

Telecommunications (Property Access and Other Matters) Amendment Bill

Government Bill

Explanatory note

General policy statement

Improvements to allocation of Telecommunications Development Levy liability

Objective

The Bill seeks to reduce compliance costs for Telecommunications Development Levy (TDL) payers by addressing identified issues with the liability allocation process.

Approach taken

The Bill, which amends the Telecommunications Act 2001 (the Act), makes the following changes to the liability allocation process:

- the Bill will allow prospective liable persons to select their chosen financial year end date rather than mandating the year-ending-30-June format:
- the Bill will update terminology by replacing the term “consolidated statement of financial performance” with “group financial statement”:
- the Bill will amend the requirements to provide financial statements, so that group financial statements will be required only where they are already required under other legislation:
- the Bill will change the default audit and assurance standards for required financial information and provide the Commerce Commission with flexibility to depart from those standards where appropriate:
- the Bill will repeal the provision in the Act that prevents the finalisation of the Telecommunications Service Obligation (TSO) cost calculation for a given financial year before the final TDL liability allocation determination is finalised.

Justification for approach taken

These are minor technical changes that will reduce compliance costs for the telecommunications industry and preserve the integrity of the liability allocation system without compromising the purpose of the TDL.

Property access for next generation telecommunications networks*Objective*

The Bill aims to allow more people to have the benefits of a fibre connection while also reducing the time taken to obtain the consent of all parties who have an interest in the property that a fibre connection needs to occupy, such as shared driveways or the common areas of multi-unit complexes.

Approach taken

The Bill implements a tiered consenting regime where a fibre installation method can be prescribed as one of 2 new categories according to the impact that method is deemed to have on property that multiple parties have an interest in. Category 1 installations will have no substantial enduring impacts on shared property. Those installations will be able to proceed by right provided that no fewer than 5 working days' notice has been provided to all interested parties.

Category 2 installations will be those that have a greater level of impact, but where the impacts are still considered justifiable in support of the mass market roll-out of a next generation telecommunications network. Those methods will be subject to a deemed consent regime whereby an interested party will be provided with a high-level design plan of what is proposed, and, if no objections are received on specified grounds within 15 working days, the installation can go ahead by right.

Where the property in which multiple parties have an interest is overseen by a governing body, such as unit title or company share properties, category 1 installations will not apply. For those premises, only category 2 will be relevant. The Bill does not change the decision-making structures within those developments. The authority to make decisions, as established by company constitution or by default through legislation, will continue to apply. However, the Bill will overlay a maximum time frame for considering a request of 15 working days from the date that the design plan for a building has been submitted.

Any installation method not prescribed as category 1 or category 2 will be subject to current requirements.

The Bill recognises that where multiple parties have an interest in property, problems similar to those that arise with the initial installation can manifest when service providers and network operators re-enter the property for maintenance purposes. The Bill provides a statutory right of access for service providers and network operators to re-visit fibre infrastructure that they own in instances where the consent of 1 or more parties was required for the initial installation.

The Bill replaces the existing regime for access to multi-unit complexes to which fibre-to-the-premises is to be deployed. There are 3 primary differences between the new regime and the existing regime, which are that—

- the new regime applies to a wider range of property types, taking in those where there is scope to improve the process of obtaining consent, for example, where driveways are shared or properties occupy land subject to a cross lease:
- the new regime better takes account of the physical impacts of installing fibre and excludes the methods considered to be too invasive for a right to be given for their use:
- the new regime results in a more efficient process because the number of notices that service providers and network operators are required to serve on affected persons is reduced from 2 to 1 and there is no precondition that the service provider or network operator must have exhausted all reasonable attempts to negotiate access before the statutory right of access can be used.

The Bill establishes an alternative disputes resolution process modelled on the one already in place in respect of the electricity and gas industries. This will ensure that any grievances that may arise as a consequence of a more streamlined access regime may be resolved fairly and efficiently.

Justification for approach taken

Providing for 2 new classes of installation ensures that the installation methods that the majority of people are expected to find reasonable are permitted, while retaining degrees of protection against more invasive methods. The framework has been designed to find the right balance between respecting property rights and the efficient roll-out of infrastructure that is in the national interest.

The approach taken will reduce the frustrations experienced by the many New Zealanders who are seeking fibre and the companies that are installing fibre. Quantifying exactly how many households and businesses will benefit from the Bill is challenging because the mix of installation methods used across the country varies according to terrain, local authority planning rules, and the preferences and technological capability of companies undertaking this work. Noting this caveat, it is estimated that around one-third of all installations in residential driveways will fall under category 1, about a half will be category 2, and the approximately 20% remaining will be subject to the status quo.

Regulatory requirements for Ultra-fast Broadband extension programme

Objective

The intent is to extend the regulatory requirements relating to the Ultra-fast Broadband programme. There are 3 primary objectives, which are—

- to ensure that any partner selected for the Ultra-fast Broadband extension programme abides by the same open access undertakings as the partners participating in the original Ultra-fast Broadband programme, so as to align with tele-

communications regulation generally and bring benefits to retail service providers and end users:

- to ensure that any partner selected for the Ultra-fast Broadband extension programme is obliged to provide the same information about its network costs and characteristics to the Commerce Commission annually as partners participating in the original programme:
- to mirror the Commerce Act 1986 authorisations implemented for the original Ultra-fast Broadband programme, which would remove a barrier to Chorus Limited (**Chorus**) participating in the extension programme should it be a successful bidder in the tender process.

Approach taken

The Bill amends the definition of UFB initiative to include the Ultra-fast Broadband extension programme. This definition change flows through to the definition of UFB partner and consequently LFC. Those definition changes mean that participants in the Ultra-fast Broadband extension programme will be subject to the existing provisions in the Act that require open access deeds of undertaking and information disclosure.

The Bill includes a new provision granting a Commerce Act 1986 authorisation to any contract, arrangement, or understanding between the Crown and Chorus that would be required should negotiations lead to Chorus being selected as a partner in a particular region for the Ultra-fast Broadband extension programme. This does not presuppose Chorus's selection; rather it is to ensure that the Government has all options available to it when approaching negotiations for the UFB 2 programme.

Justification for approach taken

The approach is consistent with what Parliament has already enacted for the original Ultra-fast Broadband programme, which has proven to be successful in managing open access, information disclosure, and the statutory authorisations for that programme.

By limiting changes to the definition of UFB initiative, the policy objective can be achieved with minimal legislative amendment and consequent risk of unforeseen outcomes. The statutory authorisation has been drafted specifically to be limited to a particular circumstance, again consistent with the approach of the UFB programme.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=146>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced regulatory impact statements on 18 August 2015 and 3 March 2016 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/telecommunications/ris-amendments-to-telecommunications-act-to-support-extension-of-ufb.pdf/>
- <http://www.mbie.govt.nz/publications-research/publications/telecommunications/ris-land-access-for-telecommunications-to-support-deployment-of-ufb.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force 15 days after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Telecommunications Act 2001.

Part 1

Amendments to Parts 1, 3, 4, and 4AA

Amendments to Part 1 (preliminary)

Clause 4 amends section 4, which provides an overview of the Act, to include a statement of what *new subpart 3 of Part 4* (inserted by *clause 10*) deals with.

Clause 5 inserts *new section 7A*, which gives effect to the transitional and related matters set out in *new Schedule 1AA*.

Amendments to subpart 2 of Part 3 (amounts payable by liable persons to the Crown)

Clause 6 amends section 80, which is the interpretation section for subpart 2 of Part 3, so that—

- the term financial statements as used in subpart 2 (which sets out the annual procedure for determining the amount that providers of telecommunications services that use some part of a public telecommunications network must pay to the Crown) has the same meaning as in section 6 of the Financial Reporting Act 2013:
- service providers to which section 79 (which treats related bodies corporate as 1 person for the purposes of Part 3) applies have to provide group financial statements for the purpose of determining their liability for the telecommunica-

tions development levy (the **TDL**) only if they have to produce those statements under another enactment. This has the practical effect of avoiding extra compliance costs for service providers that would not otherwise be required to prepare group financial statements. At the same time, it does not affect the availability of relevant financial information for determining the service providers' liability for the TDL because the revenue received from supplying telecommunications services (if any) must be included in the service providers' financial statements under section 6 of the Financial Reporting Act 2013.

Clause 7 amends section 81(2), which provides a power for the Commerce Commission to require a telecommunications service provider to provide preliminary financial information so that the Commission can determine whether the provider is liable to pay the TDL. Currently, the information that the Commission may require relates to a financial year beginning on 1 July and ending on 30 June (as defined in section 5). The amendment enables the service provider to use a year-end date that corresponds to the provider's own financial year, with the effect of enabling it to avoid the compliance burden of preparing separate financial statements for the purposes of assessing whether it is liable for the levy in the first place.

Clause 8 amends section 83, which requires liable persons to provide the Commerce Commission with information for the purposes of the Commission's liability allocation determination and to produce a qualified auditor's report that includes a statement of the extent to which the information provided is correct and complete. The amendment has the effect of removing the "correct and complete" standard and enabling the Commission to determine the standard that the report must comply with, in line with the type of entity that the liable person is and the information that it may be required to produce under section 83(1)(a).

Clause 9 repeals section 91(2), which requires the Commerce Commission to publicly notify the liability allocation determination for the final TDL before publicly notifying the final telecommunications service obligations cost calculation determination (the **TSO cost calculation determination**). This has the effect of enabling the Commission to finalise the TSO cost calculation determination before the TDL liability allocation and avoid delaying the TDL funds becoming available for the purposes set out in section 90 (including paying TSO charges to TSO providers).

