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Telecommunications Amendment Act (No 2) 2006

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Commencement see section 2

Contents

	Page
1 Title	9
2 Commencement	9
3 Principal Act amended	9

Part 1

Amendments to principal Act

4 Overview	9
5 Interpretation	9
6 Telecommunications access codes	11
7 New section 9A inserted	11
9A Functions of Commission in relation to sector monitoring and information dissemination	12
8 Commission and Minister must consider purpose set out in section 18 and additional matters	12
9 New section 19A inserted	12
19A Commission to have regard to economic policies of Government	12
10 When application may not be made	12
11 New section 22A inserted	13

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

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

22A	Effect of application on existing agreement for supply of designated access service or specified service	13
12	Matters to be included in determination	14
13	New subpart 2A inserted	14
Subpart 2A—Standard terms determinations for designated access services and specified services		
<i>Preliminary</i>		
30A	Overview of subpart	14
30B	Interpretation	15
<i>Standard terms development process</i>		
30C	When standard terms development process may be initiated	15
30D	Commission must give public notice if Commission initiates standard terms development process	15
30E	Commission must conduct scoping workshop	15
<i>Standard terms proposal</i>		
30F	Call for standard terms proposal	16
30G	Requirements for standard terms proposal	16
30H	Failure to submit standard terms proposal	17
30I	Receipt of standard terms proposal	18
30J	Requirement for submissions	18
<i>Draft standard terms determination</i>		
30K	Draft standard terms determination	18
30L	Consultation or conferences	19
<i>Standard terms determination</i>		
30M	Standard terms determination	19
30N	Commission's discretion to determine how standard terms determination is to be prepared	19
30O	Matters to be included in standard terms determination: general	20
30P	Additional matters to be included in standard terms determination for designated access service	21
30Q	Standard terms determination not to include expiry date	21
30R	Review of standard terms determination	21
<i>Application of standard terms determination</i>		
30S	Application of standard terms determination	22
30T	Effect of standard terms determination on determination made under section 27	23
<i>Residual terms determination</i>		
30U	Purpose of residual terms determination	23

	30V	Application for residual terms determination	23
	30W	When application may not be made	24
	30X	Requirements for application	24
	30Y	Commission must notify parties	25
	30Z	Commission must decide whether to investigate	25
	30ZA	Consultation or conferences	25
	30ZB	Preparation of residual terms determination	25
	30ZC	Requirements for residual terms determination	25
	30ZD	Matters to be included in residual terms determination	26
14		New heading and section 31AA inserted	26
		<i>Commission may initiate process for designated multinetwork service determination on own initiative</i>	
	31AA	Commission may initiate process for designated multinetwork service determination on own initiative	26
15		New section 34 substituted	26
	34	Commission must notify parties	26
16		Commission must decide whether to investigate	27
17		Application	27
18		Requirements for application	27
19		Commission's requirements on receiving application	27
20		Access provider to calculate price on request	27
21		Section 46 repealed	28
22		Matters to be included in draft determination	28
23		Matters to be included in determination	28
24		Applicant may withdraw	28
25		Commission's costs	28
26		Clarification of determination	28
27		Reconsideration of determination	28
28		Section 61 repealed	28
29		New section 62 substituted	28
	62	Expiry of determinations	28
30		Sections 64 and 65 repealed	29
31		New sections 68 and 68A substituted	29
	68	Minister's recommendation subject to procedure in Schedule 3	29
	68A	Application of Schedule 3A	29
32		New Parts 2A and 2B inserted	29
		Part 2A	
		Operational separation of Telecom	
		<i>Preliminary provisions</i>	
	69A	Purposes	29
	69B	Overview	30
	69C	Interpretation	30

<i>Requirements for separation plan</i>		
69D	Main requirements for separation plan	31
69E	Meaning of equivalence	32
69F	Minister must determine further requirements for separation plan	32
69G	How Ministerial determination of further requirements may be made	33
<i>Process for settling separation plan</i>		
69H	Preparation of draft separation plan	33
69I	Minister must invite public comments on draft separation plan	33
69J	Amendment of separation plan after public comments	34
69K	Minister may approve, or decline to approve, separation plan	34
69L	Minister may amend separation plan to give better effect to this Part	34
69M	Failure to submit separation plan	35
<i>Implementation of separation plan</i>		
69N	Implementation of separation plan	35
69O	Telecom must publish separation plan	35
69P	Employees	35
<i>Statutory provisions for enforcement of separation plan</i>		
69Q	Enforcement and remedies under Part 4A	36
69R	Power of Court to grant relief in respect of separation undertakings	36
69S	Interrelationship of remedies	37
<i>Variation of separation plan</i>		
69T	Variation of separation plan	37
69U	Variation by agreement	37
69V	Variation by Minister	37
69W	Variation by Telecom	37
69X	Commission may request variation	38
Part 2B		
Information disclosure requirements		
69Y	Purpose	38
69Z	Parameters of Part	38
69ZA	Interpretation	38
69ZB	Accounting separation of Telecom	39
69ZC	Information disclosure by all access providers	40
69ZD	Miscellaneous provisions relating to Commission's information disclosure requirements	41

69ZE	Publication of Commission's information disclosure requirements	41
69ZF	Information to be supplied to Commission	41
69ZG	Commission to publish summaries	42
69ZH	Reasonable charge may be imposed for providing copies of statements	42
33	Declaration of TSO instruments	42
34	New section 71A inserted	42
71A	TSO instrument or deemed TSO instrument may specify total amount payable by all liable persons	42
35	Compliance with TSO instrument	42
36	New section 79 substituted	43
79	When 2 or more bodies corporate must be treated as 1 person	43
37	Assessment of compliance with TSO instrument	43
38	New heading inserted	43
39	Liable persons and TSP must produce certain information to Commission	43
40	Section 82 repealed	44
41	Calculations of net cost and auditor's report must be given to Commission	44
42	Considerations for determining net cost	44
43	Considerations for determining which revenue basis to use	44
44	New headings and sections 86 to 93F substituted	44
<i>General provision relating to TSO cost allocation determination and TSO cost calculation determination</i>		
86	Commission may determine priority between preparation of TSO cost allocation determination and TSO cost calculation determination	45
<i>TSO cost allocation determination</i>		
87	Commission to prepare draft TSO cost allocation determination	45
88	Matters to be included in draft TSO cost allocation determination	45
89	Conferences on draft TSO cost allocation determination	46
90	Commission to prepare final TSO cost allocation determination	46
91	Matters to be included in final TSO cost allocation determination	46
<i>TSO cost calculation determination</i>		
92	Commission to prepare draft TSO cost calculation determination	46

93	Requirements for draft TSO cost calculation determination	47
93A	Matters to be included in draft TSO cost calculation determination	47
93B	Conferences on draft TSO cost calculation determination	47
93C	Commission to prepare final TSO cost calculation determination	48
93D	Requirements for final TSO cost calculation determination	48
93E	Matters to be included in final TSO cost calculation determination	48
	<i>Calculation of amount payable by liable person</i>	
93F	Calculation of amount payable by liable person	49
45	Payment by liable persons to TSP	49
46	New heading and section 94A inserted	50
	<i>Calculation of amount payable by TSO provider</i>	
94A	ISO provider must meet residual amount from calculation of TSO charge	50
47	Power of Court to grant relief in respect of TSO instrument	50
48	Certain matters not to prevent making of order under section 96	50
49	Right of appeal to High Court	50
50	New sections 100A to 100C inserted	50
100A	Procedure for determinations	50
100B	Commission must include information about deemed TSO instrument in TSO cost calculation determinations	51
100C	Duties of Commission in complying with section 100B	51
51	Regulations	52
52	Persons declared to be network operators	52
53	New heading and section 111A inserted	53
	<i>Information requirement</i>	
111A	Information about interconnection arrangements	53
54	New Parts 4A and 4B inserted	53
	Part 4A	
	Enforcement	
	Subpart 1—Enforcement of statutory and regulatory provisions	
	<i>Preliminary</i>	
156A	Application of section 156B	53
156B	Enforcement actions that Commission may take	54
156C	Matters that Commission must take into account in deciding what enforcement action to take	54

<i>Civil infringement notice</i>		
156D	Civil infringement notice	55
156E	Objection to civil infringement notice	55
156F	Commission must consider objection	56
156G	Effect of withdrawal of civil infringement notice	56
156H	Consequence of not paying pecuniary penalty specified in civil infringement notice	56
156I	Right to appeal	57
156J	Decision on appeal	57
156K	Commission may publish information about issue of civil infringement notice	57
<i>Pecuniary penalty</i>		
156L	Pecuniary penalty	58
156M	Further penalty may be imposed for continuing breach	59
	Subpart 2—Enforcement of determinations, approved codes, and registered undertakings	
156N	Interpretation	59
156O	Complaints of breach of enforceable matter	60
156P	Enforcement by High Court	60
156Q	Remedies for breach of enforceable matter	61
156R	Limit on amount of pecuniary penalty	61
Part 4B		
Consumer complaints		
Subpart 1—Preliminary		
156S	Commencement of this Part	61
156T	Process to apply before Part may be commenced	62
156U	Purpose of this Part	62
156UA	Appointment of consumer complaints system	62
156V	Interpretation	63
156W	Power to exempt service providers from application of consumer complaints system	63
156X	Objectives of consumer complaints system	63
156Y	Requirements for consumer complaints system	64
156YA	Obligation to publish rules	64
156YB	Duty to notify change to rules	64
156YC	Minister's consideration of change of rules	65
Subpart 2—Consumer complaints adjudicator		
156Z	Appointment of consumer complaints adjudicator	65
156ZA	Qualification for appointment as consumer complaints adjudicator	65
156ZB	Revocation of appointment	66
156ZC	Functions and duties of consumer complaints adjudicator	66

156ZD	Powers of consumer complaints adjudicator in relation to complaints	66
156ZE	Consumer complaints adjudicator may seek agreed settlement or order compensation	67
156ZF	Right of appeal	68
	Subpart 3—Consumer complaints levy	
156ZG	Purpose of subpart	68
156ZH	Consumer complaints levy	68
156ZI	Late payment of consumer complaints levy	69
	Subpart 4—Miscellaneous	
156ZJ	Consultation requirements for making Order in Council or regulation under this Part	69
55	Regulations	70
56	Schedule 1 amended	71
57	Schedule 2 amended	71
58	Schedule 3 amended	71
59	New Schedule 3A inserted	71
	Part 2	
	Consequential amendments and transitional provisions	
	<i>Consequential amendments</i>	
60	Telecommunications (Fixed Public Data Network) Order 2004 revoked	71
61	Amendments to Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002	71
	<i>Transitional provisions</i>	
62	Transitional provision for uncompleted determinations under section 27	72
63	Transitional provision for TSO determinations	72
64	Transitional provision for enforcement of determinations and approved codes made before commencement of this Act	72
65	Transitional provision for descriptions of services in existing determinations	73
66	Transitional provision for uncompleted Schedule 3 investigations	73
	Schedule 1	73
	Amendments to Schedule 1	
	Schedule 2	84
	Amendments to Schedule 2	
	Schedule 3	87
	Amendments to Schedule 3	
	Schedule 4	92
	New Schedule 3A inserted	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Telecommunications Amendment Act (No 2) 2006.

2 Commencement

- (1) Part 4B of the Telecommunications Act 2001 (as inserted by section 54 of this Act) comes into force as provided in section 156S of that Act.
- (2) The rest of this Act comes into force on 22 December 2006.

3 Principal Act amended

This Act amends the Telecommunications Act 2001.

Part 1
Amendments to principal Act

4 Overview

- (1) Section 4(c)(ii) is amended by inserting “prepared by the Commission on its own initiative or” after “(Schedule 2)”.
- (2) Section 4(e) is amended by omitting “Schedule 3”, and substituting “Schedules 3 and 3A”.
- (3) Section 4 is amended by inserting the following paragraphs after paragraph (e):
 - (ea) provisions requiring the operational separation of Telecom are set out in Part 2A; and
 - (eb) provisions about the preparation and disclosure of information are set out in Part 2B; and
- (4) Section 4 is amended by inserting, after paragraph (g):
 - (ga) enforcement provisions are set out in Part 4A; and
 - (gb) provisions facilitating the establishment of 1 or more complaints systems for the purpose of addressing complaints by consumers against service providers are set out in Part 4B; and

5 Interpretation

- (1) Section 5 is amended by repealing the definition of **access provider** and substituting the following definition:

access provider—

- (a) means, in relation to a designated service or specified service, the person named or described in Part 2, or Part 3, of Schedule 1 as the access provider for the designated service or specified service; and

(b) means, in relation to a service that is supplied under a registered undertaking, the person that provided the undertaking under Schedule 3A

(2) Section 5 is amended by repealing the definition of **access seeker** and substituting the following definition:

access seeker—

(a) means, in relation to a designated service or specified service, the person named or described in Part 2, or Part 3, of Schedule 1 as the access seeker for the designated service or specified service; and

(b) means, in relation to a service that is supplied under a registered undertaking, a service provider who seeks access to the service and who complies with any conditions set out in the registered undertaking for eligibility as an access seeker

(3) Section 5 is amended by repealing the definition of **financial year** and substituting the following definition:

financial year, in relation to a TSO provider, means a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year during some or all of which a TSO provider supplies services under a TSO instrument

(4) The definition of **liable person** in section 5 is amended by omitting “TSP” and substituting “TSO provider”.

