> | |
| <p>“(c) prices, terms, and conditions:</p> | |
| <p>“(d) costs and costs allocation methodologies:</p> | |
| <p>“(e) contracts:</p> | 15 |
| <p>“(f) transactions with related parties (as if the test for related parties were the same as the test in section 79):</p> | |
| <p>“(g) financial and non-financial performance measures:</p> | |
| <p>“(h) plans and forecasts:</p> | |
| <p>“(i) <i><the disclosure of></i> transfer payments (whether actual or notional) amongst prescribed business activities:</p> | 20 |
| <p>“(j) network capacity information:</p> | |
| <p>“(k) policies and methodologies in these or other areas.</p> | |
| <p>“(4) The Commission may, as part of the information required under this section,—</p> | 25 |
| <p>“(a) define the prescribed business activities and prescribed services in respect of which Telecom must prepare and disclose information:</p> | |
| <p>“(b) require Telecom to adopt, in the preparation or compilation of that information, any methodology that is required by the Commission (including the allocation methodology that must be used for preparing the financial statements and allocating the costs, revenues, assets, and liabilities amongst the prescribed business activities and prescribed services):</p> | 30 |
| <p>“(c) require Telecom to disclose the manner in which methodologies have been applied:</p> | 35 |

- “(d) prescribe the information that must be included in the financial statements to be prepared and disclosed.
- “(5) Before making any requirements under this section, the Commission must hold conferences or consult with persons that the Commission considers have a material interest. 5
- “(6) Telecom must prepare and disclose the information required under this section in accordance with the Commission’s requirements.
- “(7) **Subsections (2) to (4)** do not limit **subsection (1)**. 10
Compare: 1986 No 5 s 57T(2), (3)

“69D Information disclosure by all access providers

New (majority)

- “(1AA) This section applies—
- “(a) to any access provider in relation to any part of its business that provides prescribed designated or specified services; and 15
- “(b) for the purpose of enabling monitoring of, and facilitating compliance with, prescribed applicable access principles—
- “(i) that are incorporated in any determination, approved code, or registered undertaking; and 20
- “(ii) with which the access provider is required to comply.
- “(1) The Commission—
- “(a) may require *<all or any access providers>* *<the access provider>* to prepare and disclose information about the operation and behaviour of *<that part of its business>* *<prescribed businesses that provide prescribed services, in order to monitor and facilitate compliance with prescribed applicable access principles that are incorporated in any determination, approved code, or registered undertaking>*; and 25 30
- “(b) may require *<the>* access *<providers>* *<provider>* to adopt, in the preparation or compilation of that information, any methodology that is required by the Commission. 35

- “(2) The Commission may require *<all or any access providers>* *<the access provider>* to prepare and disclose information consisting of, or about, the following things, as part of the information required under this section,—
- “(a) contracts: 5
 - “(b) prices, terms, and conditions of supply of prescribed services:
 - “(c) transactions with related parties (as if the test for related parties were the same as the test in **section 79**):
 - “(d) performance measures and statistics (for example, response times, technical performance, and service quality details): 10
 - “(e) plans and forecasts:
 - “(f) network capacity information:
 - “(g) policies and methodologies in these or other areas. 15
- “(3) Access providers must prepare and disclose any information required under this section in accordance with the Commission’s requirements.
- “(4) **Subsection (2)** does not limit **subsection (1)**. 20
Compare: 1986 No 5 s 57T(2), (3)
- “69E** *<General things about>* *<Miscellaneous provisions relating to>* **Commission’s information disclosure requirements**
- “(1) The Commission may, in making requirements under **section 69C or 69D**— 25
- “(a) prescribe the form and manner in which information must be disclosed:
 - “(b) specify a time or date, or times or dates, as at which information must be disclosed:
 - “(c) require the disclosure of assumptions made in the preparation of the information: 30
 - “(d) require the audit of disclosed information:
 - “(e) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner by persons belonging to any specified class of persons: 35
 - “(f) set rules about when and for how long information must be disclosed:
 - “(g) require the retention of data on which disclosed information is based and associated documentation: 40

- “(h) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements:
- “(i) provide for transitional provisions: 5
- “(j) make requirements from time to time (for example, more than once a year):
- “(k) make requirements in respect of all or part of the relevant business.
- “(2) **Subsection (1)(j)** does not limit section 16 of the Interpretation Act 1999. 10
Compare: 1986 No 5 s 57T(8)
- “69F Publication of Commission’s information disclosure requirements**
The Commission must give public notice of requirements made under this Part. 15
Compare: 1986 No 5 s 57T(4)
- “69G Information to be supplied to Commission**
- “(1) Every person who is required under this Part to disclose information must supply to the Commission— 20
- “(a) a copy of all information disclosed under this Part, which must be supplied within 5 working days after the information is first disclosed under this Part; and
- “(b) any further statements, reports, agreements, particulars, and other information requested in writing by the Commission for the purpose of monitoring the person’s compliance with the requirements made under this Part. 25
- “(2) Every person to whom a request is made under **subsection (1)(b)** must comply with that request within the period specified by the Commission. 30
- “(3) The Commission may require all or any statements, reports, agreements, particulars, and other information supplied under **subsection (1)** to be either or both—
- “(a) audited:
- “(b) verified by statutory declaration by the persons and in the form required by the Commission. 35
Compare: 1986 No 5 s 57U

- “69H Commission to publish summaries**
 The Commission must, as soon as practicable after the Commission is supplied with information under **section 69G**, publish a summary and analysis of the disclosed information for the purpose of ~~promoting greater understanding of~~— 5
 “(a) ~~promoting greater understanding of~~ the operation and behaviour of the relevant prescribed businesses of Telecom and access providers; and
 “(b) the changes in operation and behaviour over time 10
 Compare: 1986 No 5 s 57V
- “69I Reasonable charge may be imposed for providing copies of statements**
 “(1) Any person who is required under this Part to provide copies of information, on request, to the public may charge for providing those copies. 15
 “(2) A charge must be no more than is reasonably required to recover the costs of providing those copies.
 Compare: 1986 No 5 s 57W”.
- 33 Declaration of TSO instruments**
 Section 70(5) is repealed. 20
- 34 New section 71A inserted**
 The following section is inserted after section 71:
“71A TSO instrument or deemed TSO instrument may specify total amount payable by all liable persons
 A TSO instrument or a deemed TSO instrument may specify the total amount payable by all liable persons and the TSO provider under the instrument for each financial year of the TSO provider (the **specified amount**).” 25
- 35 Compliance with TSO instrument**
 Section 74(1) is amended by omitting “TSP” and substituting “TSO provider”. 30

- 36 New section 79 substituted** 5
- Section 79 is repealed and the following section substituted:
- “79 When 2 or more bodies corporate must be treated as 1 person**
- “(1) For the purposes of this Part, any 2 or more bodies corporate must be treated as 1 person if— 5
- “(a) 1 of them is a body corporate of which the others are subsidiaries; or
- “(b) all of them are subsidiaries of the same body corporate; or 10
- “(c) all of them are associates of each other; or
- “(d) 1 of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or 15
- “(e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.
- “(2) For the purposes of **subsection (1)(c)**, a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other. 20
- “(3) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of **subsection (2)** just because— 25
- “(a) those bodies corporate are in competition in the same market; or
- “(b) 1 of them supplies goods or services to the other.”
- 37 Assessment of compliance with TSO instrument** 30
- (1) Section 80 is amended by omitting “TSP” wherever it appears and substituting in each case “TSO provider”.
- (2) Section 80(a) is amended by omitting “TSP’s” and substituting “TSO provider’s”.
- 38 New heading inserted** 35
- The heading “*Requirement to produce certain information*” is inserted above section 81.

- 39 Liabile persons and TSP must produce certain information to Commission**
- (1) The heading to section 81 is amended by omitting “TSP” and substituting “TSO provider”.
- (2) Section 81 is amended by— 5
- (a) omitting “section 88(a)(ii) and (b)(i)” and substituting “**section 88(1)(a) and (b)**”; and
- (b) omitting “section 92(a)(ii) and (b)(i)” and substituting “**section 91(1)(a) and (b)**”; and
- (c) omitting “TSP” wherever it appears and substituting in each case “TSO provider”. 10
- 40 Section 82 repealed**
Section 82 is repealed.
- 41 Calculations of net cost and auditor’s report must be given to Commission** 15
Section 83 is amended by omitting “TSP” wherever it appears and substituting in each case “TSO provider”.
- 42 Considerations for determining net cost**
- (1) Section 84(1) is amended by omitting “section 88, and determining the net cost under section 92” and substituting “**section 93A**, and determining the net cost under **section 93E**”. 20
- (2) Section 84(2) is amended by omitting “section 88 and determining the net cost under section 92” and substituting “**section 93A** and determining the net cost under **section 93E**”.
- (3) Section 84 is amended by omitting “TSP” wherever it appears and substituting in each case “TSO provider”. 25
- 43 Considerations for determining which revenue basis to use**
- (1) Section 85(1) is amended by— 30
- (a) omitting “a draft determination referred to in section 88 and a final determination referred to in section 92” and substituting “a draft determination referred to in **section 88** and a final determination referred to in **section 91**”; and
- and

- (b) omitting “section 88(a)(ii) or (b)(i) or section 92(a)(ii) or (b)(i)” wherever it appears and substituting in each case “**section 88(1)(a) or (b) or section 91(1)(a) or (b)**”.
- (2) Section 85(4)(b) is amended by omitting “TSP” and substituting “TSO provider”. 5
- 44 New headings and sections 86 to 93F substituted**
The heading above section 86 and sections 86 to 93 are repealed and the following headings and sections substituted:
“General provision relating to TSO cost allocation determination and TSO cost calculation determination” 10
- “86 Commission may determine priority between preparation of TSO cost allocation determination and TSO cost calculation determination**
- “(1) The Commission may determine the priority between the preparation of the TSO cost allocation determination and the TSO cost calculation determination and, accordingly, may comply with **sections 87 to 91** and **sections 92 to 93E** in the sequence, as between those two sets of sections, it thinks fit. 15
- “(2) However, the Commission must prepare a final TSO cost allocation determination before preparing a final TSO cost calculation determination for a financial year. 20
- “TSO cost allocation determination”*
- “87 Commission to prepare draft TSO cost allocation determination**
The Commission must make reasonable efforts to do the following things not later than 80 working days after the end of each financial year of a TSO provider under a TSO instrument: 25
- “(a) prepare a draft TSO cost allocation determination: 30
- “(b) give public notice of that draft determination: 30
- “(c) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice.

- “88 Matters to be included in draft TSO cost allocation determination**
- “(1) A draft TSO cost allocation determination must include—
- “(a) the amount of each TSO provider’s TSO-qualified revenue; and 5
 - “(b) the amount of each liable person’s TSO-qualified revenue; and
 - “(c) a statement that identifies which revenue basis has been used under section 85(1) in respect of each amount of revenue to which the draft determination applies; and 10
 - “(d) if a weighted revenue basis has been used for any amount of revenue, the particulars of the weighting attached to that amount of revenue; and
 - “(e) the revenue amounts that will be used for the purposes of calculating, under **section 93F**, the amount payable by each liable person in relation to each TSO instrument; and 15
 - “(f) the methodology applied by the Commission in making the determination; and
 - “(g) the reasons for the determination. 20
- “(2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of **subsection (1)(c)** (for example, a net-revenue basis).
- “89 Conferences on draft TSO cost allocation determination**
- The Commission may— 25
- “(a) hold conferences in relation to a draft TSO cost allocation determination; and
 - “(b) invite to those conferences any person who has a material interest in a matter to be determined.
- “90 Commission to prepare final TSO cost allocation determination** 30
- The Commission must make reasonable efforts to do the following things not later than 20 working days after the closing date for submissions under **section 87(c)**:
- “(a) prepare a final TSO cost allocation determination: 35
 - “(b) give public notice of that final determination:
 - “(c) give a copy of that final determination to all liable persons and TSO providers in relation to each TSO instrument.

