

# **Telecommunications (New Regulatory Framework) Amendment Bill**

Government Bill

As reported from the Economic Development, Science and Innovation  
Committee

## **Commentary**

### **Recommendation**

The Economic Development, Science and Innovation Committee has examined the Telecommunications (New Regulatory Framework) Amendment Bill and recommends that it be passed with the amendments shown.

### **The purpose of the bill**

The Telecommunications (New Regulatory Framework) Amendment Bill responds to a statutory review which concluded that regulatory change was needed in view of the major growth in fibre network services and the relative decline in copper fixed line services.

The bill would amend the Telecommunications Act 2001 in the following main ways:

- establishing a new framework for the regulation of fibre fixed line access services from 2020, while keeping regulation of copper fixed line services where no fibre alternatives are available
- removing regulation of copper fixed line services where consumers have a choice to move to regulated fibre services
- establishing and extending consumer safeguards
- streamlining processes to enable a rapid response to any competition problems, particularly in the mobile communications market
- providing more regulatory oversight of the quality of retail services.

## Proposed amendments

This commentary discusses our main recommended amendments. It does not mention minor, consequential, or technical amendments.

### Part 1—Definition of “telecommunication”

Clause 4 would amend some of the definitions in section 5 of the Act. As introduced, it does not change the definition of “telecommunication” in the Act, which currently excludes broadcasting transmission services (except in subpart 2 of Part 4). We believe the current definition could lead to anomalies in the future because of the way technological change (“convergence”) is breaking down the boundaries between providers of broadcasting and telecommunications services.

We recommend inserting clause 4(6) to replace the definition of “telecommunication” in section 5 of the Act with a new definition that includes broadcasting transmission services. We believe this would provide more consistency of treatment between different technologies. The new definition of “telecommunication” would not cover content and aggregation services.

We note that some entities may be required to contribute industry levies as a result of this change to the definition.

### Definition of “fibre network”

We recommend amending the definition of “fibre network” to be inserted into section 5, to ensure that the intended fibre network footprint is regulated under the new regime. Our amended definition would cover an end-user premise or access point, such as a mobile tower, to the defined fibre handover point.

### Part 2AA—Deregulating copper fixed line access services

Clause 7 of the bill would insert new Part 2AA in the Act to deregulate copper fixed line access services in areas where fibre fixed line access services are available.

### Implementation of specified fibre areas

Clause 7, new section 69AB, would give the Commerce Commission responsibility for declaring which geographic areas are “specified fibre areas” where fibre fixed line access services are available to end-users. Under the bill as introduced, an area could not be declared a specified fibre area before the “implementation date” for the new regulatory framework. The bill sets this date as 1 January 2020, but provides for the Minister to delay it by up to 2 years if the Commission requested.

We consider it reasonable to allow for the possibility of copper withdrawal from 1 January 2020, even if the implementation date was deferred beyond this, provided the necessary arrangements and protections were in place. We therefore recommend amending clause 7, new section 69AB(3), so that an area could be declared a specified fibre area from 1 January 2020, rather than only from the implementation date.

We note that Chorus would still need to abide by a code setting out minimum requirements to protect end-users of copper services. It could not withdraw services before a code was in place. (Schedule 3, inserting new Schedule 2A in the Act, provides for the preparation of this copper withdrawal code.) Among other things, the code would require an anchor service or commercial equivalent to be available.

### **Line of business restrictions**

Line of business restrictions are the provisions in the Telecommunications Act that limit the kind of activities that Chorus can be involved in.

The main restriction in the Act is a prohibition on Chorus's involvement in retail activities. As introduced, the bill would retain this restriction, but would remove two other restrictions:

- restrictions on Chorus providing more sophisticated wholesale services (known as “above layer 2” services)
- restrictions on Chorus linking its wholesale service inputs together to provide an end-to-end service which resembles a retail product.

In the bill as introduced, Schedule 5 would remove these restrictions by repealing sections 69R and 69S of the Act.

We considered carefully submissions both for and against repealing these restrictions. We note that the policy rationale for relaxing the restrictions is to encourage innovation. On balance, however, we consider that the potential benefits in terms of innovation and efficiency are outweighed by potential disadvantages from changing Chorus's commercial incentives. Repealing the restrictions would leave Chorus with both the ability and incentive to expand into competitive markets, which risks distorting competition and innovation.

Accordingly, we recommend retaining the existing line of business restrictions (by amending Schedule 5) but giving the Commerce Commission the ability to provide exemptions for particular services on a case-by-case basis after the first regulatory period. We propose to do this by inserting clause 24B, new sections 69SA and 69SB.

## **Part 2—Amendments related to fibre fixed line access services**

### **Date for commencement of new regulatory work**

Clause 17 would amend the provisions in section 12 of the Act relating to levy funding of the Commerce Commission's regulatory activities. To provide more transparency and certainty for the industry about these levies, we recommend that a specific date be set for the start of the first appropriation period, of 1 July 2018. This would also provide certainty for the Commerce Commission to begin preparations for new regulatory work.

We also recommend extending the range of the Commission's work that could be funded from levies. Our proposed changes to clause 17, new section 12(3A), provide for the Minister to levy for Commission work and functions relating to new Parts 2AA and 7, in addition to Part 6 of the Act.

**Definition of “non-discrimination”**

Clause 20 of the bill as introduced would amend the definition of “non-discrimination” in relation to the supply of a relevant service in section 156AB of the Act. This was intended to address an overlap with the “equivalence of inputs” standard, but not to weaken the overall protections in this area. Given concerns raised in submissions, we recommend removing this amendment from the bill as we do not believe it would achieve the intended purpose.

**Part 6—New regulatory framework for fibre fixed line access services**

Clause 23 would insert new Part 6 in the Act, establishing the new regulatory framework for fibre services.

**Purpose of Part 6**

New section 162 states that the purpose of Part 6 is to promote the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes that are consistent with outcomes produced in workably competitive markets. New section 166 would require the Commission and the Minister to seek to best give effect to this purpose in any recommendations, determinations, or decisions.

We recommend amending section 166 to permit the Commission to consider all end-users’ interests, not just the interests of fibre users. This would give the Commission the necessary flexibility to respond to technological change.

**Input methodologies**

Subpart 3 of new Part 6 provides that the Commission would specify in advance the rules and processes (input methodologies) applying to the regulation of fibre fixed line access services. The matters covered include the initial valuation of fibre assets, in respect of which we recommend some amendments, discussed below.

**Asset valuation—treatment of Government funding**

As introduced, the bill does not provide specific guidance on the treatment of the Government’s contribution to the Ultra-Fast Broadband (UFB) build. We consider that it would be helpful to clarify the treatment of concessional funding provided by the Government to regulated suppliers.

We consider it reasonable that asset valuations should give UFB providers the opportunity to recover, through future revenues or prices, the actual financing costs they have incurred. However, we emphasise that recovery should be limited to actual costs. That is, the Commission should take into account the concessional element, and should not assume that commercial financing rates were applied to the whole of the asset base.

To ensure this, we recommend inserting new section 176(3A). This would require the Commission to prevent over-recovery of financing costs by ensuring that revenues set would be no higher than necessary to meet the actual financing costs incurred in re-

spect of the Crown's debt/equity investment. We note that, under this treatment, the principal amount of the debt/equity investment would remain reflected in the value of assets in the asset base.

While supporting the recovery of actual costs, we also note that we do not consider it appropriate for the Crown to protect regulated providers from all risk by guaranteeing that they would necessarily be able to recover all costs. We recommend the insertion of section 176(2A) to make this clear.

### **Information disclosure regulation**

New section 186 sets out the information disclosure requirements that would be imposed on regulated fibre service providers.

We recommend inserting new subsection 186(4) to include some additional safeguards to ensure that any commercially sensitive information disclosed to the Commission is treated confidentially.

We also recommend inserting subsections 188(3) and (4) to provide the Commission with powers to require reconciliation and consolidation of information about services, and combinations of services, regulated under either new Part 6 or Part 4 of the Commerce Act. This would help the Commission to monitor compliance with information disclosure regulation.

### **Application of the Commerce Act 1986**

New section 203 provides that the Commerce Act would not apply when a regulated fibre service provider was complying with an individually prescribed maximum price.

For the avoidance of doubt, we recommend amending this section to make it clear that it would apply only when pricing matched the prescribed maximum price. As introduced, it could be argued that a price lower than the maximum price complied with the prescribed maximum price.

### **Modification of undertakings**

Equivalence of input (EOI) means that all regulated fibre service providers are required to provide the same product, within the same timescales, terms and conditions, and by means of the same systems and processes.

In the bill as introduced, new section 204 provides that if a service is subject to a specified maximum price under the new regime the price equivalence obligation is suspended.

We recommend the insertion of new section 204(2) to make it clear that this suspension of the price equivalence obligation would only apply when prices are not cost reflective.

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

Proposed new section 213 provides for a penalty of up to \$10 million for a breach of price-quality regulation applying to fibre fixed line access services. This is double the

maximum penalty under the Commerce Act and the maximum penalty for breach of information disclosure regulation under Part 6.

We recommend that the penalty be reduced to \$5 million, in line with Part 4 of the Commerce Act.

### **Appeals in relation to Commission determinations**

Section 220 of the bill as introduced would allow a person to appeal to the High Court against any determination of the Commission under Part 6, except a determination relating to information disclosure regulation under section 170, or an input methodology determination under subpart 3.

Regulated suppliers of fibre and retail service providers (RSPs) can appeal Commission determinations. We recommend amending section 220 to make it clear who can appeal.

### **Specified points of interconnection**

As introduced, new section 226 would allow the Governor-General, on the recommendation of the Minister, to make regulations prescribing points of interconnection (POI) for the purposes of establishing fibre handover points.

POIs are the places where the retail service provider's network connects to the wholesale fibre provider's network. A feature of the Ultra-fast Broadband (UFB) architecture is a single POI per candidate area, driving competition and supporting open access.

We consider that specifying POIs is a technical matter that does not warrant the involvement of the Minister or the Governor-General in making regulations. We therefore recommend amending section 226 to allow the Commerce Commission to specify the relevant points of interconnection from time to time by way of public notice, without the need for regulations.

### **Consumer matters**

Clause 33 would insert new Part 7 into the Act. Part 7 relates to consumer matters, and in particular contains provisions regarding retail service quality (RSQ) codes and dispute resolution schemes.

We recommend amending proposed section 227 to make it clear that the purpose of the RSQ code is to ensure that retail telecommunications services meet a quality that reflects end-user demands. This would be consistent with the Part 6 purpose statement relating to quality issues.

We also recommend that the Commission should have powers to require information to assist in its review of RSQ codes, similar to those available to the Commission when it reviews industry dispute resolution schemes.

## **Implementation date for new regulatory framework**

Schedule 1 of the bill would insert new Part 2 into Schedule 1AA of the principal Act.

Clause 7 of new Part 2 would set the implementation date for the introduction of the new regulatory framework as 1 January 2020. However, it would allow the Minister to defer this date by up to 2 years if the Commerce Commission so requested.

We recommend inserting clause 7(1A) to provide that the Minister could only defer the implementation date once.

If the Commerce Commission required an extension to implement the new regulatory framework, we recommend that only those parts of the UFB agreements that required Chorus to supply specified services should be deemed to be extended.

## **Other matters**

### **Anchor services**

The bill enables the Governor-General to make regulations specifying “anchor services” on the recommendation of the Minister. The purpose of the anchor service is to ensure that a voice service and a basic broadband service are available to consumers at reasonable prices, and to provide an “anchor” on the price and quality of other fibre services.

Two fibre anchor products are envisaged for the initial regulatory period: a 100/20Mbps UFB broadband product, and a voice-only UFB product. The actual speeds would be set out in regulations, which would also prescribe the technical specifications and the maximum price of the service.

In our consideration of the bill, submitters raised concerns about how the anchor service prices would be set. It was suggested that consumers could face the risk of a sharp increase in price.

We consider that, if a speed of 100/20Mbps is settled on, consumers should not be exposed to price shocks. However, we understand that consideration is being given to proposing an amendment by way of a Supplementary Order Paper that would provide for a maximum price to be set that is based on the price path published when Chorus launched the service in 2014. This change would ensure that consumers would not be subject to price shocks resulting from any significant increases to fibre prices currently in the market.

### **Deregulation review**

The bill would insert new Subpart 7 in the Act, providing for the Commission to undertake reviews of various aspects of the new regulatory framework. New section 208 provides for the Commission to review whether fibre fixed line access services should be deregulated. This is designed to take into account the changing nature of telecommunications technologies that are possible substitutes for fibre.

New section 222 would give effect to the recommendations of such reviews by allowing for the deregulation of specific providers. We consider that it should also allow for the deregulation of specific markets. We recommend amending section 222 accordingly.



## Appendix

### Committee process

The Telecommunications (New Regulatory Framework) Amendment Bill was referred to the Commerce Committee of the 51st Parliament on 16 August 2017 and reinstated with the Economic Development, Science and Innovation Committee of the 52nd Parliament on 8 November 2017. The closing date for submissions was 2 February 2018. We received and considered 257 submissions from interested groups and individuals. We heard oral evidence from 31 submitters at hearings in Wellington.

We received advice from the Ministry of Business, Innovation and Employment, and the Ministry of Health.

### Committee membership

Jonathan Young (Chairperson)

Tamati Coffey

Paul Eagle

Andrew Falloon

Hon Paul Goldsmith

Gareth Hughes

Melissa Lee

Clayton Mitchell

Dr Parmjeet Parmar

Hon Aupito William Sio



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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon Clare Curran*

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

**1 Title**

This Act is the Telecommunications (New Regulatory Framework) Amendment Act **2017**.