(5) Section 5 is amended by inserting the following definition in its appropriate alphabetical order:

liable person’s TSO-qualified revenue means the amount of revenue that, during the financial year, each liable person receives for supplying all or any of the following

(a) telecommunications services by means of its PSTN:

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

(c) directory services in respect of PSTN numbers

(6) The definition of **local loop network** in section 5 is repealed.

(7) Section 5 is amended by repealing the definition of **party** or **parties** and substituting the following definition:

party or parties means,—

(a) for a determination made under section 27 or a residual terms determination made under section 30ZB, the access seeker and the access provider of the service; and

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

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

(8) Section 5 is amended by inserting the following definition in its appropriate alphabetical order:

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

(9) The definition of **specified amount** in section 5 is amended by omitting “section 70(5)” and substituting “section 71A”.

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

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

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

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

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

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

- (a) telecommunications services by means of its PSTN:
- (b) telecommunications services by means that rely primarily on the existence of its PSTN or any other PSTN:
- (c) directory services in respect of PSTN numbers

6 Telecommunications access codes

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

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

- (a) designated services or specified services:
- (b) services supplied under a registered undertaking.

7 New section 9A inserted

The following section is inserted after section 9:

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

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

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

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

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

9 New section 19A inserted

The following section is inserted after section 19:

19A Commission to have regard to economic policies of Government

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

10 When application may not be made

- (1) Section 22(a) and (b) are repealed.
- (2) Section 22 is amended by inserting the following paragraph after paragraph (c):

- (ca) the standard terms development process for the service is proceeding or a standard terms determination for the service is in force; or
- (3) Section 22 is amended by adding the following subsections as subsections (2) to (4):
 - (2) However, subsection (1)(ca) does not prevent a person from applying for a residual terms determination under section 30V.
 - (3) The Commission may investigate whether subsection (1)(d) applies either at the time—
 - (a) it receives an application made under section 20; or
 - (b) it prepares a determination under section 27.
 - (4) However, if the Commission is satisfied, at any time, that the applicable conditions in relation to the service have not been met, the Commission must discontinue—
 - (a) all of its investigation; or
 - (b) as the case may be, that part of its investigation that relates to the market in which those conditions have not been met.

11 New section 22A inserted

The following section is inserted after section 22:

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

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

- (5) If there is any inconsistency between the determination and the agreement, the determination prevails.

12 Matters to be included in determination

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

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

13 New subpart 2A inserted

The following subpart is inserted after section 30:

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

Preliminary

30A Overview of subpart

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

30B Interpretation

In this subpart,—

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

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

Standard terms development process

30C When standard terms development process may be initiated

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

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

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

30E Commission must conduct scoping workshop

- (1) The Commission must conduct 1 or more scoping workshops in relation to a designated access service or specified service.

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

Standard terms proposal

30F Call for standard terms proposal

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

30G Requirements for standard terms proposal

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

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

30H Failure to submit standard terms proposal

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

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

30I Receipt of standard terms proposal

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

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

30J Requirement for submissions

A submission to the Commission on a standard terms proposal—

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

Draft standard terms determination

30K Draft standard terms determination

- (1) The Commission must make reasonable efforts to do the following things not later than 60 working days after the closing date for submissions on a standard terms proposal:
 - (a) determine the terms on which the service must be supplied; and
 - (b) prepare a draft standard terms determination containing those terms; and
 - (c) provide a copy of the draft standard terms determination to all parties to the determination; and
 - (d) give public notice of the draft standard terms determination; and
 - (e) include in the public notice the closing date for submissions.
- (2) A draft standard terms determination for a designated access service must also include,—
 - (a) if the price or prices payable for the service have been determined in accordance with the applicable final pricing principle in a determination made under section 51, either of the following:
 - (i) that price or those prices; or

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

30L Consultation or conferences

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

Standard terms determination

30M Standard terms determination

As soon as practicable after completing any consultation or conferences under section 30L, or if there is no consultation or there are no conferences, after the closing date for submissions under section 30K(1)(e), the Commission must—

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

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

- (1) The Commission may, if it considers it appropriate in the circumstances, comply with section 30M(a) by preparing—
 - (a) a standard terms determination relating to 2 or more designated access services or specified services that contains—

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

300 Matters to be included in standard terms determination: general

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

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

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

30Q Standard terms determination not to include expiry date

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

30R Review of standard terms determination

- (1) The Commission may, on its own initiative, commence a review, at any time, of all or any of the terms specified in a standard terms determination.
- (2) The Commission may replace a standard terms determination or vary, add, or delete any of its terms, if it considers it necessary to do so after conducting a review.

- (3) In exercising the power conferred by subsection (2), the Commission may specify how and when a replacement standard terms determination, or a variation, addition, or deletion of terms specified in the determination, takes effect in relation to—
 - (a) the initial standard terms determination;
 - (b) any relevant residual terms determination.
- (4) The Commission may conduct a review in the manner, and within the time, that it thinks fit.
- (5) The Commission must—
 - (a) consult all parties to the determination on the review; and
 - (b) give public notice of the commencement of the review; and
 - (c) include in the public notice under paragraph (b) the closing date for submissions; and
 - (d) give public notice of the result of the review.

Application of standard terms determination

30S Application of standard terms determination

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

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

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

Residual terms determination

30U Purpose of residual terms determination

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

30V Application for residual terms determination

- (1) An access seeker of a designated access service or specified service who is a party to a standard terms determination may apply to the Commission for a residual terms determination of any terms on which the service must be supplied.
- (2) If an access seeker applies for a residual terms determination under subsection (1), the access provider of the service may also apply to the Commission for a residual terms determination of any terms on which the access provider considers the service must be supplied.
- (3) To avoid doubt, an application under this section—
 - (a) may only be made if the Commission has made a standard terms determination for the service; and
 - (b) may seek either or both of the following:

- (i) a determination of matters that were not addressed in the standard terms determination;
- (ii) a variation of any terms in the standard terms determination that the Commission has identified under section 30O(3) as being allowed to be varied.

30W When application may not be made

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

30X Requirements for application

An application made under section 30V must—

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

30Y Commission must notify parties

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

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

30Z Commission must decide whether to investigate

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

- (a) decide whether or not to investigate the matter;
- (b) give written notice of its decision to the parties;
- (c) give public notice of its decision;
- (d) request the parties to the residual terms determination to make submissions on the matter by written notice to the Commission not later than 10 working days after receipt of the notice of decision from the Commission.

(2) Subsection (1)(d) applies only if the Commission has decided under subsection (1)(a) to investigate the matter.

30ZA Consultation or conferences

If the Commission considers that persons other than the parties to the determination have a material interest in the residual terms determination, the Commission may either consult those persons or hold conferences in relation to the matter.

30ZB Preparation of residual terms determination

After investigating the matter, the Commission must—

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

30ZC Requirements for residual terms determination

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

- (a) be made in accordance with—

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

30ZD Matters to be included in residual terms determination

A residual terms determination must include—

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

14 New heading and section 31AA inserted

The following heading and section are inserted after the subpart 3 heading in Part 2:

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

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

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

15 New section 34 substituted

Section 34 is repealed and the following section substituted:

34 Commission must notify parties

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

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

16 Commission must decide whether to investigate

Section 35 is amended by omitting “application” and substituting “matter”.

17 Application

- (1) Section 42 is amended by inserting “or section 30M” after “section 27” wherever it appears.
- (2) Section 42 is amended by inserting, after subsection (1), the following subsection:
 - (1A) However, subsection (1) does not apply in relation to a determination made under section 30M if the price to be paid for the service was included in that determination under section 30P(1)(a).

18 Requirements for application

Section 43 is amended by repealing paragraph (b) and substituting the following paragraph:

- (b) be given to the Commission not later than 25 working days after,—
 - (i) for a determination made under section 27, the date on which the person received the copy of the determination; and
 - (ii) for a standard terms determination made under section 30M, the date on which public notice of that determination is given under section 30M(c).

19 Commission’s requirements on receiving application

Section 44(b) is amended by omitting “party to the determination” and substituting “party or parties to the determination (as the case requires)”.

20 Access provider to calculate price on request

- (1) Section 45(1) is amended by omitting “the access provider” and substituting “an access provider”.
- (2) Section 45(2) is amended by omitting “the access provider” where it first appears and substituting “an access provider”.
- (3) Section 45(2)(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
 - (ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission.

21 Section 46 repealed

Section 46 is repealed.

22 Matters to be included in draft determination

Section 49(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:

- (ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission; and

23 Matters to be included in determination

Section 52(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:

- (ii) any regulations that relate to the applicable final pricing principle or, if there are no regulations, any requirements of the Commission; and

24 Applicant may withdraw

Section 54(1) is amended by inserting “a standard terms determination or” after “except”.

25 Commission’s costs

Section 55 is amended by adding the following subsection as subsection (2):

- (2) The Commission’s costs in relation to a standard terms determination, or a pricing review determination in relation to a standard terms determination, may be met—
 - (a) in the manner provided under subsection (1); or
 - (b) by way of a levy under section 11; or
 - (c) by a combination of the ways referred to in paragraphs (a) and (b).

26 Clarification of determination

Section 58(1)(b) is repealed.

27 Reconsideration of determination

Section 59(1)(b) is repealed.

28 Section 61 repealed

Section 61 is repealed.

29 New section 62 substituted

Section 62 is repealed and the following section substituted:

62 Expiry of determinations

Every determination expires on the earlier of—

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

30 Sections 64 and 65 repealed

Sections 64 and 65 are repealed.

31 New sections 68 and 68A substituted

Section 68 is repealed and the following sections are substituted:

68 Minister's recommendation subject to procedure in Schedule 3

- (1) The Minister must not make a recommendation under section 66 or 67 unless the Minister accepts the Commission's recommendation that the proposed alteration be made.
- (2) The Commission's recommendation must be made in accordance with the procedure set out in—
 - (a) Part 2 of Schedule 3 for a telecommunications service that is omitted from Part 3 of Schedule 1 and is added to Part 2 of that schedule; or
 - (b) Part 1 of Schedule 3 in any other case.
- (3) This section does not prevent the Minister from making a recommendation under section 66 or 67 to amend the detail of a proposed alteration so long as the recommendation—
 - (a) implements the effect of the Commission's recommendation on the proposed alteration; and
 - (b) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail).

68A Application of Schedule 3A

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

32 New Parts 2A and 2B inserted

The following Parts are inserted after Part 2:

Part 2A
Operational separation of Telecom

Preliminary provisions

69A Purposes

The purposes of this Part are—

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

69B Overview

- (1) The main features of this Part are that it—
 - (a) provides for a robust operational separation of Telecom to achieve the purposes of this Part; and
 - (b) sets the process for the Minister and Telecom to settle a separation plan following public comments.
- (2) This section is intended only as a guide to the general scheme and effect of this Part.