- “91 Matters to be included in final TSO cost allocation determination**
- “(1) A final TSO cost allocation determination under **section 90** must include—
- “(a) the amount of each TSO provider’s TSO-qualified revenue; and 5
 - “(b) the amount of each liable person’s TSO-qualified revenue; and
 - “(c) a statement that identifies which revenue basis has been used under section 85(1) in respect of each amount of revenue to which the final determination applies; and 10
 - “(d) if a weighted revenue basis has been used for any amount of revenue, the particulars of the weighting attached to that amount of revenue; and
 - “(e) the revenue amounts that have been used for the purposes of calculating, under **section 93F**, the amount payable by each liable person in relation to each TSO instrument; and 15
 - “(f) the percentage of the net cost under **section 93E(a)** or, as the case may be, the specified amount to be paid by each liable person in relation to the TSO instrument to the TSO provider in respect of the financial year calculated in accordance with **section 93F**. 20
- “(2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of **subsection (1)(c)** (for example, a net-revenue basis). 25

“TSO cost calculation determination

- “92 Commission to prepare draft TSO cost calculation determination**
- The Commission must make reasonable efforts to do the following things not later than 120 working days after the end of each financial year of a TSO provider under a TSO instrument: 30
- “(a) prepare a draft TSO cost calculation determination:
 - “(b) give public notice of that draft determination: 35
 - “(c) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice.

“93 Requirements for draft TSO cost calculation determination

In preparing a draft TSO cost calculation determination of the matters referred to in **section 93A(c)**, the Commission must consider the steps (if any) taken by the TSO provider between the time of any notification under section 80(b) and 15 working days before public notice is given under **section 92(b)** to remedy any non-compliance by the TSO provider with the TSO instrument. 5

“93A Matters to be included in draft TSO cost calculation determination 10

A draft TSO cost calculation determination must include,—

- “(a) if the TSO instrument does not contain a specified amount, the net cost under **section 93E(a)** and all material information that— 15
 - “(i) relates to the calculation of the net cost; and
 - “(ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
- “(b) if the TSO instrument contains a specified amount, the dollar amount of the specified amount and all material information that— 20
 - “(i) relates to the calculation of that amount; and
 - “(ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and 25
- “(c) in all cases, the amount (if any) by which the total amount that the TSO provider would receive from all liable persons in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and 30
- “(d) the methodology applied by the Commission in making the determination; and
- “(e) the reasons for the determination.

“93B Conferences on draft TSO cost calculation determination 35

The Commission may—

- “(a) hold conferences in relation to a draft TSO cost calculation determination; and

“(b) invite to those conferences any person who has a material interest in a matter to be determined.

“93C Commission to prepare final TSO cost calculation determination

The Commission must make reasonable efforts to do the following things not later than 40 working days after the closing date for submissions under **section 92(c)**: 5

“(a) prepare a final TSO cost calculation determination:

“(b) give public notice of that final determination:

“(c) give a copy of that final determination to all liable persons and the TSO providers in relation to the TSO instrument. 10

“93D Requirements for final TSO cost calculation determination

In making a final TSO cost calculation determination of the matters referred to in **section 93E(c)**, the Commission must consider the steps (if any) taken by the TSO provider between 15 working days before the date on which public notice is given under **section 92(b)** and 15 working days before the date on which public notice is given under **section 93C(b)** to remedy any non-compliance by the TSO provider with the TSO instrument. 15 20

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

A final cost calculation determination made under **section 93C** must include,— 25

“(a) if the TSO instrument does not contain a specified amount, the net cost to the TSO provider of complying with the TSO instrument during the TSO provider’s financial year and all material information that— 30

“(i) relates to the calculation of the net cost; and

“(ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and

“(b) if the TSO instrument contains a specified amount, the dollar amount of the specified amount and all material information that— 35

“(i) relates to the calculation of that amount; and

- “(ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
- “(c) in all cases, the amount (if any) by which the total amount that the TSO provider would receive from all liable persons in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and 5
- “(d) an amount payable by each liable person in relation to the TSO instrument to the TSO provider in respect of the financial year calculated in accordance with **section 93F**; and 10
- “(e) an amount payable by each liable person in relation to the TSO instrument to the TSO provider for the loss of use of the amount referred to in **paragraph (c)**, calculated at the 90-day bank bill rate (as at the date of the final determination) for the period commencing from the end of the TSO provider’s financial year and ending with the date of the final determination. 15
- “*Calculation of amount payable by liable person* 20
- “**93F Calculation of amount payable by liable person**
The amount payable by a liable person in relation to a TSO instrument that must be contained in the Commission’s final TSO cost calculation determination made under **section 93C** is,— 25
- “(a) for a TSO instrument that contains a specified amount, the amount calculated using the following formula:
- $$\frac{a}{b + c} \times (d - e)$$
- “(b) for a TSO instrument that does not contain a specified amount, the amount calculated using the following formula: 30
- $$\frac{a}{b + c} \times (f - e)$$
- where— 35

- | | | |
|---|--|----|
| a | is the amount of the liable person's TSO-qualified revenue that is referred to in section 91(1)(b) <(excluding any part of that revenue that was received for performing any obligation under a TSO instrument that contains a specified amount)> | 5 |
| b | is the amount of the TSO provider's TSO-qualified revenue referred to in section 91(1)(a) (excluding any part of that revenue that was received for performing any obligation under a TSO instrument that contains a specified amount) | 10 |
| c | is the sum of the amounts of each liable person's TSO-qualified revenue referred to in section 91(1)(b) | 15 |
| d | is the specified amount | |
| e | is the amount of the reduction (if any) referred to in section <93E(b)> <93E(c)> | |
| f | is the net cost referred to in section 93E(a). " | |

Struck out (majority)

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| 45 | New heading and section 94A inserted
The following heading and section are inserted after section 94:
<i>"Residual amount of complying with TSO instrument must be met by TSO provider"</i> | 20 |
| "94A" | TSO provider must meet residual amount of complying with TSO instrument
The TSO provider must meet any amount that remains after subtracting all of the amounts payable by liable persons under section 93F from the net cost to the TSO provider of complying with the TSO instrument during the TSO provider's financial year or, as the case may be, the specified amount." | 25
30 |
| 46 | Payment by liable persons to TSP | |
| (1) | The heading to section 94 is amended by omitting "TSP" and substituting "TSO provider". | |
| (2) | Section 94 is amended by omitting "TSP" wherever it appears and substituting in each case "TSO provider". | 35 |

New (majority)

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|---|----|
| 46A New heading and section 94A inserted | |
| The following heading and section are inserted after section 94: | |
| <i>“Calculation of amount payable by TSO provider</i> | |
| “94A TSO provider must meet residual amount from calculation of TSO charge | 5 |
| The TSO provider must meet any amount that remains after subtracting all of the amounts payable by liable persons under section 93F from the net cost to the TSO provider of complying with the TSO instrument during the TSO provider’s financial year or, as the case may be, the specified amount.” | 10 |
| 47 Power of Court to grant relief in respect of TSO instrument | |
| Section 96 is amended by omitting “TSP” wherever it appears and substituting in each case “TSO provider”. | 15 |
| 48 Certain matters not to prevent making of order under section 96 | |
| Section 98(a) is amended by omitting “TSP” and substituting “TSO provider”. | |
| 49 Right of appeal to High Court | 20 |
| (1) Section 100(1) is amended by omitting “TSP” wherever it appears and substituting in each case “TSO provider”. | |
| (2) Section 100(1)(a) is amended by omitting “section 92(a)(i)” and substituting “ section 93E(a) ”. | |
| (3) Section 100(1)(b) is amended by omitting “section 92(a)(ii)” and substituting “ section 91(1)(a) ”. | 25 |
| (4) Section 100(1)(c) is amended by omitting “section 92(b)(i)” and substituting “ section 91(1)(b) ”. | |
| (5) Section 100(1)(d) is amended by omitting “section 92(b)(ii)” and substituting “ section <93E(b)> <93E(c)> ”. | 30 |

50 New sections 100A to <100D> <100C> inserted

The following sections are inserted after section 100:

“100A Procedure for determinations

For a determination made under this Part, the Commission—

“(a) is not bound by technicalities, legal forms, or rules of evidence: 5

“(b) may inform itself of any matter relevant to the determination in any way it thinks appropriate:

“(c) must consider all submissions made in relation to the determination and all information and opinions presented or expressed at any conference in relation to the determination. 10

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

“(1) The Commission must include the information specified in subsection <(2)> <(3)> in a— 15

“(a) draft TSO cost calculation determination under section 92 in relation to a deemed TSO instrument:

“(b) final TSO cost calculation determination under section 93C in relation to a deemed TSO instrument. 20

Struck out (majority)

“(2) The information referred to in subsection (1) is information held by the Commission in relation to a TSO cost calculation determination.

“(3) <That information must include, but is not limited to,—><The information referred to in subsection (1) is as follows:> 25

“(a) the name, location, and limits of each geographical area within which the TSO provider supplies the service under the deemed TSO instrument; and

“(b) the number of subscriber lines for that service in each geographical area; and 30

“(c) the number of those subscriber lines for which—
“(i) the revenue attributed by the Commission is greater than, or equal to, the respective cost attributed; and

“(ii) the revenue attributed by the Commission is less than the respective cost attributed; and 35

“(d) the net cost of the deemed TSO instrument in each geographical area; and

New (majority)

“(e) any related information that is necessary to assist in understanding the information specified in **paragraphs (a) to (d)**.

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“(4) The geographical areas referred to in **subsection (3)** must correspond to the areas that the Commission has identified in assessing, for the purpose of calculating the TSO net cost, the commercial viability of supplying the service to customers.

“100C Duties of Commission in complying with section 100B

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“(1) In complying with **section 100B**, the Commission must ensure that—

“(a) the information to be included in a draft or final TSO cost calculation determination is at its lowest level of aggregation (as determined by the Commission); and

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Struck out (majority)

“(b) satisfactory provision exists to protect the confidentiality of any information that is regarded as confidential by the person who supplied it; and

New (majority)

“(b) satisfactory provision exists to protect the confidentiality of any information that—

20

“(i) the person who supplied it has advised is confidential; or

“(ii) may reasonably be regarded as confidential; and

“(c) the inclusion of that information does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

25

“(2) However, if the Commission considers that compliance with **subsection (1)(a)** will, or is likely to, prejudice compliance with **subsection (1)(b) or (c)**, the Commission—

- “(a) may aggregate the information before it is included under **section 100B**; and
- “(b) may do so in any manner that it thinks fit.

Struck out (majority)

“100D Protection from liability

Neither the Commission nor any of its members is under any civil or criminal liability because of any disclosure of information under **section 100B**.”

5

51 Regulations

- (1) Section 101(1) is amended by repealing paragraph (d) and substituting the following paragraph: 10
- “(d) provide for any methods for all or any of the following:
- “(i) calculating the net cost under section 83:
- “(ii) preparing a draft determination of the net cost referred to in **section 93E**:
- “(iii) determining the net cost referred to in **section 93E**: 15
- “(iv) preparing a draft determination of the amount of revenue referred to in **section 88(1)(a) or (b)**:
- “(v) determining the amount of revenue referred to in **section 91(1)(a) or (b)**.”
- (2) Section 101(2) is amended by omitting “TSP” and substituting “TSO provider”. 20

52 Persons declared to be network operators

Section 102 is amended by repealing subsection (3) and substituting the following subsections:

- “(3) For the purposes of this section and sections 103 to 105, any 2 or more bodies corporate must be treated as 1 person if— 25
- “(a) 1 of them is a body corporate of which the others are subsidiaries; or
- “(b) all of them are subsidiaries of the same body corporate; or 30
- “(c) all of them are associates of each other; or
- “(d) 1 of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or 35

- “(e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.
- “(4) For the purposes of **subsection (3)(c)**, a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other. 5
- “(5) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of **subsection (4)** just because— 10
- “(a) those bodies corporate are in competition in the same market; or
- “(b) 1 of them supplies goods or services to the other.”
- 53 New heading and section 111A inserted** 15
- The following heading and section are inserted after section 111:
- “Information requirement*
- “111A Information about interconnection arrangements**
- “(1) A major supplier must make publicly available a copy of— 20
- “(a) the procedures that apply to interconnection with a *⟨fixed⟩* PSTN *⟨or PDN⟩* owned or operated by that supplier; and
- Struck out (majority)**
- “(b) a standard agreement for interconnection with that fixed PSTN. 25
- New (majority)**
- “(b) all the applicable terms and conditions of supply for interconnection with that PSTN or PDN.
- “(2) In this section, **major supplier**—
- “(a) means Telecom; and

“(b) includes a person who is declared by the Governor-General, by Order in Council <made on the recommendation of the Minister>, to be a major supplier for the purposes of this section.