Amendments to Part 4 (networks)

Clause 10 replaces subpart 3 of Part 4. The new subpart (incorporating *new sections 155A to 155ZP*) provides a framework of rights for fibre-to-the-premises (**FTTP**) service providers and network operators to access land and buildings for the purpose of installing fibre optic media (and other new technology that may be prescribed by regulations) in situations where they would otherwise be required to obtain the consent of multiple parties. Examples include—

- where driveways are shared by several neighbours; or
- where a property is subject to a company share ownership structure (that is, where a building is owned by a flat or office owning company and ownership

of 1 or more specified parcels of shares in the company entitles the shareholder to occupy 1 or more parts of the building corresponding to those shares, such as a flat and a garage, under a licence from the company); or

- where the property to be accessed is a unit title development under the Unit Titles Act 2010.

New section 155A states the purpose of the new subpart.

New section 155B provides an overview of the new subpart.

New section 155C deals with the status of examples that are given in the new subpart.

New section 155D defines various terms used in the new subpart. These include affected person, which refers to a person whose consent an FTTP service provider or network operator would, but for the statutory rights given by the new provisions, be required to obtain before it could access property to carry out an installation.

New section 155E has the effect that if any other technology is prescribed for the purposes of the new subpart, the provisions of the subpart apply to that other technology as well as to fibre optic media.

New section 155F deals with the relationship between the statutory rights of access given by the new subpart and the rights of access that a network operator may have under an order of a District Court made under section 120 (authorising the operator to enter land and construct, lay, or maintain lines) or under section 125 (authorising the operator to access existing works or lines in order to inspect, maintain, or repair those lines). It has the effect of ensuring that the new subpart does not have any impact on the operation of those provisions.

New section 155G provides for the form and manner in which notices under the new subpart must be given.

New section 155H(a) limits how long the statutory rights of access under the new subpart may be used for laying FTTP. The rights apply from the date that the new subpart comes into force until 1 January 2025. If regulations are made prescribing other technology that the rights of access may be used for installing, those rights will apply for the period prescribed in those regulations (*new section 155H(b)*).

New section 155I sets out—

- the nature of the access rights given by the subpart. An FTTP service provider or a network operator may enter a property, at reasonable times, with the persons and the equipment reasonably necessary for carrying out an installation prescribed by regulations as a category 1 or a category 2 installation, and do any work reasonably necessary for that installation; and
- the requirements that must be met before the rights apply, which are that—
 - the general preconditions in *new section 155J* are satisfied, regardless of whether an installation is a category 1 or a category 2 installation. Those preconditions have the effect that no statutory right of access may be exercised under the new subpart unless—

- a person has placed an order with a retail provider for the FTTP service or prescribed other service to be installed; and
- the consent of 1 or more persons would be required to carry out that installation; and
- none of those persons will be liable for any of the costs of the installation; and
- the service provider or network operator is a member of the dispute resolution scheme; and
- the FTTP service provider or network operator has complied with the particular preconditions specified—
 - in *new section 155K*, if the installation is a category 1 installation:
 - in *new section 155L*, if the installation is a category 2 installation:
 - in *new section 155R*, if the installation is in a body corporate administered property.

New section 155K requires the FTTP service provider or network operator intending to enter property and carry out a category 1 installation to give a preliminary notice to each affected person, setting out specified information. However, the service provider or network operator is not required to obtain the consent of any of those persons, and those persons have no right to object to the right of access being exercised.

New section 155L(1)(a) requires the FTTP service provider or network operator intending to enter property and carry out a category 2 installation to give each affected person a preliminary notice and a high-level design plan that set out the information about the category 2 installation specified in *new section 155M*. The notice must be given at least 15 working days before the FTTP service provider or network operator enters the relevant property. *New section 155L(1)(b)* has the effect of precluding a service provider or network operator from exercising a statutory right of access to enter and carry out a category 2 installation if, within that time, it receives a notice of objection that complies with the requirements in *new section 155N*.

New section 155N gives an affected person a right to object to the FTTP service provider or network operator entering the property and carrying out a category 2 installation. The right must be exercised within 15 working days and the objection may be made only on the grounds specified.

New section 155O provides for the effect of an objection if the FTTP service provider, network operator, or person who placed the order for the installation disputes the validity of the objection. The dispute may be referred to the disputes resolution scheme and, until there is a binding resolution of the dispute or an order of a District Court in favour of the service provider, network operator, or person who placed the order, there is no statutory right of access to the property under the new subpart.

New section 155P deems all affected parties to have consented to an FTTP service provider or a network operator entering a property and carrying out a category 2 in-

stallation if it has complied with the general preconditions in *section 155J* and the particular preconditions in *section 155L*.

New sections 155Q to 155X deal with statutory rights of access to carry out installations in multi-unit properties that are administered by a body corporate. They—

- provide a separate statutory right of access for FTTP service providers and network operators to enter common areas of the property that unit owners are able to freely access on a day-to-day basis, in order to inspect the property and design an installation (*new section 155Q*);
- require the FTTP service provider or network operator to satisfy the preconditions for a category 2 installation, regardless of whether the installation is a category 1 or category 2 installation (*new sections 155R and 155S*);
- provide grounds for objecting to an installation that are additional to the grounds set out in *new section 155N* (*new section 155T*);
- empower the FTTP service provider or network operator to extend the time for objecting to an installation (*new section 155U*);
- provide for an FTTP service provider or a network operator who disputes the validity of a body corporate's objection to refer the dispute to the disputes resolution scheme and preclude the service provider or network operator from accessing the property in reliance on a statutory right of access under the subpart until the dispute is resolved in favour of the service provider or network operator (*new section 155V*);
- require the body corporate, within 10 working days after lodging an objection, to notify all unit owners of its reasons for deciding to object (*new section 155W*);
- deem a body corporate to have consented to an installation if the general and particular preconditions are met (which include that the body corporate has not lodged an objection) (*new section 155X*).

New sections 155Z to 155ZB set out requirements that FTTP service providers and network operators must comply with when exercising the statutory rights of access under the new subpart. These include—

- giving reasonable notice before entering a property:
- entering only at reasonable times:
- restrictions on persons authorised to enter:
- requirements for authorised persons to produce evidence of their identity and authority:
- using or blocking access areas only for the period of time reasonably necessary to complete the installation, as prescribed by regulations:
- reinstating the property on completion of the installation.

New section 155Y applies the requirements to both category 1 and category 2 installations.

New section 155ZC deals with installations that involve 1 or more affected persons but that are not category 1 or category 2 installations. It confirms that the statutory rights of access given by the new subpart do not apply. The FTTP service provider or network operator must therefore comply with the usual legal requirements that would apply in relation to the particular property in order to access it and carry out the installation. This may include the FTTP service provider or network operator applying for an order of a District Court (*see new section 155F*).

New sections 155ZD and 155ZE provide for statutory rights of access for FTTP service providers and network operators to re-enter shared property or the common areas of premises for the purpose of inspecting, maintaining, repairing, or upgrading the network (including any network or part of a network using prescribed other technology) if certain preconditions are met.

New section 155ZF prevents a person who owns land that has a fibre installation fixed to it, or installed under or over it, from claiming an interest in that work or installation against the FTTP service provider or network operator who carried it out. The protection applies only if the service provider or network operator carried out the installation in reliance on a statutory right of access under the new subpart and did not breach legal rights or obligations in doing so.

New sections 155ZG to 155ZM and new Schedule 3C provide for a scheme for resolving disputes relating to the statutory rights of access given by the new subpart. This includes a right of appeal to a District Court against determinations made under the scheme in favour of service providers or network operators (*new sections 155ZK and 155ZL*).

New section 155ZN provides for all FTTP service providers and network operators to pay a prescribed levy to meet the costs of establishing and operating the dispute resolution scheme if that scheme is the regulated scheme (prescribed by regulations under *clause 16 of new Schedule 3C*).

New section 155ZO comprises regulation-making powers. These provide for methods of installation to be prescribed as category 1 or category 2 installations for the purposes of the new subpart, depending on the impact that the method of installation may have on the property, and for other matters to be prescribed by regulations for the purposes specified in the section.

New section 155ZP grants the body corporate of a unit title development an exemption from the duty to maintain fibre networks installed as part of the UFB initiative (which would otherwise arise under the Unit Titles Act 2010).

Amendments to Part 4AA (services provided using networks developed with Crown funding: undertakings regime and Commerce Act 1986 authorisations)

Clauses 11 to 13 amend section 156AB, which is the interpretation section for Part 4AA of the Act, and subpart 6 of that Part, so that statutory authorisations given by subpart 6 in respect of the Ultra-fast Broadband Initiative apply also to the extension to that competitive tender programme, known as UFB 2, and partners in that extension programme comply with the same open access undertakings and requirements

to provide specified information to the Commerce Commission as partners in the original programme.

Part 2

New schedules concerning transitional and related matters and dispute resolution scheme

Clause 14 inserts *new Schedule 1AA*, which deals with transitional, savings, and other matters relating to amendments made to the Act. *Part 1* of the new Schedule relates to the replacement of subpart 3 of Part 4 of the Act by this Bill. It provides options for how FTTP service providers and network operators may proceed in relation to consent processes begun, but not completed, at the time that the replacement subpart comes into force. It also provides for certain actions relating to the process of approving a dispute resolution scheme to be taken by the Minister before *new Schedule 3C* comes into force. These include providing information to potential scheme providers about what must be included in an application to become the scheme provider, seeking and accepting applications for approval as scheme provider, and consulting industry bodies for the telecommunications industry and other persons (*clause 6*).

Clause 15 inserts *new Schedule 3C*, which deals with—

- the purpose of the dispute resolution scheme (*clause 1*);
- the process for approving a dispute resolution scheme as the approved scheme (*clauses 3 to 6*);
- preventing the rules of the approved scheme being changed without the Minister being notified beforehand (*clause 7*);
- the grounds on which and the process by which the Minister may withdraw approval for an approved scheme (*clauses 8 to 11*);
- what must be contained in the rules of the scheme (*clause 12*);
- requirements for the scheme provider to keep and publish a list of members of the scheme (*clause 13*), provide reports of reviews of the scheme to the Minister (*clause 14*), and provide certain information to the Minister on request (*clause 15*);
- the process for establishing a regulated scheme as the disputes resolution scheme by the making of regulations, on the Minister's recommendation, setting out the rules of the scheme (*clause 16*) and the making of an Order in Council, on the Minister's recommendation, appointing a person to provide the regulated scheme (*clause 17*);
- a requirement that the Minister give notice to an appointed scheme provider before recommending that the provider's appointment be revoked (*clause 18*).