69C Interpretation

In this Part, unless the context otherwise requires,—

Minister's determination means a determination made under section 69F

Ministry means the Ministry that is responsible for administering this Act

operational separation —

- (a) includes the way in which business units are managed or structured, and the type of relationships, dealings, and transactions the units have;
- (b) does not include a requirement that any business unit must be operated by different owners;
- (c) may include business units being operated in different companies but only if Telecom wishes

publish means to publish on an Internet website in an electronic form that is publicly accessible (at all reasonable times)

relevant services means any telecommunications services, or types of telecommunications services, specified in a Minister's determination

separation plan means the plan that is required under this Part

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

Requirements for separation plan

69D Main requirements for separation plan

- (1) The separation plan must require a robust operational separation of Telecom, including undertakings to achieve the following in respect of relevant services:
 - (a) Telecom must establish and maintain the following business units:
 - (i) a fixed network access service business unit (which may provide a wholesale function for those services); and
 - (ii) 1 or more business units which must provide a wholesale function for all relevant services (except to the extent that a wholesale function is provided in accordance with subparagraph (i)); and
 - (iii) 1 or more business units that provide 1 or more other functions (for example, retail); and
 - (b) Telecom must operate its fixed network access service business unit on a stand alone basis, at arms length from any other Telecom business unit; and
 - (c) Telecom must operate its wholesale business unit or units at arms length from any business unit that provides retail functions; and
 - (d) Telecom must operate any business unit that provides retail functions at arms length from any of Telecom's fixed network business units (whether access service units or other fixed network units); and
 - (e) Telecom must ensure that all Telecom business units are operated in a way that does not undermine the requirements in paragraphs (b) to (d); and
 - (f) Telecom must ensure transparency and equivalence in relation to the supply by Telecom of relevant services; and
 - (g) Telecom must be responsive in meeting its wholesale customers' needs in relation to relevant services; and
 - (h) Telecom must have systems, procedures, and processes that require—
 - (i) compliance with the separation plan; and
 - (ii) monitoring of, and reporting on, compliance with the separation plan by an independent oversight group that has a majority of members that are independent of Telecom; and
 - (iii) the development of performance measures relating to compliance with the separation plan; and
 - (iv) audit, and other checks, of compliance with the separation plan.
- (2) The separation plan must specify a separation day or a method of determining the separation day.

- (3) Each separation plan given to the Minister by Telecom under any provision of this Part must be accompanied by a certificate signed by at least 2 directors of Telecom certifying that the directors are satisfied that the plan complies with this Part and any Minister's determination.
- (4) This Part does not require separation undertakings to be given in respect of services other than relevant services.

69E Meaning of equivalence

Section 69D(1)(f) requires equivalence of supply of wholesale telecommunications services and access to Telecom's network so that third party access seekers are treated in the same or an equivalent way to Telecom's own business operations, including in relation to pricing, procedures, operational support, supply of information, and other relevant matters.

69F Minister must determine further requirements for separation plan

- (1) The Minister must determine further requirements with which the separation plan must comply.
- (2) These further requirements may include—
 - (a) the objectives and outcomes that the separation undertakings are required to give effect to; and
 - (b) the telecommunications services, or types of telecommunications services, to which equivalence and the other requirements in section 69D are to apply, and how they are to apply; and
 - (c) the matters that must be addressed in the separation undertakings, and the minimum requirements for those undertakings.
- (3) In specifying the relevant services under subsection (2)(b), the Minister is not required to list individual named services and may instead—
 - (a) provide a general description of the type or class of service, for example, all broadband services;
 - (b) provide a general description of the parts of the Telecom network that are used to deliver the service, for example, the fixed PSTN;
 - (c) specify that all or any services that may from time to time be listed in Schedule 1 are relevant services;
 - (d) specify that all or any services that may from time to time be subject to a registered undertaking in accordance with Schedule 3A are relevant services;
 - (e) provide a mechanism for including new services that are similar to, or replacements for, any relevant services;
 - (f) specify that certain services, or types of services, are not relevant services.

- (4) The Minister may amend the determination made under this section, or make a further determination under this section, at any time.

69G How Ministerial determination of further requirements may be made

- (1) The Minister must make a determination under section 69F by notice in writing to Telecom.
- (2) The Minister must, by notice in the *Gazette*, state—
- (a) a brief description of the nature of the determination; and
 - (b) where copies of the determination are available for inspection and purchase.
- (3) The notice in the *Gazette* need not contain the determination.
- (4) The Minister must make the determination available to the public by making copies of it available—
- (a) for inspection, free of charge,—
 - (i) at the head office of the Ministry (during ordinary office hours); and
 - (ii) on an Internet website in an electronic form that is publicly accessible (at all reasonable times); and
 - (b) for purchase at a reasonable price.
- (5) A determination is deemed to be a regulation for the purpose of the Regulations (Disallowance) Act 1989 but not for the purpose of the Acts and Regulations Publication Act 1989.
- (6) The Minister must present a copy of the determination to the House of Representatives in accordance with section 4 of the (Regulations Disallowance) Act 1989.

Process for settling separation plan

69H Preparation of draft separation plan

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

69I Minister must invite public comments on draft separation plan

- (1) The Minister must publish a notice, as soon as practicable after receiving the draft separation plan,—
- (a) stating that a draft separation plan has been prepared; and

- (b) stating that a copy of the draft is available on Telecom's Internet website and the Ministry's Internet website throughout the period of 20 working days after the publishing of the notice; and
 - (c) inviting persons to give written comments about the draft plan to the Minister by a specified date, which must be 20 working days after the publishing of the notice.
- (2) Telecom and the Ministry must publish the draft plan in accordance with the notice.

69J Amendment of separation plan after public comments

- (1) The Minister must, as soon as practicable after the date specified in section 69I(1)(c), give Telecom a copy of all written comments that the Minister receives under that section.
- (2) Telecom must, in consultation with the Minister, prepare an amended separation plan.
- (3) Telecom must, not later than 15 working days after the date specified in section 69I(1)(c) (or a later date that the Minister may allow), give to the Minister—
- (a) an amended separation plan; and
 - (b) a summary of how (if at all) the draft separation plan was amended as a result of the public comments.

69K Minister may approve, or decline to approve, separation plan

- (1) The Minister must, as soon as practicable after receiving the amended separation plan under section 69J(3), by notice in writing to Telecom,—
- (a) approve the separation plan; or
 - (b) decline to approve the separation plan.
- (2) If the Minister declines to approve the separation plan,—
- (a) the Minister must indicate the parts of the separation plan that require amendment; and
 - (b) the Minister must direct Telecom to prepare and submit a further amended separation plan; and
 - (c) Telecom must, in consultation with the Minister, prepare a further amended separation plan and give it to the Minister not later than 15 working days after the date on which approval was declined (or a later date that the Minister may allow).

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

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

- (1) As soon as practicable after receiving an amended separation plan under section 69K(2)(c), the Minister must—
- (a) approve the plan; or

- (b) make any amendments to the plan that the Minister considers would be desirable to give better effect to the purposes of this Part or any requirements under this Part, and approve the plan (as amended).
 - (2) Before making amendments to a separation plan, the Minister must advise Telecom of the Minister's intention to do so and must give Telecom a reasonable opportunity to make submissions on the matter.
 - (3) The Minister must give notice in writing to Telecom of the approval of the plan, accompanied by a copy of the plan as approved.
- Compare: 2001 No 51 s 57; 2003 No 40 s 33

69M Failure to submit separation plan

- (1) The Minister must arrange for a separation plan to be prepared, and the Minister has all the powers necessary for that purpose, if Telecom does not give to the Minister—
 - (a) a draft separation plan within the time specified in section 69H(2); or
 - (b) an amended separation plan within the time specified in section 69J(3) or 69K(2)(c).
 - (2) This Part applies to a separation plan prepared under subsection (1) with necessary modifications.
 - (3) The Minister and the Ministry are entitled to be reimbursed by Telecom for the costs and expenses that they incur in taking action under subsection (1).
- Compare: 2001 No 51 s 58; 2003 No 40 s 34

Implementation of separation plan

69N Implementation of separation plan

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

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

69O Telecom must publish separation plan

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

69P Employees

- (1) This section has effect only to the extent that—
 - (a) an employee is transferred within Telecom to a new business unit under the implementation of the separation plan; and
 - (b) the separation plan applies this section to the employee (whether by reference to a class of employees or otherwise).

- (2) For the avoidance of doubt,—
- (a) the implementation of the separation plan under this Part does not affect any employment agreement between Telecom and an employee of Telecom; and
 - (b) the employee of Telecom continues to be an employee of Telecom and, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of the employee, his or her employment agreement is unbroken and the period of his or her service with Telecom and every other period of service that is recognised by Telecom as his or her continuous service, continues to be recognised; and
 - (c) the terms and conditions of the employment of the employee with Telecom are (until varied) identical to the terms and conditions of his or her employment before the implementation of the separation plan and are capable of variation in the same manner; and
 - (d) the employee is not entitled to receive any payment or other benefit by reason only of the implementation of the separation plan.

Compare: 2001 No 51 s 61

Statutory provisions for enforcement of separation plan

69Q Enforcement and remedies under Part 4A

Sections 156L, 156M, and sections 156O to 156R apply to a separation undertaking as provided in Part 4A.

69R Power of Court to grant relief in respect of separation undertakings

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

69S Interrelationship of remedies

- (1) Nothing in this Part or Part 4A limits or affects any right, duty, liability, or remedy in respect of a separation undertaking that exists or is available apart from this Part or Part 4A.
- (2) Any right of action or other remedy available under this Part or Part 4A in respect of a separation undertaking may be taken, proceeded with, or heard in conjunction with any other action or remedy available under this Act or otherwise.
- (3) However, in determining whether to order a person to pay a penalty, compensation, or damages in respect of a separation undertaking, the Court must have regard to—
 - (a) whether that person has already been ordered to pay a penalty, compensation, or damages for the same matter; and
 - (b) if so, the amount and effect of that first order.

Variation of separation plan

69T Variation of separation plan

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

69U Variation by agreement

- (1) Telecom and the Minister may agree to a variation to the separation plan, and implement the varied separation plan.
- (2) Sections 69N to 69S apply to the variation, and the amended separation undertakings that result.

69V Variation by Minister

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

- (a) the Minister may amend any determination made under section 69F, or make a further determination under that section, specifying the Minister's requirement; and
- (b) Telecom must prepare a variation to the separation plan within the time that the Minister requires; and
- (c) sections 69H to 69S apply to the variation, and the amended separation undertakings that result.

69W Variation by Telecom

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

- (a) the separation plan cannot be so varied; and
- (b) the Minister must give notice in writing to Telecom of the reasons for the Minister's refusal to agree.

69X Commission may request variation

- (1) The Commission may request the Minister to propose a variation to the separation plan.
- (2) The request may be made at any time and for any reason.
- (3) Sections 69U and 69V apply if the Minister agrees to propose the variation.

Part 2B

Information disclosure requirements

69Y Purpose

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

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

Compare: 1986 No 5 s 57T(1)

69Z Parameters of Part

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

69ZA Interpretation

In this Part, unless the context otherwise requires,—

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

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

prescribed means prescribed by the Commission.

Compare: 1986 No 5 s 57T(6)

69ZB Accounting separation of Telecom

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

- (6) Before making any requirements under this section, the Commission must hold conferences or consult with persons that the Commission considers have a material interest.
- (7) Telecom must prepare and disclose the information required under this section in accordance with the Commission's requirements.
- (8) Subsections (2), (4), and (5) do not limit subsection (1).
Compare: 1986 No 5 s 57T(2), (3)

69ZC Information disclosure by all access providers

- (1) This section applies—
 - (a) to any access provider in relation to any part of its business that provides prescribed designated or specified services; and
 - (b) for the purpose of enabling monitoring of, and facilitating compliance with, prescribed applicable access principles—
 - (i) that are incorporated in any determination, approved code, or registered undertaking; and
 - (ii) with which the access provider is required to comply.
- (2) The Commission—
 - (a) may require the access provider to prepare and disclose information about the operation and behaviour of that part of its business; and
 - (b) may require the access provider to adopt, in the preparation or compilation of that information, any methodology that is required by the Commission.
- (3) The Commission may require the access provider to prepare and disclose information consisting of, or about, the following things, as part of the information required under this section,—
 - (a) contracts:
 - (b) prices, terms, and conditions of supply of prescribed services:
 - (c) transactions with related parties (as if the test for related parties were the same as the test in section 79):
 - (d) performance measures and statistics (for example, response times, technical performance, and service quality details):
 - (e) plans and forecasts:
 - (f) network capacity information:
 - (g) policies and methodologies in these or other areas.
- (4) Access providers must prepare and disclose any information required under this section in accordance with the Commission's requirements.
- (5) Subsection (3) does not limit subsection (2).
Compare: 1986 No 5 s 57T(2), (3)

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

- (1) The Commission may, in making requirements under section 69ZB or 69ZC—
 - (a) prescribe the form and manner in which information must be disclosed:
 - (b) specify a time or date, or times or dates, as at which information must be disclosed:
 - (c) require the disclosure of assumptions made in the preparation of the information:
 - (d) require the audit of disclosed information:
 - (e) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner by persons belonging to any specified class of persons:
 - (f) set rules about when and for how long information must be disclosed:
 - (g) require the retention of data on which disclosed information is based and associated documentation:
 - (h) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements:
 - (i) provide for transitional provisions:
 - (j) make requirements from time to time (for example, more than once a year):
 - (k) make requirements in respect of all or part of the relevant business.
- (2) Subsection (1)(j) does not limit section 16 of the Interpretation Act 1999.
Compare: 1986 No 5 s 57T(8)

69ZE Publication of Commission’s information disclosure requirements

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

Compare: 1986 No 5 s 57T(4)

69ZF Information to be supplied to Commission

- (1) Every person who is required under this Part to disclose information must supply to the Commission—
 - (a) a copy of all information disclosed under this Part, which must be supplied within 5 working days after the information is first disclosed under this Part; and
 - (b) any further statements, reports, agreements, particulars, and other information requested in writing by the Commission for the purpose of monitoring the person’s compliance with the requirements made under this Part.