**2 Commencement**

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

(a) **section 11**, in so far as it repeals, in subpart 1 of Part 2 of Schedule 1 of the principal Act, the heading Chorus’s unbundled copper local loop network and each item related to the heading:

(b) **section 11**, in so far as it repeals, in subpart 1 of Part 2 of Schedule 1 of the principal Act, the heading Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange) and each item related to the heading. 10

(2) **Section 35**, in so far as it repeals subpart 3 of Part 4AA of the principal Act, comes into force on **1 January 2022**. 15

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

**3 Principal Act**

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

**Part 1**

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

**4 Section 5 amended (Interpretation)**

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

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

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

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

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

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

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

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

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

**Estimates** means—

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

**fibre fixed line access service—**

- (a) means a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider's fibre network; but
- (b) does not include a telecommunications service provided by a regulated fibre service provider (F) if the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications)

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

**fibre network** means a ~~fibre-to-the-premises access network (as defined in section 156AB)~~ network structure used to deliver telecommunications services over fibre media that connects the user-network interface (or equivalent facility) of an end-user premises or access point to a regulated fibre service provider's fibre handover point

**implementation date** means the later of—

- (a) 1 January 2020; and
- (b) any date specified by the Minister in accordance with **clause 7 of Part 2** of Schedule 1AA

**industry retail service quality code** or **industry RSQ code** means a retail service quality code made by the Forum 5

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

**regulated fibre service provider** means a person who is prescribed in regulations made under **Part 6 section 222** as being subject to 1 or both of the following: 10

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

**retail service quality**, in relation to a telecommunications service, means the quality of retail service provided to an end-user of the service, including in relation to the following: 15

- (a) customer service and fault service levels:
- (b) installation issues:
- (c) contract issues:
- (d) product disclosure: 20
- (e) billing:
- (f) the switching process and related information:
- (g) service performance, speed, and availability

**retail service quality code** means a code of conduct relating to retail service quality that applies to the provision of 1 or more types of telecommunications service 25

**Spark**—

- (a) means Spark New Zealand Limited (the company previously known, before 8 August 2014, as Telecom); and
- (b) includes any of its subsidiaries 30

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

**specified point of interconnection** means the point of interconnection prescribed under **section 226** for the end-user premises or access point

- (2) In section 5, definition of **access provider**, paragraph (b), after “Schedule 3A”, insert “; and”. 35
- (3) In section 5, definition of **access provider**, after paragraph (b), insert:

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- (c) means, in relation to a fibre fixed line access service, the regulated fibre service provider who provides the service
- (4) In section 5, definition of **access seeker**, paragraph (b), after “access seeker”, insert “; and”.
- (5) In section 5, definition of **access seeker**, after paragraph (b), insert: 5
- (c) means, in section 155ZZD, a person who seeks access to a fibre optic cable that must be provided on an open access basis under that section; and
- (d) means, in relation to a fibre fixed line access service, a person who seeks access to the service from the regulated fibre service provider
- (6) In section 5, replace the definition of **telecommunication** with: 10
- telecommunication** means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not
- 5 Section 19 amended (Commission and Minister must consider purpose set out in section 18 and additional matters)** 15
- In section 19, after “this Part”, insert “, **Part 2AA**,”.
- 6 Section 66 amended (Alterations to Part 2 or Part 3 of Schedule 1)**
- (1) In section 66(a)(v)(A), replace “the applicable initial pricing principle” with “any applicable initial pricing principle”. 20
- (2) In section 66(c)(vii), replace “the applicable initial pricing principle” with “any applicable initial pricing principle”.
- 7 New Part 2AA inserted**
- After section 69, insert:
- Part 2AA** 25
- Deregulating copper fixed line access services**
- Subpart 1—Purpose
- 69AA Purpose**
- The purpose of this Part is to—
- (a) deregulate copper fixed line access services in areas where fibre fixed line access services are available; and 30
- (b) provide protections for end-users of copper fixed line access services and certain other designated services in deregulated areas; and

- (c) provide for the Commission to investigate whether the regulation of copper fixed line access services and certain other designated services should be altered.

Subpart 2—Deregulating copper fixed line access services

**69AB Specified fibre areas**

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- (1) The Commission must, before the implementation date and at least annually thereafter, carry out an assessment to determine the geographic areas in which fibre fixed line access services are available to end-users.
- (2) The Commission must, by public notice, declare an area to be a specified fibre area if the Commission determines in an assessment under **subsection (1)** that fibre fixed line access services are available to end-users in the area. 10
- (3) A notice under this section must specify the date on and after which the area is to be a specified fibre area, and that date must not be before ~~the implementation date~~ 1 January 2020.
- (4) A notice under this section may describe an area by any means, including (without limitation)— 15
  - (a) by use of a map; and
  - (b) by a narrative description of the area.
- (5) The Commission must maintain a record of all specified fibre areas that is available, at all reasonable times, for inspection on the Commission’s Internet site in an electronic form that is publicly accessible. 20

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

- (1) This section applies if—
  - (a) Chorus is required by a standard terms determination made under section 30M to supply a copper fixed line access service to an access seeker; and 25
  - (b) Chorus started supplying the service at a time when the end-user’s building (or, where relevant, the building’s distribution frame) was not located in a specified fibre area; and
  - (c) as a result of a notice under **section 69AB**,—
    - (i) the end-user’s building (or, where relevant, the building’s distribution frame) becomes located in a specified fibre area; and 30
    - (ii) the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice.
- (2) Chorus may stop supplying the service referred to in **subsection (1)** only if—
  - (a) Chorus complies with the requirements of the copper withdrawal code in relation to stopping the supply of the service; or 35

(b)	the end-user chooses to have the service disconnected (other than a temporary disconnection).	
(3)	To avoid doubt, Chorus is not required to—	
(a)	supply a service that ceases to be a designated access service in relation to a new end-user; or	5
(b)	resupply a service that Chorus has stopped supplying in accordance with <b>subsection (2)</b> .	
<b>69AD Withdrawal of certain designated access services</b>		
(1)	This section applies if—	
(a)	Chorus is required by a standard terms determination made under section 30M to supply 1 or both of the following services to an access seeker:	10
(i)	Chorus's unbundled copper local loop network:	
(ii)	Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange); and	
(b)	Chorus started supplying the service at a time when the service was a designated access service; and	15
(c)	as a result of <b>section 11</b> of the Telecommunications (New Regulatory Framework) Amendment Act <b>2017</b> , the service ceases to be a designated access service on and after 1 January 2020.	
(2)	Chorus may stop supplying the service referred to in <b>subsection (1)</b> only if—	20
(a)	Chorus complies with the requirements of the copper withdrawal code in relation to stopping the supply of the service; or	
(b)	the end-user chooses to have the service disconnected (other than a temporary disconnection).	
(3)	To avoid doubt, Chorus is not required to—	25
(a)	supply a service that ceases to be a designated access service in relation to a new end-user; or	
(b)	resupply a service that Chorus has stopped supplying in accordance with <b>subsection (2)</b> .	
<b>69AE Application of certain TSO instruments in specified fibre areas</b>		
	Despite anything in this Act, the following TSO instruments cease to apply in relation to an area that becomes a specified fibre area:	30
(a)	Telecommunications Service Obligations (TSO) Deed for Local Residential Telephone Service:	
(b)	Telecommunications Service Obligations (TSO) Deed for TSO Network Service.	35



**69AF Copper withdrawal code**

- (1) In this Part, **copper withdrawal code** means the code approved under **Schedule 2A**, ~~setting out minimum consumer protection requirements for end-users of the following:~~
- (a) ~~copper fixed line access services in areas that become specified fibre areas;~~
  - (b) ~~Chorus's unbundled copper local loop network;~~
  - (c) ~~Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).~~
- (2) **Schedule 2A** sets out the provisions that apply to the copper withdrawal code.

Subpart 3—Price regulated copper services

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

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

- (4) Despite anything in this Act, during the period starting on 16 December 2019 and ending on the close of the day immediately before the copper review date for the relevant service,—
- (a) the determination continues to apply to the relevant service, ~~except that the maximum prices increase or decrease (as appropriate) by an annual CPI adjustment on 16 December in each year;~~ and 5
  - (b) sections 30R and 59 ~~cease to~~ do not apply in respect of the determination.
- (4A) For the purposes of **subsection (4)(a)**,—
- (a) the prices that apply are the year 5 prices specified in the determination; and 10
  - (b) those prices increase or decrease (as appropriate) by an annual CPI adjustment on 16 December in each year.
- (5) On and after the copper review date for a service referred to in **subsection (1) or (3)**,— 15
- (a) the standard terms determination for the service continues to apply; and
  - (b) Part 2 (including sections 30R and 59) applies in respect of the determination; and
  - (c) unless the maximum prices in the determination are amended in accordance with Part 2, the maximum prices under the determination are those that applied immediately before the copper review date. 20
- (6) In this section, **copper review date** for a service means the date on which the Commission completes, in relation to the service,—
- (a) the investigation referred to in **section 69AH(1)(a)**; or
  - (b) any other investigation under Schedule 3 that starts on or after 1 January 2020. 25

#### Subpart 4—Investigation

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

- (1) Despite clause 1 of Schedule 3, the Commission must—
- (a) complete, by no later than 31 December 2025, an investigation under Part 1 of Schedule 3 into whether Schedule 1 should be altered in any of the ways set out in section 66 or 67 in respect of the regulation of the following: 30
    - (i) copper fixed line access services:
    - (ii) Chorus’s unbundled bitstream access backhaul: 35
    - (iii) Chorus’s unbundled copper local loop network co-location:
    - (iv) Chorus’s unbundled copper local loop network backhaul (telephone exchange to interconnect point); or

- (b) provide, within a reasonable time after 31 December 2025, written reasons why there were not reasonable grounds for starting such an investigation.
- (2) An investigation referred to in **subsection (1)(a)** must be completed in accordance with Part 1 of Schedule 3, except that the 240-working-days deadline referred to in clause 4(1) of Schedule 3 does not apply to the investigation. 5
- 8 Section 69XA amended (Interpretation)**
- (1) In section 69XA, definition of **relevant regulated services**, after “access services”, insert “except if those services are services in relation to which the end-user’s building (or, where relevant, the building’s distribution frame) is located in a specified fibre area”. 10
- (2) In section 69XA, definition of **relevant services**, replace paragraph (b) with:
- (b) does not include—
- (i) any services that are agreed by the Commission in writing to be legacy input services, being inputs to services that are no longer offered to end-users other than customers who were end-users before separation day; or 15
- (ii) any services in relation to which the end-user’s building (or, where relevant, the building’s distribution frame) is located in a specified fibre area 20
- 9 Section 157 amended (Regulations)**
- After section 157(ch), insert:
- (ci) prescribing matters for the purposes of the copper withdrawal code:
- 10 Schedule 1AA amended**
- In Schedule 1AA, after Part 1, insert the **Part 2** set out in **Schedule 1** of this Act. 25
- 11 Schedule 1 amended**
- Amend Schedule 1 as set out in **Schedule 2** of this Act.
- 12 New Schedule 2A inserted**
- After Schedule 2, insert the **Schedule 2A** set out in **Schedule 3** of this Act. 30
- 13 Schedule 3 amended**
- (1) In Schedule 3, repeal clause 1(4).
- (2) In Schedule 3, clause 1(7), replace “section 156AP” with “**sections 69AH**, 156AP, and **209**”.
- (3) In Schedule 3, after clause 1(7), insert: 35
- (8) Subclause (3) does not apply in relation to copper fixed line access services.

- (4) In Schedule 3, clause 3(1), replace “must make reasonable efforts to” with “may”.
- (5) In Schedule 3, repeal clause 3(3).
- (6) In Schedule 3, clause 4(1), replace “make reasonable efforts to do the following things not later than 120 working days” with “do the following things not later than 240 working days”.
- (7) In Schedule 3, after clause 4(4), insert:
- (4A) A failure by the Commission to comply with subclause (1) does not invalidate a final report prepared by the Commission.
- (8) In Schedule 3, repeal clause 5.
- (9) In Schedule 3, clause 7(1)(a), replace “at the end” with “after the end”.
- (10) In Schedule 3, clause 7(1)(b), replace “at the end” with “after the end”.
- (11) In Schedule 3, clause 10(1), replace “must make reasonable efforts to” with “may”.
- (12) In Schedule 3, clause 11(1), replace “make reasonable efforts to do the following things not later than 60 working days” with “do the following things not later than 120 working days”.
- (13) In Schedule 3, after clause 11(4), insert:
- (5) A failure by the Commission to comply with subclause (1) does not invalidate a final report prepared by the Commission.
- (14) In Schedule 3, repeal clause 12.
- 14 Schedule 3A amended**
- (1) In Schedule 3A, clause 5(2), delete “after the Commission has made a recommendation under clause 3(2) in respect of that undertaking”.
- (2) In Schedule 3A, after clause 13(2), insert:
- (3) An access provider must not make more than 1 application in relation to a proposed regulatory change.
- (3) In Schedule 3A, repeal clause 16(3).

## **Part 2**

### **Amendments related to fibre fixed line access services**

#### **15 Section 10 amended (Performance of Commission’s functions)**

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

**16 Section 11 amended (Levy)**

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

**17 Section 12 amended (Levy for first financial year or part financial year)**

(1) ~~In the heading to section 12, replace “financial year” with “appropriation period” in each place.~~ 5

(1) Replace the heading to section 12 with “Levy for appropriation period beginning 1 July 2018”.

(2) Repeal section 12(1), (2), and (3).

(3) After section 12(3), insert: 10

(3A) Every service provider, or class of service providers, specified in regulations made under subsection (4) must pay to the Minister, for the ~~first appropriation period or part appropriation period (as the case may require) after the date on which **section 23** of the Telecommunications (New Regulatory Framework) Amendment Act 2017 comes into force~~ appropriation period beginning on 1 July 2018, a levy of an amount stated in, or calculated or set or reset in accordance with, those regulations for, or in connection with,— 15

(a) the preparation of the performance of, and the performance of, the Commission’s functions and duties under ~~Part 6 Parts 2AA, 6, and 7~~; and

(b) the preparation of the exercise of, and the exercise of, the Commission’s powers under ~~Part 6 Parts 2AA, 6, and 7~~. 20

(3B) ~~Subsection (3A) applies irrespective of the fact that the regulations are made and come into effect after the date on which the relevant first appropriation period or part appropriation period commences.~~

(3B) Subsection (3A) applies irrespective of whether that subsection, and the regulations made under subsection (4), come into effect before, on, or after 1 July 2018. 25

(4) In section 12(4)(d), replace “financial year” with “appropriation period” in each place.

(5) After section 12(4), insert: 30

(5) The Minister must not recommend that regulations be made under this section unless the Minister is satisfied that the levy will not require a service provider, or a class of service providers, to pay a levy in respect of the same period under both this section and section 11 for, or in connection with,—

(a) the performance of the Commission’s functions and duties under ~~Part 6 Parts 2AA, 6, and 7~~; or 35

(b) the exercise of the Commission’s powers under ~~Part 6 Parts 2AA, 6, and 7~~.