New (majority)

“(3) The Minister must not make a recommendation under **subsection (2)(b)** unless the Minister is satisfied that the proposed order to which the recommendation relates is necessary to facilitate New Zealand’s compliance with its international obligations.”

54 New <Part> <Parts> **4A** <and 4B> inserted 10
The following <Part is> <Parts are> inserted after Part 4:

**“Part 4A
Enforcement**

“Subpart 1—Enforcement of statutory and regulatory provisions 15

“Preliminary

“156A Application of section 156B

Section 156B applies to a person who commits any of the following breaches:

“(a) fails<, without reasonable excuse,> to comply with **section 22A:** 20

“(b) fails<, without reasonable excuse,> to comply with a notice under **section 30F** requiring a standard terms proposal to be submitted to the Commission:

“(c) <knowingly> submits a standard terms proposal that fails to comply with **section 30G:** 25

“(d) fails<, without reasonable excuse,> to comply with a notice under section 45 or a notice requirement (if any) set out in subpart 1 of Part 2 of Schedule 1 in respect of the applicable final pricing principle: 30

“(e) fails<, without reasonable excuse,> to provide to the Commission not later than the time specified by it—
“(i) the statement referred to in section 45(2)(b)(i):

- “(ii) all the information referred to in section 45(2)(b)(ii):
- “(f) <knowingly> provides false or misleading information or documents under section 45 or under the notice requirement (if any) set out in subpart 1 of Part 2 of Schedule 1 in respect of the applicable final pricing principle: 5
- “(g) fails<, without reasonable excuse,> to comply with an information disclosure requirement made under <Part 2A><section 69C(6), 69D(3), or 69G(2)>: 10
- “(h) <knowingly> provides false or misleading information or documents under Part 2A:
- “(i) fails<, without reasonable excuse,> to comply with section 81:
- “(j) <knowingly> provides false or misleading information or documents under section 81: 15
- “(k) fails<, without reasonable excuse,> to comply with section 83:
- “(l) <knowingly> provides false or misleading information or documents under section 83: 20
- “(m) fails<, without reasonable excuse,> to comply with section 111A:
- “(n) fails<, without reasonable excuse,> to comply with any regulations made under section 157(c1) in relation to emergency call services. 25
- “156B Enforcement actions that Commission may take**
- “(1) The Commission may take either of the following actions against a person to whom this section applies:
- “(a) serve a civil infringement notice on the person under section 156D; or 30
- “(b) apply to the High Court for an order, under section 156K, requiring the person to pay a pecuniary penalty to the Crown.
- “(2) This section does not limit any power conferred on the Commission by or under section 15 or any other enactment. 35

“156C Matters that Commission must take into account in deciding what enforcement action to take

In making a decision about what action to take under **section 156B**, the Commission must take into account the following matters:

- “(a) the seriousness of the alleged breach: 5
- “(b) the circumstances in which the alleged breach took place:
- “(c) whether or not the person who is alleged to have committed the breach has previously committed a breach of that kind or has engaged in any similar conduct: 10
- “(d) the culpability of the person who is alleged to have committed the breach:
- “(e) the nature and extent of any commercial gain resulting from the alleged breach: 15
- “(f) the nature and extent of any loss or damage suffered by any person as a result of the alleged breach.

“Civil infringement notice

“156D Civil infringement notice

- “(1) A civil infringement notice must be served within 12 months after the day on which a breach of any of the provisions set out in **section 156A** is alleged to have been committed. 20
- “(2) A civil infringement notice must be in the prescribed form and must contain the following particulars:
 - “(a) sufficient details to inform the person issued with the notice of the time, manner, and nature of the alleged breach: 25
 - “(b) the amount of the pecuniary penalty prescribed to be paid for the alleged breach:
 - “(c) the address at which the pecuniary penalty may be paid or an explanation of how payment of the pecuniary penalty is to be made, or both: 30
 - “(d) the time within which the pecuniary penalty must be paid:
 - “(e) a statement of what may happen if the person does not pay the pecuniary penalty by that time: 35
 - “(f) a statement of the person’s right to object, under **section 156E**, to the notice:
 - “(g) any other prescribed information (if any).

“156E Objection to civil infringement notice

- “(1) A person who has been served with a civil infringement notice may make a written objection to the Commission on either or both of the following grounds:
- “(a) that the person has not committed the alleged breach: 5
 - “(b) that the amount of the pecuniary penalty specified in the notice is excessive having regard to the nature of the alleged breach.
- “(2) An objection must—
- “(a) contain the prescribed information; and 10
 - “(b) be made within the prescribed time and in the prescribed manner.

“156F Commission must consider objection

- “(1) The Commission must—
- “(a) consider every objection made in accordance with **section 156E**; and 15
 - “(b) decide whether to refuse or accept an objection within 10 working days after the date on which the objection is made; and
 - “(c) promptly give written notice of its decision and the reasons for its decision to the person who made the objection. 20
- “(2) If the Commission refuses the objection, the notice under **subsection (1)(c)** must also contain the following particulars:
- “(a) the address at which the pecuniary penalty may be paid or an explanation of how payment of the pecuniary penalty is to be made, or both: 25
 - “(b) a time within which the pecuniary penalty must be paid:
 - “(c) a statement of what may happen if the person does not pay the pecuniary penalty by that time: 30
 - “(d) a statement of the person’s right to appeal, under **section 156I**, against the Commission’s decision to refuse the objection.
- “(3) If the Commission accepts the objection, the notice under **subsection (1)(c)** must also contain a statement that the civil infringement notice has been withdrawn. 35

“156G Effect of withdrawal of civil infringement notice

“(1) A person who has been served with a civil infringement notice is discharged from any liability for a breach specified in the notice if the Commission withdraws the notice—

“(a) on its own initiative; or

“(b) in accordance with **section 156F(3)**.

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“(2) The Commission must refund the pecuniary penalty specified in a civil infringement notice if the notice is withdrawn after the penalty was paid.

“156H Consequence of not paying pecuniary penalty specified in civil infringement notice

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“(1) The consequence specified in **subsection (2)** applies if a person—

“(a) is served with a civil infringement notice; and

“(b) fails to pay the whole, or any part, of the pecuniary penalty on or before the later of the time specified in that notice or in the notice under **section 156F(1)(c)**.

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“(2) The consequence is that the Commission may recover from the person, as a debt due to the Commission, in a District Court,—

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“(a) the unpaid portion of the pecuniary penalty; and

“(b) the actual and reasonable costs of recovery awarded against the person by that Court.

“(3) In any proceedings for the recovery of a debt under this section, the District Court must not enter judgment in favour of the Commission unless it is satisfied that the circumstances referred to in **subsection (1)** exist.

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“156I Right to appeal

“(1) A person may appeal to a District Court if the person is dissatisfied with a decision of the Commission to refuse the person’s objection to a civil infringement notice.

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“(2) An appeal under **subsection (1)** must be brought within 20 working days after the date on which the notice under **section 156F(1)(c)** is given.

“(3) An appeal under **subsection (1)** does not operate as a stay of the civil infringement notice.

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“156J Decision on appeal

- “(1) A District Court must determine an appeal under **section 156I** by dismissing or allowing the appeal.
- “(2) If the District Court dismisses an appeal, the dismissal must be taken to be an order for the payment of the pecuniary penalty specified in the civil infringement notice to which the decision under appeal relates. 5
- “(3) If the District Court allows an appeal, it may make an order that the pecuniary penalty specified in the civil infringement notice to which the decision under appeal relates— 10
- “**(a)** is varied or cancelled; or
- “**(b)** is to be refunded to the person, if the appeal is allowed after the penalty was paid to the Commission or was recovered as a debt due to the Commission under **section 156H**. 15

New (majority)**“156JA Commission may publish information about issue of civil infringement notice**

- “**(1)** The Commission may, in any manner that it thinks fit, publish a notice that contains information or statements to the following effect: 20
- “**(a)** a statement that a person has been served with a civil infringement notice under this Act:
- “**(b)** the name of the person concerned:
- “**(c)** the nature of the breach in respect of which the civil infringement notice was issued: 25
- “**(d)** the amount of the pecuniary penalty prescribed to be paid for the breach:
- “**(e)** any other prescribed information.
- “**(2)** The Commission must not exercise its powers under **subsection (1)**— 30
- “**(a)** before the close of the prescribed time for making an objection under **section 156E** in respect of the relevant civil infringement notice; or
- “**(b)** if an objection is made under **section 156E** before the close of that prescribed time and the Commission refuses the objection, before the close of the period for bringing an appeal under **section 156I** in respect of the relevant civil infringement notice; or 35

New (majority)

- “(c) if the Commission withdraws the relevant civil infringement notice under **section 156F**; or
- “(d) if an appeal under **section 156I** is brought in respect of the relevant civil infringement notice during that appeal period and the District Court allows the appeal by cancelling the pecuniary penalty specified in that notice.

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*“Pecuniary penalty***“156K Pecuniary penalty****Struck out (majority)**

- “(1) If the High Court is satisfied, on the application of the Commission, that a person has committed a breach of any of the provisions set out in **section 156A**, the High Court may order the person to pay to the Crown any pecuniary penalty that the Court determines to be appropriate.

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New (majority)

- “(1) The High Court may order a person to pay to the Crown any pecuniary penalty that the Court determines to be appropriate if the High Court is satisfied, on the application of the Commission, that—
- “(a) the person has failed, without reasonable excuse, to comply with a separation undertaking under **Part 2AA**; or
- “(b) the person has committed a breach of any of the provisions set out in **section 156A**.
- “(2) In determining an appropriate penalty to be imposed under this section, the High Court must have regard to all relevant matters, including the nature and extent of any commercial gain.
- “(3) The amount of any pecuniary penalty for each act or omission must not exceed—

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New (majority)

“(aa) \$10 million for a breach referred to in **subsection (1)(a)**;
and

“(a) ~~⟨\$1,000,000⟩~~ ~~⟨\$1 million⟩~~ for a breach referred to in **section 156A(g)** in relation to the accounting separation requirements in **section 69C**; and

“(b) \$300,000 in any other case.

5

“(4) The standard of proof in proceedings under this section is the standard of proof that applies in civil proceedings.

“(5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the breach was discovered or ought reasonably to have been discovered.

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“(6) If conduct by a person constitutes a breach of 2 or more provisions ~~⟨set out in **section 156A⟩**~~ ~~⟨referred to in **subsection (1)⟩**~~, proceedings may be commenced under this section against that person in relation to the breach of any 1 or more of those provisions.

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“(7) However, no person is liable to more than 1 pecuniary penalty under this section for the same conduct.

“156L Further penalty may be imposed for continuing breach

“(1) In addition to a pecuniary penalty imposed under **section 156K**, the High Court may, for a continuing breach of any of the provisions ~~⟨set out in **section 156A⟩**~~ ~~⟨referred to in **section 156K(1)⟩**~~, impose for each day or part of a day during which the breach continues a further penalty of—

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Struck out (majority)

“(a) \$50,000 for a breach referred to in **section 156A(g)** in relation to the accounting separation requirements in **section 69C**; and

25

New (majority)

“(aa) \$500,000 for a breach referred to in **section 156K(1)(a)**;
and

New (majority)

“(a) \$50,000 for a breach referred to in **section 156A(g)** in relation to an information disclosure requirement made under **section 69C(6), 69D(3), or 69G(2)**; and

“(b) \$10,000 for any other case.