- (2) Every person to whom a request is made under subsection (1)(b) must comply with that request within the period specified by the Commission.
- (3) The Commission may require all or any statements, reports, agreements, particulars, and other information supplied under subsection (1) to be either or both—
 - (a) audited:
 - (b) verified by statutory declaration by the persons and in the form required by the Commission.

Compare: 1986 No 5 s 57U

69ZG Commission to publish summaries

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

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

Compare: 1986 No 5 s 57V

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

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

Compare: 1986 No 5 s 57W

33 Declaration of TSO instruments

Section 70(5) is repealed.

34 New section 71A inserted

The following section is inserted after section 71:

71A TSO instrument or deemed TSO instrument may specify total amount payable by all liable persons

A TSO instrument or a deemed TSO instrument may specify the total amount payable by all liable persons and the TSO provider under the instrument for each financial year of the TSO provider (the specified amount)

35 Compliance with TSO instrument

Section 74(1) is amended by omitting “TSP” and substituting “TSO provider”.

36 New section 79 substituted

Section 79 is repealed and the following section substituted:

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

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

37 Assessment of compliance with TSO instrument

- (1) Section 80 is amended by omitting “TSP” wherever it appears and substituting in each case “TSO provider”.
- (2) Section 80(a) is amended by omitting “TSP’s” and substituting “TSO provider’s”.

38 New heading inserted

The heading “*Requirement to produce certain information*” is inserted above section 81.

39 Liable persons and TSP must produce certain information to Commission

- (1) The heading to section 81 is amended by omitting “TSP” and substituting “TSO provider”.
- (2) Section 81 is amended by—
 - (a) omitting “section 88(a)(ii) and (b)(i)” and substituting “section 88(1)(a) and (b)”; and

- (b) omitting “section 92(a)(ii) and (b)(i)” and substituting “section 91(1)(a) and (b)”;
- (c) omitting “TSP” wherever it appears and substituting in each case “TSO provider”.

40 Section 82 repealed

Section 82 is repealed.

41 Calculations of net cost and auditor’s report must be given to Commission

Section 83 is amended by omitting “TSP” wherever it appears and substituting in each case “TSO provider”.

42 Considerations for determining net cost

- (1) Section 84(1) is amended by omitting “section 88, and determining the net cost under section 92” and substituting “section 93A, and determining the net cost under section 93E”.
- (2) Section 84(2) is amended by omitting “section 88 and determining the net cost under section 92” and substituting “section 93A and determining the net cost under section 93E”.
- (3) Section 84 is amended by omitting “TSP” wherever it appears and substituting in each case “TSO provider”.

43 Considerations for determining which revenue basis to use

- (1) Section 85(1) is amended by—
 - (a) omitting “a draft determination referred to in section 88 and a final determination referred to in section 92” and substituting “a draft determination referred to in section 88 and a final determination referred to in section 91”; and
 - (b) omitting “section 88(a)(ii) or (b)(i) or section 92(a)(ii) or (b)(i)” wherever it appears and substituting in each case “section 88(1)(a) or (b) or section 91(1)(a) or (b)”.
- (2) Section 85(4)(b) is amended by omitting “TSP” and substituting “TSO provider”.

44 New headings and sections 86 to 93F substituted

The heading above section 86 and sections 86 to 93 are repealed and the following headings and sections substituted:

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

86 Commission may determine priority between preparation of TSO cost allocation determination and TSO cost calculation determination

- (1) The Commission may determine the priority between the preparation of the TSO cost allocation determination and the TSO cost calculation determination and, accordingly, may comply with sections 87 to 91 and sections 92 to 93E in the sequence, as between those two sets of sections, it thinks fit.
- (2) However, the Commission must prepare a final TSO cost allocation determination before preparing a final TSO cost calculation determination for a financial year.

TSO cost allocation determination

87 Commission to prepare draft TSO cost allocation determination

The Commission must make reasonable efforts to do the following things not later than 80 working days after the end of each financial year of a TSO provider under a TSO instrument:

- (a) prepare a draft TSO cost allocation determination:
- (b) give public notice of that draft determination:
- (c) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice.

88 Matters to be included in draft TSO cost allocation determination

- (1) A draft TSO cost allocation determination must include—
 - (a) the amount of each TSO provider's TSO-qualified revenue; and
 - (b) the amount of each liable person's TSO-qualified revenue; and
 - (c) a statement that identifies which revenue basis has been used under section 85(1) in respect of each amount of revenue to which the draft determination applies; and
 - (d) if a weighted revenue basis has been used for any amount of revenue, the particulars of the weighting attached to that amount of revenue; and
 - (e) the revenue amounts that will be used for the purposes of calculating, under section 93F, the amount payable by each liable person in relation to each TSO instrument; and
 - (f) the methodology applied by the Commission in making the determination; and
 - (g) the reasons for the determination.
- (2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of subsection (1)(c) (for example, a net-revenue basis).

89 Conferences on draft TSO cost allocation determination

The Commission may—

- (a) hold conferences in relation to a draft ISO cost allocation determination; and
- (b) invite to those conferences any person who has a material interest in a matter to be determined.

90 Commission to prepare final TSO cost allocation determination

The Commission must make reasonable efforts to do the following things not later than 20 working days after the closing date for submissions under section 87(c):

- (a) prepare a final TSO cost allocation determination;
- (b) give public notice of that final determination;
- (c) give a copy of that final determination to all liable persons and TSO providers in relation to each TSO instrument.

91 Matters to be included in final TSO cost allocation determination

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

TSO cost calculation determination

92 Commission to prepare draft TSO cost calculation determination

The Commission must make reasonable efforts to do the following things not later than 120 working days after the end of each financial year of a TSO provider under a TSO instrument:

- (a) prepare a draft TSO cost calculation determination:
- (b) give public notice of that draft determination:
- (c) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice.

93 Requirements for draft TSO cost calculation determination

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

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

A draft TSO cost calculation determination must include,—

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

93B Conferences on draft TSO cost calculation determination

The Commission may—

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

93C Commission to prepare final TSO cost calculation determination

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

- (a) prepare a final TSO cost calculation determination:
- (b) give public notice of that final determination:
- (c) give a copy of that final determination to all liable persons and the TSO providers in relation to the TSO instrument.

93D Requirements for final TSO cost calculation determination

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

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

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

- (a) if the TSO instrument does not contain a specified amount, the net cost to the TSO provider of complying with the TSO instrument during the TSO provider's financial year and all material information that—
 - (i) relates to the calculation of the net cost; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
- (b) if the TSO instrument contains a specified amount, the dollar amount of the specified amount and all material information that—
 - (i) relates to the calculation of that amount; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
- (c) in all cases, the amount (if any) by which the total amount that the TSO provider would receive from all liable persons in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and
- (d) an amount payable by each liable person in relation to the TSO instrument to the TSO provider in respect of the financial year calculated in accordance with section 93F; and
- (e) an amount payable by each liable person in relation to the TSO instrument to the TSO provider for the loss of use of the amount referred to in

paragraph (c), calculated at the 90-day bank bill rate (as at the date of the final determination) for the period commencing from the end of the TSO provider's financial year and ending with the date of the final determination.

Calculation of amount payable by liable person

93F Calculation of amount payable by liable person

The amount payable by a liable person in relation to a TSO instrument that must be contained in the Commission's final TSO cost calculation determination made under section 93C is,—

- (a) for a TSO instrument that contains a specified amount, the amount calculated using the following formula:

$$\frac{a}{b + c} \times (d - e)$$

- (b) for a TSO instrument that does not contain a specified amount, the amount calculated using the following formula:

$$\frac{a}{b + c} \times (f - e)$$

where—

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

45 Payment by liable persons to TSP

- (1) The heading to section 94 is amended by omitting "TSP" and substituting "TSO provider".
- (2) Section 94 is amended by omitting "TSP" wherever it appears and substituting in each case "TSO provider".

46 New heading and section 94A inserted

The following heading and section are inserted after section 94:

Calculation of amount payable by TSO provider

94A ISO provider must meet residual amount from calculation of TSO charge

The TSO provider must meet any amount that remains after subtracting all of the amounts payable by liable persons under section 93F from the net cost to the TSO provider of complying with the TSO instrument during the TSO provider's financial year or, as the case may be, the specified amount.

47 Power of Court to grant relief in respect of TSO instrument

Section 96 is amended by omitting "TSP" wherever it appears and substituting in each case "TSO provider".

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

Section 98(a) is amended by omitting "TSP" and substituting "TSO provider".

49 Right of appeal to High Court

- (1) Section 100(1) is amended by omitting "TSP" wherever it appears and substituting in each case "TSO provider".
- (2) Section 100(1)(a) is amended by omitting "section 92(a)(i)" and substituting "section 93E(a)".
- (3) Section 100(1)(b) is amended by omitting "section 92(a)(ii)" and substituting "section 91(1)(a)".
- (4) Section 100(1)(c) is amended by omitting "section 92(b)(i)" and substituting "section 91(1)(b)".
- (5) Section 100(1)(d) is amended by omitting "section 92(b)(ii)" and substituting "section 93E(c)".

50 New sections 100A to 100C inserted

The following sections are inserted after section 100:

100A Procedure for determinations

For a determination made under this Part, the Commission—

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

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

- (1) The Commission must include the information specified in subsection (2) in a—
 - (a) draft TSO cost calculation determination under section 92 in relation to a deemed TSO instrument;
 - (b) final TSO cost calculation determination under section 93C in relation to a deemed TSO instrument.
- (2) The information referred to in subsection (1) is as follows:
 - (a) the name, location, and limits of each geographical area within which the TSO provider supplies the service under the deemed TSO instrument; and
 - (b) the number of subscriber lines for that service in each geographical area; and
 - (c) the number of those subscriber lines for which—
 - (i) the revenue attributed by the Commission is greater than, or equal to, the respective cost attributed; and
 - (ii) the revenue attributed by the Commission is less than the respective cost attributed; and
 - (d) the net cost of the deemed TSO instrument in each geographical area; and
 - (e) any related information that is necessary to assist in understanding the information specified in paragraphs (a) to (d).
- (3) The geographical areas referred to in subsection (2) must correspond to the areas that the Commission has identified in assessing, for the purpose of calculating the TSO net cost, the commercial viability of supplying the service to customers.

100C Duties of Commission in complying with section 100B

- (1) In complying with section 100B, the Commission must ensure that—
 - (a) the information to be included in a draft or final TSO cost calculation determination is at its lowest level of aggregation (as determined by the Commission); and
 - (b) satisfactory provision exists to protect the confidentiality of any information that—
 - (i) the person who supplied it has advised is confidential; or
 - (ii) may reasonably be regarded as confidential; and
 - (c) the inclusion of that information does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

- (2) However, if the Commission considers that compliance with subsection (1)(a) will, or is likely to, prejudice compliance with subsection (1)(b) or (c), the Commission—
- (a) may aggregate the information before it is included under section 100B; and
 - (b) may do so in any manner that it thinks fit.

51 Regulations

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

52 Persons declared to be network operators

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

- (3) For the purposes of this section and sections 103 to 105, any 2 or more bodies corporate must be treated as 1 person if—
- (a) 1 of them is a body corporate of which the others are subsidiaries; or
 - (b) all of them are subsidiaries of the same body corporate; or
 - (c) all of them are associates of each other; or
 - (d) 1 of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or
 - (e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.
- (4) For the purposes of subsection (3)(c), a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.
- (5) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of subsection (4) just because—

- (a) those bodies corporate are in competition in the same market; or
- (b) 1 of them supplies goods or services to the other.

53 New heading and section 111A inserted

The following heading and section are inserted after section 111:

Information requirement

111A Information about interconnection arrangements

- (1) A major supplier must make publicly available a copy of—
 - (a) the procedures that apply to interconnection with a PSTN or PDN owned or operated by that supplier; and
 - (b) all the applicable terms and conditions of supply for interconnection with that PSTN or PDN.
- (2) In this section, **major supplier**—
 - (a) means Telecom; and
 - (b) includes a person who is declared by the Governor-General, by Order in Council made on the recommendation of the Minister, to be a major supplier for the purposes of this section.
- (3) The Minister must not make a recommendation under subsection (2)(b) unless the Minister is satisfied that the proposed order to which the recommendation relates is necessary to facilitate New Zealand's compliance with its international obligations.

