Reprint
as at 30 November 2011

Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011

Public Act	2011 No 27
Date of assent	30 June 2011
Commencement	see section 2

Contents

Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Economic Development.

Part 4AA
Services provided using networks developed with Crown funding: Undertakings regime and Commerce Act 1986 authorisations

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011.

2 Commencement

(1) This Act, except subpart 2 of Part 2 and sections 52 to 68, comes into force on the day after the date on which it receives the Royal assent.

(2) Subpart 2 of Part 2 and sections 52 to 68 come into force on separation day, but only if an Order in Council has been made under section 36.

(3) Telecom must publish the date of separation day in the *Gazette* as soon as practicable after it is known.

(4) **Separation day** has the meaning set out in section 69B of the principal Act (as inserted by section 51 of this Act).

Section 2(2): subpart 2 of Part 2 and sections 52–68 brought into force, on 30 November 2011, being the date of separation day, and an Order in Council (SR 2011/302) having been made under section 36.

3 Principal Act amended

This Act amends the Telecommunications Act 2001.

Part 1
Telecommunications service obligations and general matters

Subpart 1—Amendments to principal Act relating to telecommunications service obligations and general matters

4 Interpretation

(1) Section 5 is amended by repealing the definitions of **constitution of Telecom**, **financial year**, **KSO**, **liable person**, **liable person's TSO-qualified revenue**, **net cost**, **original KSO**, **TSO cost calculation determination**, **TSO instrument** or **telecommunications service obligation instrument**, and **TSO provider's TSO-qualified revenue**.

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

"**CPI** means the Consumers Price Index (All Groups) published by Statistics New Zealand

"**existing residential line**—

"(a) means a Telecom residential line (other than a party line or a second line) that was an active connection on 20 December 2001; and

"(b) to avoid doubt, includes any such line that has been replaced or altered since 20 December 2001

"**financial year** means a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year

"**liability allocation determination** means a determination of the Commission prepared in accordance with section 87(1)(a)

"**liable person** means a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person

"**Ministry** means the Ministry responsible for administering this Act

"**net cost**,—

"(a) in relation to an instrument that is declared to be a TSO instrument under section 70, means the unavoidable net incremental cost to an efficient service provider of pro-

viding the service required by the TSO instrument to commercially non-viable end-users; and

"(b) in relation to a deemed TSO instrument, means the unavoidable net incremental cost to an efficient service provider of providing the service required by the TSO instrument to all end-users connected to existing residential lines

"**PTN** or **public telecommunications network**—

"(a) means a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication:

"(b) includes—

"(i) a PSTN:

"(ii) a PDN

"**qualified revenue** means the revenue (as determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to the liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

"(a) telecommunications services by means of its PTN:

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

"**TSO charges** means the amounts payable to a TSO provider by the Crown under section 94L(1)

"**TSO cost calculation determination** means a determination of the Commission prepared in accordance with section 94J(1)(a)

"**TSO instrument** or **telecommunications service obligation instrument** means—

"(a) an instrument that is declared to be a TSO instrument under section 70:

"(b) a deemed TSO instrument".

5 Performance of Commission's functions

Section 10(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

"(a) the Telecommunications Commissioner and no fewer than 2 other members of the Commission must—

"(i) make every determination in respect of a designated multinetwork service under section 39; and

"(ii) make every pricing review determination under section 51; and

"(iii) make every liability allocation determination under section 87; and

"(iv) make every TSO cost calculation determination under section 94J; and

"(ab) the determinations referred to in paragraph (a) must, if the Telecommunications Commissioner and the other members of the Commission are not unanimous in their view, be made in accordance with the majority view; and

"(b) the Telecommunications Commissioner must report to the Minister about every proposed alteration to Schedule 1 in any of the ways set out in sections 66 and 67 following consideration by the Telecommunications Commissioner and no fewer than 2 other members of the Commission in accordance with clause 4 of Schedule 3, and—

"(i) the recommendation included in the final report to the Minister must be supported by the majority of the Telecommunications Commissioner and the other members of the Commission; and

"(ii) the final report must include the majority view and any dissenting views; and".

6 Application of section 98A of Commerce Act 1986

Section 16(b) is amended by omitting "section 81(a)" and substituting "section 82(b) or 83(1)(a)".

7 Purpose

Section 18 is amended by inserting the following subsection after subsection (2):

"(2A) To avoid doubt, in determining whether or not, or the extent to which, competition in telecommunications markets for the long-term benefit of end-users of telecommunications services

within New Zealand is promoted, consideration must be given to the incentives to innovate that exist for, and the risks faced by, investors in new telecommunications services that involve significant capital investment and that offer capabilities not available from established services."

8 Deemed TSO instrument

Section 71 is amended by repealing subsection (2) and substituting the following subsection:

"(2) Subsection (1) applies to any other instrument that—

"(a) includes or records provisions that state that the parties intend the instrument to be a deemed TSO instrument under this Act; and

"(b) is conditional on, or entered into as a consequence of, the structural separation of Telecom."

9 New section 71A substituted

Section 71A is repealed and the following section substituted:

"**71A TSO instrument may specify total amount payable by the Crown**

"(1) A TSO instrument may specify the total amount payable by the Crown under the instrument for each financial year (the **specified amount**).

"(2) The total amount may be specified as—

"(a) a fixed monetary amount; or

"(b) a capped monetary amount; or

"(c) an indexed monetary amount; or

"(d) a formula for the calculation of a monetary amount; or

"(e) any combination of paragraphs (a) to (d)."

10 Sections 72 and 73 repealed

Sections 72 and 73 are repealed.

11 Section 74 substituted

Section 74 is repealed and the following section substituted:

"**74 Compliance with TSO instrument**

"(1) A TSO provider must comply with the terms of a TSO instrument.

"(2) The statutory duty in subsection (1) does not limit or affect any right, duty, liability, or remedy in respect of a TSO instrument that exists or is available apart from this Act."

12 Variation of TSO instrument or deemed TSO instrument

(1) The heading to section 75 is amended by omitting "**or deemed TSO instrument**".

(2) Section 75(a) is amended by omitting "a TSO instrument" and substituting "an instrument that is declared to be a TSO instrument under section 70".

13 New section 76 substituted

Section 76 is repealed and the following section substituted:

"**76 When instrument ceases to be TSO instrument**

"(1) An instrument ceases to be a TSO instrument,—

"(a) in the case of an instrument that is declared to be a TSO instrument under section 70, if the Governor-General, by Order in Council made on the recommendation of the Minister, revokes the declaration of that TSO instrument; or

"(b) in the case of a deemed TSO instrument, on a date appointed by the Governor-General by Order in Council made on the recommendation of the Minister; or

"(c) if the instrument is terminated in accordance with its terms.

"(2) The Minister must not make a recommendation under subsection (1)(a) or (b) unless,—

"(a) in the case of an instrument that is declared to be a TSO instrument under section 70, the service provider to whom that instrument applies agrees to the revocation of the declaration; or

"(b) in the case of a deemed TSO instrument, the service provider to whom that instrument applies agrees to that instrument ceasing to have effect as a deemed TSO instrument."

14 New section 77 substituted

Section 77 is repealed and the following section substituted:

"**77 Notification of TSO instrument**

"(1) The Minister must notify the Commission of—

"(a) every instrument that is declared to be a TSO instrument under section 70; and

"(b) every deemed TSO instrument.

"(2) The Commission must give public notice of every TSO instrument."

15 New subparts 2 and 2A of Part 3 substituted

Subpart 2 of Part 3 is repealed and the following subparts are substituted:

"Subpart 2—Amounts payable by liable persons to the Crown

"*Annual procedure for determining amounts payable by liable persons to the Crown*

"**80 Interpretation**

In this subpart, unless the context otherwise requires,—

"**financial statements**,—

"(a) except if section 79 applies, has the same meaning as in section 8 of the Financial Reporting Act 1993; and

"(b) if section 79 applies, means a consolidated statement of financial performance of the 2 or more bodies corporate required by that section to be treated as 1 person, prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993

"**minimum telecommunications revenue** means $10 million, or such other amount, as may be prescribed by regulations made under section 101(1)(a), of gross revenue (as may be determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to a liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

"(a) telecommunications services by means of its PTN:

"(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

"**81 Subpart does not apply to certain liable persons**

"(1) This subpart does not apply to a liable person in respect of a financial year (**financial year A**) if—

"(a) the liable person was not trading in the financial year preceding financial year A; or

"(b) the liable person's telecommunications revenue for the year preceding financial year A was less than the minimum telecommunications revenue.

"(2) For the purpose of determining whether a person is a liable person to whom this subpart applies in respect of a financial year, the Commission may, by written notice to that person, require the person to provide to the Commission, within the time specified in the notice,—

"(a) a copy of the person's financial statements for the year preceding financial year A; and

"(b) any further information specified by the Commission for the purpose of enabling it to verify the telecommunications revenue of that person for the year preceding financial year A; and

"(c) a certificate that complies with subsection (3).

"(3) A certificate complies with this subsection if—

"(a) it certifies the person's telecommunications revenue for the year preceding financial year A; and

"(b) it is signed by 2 directors of the person with the authority of the other directors.

"**82 Liable persons must produce information on qualified revenue**

Not later than 60 working days before the end of each financial year (**financial year A**), each liable person must provide to the Commission a copy of—

"(a) its financial statements for the financial year preceding financial year A; and

"(b) any further information specified by the Commission for the purpose of enabling it to verify the qualified revenue of that person for the financial year preceding financial year A.

"**83 Liable persons must produce information for purposes of liability allocation determination**

"(1) Not later than 60 working days after the end of each financial year, each liable person must provide to the Commission—

"(a) all prescribed information or, if there is no prescribed information, information specified by the Commission, for the purpose of enabling the Commission to make its determination in accordance with section 88(a); and

"(b) a report that complies with subsection (2).

"(2) A report complies with this subsection if—

"(a) it is prepared by a qualified auditor; and

"(b) it includes a statement of the extent to which the information provided by the liable person under subsection (1)(a) is correct and complete.

"**84 Commission to prepare draft liability allocation determination**

"(1) The Commission must—

"(a) prepare a draft liability allocation determination for each financial year; and

"(b) give public notice of that draft determination; and

"(c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.

"(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 80 working days after the end of the financial year.

"**85 Matters to be included in draft liability allocation determination**

"(1) A draft liability allocation determination must include—

"(a) the amount of each liable person's qualified revenue; and

"(b) the amount of the telecommunications development levy payable by each liable person for the financial year, calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

a is the amount of the liable person's qualified revenue

b is the sum of all liable persons' qualified revenue

c is the telecommunications development levy specified for the relevant year in Schedule 3B; and

"(c) the methodology applied by the Commission in preparing the determination; and

"(d) the reasons for the determination.

"(2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of subsection (1)(a) (for example, a net revenue basis).

"**86 Conferences on draft liability allocation determination**

The Commission may—

"(a) hold conferences in relation to the draft liability allocation determination; and

"(b) invite to those conferences any person who has a material interest in the determination.

"**87 Commission to prepare final liability allocation determination**

"(1) The Commission must—

"(a) prepare a final liability allocation determination; and

"(b) give public notice of that final determination; and

"(c) give a copy of that final determination to all liable persons.

"(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 20 working days after the closing date for submissions specified in accordance with section 84(1)(c).

"**88 Matters to be included in final liability allocation determination**

A final liability allocation determination must include—

"(a) the amount of each liable person's qualified revenue; and

"(b) the amount of the telecommunications development levy payable by each liable person, calculated in accordance with the formula set out in section 85(1)(b); and

"(c) the methodology applied by the Commission in preparing the determination; and

"(d) the reasons for the determination.

"**89 Payment by liable persons to the Crown**

"(1) Each liable person must pay to the Crown the amount set out in the determination in accordance with section 88(b) not later than 20 working days after the date that the determination is publicly notified.

"(2) If that amount is not paid on or before the due date,—

"(a) it is recoverable in any court of competent jurisdiction as a debt due to the Crown; and

"(b) the liable person must pay the Crown interest on the unpaid amount at the 90-day bank bill rate (as at 21 working days after the date on which the determination is publicly notified) plus 5% for the period from the time the amount was due until the time at which it is paid.

"(3) Subsection (2) does not authorise the imposing of interest on interest.

"*General matters*

"**90 Crown use of telecommunications development levy**

"(1) The amounts paid by liable persons under section 89 (collectively, the **telecommunications development levy**) may be used for the following purposes:

"(a) to pay TSO charges:

"(b) to pay for non-urban telecommunications infrastructure development:

"(c) to pay for upgrades to the emergency service calling system:

"(d) any other purpose that the Minister considers will facilitate the supply of certain telecommunications services

to groups of end-users within New Zealand to whom those telecommunications services may not otherwise be supplied on a commercial basis or at a price that is considered by the Minister to be affordable to those groups of end-users.

"(2) The telecommunications development levy must not be used for a purpose under subsection (1)(d) unless the Minister has first consulted liable persons and any persons and organisations that the Minister considers appropriate having regard to the proposed use of the levy.

"(3) To avoid doubt, except as provided in section 94L, nothing in this section requires the Crown to use any amount paid by liable persons under section 89 within any particular time.

"91 Commission must notify final liability allocation determination before notifying TSO cost calculation determination

"(1) The Commission may determine the priority between the preparation of a liability allocation determination and the preparation of a TSO cost calculation determination and, accordingly, may comply with sections 84 to 88 and sections 94F to 94K in the sequence, as between those 2 sets of sections, as it thinks fit.

"(2) However, the Commission must publicly notify a final liability allocation determination for each financial year in accordance with section 87(1)(b) before it publicly notifies any final TSO cost calculation determination for that financial year in accordance with section 94J(1)(b).

"92 Annual telecommunications development levy may be reduced by Order in Council

"(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend Schedule 3B by reducing the annual telecommunications development levy set out in that schedule for 1 or more future years.

"(2) The Minister must not recommend the making of an order unless the Minister is satisfied that the full amount set out in Schedule 3B is not required for the purposes in section 90.

"Subpart 2A—TSO charges payable by the Crown

"*Assessment of compliance*

"**93 Assessment of compliance with TSO instrument**

Not later than 60 working days after the end of each financial year, the Commission must—

"(a) assess a TSO provider's compliance with its TSO instrument during that financial year in accordance with any process set out in the TSO instrument; and

"(b) notify the TSO provider and the Minister, in writing, of any non-compliance by the TSO provider with the TSO instrument.

"*TSO provider may request TSO cost calculation determination*

"**94 TSO provider under TSO instrument without specified amount may request TSO cost calculation determination**

"(1) If a TSO provider under a TSO instrument that does not contain a specified amount wishes to have the TSO charges for the instrument determined in respect of a financial year, the TSO provider must notify the Commission that it wishes to invoke the procedure in sections 94D to 94K for the preparation of a TSO cost calculation determination for that financial year.

"(2) The notification must be—

"(a) in writing; and

"(b) given not later than 90 working days after the end of the relevant financial year.

"**94A TSO provider who requests TSO cost calculation determination liable for costs in certain circumstances**

"(1) A TSO provider who notifies the Commission under section 94 must, if the Commission determines the TSO charges for the instrument to be zero, pay the costs of the Commission relating to the procedure in sections 94F to 94K for the preparation of the TSO cost calculation determination (including the costs of any expert advice) as directed by the Commission in writing.

"(2) The Commission may enforce a direction given under subsection (1) by filing it in the prescribed form in the Wellington Registry of the High Court.

"(3) A direction that is filed in the Registry of the High Court under this section is enforceable as a judgment of the High Court in its civil jurisdiction.

"**94B Withdrawal of request for TSO cost calculation determination**

"(1) A TSO provider who notifies the Commission under section 94 may subsequently withdraw its request for a TSO cost calculation determination.

"(2) The withdrawal must be made by submitting a notice in writing to the Commission before the Commission publicly notifies its final TSO cost calculation determination under section 94J(1)(b).

"(3) A TSO provider who withdraws a request for a TSO cost calculation determination must pay the costs of the Commission (including the costs of any expert advice) relating to as much of the procedure in sections 94F to 94K as has been undertaken in preparing the determination before the withdrawal, as directed by the Commission in writing.

"(4) Section 94A(2) and (3) apply to the enforcement of the direction.

"**94C TSO charges deemed to be zero if TSO provider does not request TSO cost calculation determination**

If a TSO provider under a TSO instrument that does not contain a specified amount does not notify the Commission in accordance with section 94,—

"(a) sections 91 and 94D to 94L do not apply in respect of the TSO provider or TSO instrument; and

"(b) the TSO charges for the instrument are deemed to be zero.

"*Annual procedure for determining TSO charges payable by the Crown*

"**94D Calculations of net cost and auditor's report must be given to Commission**

"(1) Not later than 90 working days after the end of each financial year, a TSO provider under a TSO instrument that does not contain a specified amount must provide to the Commission—

"(a) calculations of the net cost to the TSO provider of complying with the TSO instrument during the financial year; and

"(b) a report prepared by a qualified auditor that includes a statement of whether or not the calculations comply with—

"(i) any prescribed requirements relating to those calculations; and

"(ii) any requirements of the Commission.

"(2) This section is subject to section 94C.

"**94E Considerations for determining net cost**

"(1) In calculating the net cost under section 94D and calculating the net cost for the purposes of a draft TSO cost calculation determination under section 94F and a final TSO cost calculation determination under section 94J, the following must be taken into account:

"(a) in the case of an instrument that is declared to be a TSO instrument under section 70, the range of direct and indirect revenues and associated benefits derived from providing telecommunications services to commercially non-viable end-users, less the costs of providing those services to those end-users:

"(b) in the case of a deemed TSO instrument, the range of direct and indirect revenues and associated benefits derived from providing telecommunications services to all end-users connected to existing residential lines, less the costs of providing those services to those end-users:

"(c) the provision of a reasonable return on the incremental capital employed in providing those services to end-users.

"(2) Subsection (1) is subject to subsections (3) and (4).

"(3) In calculating the net cost for the purposes of a draft TSO cost calculation determination under section 94F and a final TSO cost calculation determination under section 94J, the Commission—

"(a) may choose not to include profits from any new telecommunications services that involve significant capital investment and that offer capabilities not available from established telecommunications services; and

"(b) must not include any losses from telecommunications services other than services that the TSO instrument requires the TSO provider to provide; and

"(c) must consider the purpose set out in section 18.

"(4) In calculating the net cost under section 94D, the TSO provider must comply with any requirements of the Commission relating to the application of subsection (3)(a) to (c).

"(5) In this section,—

"**established telecommunications services** means telecommunications services that are not new telecommunications services

"**new telecommunications services** means telecommunications services that were first provided in New Zealand within 5 years before the start of the financial year to which the calculation of the net cost relates.

"94F Commission to prepare draft TSO cost calculation determination

"(1) The Commission must—

"(a) prepare a draft TSO cost calculation determination in respect of each TSO instrument for each financial year; and

"(b) give public notice of that draft determination; and

"(c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.

"(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 120 working days after the end of the financial year.

"(3) This section is subject to sections 94 and 94C.

"**94G 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 to the TSO provider of complying with the TSO instrument during the 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) the amount (if any) by which the total amount that the TSO provider would receive from the Crown 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 preparing the determination; and

"(e) the reasons for the determination.