Hon Amy Adams

Telecommunications (Property Access and Other Matters) Amendment Bill

Government Bill

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	New Schedule 1AA inserted	
	Schedule 2	
	New Schedule 3C inserted	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Telecommunications (Property Access and Other Matters) Amendment Act **2016**.
- 2 Commencement** 5
This Act comes into force on the 15th day after the date on which it receives the Royal assent.
- 3 Principal Act**
This Act amends the Telecommunications Act 2001 (the **principal Act**).

Part 1 10
Amendments to Parts 1, 3, 4, and 4AA

Amendments to Part 1 (preliminary)

- 4 Section 4 amended (Overview)**
After section 4(g), insert:

	(gaaa) subpart 3 of Part 4 sets out provisions granting statutory rights of access to property for the purpose of installing certain fibre optic and other technology in circumstances where the consent of multiple parties would otherwise be required, together with provisions for establishing a dispute resolution scheme to deal with disputes relating to those rights of access (<i>see also</i> Schedule 3C); and	5
5	New section 7A inserted (Transitional, savings, and related provisions) After section 7, insert:	
7A	Transitional, savings, and related provisions The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.	10
	<i>Amendments to subpart 2 of Part 3 (amounts payable by liable persons to the Crown)</i>	
6	Section 80 amended (Interpretation) In section 80, replace the definition of financial statements with: financial reporting standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013 financial statements — (a) has the same meaning as in section 6 of the Financial Reporting Act 2013, unless section 79 applies; and (b) if section 79 applies and an applicable financial reporting standard requires the bodies corporate to produce group financial statements (within the meaning of section 7 of the Financial Reporting Act 2013), means those financial statements	15 20
7	Section 81 amended (Subpart does not apply to certain liable persons) Replace section 81(2)(a) with: (a) the person’s financial statements for the year preceding financial year A, which may be the financial statements for— (i) the financial year as defined in section 5; or (ii) if the person has a different accounting period, the relevant period for that person, provided that the financial statements are for a period of 12 consecutive months ending not more than 6 months before 30 June in the year preceding financial year A; and	25 30
8	Section 83 amended (Liable persons must produce information for purposes of liability allocation determination)	35
(1)	Replace section 83(1)(b) with:	

- (b) either—
- (i) a report on the information provided by the liable person under subsection (1)(a), prepared by a qualified auditor in accordance with an auditing and assurance standard, issued under section 12 of the Financial Reporting Act 2013, as specified by the Commission; or
 - (ii) an alternative form of assurance, as specified by the Commission.
- (2) Repeal section 83(2).
- 9 Section 91 amended (Commission must notify final liability allocation determination before notifying TSO cost calculation determination)** 10
- Repeal section 91(2).

Amendments to Part 4 (networks)

10 Subpart 3 of Part 4 replaced

Replace subpart 3 of Part 4 with:

Subpart 3—Access to property, involving rights of multiple parties, to
deploy fibre optic media and other technology 15

Preliminary

155A Purpose

The purpose of this subpart is to enable more people and businesses to obtain the benefits of fibre-to-the-premises and other technology, within a shorter time frame, by— 20

- (a) recognising that when more than 1 person’s consent is required for an FTTP service provider or a network operator to access property and there are difficulties in obtaining those consents, the process of installing infrastructure (such as fibre optic media) is delayed and opportunities to realise the benefits of that technology are missed; and 25
- (b) providing for a tiered system of statutory rights of access—
 - (i) that FTTP service providers and network operators may use to access property and carry out installations in those situations; and
 - (ii) that imposes different requirements for different methods of installation in order to ensure that the requirements are appropriate to the methods and their impact on the property; and 30
- (c) providing for a scheme for efficiently and effectively resolving disputes that may arise about rights and obligations under this subpart.

155B Overview

- (1) This subpart—
- (a) provides statutory rights of access that FTTP service providers and network operators may use to access certain private property in order to install, maintain, repair, and upgrade fibre optic media in circumstances where, but for those rights, the service providers or network operators would need to obtain the consent of 1 or more persons (an **affected person**) to enter the property and carry out that work (for example, where a driveway is shared by several neighbours, or where a building is a company share property or part of a unit title development); and
 - (b) enables the statutory rights of access to be applied to network operators that install prescribed other technology (*see sections 155E and 155Z0(1)(b)*); and
 - (c) sets out general preconditions for the statutory rights of access to apply, including that the installation does not involve affected persons paying for any costs of the installation (*see section 155J*); and
 - (d) sets out particular preconditions that an FTTP service provider or a network operator must satisfy before exercising the statutory rights, and those preconditions—
 - (i) depend on whether the method that the service provider or network operator intends to use for installing the fibre optic media or prescribed other technology is prescribed as a category 1 installation or category 2 installation:
 - (ii) require the service provider or network operator to give every affected person a preliminary notice of its intention to enter property and carry out a category 1 installation, but do not require it to obtain any affected person’s consent (*see section 155K*):
 - (iii) require the service provider or network operator to give every affected person a preliminary notice of its intention to enter a property and carry out a category 2 installation and, unless the affected person objects within the time allowed, deem each affected person to have consented to the entry and installation (*see sections 155L to 155P*):
 - (iv) in the case of a body corporate administered property, require the service provider or network operator to satisfy the preconditions for a category 2 installation, regardless of whether the installation is a category 1 or a category 2 installation (*see sections 155Q to 155X*); and
 - (e) provides for the grounds on which an affected person may object to a category 2 installation and, for body corporate administered properties, also provides additional grounds for objection (*see sections 155N and 155T*); and

- (f) in the case of a body corporate administered property,—
- (i) provides a separate statutory right of access for FTTP service providers and network operators to enter the property in order to design installations (*see section 155Q*); and
 - (ii) requires the body corporate to give to all owners of flats and units forming part of the property the body corporate's reasons for objecting to an installation (*see section 155W*); and
- (g) provides for how FTTP service providers and network operators must exercise their statutory rights of access (*see sections 155Z to 155ZB*); and
- (h) for non-prescribed methods of installation, confirms that the rights that an FTTP service provider or a network operator has to enter property and carry out work for the purposes of the installation are the rights (if any) that it has under the general law and any relevant enactments (*see section 155ZC*); and
- (i) provides for statutory rights of access for FTTP service providers and network operators to re-enter property for the purpose of inspecting, maintaining, repairing, or upgrading all or part of a fibre-to-the premises access network if certain preconditions are met (*see sections 155ZD and 155ZE*); and
- (j) provides for a dispute resolution scheme to be established for resolving disputes relating to the statutory rights of access given by this subpart (*see sections 155ZG to 155ZN and Schedule 3C*); and
- (k) provides for methods of installation to be prescribed as category 1 or category 2 installations for the purposes of the subpart, depending on the impact that the method of installation may have on the property, and for other matters to be prescribed by regulations for the purposes specified in *section 155ZO*; and
- (l) grants the body corporate of a unit title development an exemption from the duty to maintain fibre networks installed as part of the UFB initiative (which would otherwise arise under the Unit Titles Act 2010) (*see section 155ZP*).
- (2) This section is a guide only to the general scheme and effect of this subpart.

155C Status of examples

- (1) An example used in this subpart is only illustrative of the provision to which it relates. It does not limit the provision.
- (2) If an example and the provision to which it relates are inconsistent, the provision prevails.

155D Interpretation

- (1) In this subpart, unless the context otherwise requires,—

affected person, in relation to property and a category 1 or category 2 installation,—

- (a) means a person whose consent an FTTP service provider or a network operator would, but for this subpart, have to obtain before entering the property or carrying out the installation; and
- (b) does not include the person who placed the order with a retail provider for the FTTP service to be installed

Example

A flat-owning company owns a property comprising a block of 20 flats (and the land on which it is built). It is a company share property.

The flats are situated at the end of a driveway. Three easements over the driveway enable residents of the flats as well as 2 neighbours, each living in a stand-alone house on either side of the driveway, to access their respective properties.

Mark rents one of the flats. He wants an Ultra-fast Broadband connection, so he obtains his landlord's agreement to place an order for an FTTP service to be installed to the flat. Mark, acting as agent for the landlord, places the order with a retail provider.

To get fibre optic media from the road through to Mark's flat, the FTTP service provider has to use a method of installation that depends on the service provider being able to carry out work on the driveway.

The body corporate and the neighbours on either side of the driveway are the only affected persons in relation to the installation. This is because they are the persons whose consent to the entry and installation would be required at law,—

- in the case of the body corporate, as the owner of the property in which the installation is to be carried out and also as a person with rights under an easement over the driveway;
- in the case of each of the 2 neighbours, as persons with rights under their easements over the driveway.

Mark's landlord, on whose behalf Mark is acting when he places the order for an FTTP service, is not an affected person because of the exclusion in **paragraph (b)**.