54 New Parts 4A and 4B inserted

The following Parts are inserted after Part 4:

**Part 4A
Enforcement**

Subpart 1—Enforcement of statutory and regulatory provisions

Preliminary

156A Application of section 156B

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

- (a) fails, without reasonable excuse, to comply with section 22A;
- (b) fails, without reasonable excuse, to comply with a notice under section 30F requiring a standard terms proposal to be submitted to the Commission:

- (c) knowingly submits a standard terms proposal that fails to comply with section 30G:
- (d) fails, without reasonable excuse, to comply with a notice under section 45 or a notice requirement (if any) set out in subpart 1 of Part 2 of Schedule 1 in respect of the applicable final pricing principle:
- (e) fails, without reasonable excuse, to provide to the Commission not later than the time specified by it—
 - (i) the statement referred to in section 45(2)(b)(i):
 - (ii) all the information referred to in section 45(2)(b)(ii):
- (f) knowingly provides false or misleading information or documents under section 45 or under the notice requirement (if any) set out in subpart 1 of Part 2 of Schedule 1 in respect of the applicable final pricing principle:
- (g) fails, without reasonable excuse, to comply with an information disclosure requirement made under section 69ZB(7), 69ZC(4), or 69ZF(2):
- (h) knowingly provides false or misleading information or documents under Part 2B:
 - (i) fails, without reasonable excuse, to comply with section 81:
 - (j) knowingly provides false or misleading information or documents under section 81:
 - (k) fails, without reasonable excuse, to comply with section 83:
 - (l) knowingly provides false or misleading information or documents under section 83:
- (m) fails, without reasonable excuse, to comply with section 111A:
- (n) fails, without reasonable excuse, to comply with any regulations made under section 157(ch) in relation to emergency call services.

156B Enforcement actions that Commission may take

- (1) The Commission may take either of the following actions against a person to whom this section applies:
 - (a) serve a civil infringement notice on the person under section 156D; or
 - (b) apply to the High Court for an order, under section 156L, requiring the person to pay a pecuniary penalty to the Crown.
- (2) This section does not limit any power conferred on the Commission by or under section 15 or any other enactment.

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

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

- (a) the seriousness of the alleged breach:

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

Civil infringement notice

156D Civil infringement notice

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

156E Objection to civil infringement notice

- (1) A person who has been served with a civil infringement notice may make a written objection to the Commission on either or both of the following grounds:
 - (a) that the person has not committed the alleged breach:
 - (b) that the amount of the pecuniary penalty specified in the notice is excessive having regard to the nature of the alleged breach.
- (2) An objection must—

- (a) contain the prescribed information; and
- (b) be made within the prescribed time and in the prescribed manner.

156F Commission must consider objection

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

156G Effect of withdrawal of civil infringement notice

- (1) A person who has been served with a civil infringement notice is discharged from any liability for a breach specified in the notice if the Commission withdraws the notice—
 - (a) on its own initiative; or
 - (b) in accordance with section 156F(3).
- (2) The Commission must refund the pecuniary penalty specified in a civil infringement notice if the notice is withdrawn after the penalty was paid.

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

- (1) The consequence specified in subsection (2) applies if a person—
 - (a) is served with a civil infringement notice; and
 - (b) fails to pay the whole, or any part, of the pecuniary penalty on or before the later of the time specified in that notice or in the notice under section 156F(1)(c).

- (2) The consequence is that the Commission may recover from the person, as a debt due to the Commission, in a District Court,—
 - (a) the unpaid portion of the pecuniary penalty; and
 - (b) the actual and reasonable costs of recovery awarded against the person by that Court.
- (3) In any proceedings for the recovery of a debt under this section, the District Court must not enter judgment in favour of the Commission unless it is satisfied that the circumstances referred to in subsection (1) exist.

156I Right to appeal

- (1) A person may appeal to a District Court if the person is dissatisfied with a decision of the Commission to refuse the person's objection to a civil infringement notice.
- (2) An appeal under subsection (1) must be brought within 20 working days after the date on which the notice under section 156F(1)(c) is given.
- (3) An appeal under subsection (1) does not operate as a stay of the civil infringement notice.

156J Decision on appeal

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

156K Commission may publish information about issue of civil infringement notice

- (1) The Commission may, in any manner that it thinks fit, publish a notice that contains information or statements to the following effect:
 - (a) a statement that a person has been served with a civil infringement notice under this Act;
 - (b) the name of the person concerned;
 - (c) the nature of the breach in respect of which the civil infringement notice was issued:

- (d) the amount of the pecuniary penalty prescribed to be paid for the breach;
 - (e) any other prescribed information.
- (2) The Commission must not exercise its powers under subsection (1)—
- (a) before the close of the prescribed time for making an objection under section 156E in respect of the relevant civil infringement notice; or
 - (b) if an objection is made under section 156E before the close of that prescribed time and the Commission refuses the objection, before the close of the period for bringing an appeal under section 156I in respect of the relevant civil infringement notice; or
 - (c) if the Commission withdraws the relevant civil infringement notice under section 156F; or
 - (d) if an appeal under section 156I is brought in respect of the relevant civil infringement notice during that appeal period and the District Court allows the appeal by cancelling the pecuniary penalty specified in that notice.

Pecuniary penalty

156L Pecuniary penalty

- (1) The High Court may order a person to pay to the Crown any pecuniary penalty that the Court determines to be appropriate if the High Court is satisfied, on the application of the Commission, that—
- (a) the person has failed, without reasonable excuse, to comply with a separation undertaking under Part 2A; or
 - (b) the person has committed a breach of any of the provisions set out in section 156A.
- (2) In determining an appropriate penalty to be imposed under this section, the High Court must have regard to all relevant matters, including the nature and extent of any commercial gain.
- (3) The amount of any pecuniary penalty for each act or omission must not exceed—
- (a) \$10 million for a breach referred to in subsection (1)(a); and
 - (b) \$1 million for a breach referred to in section 156A(g) in relation to the accounting separation requirements in section 69ZB; and
 - (c) \$300,000 in any other case.
- (4) The standard of proof in proceedings under this section is the standard of proof that applies in civil proceedings.
- (5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the breach was discovered or ought reasonably to have been discovered.

- (6) If conduct by a person constitutes a breach of 2 or more provisions referred to in subsection (1), proceedings may be commenced under this section against that person in relation to the breach of any 1 or more of those provisions.
- (7) However, no person is liable to more than 1 pecuniary penalty under this section for the same conduct.

156M Further penalty may be imposed for continuing breach

- (1) In addition to a pecuniary penalty imposed under section 156L, the High Court may, for a continuing breach of any of the provisions referred to in section 156L(1), impose for each day or part of a day during which the breach continues a further penalty of—
 - (a) \$500,000 for a breach referred to in section 156L(1)(a); and
 - (b) \$50,000 for a breach referred to in section 156A(g) in relation to an information disclosure requirement made under section 69ZB(7), 69ZC(4), or 69ZF(2); and
 - (c) \$10,000 for any other case.
- (2) To avoid doubt, any further penalty under subsection (1) may be imposed only in respect of the period that—
 - (a) begins on the day on which the pecuniary penalty was imposed under section 156L; and
 - (b) ends on the day on which the breach is remedied.

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

156N Interpretation

In sections 156O to 156R,—

enforceable matter means any of the following

- (a) a determination made under section 27:
- (b) a standard terms determination made under section 30M:
- (c) a residual terms determination made under section 30ZB:
- (d) a designated multinet network service determination made under section 39:
- (e) a separation undertaking under Part 2A:
- (f) an approved code under Schedule 2:
- (g) a registered undertaking under Schedule 3A

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

156O Complaints of breach of enforceable matter

- (1) An access seeker or an access provider of a designated access service or specified service may make a written complaint to the Commission alleging a breach of an enforceable matter.
- (2) As soon as reasonably practicable after receiving a complaint, the Commission must consider the complaint to decide—
 - (a) whether to take no action on the complaint; or
 - (b) whether to take either or both of the following actions:
 - (i) to amend the enforceable matter for the purpose of making a clarification (if the complaint relates, or appears to relate, to a dispute over the interpretation of the terms or conditions of the enforceable matter and the dispute has not previously been submitted to any dispute resolution procedure that is included in the enforceable matter);
 - (ii) to take, or join another party in taking, enforcement action for the enforceable matter in the High Court under section 156P.
- (3) In deciding whether to take the action referred to in subsection (2)(b)(i), the Commission must consult with interested parties.
- (4) In deciding whether to take the action referred to in subsection (2)(b)(ii), the Commission—
 - (a) must consider the purpose set out in section 18; and
 - (b) may consider the financial means of the complainant.
- (5) For the purposes of subsection (2)(b)(i), section 58 applies to the enforceable matter with any necessary modifications.
- (6) The Commission must promptly give written notice to the complainant of the Commission's decision on the complaint.
- (7) Subsection (2)(b)(i) does not apply in the case of a separation undertaking under Part 2A.

156P Enforcement by High Court

- (1) An enforceable matter may be enforced by a party or the Commission, or both, filing it in the prescribed form in the Wellington Registry of the High Court.
- (2) The Commission may,—
 - (a) for a breach of a determination made under section 27 or a standard terms determination made under section 30M, enforce the enforceable matter only if it has received a complaint of the breach under section 156O; and
 - (b) for a breach of a designated multinet network service determination, an approved code, a registered undertaking, or a separation undertaking under Part 2A, enforce the enforceable matter on its own initiative

(whether or not it has received a complaint of the breach under section 156O).

- (3) An enforceable matter filed in the High Court under subsection (1) is enforceable as a judgment of the High Court in its civil jurisdiction.
- (4) An enforceable matter is enforceable in accordance with subsection (3) during the period in which the matter continues in force.
- (5) A party who has filed a determination under subsection (1) must file in the prescribed form in the High Court any clarification of the determination under section 58 or reconsideration of the determination under section 59.

156Q Remedies for breach of enforceable matter

- (1) This section applies if an enforceable matter is filed in the High Court under section 156P(1).
- (2) On the application of the Commission, the High Court may, in addition to any other remedies available to the Court, order any person to pay to the Crown any pecuniary penalty that the Court determines to be appropriate if satisfied that—
 - (a) the person has committed a breach of the enforceable matter; and
 - (b) the amount of any compensatory damages that the Court can award against that person for the breach is less than the value of any commercial gain resulting from the breach.
- (3) The standard of proof in any proceedings under this section is the standard of proof that applies in civil proceedings.
- (4) Proceedings under this section may be commenced within 3 years after the matter giving rise to the breach was discovered or ought reasonably to have been discovered.

156R Limit on amount of pecuniary penalty

The amount of any pecuniary penalty imposed under section 156Q(2) must not exceed the value of any commercial gain resulting from the breach of the enforceable matter, less the amount of any compensatory damages that the Court decides to award against the person who has committed the breach.

Part 4B

Consumer complaints

Subpart 1—Preliminary

156S Commencement of this Part

- (1) This Part comes into force on a date to be appointed by the Governor-General, by Order in Council, made on the recommendation of the Minister in accordance with section 156T.

- (2) For the purposes of subsection (1), 1 or more Orders in Council may be made appointing different dates for different provisions or for different purposes.

156T Process to apply before Part may be commenced

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

156U Purpose of this Part

- (1) The purpose of this Part is to facilitate the resolution of complaints by consumers against service providers.
- (2) To that end, this Part—
- (a) facilitates the establishment of 1 or more consumer complaints systems; and
 - (b) provides for the appointment of a consumer complaints adjudicator; and
 - (c) imposes a consumer complaints levy on applicable service providers to fund the costs of the consumer complaints adjudicator.

156UA Appointment of consumer complaints system

- (1) The Minister may, by notice in the *Gazette*,—
- (a) appoint a system to be a consumer complaints system under this Part (with or without conditions) for a term specified by the Minister; and
 - (b) set rules for the system; and
 - (c) set rules about the funding of the system.

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

156V Interpretation

In this Part, unless the context otherwise requires,—

applicable service provider means a service provider to whom a consumer complaints system applies

consumer means a person who is an end-user of a telecommunications service, and includes an owner or occupier for the purposes of complaints under subpart 3 of Part 4

consumer complaints adjudicator means the person or entity appointed under section 156Z

consumer complaints levy means the levy payable under section 156ZH

consumer complaints system means a consumer complaints resolution system facilitated by this Part

designated person, in relation to an entity that is or is proposed to be appointed as a consumer complaints adjudicator, means the person responsible for carrying out the role of a consumer complaints adjudicator.