"**94H Requirements for draft TSO cost calculation determination**

In preparing a draft TSO cost calculation determination of the matters referred to in section 94G(c), the Commission must consider the steps taken (if any) by the TSO provider to remedy any non-compliance by the TSO provider with the TSO instrument between the date the TSO provider was notified of the non-compliance under section 93(b) and the date that is 15 working days before public notice is given under section 94F(1)(b).

"**94I 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 the determination.

"**94J Commission to prepare final TSO cost calculation determination**

"(1) The Commission must—

"(a) prepare a final TSO cost calculation determination; and

"(b) give public notice of that final determination; and

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

"(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 40 working days after the closing date for submissions specified in accordance with section 94F(1)(c).

"(3) This section is subject to sections 94 and 94C.

"**94K Matters to be included in final TSO cost calculation determination**

"(1) A final TSO cost calculation determination 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 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) the amount (if any) by which the total amount that the TSO provider would receive from the Crown in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and

"(d) the amount payable by the Crown to the TSO provider in relation to the TSO instrument in respect of the financial year calculated,—

"(i) in the case of a TSO instrument that does not contain a specified amount, by subtracting the amount of the reduction (if any) referred to in paragraph (c) from the net cost referred to in paragraph (a); and

"(ii) in the case of a TSO instrument that contains a specified amount, by subtracting the amount of the reduction (if any) referred to in paragraph (c) from the specified amount referred to in paragraph (b); and

"(e) the amount payable by the Crown to the TSO provider in relation to the TSO instrument for the loss of use of the amount referred to in paragraph (d), 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 financial year and ending with the date of the final TSO cost calculation determination; and

"(f) the methodology used by the Commission in preparing the determination; and

"(g) the reasons for the determination.

"(2) To avoid doubt, if the calculation under subsection (1)(a) or (b) results in a figure that is zero or less, the amount for the purposes of subsection (1)(d) and (e), and that must be included in the determination, is zero.

"94L Payment by the Crown to TSO provider

"(1) The Crown must pay to the TSO provider, not later than 30 working days after the date that the final TSO cost calculation determination is publicly notified,—

"(a) the amount set out in the final TSO cost calculation determination in accordance with section 94K(1)(d); and

"(b) the amount set out in the final TSO cost calculation determination in accordance with section 94K(1)(e).

"(2) If the Crown does not pay the total of the amounts referred to in subsection (1) on or before the due date, the Crown must pay the TSO provider interest on the unpaid amount at the 90-day bank bill rate (as at 31 working days after the date on which the final cost calculation determination is publicly notified) plus 5% for the period from the time the amount was due until the time at which it is paid."

16 Section 99 repealed

Section 99 is repealed.

17 New section 100 substituted

Section 100 is repealed and the following section substituted:

"**100 Right of appeal to High Court**

"(1) The following persons and (as applicable) the Crown may appeal to the High Court against the following matters:

"(a) a liable person, against a determination of the Commission, in relation to that person, of the matter referred to in section 88(a):

"(b) a TSO provider, against a direction of the Commission under section 94A(1) or 94B(3):

"(c) a liable person, TSO provider, or the Crown, against a determination of the Commission in respect of a matter referred to in section 94K(1)(a) to (g).

"(2) An appeal under subsection (1) may be on a question of law only.

"(3) If an appeal or judicial review proceedings are commenced about a liability allocation determination, TSO cost calculation determination, or direction under section 94A(1), the determination or direction continues to have effect and is enforceable as if the proceedings had not been commenced until the proceedings are finally disposed of.

"(4) To avoid doubt, the obligations to pay money imposed by sections 89 and 94L continue to have effect and are enforceable despite any appeal or judicial review proceedings about a de-

termination that relates to those payments, until the proceedings are finally disposed of.

"(5) **TSO provider**, in subsection (1), means the TSO provider under the TSO instrument to which the direction or determination relates."

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

(1) Section 100B(1)(a) is amended by omitting "section 92" and substituting "section 94F".

(2) Section 100B(1)(b) is amended by omitting "section 93C" and substituting "section 94J".

(3) Section 100B(3) is amended by omitting "customers" and substituting "end-users".

19 New section 100BA inserted

The following section is inserted after section 100B:

"**100BA Commission must include information about spending of TSO charges paid in relation to deemed TSO instrument**

"(1) The Commission must include the information specified in subsection (2) in—

"(a) a draft TSO cost calculation determination under section 94F, in relation to a deemed TSO instrument; and

"(b) a final TSO cost calculation determination under section 94J, in relation to a deemed TSO instrument.

"(2) The information referred to in subsection (1) is the amount of the total TSO charges most recently received by the TSO provider (if any), that the TSO provider has spent on each of the following, and details of that expenditure:

"(a) TSO-related infrastructure:

"(b) TSO-related operational costs:

"(c) any other items.

"(3) For the purpose of enabling the Commission to comply with subsection (1), the Commission may require the TSO provider to prepare and provide information about the spending of the TSO charges most recently received by the TSO provider.

"(4) The TSO provider must prepare and provide any information required under subsection (3) in accordance with the Commission's requirements."

20 Duties of Commission in complying with section 100B

(1) The heading to section 100C is amended by omitting "**section 100B**" and substituting "**sections 100B and 100BA**".

(2) Section 100C is amended by adding the following subsection:

"(3) In complying with section 100BA, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive."

21 New section 101 substituted

Section 101 is repealed and the following section substituted:

"**101 Regulations**

"(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—

"(a) determine the amount of the minimum telecommunications revenue for the purposes of section 80:

"(b) prescribe the information that must be provided to the Commission under section 83(1)(a):

"(c) provide for the appointment of auditors who may make an auditor's report under section 83(1)(b) or 94D(1)(b):

"(d) prescribe requirements to which section 94D(1)(b)(i) applies:

"(e) provide for any methods for all or any of the following:

"(i) preparing a draft determination of the amount of qualified revenue referred to in section 85(1)(a):

"(ii) determining the amount of qualified revenue referred to in section 88(a):

"(iii) calculating the net cost under section 94D:

"(iv) preparing a draft determination of the net cost referred to in section 94G(a):

"(v) determining the net cost referred to in section 94K(1)(a).

"(2) The Minister must not make a recommendation under subsection (1)(b) to (e) unless—

"(a) the Commission has consulted every liable person; and

"(b) the Commission has recommended that the regulations be made.

"(3) The Minister must not recommend the making of regulations under subsection (1)(a) unless the Minister is satisfied that, if the regulations were made, the minimum telecommunications revenue under those regulations would not exceed the maximum telecommunications revenue threshold.

"(4) In this section, **maximum telecommunications revenue threshold** means the amount calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

a is the CPI index number for the last quarter before the Minister's recommendation would be made

b is the CPI index number for the last quarter before the date of commencement of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011

c is $10 million.

22 New section 101A inserted

The following section is inserted after section 101:

"**101A Review of local service TSO arrangements**

"(1) The chief executive of the Ministry must,—

"(a) at the start of 2013, commence a review of the deemed TSO instruments and the provisions of this Act that implement those deeds (including the provisions that relate to funding) (collectively, the **deemed TSO arrangements**), including consideration of the following:

"(i) the operation of the deemed TSO arrangements:

"(ii) changes in the telecommunications sector that have arisen from investments in, and the roll-out of, new and enhanced telecommunications infrastructure and facilities and the impact of those changes on the deemed TSO arrangements:

"(iii) the continued need for, and relevance of, the deemed TSO arrangements:

"(iv) the practicality of adopting universal, rather than provider-specific, arrangements for provision of the services and achievement of the outcomes covered by the deemed TSO arrangements:

"(v) the impact of the funding arrangements for deemed TSO instruments and the calculation of costs in relation to deemed TSO instruments on TSO providers, market competition, and the development generally of the telecommunications industry:

"(vi) alternative arrangements for achieving the purpose set out in section 70(1), including—

"(A) the potential for adopting a contestable TSO model for deemed TSO arrangements and the costs and benefits of those alternatives in comparison with the deemed TSO arrangements; and

"(B) alternative approaches for the funding of deemed TSO instruments and the calculation of costs in relation to deemed TSO instruments, including the costs and benefits of those alternative approaches in comparison with the deemed TSO funding arrangements:

"(vii) related regulatory issues; and

"(b) report to the Minister on its findings not later than the end of 2013.

"(2) In carrying out the review, the chief executive of the Ministry must consult with interested parties, including the Commission, industry participants, consumers, and Māori.

"(3) In conducting the review and reporting to the Minister, the chief executive of the Ministry must take the following into account:

"(a) the long-term interests of end-users of telecommunications services:

"(b) the long-term interests of those end-users in respect of whom the provision of services covered by the deemed TSO arrangements is commercially non-viable:
"(c) the legitimate business interests of TSO providers:
"(d) the ability for providers of TSO services to receive a reasonable return on the incremental capital employed in providing the services required under deemed TSO instruments:
"(e) the impact on the incentives and capabilities of TSO providers and other telecommunications service providers to invest in new and improved telecommunications facilities and services:
"(f) the effects on competition in telecommunications services markets in New Zealand."

23 New subpart 3 inserted relating to multi-unit complexes

The following subpart is inserted after section 155:

"Subpart 3—Access to multi-unit complexes to which fibre-to-the-premises is to be deployed

"155A Overview

"(1) This subpart provides a statutory right of access to multi-unit complexes that fibre-to-the-premises service providers may use if an access agreement is not negotiated.

"(2) This subpart does not limit the statutory rights of access in sections 120 to 127.

"155B Interpretation

In this subpart, unless the context otherwise requires,—

"**access order** means an order of the District Court referred to in section 155I

"**Code** means the Code that has been approved under section 155K, and includes any amendment to the Code that is approved under that section

"**consumer**, in relation to a consumer complaints system, includes an owner or occupier

"**consumer complaints system**, in relation to an FTTP service provider, means either of the following:

"(a) an industry-based complaints system that has been established by the telecommunications industry and that has been approved by the Minister for the purposes of resolution of complaints under this subpart and the Code; or

"(b) a consumer complaints system facilitated by Part 4B

"**fibre-to-the-premises access network** has the same meaning as in section 156AB

"**FTTP service provider** means the owner or operator of a fibre-to-the-premises access network

"**maintenance** has the same meaning as in section 117

"**multi-unit complex** means—

"(a) a building that contains 2 or more distinct units (including the land on which the building is sited); or

"(b) a group of buildings that are used communally (including the land on which those buildings are sited)

"**owner**, in relation to any part of a multi-unit complex, means any 1 or more of the following:

"(a) a person who has a freehold or a leasehold interest in that part of the complex:

"(b) any body corporate under the Unit Titles Act 1972 or the registered proprietor of the complex to which the unit plan relates:

"(c) any other person who has a legal right to grant access to the building or to approve the performance of work in the building

"**preliminary notice** means a notice that complies with section 155F

"**second notice** means a notice that complies with section 155H.

"*Statutory right of access to multi-unit complexes*

"**155C Nature of statutory right of access to multi-unit complexes**

"(1) The right of access conferred by this subpart is that an FTTP service provider may, for the purpose of constructing, erecting, laying, maintaining, or upgrading all or any part of a fibre-to-the-premises access network,—

"(a) enter a multi-unit complex at reasonable times, with or without any person who is, or any thing that is, reasonably necessary; and

"(b) perform work that is reasonably necessary for the purpose of constructing, erecting, laying, maintaining, or upgrading all or any part of a fibre-to-the-premises access network.

"(2) This right of access applies only—

"(a) if the service provider has complied with sections 155D to 155I in respect of each part of the multi-unit complex accessed under this subpart; and

"(b) to authorise the matters referred to in subsection (1).

"**155D Preconditions before statutory right of access to multi-unit complexes may be exercised**

Before an FTTP service provider enters, or performs work in, any part of a multi-unit complex under this subpart, the service provider must first—

"(a) have agreed to be bound by the Code; and

"(b) have taken all reasonable steps to negotiate an agreement for entry with the owner in accordance with the Code; and

"(c) have served a preliminary notice on each owner of that part of the multi-unit complex in accordance with section 155F; and

"(d) have served a second notice in accordance with section 155H on each owner of that part of the multi-unit complex who has not opted out in accordance with section 155G; and

"(e) have obtained an access order from the District Court under section 155I in respect of each owner of that part

of the multi-unit complex who has opted out in accordance with section 155G; and

"(f) be a member of a consumer complaints system that provides for the resolution of complaints about compliance with this subpart and the Code.

"155E How statutory right of access to multi-unit complex must be exercised

"(1) The entry to a multi-unit complex under section 155C must only be made by an officer, employee, or agent (including a contractor) of the FTTP service provider authorised by it in writing.

"(2) The person entering must produce evidence of his or her authority and identity—

"(a) on initial entry; and

"(b) after the initial entry, on request.

"(3) Subsections (1) and (2) are subject to the terms and conditions of any access order from the District Court under section 155I.

"(4) In this section, **evidence of authority** has the same meaning as in section 118, with any necessary modifications.

"Process

"155F Requirements in respect of preliminary notice

"(1) A preliminary notice must—

"(a) contain the matters specified in subsection (2); and

"(b) comply with the Code; and

"(c) be served on each person who is known by the service provider to be a current owner; and

"(d) be left in a prominent place on the land.

"(2) The matters that must be included in the first notice are—

"(a) an explanation of the infrastructure the service provider is seeking to deploy, maintain, or upgrade, and the benefits of that work:

"(b) what the initial investigation would entail, including initial indications of the areas the service provider may want to access during the investigation, if known:

"(c) the date and time of the intended investigation:

"(d) an explanation that if the service provider does not hear from the owner within 20 working days (or any longer period agreed between the service provider and the owner), the owner will be deemed to have consented in principle to the investigation:

"(e) an explanation that the owner can opt out of the access regime, and details as to reasonable grounds for opting out and the process for doing so:

"(f) the contact details of the service provider to be used by the owner if the owner wishes to opt out or to negotiate an alternative time or date for the investigation:

"(g) an explanation that, if the owner opts out on unreasonable grounds, the service provider may apply to the District Court for an access order:

"(h) an assurance that the service provider has agreed to be bound by the Code and will, when entering the building, comply with the requirements in the Code, and an Internet link to the Code:

"(i) an explanation that, if the owner or occupier believes that the service provider has breached the Code, the owner or occupier may complain to a consumer complaints system:

"(j) an explanation of the process of making a complaint.

"**155G Opting out of providing access under subpart**

"(1) An owner may opt out of the access regime in this subpart by—

"(a) serving an opt-out notice on the service provider within 20 working days of receiving a preliminary notice or a second notice (or any longer period agreed between the service provider and the owner); or

"(b) denying access to a service provider.

"(2) An opt-out notice must be in writing and sent to the contact address given by the service provider.

"(3) The service provider has no right of access under this subpart after an opt-out happens unless the service provider obtains an access order granted by the District Court.

"**155H Requirements in respect of second notice**

"(1) A second notice must—

"(a) contain the matters specified in subsection (2); and
"(b) comply with the Code; and
"(c) be served on each person who is known by the service provider to be a current owner, and left in a prominent place on the land,—
"(i) no earlier than 10 working days after the earlier of—
"(A) the expiration of the 20-working-day period referred to in section 155F(2)(d) (or any longer period agreed between the service provider and the owner); or
"(B) the date of notification by the owner that the owner consents to the work as proposed in the preliminary notice; and
"(ii) no later than 21 working days before the time proposed in the notice for the start of the work.

"(2) The second notice must give the owner all the key information relating to the proposed work, including—
"(a) an explanation of the exact details of the proposed work, including—
"(i) the areas in which it will occur; and
"(ii) the nature of the work, including whether it will require structural work; and
"(iii) the nature of any fixed infrastructure that will be installed in the process:
"(b) details of the proposed timing of the work and the length of time it is intended to take:
"(c) an explanation of ongoing access requirements for repairs and maintenance:
"(d) details of any costs to the owner associated with the work:
"(e) an explanation that the owner can opt out, and details as to reasonable grounds for opting out and the process for doing so:
"(f) the contact details of the service provider to be used if the owner wishes to opt out or negotiate an alternative time or date for the work:

"(g) an explanation that, if the owner opts out on unreasonable grounds, the service provider may apply to the District Court for an access order:

"(h) an assurance that the service provider has agreed to be bound by the Code and will, when entering the building, comply with the requirements in the Code, and an Internet link to the Code:

"(i) an explanation that, if the owner or occupier believes that the service provider has breached the Code, the owner or occupier may complain to a consumer complaints system:

"(j) an explanation of the process of making a complaint.

"**155I Access orders from District Court**

"(1) If an owner has opted out, the service provider may apply to the District Court for an access order that authorises the service provider, for the purpose of constructing, erecting, laying, maintaining, or upgrading all or any part of a fibre-to-the-premises access network, to—

"(a) enter a multi-unit complex at reasonable times, with or without any person who is, or any thing that is, reasonably necessary; and

"(b) perform work that is reasonably necessary for the purpose of constructing, erecting, laying, maintaining, or upgrading all or any part of a fibre-to-the-premises access network.

"(2) The District Court may grant an access order only if the court is satisfied that the owner has unreasonably opted out.

"(3) The District Court must, in making that decision, consider whether the service provider has taken reasonable steps to negotiate an agreement for entry with the owner before applying to the court.

"(4) An access order may be made on any terms and conditions that the District Court thinks fit.

"(5) Sections 120(2), and 122 to 124 apply with necessary modifications.

"Code

"155J Preparation of Code

"(1) The Minister must prepare a Code relating to access to multi-unit complexes by FTTP service providers under this subpart or by agreement.

"(2) The minimum matters that must be included in the Code are—

"(a) guidance on reasonable processes and time frames for negotiating access with owners; and

"(b) guidance as to cost sharing between service providers and owners, and processes for agreeing final cost splits; and

"(c) guidance as to reasonable grounds for opting out; and

"(d) guidance as to ongoing costs and reasonable conditions of ongoing access.

"(3) The Code may contain any other provisions that are necessary or desirable.

"(4) The Minister must, before recommending that the Governor-General approve a Code, consult service providers, and any other persons, that the Minister reasonably considers may be likely to be representative of the persons to be affected by the Code.

"155K Approval and status of Code

"(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve a Code.

"(2) The order may refer to, but need not contain, the Code, and must be published in the *Gazette*.

"(3) The order and the Code are regulations for the purposes of the Regulations (Disallowance) Act 1989.

"(4) The order, but not the Code, is a regulation for the purposes of the Acts and Regulations Publication Act 1989.

"(5) The Code must be presented to the House of Representatives no later than 16 days after the date on which it is approved.

"(6) If any provision of the Code conflicts with this or any other Act, or with any regulation made under this or any other Act, the Act or regulation prevails.

"(7) The Minister may at any time prepare an amendment to the Code, and subsections (1) to (6) apply accordingly.

"(8) The Minister must ensure that the Code, and every amendment to it,—

"(a) is published on an Internet site that is publicly available at all reasonable times; and

"(b) is available for purchase in hard copy, at no more than a reasonable cost, from the head office of the Ministry.

"*Consumer complaints system*

"**155L Compliance with rules and binding settlements**

"(1) A service provider who is a member of a consumer complaints system must comply with the rules of that system that relate to complaints about access to multi-unit complexes.

"(2) On the application of the consumer complaints adjudicator or other person responsible for a consumer complaints system, a District Court may require a member of the system to do either or both of the following:

"(a) comply with the rules of the system that relate to complaints about access to multi-unit complexes:

"(b) comply with a binding settlement determined by the system in response to a complaint about access to multi-unit complexes.