New (majority)

“(2) To avoid doubt, any further penalty under **subsection (1)** may be imposed only in respect of the period that— 5

“(a) begins on the day on which the pecuniary penalty was imposed under **section 156K**; and

“(b) ends on the day on which the breach is remedied.

“Subpart 2—Enforcement of determinations, approved codes, and registered undertakings 10

“156M Interpretation

In **sections 156N to 156Q**,—

“**enforceable matter** means any of the following:

“(a) a determination made under section 27: 15

“(b) a standard terms determination made under **section 30M**:

“(c) a residual terms determination made under **section 30ZB**:

“(d) a designated multinet service determination made under section 39:

New (majority)

“(da) a separation undertaking under **Part 2AA**: 20

“(e) an approved code under Schedule 2:

“(f) a registered undertaking under **Schedule 3A**

“**party** means a party to an enforceable matter <and includes, in the case of a separation undertaking under **Part 2AA**, any provider of a telecommunications service that is affected by a breach of the separation undertaking>. 25

“156N Complaints of breach of enforceable matter

- “(1) An access seeker or an access provider of a designated access service or specified service may make a written complaint to the Commission alleging a breach of an enforceable matter.
- “(2) As soon as reasonably practicable after receiving a complaint, the Commission must consider the complaint to decide— 5
- “(a) whether to take no action on the complaint; or
- “(b) whether to take either or both of the following actions:
- “(i) to amend the enforceable matter for the purpose of making a clarification (if the complaint relates, or appears to relate, to a dispute over the interpretation of the terms or conditions of the enforceable matter and the dispute has not previously been submitted to any dispute resolution procedure that is included in the enforceable matter): 10
- “(ii) to take, or join another party in taking, enforcement action for the enforceable matter in the High Court under **section 1560**. 15

Struck out (majority)

- “(3) For the purposes of **subsection (2)(b)(i)**, section 58 applies to the enforceable matter with any necessary modifications. 20

New (majority)

- “(3) In deciding whether to take the action referred to in **subsection (2)(b)(i)**, the Commission must consult with interested parties.
- “(4) In deciding whether to take the action referred to in **subsection (2)(b)(ii)**, the Commission— 25
- “(a) must consider the purpose set out in section 18; and
- “(b) may consider the financial means of the complainant.

New (majority)

- “(4A) For the purposes of **subsection (2)(b)(i)**, section 58 applies to the enforceable matter with any necessary modifications.
- “(5) The Commission must promptly give written notice to the complainant of the Commission’s decision on the complaint. 30

New (majority)

“(6) **Subsection (2)(b)(i)** does not apply in the case of a separation undertaking under **Part 2AA**.

“156O Enforcement by High Court

- “(1) An enforceable matter may be enforced by a party or the Commission, or both, filing it in the prescribed form in the Wellington Registry of the High Court. 5
- “(2) The Commission may,—
- “(a) for a breach of a determination made under section 27 or a standard terms determination made under **section 30M**, enforce the enforceable matter only if it has received a complaint of the breach under **section 156N**; and 10
- “(b) for a breach of a designated multinet network service determination, an approved code, *<or>* a registered undertaking, *<or a separation undertaking under Part 2AA,* *>*enforce the enforceable matter on its own initiative (whether or not it has received a complaint of the breach under **section 156N**). 15
- “(3) An enforceable matter filed in the High Court under **subsection (1)** is enforceable as a judgment of the High Court in its civil jurisdiction. 20
- “(4) An enforceable matter is enforceable in accordance with **subsection (3)** during the period in which the matter continues in force.
- “(5) A party who has filed a determination under **subsection (1)** must file in the prescribed form in the High Court any clarification of the determination under section 58 or reconsideration of the determination under section 59. 25

“156P Remedies for breach of enforceable matter

- “(1) This section applies if an enforceable matter is filed in the High Court under **section 156O(1)**. 30
- “(2) On the application of the Commission, the High Court may, in addition to any other remedies available to the Court, order any person to pay to the Crown any pecuniary penalty that the Court determines to be appropriate if satisfied that— 35

- “(a) the person has committed a breach of the enforceable matter; and
- “(b) the amount of any compensatory damages that the Court can award against that person for the breach is less than the value of any commercial gain resulting from the breach. 5
- “(3) The standard of proof in any proceedings under this section is the standard of proof that applies in civil proceedings.
- “(4) Proceedings under this section may be commenced within 3 years after the matter giving rise to the breach was discovered or ought reasonably to have been discovered. 10
- “156Q Limit on amount of pecuniary penalty**
The amount of any pecuniary penalty imposed under **section 156P(2)** must not exceed the value of any commercial gain resulting from the breach of the enforceable matter, less the amount of any compensatory damages that the Court decides to award against the person who has committed the breach. 15

New (majority)

**“Part 4B
“Consumer complaints**

“Subpart 1—Preliminary 20

“156R Commencement of this Part

- “(1) **This Part** comes into force on a date to be appointed by the Governor-General, by Order in Council, made on the recommendation of the Minister in accordance with **section 156S**.
- “(2) For the purposes of **subsection (1)**, 1 or more Orders in Council may be made appointing different dates for different provisions or for different purposes. 25

“156S Process to apply before Part may be commenced

- “(1) The Minister may recommend the making of an Order in Council under **section 156R(1)** only if the Minister is satisfied, at the time of making the recommendation, that— 30
- “(a) a reasonable period of time has elapsed since the commencement of the Telecommunications Amendment

New (majority)

- Act **2006** to enable the telecommunications industry to establish its own complaints resolution system; and
- “(b) either of the following applies:
- “(i) no industry-based complaints resolution system has been established during that period; or 5
- “(ii) an industry-based complaints resolution system has been established during that period, but in the Minister’s opinion it has failed to achieve the purpose of **this Part** set out in **section 156T** and the objectives of a consumer complaints system set out in **section 156W**. 10
- “(2) The Minister may not recommend the making of an Order in Council under **section 156R(1)** unless the Minister is satisfied that appropriate consultation has been carried out in accordance with **section 156ZL**. 15
- “156T Purpose of this Part**
- “(1) The purpose of **this Part** is to facilitate the resolution of complaints by consumers against service providers.
- “(2) To that end, **this Part**—
- “(a) facilitates the establishment of 1 or more consumer complaints systems; and 20
- “(b) provides for the appointment of a consumer complaints adjudicator; and
- “(c) imposes a consumer complaints levy on applicable service providers to fund the costs of the consumer complaints adjudicator. 25
- “156U Interpretation**
- In **this Part**, unless the context otherwise requires,—
- “**applicable service provider** means a service provider to whom a consumer complaints system applies 30
- “**consumer** means a person who is an end-user of a telecommunications service
- “**consumer complaints adjudicator** means the person or entity appointed under **section 156Y**

New (majority)

“ consumer complaints levy means the levy payable under section 156ZG	
“ consumer complaints system means a consumer complaints resolution system facilitated by this Part	
“ designated person , in relation to an entity that is or is proposed to be appointed as a consumer complaints adjudicator, means the person responsible for carrying out the role of a consumer complaints adjudicator.	5
“ 156V Power to exempt service providers from application of consumer complaints system	10
“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare a service provider, or a class of service providers, to be exempt from the application of a consumer complaints system.	
“(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 156ZL .	15
“ 156W Objectives of consumer complaints system	
A consumer complaints system has the following objectives:	20
“(a) to ensure that complaints by consumers against applicable service providers are investigated in a fair, timely, and effective manner:	
“(b) to ensure that, if possible in the circumstances, complaints are dealt with reasonably promptly:	25
“(c) to ensure that all reasonable steps are taken to investigate complaints:	
“(d) to ensure that complainants are advised of the progress in investigating their complaints:	
“(e) to ensure that complaints are resolved satisfactorily and any remedies or sanctions imposed on the applicable service provider concerned are appropriate in the circumstances.	30

New (majority)

“156X Requirements for consumer complaints system

- “(1) A consumer complaints system must—
- “(a) achieve the objectives set out in **section 156W**:
 - “(b) set out the procedures that the consumer complaints adjudicator must use for receiving, investigating, and resolving complaints; and 5
 - “(c) set out appropriate and auditable documentation and record keeping:
 - “(d) comply with any other requirements prescribed by regulations made under this Act. 10
- “(2) A consumer complaints system may provide for the development of codes of practice relating to consumer complaints.

“Subpart 2—Consumer complaints adjudicator**“156Y Appointment of consumer complaints adjudicator**

- “(1) The Minister may, by notice in the *Gazette*, appoint a person or an entity as a consumer complaints adjudicator for a term, not exceeding 2 years, that the Minister may specify. 15
- “(2) A notice under this section must state—
- “(a) the date on which the appointment takes effect; and
 - “(b) the term of the appointment. 20

“156Z Qualification for appointment as consumer complaints adjudicator

- “(1) The Minister may not appoint a person or an entity as a consumer complaints adjudicator unless—
- “(a) the person or, in the case of an entity, the entity’s designated person is suitably qualified or trained to carry out that role; and 25
 - “(b) the person or entity has consented in writing to the appointment; and
 - “(c) the person or, in the case of an entity, the entity’s designated person has certified in writing that he or she is not disqualified in terms of **subsection (2)**. 30
- “(2) A person or, in the case of an entity, the entity’s designated person is disqualified if he or she is—
- “(a) under 18 years of age: 35
 - “(b) an undischarged bankrupt:

New (majority)

“(c) prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993:	
“(d) subject to a property order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988:	5
“(e) has been convicted of an offence punishable by imprisonment for a term of 2 years or more or has been sentenced to imprisonment for any other offence.	10
“156ZA Revocation of appointment	
The Minister may at any time, by notice in the <i>Gazette</i> , revoke the appointment of a person or an entity as a consumer complaints adjudicator if—	
“(a) requested by the person or entity; or	15
“(b) the person’s or entity’s term of appointment has expired; or	
“(c) the Minister is satisfied that—	
“(i) the person or entity has neglected to perform the functions or duties, or exercise the powers, of a consumer complaints adjudicator under this Act;	20
or	
“(ii) the person or, in the case of an entity, the entity’s designated person is disqualified in terms of section 156Z(2) .	25
“156ZB Functions and duties of consumer complaints adjudicator	
The functions and duties of the consumer complaints adjudicator are—	
“(a) to inquire into and investigate complaints made under a consumer complaints system in a way that is consistent with the rules of natural justice:	30
“(b) to promote, in appropriate cases, the resolution of those complaints by negotiation, conciliation, or mediation:	
“(c) to make final determinations in relation to those complaints (which may include, if appropriate, an order imposing any remedies or sanctions on the applicable	35

New (majority)

- service provider concerned that the consumer complaints adjudicator thinks appropriate):
- “(d) to ensure that the final determinations in relation to those complaints are enforced:
- “(e) to publish information with a view to making it known how complaints about applicable service providers may be made: 5
- “(f) if more than 1 consumer complaints service is established, to ensure, throughout New Zealand, both the consistency and the quality of those consumer complaints services. 10
- “156ZC Powers of consumer complaints adjudicator in relation to complaints**
- “(1) The consumer complaints adjudicator may, in relation to any complaint made under a consumer complaints system,— 15
- “(a) seek and receive any statement, document, information, or matter that may, in the adjudicator’s opinion, assist in dealing effectively with the matters before the adjudicator, whether or not the statement, document, information, or matter would be admissible in a court of law; and 20
- “(b) make any inquiries or investigations that the adjudicator thinks appropriate.
- “(2) **Subsection (1)** does not confer on the consumer complaints adjudicator any power of search or seizure or any power to require information to be supplied or evidence to be given. 25
- “(3) The consumer complaints adjudicator may decide to take no action or, as the case may require, no further action, on any complaint if, in the opinion of the adjudicator,—
- “(a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or 30
- “(b) the subject matter of the complaint is trivial; or 35
- “(c) the complaint is frivolous or vexatious or is not made in good faith; or

New (majority)

- “(d) the complainant does not desire that action be taken or, as the case may be, continued; or
- “(e) the complainant does not have sufficient personal interest in the subject matter of the complaint; or
- “(f) there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the complainant to exercise. 5
- “(4) Despite anything in **subsection (3)**, the consumer complaints adjudicator may decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the adjudicator that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate. 10 15
- “156ZD Consumer complaints adjudicator may seek agreed settlement or order compensation**
- “(1) If the consumer complaints adjudicator determines that a complaint against an applicable service provider is substantiated after inquiring into or investigating the complaint, the adjudicator may— 20
- “(a) assist the parties to reach an agreed settlement in relation to the complaint or any issue involved in the complaint and, if the parties consent, record the terms of settlement as part of the adjudicator’s final determination; or 25
- “(b) order the applicable service provider concerned to do either or both of the following:
- “(i) pay compensation to the complainant:
- “(ii) take any remedial action that the adjudicator thinks fit. 30
- “(2) Any compensation ordered to be paid under **subsection (1)(b)(i)** must not exceed \$12,000.
- “156ZE Right of appeal**
- “(1) A complainant or an applicable service provider may appeal to a District Court if the complainant or applicable service 35

New (majority)

provider is dissatisfied with the consumer complaints adjudicator's final determination of a complaint.