Mark is not an affected person because he does not have any legal interest in the flat and is therefore not a person whose consent the FTTP service provider would have been required to obtain were it not for this subpart.

body corporate administered property means—

- (a) a company share property;
- (b) a unit title development;
- (c) real property owned under another legal structure (if any) that—
 - (i) comprises 2 or more distinct units (for example, within a building) or a group of buildings used communally; and

(ii)	is administered by a body corporate	
	category 1 installation means a method of installation prescribed as a category 1 installation	
	category 2 installation means a method of installation prescribed as a category 2 installation	5
	company share property means a building (including the land on which it is sited) owned by a flat or office owning company (within the meaning of Part 7A of the Land Transfer Act 1952) that issues licences to shareholders to occupy or use specified residential flats or offices forming part of the building	
	dispute resolution scheme has the same meaning as in section 155ZG	10
	fibre-to-the-premises access network has the same meaning as in section 156AB	
	FTTP service means a telecommunications service delivered over fibre optic media to an end-user's premises	
	FTTP service provider means the owner or operator of a fibre-to-the-premises access network	15
	installing and carrying out an installation , in relation to fibre optic media or other prescribed technology, includes maintaining, repairing, and upgrading that media or technology	
	maintenance has the same meaning as in section 117	20
	non-prescribed installation means a method of installation that is not prescribed as a category 1 or a category 2 installation	
	prescribed means prescribed by regulations made under section 155ZO or clause 16 of Schedule 3C	25
	prescribed other technology means technology prescribed under section 155ZO(1)(b)	
	property means real property	
	UFB initiative has the same meaning as in section 156AB	
	unit owner includes a person who is a shareholder in a flat or office owning company (within the meaning of Part 7A of the Land Transfer Act 1952) and who has a licence to occupy or use a specified residential flat or office forming part of a building under a licence from the company	30
	unit title development has the same meaning as in section 5(1) of the Unit Titles Act 2010.	
(2)	In this subpart, unless the context otherwise requires, a reference to a person who places an order for an FTTP service to be installed is a reference to the owner of the property (or, in the case of a body corporate administered property, the unit owner) to which the order relates, regardless of whether the owner places the order himself or herself or authorises another person (for example, a tenant) to place the order as agent on the owner's behalf.	35 40

155E References to fibre optic media, etc, include other prescribed technology

In this subpart, unless otherwise stated or the context otherwise requires,—

- (a) a reference to an installation of fibre optic media or an FTTP service includes a reference to the installation of a prescribed other technology or a service involving the installation of a prescribed other technology; and
- (b) a reference to a fibre-to-the premises access network includes a reference to a network comprising prescribed other technology or of which prescribed other technology forms a part.

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155F Relationship with other statutory rights of access

This subpart does not limit the statutory rights of access in sections 120 to 127 (which provide for network operators to apply to a District Court for an order authorising entry to land to perform certain work).

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155G Notices under subpart

A notice required to be given to a person under this subpart must, unless otherwise stated,—

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- (a) be in writing; and
- (b) be given in the prescribed manner.

Nature and application of statutory rights of access under subpart

155H How long statutory rights of access apply for

The statutory rights of access given by this subpart apply,—

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- (a) in relation to FTTP service providers and network operators installing fibre optic media, for the period starting on the date that this subpart comes into force and ending on 1 January 2025; and
- (b) in relation to network operators and installations of prescribed other technology, for the prescribed period.

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155I Nature of statutory rights of access

(1) The statutory rights of access given by this subpart are that an FTTP service provider or a network operator may, for the purpose of carrying out a category 1 or category 2 installation of fibre optic media as part of a fibre-to-the-premises access network,—

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- (a) enter property at reasonable times, and may enter the property with a person who is, or thing that is, reasonably necessary for the purposes of carrying out the installation; and
- (b) perform work that is reasonably necessary for the purposes of that installation.

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(2) The statutory rights of access referred to in **subsection (1)** apply only if—

- (a) the general preconditions stated in **section 155J** are satisfied (regardless of whether the installation is a category 1 or a category 2 installation); and
- (b) the FTTP service provider or network operator has complied with the particular preconditions,—
- 5
- (i) for a category 1 installation, stated in **section 155K**;
- (ii) for a category 2 installation, stated in **section 155L**;
- (iii) for an installation in a body corporate administered property (regardless of whether the installation is a category 1 or a category 2 installation), stated in **section 155R**.
- 10
- (3) If an installation is in a property other than a body corporate administered property and involves both category 1 and category 2 installations, the FTTP service provider or network operator must treat the whole installation as a category 2 installation and (in addition to complying with the general preconditions stated in **section 155J**) must comply with the particular preconditions stated in **section 155L**.
- 15
- (4) A further statutory right of access is given to FTTP service providers and network operators for designing installations in body corporate administered properties (*see* **section 155Q**).
- 155J General preconditions for statutory rights of access to apply**
- 20
- (1) The general preconditions for the statutory rights of access given by this subpart to apply are that—
- (a) a person has, after the commencement of this subpart, placed an order with a retail provider for an FTTP service to be installed; and
- (b) the installation involves 1 or more affected persons; and
- 25
- (c) no affected person is liable to pay for the costs of the installation, or part of those costs, without the affected person's express agreement; and
- (d) the FTTP service provider or network operator carrying out the installation is a member of the dispute resolution scheme.
- (2) In relation to **subsection (1)(a)**, *see* **clauses 2 to 5 of Schedule 1AA**, which provide for how FTTP service providers and network operators may treat orders for FTTP services placed before the commencement of this subpart (as replaced by **section 10** of the Telecommunications (Property Access and Other Matters) Amendment Act **2016**), for the purpose of obtaining access to property.
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*Particular preconditions for category 1 and category 2 installations (in
properties other than body corporate administered properties)*

**155K Particular preconditions before exercising statutory right of access to
carry out category 1 installation**

- (1) Before an FTTP service provider or a network operator enters a property and carries out a category 1 installation under this subpart, the service provider or network operator must first have given a preliminary notice to each affected person. 5
- (2) The preliminary notice must—
 - (a) be given not less than 5 working days before the service provider or network operator enters the property to carry out the installation; and 10
 - (b) state when the service provider or network operator is intending to enter the property and carry out the installation; and
 - (c) include a general explanation of what will be involved in carrying out the installation; and 15
 - (d) identify any access areas that the service provider or network operator may want to use when carrying out the installation; and
 - (e) comply with the prescribed requirements (if any).
- (3) This section does not apply to a category 1 installation in a body corporate administered property (*see sections 155Q and 155R*). 20

**155L Particular preconditions before exercising statutory right of access to
carry out category 2 installation**

- (1) Before an FTTP service provider or a network operator enters a property and carries out a category 2 installation under this subpart, the service provider or network operator must—
 - (a) first have given each affected person a preliminary notice and a high-level design plan of the installation that set out the information described in **section 155M**; and 25
 - (b) not have received an objection under **section 155N** from any affected person. 30
- (2) This section does not apply to a category 2 installation in a body corporate administered property (*see section 155R*).

**155M Requirements in respect of preliminary notice and design plan for
category 2 installations**

- (1) The preliminary notice about a category 2 installation given to each affected person under **section 155L** must—
 - (a) state when the FTTP service provider or network operator is intending to enter the property and carry out the installation; and 35

- (b) include a general explanation of what will be involved in carrying out the installation; and
 - (c) identify any access areas that the service provider or network operator may want to use when carrying out the installation; and
 - (d) set out the grounds on which an affected person may object to the FTTP service provider or network operator entering the property and carrying out the installation under this subpart; and 5
 - (e) state how an affected person may object and the time within which an objection must be made; and
 - (f) comply with the prescribed requirements (if any). 10
- (2) The high-level design plan required under **section 155L(1)(a)** must describe or illustrate—
- (a) where the installation method (or, if more than 1, where each installation method) is to be used on the property; and
 - (b) where the network equipment (if any) associated with that installation method is proposed to be put. 15

Objections to exercise of statutory right of access to carry out category 2 installations

155N Grounds and time for objecting to exercise of statutory right of access to carry out category 2 installation 20

An affected person may, by notice given to an FTTP service provider or a network operator within 15 working days after receiving a preliminary notice and high-level design plan for a category 2 installation under **section 155L**, object to the FTTP service provider or network operator exercising a statutory right of access to enter property and carry out the installation on 1 or more of the following grounds: 25

- (a) the person disputes ownership of property that the proposed installation will make use of or disturb:
- (b) the person can demonstrate that the installation will have a materially negative impact on the value of the person's property: 30
- (c) the person can identify ways in which the proposed installation will unreasonably impact on the person's enjoyment of the property, or worsen an existing problem with the property, other than by having a visual impact alone:
- (d) the person can demonstrate that the proposed installation will impede the person's plans for development of the property: 35
- (e) the person has an easement over the property affected and can demonstrate that the proposed installation will have an enduring impact on the terms and conditions of that easement:

(f) the prescribed grounds (if any).

155O Effect of objection to exercise of statutory right of access for category 2 installation

- (1) If the FTTP service provider, network operator, or person who ordered the installation (in each case, **person A**) disputes the validity of an affected person's objection under **section 155N**, person A may refer the dispute to the dispute resolution scheme. 5
- (2) If person A refers the dispute to the dispute resolution scheme, the FTTP service provider or network operator has no statutory right of access to enter the property and carry out the installation unless there is a binding resolution of the dispute under the rules of the scheme or an order of a District Court allows it to exercise that right. 10

155P Deemed consent to category 2 installation

Each affected person is deemed to have consented to an FTTP service provider or a network operator entering the property and carrying out a category 2 installation if the preconditions in **sections 155J and 155L** are satisfied. 15

Statutory rights of access to body corporate administered properties

155Q Statutory right of access to common areas of body corporate administered properties for designing installations

- (1) The statutory right of access given by this section applies after a person has placed an order with a retail provider for an FTTP service to be installed in a body corporate administered property. 20
- (2) For the purpose of inspecting the property to design an installation, an FTTP service provider or a network operator has a statutory right to enter those areas of the property that are owned by the body corporate on behalf of unit owners as common property and that unit owners are able to freely access on a day-to-day basis. 25
- (3) Before entering any other area of the property, the FTTP service provider or network operator must obtain the permission of the body corporate or person with the authority to grant permission to enter that area of the property. 30

Example

The owner of an apartment on the top floor of a 3-storey apartment building places an order with a retail provider for an FTTP service to be installed. There are 3 external access ways on the building, one running along the back of each floor, and external staircases that link the access ways. Apartment owners can use these access ways and stairs to move between floors. The FTTP service provider wants to find out whether it will be possible to carry out the installation to the apartment using external conduit alone. 35

The access ways and staircases are owned and held by the body corporate of the building as common property and there are no barriers restricting free access to 40

those parts of the building. The FTTP service provider therefore has a statutory right to enter the property and inspect the external access ways and staircases up to the top floor for the purposes of finding out whether it will be possible to use external conduit and to design a suitable installation.