"(3) If a District Court is satisfied that the terms of a binding settlement are manifestly unreasonable, the court's order under subsection (2)(b) may modify the terms of the binding settlement, but only to the extent that the modification results in a binding settlement that could have been made under the consumer complaints system.

"(4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by a District Court for the payment of a sum of money.

"(5) A reference in this section to a member includes a reference to a person who was a member of the consumer complaints system at the relevant time but is no longer a member at the time of the application or order.

"**155M Offence to fail to comply with District Court order**

"(1) A member or former member of a consumer complaints system who, knowing that the member or former member is subject to an order made under section 155L, fails to comply with the order, or fails to comply with the order within the time or in the manner required by the order, commits an offence and is liable on summary conviction to a fine not exceeding $100,000.

"(2) Nothing in this section applies to an order or part of an order of a District Court referred to in section 155L(4)."

24 Application of section 156B

(1) Section 156A is amended by repealing paragraphs (i) and (j) and substituting the following paragraphs:

"(i) fails, without reasonable excuse, to provide to the Commission, not later than the time specified by it, the information or documents referred to in section 81(2):

"(ia) knowingly provides or signs a false or misleading certificate under section 81:

"(ib) knowingly provides false or misleading information or documents under section 81:

"(j) fails, without reasonable excuse, to comply with section 82:

"(ja) knowingly provides false or misleading information or documents under section 82:".

(2) Section 156A is amended by inserting the following paragraphs after paragraph (l):

"(la) fails, without reasonable excuse, to comply with section 94D:

"(lb) knowingly provides false or misleading information or documents under section 94D:

"(lc) fails, without reasonable excuse, to comply with a requirement of the Commission under section 100BA(3):

"(ld) knowingly provides false or misleading information or documents under section 100BA:".

25 New section 157AA inserted

The following section is inserted after the heading to Part 5:

"**157AA Minister must review regulatory framework**

"(1) The Minister must, not later than 30 September 2016, commence a review of the policy framework for regulating telecommunications services in New Zealand, taking account of the market structure and technology developments and competitive conditions in the telecommunications industry at the time of the review, including the impact of fibre, copper, wireless, and other telecommunications network investment.

"(2) The review must—

"(a) consider whether the existing regulatory framework under the Telecommunications Act 2001 is the most effective means to—

"(i) promote competition for the long-term benefit of end-users; and

"(ii) promote the legitimate commercial interests of access providers and access seekers; and

"(iii) encourage efficient investment for the long-term benefit of end-users, by—

"(A) providing investors with an expectation of a reasonable return on their investment; and

"(B) providing sufficient regulatory stability, transparency, and certainty to enable businesses to make long-term investments; and

"(iv) support innovation in telecommunications markets, or deregulation where sufficient competition exists; and

"(b) assess whether alternative regulatory frameworks, including (without limitation) generic price control, would be a preferable and more effective means of achieving these outcomes.

"(3) In carrying out the review, the Minister must—

"(a) consult with interested parties, including the Commission, industry participants, consumers, and Māori; and

"(b) take into account—

"(i) the extent of network coverage of services provided on fibre, copper, wireless, and other telecommunications networks; and

"(ii) the level of investment in fibre, copper, wireless, and other telecommunications networks, and the ability of access providers to recover that investment within a reasonable period; and

"(iii) the ability of access providers to achieve, within a reasonable period, reasonable rates of return on their investment in telecommunications networks that adequately reflect the risks assumed by those access providers when the relevant investments were made; and

"(iv) the level of competition in relevant telecommunications markets; and

"(v) the effects of the regulatory framework under this Act on investment in fibre, copper, wireless, and other telecommunications networks, and on outcomes for end-users; and

"(vi) the sustainability of the regulatory framework under this Act, given developments in technology and convergence of traditional telecommunications markets; and

"(vii) the importance of any regulatory intervention being proportionate, having regard to the problems being addressed, the size of the relevant market, and the number and size of the potentially regulated entities; and

"(viii) developments in wireless solutions and whether they should be part of any telecommunications regulation; and

"(ix) experience in comparable jurisdictions and economic relations with Australia, weighed against what is appropriate for New Zealand conditions and the make-up and history of New Zealand's telecommunications markets; and

"(x) any other matters that the Minister considers relevant.

"(4) The Minister must use his or her best endeavours to ensure that the review is completed no later than 31 March 2019."

26 Further amendments to principal Act

(1) The principal Act is amended in the manner set out in Part 1 of Schedule 1 (which relates to telecommunications service obligations).

(2) The principal Act is amended in the manner set out in Part 2 of Schedule 1 (which relates to multi-unit complexes to which fibre is to be deployed).

(3) The principal Act is amended in the manner set out in Part 3 of Schedule 1 (which relates to wireless works).

27 New Schedule 3B inserted

The Schedule 3B set out in Schedule 2 of this Act is inserted after Schedule 3A.

Subpart 2—Savings and transitional issues

28 Savings provision for financial years up to and including 2009/10 financial year

The principal Act continues to apply, as if this Act had not been passed, to—

(a) all TSO instruments, deemed TSO instruments, TSO providers, and liable persons for the financial year ended 30 June 2010 and all prior financial years; and

(b) every decision or determination relating to a TSO instrument or deemed TSO instrument made, or required to be made, by the Commission in respect of the financial year ended 30 June 2010 and all prior financial years.

29 Transitional provision concerning liability allocation determination for 2010/11 financial year

(1) This section applies in respect of the financial year ended 30 June 2011.

(2) For the purposes of subpart 2 of Part 3 of the principal Act,—

(a) the definition of liable person (as substituted by this Act) does not apply; and

(b) **liable person** means—

(i) a person—

(A) who is identified by the Commission as a liable person in its final cost allocation determination, for the financial year ended 30 June 2010, in relation to the deemed TSO instrument known as the Telecommunications Service Obligations (TSO) Deed for Local Residential Telephone Service; and

(B) whose qualified revenue for the financial year ended 30 June 2010 is equal to or greater than $5 million; and

(ii) Telecom; and

(c) the definition of qualified revenue (as substituted by this Act) does not apply; and

(d) **qualified revenue** means the amount of revenue (as determined in accordance with any specifications set by the Commission) that, during the financial year, each liable person received from supplying all or any of the following:

(i) telecommunications services by means of its PSTN:

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

(iii) directory services in respect of PSTN numbers; and

(e) sections 81(1) and 82 do not apply.

(3) For the avoidance of doubt,—

(a) section 81(2) and (3) apply for the purpose of determining whether a person is a liable person, within the meaning of subsection (2)(b)(i) of this section, to whom subpart 2 of Part 3 of the principal Act applies in respect of the financial year ended 30 June 2011; and

(b) except as provided in subsections (1) and (2) of this section, subpart 2 of Part 3 of the principal Act (as substituted by this Act) otherwise applies in respect of the financial year ended 30 June 2011.

30 Transitional provision concerning information about deemed TSO instruments to be included in TSO cost calculation determinations

Section 100BA of the principal Act (as inserted by this Act) does not apply in respect of any TSO charge received by a TSO provider before the 2010/11 financial year.

Part 2
Structural separation of Telecom

Subpart 1—Preparation for separation of Telecom

31 Interpretation of this subpart

For the purposes of this subpart, the terms defined in Part 2A of the principal Act (as substituted by section 51 of this Act, were that section in force) and used, but not defined, in this subpart have the same meanings as set out in that Part, with necessary modifications.

Approval of asset allocation plan

32 Preparation of asset allocation plan

(1) Telecom must prepare an asset allocation plan and submit it to the Minister and the Commission not later than 40 working days after the date on which this section comes into force.

(2) The asset allocation plan must meet the information requirements in subsection (3).

(3) The asset allocation plan must—

(a) specify how the assets and liabilities of Telecom as at 5 working days before the plan is submitted are intended to be allocated between Telecom and Chorus (which obligation may be met by specifying categories of assets and liabilities, rather than every individual asset and liability, if the categorisation is reasonable and enables the Minister to understand where the assets and liabilities will be held after separation day); and

(b) specify how each asset, or category of assets, will be used to provide telecommunications services to the market; and

(c) specify the key terms of all intended material sharing arrangements.

(4) **Material**, in this section and section 37, must be determined having regard to the degree of importance of the matter, in terms of its likely impact on, and likely consequences for, the provision of telecommunications services to the market.

33 Updating of asset allocation plan before approval

Telecom may, by notice in writing to the Minister, make changes to the asset allocation plan in order to update it at any time before the Minister approves the plan.

34 Decision of Minister concerning approval of asset allocation plan

(1) The Minister must, as soon as practicable after receiving the asset allocation plan,—

(a) decide whether to recommend or decline to recommend the making of an Order in Council approving the plan under section 36; and

(b) notify Telecom of the Minister's decision.

(2) Before making a decision under subsection (1), the Minister may consult the Commission.

(3) The Minister may decline to recommend the making of an Order in Council under section 36 only if the Minister is not satisfied that the plan meets the information requirements set out in section 32(3).

35 Variation of asset allocation plan

(1) If the Minister declines to recommend the making of an Order in Council approving the asset allocation plan,—

(a) the Minister must give reasons to Telecom for not recommending approval of the plan; and

(b) the Minister must invite Telecom to submit a revised plan; and

(c) Telecom must submit any revised plan not later than 15 days after the Minister notifies the Minister's decision under section 34, or any further time that the Minister may allow.

(2) Sections 32(2) and (3) and 34 and subsection (1) of this section apply, with all necessary modifications, to a revised asset allocation plan as if it were an asset allocation plan.

36 Asset allocation plan approved by Order in Council

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve the asset allocation plan.

(2) An Order in Council under this section may be made only before separation day.

(3) An Order in Council under this section must identify, but need not contain, the asset allocation plan.

37 Telecom must make overview of asset allocation plan publicly available

(1) Telecom must, as soon as practicable after approval of the asset allocation plan under section 36 but no later than separation day, make an overview of the plan publicly available.

(2) The overview must provide sufficient information about the intended allocation of assets and liabilities and sharing arrangements to enable a reasonable person to understand the material aspects of the asset allocation plan.

(3) The requirements in subsections (1) and (2) do not require Telecom to disclose any confidential commercial information.

(4) In this section, **publicly available** means available at all reasonable times, free of charge, on an Internet site maintained by or on behalf of Telecom.

38 Telecom must update Minister and overview on day before separation day

Telecom must, on the day before separation day,—

(a) make changes to the asset allocation plan in order to update it to take account of—

(i) assets acquired, and liabilities incurred, since the date on which the plan was submitted or approved; and

(ii) trivial differences between the plan as approved and the demerger arrangement; and

(b) notify the Minister in writing of the changes made; and

(c) update the overview made available under section 37 to take account of that information.

39 Demerger must be in accordance with asset allocation plan

(1) Telecom must ensure that the demerger of Telecom and Chorus under the demerger arrangement is carried out in accordance with, and gives full effect to, the asset allocation plan as approved under section 36.

(2) The High Court may order Telecom to pay to the Crown a pecuniary penalty not exceeding $10 million if the court is satisfied, on the application of the chief executive of the Ministry, that Telecom has failed, without reasonable excuse, to comply with subsection (1) as at separation day.

(3) Telecom has a reasonable excuse for the purpose of subsection (2) to the extent that the failure to comply is because of a matter notified to the Minister under section 38(b).

(4) Section 156L(2), (4), and (5) of the principal Act apply with all necessary modifications to proceedings under this section.

Approval of Chorus undertakings

40 Minister must consider purposes in section 69W

In making a decision under sections 42 and 43, the Minister must consider the purposes set out in section 69W and make the decision that the Minister considers best gives, or is best likely to give, effect to the purposes set out in that section.

41 Chorus must submit undertakings for approval by Minister

Chorus must submit draft undertakings that comply with section 69XB of the principal Act (were that section in force) not later than 20 working days after the date on which this section comes into force or any later date, before separation day, that the Minister may allow.

42 Minister may approve or decline to approve undertakings

(1) The Minister must, as soon as practicable after receiving the undertakings, by notice in writing to Chorus,—

(a) approve the undertakings; or

(b) decline to approve the undertakings.

(2) The Minister must consult the Commission, and may consult any other person that the Minister considers has a material interest, before deciding whether to approve or decline to approve the undertakings.

(3) If the Minister declines to approve the undertakings, the Minister must—

(a) give reasons to Chorus for not approving the undertakings; and

(b) direct Chorus to prepare and submit amended undertakings.

(4) Chorus must submit amended undertakings to the Minister not later than 15 working days after the date on which approval of the undertakings was declined, or any later date that the Minister may allow.

(5) The Minister must notify his or her approval of an undertaking by notice in the *Gazette*.

43 Approval of amended undertakings

(1) As soon as practicable after receiving amended undertakings, the Minister must—

(a) approve the undertakings by notice in writing to Chorus; or

(b) if the Minister considers that the amended undertakings require further amendment, make any amendments to the undertakings that the Minister considers necessary to give better effect to the purpose and requirements in sections 69W and 69XB of the principal Act.

(2) Before making any amendments to the undertakings under this section, the Minister must advise Chorus of the Minister's intention to do so and must give Chorus a reasonable opportunity to make submissions on the matter.

(3) The Minister must give notice in writing to Chorus of the approval of the amended undertakings, accompanied by a copy of the undertakings as approved.

(4) The Minister must notify his or her approval of an undertaking by notice in the *Gazette*.

44 Failure to submit undertakings

(1) The Minister must arrange for undertakings or revised undertakings (as the case may be) to be prepared, and the Minister has all the powers necessary for that purpose, if—

(a) Chorus has not submitted the undertakings required under section 41 within the time specified in that section; or

(b) Chorus has not given the Minister revised undertakings within the time specified in section 42(4).

(2) Section 69XB of the principal Act and section 43(1), (3), and (4) apply to undertakings prepared under subsection (1) as if the undertakings were amended undertakings submitted by Chorus to the Minister.

(3) If, as a result of the default of Chorus, the Minister acts under subsection (1) the Minister is entitled to be reimbursed for all costs and expenses incurred by the Minister in taking the action.

Notice of separation day

45 Telecom must give notice of separation day and provide information

(1) Telecom must make the following information publicly available for a period of not less than 1 month before separation day:

(a) the date of separation day:

(b) for each designated service or specified service in respect of which Telecom is an access provider immediately before separation day, which entity (Telecom or Chorus) will provide the service and which entity will be subject to the obligations under this Act in respect of that service after separation day.

(2) In this section, **publicly available** has the same meaning as in section 37, and the information referred to in that section may be combined with the information referred to in this section.

Approval of proposals for tax purposes

46 Proposals may be approved for tax purposes by Orders in Council

(1) The Governor-General may, by Order in Council made on the advice of the Minister of Revenue, approve a proposal signed by or on behalf of Telecom Corporation of New Zealand Limited and ChorusCo.

(2) The proposal may provide for 1 or more of the following matters:

(a) specify a day and a purpose relevant to sections 69XO to 69XZ for the purposes of the definition of **appointed day** in section 69XM:

(b) specify a list of assets and liabilities in accordance with subsections (3) and (4) for the purpose of the definition of **designated assets and liabilities** in section 69XM:

(c) prescribe the manner in which the volume weighted average price is to be calculated for the purposes of section 69XP(6):

(d) amend an earlier proposal with effect from the date on which the earlier proposal took effect or from a later date, if appropriate.

(3) A list of assets and liabilities may be in the form of references to ledgers or registers maintained by a Telecom company or a Chorus company, or be in any other form, and be accompanied by any other information, that is reasonable and appropriate.

(4) A designated asset or designated liability may consist of part only of an asset or liability.

(5) An Order in Council under this section must identify, but need not contain, the proposal.

(6) In this section, the references to sections 69XO to 69XZ, 69XM, and 69XP are references to those sections of the principal Act as inserted by section 51 of this Act, were section 51 and each of those sections in force.

Discontinuance of accounting separation

47 Section 69ZB repealed

Section 69ZB is repealed.

48 Miscellaneous provisions relating to Commission's information disclosure requirements

Section 69ZD(1) is amended by omitting "69ZB or".

49 Pecuniary penalty

Section 156L(3)(b) is repealed.

50 Further penalty may be imposed for continuing breach

Section 156M(1)(b) is amended by omitting "69ZB(7), 69ZC(4), or 69ZF(2)" and substituting "69ZC(4) or 69ZF(2)".

Subpart 2—New Part 2A substituted

51 New Part 2A substituted

Part 2A is repealed and the following Part substituted:

"**Part 2A**

"**Structural separation of Telecom**

"Subpart 1—Preliminary provisions

"**69A Purpose of Part**

The purpose of this Part is to provide for matters relating to the structural separation of Telecom to facilitate—

"(a) the promotion of competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and

"(b) efficient investment in telecommunications infrastructure and services.

"**69B Interpretation**

In this Part, unless the context otherwise requires,—

"**asset**—

"(a) means property of any kind, whether or not situated in New Zealand, whether tangible or intangible, real or

personal, corporeal or incorporeal, and whether or not subject to rights; and

"(b) includes—

"(i) estates or interests in any land, including rights of occupation of land or buildings:

"(ii) buildings, vehicles, plant, equipment, machinery, fixtures and fittings, and rights in them:

"(iii) choses in action and money:

"(iv) rights of any kind, and applications, objections, submissions, and appeals in respect of those rights:

"(v) intellectual property and applications pending for intellectual property:

"(vi) goodwill, and any business undertaking

"**Chorus**—

"(a) means ChorusCo; and

"(b) includes any of its subsidiaries

"**ChorusCo** means the company that is to be demerged from Telecom on separation day in accordance with the demerger arrangement

"**demerger arrangement** means an arrangement approved by the court pursuant to Part 15 of the Companies Act 1993 on the application of Telecom involving the distribution of 100% of the ordinary shares held by Telecom Corporation of New Zealand Limited in ChorusCo to the holders (including a nominee for holders) of ordinary shares in Telecom Corporation of New Zealand Limited

"**liabilities** means liabilities, debts, charges, duties, and obligations of every description, whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere

"**related party** has the meaning set out in section 69U

"**rights** includes all rights, powers, privileges, interests, leases, licences, approvals, consents, designations, permissions, dispensations, authorisations, benefits, defences, immunities, claims, and equities of any kind, whether arising from, accruing under, created or evidenced by, or the subject

of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

"**separation day** means the day on which Telecom Corporation of New Zealand Limited distributes 100% of the ordinary shares it holds in ChorusCo in accordance with the demerger arrangement.

"Subpart 2—Monitoring of shared assets, services, and systems

"69C Interpretation

In this subpart, unless the context otherwise requires,—

"**arm's-length** has the meaning set out in section 69D

"**executed**, in relation to a sharing arrangement or a material amendment to a sharing arrangement, means signed under the name of the relevant company by a person acting under the company's authority

"**sharing arrangement**—

"(a) means an arrangement, agreement, contract, or understanding between Telecom and Chorus for the purpose of providing either or both with access to, or continued use of, a system, asset, or service that is owned or controlled by Telecom at the close of the day before separation day; and

"(b) includes an arrangement, agreement, contract, or understanding of the kind described in paragraph (a) that is conducted with or through a third party; but

"(c) does not include any of the following, or anything that is wholly in accordance with the following:

"(i) the regulated terms of supply of a designated service or a specified service; or

"(ii) a registered undertaking; or

"(iii) an undertaking under Part 4AA; or

"(iv) a deemed TSO instrument; or

"(v) an undertaking approved in accordance with subpart 4 of this Part (undertakings by Chorus); or

"(vi) an arrangement that is exempted under section 69N; or

"(vii) an arrangement that relates to ensuring compliance by Telecom, Chorus, or both with—

"(A) the duties imposed by the Telecommunications (Interception Capability) Act 2004 on a network operator (within the meaning of that Act); or

"(B) duties or requirements imposed by any other Act, interception warrant, or other lawful authority that relate to the interception of communications.