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

In section 15, insert as subsections (2) ~~and (3)~~ to (4):

- (2) The following provisions of the Commerce Act 1986 apply, with any necessary modifications, as specified in **Part 6** of this Act: 5
- (a) section 77 (additional lay members of High Court for purposes of appellate jurisdiction in respect of Commission determinations):
  - (b) sections 88, 88A, and 90:
  - (c) sections 93 to 97: 10
  - (d) Schedule 5.
- (3) Sections 88 and 88A of the Commerce Act 1986 ~~also~~ apply, with any necessary modifications, as specified in **section 156MD**.
- (4) For the purposes of **subsection (1)(I)**, the necessary modifications referred to in that subsection include (without limitation) treating a notice under any of **sections 10A, 186(1)(c), 192, and 217** of this Act as a notice referred to in section 103(1)(a) of the Commerce Act 1986. 15

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

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

**20 ~~Section 156AB amended (Interpretation)~~** 20

- (1) ~~In section 156AB, definition of **non-discrimination**, after “means”, insert “(except in subpart 4)”.~~
- (2) ~~In section 156AB, definition of **non-discrimination**, delete “, or, where the service provider supplies itself with a relevant service, must not treat itself differently from other access seekers.”.~~ 25

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

After section 156AN, insert:

**156ANA Amendment or consolidation of undertaking**

- (1) The Minister may approve 1 or both of the following: 30
- (a) an amendment to an undertaking, if the amendment is necessary or desirable for the purpose of making the undertaking consistent with this Act:
  - (b) the consolidation of 2 or more undertakings.
- (2) Sections 156AI to 156AK apply, with any necessary modifications, to an amendment or a consolidation as if it were an undertaking. 35

**22 Section 156AX amended (Interpretation of this subpart)**

In section 156AX, insert in its appropriate alphabetical order:

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

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**23 New Part 6 inserted**

After section 161, insert:

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**Part 6**  
**Fibre fixed line access services**

**Subpart 1—General**

**162 Purpose**

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

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

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Compare: 1986 No 5 s 52A

**163 Overview**

(1) In this Part,—

- (a) **subpart 1** contains general provisions and defines terms used in this Part:
- (b) **subpart 2** sets out the different types of regulation that apply under this Part and provides for the Commission to make determinations specifying how each type of regulation applies to regulated fibre service providers:
- (c) **subpart 3** relates to input methodologies and provides for the Commission to determine input methodologies applying to the regulation of fibre fixed line access services:

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- (d) **subpart 4** relates to information disclosure regulation and provides that certain regulated fibre service providers are required to disclose information in accordance with requirements determined by the Commission:
- (e) **subpart 5** relates to price-quality regulation and provides that certain regulated fibre service providers are required to apply the price-quality paths determined by the Commission: 5
- (f) **subpart 6** contains provisions relating to the duration of regulatory periods:
- (g) **subpart 7** relates to the Commission carrying out reviews related to the regulatory framework for fibre fixed line access services: 10
- (h) **subpart 8** contains enforcement provisions and miscellaneous provisions relating to the powers of the Commission, incorporation of material by reference, and the disclosure of commercially sensitive information:
- (i) **subpart 9** contains appeal rights: 15
- (j) **subpart 10** contains order-making and regulation-making powers related to this Part.
- (2) This section is intended only as a guide to the general scheme and effect of this Part. 20  
Compare: 1986 No 5 ss 52, 52B
- 164 Interpretation**
- In this Part, unless the context otherwise requires,—
- anchor service** means a fibre fixed line access service prescribed in regulations made under **section 223** to be an anchor service
- claw-back** has the meaning set out in **section 165** 25
- contract price**, in relation to a service, means the maximum price that may be charged for providing the service in accordance with the contracts between Crown Fibre Holdings Limited Crown Infrastructure Partners Limited and UFB partners that were entered into as part of the UFB initiative
- direct fibre access service** or **DFAS** means a fibre fixed line access service prescribed in regulations made under **section 224** to be a direct fibre access service 30
- first regulatory period** has the meaning set out in **section 205**
- information disclosure requirement** means a requirement that—
- (a) applies to a regulated fibre service provider who is prescribed in regulations made under **section 222** as being subject to information disclosure regulation; and 35
- (b) is specified in a **section 170** determination



**input methodology** means a description of any methodology, process, rule, or matter that includes any of the matters listed in **section 175** and that is published by the Commission under **section 179**

**price**—

- (a) means 1 or more of individual prices, aggregate prices, or revenues (whether in the form of specific numbers, or in the form of formulas by which specific numbers are derived); and 5
- (b) includes any related terms of payment

**publicly disclose**, in relation to information required to be disclosed under information disclosure regulation, means to disclose information to the public in the manner required by a **section 170** determination 10

**quality dimensions** means ~~relevant aspects of~~ measures of the quality of fibre fixed line access services, ~~as set out in an input methodology~~, and may include (without limitation) responsiveness to access seekers and end-users

**section 170 determination** means a determination made by the Commission under **section 170** that sets out how information disclosure regulation or price-quality regulation applies to a regulated fibre service provider 15

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

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

**unbundled fibre service** means a point-to-multipoint layer 1 service (as defined in section 156AB), but subject to the specifications and conditions for the service (if any) prescribed in regulations made under **section 225**. 20

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

- (1) A reference to the Commission applying **claw-back** is a reference to the Commission doing either of the following: 25
  - (a) requiring a regulated fibre service provider to lower its prices on a temporary basis in order to allow end-users to be compensated for some or all of any over-recovery that occurred under the prices previously charged by the regulated fibre service provider: 30
  - (b) allowing a regulated fibre service provider to recover some or all of any shortfall in its revenues that occurred under the prices previously charged by the regulated fibre service provider. 30
- (2) If the Commission requires a regulated fibre service provider to lower its prices, it must also require that the lowering of prices must be spread over time in order to minimise undue financial hardship to the regulated fibre service provider. 35
- (3) If the Commission allows a regulated fibre service provider to recover any shortfall, it must require that any recovery must be spread over time in order to minimise price shocks to end-users. 40

Compare: 1986 No 5 s 52D

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**166 Commission and Minister must consider purpose set out in section 162**

If the Commission or the Minister (as the case may be) is required under this Part to make a recommendation, determination, or decision, the Commission or the Minister must—

- (a) consider the purpose in **section 162**; and
- (b) make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to that purpose.

Compare: 2001 No 103 s 19

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

(1) This section applies if the Commission or the Minister is required under this Part to make a recommendation, determination, or decision.

(2) The Commission or Minister must make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect—

- (a) to the purpose in **section 162**; and
- (b) to the extent that the Commission or Minister considers it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

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Subpart 2—Regulating fibre fixed line access services

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**167 Regulation of fibre fixed line access services**

(1) Fibre fixed line access services are regulated as provided for by this Part.

(2) A regulated fibre service provider must comply with—

- (a) the requirements of this Part that apply to the regulated fibre service provider; and
- (b) every **section 170** determination that applies to the regulated fibre service provider.

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(3) The following apply in relation to a regulated fibre service provider on and after the date on which the provider is obliged to comply with this Part or (as the case requires) with a **section 170** determination:

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- (a) **sections 210 to 216**; and
- (b) sections 88, 88A, and 90 of the Commerce Act (applied with any necessary modifications).

(4) The Commission may exercise any of its powers under this Act for the purpose of monitoring compliance by regulated fibre service providers with regulation under this Part.

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Compare: 1986 No 5 ss 52F, 54E

<b>168</b>	<b>Information disclosure regulation</b>	
	Fibre fixed line access services supplied by a regulated fibre service provider who is prescribed in regulations <u>made under <b>section 222</b></u> as being subject to information disclosure regulation are subject to information disclosure regulation under this Part ( <i>see <b>subpart 4</b></i> ).	5
<b>169</b>	<b>Price-quality regulation</b>	
	Fibre fixed line access services supplied by a regulated fibre service provider who is prescribed in regulations <u>made under <b>section 222</b></u> as being subject to price-quality regulation are subject to price-quality regulation under this Part ( <i>see <b>subpart 5</b></i> ).	10
<b>170</b>	<b>Determinations by Commission under this section</b>	
(1)	The Commission must make determinations under this section specifying how 1 or both of the following apply to regulated fibre service providers:	
	(a) information disclosure regulation:	
	(b) price-quality regulation.	15
(2)	<del>Determinations must be made in accordance with this Part.</del>	
(3)	Determinations must—	
	(a) set out, for each type of regulation, the requirements that apply to each regulated fibre service provider; and	
	(b) set out any time frames (including the regulatory periods) that must be complied with or that apply; and	20
	(c) specify the input methodologies that apply; and	
	(d) be consistent with this Part.	
(4)	It is not necessary for a single determination to address all matters relating to fibre fixed line access services, or to a regulated fibre service provider, and different parts of any determination may come into effect at different times.	25
(5)	A determination made under this section may require a regulated fibre service provider to comply with the requirements set out in any other determination that has been made under this section in respect of fibre fixed line access services.	30
(6)	The Commission must, as soon as practicable after making a determination under this section,—	
	(a) give a copy of the determination to each regulated fibre service provider to whom the determination relates; and	
	(b) publish a summary of it in the <i>Gazette</i> ; and	35
	<del>(e) give public notice of the whole determination.</del>	
	<u>(c) make the whole determination available for inspection on the Commission’s website in an electronic form that is publicly accessible.</u>	

- (7) A determination under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 (and does not have to be presented to the House of Representatives under section 41 of that Act).  
Compare: 1986 No 5 s 52P 5
- 171 When Commission must make initial section 170 determinations**
- (1) The Commission must, after the date on which the relevant input methodologies are determined under **section 177** but before the implementation date, make determinations under **section 170** specifying— 10
- (a) how price-quality regulation applies to regulated fibre service providers during the first regulatory period; and
- (b) how information disclosure regulation applies to regulated fibre service providers from the start of the first regulatory period.
- (2) A **section 170** determination relating to information disclosure regulation may last for more than 1 regulatory period and remains in force until it is amended. 15
- 172 Amendment of section 170 determination**
- (1) A **section 170** determination may be amended in a material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation. 20
- (2) An amendment forms part of the determination it amends.
- (3) An amendment comes into force on the date specified in the amendment, which must be a date on or after the date on which it, or a summary of it, is published in the *Gazette*.
- (4) The Commission must, as soon as practicable after making an amendment,— 25
- (a) give a copy of the amendment to each provider to whom the determination relates; and
- (b) publish the amendment, or a summary of the amendment, in the *Gazette*; and
- (c) give public notice of the determination, as amended by the amendment. 30
- Compare: 1986 No 5 s 52Q

### Subpart 3—Input methodologies

#### *Input methodologies*

- 173 Purpose of input methodologies** 35
- The purpose of input methodologies is to promote certainty for regulated fibre service providers, access seekers, and end-users in relation to the rules, require-

ments, and processes applying to the regulation, or proposed regulation, of fibre fixed line access services under this Part.

Compare: 1986 No 5 s 52R

**174 How published input methodologies apply**

A relevant input methodology relating to the supply of fibre fixed line access services ~~that is published under **section 179**~~ must be applied— 5

- (a) by each relevant regulated fibre service provider in accordance with the relevant **section 170** determination; and
- (b) by each person entitled or required under this Act to recommend, decide, or determine— 10
  - (i) how regulation under this Part should apply to fibre fixed line access services; or
  - (ii) the prices or quality standards applying to fibre fixed line access services.

Compare: 1986 No 5 s 52S 15

**175 Matters covered by input methodologies**

- (1) The input methodologies relating to fibre fixed line access services must include, to the extent applicable to the type of regulation under consideration,—
  - (a) methodologies for evaluating or determining the following matters in respect of the supply of the fibre fixed line access services: 20
    - (i) cost of capital:
    - (ii) valuation of assets, including depreciation, and treatment of revaluations:
    - (iii) allocation of common costs, including between activities, businesses, access seekers, regulated services, and geographic areas: 25
    - (iv) treatment of taxation; and
  - (b) quality dimensions; and
  - (c) regulatory processes and rules, such as—
    - (i) the specification and definition of prices, including identifying any costs that can be passed through to prices (which may not include the legal costs of any appeals against input methodology determinations under this Part); and 30
    - (ii) identifying circumstances in which a price-quality path may be reconsidered within a regulatory period; and
  - (d) methodologies for capital expenditure projects, including the following: 35
    - (i) requirements that must be met by the regulated fibre service provider, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of

	consultation and agreement with other parties (including access seekers or end-users); and	
	(ii) the criteria the Commission will use to evaluate capital expenditure proposals; and	
	(iii) time frames and processes for evaluating capital expenditure proposals, including what happens if the Commission does not comply with those time frames.	5
(2)	Every input methodology must, as far as is reasonably practicable,—	
	(a) set out the matters listed in <b>subsection (1)</b> in sufficient detail so that each affected regulated fibre service provider is reasonably able to estimate the material effects of the methodology on the provider; and	10
	(b) set out how the Commission intends to apply the input methodology to fibre fixed line access services; and	
	(c) be consistent with the other input methodologies that relate to fibre fixed line access services.	15
(3)	Any methodologies referred to in <b>subsection (1)(a)(ii)</b> that relate to establishing the initial value of fibre assets (as defined in <b>section 176</b> ) must be determined in accordance with <b>section 176</b> .	
	Compare: 1986 No 5 ss 52T, 54S	
<b>176</b>	<b>Initial value of fibre assets</b>	20
(1)	The initial value of a fibre asset is calculated by—	
	(a) taking the cost—	
	(i) incurred by a regulated fibre service provider in constructing or acquiring the fibre asset, net of specified capital contributions; or	
	(ii) if the fibre asset was owned by Chorus before 1 December 2011, recorded by Chorus for the fibre asset in its published general purpose financial statements as of 1 December 2011; and	25
	(b) adjusting that cost for accumulated depreciation and impairment losses (if any) recognised by the regulated fibre service provider (ignoring any accounting adjustment for Crown funding), as at the implementation date, under generally accepted accounting practice in New Zealand.	30
(2)	Each regulated fibre service provider is treated, as at the implementation date, as owning a fibre asset with an initial value equal to the financial losses, as determined by the Commission, incurred by the provider in providing fixed line access services under the UFB initiative for the period starting on 1 December 2011 and ending on the close of the day immediately before the implementation date.	35
(2A)	<u>It is not the intention of <b>subsection (2)</b> that regulated fibre service providers should be protected from all risk of not fully recovering those financial losses through prices over time.</u>	40

- (3) To avoid doubt, the initial value of a fibre asset determined under this section includes the costs incurred by the provider in relation to the asset—
- (a) as a direct result of meeting specific requirements of the UFB initiative; and
  - (b) for both standard connections and non-standard connections. 5
- (3A) The Commission must ensure that the value of assets or financial losses is calculated so that the maximum revenues that may be recovered by, or the maximum price or prices that may be charged by, a regulated fibre service provider under a **section 170** determination reflect the actual financing costs incurred in respect of the debt or equity financing provided by, or on behalf of, the Crown to the provider (or a related party) in connection with the deployment of fibre assets under the UFB initiative. 10
- (4) In this section,—
- ~~**fibre asset** means an asset constructed or acquired by a regulated fibre service provider—~~ 15
- ~~(a) to provide fibre fixed line access services; or~~
  - ~~(b) in the case of an asset constructed or acquired by Chorus on or after 1 December 2011, to provide fibre fixed line access services or other services~~
- fibre asset** means an asset that is— 20
- (a) constructed or acquired by a regulated fibre service provider; and
  - (b) employed in the provision of fibre fixed line access services (whether or not the asset is also employed in the provision of other services)
- specified capital contribution** means a capital contribution received by a regulated fibre service provider from 1 or more of the following: 25
- (a) an access seeker:
  - (b) an end-user:
  - (c) any other person, as determined by the Commission
- standard connection** and **non-standard connection** have the meanings set out in section 155ZU. 30
- 177 When input methodologies must be determined**
- (1) The Commission must, not later than the implementation date, determine the input methodologies referred to in **section 175** for fibre fixed line access services.
  - (2) The Commission may, at any time after the implementation date, determine further input methodologies for fibre fixed line access services. 35
- Compare: 1986 No 5 s 52U

**178 Commission process for determining input methodologies**

- (1) When the Commission begins work on an input methodology, it must publish a notice of intention to do so that—
- (a) outlines the process that will be followed; and
  - (b) sets out the proposed time frames. 5
- (2) During the course of its work on an input methodology, the Commission—
- (a) must publish a draft methodology; and
  - (b) must give interested persons a reasonable opportunity to give their views on that draft methodology; and
  - (c) may hold 1 or more conferences; and 10
  - (d) must have regard to any views received from interested persons within any time frames set.
- (3) Any work done or action taken (including any consultation) by the Commission on input methodologies before this section commences may be taken into account as part of the work required to be done by the Commission to comply with the requirements of **subsections (1) and (2)**. 15

Compare: 1986 No 5 s 52V

**179 Publication of input methodologies**

- (1) The Commission must publish every input methodology, and every amendment to an input methodology,— 20
- (a) within 10 working days after the Commission determines the input methodology or amendment; and
  - (b) if the input methodology or amendment is determined by the High Court on appeal, within 10 working days after the Commission receives a copy of the decision of the High Court. 25
- (2) The publication must be in a notice in the *Gazette* setting out—
- (a) a brief description of the nature of the methodology; and
  - (b) the reasons for determining that methodology; and
  - (c) how it is available to the public.
- ~~(3) The Commission must give public notice of every input methodology, and every amended input methodology, as soon as the input methodology or amendment is published. 30~~
- (3) The Commission must, at all reasonable times, make the input methodology available for inspection on the Commission's website in an electronic form that is publicly accessible. 35
- (4) A published input methodology or amendment is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act



2012 (and does not have to be presented to the House of Representatives under section 41 of that Act).