- “(2) An appeal under **subsection (1)** must be brought within 20 working days after the date of the final determination.
- “(3) In determining an appeal under **subsection (1)**, the District Court has all the powers, duties, and functions the consumer complaints adjudicator had in relation to the matter concerned; and may—
- “(a) confirm, modify, or reverse the adjudicator's final determination; or
- “(b) refer all or any part of the matter back to the adjudicator for further consideration, together with—
- “(i) any directions it thinks just relating to the reconsideration; and
- “(ii) a written statement of its reasons for doing so.

“Subpart 3—Consumer complaints levy**“156ZF Purpose of subpart**

The purpose of **this subpart** is to provide for the recovery from applicable service providers of the cost to the Crown of—

- “(a) the preparation of the performance of, and the performance of, the consumer complaints adjudicator's functions and duties under this Act; and
- “(b) the preparation of the exercise of, and the exercise of, the consumer complaints adjudicator's powers under this Act.

“156ZG Consumer complaints levy

- “(1) Every applicable service provider, or class of applicable service providers, must pay to the Minister, in each financial year or part financial year (as the case may require), a levy of an amount stated in, or calculated or set or reset in accordance with, regulations made under **subsection (4)**.
- “(2) The levy for the first financial year or part financial year (as the case may require) may include the costs incurred from the date of commencement of this Part for, or in connection with, the appointment of a consumer complaints adjudicator.

New (majority)

- “(3) **Subsections (1) and (2)** apply irrespective of the fact that the regulations are made and come into effect after the date on which the financial year or part financial year commences.
- “(4) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations— 5
- “(a) specifying the amounts of levies payable under this section:
- “(b) providing for the method by which those levies will be calculated:
- “(c) specifying the criteria and other requirements by and against which those levies will be set or reset: 10
- “(d) specifying the financial year or part financial year to which those levies apply:
- “(e) providing for the payment and collection of those levies: 15
- “(f) exempting any applicable service provider or class of applicable service providers from paying levies under this section:
- “(g) providing for waivers or refunds of the whole or any part of any levy paid by any applicable service provider or class of applicable service providers under this section. 20
- “(5) The Minister may not recommend the making of regulations under **subsection (4)** unless the Minister is satisfied that appropriate consultation has been carried out in accordance with **section 156ZI**. 25
- “156ZH Late payment of consumer complaints levy**
- “(1) If any applicable service provider liable to pay the consumer complaints levy fails to pay the whole amount of that levy by the date specified in regulations made under **section 156ZG(4)**, the applicable service provider must pay interest on the unpaid amount at the rate of 1.5% per month calculated from the date payment is due. 30
- “(2) Interest will be calculated in monthly instalments for each month, or part of each month, that the payment is due. 35

New (majority)

“(3) The amount of any unpaid levy or interest is recoverable in any court of competent jurisdiction as a debt due to the Crown.

“Subpart 4—Miscellaneous

- “156ZI Consultation requirements for making Order in Council or regulation under this Part** 5
- “(1) This section applies to—
- “(a) an Order in Council proposed to be made under **section 156R(1) or 156V(1)**; or
- “(b) regulations proposed to be made under **section 156ZG(4)**. 10
- “(2) Before making a recommendation for the making of an Order in Council or regulations to which this section applies, the Minister must consult with the persons, or representatives of the persons, that the Minister considers will be substantially affected by the making of the relevant Order in Council or regulations. 15
- “(3) The process for consultation should, to the extent practicable in the circumstances, include—
- “(a) giving adequate and appropriate notice of the intention to make the Order in Council or regulations; and 20
- “(b) giving a reasonable opportunity for interested persons to make submissions; and
- “(c) adequate and appropriate consideration of submissions.
- “(4) A failure to comply with this section does not affect the validity of any Order in Council or regulations made.” 25

55 Regulations

- (1) Section 157 is amended by inserting the following paragraphs after paragraph (c):
- “(ca) prescribing the form in which a civil infringement notice must be served under **section 156D**: 30
- “(cb) prescribing the amount of the pecuniary penalty that must be specified in a civil infringement notice under **section 156D(2)(b)** (which may not exceed \$2,000):
- “(cc) prescribing the time within and the manner in which a written objection to a civil infringement notice must be 35

made under **section 156E** and the information to be included in that written objection:

Struck out (majority)

- | | |
|---|----------|
| “(cd) providing for the establishment of a complaints resolution system (that may include codes of practice relating to consumer complaints resolution) for the purpose of addressing complaints by consumers of telecommunications services, specifying which persons are to be subject to that system, and setting out minimum requirements in relation to that system: | 5 |
| “(ce) providing for the appointment of a consumer complaints conciliator (who may be an individual or an entity), prescribing the functions, powers, and duties of the conciliator, and specifying procedures or minimum standards to be followed by the conciliator in dealing with complaints by consumers: | 10
15 |
| “(cf) imposing a levy on service providers that are subject to the complaints resolution system to be paid to the Minister in respect of the exercise of the functions, and the performance of the powers and duties, of the consumer complaints conciliator, and prescribing the amount or method of calculation of the levy and the manner of its collection: | 20 |
| “(cg) enabling the consumer complaints conciliator to make orders concerning the disposition of a complaint by a consumer, including an order requiring a person who is the subject of a complaint to pay compensation not exceeding \$12,000 or damages, or to take any remedial action: | 25 |

New (majority)

- | | |
|--|----|
| “(cd) prescribing any other information that a notice published by the Commission under section 156JA may contain: | 30 |
| “(ce) prescribing the procedures or standards to be followed by a consumer complaints adjudicator in dealing with complaints under a consumer complaints system: | |

New (majority)

“(cf) specifying the time frames within which the procedures or minimum standards prescribed under **paragraph (ce)** must be followed:

“(cg) prescribing requirements and other matters concerning the operation and administration of a consumer complaints system: 5

Struck out (majority)

“(ch) providing for rights of review or rights of appeal in relation to decisions by the consumer complaints conciliator relating to complaints by consumers:

“(ci) setting out minimum requirements for emergency call services and specifying which persons are subject to those requirements:” 10

Struck out (majority)

(2) Section 157 is amended by adding the following subsection:

“(2) The functions, powers, and duties of the consumer complaints conciliator prescribed under **subsection (1)(ce)**— 15

“(a) may include the power to seek and receive evidence and to make any investigations or inquiries that the consumer complaints conciliator thinks fit; but

“(b) must not include any power of search or seizure or any power requiring information to be supplied or evidence to be given.” 20

56 Schedule 1 amended

Schedule 1 is amended in the manner set out in **Schedule 1** of this Act.

57 Schedule 2 amended

Schedule 2 is amended in the manner set out in **Schedule 2** of this Act. 25

- 58 Schedule 3 amended**
Schedule 3 is amended in the manner set out in **Schedule 3** of this Act.
- 59 New Schedule 3A inserted**
The **Schedule 3A** set out in **Schedule 4** of this Act is inserted after Schedule 3. 5

Part 2
Consequential amendments and
transitional provisions

⟨Consequential amendments⟩ 10

- 60 Telecommunications (Fixed Public Data Network) Order 2004 revoked**
The Telecommunications (Fixed Public Data Network) Order 2004 is revoked.
- 61 Amendments to Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002** 15
- (1) This section amends the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002.
- (2) Regulation 4 is amended by revoking the definition of **final TSO revenues** and substituting the following definition: 20
“**final TSO revenues** means the total of—
“(a) all TSO providers’ TSO-qualified revenues; and
“(b) all liable persons’ TSO-qualified revenues”.
- (3) Regulation 4 is amended by revoking the definition of **revenue amount** and substituting the following definition: 25
“**revenue amount**, in relation to a telecommunications operator, means—
“(a) the amount of the TSO provider’s TSO-qualified revenue; or
“(b) as the case may be, the amount of a liable person’s 30
TSO-qualified revenue”.
- (4) Regulation 9(2)(c) is amended by revoking subparagraph (i) and substituting the following subparagraph: 35
“(i) any costs of the Commission in relation to a determination or application for a determination

that are met by the parties to the determination under section 55 of the Act; and”.

⟨Transitional provisions⟩

New (majority)

- | | | |
|------------|---|----|
| 61A | Transitional provision for uncompleted determinations under section 27 | 5 |
| (1) | This section applies if, before the commencement of this Act, the Commission was— | |
| (a) | considering an application under section 20 for a determination of all or some of the terms on which a designated access service or specified service must be supplied: | 10 |
| (b) | otherwise in the process of investigating or preparing a determination under section 27 of all or some of those terms. | |
| (2) | The Commission may continue and complete the matter in accordance with— | 15 |
| (a) | subpart 2 of the principal Act (as if this Act had not been enacted); or | |
| (b) | subpart 2A of the principal Act (as inserted by this Act) as if the determination under section 27 were a standard terms determination. | 20 |
| (3) | For the purposes of subsection (2)(b) , the provisions of subpart 2A of the principal Act (as inserted by this Act) apply with any necessary modifications. | |
|
 | | |
| 62 | Transitional provision for TSO determinations | 25 |
| | Despite the amendments made <i>⟨by this Act⟩</i> to the <i>⟨Telecommunications Act 2001 by this Act⟩</i> <i>⟨principal Act⟩</i> , the <i>⟨Telecommunications Act 2001⟩</i> <i>⟨principal Act⟩</i> continues to apply as if those amendments had not been made in respect of any TSO determinations that were commenced <i>⟨, but not completed,⟩</i> before the commencement of this Act. | 30 |

New (majority)

- | | | |
|---------------|--|--------|
| 63 | Transitional provision for enforcement of determinations and approved codes made before commencement of this Act | |
| (1) | This section applies to any of the following matters that were made or approved before the commencement of this Act: | 5 |
| | (a) a determination under section 27: | |
| | (b) an approved code under Schedule 2. | |
| (2) | A matter to which this section applies may be enforced in accordance with subpart 2 of Part 4A of the principal Act. | |
| (3) | For the purposes of subsection (2) ,— | 10 |
| | (a) the definition of enforceable matter in section 156M of the principal Act must be read as if— | |
| | (i) the reference in paragraph (a) of that definition to a determination made under section 27 were a reference to that determination whether made before or after the commencement of this Act; | 15 |
| | and | |
| | (ii) the reference in paragraph (e) of that definition to an approved code under Schedule 2 were a reference to that code whether approved before or after the commencement of this Act; and | 20 |
| | (b) the other provisions of subpart 2 of Part 4A of the principal Act apply with any necessary modifications. | |
|
64 |
Transitional provision for descriptions of services in existing determinations |
25 |
| | Despite the amendments made to the designated access services under Part 2 of Schedule 1 of this Act, any determinations relating to those services that are in force before the commencement of this Act continue to apply accordingly to meet terms as if those amendments had not been enacted. | 30 |
|
65 |
Transitional provision for uncompleted Schedule 3 investigations | |
| (1) | This section applies to investigations under Schedule 3 of the principal Act that were commenced, but not completed, before the commencement of this Act. | 35 |

New (majority)

- (2) The Commission may continue and complete an investigation to which this section applies in accordance with—
- (a) Schedule 3 of the principal Act (as if this Act had not been enacted); or
 - (b) Schedule 3 of the principal Act (as amended by this Act).