"**69D Meaning of arm's-length**

Without limiting the ordinary meaning of the expression, **arm's-length** includes having relationships, dealings, and transactions that—

"(a) do not include elements that parties in their respective positions would usually omit; and

"(b) do not omit elements that parties in their respective positions would usually include,—

if the parties were—

"(c) connected or related only by the transaction or dealing in question; and

"(d) acting independently; and

"(e) each acting in its own best interests.

"**69E Requirements for sharing arrangements**

"(1) Every sharing arrangement must—

"(a) be recorded in writing and be executed by Telecom and Chorus; and

"(b) be on arm's-length terms between Telecom and Chorus; and

"(c) be unlikely to harm competition in any telecommunications market; and

"(d) ensure the protection of confidential commercial and customer information.

"(2) Telecom and Chorus must not enter into a sharing arrangement unless the arrangement meets the requirements in subsection (1).

"**69F Commission must be notified of proposed and final sharing arrangements**

"(1) Telecom and Chorus must,—

"(a) not later than 10 working days after separation day, provide a copy of all sharing arrangements executed before separation day to the Commission; and

"(b) if a sharing arrangement is entered into after separation day,—

"(i) not later than 10 working days before the sharing arrangement is executed, notify the Commission of their intention to enter into the sharing arrangement and provide a copy of the proposed arrangement to the Commission; and

"(ii) not later than 10 working days after the final sharing arrangement is executed, provide a copy of the arrangement to the Commission.

"(2) Subsection (1) applies to any material amendment to a sharing arrangement as if that amendment were a sharing arrangement.

"(3) *See* sections 156L(3) and 156M for the maximum penalty of $1 million (and $50,000 per day) for breach of this section.

"**69G Obligation to collect and retain information for monitoring purposes**

Telecom and Chorus must each collect and retain information relating to the operation and performance of a sharing arrangement for the purpose of enabling the Commission to monitor compliance with this subpart.

"**69H Commission's monitoring, investigation, and enforcement powers**

"(1) The Commission may, by notice in writing, require Telecom and Chorus to prepare and disclose information consisting of, or about, the following:

"(a) the terms, execution, or performance of a sharing arrangement:

"(b) any report, agreement, or other information relating to the sharing arrangement that the Commission considers necessary for the purpose of monitoring compliance with this subpart.

"(2) Telecom and Chorus must prepare and disclose the information required within the period specified in the notice.

"(3) A notice under this section may require either or both of the following:

"(a) that all or any of the information be audited by a qualified auditor and that the auditor provide a report directly to the Commission on the matters that the Commission specifies as those that must be addressed in that report:

"(b) that all or any of the information be verified by statutory declaration in the form and by the persons required by the Commission.

"(4) To avoid doubt, nothing in this section limits the application of section 98 of the Commerce Act 1986.

"(5) The Commission may, for the purpose of monitoring, investigation, and enforcement under this subpart, consult with any persons that the Commission considers may be affected by a sharing arrangement.

"(6) *See* sections 156L(3) and 156M for the maximum penalty of $1 million (and $50,000 per day) for breach of this section.

"**69I Commission may give non-compliance notice**

"(1) This section applies if the Commission considers that Telecom and Chorus are parties to a sharing arrangement that contravenes section 69E (a **non-compliance**).

"(2) The Commission may give written notice to each party (a **non-compliance notice**) setting out—

"(a) the nature of the non-compliance; and

"(b) the 10-day time limit for responses in section 69J; and

"(c) the 40-day time limit for rectification and enforcement (*see* section 69K).

"**69J Process for responding to non-compliance notice**

"(1) Each party may, not later than 10 working days after the date of the non-compliance notice or any further time as the Commission may allow, respond in writing to the notice either—

"(a) by disputing the notice; or

"(b) by setting out the reasons for the non-compliance.

"(2) The Commission must consider each party's response (if any) before deciding what action to take under subsection (3).

"(3) The Commission must, not later than 10 working days after the final date for the parties to respond to the non-compliance notice under subsection (1),—

"(a) retract the non-compliance notice; or

"(b) give a revised non-compliance notice; or

"(c) confirm the non-compliance notice.

"(4) If the Commission gives a revised non-compliance notice, or confirms the non-compliance notice, the Commission must—

"(a) set out the nature of the non-compliance; and

"(b) require the parties to rectify the non-compliance.

"69K Commission may decide on appropriate enforcement action if non-compliance persists

"(1) This section applies if the Commission considers that a non-compliance has not been rectified within 40 working days after the date of a non-compliance notice given under section 69I.

"(2) The Commission may, at any time, do all or any of the following:

"(a) direct Telecom and Chorus to amend the sharing arrangement in order to rectify the non-compliance within 10 working days of the direction (an **amendment direction**):

"(b) apply for an injunction under section 69M in respect of the non-compliance or a failure to comply with an amendment direction:

"(c) seek a pecuniary penalty under Part 4A in respect of the non-compliance or a failure to comply with an amendment direction.

"(3) The Commission must give written notice of each decision to each party affected by the decision.

"69L Application of pecuniary penalty provisions

"(1) Sections 156L and 156M apply to a party to a sharing arrangement who, without reasonable excuse, fails to rectify a non-compliance, or fails to comply with an amendment direc-

tion, in respect of which the Commission decides to take enforcement action under section 69K(2)(c).

"(2) *See* sections 156L(3) and 156M for the maximum penalty of $10 million (and $500,000 per day) for breach of this section.

"**69M Injunction may be granted by High Court**

"(1) If the High Court is satisfied that a non-compliance has not been rectified within 40 working days after the date of a non-compliance notice under section 69I, the court may, on the application of the Commission, grant an injunction restraining Telecom and Chorus from further performing the sharing arrangement or engaging in any conduct for the purpose of giving effect to that arrangement.

"(2) If the High Court is satisfied that there has been a failure to comply with a direction of the Commission given under section 69K(2)(a), the court may, on the application of the Commission, grant an injunction requiring Telecom and Chorus to comply with the direction of the Commission.

"(3) In any proceeding under this section, the Commission, on the order of the court, may obtain discovery and administer interrogatories.

"(4) The court may at any time rescind or vary an order made under this section.

"**69N Minister may grant exemption from application of subpart**

"(1) The Minister may, by notice in the *Gazette*, exempt a sharing arrangement or class of sharing arrangements from the application of this subpart, if the Minister is satisfied that—

"(a) any potential harm to competition in telecommunications markets would be likely to be trivial or inconsequential; and

"(b) commercial information or customer confidential information would not be disclosed.

"(2) The Minister must consult the Commission before granting an exemption under this section.

"(3) The exemption takes effect from the date specified in the exemption (which may not be earlier than the date of the *Gazette* notice).

"(4) The Minister may grant the exemption on any terms and conditions that the Minister thinks fit.

"(5) The Minister may, in like manner, vary or revoke such an exemption.

"(6) An exemption under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but not for the purposes of the Acts and Regulations Publication Act 1989.

"(7) Telecom and Chorus must ensure that all exemptions granted under this section are available at all reasonable times, free of charge, on the Internet sites maintained by or on behalf of Telecom and Chorus.

"Subpart 3—Line of business restrictions

"69O No participation in supply of retail services

"(1) Chorus, or any related party of Chorus, must not participate in the supply of a telecommunications service to a person (**A**) if 25% or more of the services supplied, or to be supplied, by Chorus to A in any year are or will be supplied—

"(a) for A's own use or consumption; or

"(b) for the use or consumption of persons who are related parties of A.

"(2) *See* sections 156L(3) and 156M for the maximum penalty of $10 million (and $500,000 per day) for breach of this section.

"69P Register of non-retail users

"(1) The Commission must maintain a register of users for the purposes of section 69O.

"(2) If the name of the user appears on the register maintained by the Commission under this section, it is conclusive evidence of the fact that Chorus does not breach section 69O by supplying to that person.

"(3) Chorus or any user of telecommunications services may make a written application to the Commission (in a form required by

the Commission, if any) for a name of a user to be entered on the register.

"(4) The Commission must give public notice of the application as soon as practicable after receiving it.

"(5) The Commission must, within 15 working days of receiving the application, enter the name of the user on the register if the Commission is satisfied that Chorus would not breach section 69O by supplying to that person.

"(6) At separation day, the register must include all of Chorus's existing unbundled copper local loop customers and unbundled bitstream access customers as at separation day, as notified to the Commission by Chorus before separation day.

"(7) The Commission must, at all reasonable times, make the register available for inspection on the Commission's Internet site in an electronic form that is publicly accessible.

"**69Q Variations to, and removals from, register**

"(1) The Commission may, at any time,—

"(a) review and correct the register maintained under section 69P; and

"(b) remove the names of users from the register if—

"(i) the Commission ceases to be satisfied of the matters in section 69P(5); or

"(ii) the Commission is satisfied that the user is insolvent or has ceased business.

"(2) However, the Commission must give Chorus and the user—

"(a) notice of its intention to remove the user from the register, and a reasonable opportunity to comment before removing a name from the register; and

"(b) notice that the name has been removed, as soon as practicable after removal.

"(3) Chorus is not in breach of section 69O to the extent that it continues to supply a service to a user within the 6-month period following the removal of the user's name from the register.

"**69R No services above layer 2**

"(1) Every undertaking entered into by Chorus in favour of the Crown under subpart 4 of this Part or Part 4AA must include

a prohibition on participation by Chorus, or any related party of Chorus, in services above layer 2 services.

"(2) In this section, unless the context otherwise requires, **layer 2 services** has the same meaning as in the document 'New Zealand Government Ultra-Fast Broadband Initiative Invitation to Participate in Partner Selection Process' dated October 2009 (as amended).

"(3) This Act applies to an undertaking required under this section as if the undertaking were required under subpart 4 of this Part or Part 4AA, as the case may be.

"**69S No end-to-end services**

"(1) Chorus, or any related party of Chorus, must not provide telecommunications links to customers except—

"(a) between an end-user's building (or, in the case of a commercial building, the 2 building distribution frames) and a Chorus local or regional aggregation point; and

"(b) between 2 Chorus local or regional aggregation points.

"(2) To avoid doubt,—

"(a) telecommunications links provided by Chorus, or a related party of Chorus, to customers must terminate at a local or regional aggregation point; and

"(b) Chorus, or a related party of Chorus, must not sell a service to customers that links 2 or more end-user sites together (but a customer of Chorus can create the linking between 2 or more end-user sites).

"(3) However, this section does not prevent the resale of PSTN-based services for the purposes of acting as a channel to market for Telecom.

"(4) *See* sections 156L(3) and 156M for the maximum penalty of $10 million (and $500,000 per day) for breach of this section.

"**69T Enforcement of breaches of sections 69O and 69S**

Sections 69V (injunctions) and 156B (enforcement actions) apply to Chorus, and any related party of Chorus, that, without reasonable excuse, participates in the supply of a telecommunications service in breach of sections 69O and 69S.

"**69U Application of line of business restrictions to related parties of Chorus**

"(1) The test for related parties in this Part is that a person is related to another person if—

"(a) they are acting jointly or in concert; or

"(b) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or

"(c) they are related companies within the meaning of section 2(3) of the Companies Act 1993; or

"(d) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or

"(e) they are both, directly or indirectly, under the control of the same person.

"(2) However, for the purposes of subsection (1),—

"(a) a director of a company or other body corporate is not related to that company or body corporate merely because he or she is a director of that company or body corporate; and

"(b) a person is not able to exert a substantial degree of influence over another person merely because—

"(i) those persons are in competition in the same market; or

"(ii) one of them supplies goods or services to the other.

"(3) Any sharing of assets, services, and systems between Chorus and Telecom must be disregarded for the purposes of applying subsection (1) to the extent that it is provided for in a sharing arrangement of which a copy has been provided to the Commission under section 69F(1)(a) or (b)(ii).

"(4) Without limiting section 69O, Chorus is deemed to participate in the supply of a telecommunications service if a related party of Chorus participates in the supply of the telecommunications service.

"(5) The order of responsibility for remedying breaches is, to the extent practical, that the breach must be remedied first by the party whose activity resulted in the breach.

"Compare: 1993 No 106, s 4A(2), 1998 No 88 s 21

"**69V Injunctions may be granted by High Court for certain contraventions**

"(1) The High Court may, on the application of the Commission, grant an injunction restraining a person from engaging in a breach of sections 69O or 69S.

"(2) The High Court may, at any time, rescind or vary an injunction granted under this section.

"Subpart 4—Undertakings by Chorus

"**69W Purposes of subpart**

The purposes of this subpart are to—

"(a) promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and

"(b) require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and

"(c) facilitate efficient investment in telecommunications infrastructure and services.

"**69X Overview**

"(1) This subpart imposes obligations on Chorus to give undertakings—

"(a) to supply wholesale services using its copper access network (called relevant services in this subpart) on a non-discrimination basis; and

"(b) to supply a subset of those services, which Chorus consumes and which it supplies to its competitors, (called relevant regulated services in this subpart) on an equivalence basis.

"(2) This section is intended only as a guide to the general scheme and effect of this subpart.

"**69XA Interpretation**

In this subpart, unless the context otherwise requires,—

"**equivalence**, in relation to the supply of a relevant regulated service, means equivalence of supply of the service and access to Chorus's network so that third-party access seekers are

treated in the same way to Chorus's own business operations, including in relation to pricing, procedures, operational support, and supply of information and other relevant matters

"**legacy access network** means the network comprising—

"(a) Chorus's local loop network, as defined in clause 1 of Part 1 of Schedule 1 (including any relevant line in Chorus's local telephone exchange or distribution cabinet); and

"(b) Chorus's local telephone exchange, as defined in clause 1 of Part 1 of Schedule 1, and Chorus's distribution cabinet (or equivalent facility); and

"(c) Chorus's backhaul network (whether copper, fibre, or anything else) between the local loop network handover point in Chorus's distribution cabinet (or equivalent facility) or Chorus's local telephone exchange and the first data switch (including the first data switch); and

"(d) Chorus's digital subscriber line access multiplexer (or equivalent facility)

"**local access and calling service** means the designated access service described in subpart 1 of Part 2 of Schedule 1 as local access and calling service offered by means of a fixed telecommunications network

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

"**relevant regulated services** means the following designated access services:

"(a) Chorus's unbundled copper local loop network service:

"(b) Chorus's unbundled copper local loop network co-location service:

"(c) Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange):

"(d) Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

"**relevant services**—

"(a) means—

"(i) wholesale telecommunications services that are provided using, or that provide access to the unbundled elements of, the legacy access network; and

"(ii) the designated access service described in subpart 1 of Part 2 of Schedule 1 as Chorus's unbundled bitstream access backhaul; but

"(b) does not include any services that are agreed by the Commission in writing to be legacy input services, being inputs to services that are no longer offered to end-users other than customers who were end-users before separation day

"**UBA service** means the designated access service described in subpart 1 of Part 2 of Schedule 1 as unbundled bitstream access service.

"**69XB Requirements for undertakings by Chorus relating to supply of certain wholesale telecommunications services**

Chorus must give undertakings that—

"(a) require Chorus to achieve non-discrimination in relation to the supply of relevant services; and

"(b) set out rules and principles that Chorus will apply to ensure that non-discrimination is achieved in relation to the supply of relevant services; and

"(c) require Chorus to achieve equivalence of supply in relation to relevant regulated services; and

"(d) require Chorus to develop, in consultation with the Commission and key industry stakeholders, key performance indicators for systems and processes for relevant regulated services by which it may be judged whether Chorus is achieving equivalence of supply in relation to those services; and

"(e) require Chorus to develop, in consultation with the Commission and key industry stakeholders, key performance indicators by which it may be judged whether Chorus is achieving non-discrimination in relation to the supply of the UBA service; and

"(f) require Chorus to—
"(i) conduct quarterly reviews of performance as measured against the key performance indicators referred to in paragraphs (d) and (e); and
"(ii) make all information relating to those reviews available to the Commission to support the Commission's assessment of compliance with the undertakings; and
"(iii) publish quarterly reports on its performance as measured against the key performance indicators referred to in paragraphs (d) and (e); and
"(iv) internally audit the controls and processes behind the key performance indicator reporting; and
"(g) require Chorus to carry out quarterly customer surveys of its performance in relation to relevant regulated services; and
"(h) require Chorus to—
"(i) implement a policy of control of commercial information provided by access seekers for relevant services and relevant regulated services, in consultation with the Commission; and
"(ii) internally audit the effectiveness of that policy, at the end of each of the first two 6-month periods following separation day and then annually after that; and
"(i) require Chorus to supply the UBA service in a bundle with the local access and calling service; and
"(j) require the directors of Chorus to certify that Chorus has complied with the undertakings; and
"(k) provide for disclosure of relevant information to the Commission, to support the Commission's assessment of compliance with the undertakings; and
"(l) require Chorus to commit to a reasonable plan containing time frames for a transition to the end of the sharing arrangements referred to in subpart 2.

"**69XC Implementation of Chorus undertakings**

"(1) On and from separation day, the undertakings approved by the Minister on or before separation day under sections 42 to

44 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 take effect as if they were a deed that is—

"(a) properly executed by, and binding on, Chorus; and

"(b) given in favour of the Crown.

"(2) The undertakings approved by the Minister after separation day under sections 42 to 44 of that Act take effect in accordance with subsection (1), but with effect from the date of approval.

"**69XD Chorus must publish Chorus undertakings**

"(1) As soon as practicable after the date on which an undertaking takes effect under section 69XC, Chorus must publish the undertaking.

"(2) Section 156AK applies with necessary modifications.

"**69XE Variation of Chorus undertakings**

Sections 156AL to 156AN apply with necessary modifications to undertakings under this subpart.

"**69XF Termination of Chorus undertakings**

Section 156AO applies with necessary modifications to undertakings under this subpart.

"**69XG Enforcement of Chorus undertakings**

"(1) Sections 156AQ to 156AS apply with necessary modifications to undertakings under this subpart.

"(2) *See* sections 156L(3) and 156M for the maximum penalty of $10 million (and $500,000 per day) for failure to comply with undertakings).

"Subpart 5—Miscellaneous

"*Public Works Act 1981*

"**69XH Application of Public Works Act 1981**

"(1) Despite section 4(4) of the Finance Act 1990 and section 24(4) of the State-Owned Enterprises Act 1986, nothing in sections

40 to 42 of the Public Works Act 1981 applies to the transfer of affected land from Telecom to Chorus.

"(2) However, after that transfer, sections 40 and 41 of the Public Works Act 1981 apply to that land as if Chorus were the Crown and the transfer of the land from the Crown to Telecom and from Telecom to Chorus had not taken place.

"(3) If, in relation to affected land that has been transferred by Telecom to Chorus, an offer made by Chorus under section 40(2) of the Public Works Act 1981 is not accepted within the time specified in subsection (4) and the parties have not agreed on other terms for the sale of the land, Chorus may sell or otherwise dispose of the land to any person and on such terms and conditions as it thinks fit.

"(4) The time referred to in subsection (3) is the later of the following:

"(a) 40 working days after the offer is made or such further period as Chorus considers reasonable:

"(b) if an application has been made to the Land Valuation Tribunal pursuant to section 40(2A) of the Public Works Act 1981, 20 working days after the determination of the Tribunal.