Compare: 1986 No 5 s 52W

**180 Changes to input methodologies**

- (1) If the Commission proposes to amend an input methodology to make a material change, **section 178** applies as if the amendment were a new input methodology. 5
- (2) The Commission may amend an input methodology to make a non-material change without complying with **section 178**.
- (3) If the Commission proposes to revoke an input methodology, **sections 178 and 179** apply with any necessary modifications as if the revocation were a new input methodology. 10

Compare: 1986 No 5 s 52X

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

- (1) The Commission must review each input methodology no later than 7 years after its date of publication and, after that, at intervals of no more than 7 years. 15
- (2) The date of publication of an input methodology is the date on which it is published under **section 179(1)(a)** or, if it is subsequently published under **section 179(1)(b)**, the date of that later publication.
- (3) **Section 178** applies, with any necessary modifications, as if the review were a new input methodology. 20
- (4) **Section 179** applies if, after a review, an input methodology is replaced, amended, or revoked.

Compare: 1986 No 5 s 52Y

*Appeals against input methodology determinations* 25

**182 Appeals against input methodology determinations**

- (1) Any person who gave views on an input methodology determination to the Commission as part of the process under **section 178**, and who, in the opinion of the High Court, has a significant interest in the matter, may appeal to the High Court against the determination. 30
- (2) In this section and **section 183**, **input methodology determination** means any of the following:
  - (a) the initial determination of an input methodology;
  - (b) any determination by the Commission that amends or revokes the input methodology; 35
  - (c) any determination by the Commission of an input methodology after a review of the input methodology.

- (3) In determining an appeal against an input methodology determination, the court may do any of the following:
- (a) decline the appeal and confirm the input methodology, or the revocation of the input methodology, set out in the determination:
  - (b) allow the appeal by—
    - (i) amending the input methodology; or
    - (ii) revoking the input methodology and substituting a new one; or
    - (iii) referring the input methodology determination back to the Commission with directions as to the particular matters that require amendment; or
    - (iv) if the revocation of an input methodology is not confirmed, confirming that the input methodology still applies.
- (4) The court may only exercise its powers under **subsection (3)(b)** if it is satisfied that the amended, substituted, or confirmed input methodology is (or will be, in the case of **subsection (3)(b)(iii)**) materially better in meeting the purpose of this Part, the purpose in **section 173**, or both.
- (5) If the court allows an appeal, the Commission may seek clarification from the court on any matter for the purpose of implementing the court's decision.
- (6) There is a right of appeal under section 97 of the Commerce Act 1986 to the Court of Appeal from any decision or order of the High Court under this section on a point of law only.

Compare: 1986 No 5 s 52Z

### 183 Process for appeals

- (1) An appeal under **section 182(1)** must be brought within 20 working days after the date on which the input methodology determination is published.
- (2) The appeal must be by way of rehearing and must be conducted solely on the basis of the documentary information and views that were before the Commission when it made its determination, and no party may introduce any new material during the appeal.
- (3) The High Court must sit with 2 lay members (unless the court considers that only 1 is required).
- (4) Each of the lay members must have relevant experience and be appointed from the pool of people appointed under section 77 of the Commerce Act 1986 to be members of the court for the purpose of hearing the appeal.
- (5) Section 77 of the Commerce Act 1986 applies, and section 77(14) of that Act is not limited by **subsection (3)** of this section.

Compare: 1986 No 5 s 52ZA

**184 Input methodology applies pending outcome of appeal**

(1) The High Court may not stay the application of **section 174** with respect to any input methodology published under **section 179** until any appeal against it is finally determined.

(2) **Section 174** continues to apply with respect to every input methodology published under **section 179** until any appeal against the input methodology is finally determined.

Compare: 1986 No 5 s 53

5

Subpart 4—Information disclosure regulation

**185 Purpose of information disclosure regulation**

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

Compare: 1986 No 5 s 53A

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

(1) A regulated fibre service provider who is subject to information disclosure regulation must—

(a) publicly disclose information in accordance with the information disclosure requirements set out in the relevant **section 170** determination; and

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(b) supply to the Commission a copy of all information disclosed in accordance with the **section 170** determination, within 5 working days after the information is first made available to the public; and

(c) supply to the Commission, in accordance with a written notice by the Commission, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring the regulated fibre service provider's compliance with the **section 170** determination.

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(2) If a regulated fibre service provider is subject to information disclosure regulation, the Commission—

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(a) may monitor and analyse all information disclosed in accordance with the information disclosure requirements; and

(b) must, as soon as practicable after any information is publicly disclosed, publish a summary and an analysis of that information for the purpose of promoting greater understanding of the performance of individual regulated fibre service providers, their relative performance, changes in their performance over time, and their ability to extract excessive profits.

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(3) To avoid doubt, the Commission may, as part of a summary and an analysis, include an analysis of how effective the information disclosure requirements

<u>imposed on the regulated service providers are in achieving the purpose in <b>section 162</b>.</u>	
(4) <u>In complying with <b>subsection (2)(b)</b>, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.</u>	5
Compare: 1986 No 5 s 53B	
<b>187 Section 170 determination to set out information disclosure requirements</b>	
(1) A <b>section 170</b> determination relating to fibre fixed line access services that are subject to information disclosure regulation must specify the following:	
(a) the regulated fibre service providers to which it applies:	10
(b) the information to be disclosed:	
(c) the manner in which the information is to be disclosed:	
(d) the form of disclosure:	
(e) when, and for how long, information must be disclosed:	
(f) the input methodologies that apply:	15
(g) any other methodologies that are required in the preparation or compilation of the information.	
(2) Information required to be disclosed may include (without limitation) 1 or more of the following:	
(a) financial statements (including projected financial statements):	20
(b) asset values and valuation reports:	
(c) prices, terms and conditions relating to prices, and pricing methodologies:	
(d) contracts:	
(e) transactions with related parties:	25
(f) financial and non-financial performance measures:	
(g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements:	
(h) asset management plans:	30
(i) quality performance measures and statistics:	
(j) assumptions, policies, and methodologies used or applied in these or other areas:	
(k) consolidated information that includes information about unregulated services, in which case <b>section 188</b> applies:	35
(l) information related to 1 or more parts of a fibre network.	
(3) The <b>section 170</b> determination may do 1 or more of the following:	

- (a) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration:
  - (b) require independent audits of disclosed information:
  - (c) require the retention of data on which disclosed information is based, and associated documentation: 5
  - (d) exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions:
  - (e) provide for transitional provisions: 10
  - (f) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of information disclosure regulation.
- (4) The **section 170** determination may not require a regulated fibre service provider to publicly disclose any provision of an existing contract that, immediately before the fibre fixed line access services became subject to information disclosure regulation, was not required by or under any other enactment to be publicly disclosed. 15
- Compare: 1986 No 5 s 53C
- 188 Consolidated information may also be required**
- (1) The purpose of this section is to enable the Commission to monitor compliance with information disclosure regulation applying to fibre fixed line access services. 20
  - (2) A **section 170** determination may require information referred to in **subsection (3)** to be disclosed only to the extent required to enable the purpose in **subsection (1)** to be met. 25
  - (3) If a regulated fibre service provider provides services that are not subject to regulation under this Part (**other services**), the provider may be required to disclose—
    - (a) consolidated financial statements, and any other information referred to in **section 187**, for all businesses (including those related to the supply of other services) undertaken by that provider; and 30
    - (b) consolidated financial statements, and any other information referred to in **section 187**, for the supply of all other services in aggregate; and
    - (c) reconciliation of information provided under **paragraphs (a) and (b)** with information disclosed in accordance with information disclosure requirements applying to the fibre fixed line access services; and 35
    - (d) reconciliation of information disclosed under Part 4 of the Commerce Act 1986 with information disclosed in accordance with information disclosure requirements applying to the fibre fixed line access services.

(4)	<u>If a regulated fibre service provider supplies goods or services that are regulated under Part 4 of the Commerce Act 1986, the Commission may require the provider to provide consolidated information and performance measures relating to all, or any combination of, those goods or services and the services regulated under this Part.</u>	5
	Compare: 1986 No 5 s 53D	
<b>189</b>	<b>Charge for providing copies to public</b>	
(1)	A person who is required, by a <b>section 170</b> determination, to provide copies of statements and information to the public on request may charge for providing those copies.	10
(2)	The charge must be no more than is reasonably required to recover the costs of providing those copies.	
	Compare: 1986 No 5 s 53E	
<b>190</b>	<b>Limited exception to obligation to apply input methodologies</b>	
(1)	Despite <b>section 174</b> , a regulated fibre service provider who is subject only to information disclosure regulation does not have to apply the following input methodologies in accordance with that section:	15
	(a) methodologies for evaluating or determining the cost of capital:	
	(b) quality dimensions.	
(2)	However, to avoid doubt, <b>subsection (1)</b> does not affect anything else in this subpart, and in particular does not affect—	20
	(a) <b>section 186(2)</b> (which means the Commission may use the input methodologies referred to in <b>subsection (1)</b> to monitor and analyse information); and	
	(b) <b>section 187(2)</b> (which means that a regulated fibre service provider may still be required to disclose information about the methodologies for evaluation or determining the cost of capital that it does in fact use).	25
	Compare: 1986 No 5 s 53F	
	<b>Subpart 5—Price-quality regulation</b>	
<b>191</b>	<b>Purpose of price-quality regulation</b>	30
	The purpose of price-quality regulation is to regulate the price and quality of fibre fixed line access services provided by regulated fibre service providers.	
	Compare: 1986 No 5 s 53K	
<b>192</b>	<b>Effect of being subject to price-quality regulation</b>	
(1)	A regulated fibre service provider who is subject to price-quality regulation in respect of fibre fixed line access services must—	35

- (a) apply the price-quality paths set by the Commission in a **section 170** determination in respect of those services; and
  - (b) comply with **sections 197 to 200**.
- (2) For the purpose of monitoring compliance with this section, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated fibre service provider requiring it to provide any or all of the following: 5
- (a) a written statement that states whether the provider has complied with the price-quality paths applying to that provider:
  - (b) a report on the written statement referred to in **paragraph (a)** that is signed by an auditor in accordance with any form specified by the Commission: 10
  - (c) sufficient information to enable the Commission to properly determine whether a price-quality path has been complied with:
  - (d) a certificate, in the form specified by the Commission and signed by at least 1 director of the provider, confirming the truth and accuracy of any information provided under this section. 15

Compare: 1986 No 5 ss 53L, 53N

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

- (1) A **section 170** determination relating to fibre fixed line access services that are subject to price-quality regulation must specify the price-quality paths that apply to a regulated fibre service provider. 20
- (2) A price-quality path must specify the following:
  - (a) the regulatory period to which it applies:
  - (b) in relation to prices, 1 or both of the following: 25
    - (i) the maximum price or prices that may be charged by a regulated fibre service provider:
    - (ii) the maximum revenues that may be recovered by a regulated fibre service provider:
  - (c) the quality standards that must be met by a regulated fibre service provider: 30
  - (d) the date or dates on which the price-quality path (or any part of it) takes effect:
  - (e) the date or dates by which compliance must be demonstrated in accordance with **section 192**. 35
- (3) A price-quality path may include incentives for a regulated fibre service provider to maintain or improve its quality of supply, and those incentives may include (without limitation) any of the following:

- (a) penalties by way of a reduction in the provider's maximum prices or revenues based on whether, or by what amount, the provider fails to meet the required quality standards:
- (b) rewards by way of an increase in the provider's maximum prices or revenues based on whether, or by what amount, the provider meets or exceeds the required quality standards: 5
- (c) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards:
- (d) reporting requirements, including special reporting requirements in asset management plans, if the provider fails to meet the quality standards. 10
- (4) Quality standards may, subject to any relevant input methodologies, be prescribed in any way the Commission considers appropriate (such as targets, bands, or formulas).
- (5) A price-quality path does not apply to a regulated fibre service provider until the date specified in the relevant **section 170** determination. 15  
Compare: 1986 No 5 ss 53M, 53O
- 194 Maximum revenues specified in initial price-quality paths**
- (1) Despite **section 193(2)(b)**, the Commission must, in the price-quality paths for each regulatory period that starts before the reset date,— 20
- (a) specify the maximum revenues that may be recovered by a regulated fibre service provider; and
- (b) not specify the maximum price or prices that may be charged by a regulated fibre service provider.
- (2) In this section and **section 195**, **reset date** means the date declared, in an order made under **section 221**, to be the reset date. 25
- 195 Wash-up mechanism for maximum revenues specified in initial price-quality paths**
- (1) This section applies when the Commission specifies, in the price-quality paths for each regulatory period that starts before the reset date (except the first regulatory period), the maximum revenues that may be recovered by a regulated fibre service. 30
- (2) The Commission must, in calculating the maximum revenues, apply a wash-up mechanism that provides for any over-recovery or under-recovery of revenue by the regulated fibre service provider during the previous regulatory period to be applied in a manner that is equivalent in present value terms over 1 or more future regulatory periods. 35



- (3) To avoid doubt, the Commission may, but is not required to, apply the wash-up mechanism referred to in **subsection (2)** in a price-quality path for a regulatory period that starts on or after the reset date.

**196 Smoothing revenues and prices**

- (1) This section applies when the Commission specifies maximum prices or maximum revenues for the purpose of **section 193(2)(b)**. 5
- (2) The Commission must calculate the maximum price or revenue in a manner that is equivalent in present value terms over 2 or more regulatory periods (for example, by altering depreciation) if, in the Commission’s opinion, it is necessary or desirable to do so to minimise any undue financial hardship to a regulated fibre service provider or to minimise price shocks to end-users. 10

**197 Anchor services**

A regulated fibre service provider who is subject to price-quality regulation must, during the prescribed period for an anchor service, provide the anchor service— 15

- (a) in respect of any premises, building, or access point connected to its fibre network; and
- (b) at a price that is no greater than the prescribed maximum price; and
- (c) in accordance with any prescribed specifications and conditions.