155R Particular preconditions before exercising statutory right of access to body corporate administered property for carrying out category 1 and 2 installations 5

Before an FTTP service provider or a network operator enters a body corporate administered property and carries out a category 1 or a category 2 installation in reliance on a statutory right of access under this subpart, the service provider or network operator must— 10

- (a) first have given the body corporate a preliminary notice and high-level design plan in accordance with **section 155S**; and
- (b) not have received an objection under **section 155T**.

155S Requirements in respect of preliminary notice and design plan given to body corporate 15

- (1) The preliminary notice and high-level design plan given to a body corporate about a category 1 or category 2 installation under **section 155R** must include the information set out in **section 155M** as if each reference to an affected person were a reference to the body corporate and each reference to a category 2 installation were a reference to a category 1 or category 2 installation. 20
- (2) However, in complying with **section 155M(1)(d)**, the statement of grounds for objection must include the grounds stated in **section 155T** as well as those in **section 155N**.

155T Grounds and time for body corporate objecting to statutory right of access to carry out category 1 or category 2 installation 25

The body corporate may object to a category 1 or category 2 installation under **section 155R** within the same time and on the same grounds as stated in **section 155N** as well as on 1 or more of the following additional grounds:

- (a) the body corporate considers that the installation will result in unacceptable disruption to the availability of telecommunications services to unit owners: 30
- (b) the body corporate considers that there is a real likelihood the installation as designed would breach 1 or more enactments applying to the body corporate and the property (for example, the Building Code, the Heritage New Zealand Pouhere Taonga Act 2014, or the Health and Safety at Work Act 2015): 35
- (c) the body corporate considers that the proposed installation will prevent it from meeting its existing contractual obligations and the body corporate can provide documentation confirming this: 40

- (d) any prescribed grounds.

155U FTTP service provider or network operator may extend time for body corporate objections

- (1) An FTTP service provider or a network operator may, on its own initiative or at the request of the body corporate, extend the time for a body corporate to object to a category 1 or category 2 installation under **section 155T**. 5
- (2) If a body corporate wants to request an extension under this section, it must do so by giving a notice to the FTTP service provider or network operator before the end of the 15-working-day period allowed for objecting under **section 155T** (as set out in **section 155N**). 10

155V Effect of body corporate objections

If an FTTP service provider or a network operator disputes the validity of a body corporate's objection under **section 155T**,—

- (a) the service provider or network operator may refer the dispute to the dispute resolution scheme; and 15
- (b) **section 155O(2)** applies.

155W Requirement for governing bodies to give unit owners reasons for objections

- (1) A body corporate that objects to an installation under **section 155T** must notify each unit owner of its reasons for deciding to object. 20
- (2) The notice must—
- (a) be in writing; and
- (b) be given not later than 10 working days after the body corporate lodges its objection.

155X Deemed consent of body corporate to category 1 or category 2 installation 25

The body corporate of a body corporate administered property is deemed to have consented to an FTTP service provider or a network operator entering the property and carrying out a category 1 or category 2 installation if the preconditions in **sections 155J and 155R** are met.

Exercising statutory rights of access for category 1 and 2 installations 30

155Y Application of sections 155Z to 155ZB

Sections 155Z to 155ZB apply to category 1 and category 2 installations, regardless of the type of property accessed or to be accessed.

155Z How statutory rights of access must be exercised

- (1) An FTTP service provider or a network operator must comply with the following requirements when exercising its statutory right of access under this subpart to enter property and carry out an installation:
- (a) the owner and the occupier of the property must be given reasonable notice of the service provider's or network operator's intention to enter the property to start the installation; and 5
 - (b) from the start to the completion of the installation, entry to the property must be made at reasonable times; and
 - (c) entry to the property must be made only by an officer, employee, or agent of the service provider or network operator authorised by it in writing; and 10
 - (d) the person authorised to enter must produce evidence of his or her authority and identity if asked to do so.
- (2) In **subsection (1), evidence of authority** has the same meaning as in section 118, with any necessary modifications. 15

155ZA Restrictions on use of access areas during installations

An FTTP service provider or a network operator using an access area to carry out a category 1 or category 2 installation may restrict or block other persons from using the access area only for the prescribed period of time reasonably necessary to complete the installation. 20

155ZB Obligation to reinstate property

An FTTP service provider or a network operator must, as soon as practicable after completing an installation, reinstate the property as closely as reasonably possible to its original condition before the installation. 25

*Non-prescribed installations***155ZC Non-prescribed installations**

If an FTTP service provider or a network operator wants to enter property and carry out a non-prescribed installation involving 1 or more affected persons,—

- (a) none of the statutory rights of access under this subpart applies; and 30
- (b) the service provider or network operator must obtain rights to enter the property and carry out the installation in accordance with the general law and any relevant enactment applying at the time.

Ongoing rights of access to installed fibre infrastructure

155ZD Ongoing rights of access

- (1) The rights of access given by this section are for an FTTP service provider or a network operator to—
- (a) re-enter property for the purpose of inspecting, maintaining, repairing, or upgrading all or any part of a fibre-to-the-premises access network that the service provider or network operator owns and that was installed at any time after 1 July 2012; and 5
 - (b) perform any act or operation necessary for the purpose of inspecting, maintaining, repairing, or upgrading that access network or part of it. 10
- (2) The rights of access apply if—
- (a) the FTTP service provider or network operator entered the property and carried out the original installation after obtaining the consent of 1 or more persons, or entered the property under this subpart; and
 - (b) the FTTP service provider or network operator complies with the conditions in **section 155ZE**; and 15
 - (c) neither of the circumstances in **subsection (3)** applies.
- (3) The rights of access given by this section do not apply if—
- (a) the FTTP service provider or network operator has rights of access equivalent to the rights in **subsection (1)** under 1 or more easements in respect of the part of the fibre-to-the-premises access network that the service provider wants to access; or 20
 - (b) the part of the fibre-to-the-premises access network that the FTTP service provider or network operator wants to access was installed in breach of legal rights or obligations in that the service provider or network operator that carried out the original installation— 25
 - (i) failed to obtain all necessary consents for the installation; or
 - (ii) acted outside the terms of 1 or more consents given by persons in respect of the installation.
- (4) To avoid doubt, this section applies, with all necessary modifications, to a network operator and prescribed other technology that is installed in reliance on the rights of access given by this subpart. 30

155ZE Conditions of ongoing rights

The rights of access given by **section 155ZD** are subject to the following conditions: 35

- (a) entry to the property must be made only by a person who—
 - (i) is an officer, employee, or agent of the FTTP service provider or network operator; and

- (ii) is authorised by the service provider or network operator, in writing, to make that entry; and
- (b) the owner and the occupier of the property must be given reasonable notice of the intention to enter the property; and
- (c) entry must be made at reasonable times; and 5
- (d) the person entering must produce evidence of his or her authority and identity, if asked to do so; and
- (e) the property must be reinstated as provided in **section 155ZB**.

Protection of interests in installations

155ZF Protection of interests in installations 10

- (1) This section applies to a category 1 or category 2 installation that forms part of a fibre-to-the-premises access network, including any work in relation to or in connection with the installation, if—
 - (a) it is fixed to, or installed under or over, land that is not owned by the FTTP service provider or network operator; and 15
 - (b) the FTTP service provider or network operator carried out the installation in reliance on the statutory rights of access given by this subpart (as replaced by **section 10** of the Telecommunications (Property Access and Other Matters) Amendment Act **2016**); and
 - (c) neither of the circumstances described in **section 155ZD(3)** applied in relation to the installation so as to disentitle the FTTP service provider or network operator from exercising those statutory rights of access. 20
- (2) If this section applies,—
 - (a) the installation and work are deemed to be lawfully fixed or installed and continues to be lawfully fixed or installed until the FTTP service provider or network operator decides otherwise; and 25
 - (b) no person other than the FTTP service provider or network operator has an interest in the installation or work by reason only of having an interest in the land.

Compare: 2001 No 103 s 155 30

Dispute resolution process

155ZG Dispute resolution scheme

- (1) The **dispute resolution scheme** is—
 - (a) the approved scheme defined in **clause 2** of **Schedule 3C**; or
 - (b) the regulated scheme provided for in regulations made under **clause 16** of **Schedule 3C**. 35

- (2) The procedures for referring disputes to the dispute resolution scheme are as set out in the rules of the dispute resolution scheme.

Compare: 2010 No 116 s 95

155ZH FTTP service providers and network operators exercising statutory access rights must be members of dispute resolution scheme

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- (1) Every FTTP service provider and network operator that relies on a statutory right of access under this subpart—

(a) in order to install fibre optic media must be a member of the dispute resolution scheme and must remain a member of the scheme until 1 January 2026:

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(b) in order to install a prescribed other technology must be a member of the dispute resolution scheme for the period that—

(i) starts on the day after the date on which the order prescribing that technology as other technology for the purposes of this subpart comes into force; and

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(ii) ends on the date that is 10 years later.

- (2) Despite **subsection (1)**, an FTTP service provider or a network operator does not need to be a member of the dispute resolution scheme if the Minister exempts that person by issuing an individual exemption notice in the *Gazette* that—

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(a) identifies the person that is exempt from the obligation to be a member; and

(b) gives reasons for the exemption.

- (3) The Minister may grant an individual exemption to a person only if he or she is satisfied that membership of the dispute resolution scheme by the person is not necessary in order to meet the purpose of the dispute resolution scheme (as set out in **clause 1 of Schedule 3C**) because—

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(a) that person has permanently stopped carrying out installations; and

(b) all disputes involving that person that have been referred to the scheme (if any) have been dealt with; and

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(c) it is unlikely that other disputes involving that person are yet to be referred to the scheme.