"(5) In this section,—

"**affected land** means any land that, immediately before it was transferred by the Crown to Telecom pursuant to section 4(4) of the Finance Act 1990, was held by the Crown under the Public Works Act 1981 for a public work

"**land** has the same meaning as in section 2 of the Public Works Act 1981

"**working day** has the same meaning as in section 2 of the Public Works Act 1981.

"*Resource Management Act 1991 issues*

"**69XI Requiring authority status under Resource Management Act 1991**

"(1) Chorus is approved as a requiring authority, as a network utility operator, under the Resource Management Act 1991 for the following purposes:

"(a) constructing or operating, or proposing to construct or operate, a network for the purpose of telecommunication as defined in section 5 of this Act; and

"(b) constructing or operating, or proposing to construct or operate, a network for the purpose of radiocommunications as defined in section 2(1) of the Radiocommunications Act 1989.

"(2) Part 8 of the Resource Management Act 1991 applies with necessary modifications as if the approval had been given under section 167 of that Act.

"**69XJ Designations under Resource Management Act 1991**

"(1) The Minister may, before separation day, by notice in the *Gazette*, issue 2 lists comprising all or any of the designations (within the meaning of section 166 of the Resource Management Act 1991) for which Telecom is responsible, as follows:

"(a) designations that are to be transferred to Chorus:

"(b) designations that are to be additionally granted back to Telecom.

"(2) On separation day,—

"(a) all the rights and responsibilities of Telecom in relation to the designations listed in a *Gazette* notice under subsection (1)(a), as they existed immediately before separation day, are transferred to Chorus for the purposes of section 180 of the Resource Management Act 1991; and

"(b) the designations listed in a *Gazette* notice under subsection (1)(b), as they existed immediately before separation day, are (in addition to being transferred to Chorus) granted back to Telecom, with the effect that, subject to subsection (3), Telecom continues to have the same rights and responsibilities as Chorus in relation to the designations.

"(3) For the purposes of section 177 of the Resource Management Act 1991,—

"(a) the designations transferred to Chorus under subsection (2)(a) are treated as earlier designations; and

"(b) the additional designations granted to Telecom under subsection (2)(b) are treated as later designations.

"(4) Part 8 of the Resource Management 1991 applies with necessary modifications as if the designations had been transferred or made under that Part.

"*Restrictive covenants*

"**69XK Certain restrictive covenants**

"(1) This section applies to any restrictive covenant that is registered in favour of land—

"(a) of which Telecom was a registered proprietor immediately before separation day; and

"(b) that is transferred from Telecom to Chorus on separation day.

"(2) Despite the transfer of land to Chorus, Telecom is entitled to enforce the covenant against the persons bound by the covenant as if Telecom were an owner or occupier of the land.

"(3) This section does not limit the rights to enforce the covenant of Chorus, Chorus's successors in title, and persons claiming through Chorus or Chorus's successors in title.

"(4) The Registrar-General may enter in the register relating to the burdened land, the benefited land, or both, a notification of the effect of this section as if it were an instrument.

"*Government Superannuation Fund Act 1956*

"**69XL Protection of existing members of Government Superannuation Fund**

"(1) The Government Superannuation Fund Act 1956 continues to apply to the persons referred to in subsection (2) in all respects as if service with Chorus were Government service.

"(2) The persons are every person who, immediately before separation day,—

"(a) is employed by Telecom; and

"(b) is deemed to be employed in the Government service under section 2A of the Government Superannuation Fund Act 1956; and

"(c) is a contributor to the Government Superannuation Fund under Part 2 or 2A of that Act.

"(3) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of Chorus is the controlling authority.

"Subpart 6—Taxation consequences of structural separation

"**69XM Interpretation in this subpart**

In this subpart, unless the context requires otherwise,—

"**appointed day** means,—

"(a) for a purpose specified in a proposal approved by Order in Council made under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, a day specified in that proposal for that purpose:

"(b) if there is no relevant day under paragraph (a), the day on which the vesting of the designated assets and liabilities, and the demerger distribution, take effect

"**Chorus company** means a member of the group of companies comprising ChorusCo and the companies that are, or will be, its subsidiaries immediately following the demerger distribution and the vesting of the designated assets and liabilities

"**demerger distribution** means a distribution, or an entitlement to a distribution, to each holder of ordinary shares in Telecom Corporation of New Zealand Limited, where the distribution or entitlement—

"(a) arises under the demerger arrangement; and

"(b) comprises—

"(i) an amount determined by reference to the value of a holder's entitlement to ordinary shares in ChorusCo:

"(ii) ordinary shares in ChorusCo to which the holder is entitled, or proceeds from the disposal of that holder's entitlement to ordinary shares in ChorusCo

"**designated assets and liabilities** means assets and liabilities, or parts of assets and liabilities, as the case may be, specified in an Order in Council made under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment

Act 2011, and **designated assets** and **designated liabilities** have corresponding meanings

"**income year** has the same meaning as in the Income Tax Act 2007

"**Inland Revenue Acts** has the same meaning as in the Tax Administration Act 1994

"**Telecom company** means a member of the group of companies comprising Telecom Corporation of New Zealand Limited and the companies that are, or will be, its subsidiaries immediately following the demerger distribution and the vesting of the designated assets and liabilities

"**vest** means the transfer of the designated assets and liabilities from a Telecom company to a Chorus company on the appointed day

"**vesting year** means the income year that includes the appointed day for the vesting of the designated assets and liabilities.

"**69XN Purpose**

The purpose of this subpart is to ensure that—

"(a) the vesting of the designated assets and liabilities in Chorus does not give rise to tax consequences under the Inland Revenue Acts for Telecom or Chorus that would not have arisen if they were the same person:

"(b) no tax consequences arise under the Inland Revenue Acts on the appointed day for any shareholder of Telecom Corporation of New Zealand Limited or Chorus from the demerger distribution that would not have arisen if the vesting of the designated assets and liabilities and the demerger distribution had not occurred.

"**69XO Depreciation**

"(1) For the purposes of the Income Tax Act 2007, for a designated asset (the **asset**) that is depreciable property,—

"(a) the relevant Telecom company has a deduction for an amount of depreciation loss for the period beginning on the first day of the vesting year and ending on the day before the appointed day:

"(b) the relevant Telecom company does not derive depreciation recovery income and does not have a deduction for an amount of depreciation loss under sections EE 44 to EE 52 of the Income Tax Act 2007 as a result of the vesting of the asset:

"(c) the relevant Chorus company must calculate, on and after the appointed day, depreciation recovery income and deductions for amounts of depreciation loss as if, in respect of the period up to and including the appointed day, it and the Telecom company were the same person.

"(2) In this section, **depreciable property, depreciation loss**, and **depreciation recovery income** have the same meanings as in the Income Tax Act 2007.

"**69XP Tax effect of distribution of ChorusCo shares**

"(1) For the purposes of the Income Tax Act 2007, the following transactions do not give rise to, and are ignored for the purposes of calculating, the available subscribed capital of a Chorus company or a Telecom company:

"(a) the vesting of the designated assets and liabilities:

"(b) the demerger distribution:

"(c) a transaction necessary for carrying into effect the vesting of the designated assets and liabilities, or the demerger distribution, if, for that transaction, there is no party other than Chorus companies and Telecom companies.

"(2) The demerger distribution on the appointed day—

"(a) is not a dividend or other kind of assessable income for the purposes of the Income Tax Act 2007:

"(b) is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:

"(c) is, for any relevant Telecom company, a disposition for the cost price of the share, for the purposes of the Income Tax Act 2007.

"(3) For the purposes of the Income Tax Act 2007, a person who receives a demerger distribution by virtue of holding a Telecom Corporation of New Zealand Limited share or shares is treated as—

"(a) acquiring the relevant ChorusCo share or shares at the same time and for the same purposes as the Telecom Corporation of New Zealand Limited share or shares that give rise to that person's entitlement to the demerger distribution:

"(b) having paid the amount given by subsection (4) for the acquisition of the ChorusCo share or shares:

"(c) having paid the amount given by subsection (5) for the acquisition of the Telecom Corporation of New Zealand Limited share or shares.

"(4) For the purposes of subsection (3)(b), the amount paid for the acquisition is calculated using the following formula:

$$\frac{\text{pre-calculation amount paid}}{\text{combined mv}} \times \text{Chorus mv}$$

"(5) For the purposes of subsection (3)(c), the amount paid for the acquisition is calculated using the following formula:

$$\frac{\text{pre-calculation amount paid}}{\text{combined mv}} \times \text{Telecom mv}$$

"(6) In the formulas in subsections (4) and (5),—

"(a) **pre-calculation amount paid** is the person's expenditure or loss incurred in acquiring the relevant Telecom Corporation of New Zealand Limited share or shares, ignoring this section:

"(b) **Chorus mv** is the market capitalisation of ChorusCo calculated in the manner prescribed in a proposal approved by Order in Council under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, or, if none is prescribed, the number of ChorusCo shares on issue immediately following the demerger distribution multiplied by the volume weighted average price of ChorusCo shares as traded on the NZSX over the first 5 trading days commencing on the date of listing of ChorusCo:

"(c) **Telecom mv** is the market capitalisation of Telecom Corporation of New Zealand Limited calculated in the manner prescribed in a proposal approved by Order in Council under section 46 of the Telecommunications

(TSO, Broadband, and Other Matters) Amendment Act 2011, or, if none is prescribed, the number of Telecom Corporation of New Zealand Limited shares on issue immediately following the demerger distribution multiplied by the volume weighted average price of Telecom Corporation of New Zealand Limited shares as traded on the NZSX over the first 5 trading days commencing on the date of listing of ChorusCo:

"(d) **combined mv** is the total market capitalisation of ChorusCo and of Telecom Corporation of New Zealand Limited calculated in the manner prescribed in a proposal approved by Order in Council under section 46 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, or, if none is prescribed, the total of the market capitalisation of ChorusCo and of Telecom Corporation of New Zealand Limited determined in accordance with paragraphs (b) and (c).

"(7) Subsection (8) applies where—

"(a) an arrangement entered into on or before the appointed day would, but for the demerger distribution, be a returning share transfer or share-lending arrangement in respect of which the original share is a Telecom Corporation of New Zealand Limited share; and

"(b) if, under the relevant arrangement in respect of the Telecom Corporation of New Zealand Limited share, the share user is required to transfer a Telecom Corporation of New Zealand Limited share or shares and a ChorusCo share or shares to the share supplier.

"(8) If subsection (7) applies,—

"(a) the relevant ChorusCo share or shares are treated as part of the relevant Telecom Corporation of New Zealand Limited share or shares for the purposes of the definitions of identical share, original share, returning share transfer, and share-lending arrangement in the Income Tax Act 2007:

"(b) subsection (3) applies to the share supplier as if the share supplier were the person referred to in that subsection.

"(9) In this section, **available subscribed capital, dividend, identical share, original share, returning share transfer, share-lending arrangement, share supplier,** and **share user** have the same meanings as in the Income Tax Act 2007.

"**69XQ Goods and Services Tax Act 1985**

"(1) The vesting of the designated assets and liabilities is treated as being a taxable supply on the appointed day that is charged with tax at the rate of 0% for the purposes of the Goods and Services Tax Act 1985.

"(2) For the purpose of calculating, under the Goods and Services Tax Act 1985, the amount of tax payable, or input tax deductible, on or after the appointed day by a Chorus company in respect of, or in relation to, a designated asset or a designated liability, the Chorus company and the relevant Telecom company are treated as if they were the same person in respect of the period up to and including the appointed day, subject to subsection (1).

"(3) If it is necessary for a tax invoice, a credit note, or a debit note (the **document**) to be issued by or to a Telecom company in respect of a supply made by or to a Telecom company before the appointed day, the document may be issued by or to a Chorus company if the supply was in respect of or in relation to designated assets and liabilities. The Chorus company and the Telecom company are treated as if, in relation to that supply, they were the same person for the purposes of any requirement in the Goods and Services Tax Act 1985 that the Telecom company holds, has previously been issued with, or has issued to a person, a tax invoice, a debit note, or a credit note for the supply.

"(4) In this section, **credit note, debit note, input tax, supply, tax**, and **tax invoice** have the same meanings as in the Goods and Services Tax Act 1985.

"**69XR Prepayments**

"(1) For the purposes of the Income Tax Act 2007,—

"(a) for the vesting year, the relevant Telecom company is treated as having an unexpired amount of expenditure under section EA 3 of that Act (the **unexpired portion**)

for expenditure connected with the designated assets and liabilities, calculated by applying section EA 3(4) to (7) of that Act as if the day before the appointed day were the end of an income year:

"(b) the relevant Telecom company has, for the vesting year, income under section CH 2 of that Act for the unexpired portion described in paragraph (a):

"(c) for an income year starting after the appointed day, the relevant Telecom company is not allowed a deduction for the unexpired portion under section DB 50 of that Act, and no part of the unexpired portion is income under section CH 2 of that Act:

"(d) the relevant Chorus company has, for the vesting year, a deduction for the unexpired portion described in paragraph (a) under section DB 50 of that Act:

"(e) for the vesting year and any subsequent income year, section EA 3 of that Act applies to the relevant Chorus company as if that member had been allowed a deduction under that Act for expenditure to which paragraph (a) applies.

"(2) In this section, **expenditure** means expenditure that the relevant Telecom company has been allowed a deduction for under the Income Tax Act 2007 or an earlier Act, and that was not incurred on the items described in section EA 3(2) of that Act.

"**69XS Expenditure or loss incurred, and amounts derived**

A Chorus company and the relevant Telecom company are treated as the same person for the period prior to and including the appointed day for the purpose of determining the following, under the Income Tax Act 2007:

"(a) whether a deduction is allowed for an amount of expenditure or loss incurred by the Chorus company in connection with the designated assets or liabilities:

"(b) the amount of any deduction of the Chorus company in connection with the designated assets or liabilities:

"(c) whether an amount derived by the Chorus company in connection with the designated assets or liabilities is income:

"(d) the amount of any income of the Chorus company in connection with the designated assets or liabilities.

"**69XT Bad debts**

Sections CG 3 and DB 31 of the Income Tax Act 2007 apply to a relevant Chorus company in respect of any obligation that is owed to the relevant Telecom company immediately before the appointed day and that vests in the Chorus company, as if the Telecom company and the Chorus company were the same person in respect of the period up to and including the appointed day.

"**69XU Unpaid employment expenditure**

Sections DC 11(2) and (3) and EA 4(6) of the Income Tax Act 2007 apply to any amount of employment income (as that term is defined in the Income Tax Act 2007) that a Chorus company assumes the obligation to pay in connection with the vesting. For the purposes of those sections, the Chorus company is treated as **person B**, and the relevant Telecom company that incurred the obligation to pay is treated as **person A**.

"**69XV Vesting of designated assets and liabilities**

The vesting of the designated assets and liabilities in a Chorus company—

"(a) does not give rise to a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:

"(b) does not give rise to a dividend, or, except as provided in this subpart, other assessable income, for the purposes of the Income Tax Act 2007:

"(c) does not, except as provided in this subpart, give rise to a deduction for the purposes of the Income Tax Act 2007.

"**69XW Revenue account property**

"(1) For the purposes of the Income Tax Act 2007, for a designated asset or liability that is revenue account property (the **property**), the property is treated as being disposed of by the relevant Telecom company and acquired by the relevant Cho-

rus company for an amount equal to the property's tax book value.

"(2) In this section, **tax book value** means,—

"(a) for the property, if it is trading stock or an excepted financial arrangement acquired by the relevant Telecom company before the vesting year, the opening value of the property under section DB 49 of the Income Tax Act 2007 for that Telecom company for the vesting year:

"(b) for the property, if paragraph (a) does not apply, the amount of expenditure or loss for which the relevant Telecom company is allowed a deduction in the vesting year as a result of the disposal.

"(3) In this section, **excepted financial arrangement**, **revenue account property**, and **trading stock** have the same meaning as in the Income Tax Act 2007.

"**69XX Leased assets**

For the purposes of the Income Tax Act 2007, for expenditure that a Telecom company incurs as a lessee under a lease that relates to a designated asset and to which section EJ 10 of the Income Tax Act 2007 applies,—

"(a) the Telecom company must calculate an amount to be allocated to the vesting year under section EJ 10(3) and (4) of that Act as if the day before the appointed day were the end of the vesting year:

"(b) the relevant Chorus company must calculate an amount to be allocated to the vesting year under section EJ 10(3) and (4) of that Act as if the appointed day were the start of the vesting year:

"(c) section EJ 10 of that Act applies to the Chorus company for income years after the vesting year as if, in respect of the period up to and including the appointed day, the Telecom company and the Chorus company were the same person.

"**69XY Finance leases: financial arrangements rules**

"(1) For the purposes of the financial arrangements rules as defined in section EW 1(2) of the Income Tax Act 2007, for a finance lease that a Telecom company is party to immediately before

the appointed day and vests in a Chorus company on the appointed day,—

"(a) if the finance lease is an asset of the Telecom company, the Chorus company is treated as paying to the Telecom company an amount of consideration for the finance lease that is equal to the tax book value of the finance lease on the relevant day:

"(b) if the finance lease is a liability of the Telecom company, the Telecom company is treated as paying to the Chorus company an amount of consideration for the finance lease that is equal to the tax book value of the finance lease on the relevant day:

"(c) the Telecom company must calculate, on the relevant day, a base price adjustment under section EW 31 of the Income Tax Act 2007:

"(d) if the Chorus company calculates, on or after the relevant day, a base price adjustment under section EW 31 of that Act, that base price adjustment must be calculated as if, in respect of the period up to and including the relevant day, it and the Telecom company were the same person:

"(e) sections EW 38, EW 42, and GB 21 of that Act do not apply for the vesting.

"(2) In this section,—

"(a) **finance lease** has the same meaning as in the Income Tax Act 2007:

"(b) **tax book value** means, for the relevant day and a finance lease, the value for tax purposes of the finance lease on the relevant day determined consistently with the method used in subpart EW of the Income Tax Act 2007 to calculate and allocate income and expenditure under the finance lease as if the day immediately preceding the relevant day were the last day of an income year.

"**69XZ Approved issuer levy and administrative status**

"(1) For the purposes of the Income Tax Act 2007 and the Stamp and Cheque Duties Act 1971, a transaction or class of transactions registered as a registered security or as registered secur-

ities by a Telecom company on or prior to the appointed day is treated as also being registered as a registered security or as registered securities, as the case may be, by the relevant Chorus company. The relevant Chorus company is treated as an approved issuer in respect of the registered security or registered securities, as the case may be.

"(2) The relevant Telecom company and the relevant Chorus company are treated as the same person, for the period prior to and including the appointed day, for the purposes of the making, giving, or receiving of any election, notice, certificate, and filing provided for under the Inland Revenue Acts.

"(3) A Telecom company and the relevant Chorus company are treated as the same person for the purposes of receiving the benefit of—

"(a) a provisional rate, as defined in section EE 67 of the Income Tax Act 2007:

"(b) a special rate, as defined in section EE 67 of that Act.

"(4) In this section, **registered security** has the same meaning as in the Income Tax Act 2007."