**198 Direct fibre access services** 20

A regulated fibre service provider who is subject to price-quality regulation must, during the prescribed period for a direct fibre access service, provide the direct fibre access service—

- (a) in respect of any premises, building, or access point connected to its fibre network; and 25
- (b) at a price that is no greater than the prescribed maximum price; and
- (c) in accordance with any prescribed specifications and conditions.

**199 Unbundled fibre services**

A regulated fibre service provider who is subject to price-quality regulation must, during the prescribed period for an unbundled fibre service, provide the unbundled fibre service— 30

- (a) in respect of any premises, building, or access point connected to its fibre network; and
- (b) at a price that is no greater than the prescribed maximum price (if any); and 35
- (c) in accordance with any prescribed specifications and conditions.

<b>200</b>	<b>Geographically consistent pricing</b>	
	A regulated fibre service provider who is subject to price-quality regulation must, regardless of the geographic location of the access seeker or end-user, charge the same price for providing fibre fixed line access services that are, in all material respects, the same.	5
<b>201</b>	<b>Making new section 170 determination</b>	
(1)	Before the end of each regulatory period, the Commission must make a new <b>section 170</b> determination specifying the price-quality paths that will apply for the following regulatory period.	
(2)	In making a new <b>section 170</b> determination, the Commission must consult with interested parties in relation to the requirements listed in <b>section 193</b> .	10
	Compare: 1986 No 5 s 53P	
<b>202</b>	<b>What happens to price-quality path if input methodologies change</b>	
(1)	A price-quality path may not be reopened within a regulatory period on the grounds of a change in an input methodology, except as provided in <b>subsection (2)</b> .	15
(2)	A price-quality path must be reopened by the Commission, and a new price-quality path made by amending the relevant <b>section 170</b> determination in accordance with <b>section 172</b> , if—	
(a)	an input methodology changes as a result of an appeal under <b>section 182</b> ; and	20
(b)	had the changed methodology applied at the time the price-quality path was set, it would have resulted in a materially different path being set.	
(3)	When making a new price-quality path under <b>subsection (2)</b> , the Commission must apply claw-back.	25
	Compare: 1986 No 5 s 53ZB	
<b>203</b>	<b>Application of Commerce Act 1986</b>	
	Part 2 of the Commerce Act 1986 does not apply in respect of—	
(a)	a price for a fibre fixed line access service provided by a regulated fibre service provider if—	30
(i)	that service is subject to an individually <del>specified</del> <u>prescribed</u> maximum price <del>set</del> under this Part (whether in this <del>Act</del> <u>Part</u> , in regulations made under this <del>Act</del> <u>Part</u> , or <del>by the Commission</del> in a <b>section 170</b> determination); and	
(ii)	the price <del>complies with</del> <u>is the same as</u> the individually <del>specified</del> <u>prescribed</u> maximum price; and	35
(b)	any matter necessary for giving effect to the <del>specified</del> <u>prescribed</u> maximum price referred to in <b>paragraph (a)</b> .	

**204 Modification of undertakings under section 156AD**

- (1) Despite any undertaking entered into by a regulated fibre service provider in accordance with section 156AD(2)(c), a regulated fibre service provider is not required, on and after the implementation date, to achieve price equivalence in relation to the supply of an unbundled layer 1 service (as defined in section ~~155ZS~~ 156AB) if— 5
- (a) the service is subject to an individually ~~specified~~ prescribed maximum price under this Part (whether in this ~~Act~~ Part, in regulations made under this ~~Act~~ Part, or by the ~~Commission~~ in a **section 170** determination); or
  - (b) the service is an input to a service referred to in **paragraph (a)**. 10
- (2) However, **subsection (1)** does not apply if the prescribed maximum price is cost-based.

Subpart 6—Regulatory periods

**205 Regulatory periods**

- (1) The first regulatory period starts on the implementation date and lasts for a period of 3 years. 15
- (2) The duration of subsequent regulatory periods must be determined by the Commission and must be between 3 and 5 years.
- (3) The Commission must notify the duration of each new regulatory period in a **section 170** determination. 20

Subpart 7—Reviews

**206 Anchor services review**

- (1) The Commission may, before the start of each regulatory period (including the first regulatory period), review whether, and how effectively, an anchor service meets the purpose of anchor services in **subsection (7)**. 25
- (2) A review must consider the following in respect of an anchor service:
- (a) the specification of the service:
  - (b) the prescribed conditions that apply to the service:
  - (c) the prescribed period for the service:
  - (d) the prescribed maximum price for the service. 30
- (3) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received.
- (4) The Commission must make a recommendation to the Minister after a review for the purposes of **section 223**. 35

- (5) The Commission must not recommend a change to the specification of an anchor service unless the service (with the amended specification) meets the purpose in **subsection (7)**.
- (6) The Commission must not recommend a change to the prescribed maximum price of an anchor service unless,— 5
- (a) if the recommendation is made before the start of the first regulatory period, the maximum price is based on the contract price for the service immediately before the implementation date, with an annual CPI adjustment mechanism; and
  - (b) if the recommendation is made after the start of the first regulatory period, the maximum price is a cost-based price. 10
- (7) The purpose of anchor services is—
- (a) to ensure that baseband equivalent voice and basic broadband services are available to end-users at reasonable prices; and
  - (b) to provide a reference to act as an appropriate constraint on the price and quality of other fibre fixed line access services. 15
- 207 Price-quality review**
- (1) The Commission may, on or after the date that is 3 years after the implementation date and at intervals of no less than 5 years thereafter, review how effectively the regulatory provisions in **sections 194, 198, and 199** meet the purpose in **section 162**. 20
- (2) A review must consider 1 or more of the following:
- (a) whether price-quality paths should, with effect from the start of a future regulatory period, continue to be required to specify the maximum revenues that may be recovered by a regulated fibre service provider (*see sections 194 and 195*): 25
  - (b) whether the prescribed period for an unbundled fibre service or a direct fibre access service should be amended:
  - (c) whether the prescribed maximum price for a direct fibre access service should be amended: 30
  - (d) whether a maximum price should be prescribed for an unbundled fibre service and, if so, what the price should be:
  - (e) whether the prescribed maximum price (if any) for an unbundled fibre service should be amended.
- (3) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received. 35
- (4) The Commission must make a recommendation to the Minister following a review for the purposes of **sections 221, 224, or 225** (as appropriate).

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

**208 Deregulation review**

- (1) The Commission may, at any time after the implementation date, review how fibre fixed line access services should be regulated under this Part if the Commission has reasonable grounds to consider that fibre fixed line access services—
- (a) should no longer be regulated under this Part; or
  - (b) should no longer be subject to price-quality regulation under this Part.
- (2) The Commission must, before the start of each regulatory period (except the first regulatory period), consider whether there are reasonable grounds to start a review.
- (3) A review may consider the following:
- (a) whether competition to fibre fixed line access services has emerged in a relevant market: 15
  - (b) whether any competition referred to in **paragraph (a)** exercises an effective constraint on the ability of regulated fibre service providers to exercise substantial market power:
  - (c) whether the purpose of this Part would be better met if fibre fixed line access services were no longer subject to price-quality regulation. 20
- (4) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received.
- (5) The Commission must make a recommendation to the Minister after a review. 25

**209 Application of Schedule 3**

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

Subpart 8—Enforcement and miscellaneous provisions

**210 Pecuniary penalty for contravening information disclosure requirement** 30

- (1) The High Court may, on application by the Commission, order any person to pay a pecuniary penalty to the Crown if the court is satisfied that the person—
- (a) has contravened any information disclosure requirement (as defined in **section 164**); or
  - (b) has attempted to contravene any such requirement; or 35
  - (c) has aided, abetted, counselled, or procured any other person to contravene any such requirement; or

- (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any such requirement; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or 5
- (f) has conspired with any other person to contravene any such requirement.
- (2) In **subsection (1)** and **section 212**, a reference to **contravening an information disclosure requirement** includes all or any of the following:
- (a) failing to disclose information required to be disclosed:
- (b) failing to disclose information in the form or within the time required: 10
- (c) disclosing information that is false or misleading under an information disclosure requirement ~~that is false or misleading~~.
- (3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or \$5,000,000 in the case of a body corporate. 15
- (4) In determining the amount of pecuniary penalty, the court must have regard to all relevant matters, including—
- (a) the nature and extent of the contravention; and
- (b) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and 20
- (c) whether the person has previously been found by the court in proceedings under this Part to have engaged in similar conduct.
- (5) A regulated fibre service provider may not be liable to more than 1 pecuniary penalty in respect of the same conduct. 25
- (6) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.
- Compare: 1986 No 5 s 86
- 211 Order requiring information disclosure requirement to be complied with**
- (1) The High Court may, on application by the Commission, order a regulated fibre service provider to comply with an information disclosure requirement that applies to the provider. 30
- (2) An order under this section must specify the date by which, or period within which, the provider must comply with the requirement.
- Compare: 1986 No 5 s 86A 35
- 212 Offences relating to information disclosure regulation**
- (1) A person commits an offence if—

- (a) the person, knowing that particular fibre fixed line access services are subject to information disclosure regulation, intentionally contravenes any information disclosure requirement relating to those services; or
- (b) the person is subject to an order under **section 211** and fails to comply with the order by the date, or within the period, specified. 5
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate.
- Compare: 1986 No 5 s 86B
- 213 Pecuniary penalty for contravening price-quality requirements** 10
- (1) The High Court may, on application by the Commission, order a person to pay a pecuniary penalty to the Crown if the court is satisfied that the person—
- (a) has contravened any price-quality requirement applying to fibre fixed line access services; or
- (b) has attempted to contravene any such requirement; or 15
- (c) has aided, abetted, counselled, or procured any other person to contravene any such requirement; or
- (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any such requirement; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or 20
- (f) has conspired with any other person to contravene any such requirement.
- (2) In **subsection (1)** and **sections 214 to 216**, a reference to **contravening a price-quality requirement**— 25
- (a) refers to a requirement imposed—
- (i) by a determination made under **section 170** in relation to fibre fixed line services that are subject to price-quality regulation imposed under **Part 6**; or
- (ii) by **section 192(1)(b)**; and 30
- (b) includes 1 or more of the following:
- (i) failing to comply with a requirement for prices, whether by charging a price for a service that is higher than the maximum price permitted, or by receiving more revenue than is permitted, or in any other way: 35
- (ii) failing to comply with any quality standards required under the price-quality regulation:
- (iii) failing to comply with any requirement in **sections 197 to 200**.

- (3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or ~~\$10,000,000~~ \$5,000,000 in the case of a body corporate.
- (4) In setting the amount of pecuniary penalty, the court must take into account all of the following matters: 5
- (a) the nature and extent of the contravention:
  - (b) the nature and extent of any loss or damage suffered by any person as a result of the contravention:
  - (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence): 10
  - (d) whether or not the person has previously been found by the court in proceedings under this Part to have engaged in similar conduct.
- (5) A regulated fibre service provider may not be liable to more than 1 pecuniary penalty in respect of the same conduct. 15
- (6) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

Compare: 1986 No 5 s 87

**214 Compensation for contravention of price-quality requirement**

- (1) If the High Court orders a person to pay a pecuniary penalty under **section 213** in respect of the contravention of a price-quality requirement, the court may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (an **aggrieved person**). 20
- (2) An application for an order under this section may be made by the Commission or any aggrieved person. 25
- (3) The application must be made within 1 year of the date of the pecuniary penalty order.
- (4) The court may make an order under this section whether or not any aggrieved person is party to the proceedings. 30
- (5) In proceedings under this section, the court may make such orders as to cost as it thinks fit.

Compare: 1986 No 5 s 87A

**215 Offence relating to price-quality regulation**

- (1) A person commits an offence if— 35
- (a) the person, knowing that particular fibre fixed line access services are subject to price-quality regulation, intentionally contravenes a price-quality requirement in respect of the services; or



- (b) the person is subject to an order under **section 216(1)(b)** and fails to comply with the order.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate. 5  
Compare: 1986 No 5 s 87B
- 216 Injunction and other orders relating to price-quality regulation**
- (1) If the High Court is satisfied that fibre fixed line access services that are subject to price-quality regulation are being provided, or are likely to be provided, in contravention of any price-quality requirement applying with respect to those services, the court may do 1 or both of the following: 10
- (a) grant an injunction restraining any provider of those services from providing them in contravention of the price-quality requirement:
- (b) requiring the provider to provide the services in accordance with the price-quality requirement applying to them. 15
- (2) An application for an order under this section may be made by any person.  
Compare: 1986 No 5 s 87C
- 217 Powers of Commission under this Part**
- (1) For the purpose of carrying out its functions and exercising its powers under this Part, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, do any of the following: 20
- (a) consult ~~with~~ any person the Commission considers may assist it:
- (b) investigate any of the following: 25
- (i) how effectively and efficiently a regulated fibre service provider is providing fibre fixed line access services:
- (ii) how any formula, methodology, or price-quality path being considered by the Commission may be applied, or how any formula, methodology, or price-quality provision determined or authorised by the Commission has been applied, in considering proposed prices, revenue, or quality standards: 30
- (iii) how any conditions relating to the quality of fibre fixed line access services may be, or are being, fulfilled:
- (c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years: 35
- (d) use any information previously disclosed to the Commission under this Act or the Commerce Act 1986:
- (e) by notice in writing, require any regulated fibre service provider—

- (i) to prepare and produce forecasts, forward plans, or other information; and
- (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:
- (f) by notice in writing, require any specified person who the Commission has reason to believe may have information or documents relevant to the investigation, audit, or inquiry, at the time and place specified in the notice, to do 1 or both of the following: 5
- (i) produce or supply to the Commission documents and information in relation to the fibre fixed line access services, or the prices or operations of the person in respect of the services: 10
- (ii) answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:
- (g) by notice in writing, require any regulated fibre service provider, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or from a member of a class of appropriately qualified persons, as determined by the Commission in relation to the matters in **paragraph (b), (c), (e), or (f)(i)**. 15 20
- (2) In this section, **specified person** means any of the following:
- (a) a regulated fibre service provider:
- (b) a person who used to be a regulated fibre service provider:
- (c) a retail service provider:
- (d) an agency associated with the supply of fibre fixed line access services. 25
- Compare: 1986 No 5 s 53ZD
- 218 Power to exempt disclosure of commercially sensitive information**
- (1) The Commission may, on application, exempt any person or class of persons, in respect of any information or class of information that the Commission considers to be commercially sensitive, from any obligation to make that information available to the public as part of the requirements of information disclosure regulation or price-quality regulation. 30
- (2) The Commission may grant the exemption on any terms and conditions that it thinks fit.
- (3) The exemption must be granted by notice in the *Gazette*, and takes effect from the date specified in the exemption (which must not be earlier than the date of the *Gazette* notice). 35
- (4) The Commission may, in like manner, vary or revoke any exemption.

(5) The Commission must keep a list of all current exemptions made by it under this section available for public inspection free of charge during normal office hours of the Commission at the offices of the Commission.

(6) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 (and does not have to be presented to the House of Representatives under section 41 of that Act).