156W Power to exempt service providers from application of consumer complaints system

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare a service provider, or a class of service providers, to be exempt from the application of a consumer complaints system.
- (2) The Minister may not recommend the making of an Order in Council under subsection (1) unless the Minister is satisfied that appropriate consultation has been carried out in accordance with section 156ZJ.

156X Objectives of consumer complaints system

- (1) When considering appointing a system under this Part, the Minister must have regard to the following considerations in light of the principles listed in subsection (2):
 - (a) whether the system has an appropriate purpose:
 - (b) whether the applicant has undertaken reasonable consultation on the system with members or potential members of the system, and persons (or their representatives) likely to be substantially affected by the system:
 - (c) whether the applicant's directors and senior managers are competent to manage a consumer complaints system:

- (d) whether the rules about the system are adequate and comply with the principles listed in subsection (2).
- (2) The principles are as follows:
- (a) accessibility:
 - (b) independence:
 - (c) fairness:
 - (d) accountability:
 - (e) efficiency:
 - (f) effectiveness.

156Y Requirements for consumer complaints system

- (1) A consumer complaints system must—
- (a) achieve the objectives set out in section 156X:
 - (b) set out the procedures that the consumer complaints adjudicator must use for receiving, investigating, and resolving complaints; and
 - (c) set out appropriate and auditable documentation and record keeping:
 - (d) comply with any other requirements prescribed by regulations made under this Act.
- (2) A consumer complaints system may provide for the development of codes of practice relating to consumer complaints.
- (3) Any codes of practice must be available for inspection by the public, free of charge,—
- (a) at the system's head office (during ordinary office hours); and
 - (b) on an Internet site in an electronic form that is publicly available at all reasonable times.
- (4) To avoid doubt, a consumer complaints system may resolve complaints by consumers against service providers in relation to a Commission RSQ code.

156YA Obligation to publish rules

The person responsible for an appointed consumer complaints system must make copies of the rules about the system available for inspection by the public, free of charge,—

- (a) at the system's head office (during ordinary office hours); and
- (b) on an Internet site in an electronic form that is publicly available (at all reasonable times).

156YB Duty to notify change to rules

The person responsible for an appointed consumer complaints system must notify the Minister if the person wishes to change the rules about the system.

156YC Minister's consideration of change of rules

- (1) After receiving a notification under section 156YB, the Minister may notify the person responsible for a system that the Minister—
 - (a) approves the change; or
 - (b) considers the proposed change is not adequate and does not comply with the principles listed in section 156X(2).
- (2) If subsection (1)(b) applies, the rule change must not be made.
- (3) If the Minister does not notify the person responsible for the system in accordance with subsection (1) within 45 working days of the notification of the change of rules, the change is treated as having been approved by the Minister.

Subpart 2—Consumer complaints adjudicator

156Z Appointment of consumer complaints adjudicator

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

156ZA Qualification for appointment as consumer complaints adjudicator

- (1) The Minister may not appoint a person or an entity as a consumer complaints adjudicator unless—
 - (a) the person or, in the case of an entity, the entity's designated person is suitably qualified or trained to carry out that role; and
 - (b) the person or entity has consented in writing to the appointment; and
 - (c) the person or, in the case of an entity, the entity's designated person has certified in writing that he or she is not disqualified in terms of subsection (2).
- (2) A person or, in the case of an entity, the entity's designated person is disqualified if he or she is—
 - (a) under 18 years of age;
 - (b) an undischarged bankrupt;
 - (c) prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993;
 - (d) subject to a property order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988:

- (e) has been convicted of an offence punishable by imprisonment for a term of 2 years or more or has been sentenced to imprisonment for any other offence.

156ZB Revocation of appointment

The Minister may at any time, by notice in the *Gazette*, revoke the appointment of a person or an entity as a consumer complaints adjudicator if—

- (a) requested by the person or entity; or
- (b) the person's or entity's term of appointment has expired; or
- (c) the Minister is satisfied that—
 - (i) the person or entity has neglected to perform the functions or duties, or exercise the powers, of a consumer complaints adjudicator under this Act; or
 - (ii) the person or, in the case of an entity, the entity's designated person is disqualified in terms of section 156ZA(2).

156ZC Functions and duties of consumer complaints adjudicator

The functions and duties of the consumer complaints adjudicator are—

- (a) to inquire into and investigate complaints made under a consumer complaints system in a way that is consistent with the rules of natural justice;
- (b) to promote, in appropriate cases, the resolution of those complaints by negotiation, conciliation, or mediation;
- (c) to make final determinations in relation to those complaints (which may include, if appropriate, an order imposing any remedies or sanctions on the applicable service provider concerned that the consumer complaints adjudicator thinks appropriate);
- (d) to ensure that the final determinations in relation to those complaints are enforced;
- (e) to publish information with a view to making it known how complaints about applicable service providers may be made;
- (f) if more than 1 consumer complaints system is established, to ensure, throughout New Zealand, both the consistency and the quality of those consumer complaints services.

156ZD Powers of consumer complaints adjudicator in relation to complaints

- (1) The consumer complaints adjudicator may, in relation to any complaint made under a consumer complaints system,—
 - (a) seek and receive any statement, document, information, or matter that may, in the adjudicator's opinion, assist in dealing effectively with the matters before the adjudicator, whether or not the statement, document, information, or matter would be admissible in a court of law; and

- (b) make any inquiries or investigations that the adjudicator thinks appropriate.
- (2) Subsection (1) does not confer on the consumer complaints adjudicator any power of search or seizure or any power to require information to be supplied or evidence to be given.
- (3) The consumer complaints adjudicator may decide to take no action or, as the case may require, no further action, on any complaint if, in the opinion of the adjudicator,—
 - (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or
 - (b) the subject matter of the complaint is trivial; or
 - (c) the complaint is frivolous or vexatious or is not made in good faith; or
 - (d) the complainant does not desire that action be taken or, as the case may be, continued; or
 - (e) the complainant does not have sufficient personal interest in the subject matter of the complaint; or
 - (f) there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the complainant to exercise.
- (4) Despite anything in subsection (3), the consumer complaints adjudicator may decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the adjudicator that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

156ZE Consumer complaints adjudicator may seek agreed settlement or order compensation

- (1) If the consumer complaints adjudicator determines that a complaint against an applicable service provider is substantiated after inquiring into or investigating the complaint, the adjudicator may—
 - (a) assist the parties to reach an agreed settlement in relation to the complaint or any issue involved in the complaint and, if the parties consent, record the terms of settlement as part of the adjudicator's final determination; or
 - (b) order the applicable service provider concerned to do either or both of the following:
 - (i) pay compensation to the complainant;
 - (ii) take any remedial action that the adjudicator thinks fit.

- (2) Any compensation ordered to be paid under subsection (1)(b)(i) must not exceed \$12,000.

156ZF Right of appeal

- (1) A complainant or an applicable service provider may appeal to a District Court if the complainant or applicable service provider is dissatisfied with the consumer complaints adjudicator's final determination of a complaint.
- (1A) For the avoidance of doubt, an appeal under subsection (1) cannot be made by either party after a binding settlement has been agreed to.
- (2) An appeal under subsection (1) must be brought within 20 working days after the date of the final determination.
- (3) In determining an appeal under subsection (1), the District Court has all the powers, duties, and functions the consumer complaints adjudicator had in relation to the matter concerned; and may—
- (a) confirm, modify, or reverse the adjudicator's final determination; or
 - (b) refer all or any part of the matter back to the adjudicator for further consideration, together with—
 - (i) any directions it thinks just relating to the reconsideration; and
 - (ii) a written statement of its reasons for doing so.

Subpart 3—Consumer complaints levy

156ZG Purpose of subpart

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

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

156ZH Consumer complaints levy

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

- (3) Subsections (1) and (2) apply irrespective of the fact that the regulations are made and come into effect after the date on which the financial year or part financial year commences.
- (4) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
 - (a) specifying the amounts of levies payable under this section:
 - (b) providing for the method by which those levies will be calculated:
 - (c) specifying the criteria and other requirements by and against which those levies will be set or reset:
 - (d) specifying the financial year or part financial year to which those levies apply:
 - (e) providing for the payment and collection of those levies:
 - (f) exempting any applicable service provider or class of applicable service providers from paying levies under this section:
 - (g) providing for waivers or refunds of the whole or any part of any levy paid by any applicable service provider or class of applicable service providers under this section.
- (5) The Minister may not recommend the making of regulations under subsection (4) unless the Minister is satisfied that appropriate consultation has been carried out in accordance with section 156ZJ.

156ZI Late payment of consumer complaints levy

- (1) If any applicable service provider liable to pay the consumer complaints levy fails to pay the whole amount of that levy by the date specified in regulations made under section 156ZH(4), the applicable service provider must pay interest on the unpaid amount at the rate of 1.5% per month calculated from the date payment is due.
- (2) Interest will be calculated in monthly instalments for each month, or part of each month, that the payment is due.
- (3) The amount of any unpaid levy or interest is recoverable in any court of competent jurisdiction as a debt due to the Crown.

Subpart 4—Miscellaneous

156ZJ Consultation requirements for making Order in Council or regulation under this Part

- (1) This section applies to—
 - (a) an Order in Council proposed to be made under section 156S(1) or 156W(1); or
 - (b) regulations proposed to be made under section 156ZH(4).

- (2) Before making a recommendation for the making of an Order in Council or regulations to which this section applies, the Minister must consult with the persons, or representatives of the persons, that the Minister considers will be substantially affected by the making of the relevant Order in Council or regulations.
- (3) The process for consultation should, to the extent practicable in the circumstances, include—
- (a) giving adequate and appropriate notice of the intention to make the Order in Council or regulations; and
 - (b) giving a reasonable opportunity for interested persons to make submissions; and
 - (c) adequate and appropriate consideration of submissions.
- (4) A failure to comply with this section does not affect the validity of any Order in Council or regulations made.

Section 54: amended, on 13 November 2018, by section 33 of the Telecommunications (New Regulatory Framework) Amendment Act 2018 (2018 No 48).

Section 54: amended, on 13 November 2018, by section 34 of the Telecommunications (New Regulatory Framework) Amendment Act 2018 (2018 No 48).

Section 54: amended, on 13 November 2018, by section 35 of the Telecommunications (New Regulatory Framework) Amendment Act 2018 (2018 No 48).

Section 54: amended, on 1 July 2011, by section 26(2) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27)

55 Regulations

- 1 Section 157 is amended by inserting the following paragraphs after paragraph (c):

- (ca) prescribing the form in which a civil infringement notice must be served under section 156D:
- (cb) prescribing the amount of the pecuniary penalty that must be specified in a civil infringement notice under section 156D(2)(b) (which may not exceed \$2,000):
- (cc) prescribing the time within and the manner in which a written objection to a civil infringement notice must be made under section 156E and the information to be included in that written objection:
- (cd) prescribing any other information that a notice published by the Commission under section 156K may contain:
- (ce) prescribing the procedures or minimum standards to be followed by a consumer complaints adjudicator in dealing with complaints under a consumer complaints system:
- (cf) specifying the time frames within which the procedures or minimum standards prescribed under paragraph (ce) must be followed:

- (cg) prescribing requirements and other matters concerning the operation and administration of a consumer complaints system:
- (ch) setting out minimum requirements for emergency call services and specifying which persons are subject to those requirements:

56 Schedule 1 amended

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

57 Schedule 2 amended

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

58 Schedule 3 amended

Schedule 3 is amended in the manner set out in Schedule 3 of this Act.

59 New Schedule 3A inserted

The Schedule 3A set out in Schedule 4 of this Act is inserted after Schedule 3.

Part 2

Consequential amendments and transitional provisions

Consequential amendments

60 Telecommunications (Fixed Public Data Network) Order 2004 revoked

The Telecommunications (Fixed Public Data Network) Order 2004 is revoked.

61 Amendments to Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002

- (1) This section amends the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002.
- (2) Regulation 4 is amended by revoking the definition of **final TSO revenues** and substituting the following definition:

final TSO revenues means the total of—

- (a) all TSO providers' TSO-qualified revenues; and
- (b) all liable persons' TSO-qualified revenues

- (3) Regulation 4 is amended by revoking the definition of **revenue amount** and substituting the following definition:

revenue amount, in relation to a telecommunications operator, means—

- (a) the amount of the TSO provider's TSO-qualified revenue; or
- (b) as the case may be, the amount of a liable person's TSO-qualified revenue

- (4) Regulation 9(2)(c) is amended by revoking subparagraph (i) and substituting the following subparagraph:

- (i) any costs of the Commission in relation to a determination or application for a determination that are met by the parties to the determination under section 55 of the Act; and.