Subpart 3—Consequential amendments, saving, transitional provisions, and miscellaneous matters

Consequential amendments relating to TSO obligations

52 Interpretation

(1) The definition of **net cost** in section 5 is amended by repealing paragraph (b) and substituting the following paragraphs:

"(b) in relation to a deemed TSO instrument that requires the supply of a service to end-users, means the unavoidable net incremental cost to an efficient service provider of providing the service required by the TSO instrument to all end-users connected to existing residential lines; and

"(c) in relation to a deemed TSO instrument that requires the supply of a wholesale service that is an input to a service supplied to end-users, means the unavoidable net incremental cost to an efficient service provider of

providing the service required by the TSO instrument to another service provider for the purpose of making a retail service available to all end-users connected to existing residential lines".

(2) Section 5 is amended by inserting the following definition after the definition of net cost:

"**net revenue** means the range of direct and indirect revenues and associated benefits derived from providing telecommunications services to all end-users connected to existing residential lines, less the costs of providing those services to those end-users".

53 Deemed TSO instrument

(1) Section 71(2)(b)(i) is amended by omitting "; and".

(2) Section 71(2)(b) is amended by repealing subparagraph (ii).

54 TSO provider under TSO instrument without specified amount may request TSO cost calculation determination

Section 94 is amended by adding the following subsection:

"(3) A TSO provider under a deemed TSO instrument who gives notice under subsection (1) must, at the time of giving that notice to the Commission, serve a copy of the notice on every other TSO provider under a deemed TSO instrument."

55 New sections 94EA and 94EB inserted

The following sections are inserted after section 94E:

"**94EA Calculations of net revenue and auditor's report must be given to Commission**

"(1) This section applies to a TSO provider under a deemed TSO instrument that requires the TSO provider to provide a telecommunications service to end-users and who is served with a copy of a notice under section 94(3).

"(2) Not later than 60 days after receiving the copy of the notice served under section 94(3), a TSO provider to whom this section applies must provide to the Commission—

"(a) calculations of the net revenue of the TSO provider for the financial year; and

"(b) a report prepared by a qualified auditor that includes a statement of whether the calculations comply with—

"(i) any prescribed requirements relating to those calculations; and

"(ii) any requirements of the Commission.

"**94EB Considerations for determining net revenue**

"(1) In calculating net revenue under section 94EA and calculating net revenue for the purposes of a draft TSO cost calculation determination under section 94F and a final TSO cost calculation determination under section 94J, the provision of a reasonable return on the incremental capital employed in providing telecommunications services to end-users must be taken into account.

"(2) In calculating the net revenue for the purposes of a draft TSO cost calculation determination under section 94F and a final TSO cost calculation determination under section 94J, the Commission—

"(a) may choose not to include profits from any new telecommunications services that involve significant capital investment and that offer capabilities not available from established telecommunications services; and

"(b) must not include any losses from telecommunications services other than services that the TSO instrument requires the TSO provider to provide; and

"(c) must consider the purpose set out in section 18.

"(3) In calculating net revenue under section 94EA, the TSO provider must comply with any requirements of the Commission relating to the application of subsection (2)(a) to (c).

"(4) In this section, **established telecommunications services** and **new telecommunications services** have the same meanings as in section 94E."

56 Matters to be included in draft TSO cost calculation determination

Section 94G is amended by inserting the following paragraph after paragraph (a):

"(ab) if the TSO instrument does not contain a specified amount and is a deemed TSO instrument, the net revenue of all providers under deemed TSO instruments, excluding the provider whose net cost is set out in paragraph (a), and all material information that—

"(i) relates to the calculation of the net revenue; and

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

57 Matters to be included in final TSO cost calculation determination

(1) Section 94K(1) is amended by inserting the following paragraph after paragraph (a):

"(ab) if the TSO instrument does not contain a specified amount and is a deemed TSO instrument, the net revenue for the financial year of all providers under deemed TSO instruments, excluding the provider whose net cost is set out under paragraph (a), and all material information that—

"(i) relates to the calculation of the net revenue; and

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

(2) Section 94K(1)(d)(i) is amended by inserting "and is not a deemed instrument" after "that does not contain a specified amount".

(3) Section 94K(1)(d) is amended by inserting the following subparagraph after subparagraph (i):

"(ia) in the case of a TSO instrument that does not contain a specified amount and is a deemed TSO instrument, by subtracting the amount of the reduction (if any) referred to in paragraph (c) and the net revenue referred to in paragraph (ab) from the net cost referred to in paragraph (a); and".

58 Section 95 repealed

Section 95 is repealed.

59 Regulations

(1) Section 101(1) is amended by inserting the following paragraph after paragraph (d):

"(da) prescribe requirements to which section 94EA(2)(b)(i) applies:".

(2) Section 101(1)(e) is amended by inserting the following subparagraph after subparagraph (iii):

"(iiia) calculating the net revenue under section 94EA:".

60 Application of section 156B

Section 156A is amended by inserting the following paragraphs after paragraph (lb):

"(lba) fails, without reasonable excuse, to comply with section 94EA:

"(lbb) knowingly provides false or misleading information under section 94EA:".

Consequential amendments relating to new Part 2A and general matters

61 Overview

Section 4 is amended by repealing paragraph (ea) and substituting the following paragraph:

"(ea) provisions concerning the structural separation of Telecom are set out in Part 2A; and".

62 Interpretation

Section 5 is amended by omitting the definition of **price** and substituting the following definition:

"**price** (except in subpart 6 of Part 2A) includes—

"(a) valuable consideration in any form, whether direct or indirect; and

"(b) any consideration that in effect relates to the acquisition of goods or services or the acquisition or disposition of any interest in land, even though it ostensibly relates to any other matter or thing".

63 Declaration made or revoked by notice in *Gazette*: amendments relating to network operator status

(1) Section 105(1) is repealed and the following subsections are substituted:

"(1) A declaration is made by notice in the *Gazette*, except that Chorus and Telecom are declared to be network operators by this Act.

"(1A) A declaration may be revoked by notice in the *Gazette* (including the declarations relating to Chorus and Telecom)."

(2) The definition of **network operator** in section 5 is consequentially amended by omitting "Telecom and".

64 Application of section 156B

(1) Section 156A is amended by inserting the following paragraphs after paragraph (f):

"(fa) fails, without reasonable excuse, to comply with section 69F:

"(fb) fails, without reasonable excuse, to comply with a notice under section 69H:".

(2) Section 156A is amended by adding the following subsection as subsection (2):

"(2) Section 156B also applies as provided in—

"(a) section 69L:

"(b) section 69T."

65 Pecuniary penalty

(1) Section 156L(1)(a) is amended by omitting "a separation undertaking" and substituting "an undertaking".

(2) Section 156L(3) is amended by inserting the following paragraphs after paragraph (ab):

"(b) $10 million for a breach referred to in section 69L (failure to comply with or amend sharing arrangements); and

"(ba) $10 million for a breach referred to in section 69T (line of business restrictions); and

"(bb) $10 million for a breach referred to in section 69XG (Chorus undertakings); and

"(bc) $1 million for a breach referred to in section 156A(fa) (obligation in section 69F to notify sharing arrangements); and

"(bd) $1 million for a breach referred to in section 156A(fb) (obligation in section 69H to comply with Commission's investigation, etc, powers); and".

66 Further pecuniary penalty for continuing breach

Section 156M(1) is amended by inserting the following paragraphs after paragraph (a):

"(aa) $500,000 for a breach referred to in section 69L; and

"(ab) $500,000 for a breach referred to in section 69T; and

"(ac) $50,000 for a breach referred to in section 156A(fa) or (fb); and".

67 Complaints of breach of enforceable matter

(1) Section 156O(1) is amended by repealing paragraph (b) and substituting the following paragraph:

"(b) in the case of an undertaking under Part 2A or 4AA, a party."

(2) Section 156O(4)(a) is amended by omitting subparagraph (ii) and substituting the following subparagraph:

"(ii) in the case of a complaint by a party relating to an undertaking under Part 2A, the purpose set out in section 69W; and".

68 Schedule 1 amended

Schedule 1 is amended in the manner set out in Schedule 3 of this Act.

Transitional provision relating to TSO obligations

69 TSO provider cannot request TSO cost calculation determination under section 94 for financial year in which separation day occurs

(1) Despite section 94, a TSO provider under a TSO instrument that does not contain a specified amount may not notify the Commission that it wishes to invoke the procedure in sections

94D to 94K for the preparation of a TSO cost calculation determination for the financial year in which separation day occurs.

(2) To avoid doubt, for the financial year in which separation day occurs, the TSO charges for a TSO instrument that does not contain a specified amount are deemed to be zero as provided in section 94C.

Transitional provision relating to shared asset arrangements

70 Minister may grant exemptions in relation to shared asset arrangements

The Minister may grant an exemption under section 69N of the principal Act (as inserted by section 51 of this Act) as if those sections were in force.

Saving and transitional provisions relating to designated access services

71 Standard terms determinations continue to apply

(1) Each standard terms determination referred to in the first column of the following table remains in force and continues to apply as if the determination were a determination made by the Commission for the designated access service set out in the second column of that table opposite that determination:

Standard terms determination	Designated access service
Standard terms determination for Telecom's unbundled bitstream access, 12 December 2007	Chorus's unbundled bitstream access
Standard terms determination for Telecom's unbundled bitstream access backhaul service, 27 June 2008	Chorus's unbundled bitstream access backhaul

Standard terms determination	Designated access service
Standard terms determination for Telecom's unbundled copper local loop network service, 7 November 2007 Standard terms determination for the designated services of Telecom's unbundled copper local loop network service (Sub-loop UCLL), Telecom's unbundled copper local loop network co-location service (Sub-loop Co-location) and Telecom's unbundled copper local loop network backhaul service (Sub-loop backhaul), 18 June 2009 (the **Sub-loop services standard terms determination**)	Chorus's unbundled copper local loop network
Standard terms determination for Telecom's unbundled copper local loop network co-location service, 7 November 2007 Sub-loop services standard terms determination	Chorus's unbundled copper local loop network co-location
Sub-loop services standard terms determination	Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)
Standard terms determination for Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) service, 27 June 2008	Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

(2) Part 2 of the principal Act applies to each standard terms determination accordingly.

(3) Subsections (1) and (2) are subject to sections 72 to 79.

72 General provision concerning reviews of standard terms determinations for purpose of implementing amendments to Schedule 1 of principal Act

(1) The Commission may review any standard terms determination referred to in section 71 under section 30R for the purpose of making any changes to the determination that the Com-

mission considers necessary to implement the amendments made by this Act to Schedule 1 of the principal Act—

(a) before the relevant amendments come into force or take effect; and

(b) as if the relevant amendments were in force or had taken effect.

(2) However,—

(a) the Commission must review the standard terms determination for Telecom's unbundled bitstream access dated 12 December 2007 before separation day, as referred to in section 73(1); and

(b) the Commission must make reasonable efforts to conduct a review of certain determinations—

(i) before separation day, as referred to in section 73(2); and

(ii) before the expiry of 1 year from separation day, as referred to in section 77; and

(c) the Commission may not make a replacement determination under section 30R(2); and

(d) any variation of, addition to, or deletion of terms in a determination for the purpose of implementing an amendment made by this Act to the principal Act may not come into force or take effect until the relevant amendment comes into force or takes effect; and

(e) on conducting any review of the standard terms determination for Telecom's unbundled copper local loop network service dated 7 November 2007 and the Subloop services standard terms determination, the Commission's powers under section 30R are subject to section 73(3).

73 Commission must complete reviews of standard terms determinations for certain designated access services before separation day

(1) The Commission must review the standard terms determination for Telecom's unbundled bitstream access dated 12 December 2007 before separation day for the purpose of making any changes to the determination that may be necessary for the purpose of implementing clause 4A of subpart 1 of Part 1 of

Schedule 1 of the principal Act from the close of the day before separation day.

(2) The Commission must make reasonable efforts to do the following before separation day:

(a) review each of the standard terms determinations referred to in the first column of the table in subsection (5) for the purpose of making any changes or (in the case of the standard terms determination for Telecom's unbundled bitstream access) any further changes that may be necessary in order for the determination to apply to the designated access service set out opposite that determination in the second column of that table from the close of the day before separation day; and

(b) review the standard terms determination for Telecom's unbundled copper local loop network dated 7 November 2007 (in this section, the **unbundled copper local loop network determination**) and the Sub-loop services standard terms determination for the purpose of making any changes to those determinations that may be necessary for the purpose of implementing clause 4A of subpart 1 of Part 1 of Schedule 1; and

(c) give public notice of the results of each review.

(3) However, no variation of, addition to, or deletion of terms in the unbundled copper local loop network determination or the Sub-loop services standard terms determination that relates to the implementation of clause 4A of subpart 1 of Part 1 of Schedule 1 may take effect before the expiry of 3 years from separation day.

(4) To avoid doubt, clause 4A of subpart 1 of Part 1 of Schedule 1 of the principal Act applies to Chorus's unbundled bitstream access service on and after separation day and any changes made to the standard terms determination in accordance with subsection (1) for the purpose of implementing that clause take effect from the close of the day before separation day.

(5) The table referred to in subsection (2) is—

Standard terms determination	Designated access service
Standard terms determination for Telecom's unbundled bitstream access, 12 December 2007	Chorus's unbundled bitstream access (excluding the initial and the final pricing principles applicable after the expiry of 3 years from separation day)
Standard terms determination for Telecom's unbundled copper local loop network co-location service, 7 November 2007	Chorus's unbundled copper local loop network co-location
Standard terms determination for Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) service, 27 June 2008	Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

74 Commission must make standard terms determination for Chorus's unbundled copper low frequency service before separation day

(1) The Commission must make reasonable efforts to make a standard terms determination under section 30M for Chorus's unbundled copper low frequency service before separation day.

(2) The standard terms determination must—

(a) be made in accordance with the procedure and requirements set out in sections 30D to 30Q; and

(b) apply from the close of the day before separation day.

Further transitional provisions relating to Chorus's unbundled bitstream access service

75 Certain clauses of standard terms determination do not apply to Chorus's unbundled bitstream access service

Despite section 71(1), the following clauses of Schedule 2 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007 do not apply to Chorus's unbundled bitstream access service from the close of the day before separation day:

(a) clause 4 (adjustment to basic UBA monthly (with POTS) charge):

(b) clause 4B (quarterly adjustment to early termination charge):
(c) clause 5 (adjustment to enhanced UBA monthly (with POTS) charge):
(d) clause 6 (adjustment to enhanced UBA service (without POTS) charges).

76 Certain provisions of Part 2 and Schedule 3 of principal Act do not apply in relation to Chorus's unbundled bitstream access service

Despite section 71(2), the following provisions of the principal Act do not apply in relation to Chorus's unbundled bitstream access service for the period starting on separation day and ending 3 years after separation day:

(a) section 30R (review of standard terms determination), except as provided in sections 73 and 77:
(b) section 30V (application for residual terms determination):
(c) section 59 (reconsideration of determination):
(d) clause 1(1) and (5) of Schedule 3 (Commission's investigation).

77 Review of standard terms determination for unbundled bitstream access service before expiry of 1 year from separation day

(1) The Commission must make reasonable efforts to do the following before the expiry of 1 year from separation day:
(a) review the standard terms determination for Chorus's unbundled bitstream access service under section 30R for the purpose of making any changes that may be necessary in order to implement the initial and final pricing principles applicable after the expiry of 3 years from separation day; and
(b) give public notice of the result of the review.

(2) To avoid doubt, no variation of, addition to, or deletion of terms specified in the standard terms determination as a result of the Commission's review in accordance with subsection (1) may take effect before the expiry of 3 years from separation day.

78 Party to standard terms determination for Chorus's unbundled bitstream access service may apply for pricing review

(1) A party to the standard terms determination for Chorus's unbundled bitstream access service may apply for a pricing review under section 42 as if the review under section 77(1)(a) were a determination made under section 30M regarding the price payable for the service.

(2) The pricing review application must be made in accordance with section 43, except that section 43(b)(ii) (which relates to the time within which an application under section 42 must be made) does not apply and the application must be given to the Commission not later than 25 working days after the Commission gives public notice of the review in accordance with section 77(1)(b).

(3) The Commission must make reasonable efforts to complete the pricing review determination before the expiry of 3 years from separation day.

79 Chorus's unbundled bitstream access prices grandfathered

(1) This section applies in relation to a subscriber line if an access seeker is being supplied with a UBA service in relation to that subscriber line before separation day.

(2) Chorus must, for the period starting on separation day and ending 3 years after separation day, provide each service component identified in items 2.1 to 2.8 of Schedule 2 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007 at whichever of the following is the lower:

(a) the price that applies under the determination for the date on which this Act receives the Royal assent, if that price is set out in the standard terms determination before the day before separation day:

(b) the price set out in the standard terms determination on the day before separation day.

(3) From the end of the period referred to in subsection (2), the initial pricing principle or the final pricing principle (whichever applies) for Chorus's unbundled bitstream access service ap-

plies to unbundled bitstream access services purchased by access seekers before separation day.

(4) In this section, **UBA service** has the meaning set out in clause 1 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007.

Miscellaneous

80 Operational separation undertakings cease to have effect

The separation undertakings given by Telecom in favour of the Crown for the purposes of Part 2A (before its repeal and substitution by this Act) cease to have legal effect from the close of the day before separation day.

Part 3
Telecommunications networks involving Crown funding

81 New Part 4AA inserted

The following Part is inserted after Part 4:

"**Part 4AA**

"**Services provided using networks developed with Crown funding: Undertakings regime and Commerce Act 1986 authorisations**

"Subpart 1—Preliminary provisions

"**156AA Overview**

"(1) This Part—

"(a) requires providers of wholesale telecommunications services that are provided using a fibre optic communications network that is constructed, in whole or in part, with Crown investment funding provided as part of the Ultra-fast Broadband Initiative, or that provide access to unbundled elements of such a network, to give enforceable undertakings providing for non-discrimination, equivalence, and other matters in relation to the supply of those services (subpart 2); and

"(b) restricts unbundling of point-to-multipoint layer 1 services before 1 January 2020 in respect of those service providers (section 156AP); and

"(c) requires those service providers to disclose information concerning costs and other matters in accordance with requirements of the Commission (subpart 3); and

"(d) enables providers of wholesale telecommunications services provided using a network that is constructed, in whole or in part, with Crown investment funding as part of the Rural Broadband Initiative to give enforceable undertakings that provide for non-discrimination and other matters in relation to those services (subpart 4); and

"(e) provides certain Commerce Act 1986 authorisations in respect of participation in the Rural Broadband Initiative (subpart 5) and the Ultra-fast Broadband Initiative (subpart 6).

"(2) This section is intended only as a guide to the general scheme and effect of this Part.