Compare: 1986 No 5 s 53ZG

### 219 Material may be incorporated by reference

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

- (a) a **section 170** determination;
- (b) an input methodology;
- (c) ~~regulations made under this Part.~~

Compare: 1986 No 5 s 53ZF

## Subpart 9—Appeals from Commission determinations

### 220 Appeals in relation to Commission determinations

(1) ~~A person~~ A regulated fibre service provider or any other person may appeal to the High Court under this subsection against any determination of the Commission under this Part, other than the following:

- (a) a **section 170** determination, or any part of a **section 170** determination, that sets out how information disclosure regulation applies to a regulated fibre service provider;
- (b) an input methodology determination under **subpart 3** (for which a separate appeal right is given under that subpart).

(2) An appeal against a **section 170** determination under **subsection (1)** may not include an appeal against all or part of an input methodology, whether on a point of law or any other ground.

(3) A person may appeal to the High Court under this subsection on a question of law against any determination of the Commission under this Part (including a determination referred to in **subsection (1)**), except if the person has appealed, or is able to appeal, on the question of law against the determination under **section 182**.

(4) An appeal under this section must be made by giving notice of appeal within 20 working days after the date of the determination appealed against or within such further time as the court may allow.

(5) Sections 77 and 93 to 97 of the Commerce Act 1986 apply with any necessary modifications in respect of an appeal under this section.

- (6) To avoid doubt, a recommendation to the Minister by the Commission is not a determination for the purposes of this section.

Compare: 1986 No 5 s 91

### Subpart 10—Orders and regulations

- 221 Order for reset date** 5
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare a date to be the reset date for the purpose of **sections 194 and 195**.
- (2) The power to make an order made under this section may be exercised only once. 10
- (3) The Minister must not recommend that an order be made under this section unless the Commission has, after a review under **section 207**, recommended that the order be made.
- 222 Persons subject to regulation under Part 6**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing a person who provides fibre fixed line access services as being subject to 1 or both of the following: 15
- (a) information disclosure regulation;
- (b) price-quality regulation.
- (2) Regulations made under this section may include the name and a description of the person. 20
- (3) The Minister must not recommend that regulations be made under this section unless—
- (a) the Commission has consulted with interested parties; and
- (b) the Commission has recommended to the Minister that the person provides fibre fixed line access services in a market where the person can exercise a substantial degree of market power; and 25
- (c) the Commission has recommended to the Minister that making the provider subject to the proposed form of regulation meets the purpose in **section 162**. 30
- (4) In this section, a reference to **a person who provides fibre fixed line access services** includes a person who provides services that would be fibre fixed line access services if the person was already subject to information disclosure regulation or price-quality regulation under this Part.
- 223 Anchor services** 35
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations ~~prescribing~~ declaring a fibre fixed line access service to be an anchor service ~~by and~~ prescribing in relation to the service—

- (a) the name and technical specification of the service; and
  - (b) any conditions; and
  - (c) the period during which a regulated fibre service provider who is subject to price-quality regulation must provide the service; and
  - (d) the maximum price that a regulated fibre service provider who is subject to price-quality regulation may charge for providing the service. 5
- (2) Except as provided for in **subsection (3)(b)**, the Minister must not recommend that regulations be made under this section unless the Commission has, after a review under **section 206**, recommended that the regulations be made.
- (3) The Minister must not recommend that regulations be made under **subsection (1)(d)** unless,— 10
- (a) if a review has been carried out under **section 206**, the Minister is satisfied that the regulations will prescribe a maximum price by reference to—
    - (i) the contract price of the service immediately before the implementation date, with an annual CPI adjustment mechanism; or 15
    - (ii) any other method recommended by the review; or
  - (b) if a review has not been carried out under **section 206**, the Minister is satisfied that the regulations will prescribe a maximum price by reference to the contract price of the service immediately before the implementation date, with an annual CPI adjustment mechanism. 20
- 224 Direct fibre access services**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations ~~prescribing~~ declaring a fibre fixed line access service to be a direct fibre access service ~~by~~ and prescribing in relation to the service— 25
- (a) the name and technical specification of the service; and
  - (b) any conditions; and
  - (c) the period during which a regulated fibre service provider who is subject to price-quality regulation must provide the service; and 30
  - (d) the maximum price that a regulated fibre service provider who is subject to price-quality regulation may charge for providing the service.
- (2) Except as provided for in **subsection (3)(b)**, the Minister must not recommend that regulations be made under this section unless the Commission has, after a review under **section 207**, recommended that the regulations be made. 35
- (3) The Minister must not recommend that regulations be made under **subsection (1)(d)** unless,—

- (a) if a review has been carried out under **section 207**, the Minister is satisfied that the regulations will prescribe a maximum price by reference to—
- (i) the contract price of the service immediately before the implementation date, with an annual CPI adjustment mechanism; or 5
- (ii) any other method recommended by the review; or
- (b) if a review has not been carried out under **section 207**, the Minister is satisfied that the regulations will prescribe a maximum price by reference to the contract price of the service immediately before the implementation date, with an annual CPI adjustment mechanism. 10
- 225 Unbundled fibre services**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) prescribing, in relation to an unbundled fibre service, 1 or both of the following: 15
- (i) the technical specification of the service:
- (ii) any conditions:
- (b) prescribing, in relation to an unbundled fibre service, the period during which a regulated fibre service provider who is subject to price-quality regulation must provide the service: 20
- (c) prescribing, in relation to an unbundled fibre service, the maximum price that a regulated fibre service provider who is subject to price-quality regulation may charge for providing the service.
- (2) The Minister must not recommend that regulations be made under this section unless the Commission has, after a review under **section 207**, recommended that the regulations be made. 25
- (3) The Minister must not recommend that regulations be made under **subsection (1)(c)** unless—
- (a) regulations have been made under **subsection (1)(b)**; and
- (b) ~~a review has been carried out under **section 207**; and~~ 30
- (c) the Minister is satisfied that the regulations will prescribe a maximum price by reference to—
- (i) the contract price of the service immediately before the implementation date, with an annual CPI adjustment mechanism; or
- (ii) any other method recommended by the review. 35

<b>226</b>	<b>Specified points of interconnection</b>	
(1)	<del>The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing points of interconnection for the purposes of establishing fibre handover points.</del>	
(1)	<u>The Commission may, by public notice, prescribe points of interconnection for the purposes of establishing fibre handover points.</u>	5
(2)	<del>Regulations made under <b>subsection (1)</b>—</del> The notice may prescribe a point of interconnection by reference to 1 or more of the following:	
	(a) a regulated fibre service provider’s network:	
	(b) a geographical location:	10
	(c) the UFB initiative.	
(3)	<del>The Minister must not recommend that regulations be made under this section unless the Commission has recommended that the regulations be made.</del>	
(3)	<u>The Commission may amend or revoke a notice in the manner in which it was made.</u>	15
(4)	<del>The</del> However, the Commission must not recommend an amendment to amend a specified point of interconnection unless the amendment—	
	(a) is for an appropriate technical purpose; and	
	(b) is consistent with the purpose in <b>section 162</b> .	
(5)	The first <del>regulations</del> notice made under this section must prescribe points of interconnection based on the points of interconnection that apply as at the close of 31 December 2019 under the UFB initiative.	20
(6)	<u>A notice under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 (and does not have to be presented to the House of Representatives under section 41 of that Act).</u>	25

### Part 3

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

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

	<i>Retail service quality monitoring</i>	30
<b>24</b>	<b>Section 9A amended (Functions of Commission in relation to sector monitoring and information dissemination)</b>	
(1)	In section 9A(1)(c), after “(a) and (b)”, insert “; and”.	
(2)	After section 9A(1)(c), insert:	
	(d) must monitor retail service quality in relation to telecommunications services; and	35

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- (e) must make available reports, summaries, and information about retail service quality in a way that better informs consumer choice.
- (3) In section 9A(2), replace “subsection (1)(c)” with “subsections (1)(c) and **(e) and (3)**”.
- (4) After section 9A(2), insert: 5
- (3) ~~For the purpose of carrying out its functions under **subsection (1)(d) and (e)**, the Commission may, in addition to exercising any other of its powers under this Act, by notice in writing, require any provider of telecommunications services to—~~
- (a) ~~prepare and produce forecasts, forward plans, historical information, or other information; and~~ 10
- (b) ~~apply any methodology or format specified by the Commission in the preparation of forecasts, forward plans, historical information, or other information.~~
- (4) In section 9A(2), after “this section”, insert “or **section 10A**”. 15

**24A New section 10A inserted (Power to require supply of information to support functions of monitoring and reporting on retail service quality)**

After section 10, insert:

- 10A Power to require supply of information to support functions of monitoring and reporting on retail service quality** 20
- ~~For the purpose of carrying out its functions under **section 9A(1)(d) and (e)**, the Commission may, in addition to exercising any of its other powers under this Act, by notice in writing, require any provider of telecommunications services to—~~
- (a) ~~prepare and produce forecasts, forward plans, historical information, or other information; and~~ 25
- (b) ~~apply any methodology or format specified by the Commission in the preparation of forecasts, forward plans, historical information, or other information.~~

*Line of business restrictions* 30

**24B New sections 69SA and 69SB inserted**

After section 69S, insert:

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

- (1) ~~The Commission may, on the terms and conditions (if any) that it thinks fit, grant an exemption from compliance with—~~ 35
- (a) ~~any prohibition referred to in section 69R that is included in an undertaking referred to in that section; or~~



- (b) any provision or provisions of section 69S.
- (2) An exemption may be granted in whole or in part (for example, there could be a complete exemption from a prohibition or provision or an exemption that applies only to 1 or more particular services).
- (3) The Commission must not grant an exemption unless— 5
- (a) it is satisfied that the exemption is consistent with the purpose set out in section 69A; and
- (b) it has had regard to whether the exemption will harm, or is likely to harm, competition in any telecommunications market; and
- (c) it has consulted the persons or organisations that appear to the Commission to be representative of the interests of those persons likely to be substantially affected by the exemption. 10
- (4) This section applies on and after the end of the first regulatory period (as defined in **section 205**).
- (5) **Section 69SB** applies to exemptions granted under this section. 15
- 69SB Other provisions relating to exemptions**
- (1) An exemption is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (2) An exemption must, as soon as practicable after it is granted, be— 20
- (a) published on the Commission’s website in an electronic form that is publicly accessible; and
- (b) notified in the *Gazette*.
- (3) A notification in the *Gazette* for the purpose of **subsection (2)(b)** does not have to include the text of the exemption. 25
- (4) The Commission’s reasons for granting an exemption (including why it is appropriate) must be published together with the exemption.
- (5) The breach of a term or condition of an exemption is,—
- (a) in the case of an exemption under **section 69SA(1)(a)**, a breach of the undertaking required under section 69R; 30
- (b) in the case of an exemption under **section 69SA(1)(b)**, a breach of section 69S.
- (6) The Commission may vary or revoke an exemption in the same way as it may grant the exemption (with the provisions of **section 69SA** and this section applying with all necessary modifications). 35

*Clarification of meaning of UFB 2***24C Section 156AB amended (Interpretation)**

In section 156AB, definition of **UFB 2**, after “UFB initiative”, insert “(which, to avoid doubt, includes the extension to UFB 2 known as UFB 2+)”.

*Enforcement*

5

**25 Section 156A amended (Application of section 156B)**

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

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

10

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

- (1) In section 156B(1), replace “either” with “1”.
- (2) In section 156B(1)(b), after “Crown”, insert “; or”.
- (3) After section 156B(1)(b), insert:

15

- (c) in relation a person who commits a breach referred to in **section 156A(1)(o) or (p)**, accept an undertaking under **section 156CA**.

- (4) After section 156B(1), insert:

- (1A) The Commission may, in addition to or instead of taking action under subsection (1), take 1 or both of the following actions against a person who commits a breach referred to in **section 156A(1)(o)**:

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- (a) apply to the High Court for an order under **section 156MA**;
- (b) apply to the High Court for an order under **section 156MB**.

- (1B) The Commission may, in addition to or instead of taking action under subsection (1), take 1 or both of the following actions against a person who commits a breach referred to in **section 156A(1)(p)**:

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- (a) apply to the High Court for an order under **section 156MC**;
- (b) apply to the High Court for an order under **section 156MD**.

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

After section 156B, insert:

30

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

- (1) If ~~section 156B applies to a person who~~ commits a breach referred to in **section 156A(1)(p)**, an end-user (as referred to in **clause 1 of Schedule 2A**) may take 1 or both of the following actions against the person:

- (a) apply to the High Court for an order under **section 156MC**;

35

- (b) apply to the High Court for an order under **section 156MD**.
- (2) An end-user may take the action referred to in **subsection (1)** whether or not the Commission has taken action against the person under section 156B in respect of the breach.

**28 New sections 156CA and 156CB and cross-heading inserted** 5

After section 156C, insert:

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

**156CA Commission may accept undertakings**

- (1) The Commission may accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the enforcement of a Commission RSQ code or the copper withdrawal code. 10
- (2) The person may withdraw or vary the undertaking with the consent of the Commission. 15

Compare: 1986 No 121 s 46A

**156CB Enforcement of undertakings**

- (1) If the Commission considers that a person who has given an undertaking under **section 156CA** has, without reasonable excuse, breached a term of that undertaking, the Commission may apply to the High Court for an order under **subsection (2)**. 20
- (2) The High Court may make any of the following orders if it is satisfied that the person has, without reasonable excuse, breached a term of the undertaking:
- (a) an order directing the person to comply with the term:
  - (b) an order directing the person to pay to the Crown—
    - (i) an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach; or 25
    - (ii) any pecuniary penalty that the court determines to be appropriate (up to the maximum amount specified in section 156L(3)(c)): 30
  - (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach: 30
  - (d) an order for any consequential relief that the court thinks appropriate.
- (3) Section 156L(4) to (7) applies with any necessary modifications in respect of proceedings under this section. 35

Compare: 1986 No 121 s 46B

**29 New sections 156MA to 156MD and cross-headings inserted**

After section 156M, insert:

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

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

- (1) The High Court may make 1 or both of the following orders if the High Court is satisfied, on the application of the Commission, that a person has committed a breach referred to in **section 156A(1)(o)**:
- (a) ~~an order requiring that person, or any other person involved in the breach, to disclose, at that person's own expense, to the public, or to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that person has access:~~ 10
- (b) ~~an order requiring that person, or any other person involved in the breach, to publish, at that person's own expense, in such manner and at such times as are specified in the order, corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.~~ 15
- (a) an order requiring that person, or any other person involved in the breach, to disclose to the public, or to a particular person or class of persons, the information or class of information that is specified in the order, being information that is in the possession of the person to whom the order is directed or to which that person has access: 20
- (b) an order requiring that person, or any other person involved in the breach, to publish corrective statements the terms of which are specified in, or are to be determined in accordance with, the order. 25
- (1A) The information must be disclosed or published—
- (a) in the manner and at the times that are specified in the order; and
- (b) at the person's own expense. 30
- (2) The High Court may hear and determine an application ~~under **subsection (1)**~~ in conjunction with any other proceedings under this Part.