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Schedule 1 Amendments to Schedule 1

Part 1 Amendments to preliminary provisions of Schedule 1

New (majority)

Clause 1	5
Insert, in its appropriate alphabetical order:	
“ local loop network means that part of Telecom’s copper network that connects the end user’s building (or, where relevant, the building distribution frames) to the handover point in Telecom’s local telephone exchange or distribution cabinet (or equivalent facility)”.	10

Clause 5	
Add:	
“(d) <i>principle 4</i> : the access provider must, if requested, provide an access seeker with information about a designated access service or specified service <u>⟨at the same level of detail, and within the same time frame, that the access provider would provide that information had it been requested by one of its own business units.⟩</u> ”	15 20

Clause 6
Omit “Principles 1 to 3” and substitute “Principles 1 to 4”.

New (majority)

Add as subclause (2):	
“(2) Principle 4 set out in clause 5—	
“(a) does not extend to any information about identifiable individual customers of the access provider; and	25
“(b) is subject to the requirement that any confidential information provided to the access seeker, in accordance with that principle, must be kept confidential to that access seeker.”	30

Part 2
**New bitstream and bitstream backhaul designated
access services**

Subpart 1 of Part 2

Omit the items relating to “Access to, and interconnection with, Telecom’s fixed PDN” and “Telecom’s fixed PDN backhaul” and substitute the following items: 5

Telecom’s unbundled bitstream access

Description of service: A digital subscriber line enabled service (and its associated functions, including the associated functions of Telecom’s operational support systems) that enables access to, and interconnection with, that part of Telecom’s fixed PDN that connects the end-user’s building (or, where relevant, the building distribution frames) to Telecom’s first data switch (or equivalent facility), other than a digital subscriber line access multiplexer (DSLAM) 10
To avoid doubt, unless requested by the access seeker, the supply of this service must not be conditional on a requirement that the access seeker, the end-user, or any other person must purchase any other service from the access provider 20

<Conditions applicable before the expiry of 3 years from the date on which the Telecommunications Amendment Act 2006 receives the Royal assent:> <Nil> 25

Conditions <applicable after the expiry of 3 years from the date on which the Telecommunications Amendment Act 2006 receives the Royal assent>: That either— 30
(a) Telecom faces limited, or is likely to face lessened, competition in a relevant market; or
(b) Telecom does not face limited, or is not likely to face lessened, competition in a relevant market, and the Commission has decided to require Telecom’s unbundled bitstream access to be wholesaled in that market 35

Access provider: Telecom
Access seeker: A service provider who seeks access to the service
Access principles: The standard access principles set out in clause 5
Limits on access principles: The limits set out in clause 6 and the additional limit that Telecom is only required to provide access to the trunk side of Telecom’s first data switch or equivalent facility (for which purpose a DSLAM is not an equivalent facility) 40

Part 2—*continued***Subpart 1 of Part 2—*continued***

<i>Initial pricing principle:</i>	Retail price (as imputed by the Commission having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) <i><less></i> <i><minus></i> a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of the service	5
	<u><Plus, if no person is also purchasing a local access and calling service from the access provider in relation to the relevant subscriber line, all or any of the costs of Telecom's local loop network that would usually be recovered by the access provider from an end-user of its local access and calling service, as determined by benchmarking against comparable countries (unless the Commission considers that the price already takes into account all of the relevant costs)></u>	10 15
<i>Final pricing principle:</i>	Either—	
	(a) retail price (as imputed by the Commission having regard to the price of any other digital subscriber line enabled service including the imputed price of any such service offered as part of a bundle of retail services) minus a discount comprising avoided costs saved, in a case where Telecom faces limited, or is likely to face lessened, competition in a relevant market; or	20 25
	(b) retail price (as imputed by the Commission having regard to the price of any other digital subscriber line enabled service including the imputed price of any such service offered as part of a bundle of retail services) minus a discount comprising actual costs saved, in a case where Telecom does not face limited or lessened competition in a relevant market	30
	<u><Plus, in either case, if no person is also purchasing a local access and calling service from the access provider in relation to the relevant subscriber line, all or any of the costs of Telecom's local loop network that would usually be recovered by the access provider from an end-user of its local access and calling service, as determined by identifying the relevant costs (unless the Commission considers that the price already takes into account all of the relevant costs)></u>	35 40
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil	45

Part 2—continued

Subpart 1 of Part 2—continued

Additional matters that must be considered regarding application of section 18: The Commission must consider relativity between this service and Telecom's unbundled copper local loop network service <(to the extent that terms and conditions have been determined for that service)>

Telecom's unbundled bitstream access backhaul

Description of service: A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides transmission capacity in Telecom's network <(whether the transmission capacity is copper, fibre, or anything else)> between the trunk side of Telecom's first data switch (or equivalent facility), other than a digital subscriber line access multiplexer (DSLAM), that is connected to the end-user's building (or, where relevant, the building distribution frames) and the access seeker's nearest available point of interconnection

New (majority)

<i>Conditions applicable before the expiry of 3 years from the date on which the Telecommunications Amendment Act 2006 receives the Royal assent:</i>	Any of the following:	
	(a) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled bitstream access; or	5
	(b) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled bitstream access; or	10
	(c) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M , in respect of Telecom's unbundled bitstream access; or	15
	(d) an agreement for Telecom's unbundled bitstream access (or similar unbundled bitstream access service) is in force between the access seeker of the service and Telecom; and	20
		25
		30

<i>Conditions <applicable after the expiry of 3 years from the date on which the Telecommunications Amendment Act 2006 receives the Royal assent>:</i>	Both of the following:	
	(a) any of the following—	
	(i) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled bitstream access; or	35
	(ii) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled bitstream access; or	40

Part 2—*continued*Subpart 1 of Part 2—*continued*

(iii)	the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M , in respect of Telecom's unbundled bitstream access; or	5
(iv)	an agreement for Telecom's unbundled bitstream access (or similar unbundled bitstream access service) is in force between the access seeker of the service and Telecom; and	10
(b)	either—	
(i)	Telecom faces limited, or is likely to face lessened, competition in a market for transmission capacity between Telecom's first data switch (or equivalent facility) and the access seeker's nearest available point of interconnection; or	15
(ii)	Telecom does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between Telecom's first data switch (or equivalent facility) and the access seeker's nearest available point of interconnection, and the Commission has decided to require Telecom's unbundled bitstream access backhaul to be wholesaled in that market	20
<i>Access provider:</i>	Telecom	
<i>Access seeker:</i>	A service provider who seeks access to the service	30
<i>Access principles:</i>	The standard access principles set out in clause 5	
<i>Limits on access principles:</i>	The limits set out in clause 6	
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method	35
<i>Final pricing principle:</i>	TSLRIC	
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil	
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil	40

Part 3
4 new designated access services including copper local loop unbundling

Subpart 1 of Part 2

Add:		5
	Telecom's unbundled copper local loop network	
<i>Description of service:</i>	A service (and its associated functions, including the associated functions of Telecom's operational support systems) that enables access to, and interconnection with, <that part of> Telecom's copper local loop network <that connects the end user's building (or, where relevant, the building distribution frames) to the line side of the distribution frame in Telecom's local telephone exchange or distribution cabinet (or equivalent facility)> <(including any relevant line in the exchange or distribution cabinet)>	10 15
<i>Conditions:</i>	Nil	
<i>Access provider:</i>	Telecom	
<i>Access seeker:</i>	A service provider who seeks access to the service	
<i>Access principles:</i>	The standard access principles set out in clause 5	20
<i>Limits on access principles:</i>	The limits set out in clause 6	
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method	
<i>Final pricing principle:</i>	TSLRIC	25
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil	
<i>Additional matters that must be considered regarding application of section 18:</i>	The Commission must consider relativity between this service and Telecom's unbundled bitstream access service <(to the extent that terms and conditions have been determined for that service)>	30
	Telecom's unbundled copper local loop network co-location	
<i>Description of service:</i>	A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides co-location facilities for an access seeker's equipment, and access to the <line side of the distribution frame> <handover point>, at Telecom's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of providing access to, and interconnection with, Telecom's unbundled copper local loop network (including any necessary supporting equipment). <To avoid doubt, access seeker's equipment includes the equipment of any person other than the access seeker (including any line) if that equipment is being used to support the provision of backhaul for the access seeker.>	35 40 45

Part 3—*continued***Subpart 1 of Part 2—*continued***

	<To avoid doubt, this service includes access to, and the use of, space in, on, or around Telecom's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of installing and maintaining the access seeker's equipment>	
<i>Conditions:</i>	Any of the following:	5
	(a) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled copper local loop network; or	
	(b) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled copper local loop network; or	10
	(c) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M , in respect of Telecom's unbundled copper local loop network; or	15
	(d) an agreement for Telecom's unbundled copper local loop network (or similar unbundled local loop network service) is in force between the access seeker of the service and Telecom	20
<i>Access provider:</i>	Telecom	
<i>Access seeker:</i>	A service provider who seeks access to the service	25
<i>Access principles:</i>	The standard access principles set out in clause 5	
<i>Limits on access principles:</i>	The limits set out in clause 6 and the additional limit of the interests of other service providers who are co-located in the relevant facilities	
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward looking cost-based pricing method	30
<i>Final pricing principle:</i>	TSLRIC	
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil	35
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil	40
	Telecom's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)	

Part 3—continued

Subpart 1 of Part 2—continued

<i>Description of service:</i>	A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides transmission capacity in Telecom's network (whether the transmission capacity is copper, fibre, or anything else) between the <line side of the distribution frame> <handover point> in Telecom's distribution cabinet (or equivalent facility) and the <line side of the distribution frame> <handover point> in Telecom's local telephone exchange (or equivalent facility), for the purposes of providing access to, and interconnection with, Telecom's unbundled copper local loop network (including any necessary supporting equipment)	5 10
<i>Conditions:</i>	Any of the following: <ul style="list-style-type: none"> (a) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled copper local loop network; or (b) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled copper local loop network; or (c) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M, in respect of Telecom's unbundled copper local loop network; or (d) an agreement for Telecom's unbundled copper local loop network (or similar unbundled local loop network service) is in force between the access seeker of the service and Telecom 	15 20 25 30
<i>Access provider:</i>	Telecom	
<i>Access seeker:</i>	A service provider who seeks access to the service	
<i>Access principles:</i>	The standard access principles set out in clause 5	
<i>Limits on access principles:</i>	The limits set out in clause 6	35
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method	
<i>Final pricing principle:</i>	TSLRIC	40
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil	
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil	45

Part 3—*continued*Subpart 1 of Part 2—*continued*

Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

<i>Description of service:</i>	A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides transmission capacity in Telecom's network (whether the transmission capacity is copper, fibre, or anything else) between the <i><line side of the distribution frame></i> <i><handover point></i> in Telecom's local telephone exchange (or equivalent facility) and the access seeker's nearest available point of interconnection, for the purposes of providing access to, and interconnection with, Telecom's unbundled copper local loop network (including any necessary supporting equipment)	5 10
<i>Conditions:</i>	Both of the following:	15
	(a) any of the following:	15
	(i) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled copper local loop network;	20
	or	
	(ii) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled copper local loop network;	25
	or	
	(iii) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M , in respect of Telecom's unbundled copper local loop network;	30
	or	
	(iv) an agreement for Telecom's unbundled copper local loop network (or similar unbundled local loop network service) is in force between the access seeker of the service and Telecom; and	35
	(b) either—	
	(i) Telecom faces limited, or is likely to face lessened, competition in a market for transmission capacity between Telecom's local telephone exchange (or equivalent facility) and the access seeker's nearest available point of interconnection; or	40 45

Part 3—*continued*Subpart 1 of Part 2—*continued*

(ii)	Telecom does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between Telecom's local telephone exchange (or equivalent facility) and the access seeker's nearest available point of interconnection, and the Commission has decided to require Telecom's unbundled copper local loop network backhaul (telephone <network> <exchange> to interconnect point) to be wholesaled in that market	5
<i>Access provider:</i>	Telecom	
<i>Access seeker:</i>	A service provider who seeks access to the service	
<i>Access principles:</i>	The standard access principles set out in clause 5	15
<i>Limits on access principles:</i>	The limits set out in clause 6	
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method	20
<i>Final pricing principle:</i>	TSLRIC	
<i>Requirement referred to in section 45 for final pricing principles:</i>	Nil	
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil	25

Part 4

Further amendments to Schedule 1 30

Subpart 1 of Part 2

Omit from the item <called> “**Interconnection with fixed PSTN other than Telecom's**” the item <called> “*Conditions*” and substitute the following item:

<i>Conditions:</i>	Any of the following:	35
(a)	an application for a determination by the access provider of this service for interconnection with Telecom's fixed PSTN must be pending; or	

Part 4—*continued*Subpart 1 of Part 2—*continued*

- (b) a standard terms development process has been initiated under **subpart 2A** of Part 2 in respect of interconnection with Telecom’s fixed PSTN; or
- (c) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under **section 30M**, in respect of interconnection with Telecom’s fixed PSTN.