- (4) The Minister may amend or revoke an individual exemption by issuing a notice in the *Gazette* that identifies the exempt participant and gives reasons for the amendment or revocation, but only if the Minister—

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(a) first notifies the exempt person (where possible) of the proposed amendment or revocation and gives the person a reasonable opportunity to comment on the proposal; and

- (b) is satisfied that the amendment or revocation is necessary or desirable in order to meet the purpose of the dispute resolution scheme.
- (5) The Ministry must ensure that an up-to-date list of all exemptions is available at all reasonable times on an Internet site maintained by or on behalf of the Ministry. 5
- Compare: 2010 No 116 s 96
- 155ZI Disputes may be referred to dispute resolution scheme**
- (1) A dispute between the following persons about their rights and obligations under this subpart in relation to an installation may be referred to the dispute resolution scheme by any of the parties to the dispute: 10
- (a) a dispute between an FTTP service provider or a network operator and—
- (i) a person who places an order with a retail provider for an FTTP service to be installed:
- (ii) the body corporate of a body corporate administered property:
- (iii) an affected person; and 15
- (b) a dispute between a person who places an order with a retail provider for an FTTP service to be installed and an affected person.
- (2) **Subsection (1)(b)** does not apply if the person who places the order with the retail provider is a unit owner or person occupying a unit in a body corporate administered property. 20
- (3) Disputes that may be referred to the dispute resolution scheme include disputes about—
- (a) whether a statutory right of access under this subpart applies for an FTTP service provider or a network operator to enter a property and carry out a proposed installation: 25
- (b) the validity of a person's grounds for objecting to an FTTP service provider or a network operator exercising a statutory right of access under this subpart to carry out a category 2 installation (or, in the case of a body corporate administered property, a category 1 or category 2 installation): 30
- (c) whether an FTTP service provider or a network operator has complied with requirements under this subpart when exercising a statutory right of access (including the requirement to reinstate property when an installation is completed):
- (d) other matters provided for in the rules of the scheme. 35

Example

This example refers to the situation set out in the example in **section 155D(1)** concerning the meaning given to the term affected person.

The method that the FTTP service provider has to use in order to get fibre optic media from the road to Mark's flat via the driveway is prescribed as a category 2 installation. The FTTP service provider therefore gives the flat-owning company and each of the 2 neighbours a notice and high-level design plan that set out the information required under **section 155R**.

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Within 15 working days after receiving the notice, one of the neighbours objects, on the grounds that the work involved may worsen a subsidence problem in one corner of that person's property (**section 155N**). The body corporate also objects, on the ground that it considers the installation will result in an unacceptable disruption to telephone services for other flat owners (**section 155T(a)**).

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The FTTP service provider is unable to reach an agreed settlement with either the neighbour or the body corporate concerning the validity of their objections and therefore refers each dispute to the dispute resolution scheme. After further unsuccessful attempts to settle each dispute, the FTTP service provider requests that a determination be made on each dispute under the rules of the scheme.

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The person determining the disputes concludes that there are no grounds for the body corporate's objection. This determination is binding on the FTTP service provider as a member of the scheme (**section 155ZJ(2)**) but not on the body corporate, which can, within 5 working days of being notified of the determination, appeal against it to a District Court (**sections 155ZK and 155ZL**).

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However, the neighbour's objection is determined to be valid, meaning that the FTTP service provider cannot exercise a statutory right of access to carry out the installation. This is binding on the FTTP service provider and it cannot appeal to the District Court (**section 155ZJ(2)**).

The owner of Mark's flat, as the person who placed the order for the installation, does not have a right to refer a dispute to the dispute resolution scheme, either in relation to the body corporate's objection or in relation to the neighbour's objection (**subsection (2)** of this section). Any dispute between the owner of Mark's flat and the body corporate over the body corporate's objection to the FTTP service provider entering the block of flats and carrying out the installation would be a matter to be resolved in accordance with the relevant provisions (if any) of the owner's licence and the rules of the body corporate (or, if the flat is part of a unit title development instead of a company share property, in accordance with the provisions of Part 4 of the Unit Titles Act 2010).

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Mark does not have any right to refer a dispute to the dispute resolution scheme under this section either. He is not the person who placed the order for the installation (see **section 155D(2)**) and he is not an affected person (see **section 155D(1)**).

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155ZJ Determinations binding on members and certain other parties

(1) This section applies if a dispute is referred to the dispute resolution scheme and a determination is made on the dispute under the rules of the scheme.

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(2) The determination is binding on each party to the dispute that is a member of the dispute resolution scheme (except to the extent that it may be modified by a District Court under **section 155ZM(3)**), and the scheme member has no right of appeal against the determination.

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- (3) The determination is binding on each party to the dispute who is not a member of the dispute resolution scheme, except if one of those parties lodges an appeal against the determination under **section 155ZK** and the court modifies or reverses the determination.

155ZK Appeals against determinations

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- (1) A party to the dispute that is not a member of the scheme may, within the time allowed under **section 155ZL(1)**, appeal to a District Court against a determination.
- (2) The court may confirm, modify, or reverse the decision appealed against.
- (3) The decision of the court on the appeal is binding on all persons named as parties in the determination, and there is no right of appeal against the court's decision.

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155ZL Procedure on appeal

- (1) An appeal under **section 155ZK** must be brought and determined in accordance with the rules of court, except that—
- (a) an appeal must be brought within 5 working days after the determination appealed against is notified to the party wanting to lodge the appeal, or any further time the court allows on an application made before or after that period ends; and
- (b) the dispute resolution scheme, as the maker of the determination appealed against, is not entitled to be represented at the hearing of the appeal; and
- (c) the court on appeal may not refer the determination back to the dispute resolution scheme for any purpose.
- (2) The court may hear all evidence provided and representations made by or on behalf of any party to the appeal that the court considers relevant to the appeal, whether or not the evidence would be admissible in a court.

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155ZM Compliance with rules, binding settlements, and determinations

- (1) Members of the dispute resolution scheme and each party to a dispute that is referred to the scheme must comply with the rules of the scheme.
- (2) On the application of the person responsible for the dispute resolution scheme, a District Court may require a member of the dispute resolution scheme or other person who is a party to a dispute to—
- (a) comply with the rules of the scheme;
- (b) comply with the terms of a binding settlement or determination made under the rules of the scheme.
- (3) If the District Court is satisfied that the terms of a binding settlement or determination are manifestly unreasonable, the court's order under **subsection (2)(b)** may modify the terms of the binding settlement or determination, but

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only to the extent that the modification results in a binding settlement or determination that could have been made under the dispute resolution scheme.

- (4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by a District Court for the payment of a sum of money. 5
- (5) A reference in this section to a member includes a reference to a person who was a member of the dispute resolution scheme at the relevant time but is no longer a member at the time of the application or order. 10

Compare: 2010 No 116 s 97 10

155ZN Levy for regulated dispute resolution scheme

- (1) This section applies if the dispute resolution scheme is the regulated scheme.
- (2) Every FTTP service provider and network operator (or a prescribed class of those persons) must pay to the Minister in each financial year or part financial year (as the case may require) a prescribed levy. 15
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy.
- (4) The levy must be prescribed on the basis that the costs of establishing and operating the dispute resolution scheme should be met fully out of the levy.
- (5) The Governor-General, in making regulations under this section, has the same powers as those set out in section 11(3). 20

Regulations and exemption

155ZO Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with **subsections (2) to (4)**, make regulations for all or any of the following purposes: 25
- (a) prescribing, for the purposes of **section 155G**, how notices may or must be given and other matters relating to that procedure (including when the notice is treated as having been received or as having been given for the purposes of this subpart): 30
- (b) prescribing other technology for the purposes of this subpart:
- (c) prescribing how long statutory rights of access apply for a prescribed other technology for the purposes of **section 155H(b)**:
- (d) prescribing requirements for preliminary notices for the purposes of **section 155K(2) or 155M(1)**: 35
- (e) prescribing methods of installations as category 1 installations for the purposes of this subpart:

- (f) prescribing methods of installations as category 2 installations for the purposes of this subpart:
- (g) prescribing grounds on which affected persons may object to category 2 installations for the purposes of **section 155N**:
- (h) prescribing grounds on which the body corporate of a body corporate administered property may object to a category 1 or category 2 installation for the purposes of **section 155T**: 5
- (i) prescribing when grounds for objection apply, do not apply, or apply with modifications:
- (j) prescribing periods of time reasonably necessary to complete category 1 and category 2 installations for the purposes of **section 155ZA**: 10
- (k) prescribing fees payable by scheme members in respect of any matter relating to disputes under this subpart, or the manner in which such fees may be calculated:
- (l) prescribing how information may or must be given to, provided to, or served on any person under this subpart and other matters relating to that procedure (including when the information is treated as received or as having been given, provided, or served for the purposes of this subpart and the regulations). 15
- (2) Before recommending regulations prescribing other technology under **subsection (1)(b)**, the Minister must— 20
- (a) consult the persons or organisations that appear to the Minister to be representative of the interests of those persons likely to be substantially affected by the regulations; and
- (b) be satisfied that the technology proposed— 25
- (i) is to be deployed on a large scale; and
- (ii) will provide benefits to New Zealand; and
- (iii) cannot be installed without the consent of multiple parties first being obtained and this requirement is preventing, or is likely to prevent, the benefits to New Zealand of the technology being realised. 30
- (3) Before recommending regulations prescribing a method of installation as a category 1 installation under **subsection (1)(e)**, the Minister must be satisfied that the installation will not have any lasting, substantial, physical impact on the property. 35
- (4) Before recommending regulations prescribing a method of installation as a category 2 installation under **subsection (1)(f)**, the Minister must be satisfied that—
- (a) any disruption that the installation may cause for users of the property will be temporary; and 40