"**156AB Interpretation**

In this Part, unless the context otherwise requires,—

"**access seeker** means a person who seeks access to a relevant service

"**arm's-length** has the meaning set out in section 69D

"**Crown** includes Crown Fibre Holdings Limited

"**disclose** means to supply to the Commission

"**equivalence**, in relation to the supply of a relevant service, means equivalence of supply of the service and access to the service provider's network so that third-party access seekers are treated in the same way to the service provider's own business operations, including in relation to pricing, procedures, operational support, supply of information, and other relevant matters

"**fibre-to-the-premises access network**—

"(a) means a network structure used to deliver telecommunications services over fibre media that connects a powered node in a central office location (an exchange or

equivalent powered facility) to an end-user's premises or building, or the optical distribution facility of an end-user's premises or building; and

"(b) includes the powered node in the central office location; and

"(c) includes that part of the overall telecommunications link that connects to the end-user's equipment

"**information** includes any statement, certificate, or other information required to be disclosed under this Part

"**layer 1 service** has the same meaning as in the document 'New Zealand Government Ultra-Fast Broadband Initiative Invitation to Participate in Partner Selection Process' dated October 2009 (as amended)

"**LFC** or **local fibre company** means a company through which the investment of the Crown and a UFB partner in relation to a fibre optic communications network is effected, including—

"(a) a company in which the Crown and the UFB partner hold shares; and

"(b) a company in which the Crown holds a financial interest pursuant to the selection of that company as a UFB partner

"**LFC fibre network** means a fibre-to-the-premises access network that is owned or operated by an LFC

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

"**point-to-multipoint layer 1 service** means a layer 1 service provided over a network configuration that enables each fibre to provide multiple end-point connections

"**prescribed** means prescribed by the Commission

"**relevant service**—

"(a) in subparts 2 and 3, means a wholesale telecommunications service that is provided using, or that provides access to unbundled elements of, an LFC fibre network; and

"(b) in subpart 4, means a wholesale telecommunications service that is provided using, or that provides access to, unbundled elements of a network that is constructed with funding provided, in whole or in part, by the Crown as part of the Rural Broadband Initiative

"**Rural Broadband Initiative** means the programme to develop enhanced broadband infrastructure in non-urban areas of New Zealand with the support of Crown grant funding

"**service provider** means a provider of a relevant service

"**UFB initiative** means the competitive tender programme, known as the Ultra-fast Broadband Initiative, to develop fibre-to-the-premises broadband networks connecting 75% of New Zealand households, with the support of $1.5 billion of Crown investment funding

"**UFB partner** means a successful tenderer in the UFB initiative

"**undertaking** means an undertaking under this Part.

"Subpart 2—Undertakings relating to networks developed with Crown funding as part of UFB initiative

"156AC Purposes

The purposes of this subpart are to—

"(a) promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and

"(b) require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and

"(c) facilitate efficient investment in telecommunications infrastructure and services.

"Requirements for undertakings

"156AD Main requirements for undertakings

"(1) An LFC must enter into an undertaking in accordance with this subpart.

"(2) The undertaking must—

"(a) be executed by the LFC; and

"(b) provide for the LFC to supply unbundled layer 1 services on all parts of its fibre-to-the-premises access network on and after 1 January 2020; and

"(c) provide for the LFC to—

"(i) achieve non-discrimination in relation to the supply of relevant services; and

"(ii) design and build the LFC fibre network in a way that enables equivalence in relation to the supply of unbundled layer 1 services to be achieved on and after 1 January 2020; and

"(iii) achieve equivalence in relation to the supply of unbundled layer 1 services on and after 1 January 2020; and

"(d) provide for the LFC to deal with the UFB partner on arm's-length terms (unless the UFB partner and the LFC are not separate entities); and

"(e) provide for the LFC to maximise the use of standard terms for the supply of services through the use of template, or model, agreements; and

"(f) provide for access seekers to have the same access to information from the LFC; and

"(g) specify rules for the treatment of confidential information relating to access seekers; and

"(h) provide for disclosure of relevant information to the Commission, to support the Commission's assessment of compliance with the undertaking; and

"(i) provide for any other matters required by a determination of the Minister under section 156AE.

"(3) An undertaking may specify a mechanism for resolution, by a suitably qualified and experienced independent person, of any disputes that arise between the LFC and access seekers after the undertaking is approved.

"(4) Subsection (3) does not limit the further matters that may be included in an undertaking.

"(5) However, an undertaking must not—

"(a) provide for rules or obligations in respect of services that are not relevant services (including layer 1 services); or

"(b) specify the price or non-price terms of supply for any telecommunications service.

"**156AE Minister may determine further requirements for undertakings**

"(1) The Minister may determine further requirements with which an undertaking must comply.

"(2) The further requirements may—

"(a) specify the relevant services, or types of relevant services, to which the requirements in section 156AD apply, and how they are to apply; and

"(b) include further matters that must be addressed in the undertaking, and minimum requirements for the undertaking.

"(3) Any further requirements determined by the Minister under this section do not apply to an undertaking that has already been approved by the Minister.

"**156AF Minister must issue and consult on draft determination**

Before making a determination under section 156AE, the Minister must prepare a draft determination and consult on that draft with those persons that the Minister considers have a material interest in the determination.

"**156AG Procedural requirements for determination**

"(1) The Minister must notify a determination made under section 156AE in the *Gazette* as soon as practicable after it is made.

"(2) The notice in the *Gazette*—

"(a) need not contain the determination:

"(b) must give a brief description of the nature of the determination:

"(c) must state where copies of the determination are available for inspection and purchase.

"(3) 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 office hours); and

"(ii) on the Internet in an electronic form that is publicly accessible (at all reasonable times); and

"(b) for purchase at a reasonable price.

"(4) A determination is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989 but not for the purpose of the Acts and Regulations Publication Act 1989.

"(5) 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 submission and consideration of undertakings*

"**156AH LFC must submit undertaking for approval by Minister**

An LFC must submit an undertaking for approval by the Minister by sending the undertaking in writing to the Minister.

"**156AI Minister may approve or decline undertaking**

"(1) The Minister may, by notice in writing to the LFC who submitted the undertaking,—

"(a) approve the undertaking; or

"(b) decline to approve the undertaking.

"(2) The Minister must not approve the undertaking unless the Minister is satisfied that it meets the requirements in section 156AD.

"(3) If the Minister declines to approve the undertaking, the Minister—

"(a) must give reasons for not approving the undertaking; and

"(b) may invite the LFC to submit an amended undertaking for approval by the Minister.

"(4) Subsections (1) and (3) and section 156AH apply to an amended undertaking.

"(5) The Minister must notify his or her approval of an undertaking by notice in the *Gazette*.

"*Implementation of undertakings*

"**156AJ Implementation of undertaking**

On and from the date that the Minister's approval of an undertaking is notified in accordance with section 156AI(5), the undertaking takes effect as if it were a deed that is—

"(a) properly executed by, and binding on, the LFC; and

"(b) given in favour of the Crown.

"**156AK LFC must publish undertaking**

"(1) As soon as practicable after the Minister's approval of an undertaking is notified, the LFC must publish the undertaking on an Internet site maintained by or on behalf of the LFC so that it is publicly accessible at all reasonable times.

"(2) The LFC must make a copy of the undertaking available for inspection free of charge at its registered office.

"*Variation and termination of undertakings*

"**156AL Variation of undertaking**

"(1) The Minister may, on the recommendation of the Commission, approve a variation of an undertaking.

"(2) The Commission must not make a recommendation under subsection (1) unless—

"(a) the LFC who gave the undertaking has submitted a request for the variation to the Commission; and

"(b) the Commission has consulted with interested parties; and

"(c) the Commission is satisfied that the variation would best give effect to the purposes of this subpart.

"**156AM Procedure for variation of undertaking**

"(1) An LFC may submit a request for a variation of an undertaking under section 156AL by sending the proposed variation in writing to the Commission.

"(2) The Commission must notify the LFC in writing of whether it proposes to recommend that the Minister approve the variation.

"(3) The notice under subsection (2)—

"(a) must set out the reasons for the Commission's decision; and

"(b) may invite the LFC to submit an amended variation for consideration, if the Commission does not propose to recommend that the Minister approve the variation.

"(4) The Commission must make reasonable efforts to give the notice not later than 30 working days after the Commission receives the request for the variation from the service provider.

"(5) Sections 156AI to 156AK apply, with all necessary modifications, to a variation of an undertaking as if the variation were an undertaking.

"**156AN Clarification of undertaking**

The Commission may amend an undertaking to clarify it if—

"(a) the Commission, on the application of the LFC who gave the undertaking, considers that the undertaking requires clarification; and

"(b) the clarification is not material.

"**156AO Termination of undertaking**

"(1) An undertaking may be terminated by mutual agreement between the LFC and the Minister.

"(2) The Minister may request the Commission to recommend whether an undertaking should be terminated under this section.

"(3) The Commission may, in response to a request under subsection (2) or on its own initiative, recommend to the Minister that an undertaking be terminated under this section, if the Commission considers that the termination would best promote the purposes of this subpart.

"*Effect of undertakings in relation to unbundling of certain services*

"**156AP Commission may not recommend or investigate unbundling of point-to-multipoint layer 1 services**

"(1) The Commission must not, before the close of 31 December 2019, provide a final report to the Minister recommending the unbundling of any point-to-multipoint layer 1 service that is provided by an LFC that is subject to a binding undertaking.

"(2) The Commission must not, before the close of 31 December 2018, commence an investigation into the unbundling of any point-to-multipoint layer 1 service provided by an LFC that is subject to a binding undertaking.

"(3) An LFC is subject to a binding undertaking for the purposes of this section if it has entered into an undertaking that has been approved by the Minister under this subpart and that is still in force.

"*Enforcement of undertakings*

"**156AQ Enforcement and remedies under Part 4A**

Sections 156L, 156M, and 156O to 156R apply to an undertaking under this subpart as provided in Part 4A.

"**156AR Power of court to grant relief in respect of undertakings**

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

"(a) restrain the LFC from engaging in conduct that constitutes, or would constitute, the breach:

"(b) require the LFC to do a particular act or thing:

"(c) require the LFC to comply with the terms of the undertaking.

"(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.

"**156AS Interrelationship of remedies**

"(1) Nothing in this Part or Part 4A limits or affects any right, duty, liability, or remedy in respect of an 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 an 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 an 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.

"Subpart 3—Information disclosure by LFCs with undertakings

"**156AT Purpose**

The purpose of this subpart is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand by requiring LFCs who have given undertakings in relation to certain services to provide reliable and timely information to the Commission to enable it to record over time the costs and characteristics of LFC fibre networks to inform the Commission's statutory processes and determinations.

"**156AU Commission must require disclosure by LFCs**

"(1) The Commission must require LFCs to prepare and disclose information, annually, about the costs and characteristics of relevant services and the LFC fibre networks used to provide, or comprised of, relevant services.

"(2) The Commission may require the LFCs 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 cost 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), including prices and methodologies in relation to such transactions:
"(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) characteristics of relevant services:
"(l) policies and methodologies in the areas referred to in paragraphs (a) to (k) or other areas.

"(3) 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 the LFC must prepare and disclose information:
"(b) require the LFC 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):
"(c) require the LFC 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.

"(4) The LFCs must prepare and disclose the information required under this section in accordance with the Commission's requirements.

"(5) To avoid doubt, nothing in this subpart requires an LFC to prepare and disclose information about the operation of all or

any of its network or wholesale activities as if those activities were operated as independent or unrelated companies.

"**156AV Further powers of Commission relating to information disclosure**

The Commission may, in making requirements under section 156AU,—

"(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 a 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.

"**156AW Commission may publish reports, etc, on information collected**

"(1) The Commission may publish reports on, and summaries and analyses of, information collected under this subpart for the purpose of informing the industry and the public of current developments and emerging trends in relation to LFC fibre-to-the-premises access networks.

"(2) The publication may be in any form that the Commission considers fit.

"(3) In exercising its power under this section, the Commission must ensure that it protects the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.

"Subpart 4—Undertakings relating to networks developed with Crown funding as part of Rural Broadband Initiative

"156AX Interpretation of this subpart

In this subpart, unless the context otherwise requires,—

"**relevant service** means a service that is provided using, or that provides access to the unbundled elements of, a network that was constructed with funding provided, in whole or in part, by the Crown as part of the Rural Broadband Initiative

"**service provider** means a provider of a relevant service.

"156AY Requirements for undertakings under this subpart

"(1) A service provider may enter into an undertaking.

"(2) The undertaking must—

"(a) provide for the service provider to achieve non-discrimination in relation to supply of relevant services; and

"(b) provide for the disclosure of relevant information to the Commission, to support the Commission's assessment of compliance with the undertaking.

"(3) An undertaking may specify a mechanism for resolution, by a suitably qualified and experienced independent person, of any disputes that arise between the service provider and access seekers after the undertaking is approved.

"(4) Subsection (3) does not limit the further matters that may be included in an undertaking.

"156AZ Application of provisions in subpart 1

Sections 156AH to 156AN, 156AO, and 156AQ to 156AS, with all necessary modifications, apply to an undertaking

under this subpart as if every reference in those sections to an LFC were a reference to a service provider.

"Subpart 5—Commerce Act 1986 authorisations in respect of Rural Broadband Initiative

"156AZA Restrictive trade practices authorisations in respect of Telecom and Vodafone participation in Rural Broadband Initiative

"(1) The following are authorised:

"(a) the joint Telecom–Vodafone proposal made on 12 November 2010 in response to the Rural Broadband Initiative request for proposals issued on 26 August 2010; and

"(b) any contract that is entered into between the Crown and Telecom, or the Crown and Vodafone, to provide funding to Telecom or Vodafone in accordance with the Rural Broadband Initiative.

"(2) In this section, unless the context otherwise requires,—

"**Vodafone** means Vodafone New Zealand Limited and its subsidiaries.

"(3) The authorisations apply to any contract, arrangement, or understanding that is entered into before the date on which this section comes into force as if the authorisation were in force at the time of entry.

"(4) The authorisations do not apply to a contract, arrangement, or understanding that is entered into later than 6 months after the date on which this section comes into force.

"(5) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 58(1), (2), (5), and (6) of the Commerce Act 1986.

"(6) Sections 65 and 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.

"(7) The effect of the authorisations is the same as that stated in section 58A(1) and (2) of the Commerce Act 1986.

"Subpart 6—Commerce Act 1986 authorisations in respect of Ultra-fast Broadband Initiative

"**156AZB Interpretation for this subpart**

In this subpart, unless the context otherwise requires,—

"**fibre optic network assets** means ducting, fibre optic cabling, and related electronic equipment, together with other related equipment, that is used in connection with telecommunication over a fibre-based network

"**Telecom** includes Chorus and a successor to Telecom or Chorus

"**telecommunications network company** means a company that owns or operates a network.

"**156AZC Restrictive trade practices authorisations in respect of participation in Ultra-fast Broadband Initiative**

"(1) The following are authorised:

"(a) any contract, arrangement, or understanding between the Crown and Telecom that is necessary to give effect to the selection of Telecom as a UFB partner in a particular region or regions; and

"(b) any contract, arrangement, or understanding that is part of the arrangement with the Crown under the UFB initiative in a particular region or regions, under which Telecom or a UFB partner transfers fibre optic network assets to a local fibre company owned partially by the Crown.

"(2) The authorisations—

"(a) apply to any contract, arrangement, or understanding that is entered into before the date on which this section comes into force as if the authorisations were in force at the time of entry; but

"(b) do not apply to any contract, arrangement, or understanding that is entered into more than 2 years after the date on which this section comes into force.

"(3) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 58(1), (2), (5), and (6) of the Commerce Act 1986.

"(4) Sections 65 and 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.

"(5) The effect of the authorisations is the same as that stated in section 58A(1) and (2) of the Commerce Act 1986.

"**156AZD Business acquisition authorisations in respect of participation in Ultra-fast Broadband Initiative**

"(1) The following are authorised:

"(a) any acquisition by a UFB partner or a local fibre company owned partially by the Crown of the fibre optic network assets or undertaking of any telecommunications network company as part of an arrangement with the Crown under the UFB initiative; and

"(b) any acquisition by a UFB partner of the shares of any telecommunications network company (whether on a minority or an equal basis or otherwise) as part of an arrangement with the Crown, or with the Crown and another UFB partner, under the UFB initiative; and

"(c) any acquisition by the Crown of shares in, or assets of, Telecom pursuant to the selection of Telecom as a UFB partner in a particular region or regions.

"(2) The authorisations do not apply to any acquisition that is made more than 2 years after the date on which this section comes into force.

"(3) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 67(3)(b) of the Commerce Act 1986 on the date on which this section comes into force.

"(4) Sections 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.

"(5) The effect of the authorisations is the same as that stated in section 69 of the Commerce Act 1986."

82 Application of section 156B

(1) Section 156A(g) is amended by omitting "section 69ZB(7), 69ZC(4), or 69ZF(2):" and substituting "69ZC(4), 69ZF(2), or 156AU:".

(2) Section 156A is amended by inserting the following paragraph after paragraph (m):

"(ma) fails, without reasonable excuse, to comply with section 156AK:".

83 Pecuniary penalty

(1) Section 156L(1) is amended by inserting the following paragraph after paragraph (a):

"(ab) the person has failed, without reasonable excuse, to comply with an undertaking under Part 4AA; or".

(2) Section 156L(2) is repealed and the following subsection substituted:

"(2) In determining an appropriate remedy to be imposed under this section, the High Court must have regard to all relevant matters, including—

"(a) the nature and extent of any commercial gain; and

"(b) if subsection (1)(ab) applies, the size of the service provider."

(3) Section 156L(3) is amended by inserting the following paragraph after paragraph (a):

"(ab) $10 million for a breach referred to in subsection (1)(ab) (Part 4AA undertakings—UFB and RBI); and".

84 Heading to subpart 2 of Part 4A amended

The heading to subpart 2 of Part 4A is amended by omitting "registered".

85 Interpretation

(1) Paragraph (e) of the definition of **enforceable matter** in section 156N is amended by omitting "a separation undertaking" and substituting "an undertaking".

(2) The definition of **enforceable matter** in section 156N is amended by inserting the following paragraph after paragraph (e):

"(ea) an undertaking under Part 4AA:".

(3) The definition of **party** in section 156N is repealed and the following definition substituted:

"**party** means a party to an enforceable matter and includes, in the case of an undertaking under Part 2A or 4AA, any provider of a telecommunications service that is affected by a breach of the undertaking."

86 Complaints of breach of enforceable matter

(1) Section 156O(1) is repealed and the following subsection substituted:

"(1) The following persons may make a written complaint to the Commission alleging a breach of an enforceable matter:

"(a) an access seeker or an access provider of a designated service or a specified service:

"(b) in the case of an undertaking under Part 2A or 4AA, a party."

(2) Section 156O(4) is repealed and the following subsection substituted:

"(4) In deciding whether to take the action referred to in subsection (2)(b)(ii), the Commission—

"(a) must consider,—

"(i) in the case of a complaint by a person referred to in subsection (1)(a), the purpose set out in section 18; and

"(ii) in the case of a complaint by a party relating to an undertaking under Part 2A, the purposes set out in section 69A; and

"(iii) in the case of a complaint by a party relating to an undertaking under Part 4AA, the purposes set out in section 156AC; and

"(b) may consider the financial means of the complainant."

(3) Section 156O is amended by repealing subsection (7) and substituting the following subsection:

"(7) Subsection (2)(b)(i) does not apply in the case of an undertaking under Part 2A or 4AA."

87 Enforcement by High Court

Section 156P(2)(b) is amended by omitting "or a separation undertaking under Part 2A," and substituting " an undertaking under Part 2A or 4AA,".

88 Further amendments to principal Act

The principal Act is amended in the manner set out in Schedule 4.

Schedule 1

s 26

Further amendments to principal Act

Part 1

Amendments relating to telecommunications service obligations

Section 69C

Definition of **Ministry**: repeal.

Section 106

Subsection (4)(b): omit "PSTN or PDN" and substitute "PTN".

Section 111A

Subsection (1)(a): omit "PSTN or PDN" and substitute "PTN".

Subsection (1)(b): omit "PSTN or PDN" and substitute "PTN".

Schedule 2: Part 1

Clause 4(4)(a): omit "PSTN or PDN" and substitute "PTN".