Compare: 1986 No 121 s 42

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

- (1) The High Court may make 1 or more of the following orders if the High Court is satisfied, on the application of the Commission, that a person (**person X**) has committed a breach referred to in **section 156A(1)(o)**:
- (a) an order directing person X to refund money or return property to any other person:

- (b) an order directing person X to pay to any other person the amount of any loss or damage caused to that other person by the conduct of person X:
  - (c) an order directing person X, at person X's own expense, to supply a service to any other person:
  - (d) an order declaring all or part of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,—
    - (i) to be void; and
    - (ii) if the court thinks fit, to have been void at all times on and after a date specified in the order, which may be before the date on which the order is made:
  - (e) an order in respect of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,—
    - (i) varying the contract or the arrangement in the manner specified in the order; and
    - (ii) if the court thinks fit, declaring the varied contract or arrangement to have had effect on and after a date specified in the order, which may be before the date on which the order is made.
- (2) The High Court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part.
- Compare: 1986 No 121 s 43

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

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

- (1) The High Court may make 1 or both of the following orders if the High Court is satisfied, on the application of the Commission or an end-user, that a person has committed a breach referred to in **section 156A(1)(p)**:
- (a) an order directing the person to pay to an end-user the amount of any loss or damage caused to the end-user by the conduct of the person:
  - (b) an order directing the person, at the person's own expense, to supply a service to an end-user.
- (2) The High Court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part.
- (3) An order under **subsection (1)(b)** must not be inconsistent with a restriction that applies under subpart 3 of Part 2A.
- Compare: 1986 No 121 s 43

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

- (1) If the High Court is satisfied, on the application of the Commission or an end-user, that a person has committed a breach referred to in **section 156A(1)(p)**,

the court may grant an injunction restraining the person from engaging in conduct that constitutes or would constitute a breach of the copper withdrawal code.

- (2) The High Court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part. 5
- (3) Sections 88 and 88A of the Commerce Act apply with any necessary modifications in relation to an injunction granted under this section.

Compare: 1986 No 5 s 81

*Amendments to provisions inserted by Telecommunications Amendment Act  
(No 2) 2006* 10

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

Replace section 156T with:

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

- (1) The Minister may recommend the making of an Order in Council under section 156S(1) only if the Minister is satisfied, at the time of making the recommendation, that any of the following applies: 15
- (a) no industry-based complaints resolution system has been established;
  - (b) an industry-based complaints resolution system has been established, but in the Minister's opinion it has failed to achieve the purpose of this Part set out in section 156U and the objectives of a consumer complaints system set out in section 156X: 20
  - (c) the provisions being brought into force by the Order in Council are necessary to implement Government policy;
  - (d) the Commission has reported to the Minister under **section 240(5)(c)** that, in relation to the industry dispute resolution scheme (as defined in **Part 7**),— 25
    - (i) the scheme fails to achieve the purpose set out in **section 241**; or
    - (ii) the scheme provider fails to achieve the purpose set out in **section 242**.
- (2) The Minister may not recommend the making of an Order in Council under **subsection (1)(a) to (c)** unless the Minister is satisfied that appropriate consultation has been carried out in accordance with section 156ZJ. 30

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

Replace section 156UA(2) with:

- (2) To avoid doubt, this Part does not preclude— 35
- (a) the existence of 1 or more industry-based complaints resolution systems in addition to 1 or more systems appointed under this Part; and

- (b) the dispute resolution scheme provider for a Commission RSQ code being the person responsible for a consumer complaints system.

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

After section 156Y(3), insert:

- (4) To avoid doubt, a consumer complaints system may resolve complaints by consumers against service providers in relation to a Commission RSQ code. 5

*Retail service quality codes*

**33 New Part 7 inserted**

After **section 226** (as inserted by **section 23** of this Act), insert:

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

10

*Retail service quality codes*

**227 Purpose of retail service quality code**

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

15

**228 Interpretation**

In this Part, unless the context otherwise requires,—

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

20

**industry dispute resolution scheme** means the Telecommunications Dispute Resolution Scheme established by the Forum

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

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

25

**229 Commission may issue guidelines**

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

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

30

- (1) The Commission may, at any time, review an industry retail service quality code.

- (1A) The Commission may require the following persons to provide the Commission with any information relevant to the industry retail service quality code under review:
- (a) the Forum;
  - (b) service providers to whom the code applies. 5
- (2) After each review, the Commission must—
- (a) advise the Forum, the dispute resolution provider for the code (if any), and the Minister of any recommendations for improving the code and of any recommendations for creating a new code; and
  - (b) advise the Minister of whether any previous recommendations have been implemented; and 10
  - (c) advise the Minister of whether, in the Commission’s opinion,—
    - (i) the code fails to achieve the purpose set out in **section 227**; or
    - (ii) a Commission RSQ code would better achieve the purpose set out in **section 227**. 15
- 231 Commission retail service quality code**
- (1) The Commission may make a retail service quality code in relation to the provision of 1 or more types of telecommunications service only if—
- (a) no industry retail service quality code has been made in relation to the service; or 20
  - (b) an industry retail service quality code has been made in relation to the service, but in the Commission’s opinion—
    - (i) the code fails to achieve the purpose set out in **section 227**; or
    - (ii) a Commission RSQ code would better achieve the purpose set out in **section 227**. 25
- (2) If the Commission intends to make a Commission RSQ code, the Commission must, before making the code, provide a report to the Minister containing the reasons for making the code and the provision of this section that applies.
- 232 Contents of Commission retail service quality code**
- (1) A Commission RSQ code must— 30
- (a) specify which telecommunications services it applies to; and
  - (b) specify which telecommunications service providers it applies to; and
  - (c) promote the purpose set out in **section 227**; and
  - (d) specify the dispute resolution scheme that applies in relation to the code.
- (2) A Commission retail service quality code may— 35
- (a) impose binding obligations on telecommunications service providers that provide retail telecommunications services covered by the code; and



(b) contain any other provisions that are necessary or desirable.

**233 Process for making or amending Commission retail service quality code**

- (1) In order to make a Commission RSQ code, the Commission must—
- (a) notify the process that will be followed to make the code; and
  - (b) consult with interested persons; and
  - (c) give public notice of a draft code.
- (2) A person is entitled to make submissions to the Commission not later than 30 working days after the date on which public notice of the draft code is given.
- (3) The Commission may make the code only if the Commission is satisfied that the draft code meets all the requirements set out in this Part.
- (4) The Commission may amend or revoke a code if the Commission considers that the code no longer meets all the requirements set out in this Part.
- (5) The same procedure that applies to making a code in **subsections (1) to (3)** must be followed to make an amendment or a revocation, with any necessary modifications.
- (6) The Commission must give public notice of every code that is made and every amendment or revocation of those codes.

**234 Dispute resolution scheme**

- (1) The dispute resolution scheme for all Commission RSQ codes made by the Commission under this Part is—
- (a) the industry dispute resolution scheme; or
  - (b) if Part 4B comes into force in accordance with section 156S, a consumer complaints system—
    - (i) that is appointed under that Part; and
    - (ii) that the Minister declares under this section to be the dispute resolution scheme for Commission RSQ codes.
- (2) The scheme provider for the industry dispute resolution scheme must, on request by the Minister or the Commission, provide information on matters relating to any information or reports relevant to the administration of a Commission RSQ code.
- (3) **Sections 235 to 239** apply only if the dispute resolution scheme for Commission RSQ codes is the industry dispute resolution scheme.

**235 Disputes may be referred to dispute resolution scheme**

- (1) A dispute between a consumer and a telecommunications service provider about their rights and obligations under a Commission RSQ code may be referred to the industry dispute resolution scheme by any of the parties to the dispute.

- (2) Disputes that may, depending on the relevant Commission RSQ code, be referred to the industry dispute resolution scheme include disputes about the following:
- (a) installation times:
  - (b) how consumer complaints are handled: 5
  - (c) other matters provided for in the code or by the industry dispute resolution scheme.

Compare: 2001 No 103 s 155ZI

**236 Determinations binding on scheme members and certain other parties**

- (1) This section applies if a dispute is referred to the industry dispute resolution scheme and a determination is made on the dispute under the rules of the scheme. 10
- (2) The determination is binding on each party to the dispute who is a member of the industry dispute resolution scheme (except to the extent that it may be modified by the District Court under **section 239(3)**), and the scheme member has no right of appeal against the determination. 15
- (3) The determination is binding on each party to the dispute who is not a member of the industry dispute resolution scheme, except if one of those parties lodges an appeal against the determination under **section 237** and the court modifies or reverses the determination. 20

Compare: 2001 No 103 s 155ZJ

**237 Appeals against determinations**

- (1) A consumer or any other party to the dispute who is not a member of the scheme may, within the time allowed under **section 238(1)**, appeal to the District Court against a determination. 25
- (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. 30

Compare: 2001 No 103 s 155ZK

**238 Procedure on appeal**

- (1) An appeal under **section 237** must be brought and determined in accordance with the rules of court, except that— 35
- (a) an appeal must be brought within 5 working days after the determination appealed against is notified to the party wanting to lodge the appeal, or any further time the court allows on an application made before or after that period ends; and

(b)	the industry dispute resolution scheme, as the maker of the determination appealed against, is not entitled to be represented at the hearing of the appeal; and	
(c)	the court on appeal may not refer the determination back to the industry dispute resolution scheme for any purpose.	5
(2)	The court may hear all evidence provided and representations made by or on behalf of any party to the appeal that the court considers relevant to the appeal, whether or not the evidence would otherwise be admissible in a court. Compare: 2001 No 103 s 155ZL	
<b>239</b>	<b>Compliance with rules, binding settlements, and determinations</b>	10
(1)	Members of the industry dispute resolution scheme and each party to a dispute that is referred to the scheme must comply with the rules of the scheme.	
(2)	On an application of the scheme provider for the industry dispute resolution scheme, the District Court may require a scheme member or other person who is a party to a dispute to do any of the following:	15
(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 <b>subsection (2)(b)</b> may modify the terms of the binding settlement or determination, but only to the extent that the modification results in a binding settlement or determination that could have been made under the industry dispute resolution scheme.	20
(4)	If an order requiring a scheme member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by the District Court for the payment of a sum of money.	25
(5)	A reference in this section to a scheme member includes a reference to a person who was a member of the dispute resolution scheme at the relevant time but is no longer a member at the time of the application or order. Compare: 2001 No 103 s 155ZM	30
	<i>Commission review of industry dispute resolution schemes</i>	
<b>240</b>	<b>Commission review of industry dispute resolution schemes</b>	
(1)	The Commission must, at least once every 3 years, review any dispute resolution scheme that—	35
(a)	has been set up by the telecommunications industry; and	
(b)	deals with consumer complaints.	

- (2) As part of a review of a scheme, the Commission may, without limitation, consider the following:
- (a) the purpose of the scheme:
  - (b) the dispute resolution provider for the scheme:
  - (c) the effectiveness of the scheme in resolving complaints by consumers against service providers: 5
  - (d) the adequacy of the scheme rules:
  - (e) whether the scheme rules comply with the following principles:
    - (i) accessibility:
    - (ii) independence: 10
    - (iii) fairness:
    - (iv) accountability:
    - (v) efficiency:
    - (vi) effectiveness:
  - (f) whether any recommendations for improving the scheme made under **subsection (4)** have been implemented: 15
  - (g) the purpose of the dispute resolution provider for the scheme:
  - (h) the procedures that are used for receiving, investigating, and resolving complaints:
  - (i) how promptly complaints are dealt with. 20
- (3) The Commission may require the following persons to provide the Commission with any information relevant to the matters included in **subsection (2)**:
- (a) the dispute resolution provider for the scheme:
  - (b) a service provider who is subject to the scheme.
- (4) After each review, the Commission must provide a report to the dispute resolution provider for the scheme on any recommendations for improving the scheme and when the recommendations should be implemented. 25
- (5) If the Commission considers that any recommendations made under **subsection (4)** have not been implemented satisfactorily, the Commission must provide a report to the Minister on— 30
- (a) the recommendations for improving the scheme made under **subsection (4)**; and
  - (b) whether those recommendations have been implemented; and
  - (c) whether, in the Commission’s opinion,—
    - (i) the scheme fails to achieve the purpose set out in **section 241**; or 35
    - (ii) the dispute resolution provider for the scheme fails to achieve the purpose set out in **section 242**.

- (6) If the Commission proposes to report, under **subsection (5)(c)**, that a scheme fails to achieve the purpose set out in **section 241** or that the dispute resolution provider for the scheme fails to achieve the purpose in **section 242**, the Commission must give the following persons 20 working days to make submissions on a draft report: 5
- (a) the dispute resolution provider for the scheme;
  - (b) a service provider who is subject to the scheme.

**241 Purpose of dispute resolution scheme**

The purpose of a dispute resolution scheme is to ensure that, if a consumer has a dispute with a service provider in relation to a retail service quality code, the consumer has access to a dispute resolution scheme for resolving that dispute in a timely manner. 10

**242 Purpose of dispute resolution provider**

The purpose of a dispute resolution provider, in relation to a dispute resolution scheme for a retail service quality code, is— 15

- (a) to operate the scheme; and
- (b) to administer the relevant code; and
- (c) to manage consumer complaints relating to the code; and
- (d) to investigate disputes relating to the code; and
- (e) to promote awareness of the scheme and the code; and 20
- (f) to monitor compliance with the scheme and the code; and
- (g) to enforce the provisions of the scheme and the code.

**243 Interrelationship of remedies**

- (1) Nothing in this Part limits or affects any right, duty, liability, or remedy that exists or is available apart from this Part. 25
- (2) Any right of action or other remedy available under, or in connection with, this Part may be taken, proceeded with, or heard in conjunction with any other action or remedy available under this Act or otherwise.
- (3) However, in determining whether to order a person to pay a penalty, compensation, or damages, the court must have regard to— 30
  - (a) whether that person has already been ordered to pay a penalty, compensation, or damages for the same matter; and
  - (b) if so, the amount and effect of that first order.

Compare: 2001 No 103 s 156AS

## Subpart 2—Consequential and other miscellaneous amendments

**34 Amendments to replace references to Telecom**

- (1) In the provisions specified in **Part 1 of Schedule 4**, replace “Telecom” with “Spark” in each place.
- (2) In the provisions specified in **Part 2 of Schedule 4**, replace “Telecom’s” with “Spark’s” in each place. 5

**35 Repeals**

Repeal the provisions specified in **Schedule 5**.

**36 Consequential amendments**

- (1) In section 5, definition of **party**, paragraph (a), delete “or a residual terms de- 10  
termination made under section 30ZB”.
- (2) ~~In the heading to section 69T, replace “sections 69O and 69S” with “section 69O”.~~
- (3) ~~In section 69T, replace “sections 69O and 69S” with “section 69O”.~~
- (4) ~~In section 69V, replace “sections 69O or 69S” with “section 69O”.~~ 15
- (5) In section 107(1)(c), delete “or section 113”.
- (6) In section 156A(1)(g), delete “69ZC(4), 69ZF(2), or”.

**37 Miscellaneous amendments**

- (1) In section 5, definition of **chief executive**, delete “of Economic Development”.
- (2) In section 69C, definition of **sharing arrangement**, paragraph (a), replace “be- 20  
tween Telecom and Chorus” with “between Spark and Chorus”.
- (3) In section 156AZB, definition of **Telecom**, replace “Chorus and a successor to  
Telecom or Chorus” with “Chorus, Spark, and a successor to Chorus or Spark”.