Transitional provisions

62 Transitional provision for uncompleted determinations under section 27

- (1) This section applies if, before the commencement of this Act, the Commission was—
- (a) considering an application under section 20 for a determination of all or some of the terms on which a designated access service or specified service must be supplied;
 - (b) otherwise in the process of investigating or preparing a determination under section 27 of all or some of those terms.
- (2) The Commission may continue and complete the matter in accordance with—
- (a) subpart 2 of Part 2 of the principal Act (as if this Act had not been enacted); or
 - (b) subpart 2A of Part 2 of the principal Act (as inserted by this Act) as if the determination under section 27 were a standard terms determination.
- (3) For the purposes of subsection (2)(b), the provisions of subpart 2A of Part 2 of the principal Act (as inserted by this Act) apply with any necessary modifications.

63 Transitional provision for TSO determinations

Despite the amendments made by this Act to the principal Act, the principal Act continues to apply as if those amendments had not been made in respect of any TSO determinations that were commenced, but not completed, before the commencement of this Act.

64 Transitional provision for enforcement of determinations and approved codes made before commencement of this Act

- (1) This section applies to any of the following matters that were made or approved before the commencement of this Act:
- (a) a determination under section 27;
 - (b) an approved code under Schedule 2.
- (2) A matter to which this section applies may be enforced in accordance with subpart 2 of Part 4A of the principal Act.
- (3) For the purposes of subsection (2),—
- (a) the definition of **enforceable matter** in section 156N of the principal Act must be read as if—

- (i) the reference in paragraph (a) of that definition to a determination made under section 27 were a reference to that determination whether made before or after the commencement of this Act; and
 - (ii) the reference in paragraph (f) of that definition to an approved code under Schedule 2 were a reference to that code whether approved before or after the commencement of this Act; and
- (b) the other provisions of subpart 2 of Part 4A of the principal Act apply with any necessary modifications.

65 Transitional provision for descriptions of services in existing determinations

Despite the amendments made to the designated access services under Part 2 of Schedule 1 of this Act, any determinations relating to those services that are in force before the commencement of this Act continue to apply according to their terms as if those amendments had not been enacted.

66 Transitional provision for uncompleted Schedule 3 investigations

- (1) This section applies to investigations under Schedule 3 of the principal Act that were commenced, but not completed, before the commencement of this Act.
- (2) The Commission may continue and complete an investigation to which this section applies in accordance with—
 - (a) Schedule 3 of the principal Act (as if this Act had not been enacted); or
 - (b) Schedule 3 of the principal Act (as amended by this Act).

Schedule 1
Amendments to Schedule 1

s 56

1

Amendments to preliminary provisions of Schedule 1

Clause 1

Insert, in its appropriate alphabetical order:

local loop network means that part of Telecom's copper network that connects the end user's building (or, where relevant, the building distribution frames) to the hand-over point in Telecom's local telephone exchange or distribution cabinet (or equivalent facility)

Clause 5

Add:

- (d) *principle 4*: the access provider must, if requested, provide an access seeker with information about a designated access service or specified service at the

same level of detail, and within the same time frame, that the access provider would provide that information had it been requested by one of its own business units.

Clause 6

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

Add as subclause (2):

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

2

New bitstream and bitstream backhaul designated access services

Subpart 1 of Part 2

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

Telecom’s unbundled bitstream access

Description of service: A digital subscriber line enabled service (and its associated functions, including the associated functions of Telecom’s operational support systems) that enables access to, and interconnection with, that part of Telecom’s fixed PDN that connects the end-user’s building (or, where relevant, the building distribution frames) to Telecom’s first data switch (or equivalent facility), other than a digital subscriber line access multiplexer (**DSLAM**)

To avoid doubt, unless requested by the access seeker, the supply of this service must not be conditional on a requirement that the access seeker, the end-user, or any other person must purchase any other service from the access provider

Conditions applicable before the expiry of 3 years from the date on which the Telecommunications Amendment Act (No 2) 2006 receives the Royal assent:

Nil

<i>Conditions applicable after the expiry of 3 years from the date on which the Telecommunications Amendment Act (No 2) 2006 receives the Royal assent:</i>	That either— (a) Telecom faces limited, or is likely to face lessened, competition in a relevant market; or (b) Telecom does not face limited, or is not likely to face lessened, competition in a relevant market, and the Commission has decided to require Telecom’s unbundled bitstream access to be wholesaled in that market
<i>Access provider:</i>	Telecom
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6 and the additional limit that Telecom is only required to provide access to the trunk side of Telecom’s first data switch or equivalent facility (for which purpose a DSLAM is not an equivalent facility)
<i>Initial pricing principle:</i>	Retail price (as imputed by the Commission having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of the service Plus, if no person is also purchasing a local access and calling service from the access provider in relation to the relevant subscriber line, all or any of the costs of Telecom’s local loop network that would usually be recovered by the access provider from an end-user of its local access and calling service, as determined by benchmarking against comparable countries (unless the Commission considers that the price already takes into account all of the relevant costs)
<i>Final pricing principle:</i>	Either— (a) retail price (as imputed by the Commission having regard to the price of any other digital subscriber line enabled service including the imputed price of any such

	<p>service offered as part of a bundle of retail services) minus a discount comprising avoided costs saved, in a case where Telecom faces limited, or is likely to face lessened, competition in a relevant market; or</p> <p>(b) retail price (as imputed by the Commission having regard to the price of any other digital subscriber line enabled service including the imputed price of any such service offered as part of a bundle of retail services) minus a discount comprising actual costs saved, in a case where Telecom does not face limited or lessened competition in a relevant market</p> <p>Plus, in either case, if no person is also purchasing a local access and calling service from the access provider in relation to the relevant subscriber line, all or any of the costs of Telecom's local loop network that would usually be recovered by the access provider from an end-user of its local access and calling service, as determined by identifying the relevant costs (unless the account all of the relevant costs)</p>
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	The Commission must consider relativity between this service and Telecom's unbundled copper local loop network service (to the extent that terms and conditions have been determined for that service)
<i>Description of service:</i>	Telecom's unbundled bitstream access backhaul A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides transmission capacity in Telecom's network (whether the transmission capacity is copper, fibre, or anything else) between the trunk side of Telecom's first data switch (or equivalent facility), other than a digital subscriber line access multiplexer (DSLAM), that is connected to the end-user's building (or, where relevant, the building distribution frames) and the access seeker's nearest available point of interconnection
<i>Conditions applicable before the expiry of 3 years from the date on which the</i>	Any of the following:

*Telecommunications
Amendment Act (No
2) 2006 receives the
Royal assent:*

- (a) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled bitstream access; or
- (b) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled bitstream access; or
- (c) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M, in respect of Telecom's unbundled bitstream access; or
- (d) an agreement for Telecom's unbundled bitstream access (or similar unbundled bitstream access service) is in force between the access seeker of the service and Telecom

*Conditions
applicable after the
expiry of 3 years
from the date on
which the
Telecommunications
Amendment Act (No
2) 2006 receives the
Royal assent:*

Both of the following:

- (a) any of the following—
 - (i) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled bitstream access; or
 - (ii) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled bitstream access; or
 - (iii) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M, in respect of Telecom's unbundled bitstream access; or
 - (iv) an agreement for Telecom's unbundled bitstream access (or similar unbundled

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

3

4 new designated access services including copper local loop unbundling

Subpart 1 of Part 2

Add:

Telecom's unbundled copper local loop network

Description of service: A service (and its associated functions, including the associated functions of Telecom's operational support systems) that enables access to, and interconnection with, Telecom's copper local loop network (including any relevant line in the exchange or distribution cabinet)

Conditions: Nil

Access provider: Telecom

Access seeker: A service provider who seeks access to the service

Access principles: The standard access principles set out in clause 5

Limits on access principles: The limits set out in clause 6

Initial pricing principle: Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method

Final pricing principle: TSLRIC

Requirement referred to in section

45 for final pricing principle:

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

Telecom's unbundled copper local loop network co-location

Description of service: A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides co-location facilities for an access seeker's equipment, and access to the handover point, at Telecom's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of providing access to, and interconnection with, Telecom's unbundled copper local loop network (including any necessary supporting equipment)

	To avoid doubt, access seeker's equipment includes the equipment of any person other than the access seeker (including any line) if that equipment is being used to support the provision of backhaul for the access seeker
	To avoid doubt, this service includes access to, and the use of, space in, on, or around Telecom's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of installing and maintaining the access seeker's equipment
<i>Conditions:</i>	Any of the following: <ul style="list-style-type: none"> (a) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled copper local loop network; or (b) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled copper local loop network; or (c) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M, in respect of Telecom's unbundled copper local loop network; or (d) an agreement for Telecom's unbundled copper local loop network (or similar unbundled local loop network service) is in force between the access seeker of the service and Telecom
<i>Access provider:</i>	Telecom
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6 and the additional limit of the interests of other service providers who are co-located in the relevant facilities
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil
<i>Additional matters that must be considered</i>	Nil

*regarding
application of
section 18:*

Telecom's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)

*Description of
service:*

A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides transmission capacity in Telecom's network (whether the transmission capacity is copper, fibre, or anything else) between the handover point in Telecom's distribution cabinet (or equivalent facility) and the handover point in Telecom's local telephone exchange (or equivalent facility), for the purposes of providing access to, and interconnection with, Telecom's unbundled copper local loop network (including any necessary supporting equipment)

Conditions:

Any of the following:

- (a) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled copper local loop network; or
- (b) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled copper local loop network; or
- (c) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M, in respect of Telecom's unbundled copper local loop network; or
- (d) an agreement for Telecom's unbundled copper local loop network (or similar unbundled local loop network service) is in force between the access seeker of the service and Telecom

Access provider: Telecom

Access seeker: A service provider who seeks access to the service

Access principles: The standard access principles set out in clause 5

*Limits on access
principles:* The limits set out in clause 6

*Initial pricing
principle:* Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method

*Final pricing
principle:* TSLRIC

*Requirement
referred to in section* Nil

45 for final pricing principle:

Additional matters that must be considered regarding application of section 18:

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

Description of service:

Nil

A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides transmission capacity in Telecom's network (whether the transmission capacity is copper, fibre, or anything else) between the handover point in Telecom's local telephone exchange (or equivalent facility) and the access seeker's nearest available point of interconnection, for the purposes of providing access to, and interconnection with, Telecom's unbundled copper local loop network (including any necessary supporting equipment)

Conditions:

Both of the following:

- (a) any of the following:
 - (i) an application for a determination by the access seeker of the service is pending in respect of Telecom's unbundled copper local loop network; or
 - (ii) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of Telecom's unbundled copper local loop network; or
 - (iii) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M, in respect of Telecom's unbundled copper local loop network; or
 - (iv) an agreement for Telecom's unbundled copper local loop network (or similar unbundled local loop network service) is in force between the access seeker of the service and Telecom; and
- (b) either—
 - (i) Telecom faces limited, or is likely to face lessened, competition in a market for

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

4

Further amendments to Schedule 1

Subpart 1 of Part 2

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

Conditions: Any of the following:

- (a) an application for a determination by the access provider of this service for interconnection with Telecom's fixed PSTN must be pending; or
- (b) a standard terms development process has been initiated under subpart 2A of Part 2 in respect of interconnection with Telecom's fixed PSTN; or
- (c) the access seeker of the service is a party to a determination under section 27 that has not expired, or is a party to a standard terms determination under section 30M, in respect of interconnection with Telecom's fixed PSTN.

Part 3 of Schedule 1

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

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

Schedule 2

Amendments to Schedule 2

s 57

New Part heading inserted

Insert above clause 1:

Part 1

Telecommunications access codes prepared by Forum

Clause 1

Add as subclause (2):

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

Clause 2

Subclause (1): repeal and substitute:

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

New clause 3A

Insert after clause 3:

3A Requirements for draft codes for services supplied under registered undertaking

- (1) A draft code for 1 or more services supplied under a registered undertaking may only provide for procedures, requirements, and other matters, not inconsistent with this Act, that relate to an aspect or aspects of the supply of that service or those services.
- (2) A draft code to which subclause (1) applies must—
 - (a) be consistent with the purpose set out in section 18; and
 - (b) comply with the Commerce Act 1986; and
 - (c) not provide for any matter relating to the price of the service.

Clause 4

Subclauses (2) and (3): repeal and substitute:

- (2) The Forum must take all practicable steps to invite, for the purpose of voting on a draft code, all eligible persons who are, in the opinion of the Commission, affected or likely to be affected by the draft code.
- (3) The Forum may otherwise determine the way in which the referendum is conducted.
- (3A) All eligible persons who are, in the opinion of the Commission, affected or likely to be affected by the draft code may vote in the referendum.