(b)	any lasting, substantial, physical impact that the installation may have on the property is justifiable in support of the mass market roll-out of a telecommunications network.	
	Examples of category 1 and category 2 installations	
	Examples of category 1 installations are—	5
	<ul style="list-style-type: none"> • an installation that uses existing equipment such as ducts or conduit: • an aerial installation: • an installation that only disturbs soft surfaces and where those surfaces can easily be restored. 	
	Examples of category 2 installations are—	10
	<ul style="list-style-type: none"> • micro-trenching where the width of the cut is not more than the prescribed width: • an installation that is predominantly below the surface, such as directional drilling, where the physical impact is limited to access points, or entry and exit points, that do not exceed the prescribed size: • open trenching where the size of the trench, once reinstated, is not more than the prescribed size. 	15
(5)	A failure to comply with this subsection does not affect the validity of the regulations made.	
	155ZP Exemption from body corporate duties of repair and maintenance	20
(1)	A body corporate is exempted from any obligation to repair and maintain fibre network equipment installed in its complex if that network was installed as part of the UFB initiative.	
(2)	Subsection (1) applies despite—	
	(a) section 138 of the Unit Titles Act 2010:	25
	(b) the terms of any licence, lease, or other instrument that, but for this section, would require a body corporate to repair and maintain that equipment.	
	<i>Amendments to Part 4AA (services provided using networks developed with Crown funding: undertakings regime and Commerce Act 1986 authorisations)</i>	30
11	Section 156AB amended (Interpretation)	
	In section 156AB, replace the definition of UFB initiative with:	
	UFB 2 has the meaning given to it by paragraph (b) of the definition of UFB initiative	
	UFB initiative —	35
	(a) means the competitive tender programme, known as the Ultra-fast Broadband Initiative, to develop fibre-to-the-premises broadband net-	

- works connecting 75% of New Zealand households, with the support of \$1.5 billion of Crown investment funding; and
- (b) includes the extension to that programme, known as UFB 2, to develop fibre-to-the-premises networks connecting at least 80% of New Zealand households 5
- 12 Section 156AZC amended (Restrictive trade practices authorisations in respect of participation in Ultra-fast Broadband Initiative)**
- After section 156AZC(2), insert:
- (2A) Despite subsection (2), the authorisations—
- (a) apply to any contract, arrangement, or understanding that is entered into in respect of UFB 2 before the date on which this subsection comes into force, as if the authorisation were in force at the time of the entry; but 10
- (b) do not apply to any contract arrangement or understanding in respect of UFB 2 that is entered into more than 2 years after the date on which this subsection comes into force. 15
- 13 Section 156AZD amended (Business acquisition authorisations in respect of participation in Ultra-fast Broadband Initiative)**
- (1) In section 156AZD(2), after “the date on which this section comes into force”, insert “, except an acquisition under UFB 2”.
- (2) After section 156AZD(2), insert: 20
- (2A) The authorisations do not apply to any acquisition under UFB 2 that is made more than 2 years after the date on which this subsection comes into force.
- (3) After section 156AZD(3), insert:
- (3A) However, if the authorisations are for any acquisitions under UFB 2, the authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 67(3)(b) of the Commerce Act 1986 on the date on which this subsection comes into force. 25

Part 2

New schedules concerning transitional and related matters and dispute resolution scheme 30

- 14 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.
- 15 New Schedule 3C inserted**
- After Schedule 3B, insert the **Schedule 3C** set out in **Schedule 2** of this Act. 35

Schedule 1
New Schedule 1AA inserted

s 14

Schedule 1AA
Transitional, savings, and related matters

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s 7A

Part 1
**Provisions relating to Telecommunications (Property Access and
Other Matters) Amendment Act 2016**

- 1 Interpretation** 10
- In this Part,—
- amendment Act** means the Telecommunications (Property Access and Other Matters) Amendment Act **2016**
- commencement date** means the date on which new **subpart 3 of Part 4** comes into force 15
- consent process**, in relation to an installation, means the process of sending to each affected party a request for that person’s consent to the FTTP service provider or network operator entering the relevant property and carrying out the installation
- new subpart 3 of Part 4** means **subpart 3 of Part 4** of the principal Act as replaced by **section 10** of the amendment Act 20
- principal Act** means the Telecommunications Act 2001.
- Orders for FTTP services placed before commencement of new subpart 3 of Part 4: transitional provisions*
- 2 Application of clauses 3 to 5 to installations ordered before commencement date** 25
- Clauses 3 to 5** apply to an FTTP service provider or a network operator and an installation of an FTTP service where—
- (a) the order for the installation was placed with a retail provider before the commencement date; and 30
- (b) the installation is prescribed as a category 1 or category 2 installation for the purposes of **new subpart 3 of Part 4**.

3	New subpart 3 of Part 4 applies if consent process not begun as at commencement date	
	If the consent process has not begun as at the commencement date, then, despite section 155J(1)(a) , new subpart 3 of Part 4 applies as if the order had been placed after the commencement date.	5
4	FTTP service provider or network operator may elect to use statutory procedure if consent process begun but not responded to as at commencement date	
(1)	If the consent process has begun as at the commencement date but no affected person has responded to the request for consent by that date, the FTTP service provider or network operator may elect to—	10
	(a) obtain the necessary consents by continuing the process already begun; or	
	(b) meet the preconditions for exercising a statutory right of access under new subpart 3 of Part 4 by—	15
	(i) giving affected persons the notice and the further information required under section 155K, 155L, or 155R (whichever applies) as documents in substitution for the request for consent previously made; and	
	(ii) proceeding in accordance with new subpart 3 of Part 4 .	20
(2)	Subclause (1)(b) does not affect the application of section 155J (general preconditions for statutory rights of access to apply) except to the extent that section 155J(1)(a) requires the order for the installation to have been placed after the commencement date.	
5	Consent process begun and some responses received	25
(1)	If, as at the commencement date, the consent process has begun and some affected persons have given their consent but others have not responded to the request for consent, the FTTP service provider or network operator may elect to—	
	(a) obtain the consents of those who have not responded, by continuing the process already begun; or	30
	(b) meet the preconditions for exercising a statutory right of access under new subpart 3 of Part 4 by—	
	(i) giving to the affected persons who have not responded the notice and the further information required under section 155K, 155L, or 155R (whichever applies) as documents in substitution for the request for consent given before the commencement date; and	35
	(ii) proceeding in accordance with new subpart 3 of Part 4 in respect of those persons.	

- (2) The FTTP service provider or network operator may, at its discretion, accept an affected person's retraction of his or her consent given before the commencement date.
- (3) **Subclause (1)(b)** does not affect the application of **section 155J** (general preconditions for statutory rights of access to apply) except to the extent that **section 155J(1)(a)** requires the order for the installation to have been placed after the commencement date.

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Exercise of Minister's powers in connection with dispute resolution scheme

6 Action taken by Minister on dispute resolution scheme

- (1) **Subclause (2)** applies if, before the commencement of **sections 10, 14, and 15** of the amendment Act, any action is taken by or on behalf of the Minister in doing any of the following:
- (a) notifying in the *Gazette* the information that a person applying for approval of a scheme as the dispute resolution scheme must include in an application:
 - (b) seeking and accepting applications for approval of a scheme as the approved scheme:
 - (c) consulting industry bodies and other persons that the Minister considers would be likely to be substantially affected by a potential approval.
- (2) The action taken is deemed to have been taken by the Minister under, and for the purposes of, **clauses 3 and 4 of Schedule 3C** of the principal Act, before deciding, in connection with the commencement of the amendment Act, to approve a dispute resolution scheme under **clause 5 of Schedule 3C**.

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Schedule 2

New Schedule 3C inserted

s 15

Schedule 3C

Dispute resolution scheme

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s 155ZG

1 Purpose of dispute resolution scheme

- (1) The purpose of the dispute resolution scheme is to ensure that if 2 or more persons have a dispute within **section 155ZI** in relation to an installation, they have access to a dispute resolution scheme for resolving that dispute. 10
- (2) To that end, a scheme is to be established that—
- (a) provides for a range of dispute resolution processes, including facilitative, evaluative, and determinative processes, so that—
- (i) each dispute can be resolved through the process assessed to be the most appropriate to the particular dispute, having regard to the nature and circumstances of that dispute; and 15
- (ii) if the dispute cannot be resolved by agreement between the parties, the dispute is determined by a neutral third party whose decision is legally binding on the FTTP service provider or a network operator (if either is a party to the dispute); and 20
- (iii) the scheme combines both formality and flexibility in a manner most likely to achieve the purposes referred to in **paragraph (b)**; and
- (b) provides for disputes to be assessed promptly after they are received for the purposes of— 25
- (i) identifying the process that is the most appropriate for resolving the dispute; and
- (ii) ensuring that the dispute is resolved within the time provided in the rules of the scheme, whether by agreement between the parties or determination by a neutral third party. 30

2 Interpretation

In this schedule, unless the context otherwise requires,—

affected person has the same meaning as in **section 155D**

approved scheme is the disputes resolution scheme approved by the Minister under **clause 5** (provided that the scheme's approval has not been withdrawn) 35

dispute resolution scheme, at any time, means whichever of the following is in force under this schedule at the time:

- (a) the approved scheme:
- (b) the regulated scheme

installation includes a proposed installation, an installation being carried out, and an installation that is completed (or claimed or disputed to be completed)

member, in relation to the dispute resolution scheme, means an FTTP service provider or a network operator 5

provider, in relation to a scheme, means the person responsible for the scheme

regulated scheme means the scheme provided for in regulations made under **clause 16**.

Approved scheme: approval and withdrawal of approval 10

3 Application for approval

(1) The provider of a scheme may apply to the Minister for approval of the scheme as the approved scheme.

(2) The application must include—

- (a) the rules of the scheme; and 15
- (b) any other information that the Minister, by notice in the *Gazette*, prescribes as being required to be included in an application under this clause; and
- (c) the prescribed fee (if any).