Schedule 3: Part 1

Clause 4(3)(d): repeal and substitute:

"(d) the majority view and any dissenting views of the members of the Commission regarding the recommendation."

Part 2

Amendments relating to multi-unit complexes to which fibre is to be deployed

New section 118A

Insert after section 118:

"**118A Notices under this subpart**

"(1) Any notice that is required to be given to any person under this subpart must be in writing.

"(2) To avoid doubt, subsection (1) does not apply to notices given in any proceedings in a court."

Part 2—*continued*

Section 156

Repeal.

Section 156T(1)(b)

Omit "either" and substitute "any".

Add "; or" and also add:

"(iii) the provisions are necessary to implement Government policy."

New section 156UA

Insert after section 156U:

"**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 the existence of 1 or more industry-based complaints resolution systems in addition to 1 or more systems appointed under this Part."

Section 156V

Definition of **consumer**: add ", and includes an owner or occupier for the purposes of complaints under subpart 3 of Part 4".

Section 156X

Repeal and substitute:

"**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 mem-

Part 2—*continued*

Section 156X—*continued*

bers 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."

Section 156Y

Add:

"(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."

New sections 156YA to 156YC

Insert after section 156Y:

"**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).

Part 2—*continued*

New sections 156YA to 156YC—*continued*

"**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."

Section 156ZF

Insert after subsection (1):

"(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."

Part 3
Amendments relating to wireless works

Section 5

Insert in its appropriate alphabetical order:

"**wireless works** means any works relating to the provision of any wireless or mobile telecommunications services".

Heading above section 135

Insert "*or wireless works*" after "*Lines*".

Part 3—*continued*

Heading to section 135
Insert "**or wireless works**" after "**lines**".

Section 135(1)(a)
Insert "or wireless works" after "lines".

Section 135(1)(c)
Insert "or wireless works" after "lines" in each place where it appears.

Section 147A(1)
Insert "wireless works," after "cabinets," in each place where it appears.

Section 147B(2)
Insert "wireless works," after "cabinets,".

Section 147B(4)
Insert "wireless works," after "cabinets," in each place where it appears.

Heading to section 148
Insert "**or wireless works**" after "**line**".

Section 148(1)
Omit "line or" and substitute "line, wireless works, or other".

Section 148(2)
Omit "works" and substitute "wireless works or other works".

Section 153(1)
Omit "line or" and substitute "line, wireless works, or other".

Schedule 2

s 27

New Schedule 3B inserted

Schedule 3B

ss 85, 92

Annual telecommunications development levy

Financial year	Telecommunications development levy ($)
2010/11	50 million
2011/12	50 million
2012/13	50 million
2013/14	50 million
2014/15	50 million
2015/16	50 million
2016/17	10 million
2017/18 and each subsequent financial year	the inflation-adjusted specified telecommunications development levy

The inflation-adjusted specified telecommunications development levy must be calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

a is the CPI index number for the last quarter of the financial year preceding the relevant financial year

b is the CPI index number for the last quarter of the financial year that is 1 year before the financial year preceding the relevant financial year

c is the telecommunications development levy for the financial year preceding the relevant financial year.

Schedule 3
s 68

Amendments to Schedule 1 of principal Act

Clause 1

Definition of **local loop network**: omit and substitute:

"**local loop network** means that part of Chorus's copper network that connects the end-user's building (or, where relevant, the building's distribution frame) to the handover point in Chorus's local telephone exchange (including where it passes through a distribution cabinet) or distribution cabinet (or equivalent facility)".

Insert in their appropriate alphabetical order:

"**Chorus's local telephone exchange** means a local telephone exchange (or equivalent facility) where Chorus's local loop network terminates, whether that local telephone exchange is owned and operated by Chorus or by any other person

"**geographically averaged price** means a price that is calculated as an average of all geographically non-averaged prices for a designated service throughout the geographical extent of New Zealand".

New clauses 4A and 4B

Insert after clause 4:

"**4A Application of pricing principles for Chorus's unbundled copper local loop network and Chorus's unbundled bitstream access**

In applying the initial pricing principle or the final pricing principle for the following designated services, the Commission must determine a geographically averaged price:

"(a) Chorus's unbundled bitstream access service:

"(b) Chorus's unbundled copper local loop network service.

"**4B Application of pricing principles for designated access services**

In applying an applicable initial pricing principle or an applicable final pricing principle, the Commission must ensure that an access provider of a designated service does not recover

New clauses 4A and 4B—*continued*

costs that the access provider is recovering in the price of a designated or specified service provided under a determination prepared under section 27 or 30M or a designated or specified service provided on commercial terms."

Subpart 1 of Part 2: Interconnection with Telecom's fixed PSTN

Heading: omit "**Telecom's**" and substitute "**a**".

Item relating to *Description of service*: omit "Telecom's" and substitute "a".

Item relating to *Access provider*: omit and substitute the following item:

Access provider:	A person who operates a fixed PSTN

Subpart 1 of Part 2: Interconnection with fixed PSTN other than Telecom's

Omit.

Subpart 1 of Part 2: Retail services offered by means of Telecom's fixed telecommunications network

Heading: omit "**Telecom's**" and substitute "**a**".

Item relating to *Description of service*: omit and substitute:

Description of service applicable before the expiry of 3 years from separation day:	A retail service that satisfies both of the following: (a) any of the following: (i) a non-price-capped local access and calling service; or (ii) a non-price-capped retail service (and its associated functions) supplying an access and calling service in a different form to the service described in subparagraph (i) (and including, for the avoidance of doubt, a service supplying ISDN digital access, or Centrex-based access or facsimile); or (iii) a value-added non-price-capped retail service that is supplied in conjunction with a service described in subparagraph (i) or (ii) above or a price-capped residential local access and calling service; and (b) a retail service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets:

Subpart 1 of Part 2: Retail services offered by means of Telecom's fixed telecommunications network—*continued*

(i) all markets in which Telecom faces limited, or is likely to face lessened, competition for that service:

(ii) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for that service as determined by the Commission

Description of service applicable after the expiry of 3 years from separation day:

A retail service that satisfies both of the following:

(a) either of the following:

(i) a non-price-capped retail service (and its associated functions) supplying an access and calling service in a different form to a local access and calling service (and including, for the avoidance of doubt, a service supplying ISDN digital access, or Centrex-based access or facsimile); or

(ii) a value-added non-price-capped retail service that is supplied in conjunction with a service described in subparagraph (i) above or a local access and calling service; and

(b) a retail service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets:

(i) all markets in which Telecom faces limited, or is likely to face lessened, competition for that service:

(ii) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for that service as determined by the Commission

Subpart 1 of Part 2: Residential local access and calling service offered by means of Telecom's fixed telecommunications network

Omit and substitute:

Local access and calling service offered by means of fixed telecommunications network

Description of service applicable before the expiry of 3 years from separation day:

A price-capped residential local access and calling service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets:

(a) all markets in which Telecom faces limited, or is likely to face lessened, competition for the service:

(b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, compe-

Subpart 1 of Part 2: Residential local access and calling service offered by means of Telecom's fixed telecommunications network—*continued*

	tition for price-capped residential local access and calling service as determined by the Commission
Description of service applicable after the expiry of 3 years from separation day:	A local access and calling service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets: (a) all markets in which Telecom faces limited, or is likely to face lessened, competition for the service: (b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for the service as determined by the Commission
Conditions applicable before the expiry of 3 years from separation day:	That either— (a) Telecom faces limited, or is likely to face lessened, competition in a market for a price-capped residential local access and calling service offered by Telecom to end-users; or (b) Telecom does not face limited, or is not likely to face lessened, competition for a price-capped residential local access and calling service offered by Telecom to end-users, and the Commission has decided to require a local access and calling service to be wholesaled
Conditions applicable after the expiry of 3 years from separation day:	That either— (a) Telecom faces limited, or is likely to face lessened, competition in a market for a local access and calling service offered by Telecom to end-users; or (b) Telecom does not face limited, or is not likely to face lessened, competition for a local access and calling service offered by Telecom to end-users, and the Commission has decided to require a local access and calling service to be wholesaled
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 applicable before the expiry of 3 years from separation day:	Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus 2%

Subpart 1 of Part 2: Residential local access and calling service offered by means of Telecom's fixed telecommunications network—*continued*

Initial pricing principle applicable after the expiry of 3 years from separation day:

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

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

(b) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service

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

(a) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of these services, in the case of a service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; or

(b) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus actual costs saved pricing in respect of these services, in the case of a service offered by Telecom in markets in which Telecom does not face limited, or lessened, competition for that service; or

(c) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service; or

(d) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (b) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service

Subpart 1 of Part 2: Residential local access and calling service offered by means of Telecom's fixed telecommunications network—*continued*

Final pricing principle applicable before the expiry of 3 years from separation day:	Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus actual costs saved
Final pricing principle applicable after the expiry of 3 years from separation day:	For a price-capped local access and calling service, either— (a) Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus actual costs saved; or (b) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service For a non-price-capped local access and calling service, either— (a) average or best retail price minus a discount comprising avoided costs saved pricing, in the case of a service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; or (b) average or best retail price minus a discount comprising actual costs saved, in the case of a service offered by Telecom in markets in which Telecom does not face limited, or is not likely to face lessened, competition for that service; or (c) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service; or (d) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the price in paragraph (b) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the

Subpart 1 of Part 2: Residential local access and calling service offered by means of Telecom's fixed telecommunications network—*continued*

	final pricing principle for Chorus's unbundled copper low frequency service
Requirement referred to in section 45 or final pricing principle:	Nil
Additional matters that must be considered regarding application of section 18:	Nil

Subpart 1 of Part 2: Retail services offered by means of Telecom's fixed telecommunications network as part of bundle of retail services

Heading: omit "**Telecom's**" and substitute "**a**".

Item relating to *Description of service*: omit and substitute:

Description of service:	A retail service that— (a) is, or has previously been, offered separately by Telecom to end-users by means of a fixed telecommunications network; and (b) is offered by Telecom to end-users as part of a bundle of retail services— (i) in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; and (ii) if the effect of the bundled price is likely to significantly reduce the ability of an efficient rival to contest the market

Subpart 1 of Part 2

Items headed **Telecom's unbundled bitstream access**, **Telecom's unbundled bitstream access backhaul**, **Telecom's unbundled copper local loop network**, **Telecom's unbundled copper local loop network co-location**, **Telecom's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)**, and

Subpart 1 of Part 2—*continued*

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

	Chorus's unbundled bitstream access
Description of service:	A digital subscriber line enabled service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, that part of a fixed PDN that connects the end-user's building (or, where relevant, the building's distribution frame) to a first data switch (or equivalent facility), other than a digital subscriber line access multiplexer (**DSLAM**) To avoid doubt, unless otherwise requested by the access seeker, the supply of this service must not be conditional on a requirement that the access seeker, end-users, or any other person must purchase any other service from the access provider
Conditions:	That either— (a) Chorus faces limited, or is likely to face lessened, competition in a relevant market; or (b) Chorus does not face limited, or is not likely to face lessened, competition in a relevant market, and the Commission has decided to require Chorus's unbundled bitstream access to be wholesaled in that market
Access provider:	Chorus
Access seeker:	A service provider who seeks access to the service
Access principles:	The standard access principles set out in clause 5
Limits on access principles:	The limits set out in clause 6 and the additional limit that Chorus is only required to provide access to the trunk side of the first data switch or equivalent facility (for which purpose a DSLAM is not an equivalent facility)
Initial pricing principle applicable before the expiry of 3 years from separation day:	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 Telecom in relation to the relevant subscriber line, all or any of the costs of Chorus's local loop network that would usually be recovered by Telecom 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)

Subpart 1 of Part 2—*continued*

Initial pricing principle applicable after the expiry of 3 years from separation day:	The price for the designated access service entitled Chorus's unbundled copper local loop network plus benchmarking additional costs incurred in providing the unbundled bitstream access service against prices in comparable countries that use a forward-looking cost-based pricing method
Final pricing principle applicable before the expiry of 3 years from separation day:	Either— (a) retail price (as imputed by the Commission, having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount comprising avoided costs saved, in a case where Chorus faces limited, or is likely to face lessened, competition in a relevant market; or (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 Chorus does not face limited, or lessened, competition in a relevant market Plus, in either case, if no person is also purchasing a local access and calling service from Telecom in relation to the relevant subscriber line, all or any of the costs of Chorus's local loop network that would usually be recovered by Telecom from an end-user of its local access and calling service, as determined by identifying the relevant costs (unless the Commission considers that the price already takes into account all of the relevant costs)
Final pricing principle applicable after the expiry of 3 years from separation day:	The price for Chorus's unbundled copper local loop network plus TSLRIC of additional costs incurred in providing the unbundled bitstream access service
Requirement referred to in section 45 or final pricing principle:	Nil
Additional matters that must be considered regarding application of section 18:	The Commission must consider relativity between this service and Chorus's unbundled copper local loop network service (to the extent that terms and conditions have been determined for that service)

Subpart 1 of Part 2—*continued*

Chorus's unbundled bitstream access backhaul

Description of service:	A service (and its associated functions, including the associated functions of operational support systems) that provides transmission capability (whether the transmission capacity is copper, fibre, or anything else) between the trunk side of a first data (or equivalent facility), other than a DSLAM, that is connected to the end-user's building (or, where relevant, the building's distribution frame) and the access seeker's nearest available point of interconnection
Conditions:	That either— (a) Chorus faces limited, or is likely to face lessened, competition in a market for transmission capacity between the first data switch (or equivalent facility) and the access seeker's nearest available point of interconnection; or (b) Chorus does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between the first data switch (or equivalent facility) and the access seeker's nearest available point of interconnection, and the Commission has decided to require Chorus's unbundled bitstream access to be wholesaled in that market
Access provider:	Chorus
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 or final pricing principle:	Nil
Additional matters that must be considered regarding application of section 18:	Nil

Subpart 1 of Part 2—*continued*

Chorus's unbundled copper local loop network

Description of service:	A service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, Chorus's copper local loop network (including any relevant line in Chorus's local telephone exchange or distribution cabinet)
Conditions:	Nil
Access provider:	Chorus
Access seeker:	A service provider who seeks access to the service, except, until 3 years after separation day, Telecom
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 or final pricing principle:	Nil
Additional matters that must be considered regarding application of section 18:	The Commission must consider relativity between this service and Chorus's unbundled bitstream access service (to the extent that the terms and conditions have been determined for that service)

Chorus's unbundled copper local loop network co-location

Description of service:	A service (and its associated functions, including the associated functions of operational support systems) that provides co-location facilities for an access seeker's equipment, and access to the handover point, at Chorus's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of providing access to, and interconnection with,— (a) Chorus's unbundled copper local loop network (including any necessary supporting equipment); and (b) Chorus's unbundled copper low frequency service (including any necessary supporting equipment) To avoid doubt, the same instance of this service can be used to support both Chorus's unbundled copper local loop network and Chorus's unbundled copper low frequency service

Subpart 1 of Part 2—*continued*

	To avoid doubt, **access seeker 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 Chorus's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of installing and maintaining the access seeker's equipment
Conditions:	Nil
Access provider:	Chorus
Access seeker:	A service provider who seeks access to the service
Access principles:	The standard access principles set out in clause 5
Limits on access principles:	The limits set out in clause 6 and the additional limit of the interests of other service providers who are co-located in the relevant facilities
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 or final pricing principle:	Nil
Additional matters that must be considered regarding application of section 18:	Nil

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

Subpart 1 of Part 2—*continued*

Access provider:	Chorus
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 or final pricing principle:	Nil
Additional matters that must be considered regarding application of section 18:	Nil

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

Description of service:	A service (and its associated functions, including the associated functions of operational support systems) that provides transmission capacity in a network (whether the transmission capacity is copper, fibre, or anything else) between the handover point in Chorus's local telephone exchange and the access seeker's nearest available point of interconnection for the purposes of providing access to, and interconnection with,— (a) Chorus's unbundled copper local loop network (including any necessary supporting equipment); and (b) Chorus's unbundled copper low frequency service (including any necessary supporting equipment) To avoid doubt, the same instance of this service can be used to support both Chorus's unbundled copper local loop network and Chorus's unbundled copper low frequency service

Subpart 1 of Part 2—*continued*

Conditions:	That either— (a) Chorus faces limited, or is likely to face lessened, competition in a market for transmission capacity between Chorus's local telephone exchange and the access seeker's nearest available point of interconnection; or (b) Chorus does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between Chorus's local telephone exchange and the access seeker's nearest available point of interconnection, and the Commission has decided to require Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point) to be wholesaled in that market
Access provider:	Chorus
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 or final pricing principle:	Nil
Additional matters that must be considered regarding application of section 18:	Nil

Subpart 1 of Part 2: new item

Add:

Chorus's unbundled copper low frequency service

Description of service:	A service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, the low frequency (being the frequency band between 300 and 3400 Hz) in Chorus's copper local loop network (including any relevant line in Chorus's local telephone exchange or distribution cabinet) that connects the end-user's building (or, where relevant, the building's distribution frame) to the handover point in Chorus's local telephone exchange
Conditions:	Chorus's unbundled copper low frequency service is only available where Chorus's local loop that connects the end-user's building (or, where relevant, the building's distribution frame) to the handover point in Chorus's local telephone exchange remains in place To avoid doubt, there is no obligation on Chorus that Chorus's copper network that connects a cabinet (or equivalent facility) and Chorus's local telephone exchange remain in place or be maintained if that part of Chorus's copper network is only being used to provide Chorus's unbundled copper low frequency services
Access provider:	Chorus
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:	Either— (a) the geographically averaged price for Chorus's full unbundled copper local loop network; or (b) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the cost of any additional elements of Chorus's local loop network that are not recovered in the price for Chorus's unbundled bitstream access service
Final pricing principle:	Either— (a) the geographically averaged price for Chorus's full unbundled copper local loop network; or (b) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the TSLRIC of any additional elements of Chorus's local loop network that are not recovered by the price for Chorus's unbundled bitstream access service

Subpart 1 of Part 2: new item—*continued*

Requirement referred to in section 45 or final pricing principle:	Nil
Additional matters that must be considered regarding application of section 18:	Nil

Schedule 4

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Further amendments to principal Act relating to telecommunications networks involving Crown funding

Section 4

Insert after paragraph (g):

"(gaa) provisions about undertakings required to be given by providers of certain telecommunications services involving fibre optic communications networks constructed in whole or in part using Crown investment funding, restrictions on unbundling in respect of such service providers, and the preparation and disclosure of information are set out in Part 4AA; and".

Section 5

Insert in its appropriate alphabetical order:

"**fibre-to-the-premises access network** has the meaning set out in section 156AB".

Section 5

Definition of **service provider**: insert ", except in subpart 3 of Part 4 and Part 4AA," after "**service provider**".

Schedule 3: Part 1

Clause 1: add:

"(7) This clause is subject to section 156AP."

Schedule 3: Part 1

Clause 4: add:

"(5) This clause is subject to section 156AP."

Contents

Notes

1 General

This is a reprint of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011. The reprint incorporates all the amendments to the Act as at 30 November 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* http://www.pco.parliament.govt.nz/reprints/.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the

enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as "of this section" and "of this Act")
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)

- format of dates (eg, a date formerly expressed as "the 1st day of January 1999" is now expressed as "1 January 1999")
- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

Telecommunications (Structural Separation—Approval of Asset Allocation Plan) Order 2011 (SR 2011/302)

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