Subclause (4): repeal and substitute:

- (4) The following persons are entitled to register with the Commission as eligible persons:
 - (a) a person who provides a telecommunications service by means of some component of a PSTN or PDN that is operated by that person;
 - (b) an access seeker or access provider of—
 - (i) a designated service or specified service; or
 - (ii) a service supplied under a registered undertaking;
 - (c) any other person whom the Commission determines has a material interest in a draft code because that person is about to become, within the foreseeable future, a person referred to in paragraph (a) or (b).

Clause 5

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

Paragraph (d): repeal and substitute:

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

Clause 8

Insert before subclause (1):

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

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

Clause 9

Repeal.

Clause 10

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

Paragraph (c): repeal.

New clauses 10A and 10B

Insert after clause 10:

10A Commission must refuse to approve draft code in certain cases

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

- (a) a determination under section 27; or
- (b) a standard terms determination under section 30M; or
- (c) a designated multinet network service determination under section 39.

10B Amendment of draft code

- (1) This clause applies only if the Commission considers that, because of a change in circumstances, a draft code submitted to it no longer meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require).
- (2) The Commission may prepare, or request the Forum to prepare, a specific amendment to the draft code to ensure that it meets all of those requirements.
- (3) If the Commission prepares the amendment, the Commission must—
 - (a) ensure that the consultation referred to in clause 7(1) has been carried out on the amended draft code; and
 - (b) decide, as soon as practicable after paragraph (a) has been complied with, whether to approve the amended draft code under clause 10.

Clause 12

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

- (a) requested to do so by 75% of eligible persons who voted on the approved code;
and

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

New subclause (3): add:

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

Clause 14

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

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

Clause 15

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

New Part 2 added

Add the following Part:

Part 2

Telecommunications access codes prepared by Commission

17 Commission may prepare code

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

(2) This clause does not limit clause 1.

(3) For the purposes of this clause, the provisions of Part 1 of this schedule, so far as they are applicable and with any necessary modifications, apply to a code prepared by the Commission as if it were a code prepared by the Forum under that Part.

Schedule 3

Amendments to Schedule 3

s 58

Clause 1

Repeal and substitute:

1 Commission’s investigation

- (1) The Commission may, on its own initiative or if requested to do so in writing by the Minister, commence an investigation into whether or not Schedule 1 should be altered in any of the ways set out in section 66 or 67 (the **proposed**

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

Clause 2

Subclause (2): repeal and substitute:

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

Clause 4

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

New subclause (4): add:

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

New clause 5A

Insert after clause 5:

5A Minister may request clarification of final report

- (1) After receiving a final report under clause 4, the Minister may request that the Commission—
 - (a) clarify any aspect of the report:

- (b) provide any additional information that is necessary to understand the nature and implications of the Commission's recommendations that are included in the final report.
- (2) The Commission must comply with a request made under subclause (1) within a period and in a manner agreed between the Commission and the Minister.
- (3) Subclause (1) does not authorise the Minister to require the Commission to undertake any further analysis of, or investigation into, any matter included in the final report.

Clauses 6 and 7

Repeal and substitute:

6 Decision by Minister on Commission's recommendations

- (1) In considering a final report under clause 4, the Minister must—
 - (a) consider together any recommendations that the Commission has, under clause 4(4), identified in its final report to be sufficiently related to each other (**a set of related recommendations**); and
 - (b) consider separately any other recommendations.
- (2) The Minister may—
 - (a) accept or reject—
 - (i) each set of related recommendations:
 - (ii) each of the other recommendations:
 - (b) require the Commission to reconsider, for any reasons specified by the Minister,—
 - (i) any set of related recommendations or any aspect of that set of related recommendations:
 - (ii) any of the other recommendations or any aspect of those other recommendations.

7 Deferral of Minister's decision

- (1) If the Minister accepts the Commission's recommendation that the Minister's decision be deferred for any period that the Commission thinks fit,—
 - (a) the Minister must refer the recommendation back to the Commission for a report at the end of the period on whether the recommendation should be amended; and
 - (b) the Commission must, at the end of that period,—
 - (i) prepare a draft report stating that the period has expired and setting out any amendments it wishes to make to the recommendation; or

- (ii) prepare a final report that includes a recommendation that the Minister should accept an undertaking under Schedule 3A and deliver that report to the Minister.
- (2) If subclause (1)(b)(i) applies, the Commission must also—
 - (a) give public notice of the draft report; and
 - (b) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice; and
 - (c) prepare, as soon as is reasonably practicable after the closing date for submissions, a final report to the Minister that contains the matters set out in the draft report and summarises, and makes recommendations on, the submissions received on the draft report.
- (3) Clause 6 again applies to the report referred to in subclause (1)(b)(ii) or (2)(c), as the case may be.

Clause 11

Add as subclause (4):

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

New clause 12A

Insert after clause 12:

12A Minister may request clarification of final report

- (1) After receiving a final report under clause 11, the Minister may request that the Commission—
 - (a) clarify any aspect of the report;
 - (b) provide any additional information that is necessary to understand the nature and implications of the Commission's recommendations that are included in the final report.
- (2) The Commission must comply with a request made under subclause (1) within a period and in a manner agreed between the Commission and the Minister.
- (3) Subclause (1) does not authorise the Minister to require the Commission to undertake any further analysis of, or investigation into, any matter included in the final report.

Clauses 13 and 14

Repeal and substitute:

13 Decision by Minister on Commission's recommendations

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

- (a) consider together any recommendations that the Commission has, under clause 11(4), identified in its final report to be sufficiently related to each other (a **set of related recommendations**); and
 - (b) consider separately any other recommendations.
- (2) The Minister may—
- (a) accept or reject—
 - (i) each set of related recommendations:
 - (ii) each of the other recommendations:
 - (b) require the Commission to reconsider, for any reasons specified by the Minister,—
 - (i) any set of related recommendations or any aspect of that set of related recommendations:
 - (ii) any of the other recommendations or any aspect of those other recommendations.
- (3) If the Commission makes a recommendation in the final report that the proposed omission and addition should be made, the Minister must make a decision under subclause (2) within 6 months after—
- (a) the date on which the Minister receives that report; or
 - (b) as the case may be, the date on which the Commission complies with a request under clause 12A.

14 Deferral of Minister's decision

- (1) If the Minister accepts the Commission's recommendation that the Minister's decision be deferred for any period that the Commission thinks fit,—
- (a) the Minister must refer the recommendation back to the Commission for a report at the end of the period on whether the recommendation should be amended; and
 - (b) the Commission must, at the end of that period,—
 - (i) prepare a draft report stating that the period has expired and setting out any amendments it wishes to make to the recommendation; or
 - (ii) prepare a final report that includes a recommendation that the Minister should accept an undertaking under Schedule 3A and deliver that report to the Minister.
- (2) If subclause (1)(b)(i) applies, the Commission must also—
- (a) give public notice of the draft report; and
 - (b) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice; and

- (c) prepare, as soon as is reasonably practicable after the closing date for submissions, a final report to the Minister that contains the matters set out in the draft report and summarises, and makes recommendations on, the submissions received on the draft report.
- (3) Clause 6 applies to the report referred to in subclause (1)(b)(ii) or (2)(c), as the case may be.

Schedule 4 New Schedule 3A inserted

s 59

Schedule 3A Undertakings

s 68A

Preliminary

1 Interpretation

In this schedule, unless the context otherwise requires,—

final report means the report that—

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

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

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

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

proposed regulatory change means—

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

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

registered undertaking means an undertaking that is entered in the register

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

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

undertaking has the meaning set out in clause 3.

Purpose of clauses 3 to 16

2 Purpose of clauses 3 to 16

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

- (a) on a voluntary basis that avoids the need for regulation; and
- (b) on terms and conditions agreed between the access provider and the Commission.

Acceptance and registration of undertakings

3 Commission may accept undertaking

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

4 Criteria for undertaking

The Commission must not make a recommendation under clause 3(2) unless the Commission is satisfied that the undertaking—

- (a) complies with this Act and any regulations made under this Act; and

- (b) complies with the standard access principles set out in clause 5 of Schedule 1 and any limits on those standard access principles set out in clause 6 of that schedule.

5 Requirements for undertaking

- (1) An undertaking must—
 - (a) be signed or executed by the relevant access provider; and
 - (b) specify the terms and conditions of the supply of the service; and
 - (c) specify the date by which those terms or conditions must be complied with by the relevant access provider; and
 - (d) specify a mechanism for the resolution by the Commission or a suitably qualified and experienced independent person of any issues or disputes that arise after the undertaking is registered; and
 - (e) provide for any other prescribed matters.
- (2) An undertaking must not be amended after the Commission has made a recommendation under clause 3(2) in respect of that undertaking.

6 Commission must register undertaking if Minister accepts Commission's recommendation

If the Minister accepts the Commission's recommendation that the Minister should accept an undertaking, the Commission must—

- (a) enter in the register—
 - (i) the name of the relevant access provider; and
 - (ii) any other information specified in clause 12; and
- (b) give written notice of the registration to the relevant access provider; and
- (c) give public notice of the registration.

7 Expiry of registration of undertaking

- (1) The registration of an undertaking is effective for—
 - (a) a period of 5 years from the date of registration; and
 - (b) any further period that the Commission and the relevant access provider may agree.
- (2) The Commission must consult with every person who has a material interest in the matter before agreeing to a further period under subclause (1)(b).
- (3) Despite subclause (1), the Commission may make a recommendation in the final report to the Minister that, having regard to the matters specified in subclause (4), the registration of an undertaking should expire earlier than the 5-year period referred to in subclause (1).
- (4) The matters are—
 - (a) the reasonable needs of potential access seekers; and

- (b) the commercial lifetime of the service delivery technology concerned;
and
 - (c) any other factors that the Commission thinks relevant.
- (5) Despite anything in this clause, the registration of an undertaking expires on the date that the proposed regulatory change is made.
- (6) This clause does not require the Commission to commence an investigation into a proposed regulatory change on the expiry of the registration of an undertaking.

Effect of registration of undertaking

8 Effect of registration of undertaking

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

9 Part 2 of Commerce Act 1986 does not apply to registered undertaking

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

- (a) a registered undertaking; and
- (b) any matter necessary for giving effect to a registered undertaking.

Register

10 Register of undertakings

- (1) For the purposes of this schedule, the Commission must establish and maintain a register of undertakings.
- (2) The register may be—
- (a) an electronic register; or
 - (b) kept in any other manner that the Commission thinks fit.

11 Other duties and powers of Commission in relation to register

- (1) The Commission must ensure that the register is open for public inspection, at all reasonable times,—
 - (a) at the head office of the Commission and at any other place that the Commission determines to be necessary or appropriate:
 - (b) on the Commission's website in an electronic form that is publicly accessible.
- (2) The Commission may, at any time, make any amendments to the register that are necessary to—
 - (a) reflect any changes in the information specified in clause 13; or
 - (b) correct a mistake caused by any error or omission on the part of the Commission.

12 Contents of register

The register must, in relation to every registered undertaking, contain all of the following:

- (a) particulars of the relevant access provider:
- (b) the date of registration of the undertaking:
- (c) the terms and conditions of the supply of the service:
- (d) particulars of, or a description of the class of, the access seekers to whom the service is to be supplied:
- (e) any other particulars that may be prescribed.

Process for making undertaking**13 Process for making undertaking**

- (1) An access provider who wishes to make an undertaking must apply to the Commission in accordance with clause 14.
- (2) The Commission must deal with the application—
 - (a) in accordance with clauses 15(2) and 16:
 - (b) in the prescribed manner, if any.

14 Requirements for application

An application under clause 13 must—

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

15 Timing of application

- (1) An application under clause 13—
 - (a) may be made after the date on which public notice is given under clause 1(3) of Schedule 3; but
 - (b) must be made not later than 40 working days after the date on which the Commission commences an investigation into the proposed regulatory change under clause 1 of Schedule 3.
- (2) The Commission must not consider a late application.

16 Commission must invite submissions

- (1) After receiving an application under clause 13, the Commission must—
 - (a) give public notice of the application; and
 - (b) invite persons who have a material interest in the proposed regulatory change to make written submissions on the application by the closing date specified in the public notice; and
 - (c) consider those submissions.
- (2) The closing date for submissions must not be earlier than 10 working days after the date on which public notice is given under subclause (1)(a).
- (3) Before determining the application, the commission must give the access provider who made the application a reasonable opportunity to amend it in light of any submissions received by the Commission under this clause.

Eprint notes

1 *General*

This is an eprint of the Telecommunications (New Regulatory Framework) Amendment Act 2018 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Telecommunications (New Regulatory Framework) Amendment Act 2018 (2018 No 48): sections 33–35

Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (2011 No 27): section 26(2)