New (majority)

Part 3 of Schedule 1

Omit from the item “National Roaming” paragraph (d)(ii) of the item “*Conditions*” and substitute the following item:

- (ii) the provision for roll-out of a new national cellular mobile telephone network before the date on which the Commission must next consider, under **clause 1(3)** of Schedule 3, whether there are reasonable grounds for commencing an investigation into whether the national roaming service should be omitted from this schedule under section 66(b):

Schedule 2
Amendments to Schedule 2

s 57

New (majority)

New Part heading inserted

Insert above clause 1:

“Part 1
“Telecommunications access codes prepared
by Forum”.

5

Clause 1

Add *<the following subclause>* as subclause (2):

“(2) The Commission may issue guidelines to the Forum on any matters relating to telecommunications access codes, including advice on what matters are appropriately dealt with by those codes.”

10

Struck out (majority)

New clause 1A

Insert after clause 1:

“1A Commission may prepare code

“(1) The Commission may, on its own initiative, prepare 1 or more telecommunications access codes in relation to any matter that is not already provided for by an approved code.

“(2) This clause does not limit clause 1.”

15

20

Clause 2

Subclause (1): repeal and substitute:

“(1) A draft code for 1 or more designated access services or specified services may only provide for procedures, requirements, and other matters, not inconsistent with this Act, that relate to an aspect or aspects of the supply of that service or those services.”

25

New clause 3A

Insert after clause 3:

New clause 3A—continued**“3A Requirements for draft codes for services supplied under registered undertaking**

“(1) A draft code for 1 or more services supplied under a registered undertaking may only provide for procedures, requirements, and other matters, not inconsistent with this Act, that relate to an aspect or aspects of the supply of that service or those services. 5

“(2) A draft code to which **subclause (1)** applies must—

“(a) be consistent with the purpose set out in section 18; and

“(b) comply with the Commerce Act 1986; and

“(c) not provide for any matter relating to the price of the service.” 10

Clause 4

Subclauses (2) and (3): repeal and substitute *⟨the following subclauses⟩*:

“(2) The Forum must take all practicable steps to invite, for the purpose of voting on a draft code, all eligible persons who are, in the opinion of the Commission, affected or likely to be affected by the draft code. 15

“(3) The Forum may otherwise determine the way in which the referendum is conducted. 20

“(3A) All eligible persons who are, in the opinion of the Commission, affected or likely to be affected by the draft code may vote in the referendum.”

Subclause (4): repeal and substitute:

“(4) The following persons are entitled to register with the Commission as eligible persons: 25

“(a) a person who provides a telecommunications service by means of some component of a PSTN or PDN that is operated by that person:

“(b) an access seeker or access provider of— 30

“(i) a designated service or specified service; or

“(ii) a service supplied under a registered undertaking:

“(c) any other person whom the Commission determines has a material interest in a draft code ⟨because that person is about to become, within the foreseeable future, a person referred to in paragraph (a) or (b)⟩.” 35

Clause 5

Paragraph (c): insert “or **clause 3A**” after “clause 3”.

Clause 5—*continued*

Paragraph (d): repeal and substitute:

- “(d) that either the draft code—
- “(i) has the support of all eligible persons who voted on the draft code; or
 - “(ii) is supported by at least ~~66%~~ 75% of eligible persons who voted on the draft code; and”.

5

Struck out (majority)**Clause 6**

Repeal subclause (1) and substitute:

- “(1) The Commission must make reasonable efforts to consider whether or not consultation on the draft code is needed not later than 10 working days after—
- “(a) the date on which the Commission received the draft code; or
 - “(b) as the case may be, the date on which the Commission completed the preparation of the draft code.”

10

Clause 8

15

Insert before subclause (1):

- “(1AA) This clause applies if the draft code has been prepared by the Forum under clause 1.”

Insert “or **clause 3A**” after “clause 3” wherever it appears.**Clause 9**

20

Repeal ~~clause 9~~.**Clause 10**Paragraph (a): insert “or **clause 3A**” after “clause 3”.

Paragraph (c): repeal.

New clauses 10A and 10B

25

Insert ~~the following clauses~~ after clause 10:**“10A Commission must refuse to approve draft code in certain cases**

Despite clauses 9 and 10, the Commission must refuse to approve a draft code if it satisfied that the draft code deals with a matter that is more appropriately dealt with in—

30

- “(a) a determination under section 27; or
- “(b) a standard terms determination under **section 30M**; or

New clauses 10A and 10B—continued

“(c) a designated multinet network service determination under section 39.

“10B Amendment of draft code

“(1) This clause applies only if the Commission considers that, because of a change in circumstances, a draft code submitted to it no longer meets all the requirements set out in clause 2 or clause 3 or **clause 3A** (as the case may require). 5

“(2) The Commission may prepare<, or request the Forum to prepare,> a specific amendment to the draft code to ensure that it meets all of those requirements.

“(3) If the Commission prepares the amendment, the Commission must— 10

“(a) ensure that the consultation referred to in clause 7(1) has been carried out on the amended draft code; and

“(b) decide, as soon as practicable after **paragraph (a)** has been complied with, whether to approve the amended draft code under clause 10.” 15

Clause 12

Subclause (2)(a): repeal and substitute:

“(a) requested to do so by <66%> <75%> of eligible persons who voted on the approved code; and” 20

Subclause (2)(b): insert “or **clause 3A**” after “clause 3”.

New subclause (3): add:

“(3) Despite **subclause (2)**, the Commission may revoke an approved code if it is satisfied that to do so best gives, or is likely to best give, effect to the purpose set out in section 18.” 25

Clause 14

Subclause (1): omit “section” and substitute “clause”.

Subclause (1): insert “or **clause 3A**” after “clause 3”.

Clause 15

Subclause (2): insert “or **clause 3A**” after “clause 3”. 30

New (majority)**New Part 2 added**

Add the following Part:

New (majority)**New Part 2 added—continued****“Part 2****“Telecommunications access codes prepared
by Commission****“17 Commission may prepare code**

- “(1) The Commission may, on its own initiative, prepare 1 or more telecommunications access codes in relation to any matter that is not already provided for by an approved code. 5**
- “(2) This clause does not limit clause 1.**
- “(3) For the purposes of this clause, the provisions of Part 1 of this schedule, so far as they are applicable and with any necessary modifications, apply to a code prepared by the Commission as if it were a code prepared by the Forum under that Part.” 10**

Schedule 3 Amendments to Schedule 3

Struck out (majority)

Clause 1

Subclause (1): repeal and substitute the following subclauses:

“(1) The Commission may, on its own initiative or if requested to do so in writing by the Minister, commence an investigation into whether or not Schedule 1 should be altered in any of the ways set out in section 66 or 67 (the **proposed alteration**) if the Commission is satisfied that there are reasonable grounds for an investigation into the matter. 5
10

“(1A) However, the Commission must consider, at intervals of not more than 5 years after the date on which a designated service or specified service came into force, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from Schedule 1 under section 66(b). 15

“(1B) The Commission must not consider the matter under **subclause (1A)** earlier than 12 months before the end of each 5-year interval referred to in that subclause.”

Subclause (2): omit “subclause (1)(a) and (b) have been met” and substitute “**subclause (1)** have been met”. 20

New (majority)

Clause 1

Repeal and substitute:

“**1 Commission’s investigation**
“(1) The Commission may, on its own initiative or if requested to do so in writing by the Minister, commence an investigation into whether or not Schedule 1 should be altered in any of the ways set out in section 66 or 67 (the **proposed alteration**) if the Commission is satisfied that there are reasonable grounds for an investigation into the matter. 25
30

New (majority)

Clause 1—*continued*

- “(2) If an investigation has been requested by the Minister and the requirements set out in **subclause (1)** have been met, the Commission must commence the investigation not later than 10 working days after receiving the Minister’s written request.
- “(3) Despite **subclause (1)**, the Commission must consider, at intervals of not more than 5 years after the date on which a designated service or specified service came into force, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from Schedule 1 under section 66(b). 5
- “(4) The Commission must not consider the matter under **subclause (3)** earlier than 12 months before the end of each 5-year interval referred to in that subclause. 10
- “(5) If the Commission decides that there are reasonable grounds for commencing an investigation into whether a designated service or specified service should be omitted from Schedule 1 under section 66(b), the Commission must commence the investigation not later than 15 working days after making that decision. 15
- “(6) The Commission must give public notice of the commencement of an investigation under this clause.” 20

Clause 2

Subclause (2): repeal and substitute:

- “(2) The draft report must—
- “(a) include the detail of the proposed alteration; and
- “(b) identify any recommendations that the Commission considers to be sufficiently related to each other that they ought to be considered together.” 25

Clause 4

New (majority)

Subclause (1): omit “clause 1(3)” and substitute “**clause 1(6)**”.

New subclause (4): add:

- “(4) The Commission may, if it thinks fit, identify any recommendations included in the final report that it considers to be

30

Clause 4—continued

sufficiently related to each other that they ought to be considered together by the Minister.”

New clause 5A

Insert *<the following clause>* after clause 5:

“5A Minister may request clarification of final report

“(1) After receiving a final report under clause 4, the Minister may request that the Commission— 5

“(a) clarify any aspect of the report:

“(b) provide any additional information that is necessary to understand the nature and implications of the Commission’s recommendations that are included in the final report. 10

“(2) The Commission must comply with a request made under **subclause (1)** within a period and in a manner agreed between the Commission and the Minister.

“(3) **Subclause (1)** does not authorise the Minister to require the Commission to undertake any further analysis of, or investigation into, any matter included in the final report.” 15

Clauses 6 and 7

Repeal *<clauses 6 and 7>* and substitute *<the following clauses>*:

“6 Decision by Minister on Commission’s recommendations 20

“(1) In considering a final report under clause 4, the Minister must—

“(a) consider together any recommendations that the Commission has, under **clause 4(4)**, identified in its final report to be sufficiently related to each other (a **set of related recommendations**); and 25

“(b) consider separately any other recommendations.

“(2) The Minister may—

“(a) accept or reject—

“(i) each set of related recommendations: 30

“(ii) each of the other recommendations:

“(b) require the Commission to reconsider, for any reasons specified by the Minister,—

“(i) any set of related recommendations or any aspect of that set of related recommendations: 35

“(ii) any of the other recommendations or any aspect of those other recommendations.