(3) The Minister may ask an applicant to supply any further information or documentation in support of the application. 20

Compare: 2008 No 97 s 51; 1992 No 122 s 4

4 Mandatory considerations for approval

(1) When considering an application under **clause 3**, the Minister must have regard to the following considerations in light of the principles listed in **sub-clause (2)**: 25

- (a) whether the scheme is capable of meeting the purpose of the dispute resolution scheme as set out in **clause 1**:
- (b) the views of persons who are required to be members:
- (c) whether the scheme is capable of dealing with the wide range of disputes that persons and entities are entitled to refer to it: 30
- (d) whether the applicant has adequate funding to enable it to operate the scheme according to its purpose and in accordance with its rules:
- (e) whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme: 35
- (f) whether the rules of the scheme are adequate and comply with—

(i)	the principles listed in subclause (2) ; and	
(ii)	the requirements of clause 12 (rules of approved scheme).	
(2)	The principles are—	
(a)	accessibility:	
(b)	independence:	5
(c)	fairness:	
(d)	accountability:	
(e)	efficiency:	
(f)	effectiveness.	
	Compare: 2010 No 116 s 5	10
5	Minister must decide application for approval	
(1)	After considering an application made under clause 4 , the Minister may—	
(a)	approve the scheme as the approved scheme; or	
(b)	decline the application.	
(2)	The Minister may decide whether to approve the scheme or decline the application only after consulting—	15
(a)	the industry bodies (if any) for the telecommunications industry; and	
(b)	any other persons (or their representatives) that the Minister considers are likely to be substantially affected by the approval.	
(3)	A failure to consult the persons referred to in subclause (2) does not affect the validity of any approval of the scheme.	20
(4)	The Minister may approve a scheme if there is already another approved scheme, but in that case the approval does not take effect until the approval of the other scheme is withdrawn.	
	Compare: 2010 No 116 s 6	25
6	Decision must be notified and publicised	
	The Minister must, as soon as practicable after deciding an application,—	
(a)	notify the applicant of the decision; and	
(b)	if the decision is to approve the application, ensure that the approval is publicised.	30
	Compare: 2010 No 116 s 7	
7	Rules of approved scheme not to change without ministerial approval	
(1)	The rules of the approved scheme must not be changed unless the Minister approves the change.	
(2)	If the provider of the approved scheme notifies the Minister of a proposed rule change, the rule change is deemed to be approved by the Minister 45 days after	35

the date of notification, unless the Minister declines approval within that 45-day period.

- (3) The Minister may decline approval for a rule change only on the grounds that, if the rules were changed as proposed, they would not comply with the principles listed in **clause 4(2)** or the purpose in **clause 1**. 5

Compare: 2010 No 116 s 8

8 Notice of intention to withdraw approval

- (1) If the Minister proposes to withdraw approval for an approved scheme, the Minister must notify the provider. 10

- (2) The Minister's notice must— 10

- (a) state that the Minister intends to withdraw approval of the scheme; and
- (b) identify which of the 1 or more grounds described in **subclause (3)** apply; and
- (c) state why the Minister considers those grounds apply; and
- (d) specify the notice period, which must be at least 3 months, during which the provider may object, under **clause 9**, to the intended withdrawal. 15

- (3) The only grounds for withdrawing approval are as follows:

- (a) the scheme is not, or is no longer, capable of meeting the purpose of the dispute resolution scheme as set out in **clause 1**: 20
- (b) there has been a loss of broad support for the scheme: 20
- (d) there has been a failure to comply with the rules of the scheme: 20
- (d) the provider has not publicised the rules as required by **clause 12(2)**: 20
- (e) the provider has not supplied the Minister with either or both of the following: 25
 - (i) a report of a review as required by **clause 14**: 25
 - (ii) any further information requested by the Minister under **clause 15**: 25
- (f) the provider has not notified the Minister before changing the rules of the scheme as required by **clause 7**: 25
- (g) the scheme no longer complies with the principles listed in **clause 4(2)**. 30

- (4) The Minister's notice may require the provider to—

- (a) notify all members of the Minister's intention to withdraw approval of the scheme; or
- (b) provide the Minister with a list of the names and business addresses of current members so that the Minister can, if the Minister wishes, notify all members of the Minister's intention to withdraw the scheme's approval. 35

Compare: 2010 No 116 s 9

9	Objection to withdrawal of approval	
(1)	During the notice period, the provider may object (with reasons) to the proposed withdrawal of approval.	
(2)	The Minister must consider any objection that is received before the end of the notice period.	5
	Compare: 2010 No 116 s 10	
10	Withdrawal of approval	
(1)	If the Minister has given notice of intention to withdraw his or her approval, the Minister may withdraw the approval at any time after the expiry of the notice period.	10
(2)	When considering whether to withdraw approval, the Minister must have regard to the considerations referred to in clause 4(1) in light of the principles listed in clause 4(2) .	
(3)	The Minister must withdraw the approval of an approved dispute resolution scheme if the provider requests that it be withdrawn, in which case the scheme is no longer approved from the date that is 6 months after the date of withdrawal of approval.	15
	Compare: 2010 No 116 s 11	
11	Effect of withdrawal of approval	
	On the date that the withdrawal of approval of a scheme takes effect, the members of the scheme become members of—	20
(a)	any other approved scheme that is approved with effect from that date; or	
(b)	the regulated scheme.	
	Compare: 2010 No 116 s 12	25
	<i>Approved scheme: rules and obligations</i>	
12	Rules of approved scheme	
(1)	The rules of the approved scheme must provide for, or set out, the following:	
(a)	who may refer disputes to the scheme for resolution:	
(b)	how disputes may be referred to the scheme:	30
(c)	the kinds of disputes that the scheme will deal with:	
(d)	when a dispute referred to the scheme may be investigated under the scheme:	
(e)	that any investigation as part of a process for resolving a dispute must be undertaken in a way that is consistent with the rules of natural justice:	35
(f)	when a neutral third party may make a determination on a dispute referred to the scheme:	

<p>(g) that a hearing for the purposes of making a determination on a dispute is to be conducted on the papers, unless the person making the determination thinks that an oral hearing is required:</p> <p>(h) the procedure for conducting a hearing on the papers:</p> <p>(i) the time within which a determination on a dispute is to be made:</p> <p>(j) that a determination must be made in writing and include the reasons of the decision maker:</p> <p>(k) that, in relation to a dispute, any information may be considered and any inquiry may be made, that is fair and reasonable in the circumstances:</p> <p>(l) the kinds of remedial action that the scheme may require FTTP service providers or network operators to take in order to resolve disputes (for example, a requirement to compensate up to a certain amount stated in the rules, or to carry out reinstatement work, or, in the case of an affected person, to consent to a category 2 installation):</p> <p>(m) when parties to a dispute are bound by an agreement or a determination under the scheme and what rights parties to a dispute (other than scheme members) have to appeal against a determination:</p> <p>(n) that the scheme may stop investigating and resolving a dispute if any party to the dispute takes alternative court action against another party to the dispute:</p> <p>(o) that the scheme will not charge any person (other than a scheme member) a fee for an investigation or assistance to resolve a dispute (including by determination, if the parties to the dispute are unable to resolve the dispute by agreement):</p> <p>(p) how the provider will promote knowledge about, and access to, the scheme to members and persons entitled to make a complaint.</p> <p>(2) The responsible person of the approved scheme must publicise the rules. Compare: 2010 No 116 s 13</p> <p>13 List of members</p> <p>The provider of the approved scheme must maintain and publicise a list of current members of the scheme. Compare: 2010 No 116 s 14</p> <p>14 5-yearly review</p> <p>(1) The provider of the approved scheme must ensure that, 2 years after the scheme starts and at least every 5 years after that, a review of the scheme is carried out and a report of the review is provided to the Minister within 3 months of its completion.</p> <p>(2) The report may be of an independent review or a review by the provider, whichever the Minister thinks appropriate, having regard to all the circumstan-</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p></p> <p>30</p> <p>35</p>
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	ces at the time, including the likely costs associated with an independent review and whether those are justified, having regard to the scheme's operations and performance.	
	Compare: 2010 No 116 s 15	
15	Provision of information	5
(1)	The provider of the approved scheme must, on request by the Minister, provide information on the following:	
	(a) matters relating to the most recent annual report:	
	(b) the scheme's compliance with the principles listed in clause 4(2) .	
(2)	Nothing in this clause or clause 14 authorises a breach of the Privacy Act 1993 or any obligation of confidentiality.	10
	Compare: 2010 No 116 s 17	
	<i>Regulated scheme: rules of scheme and appointment of provider</i>	
16	Regulations setting out rules of regulated schemes	
(1)	The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the regulated scheme.	15
(2)	The regulations must—	
	(a) set out the rules of the scheme, which must comply with clause 12 ; and	
	(b) be consistent with the purpose in clause 1 .	
(3)	Before recommending that regulations be made, the Minister must consult—	20
	(a) the industry bodies (if any) for the telecommunications industry; and	
	(b) any other persons (or their representatives) that the Minister considers are likely to be substantially affected by the recommendation.	
(4)	However, a failure to consult the persons referred to in subclause (3) does not affect the validity of the regulations.	25
	Compare: 2010 No 116 s 18	
17	Order in Council appointing provider of regulated scheme	
(1)	The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint a person to provide the regulated scheme.	
(2)	The Minister may make a recommendation under this clause only if the Minister is satisfied that the person appointed as the provider—	30
	(a) is a formally constituted dispute resolution body; and	
	(b) is capable of providing the scheme in accordance with the purpose in clause 1 and the rules of the scheme.	
	Compare: 2010 No 116 s 19	35

18 Notice of intention to revoke appointment

- (1) An appointment made by Order in Council may not be revoked on the ground that the Minister has approved, or intends to approve, an approved scheme under **clause 5** unless the Minister has given the scheme provider at least 3 months' notice in writing of the intention to revoke the appointment.
- (2) Nothing in this clause limits the grounds on which the Minister may otherwise recommend the revocation of any appointment.

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Compare: 2010 No 116 s 20