**Schedule 1**  
**New Part 2 inserted into Schedule 1AA**

s 10

**Part 2**  
**Provisions relating to Telecommunications (New Regulatory Framework) Amendment Act 2017** 5

**7 Implementation date**

- (1) The Minister may, at any time before the implementation date, defer the implementation date by up to 2 years if the Commission makes a written request for a deferral. 10
- ~~(1A) However, the Minister may defer the implementation date only once.~~
- (2) The Minister must notify a deferral, and specify the new implementation date, in the *Gazette*.
- ~~(3) If a request for a deferral is granted, during the period starting on **1 January 2020** and ending on the close of the day immediately before the implementation date, the terms of each specified contract (including in relation to maximum prices) that are in force immediately before **1 December 2019** continue in full force and effect, except that a UFB partner may apply an annual CPI adjustment to a maximum price on 1 January in each year.~~ 15
- (3) If the implementation date is deferred, during the period starting on 1 December 2019 and ending on the close of the day immediately before the new implementation date, each specified contract continues in force to the extent that it contains terms relating to any of the following: 20
- (a) services that Crown Infrastructure Partners Limited and a UFB partner or an LFC agreed would be offered and provided by that UFB partner or LFC: 25
- (b) pricing of those services, including terms relating to maximum prices (but see **subclause (3A)**):
- (c) service levels for the network, including service default payments and the measurement and calculation of service levels: 30
- (d) reporting obligations of a UFB partner or an LFC that relate to the matters specified in **paragraphs (a) to (c)**.
- ~~(3A) A UFB partner or an LFC may, on 1 January of each year, apply an annual CPI adjustment to a maximum price continued by **subclause (3)(b)**.~~
- (4) ~~If more than 1 deferral is granted under **subclause (1)**, the total period of those deferrals must not exceed 2 years.~~ 35
- (5) In this clause,—

	<u>LFC</u> has the meaning set out in section 156AB	
	<b>maximum price</b> means the maximum price a UFB partner <u>or an LFC</u> is able, under the terms of a specified contract, to charge for providing a service	
	<b>specified contract</b> means a contract <u>or deed (as in force immediately before 1 December 2019 and as amended from time to time) between Crown Fibre Holdings Limited Crown Infrastructure Partners Limited and a UFB partner or an LFC</u> that was entered into as part of the UFB initiative	5
	<b>UFB initiative</b> has the meaning set out in section 156AB	
	<b>UFB partner</b> has the meaning set out in section 156AB.	
<b>8</b>	<b>Information disclosure under subpart 3 of Part 4AA</b>	10
(1)	An LFC is not required to comply with any information disclosure requirements under subpart 3 of Part 4AA in respect of any period during which the LFC is also subject to information disclosure regulation under <b>Part 6</b> .	
(2)	However, an LFC must continue to prepare and disclose information in accordance with section 156AU in respect of any disclosure period for the LFC that starts before the implementation date but ends on or after the implementation date.	15
(3)	In this clause,—	
	<b>disclosure period</b> means the period of time, set by the Commission under section 156AU, in respect of which the LFC is required to disclose information under subpart 3 of Part 4AA	20
	<b>LFC</b> has the meaning set out in section 156AB.	
<b>9</b>	<b>Anchor services review before first regulatory period</b>	
(1)	Despite <b>section 206(2)(c)</b> , if the Commission starts a review under <b>section 206</b> before the start of the first regulatory period, the review must not consider the prescribed period for an anchor service.	25
(2)	If the Commission starts a review under <b>section 206</b> before the start of the first regulatory period, the Commission must not recommend amending the prescribed maximum price for an anchor service unless the Commission also recommends amending the specification of the service.	30
<b>10</b>	<b>Procedural requirements for initial regulations made under section 222 (persons subject to regulation under Part 6)</b>	
	<b>Section 222(3)</b> does not apply in relation to any regulations made under <b>section 222(1)</b> before the start of the first regulatory period.	
<b>11</b>	<b>Procedural requirements for initial regulations made under section 223 (anchor services)</b>	35
	<b>Section 223(2)</b> does not apply in relation to the first regulations made under <b>section 223(1)</b> .	



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- 12 **Procedural requirements for initial regulations made under section 224 (direct fibre access services)**  
**Section 224(2)** does not apply in relation to the first regulations made under **section 224(1)**.
- 13 **Procedural requirements for initial regulations made under section 225 (unbundled fibre services)**  
**Section 225(2)** does not apply in relation to the first regulations made under **section 225(1)**.

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## Schedule 2

### Amendments to Schedule 1

s 11

**Part 2, subpart 1, under the heading Retail services offered by means of a fixed telecommunications network** 5

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

In the item relating to Description of service applicable after the expiry of 3 years from separation day, in the first column, delete “*applicable after the expiry of 3 years from separation day*”. 10

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

Repeal each of the following items:

(a) item relating to Description of service applicable before the expiry of 3 years from separation day: 15

(b) item relating to Conditions applicable before the expiry of 3 years from separation day:

(c) item relating to Initial pricing principle applicable before the expiry of 3 years from separation day:

(d) item relating to Final pricing principle applicable before the expiry of 3 years from separation day. 20

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

In the item relating to Conditions applicable after the expiry of 3 years from separation day, in the first column, delete “*applicable after the expiry of 3 years from separation day*”. 25

In the item relating to Initial pricing principle applicable after the expiry of 3 years from separation day, in the first column, replace “*after the expiry of 3 years from separation day*” with “*before 16 December 2019*”. 30

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

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

For a price-capped residential local access and calling service, either—

- (a) Spark’s standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus 2%; or

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

- (b) if a person is also purchasing Chorus’s unbundled bitstream access service in relation to the relevant subscriber line, the price in **paragraph (a)** minus \$31.68, with an annual CPI adjustment applied on 16 December in each year
- For a non-price-capped local access and calling service, either—
- (a) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of these services, in the case of a service offered by Spark in markets in which Spark faces limited, or is likely to face lessened, competition for that service; or
  - (b) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus actual costs saved pricing in respect of these services, in the case of a service offered by Spark in markets in which Spark does not face limited, or lessened, competition for that service; or
  - (c) if a person is also purchasing Chorus’s unbundled bitstream access service in relation to the relevant subscriber line, the price in **paragraph (a)** minus \$31.68, with an annual CPI adjustment applied on 16 December in each year; or
  - (d) if a person is also purchasing Chorus’s unbundled bitstream access service in relation to the relevant subscriber line, the price in **paragraph (b)** minus \$31.68, with an annual CPI adjustment applied on 16 December in each year

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

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

5

- Final pricing principle applicable on and after 16 December 2019*
- For a price-capped residential local access and calling service, either—
    - (a) Spark’s standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus actual costs saved; or
    - (b) if a person is also purchasing Chorus’s unbundled bitstream access service in relation to the relevant subscriber line, the price in **paragraph (a)** minus \$31.68, with an annual CPI adjustment applied on 16 December in each year
  - For a non-price-capped local access and calling service, either—
    - (a) average or best retail price minus a discount comprising avoided costs saved pricing, in the case of a service offered by Spark in markets in which Spark faces limited, or is likely to face lessened, competition for that service; or
    - (b) average or best retail price minus a discount comprising actual costs saved, in the case of a service offered by Spark in markets in which Spark does not face limited, or is not likely to face lessened, competition for that service; or

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

- (c) if a person is also purchasing Chorus’s unbundled bitstream access service in relation to the relevant subscriber line, the price in **paragraph (a)** minus \$31.68, with an annual CPI adjustment applied on 16 December in each year; or
- (d) if a person is also purchasing Chorus’s unbundled bitstream access service in relation to the relevant subscriber line, the price in **paragraph (b)** minus \$31.68, with an annual CPI adjustment applied on 16 December in each year

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

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

Repeal each of the following items:

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

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

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

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

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

The year 5 prices specified in Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled bitstream access service, with an annual CPI adjustment applied on 16 December in each year

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

The year 5 prices specified in Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled bitstream access service, with an annual CPI adjustment applied on 16 December in each year

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

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

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

After the item relating to Final pricing principle, insert:

**Part 2, subpart 1, under the heading Chorus’s unbundled bitstream access backhaul—continued**

<i>Initial pricing principle applicable on and after 1 January 2020</i>	The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled bitstream access backhaul service, with an annual CPI adjustment applied on 1 January in each year
<i>Final pricing principle applicable on and after 1 January 2020</i>	The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled bitstream access backhaul service, with an annual CPI adjustment applied on 1 January in each year

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

Repeal the heading and each item related to the heading.

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

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

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

After the item relating to Final pricing principle, insert:

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<i>Initial pricing principle applicable on and after 1 January 2020</i>	The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled copper local loop network co-location service, with an annual CPI adjustment applied on 1 January in each year
<i>Final pricing principle applicable on and after 1 January 2020</i>	The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled copper local loop network co-location service, with an annual CPI adjustment applied on 1 January in each year

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

Repeal the heading and each item related to the heading.

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

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

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

After the item relating to Final pricing principle, insert:

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<i>Initial pricing principle applicable on and after 1 January 2020</i>	The prices that applied as at 1 January 2020 under Schedule 2 of the Commission’s standard terms determination for Chorus’s unbundled
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**Telecommunications (New Regulatory Framework)  
Amendment Bill**

Schedule 2

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

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

Replace the item relating to Conditions with:

<i>Conditions:</i>	<p>Chorus’s unbundled copper low frequency service is only available where—</p> <ul style="list-style-type: none"> <li>(a) Chorus’s local loop that connects the end-user’s building (or, where relevant, the building’s distribution frame) to the handover point in Chorus’s local telephone exchange remains in place; and</li> <li>(b) the end-user’s building (or, where relevant, the building’s distribution frame) is not located in a specified fibre area</li> </ul> <p>To avoid doubt, there is no obligation on Chorus that Chorus’s copper network that connects a cabinet (or equivalent facility) and Chorus’s local telephone exchange remain in place or be maintained if that part of Chorus’s copper network is only being used to provide Chorus’s unbundled copper low frequency services</p>
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In the item relating to Initial pricing principle, in the first column, after “*principle*”, insert “*applicable before 16 December 2019*”.

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

After the item relating to Final pricing principle, insert:

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

**Schedule 3**  
**New Schedule 2A inserted**

**s 12**

**Schedule 2A**  
**Copper withdrawal code**

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**s 69AF**

**1 Copper withdrawal code**

- (1) The Commission, or the Forum if requested to do so by the Commission, must prepare a code to be known as the copper withdrawal code, setting out minimum consumer protection requirements for end-users of the following: 10
- (a) copper fixed line access services in areas that become specified fibre areas: 10
  - (b) Chorus's unbundled copper local loop network: 10
  - (c) Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange). 15
- (2) The code must be prepared before the implementation date.
- (3) The minimum requirements that the code must include are that, before Chorus is permitted to stop supplying a service under **section 69AC or 69AD**,—
- (a) the end-user in relation to the service must be able to— 20
    - (i) access a fibre fixed line access network; and 20
    - (ii) have a fibre connection installed—
      - (A) within a reasonable time frame; and
      - (B) whether the connection is standard or non-standard, at no cost to the end-user; and
  - (b) Chorus must give the end-user, the access seeker, and the relevant regulated fibre service provider reasonable notice of the proposed withdrawal of the service; and 25
  - (c) the functionality provided by the services that are to be withdrawn must, apart from legacy services, be available to the end-user over a fibre fixed line access network; and 30
  - (d) Chorus must provide the end-user with information about—
    - (i) the withdrawal of the services; and
    - (ii) the need to make alternative arrangements, such as battery back-up, to maintain service on fixed line access services in the event of a power failure; and 35

(e)	Chorus must, if it is reasonably practicable to do so, provide the end-user with information about the fibre fixed line access services available to the end-user; and	
(f)	the anchor services or commercial equivalents must be available at the end-user's premises on a fibre fixed line access network; and	5
(g)	any other prescribed matters must be complied with.	
(4)	The code may contain any other provisions that are necessary or desirable.	
(5)	In this clause,—	
	<b>anchor service</b> has the meaning set out in <b>section 164</b>	
	<b>fibre connection</b> means a fibre-based network for telecommunications that incorporates fibre optic cable	10
	<b>legacy service</b> means the services (if any) specified in the copper withdrawal code as legacy services	
	<b>standard connection</b> and <b>non-standard connection</b> have the meanings set out in section 155ZU.	15
<b>2</b>	<b>Consultation process on code</b>	
(1)	The Commission or the Forum (as appropriate) must—	
(a)	notify the process that will be followed to make the code; and	
(b)	consult with interested persons; and	
(c)	give public notice of a draft code.	20
(2)	A person is entitled to make submissions to the Commission or the Forum (as appropriate) not later than 30 working days after the date on which public notice of the draft code is given.	
<b>3</b>	<b>Commission's discretion to approve draft code</b>	
	The Commission may approve a draft code if the Commission is satisfied that the draft code meets all the requirements set out in this Act.	25
<b>4</b>	<b>Amendment of approved code initiated by Commission</b>	
(1)	The Commission may prepare an amendment to the approved code or revoke the approved code if the Commission considers that the approved code no longer meets all the requirements set out in this Act.	30
(2)	The same procedure that applies to making a code in <b>clauses 2 and 3</b> must be followed to make an amendment or a revocation.	
<b>5</b>	<b>Public notice of approved code</b>	
	The Commission must give public notice of—	
(a)	the approved code; and	35
(b)	every amendment or revocation of the approved code.	



**Schedule 4**  
**Replacing references to “Telecom” or “Telecom’s”**

**s 34**

**Part 1**

**Replacing references to “Telecom” with “Spark”** 5

Section 69C, definition of <b>sharing arrangement</b> , paragraph (c)(vii)	
Section 69E(1) and (2)	
Section 69F(1)	
Section 69G	
Section 69H(1) and (2)	10
Section 69I(1)	
Section 69K(2)	
Section 69M(1) and (2)	
Section 69N(7)	
Section 69U(3)	15
Section 69XK(2)	
Section 105(1) and (1A)	
Section 111A(2)	
Parts 2 and 3 of Schedule 1	

**Part 2** 20

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

Part 2 of Schedule 1	
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## Schedule 5

### Repeals

s 35

Section 4(eb)	
Section 22(2)	5
Section 30A(2)(e)	
Section 30O(3)	
Section 30R(3)(b)	
Section 30S(3) and (4)	
Sections 30U to 30ZD and the cross-heading above section 30U	10
<del>Section 69R</del>	
<del>Section 69S</del>	
Part 2B	
Section 101A	
Section 113	15
Subpart 3 of Part 4AA	
Subpart 5 of Part 4AA	
Section 156A(1)(h)	
Section 156M(1)(b)	
Section 156N, definition of <b>enforceable matter</b> , paragraph (c)	20
Section 157AA	
Section 158 and Schedule 4	
Section 159	
Section 161	

### Legislative history

8 August 2017	Introduction (Bill 293–1)
16 August 2017	First reading and referral to Commerce Committee
8 November 2017	Reinstated before Economic Development, Science and Innovation Committee