Clauses 6 and 7—continued**“7 Deferral of Minister’s decision**

- “(1) If the Minister accepts the Commission’s recommendation that the Minister’s decision be deferred for any period that the Commission thinks fit,—
- “**(a)** the Minister must refer the recommendation back to the Commission for a report at the end of the period on whether the recommendation should be amended; and 5
- “**(b)** the Commission must, at the end of that period,—
- “**(i)** prepare a draft report stating that the period has expired and setting out any amendments it wishes to make to the recommendation; or 10
- “**(ii)** prepare a final report that includes a recommendation that the Minister should accept an undertaking under **Schedule 3A** and deliver that report to the Minister.
- “**(2)** If **subclause (1)(b)(i)** applies, the Commission must also— 15
- “**(a)** give public notice of the draft report; and
- “**(b)** include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice; and
- “**(c)** prepare, as soon as is reasonably practicable after the closing date for submissions, a final report to the Minister that contains the matters set out in the draft report and summarises, and makes recommendations on, the submissions received on the draft report. 20
- “**(3)** **Clause 6** again applies to the report referred to in **subclause (1)(b)(ii)** or **(2)(c)**, as the case may be.” 25

Clause 11

Add *<the following subclause>* as subclause (4):

- “**(4)** The Commission may, if it thinks fit, identify any recommendations included in the final report that it considers to be sufficiently related to each other that they ought to be considered together by the Minister.” 30

New clause 12A

Insert *<the following clause>* after clause 12:

- “12A Minister may request clarification of final report** 35
- “**(1)** After receiving a final report under clause 11, the Minister may request that the Commission—
- “**(a)** clarify any aspect of the report:

New clause 12A—continued

“(b) provide any additional information that is necessary to understand the nature and implications of the Commission’s recommendations that are included in the final report.

“(2) The Commission must comply with a request made under **subclause (1)** within a period and in a manner agreed between the Commission and the Minister. 5

“(3) **Subclause (1)** does not authorise the Minister to require the Commission to undertake any further analysis of, or investigation into, any matter included in the final report.”

Clauses 13 and 14 10

Repeal *<clauses 13 and 14>* and substitute *<the following clauses>*:

“13 Decision by Minister on Commission’s recommendations

“(1) In considering a final report under clause 11, the Minister must—

“(a) consider together any recommendations that the Commission has, under **clause 11(4)**, identified in its final report to be sufficiently related to each other (a **set of related recommendations**); and 15

“(b) consider separately any other recommendations.

“(2) The Minister may— 20

“(a) accept or reject—

“(i) each set of related recommendations:

“(ii) each of the other recommendations:

“(b) require the Commission to reconsider, for any reasons specified by the Minister,— 25

“(i) any set of related recommendations or any aspect of that set of related recommendations:

“(ii) any of the other recommendations or any aspect of those other recommendations.

“(3) If the Commission makes a recommendation in the final report that the proposed omission and addition should be made, the Minister must make a decision under **subclause (2)** within 6 months after— 30

“(a) the date on which the Minister receives that report; or

“(b) as the case may be, the date on which the Commission complies with a request under **clause 12A**. 35

Clauses 13 and 14—continued**“14 Deferral of Minister’s decision**

- “(1) If the Minister accepts the Commission’s recommendation that the Minister’s decision be deferred for any period that the Commission thinks fit,—
- “(a) the Minister must refer the recommendation back to the Commission for a report at the end of the period on whether the recommendation should be amended; and 5
- “(b) the Commission must, at the end of that period,—
- “(i) prepare a draft report stating that the period has expired and setting out any amendments it wishes to make to the recommendation; or 10
- “(ii) prepare a final report that includes a recommendation that the Minister should accept an undertaking under **Schedule 3A** and deliver that report to the Minister.
- “(2) If **subclause (1)(b)(i)** applies, the Commission must also— 15
- “(a) give public notice of the draft report; and
- “(b) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice; and
- “(c) prepare, as soon as is reasonably practicable after the closing date for submissions, a final report to the Minister that contains the matters set out in the draft report and summarises, and makes recommendations on, the submissions received on the draft report. 20
- “(3) **Clause 6** applies to the report referred to in **subclause (1)(b)(ii) or (2)(c)**, as the case may be.” 25

s 59

Schedule 4 New Schedule 3A inserted

s 68A

Schedule 3A Undertakings

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Schedule 3A—continued*Preliminary***1 Interpretation**

In this schedule, unless the context otherwise requires,—

final report means the report that—

- (a) is prepared in accordance with clause 4 of Schedule 3 or, as the case may be, clause 11 of that schedule; and 5
- (b) includes the Commission’s recommendation on—
 - (i) a proposed regulatory change:
 - (ii) as the case may be, an undertaking

proposed addition has the meaning set out in clause 8(1)(b) of Schedule 3 10

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

proposed omission has the meaning set out in clause 8(1)(a) of Schedule 3 15

proposed regulatory change means—

- (a) a proposed alteration; or
- (b) as the case may be,—
 - (i) a proposed omission:
 - (ii) a proposed addition 20

register means the register of undertakings established and maintained by the Commission under clause 10(1)

registered undertaking means an undertaking that is entered in the register

service means the telecommunications service to which either or both of the following relate: 25

- (a) a proposed regulatory change:
- (b) an undertaking

undertaking has the meaning set out in clause 3.

Purpose of clauses 3 to 16 30

2 Purpose of clauses 3 to 16

The purpose of clauses 3 to 16 is to provide, as an alternative to a proposed regulatory change, a mechanism for an access provider to supply a service to all access seekers—

- (a) on a voluntary basis that avoids the need for regulation; and 35

Schedule 3A—continued

- (b) on terms and conditions agreed between the access provider and the Commission.

*Acceptance and registration of undertakings***3 Commission may accept undertaking**

- (1) While the Commission is considering a proposed regulatory change, the Commission may accept an offer from an access provider to supply a service to all access seekers on the terms and conditions of a written undertaking (an **undertaking**). 5
- (2) If the Commission accepts an undertaking, a final report may include— 10
- (a) a recommendation by the Commission that the Minister should accept the undertaking; and
- (b) any of the following recommendations by the Commission:
- (i) that the proposed regulatory change should be made: 15
- (ii) that the proposed regulatory change should not be made:
- (iii) that the Minister’s decision on the proposed regulatory change should be deferred. 20
- (3) However, an undertaking that the Commission accepts under **subclause (2)** has no legal effect unless it is registered under **clause 6**.
- (4) For the purposes of **subclause (2)**, clauses 4, 6, and 7 of Schedule 3 or, as the case may be, clauses 11, 13, and 14 of that schedule apply with any necessary modifications. 25

4 Criteria for undertaking

- The Commission must not make a recommendation under **clause 3(2)** unless the Commission is satisfied that the undertaking— 30
- (a) complies with this Act and any regulations made under this Act; and
- (b) complies with the standard access principles set out in clause 5 of Schedule 1 and any limits on those standard access principles set out in clause 6 of that schedule. 35

Schedule 3A—continued

- 5 Requirements for undertaking**
- (1) An undertaking must—
- (a) be signed or executed by the relevant access provider; and
 - (b) specify the terms and conditions of the supply of the service; and 5
 - (c) specify the date by which those terms or conditions must be complied with by the relevant access provider; and
 - (d) specify a mechanism for the resolution by the Commission or a suitably qualified and experienced independent person of any issues or disputes that arise after the undertaking is registered; and 10
 - (e) provide for any other prescribed matters.
- (2) An undertaking must not be amended after the Commission has made a recommendation under **clause 3(2)** in respect of that undertaking. 15
- 6 Commission must register undertaking if Minister accepts Commission's recommendation**
- If the Minister accepts the Commission's recommendation that the Minister should accept an undertaking, the Commission must— 20
- (a) enter in the register—
 - (i) the name of the relevant access provider; and
 - (ii) any other information specified in **clause 12**; and 25
 - (b) give written notice of the registration to the relevant access provider; and
 - (c) give public notice of the registration.
- 7 Expiry of registration of undertaking**
- (1) The registration of an undertaking is effective for— 30
- (a) a period of 5 years from the date of registration; and
 - (b) any further period that the Commission and the relevant access provider may agree.
- (2) The Commission must consult with every person who has a material interest in the matter before agreeing to a further period under **subclause (1)(b)**. 35

Schedule 3A—continued

- (3) Despite **subclause (1)**, the Commission may make a recommendation in the final report to the Minister that, having regard to the matters specified in **subclause (4)**, the registration of an undertaking should expire earlier than the 5-year period referred to in **subclause (1)**. 5
- (4) The matters are—
- (a) the reasonable needs of potential access seekers; and
 - (b) the commercial lifetime of the service delivery technology concerned; and
 - (c) any other factors that the Commission thinks relevant. 10
- (5) Despite anything in this clause, the registration of an undertaking expires on the date that the proposed regulatory change is made.
- (6) This clause does not require the Commission to commence an investigation into a proposed regulatory change on the expiry of the registration of an undertaking. 15

*Effect of registration of undertaking***8 Effect of registration of undertaking**

- (1) A registered undertaking provides a basis for preparing and approving a telecommunications access code in relation to the supply of the service even though the access provider would not otherwise be subject to that code. 20
- (2) A registered undertaking—
- (a) does not prevent the Commission from—
 - (i) commencing or continuing an investigation into a proposed regulatory change; or 25
 - (ii) making a recommendation to the Minister that a proposed regulatory change should be made; and
 - (b) does not prevent the Minister from—
 - (i) requesting that the Commission commence or continue an investigation into a proposed regulatory change; or 30
 - (ii) accepting the Commission's recommendation that a proposed regulatory change should be made. 35

Schedule 3A—continued

- 9 Part 2 of Commerce Act 1986 does not apply to registered undertaking**
- Part 2 of the Commerce Act 1986 does not apply in respect of—
- (a) a registered undertaking; and 5
 - (b) any matter necessary for giving effect to a registered undertaking.
- Register*
- 10 Register of undertakings**
- (1) For the purposes of this Part, the Commission must establish and maintain a register of undertakings. 10
 - (2) The register may be—
 - (a) an electronic register; or
 - (b) kept in any other manner that the Commission thinks fit.
- 11 Other duties and powers of Commission in relation to register** 15
- (1) The Commission must ensure that the register is open for public inspection, at all reasonable times,—
 - (a) at the head office of the Commission and at any other place that the Commission determines to be necessary or appropriate: 20
 - (b) on the Commission’s website in an electronic form that is publicly accessible.
 - (2) The Commission may, at any time, make any amendments to the register that are necessary to— 25
 - (a) reflect any changes in the information specified in **clause 13**; or
 - (b) correct a mistake caused by any error or omission on the part of the Commission.
- 12 Contents of register** 30
- The register must, in relation to every registered undertaking, contain all of the following:
- (a) particulars of the relevant access provider:
 - (b) the date of registration of the undertaking:
 - (c) the terms and conditions of the supply of the service: 35

Schedule 3A—continued

- (d) particulars of, or a description of the class of, the access seekers to whom the service is to be supplied:
- (e) any other particulars that may be prescribed.

Process for making undertaking

- 13 Process for making undertaking** 5
- (1) An access provider who wishes to make an undertaking must apply to the Commission in accordance with **clause 14**.
 - (2) The Commission must deal with the application—
 - (a) in accordance with **clauses 15(2) and 16**:
 - (b) in the prescribed manner, if any. 10
- 14 Requirements for application**
- An application under **clause 13** must—
- (a) be in writing; and
 - (b) be given in the prescribed manner, if any; and
 - (c) contain the prescribed information, if any; and 15
 - (d) be accompanied by the prescribed fee, if any.
- 15 Timing of application**
- (1) An application under **clause 13**—
 - (a) may be made after the date on which public notice is given under clause 1(3) of Schedule 3; but 20
 - (b) must be made not later than 40 working days after the date on which the Commission commences an investigation into the proposed regulatory change under **clause 1** of Schedule 3.
 - (2) The Commission must not consider a late application. 25
- 16 Commission must invite submissions**
- (1) After receiving an application under **clause 13**, the Commission must—
 - (a) give public notice of the application; and
 - (b) invite persons who have a material interest in the proposed regulatory change to make written submissions on the application by the closing date specified in the public notice; and 30
 - (c) consider those submissions.

Schedule 3A—continued

- (2) The closing date for submissions must not be earlier than 10 working days after the date on which public notice is given under **subclause (1)(a)**.

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- (3) Before determining the application, the Commission must give the access provider who made the application a reasonable opportunity to amend it in light of any submissions received by the Commission under this clause. 5

Legislative history

24 June 2006
29 June 2006

Introduction (Bill 62–1)
First reading and referral to Finance and Expenditure Committee