

# Departmental Disclosure Statement

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Telecommunications (New Regulatory Framework) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill; and
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment's (MBIE's) Communications Policy team.

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Osmond Borthwick  
Manager, Communications Policy

4 August 2017

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## Part One: General Policy Statement

### **General Policy Statement**

The purpose of the Bill is to amend the Telecommunications Act 2001 (the **Act**) to—

- establish a stable and predictable regulatory framework for fibre fixed line access services in New Zealand;
- remove unnecessary copper fixed line access service regulation;
- streamline regulatory processes to enable a rapid response to any competition problems, particularly in the mobile communications market;
- provide more regulatory oversight of retail service quality.

The new regulatory framework has been designed following a statutory review as required under section 157AA of the Act (the **Review**). The Review was conducted between 2012 and 2017. Consultation took place through a series of discussion documents, options papers and final policy design papers, available at: <http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001>

### **Key Review findings and rationale for change**

The communications sector is a key enabler of economic growth. The Government's goal is to support a communications environment that provides high quality and affordable services for all New Zealanders, and enables the New Zealand economy to grow, innovate and compete in a dynamic global environment.

The Act provides the underlying economic regulation of communications markets in New Zealand.

The Review examined whether the current regulatory framework for telecommunications in New Zealand is the optimal one for competition, investment and innovation after 2020. It concluded that there was a need for change given the evolution of the telecommunications environment, the growth in fibre networks and services, and changes in the market structure of the industry. These changes require a new approach to telecommunications regulation to ensure that—

- excessive profits arising from natural monopoly services are limited;
- regulation is stable and predictable;
- regulation is only applied to the extent necessary to address a lack of competition;
- regulation can respond rapidly to a changing environment;
- market participants are responsive to consumer demands for service quality.

The key outcome of the Review is the introduction of a new regulatory framework for fibre services to apply from the implementation date (which will be 1 January 2020 or a date within 2 years of 1 January 2020). The new framework is based on utility regulation in Part 4 of the Commerce Act 1986, and includes 2 types of regulation: price-quality regulation and information disclosure regulation.

From the implementation date, Chorus Limited (**Chorus**) will be subject to price-quality and information disclosure regulation, and 4 fibre service providers (Ultrafast Fibre Limited, Enable Networks Limited, Northpower Fibre Limited and Northpower LFC2 Limited) will be subject to information disclosure regulation.

Under this form of price-quality regulation, Chorus will, for at least the first 3-year regulatory period, be subject to a revenue cap and must provide certain anchor services to its wholesale fibre customers. Under information disclosure regulation, Chorus and the 3 other fibre service providers must disclose information publicly to enable scrutiny of their performance and profitability.

The regulatory framework will be implemented by the Commerce Commission (the **Commission**), led by the Telecommunications Commissioner.

In the areas where fibre services are available, the copper network operated by Chorus will be deregulated and the telecommunications service obligations (**TSO**) will cease to apply. Chorus may continue to operate the copper fixed-line network in these areas, but it will not be required to do so by regulation.

Withdrawal of the copper network by Chorus in a given area will, however, be regulated by a copper withdrawal code which sets out minimum conditions that must be met before a copper line can be withdrawn.

New regulatory arrangements will be introduced to support consumer service quality across the sector and improve responsiveness to consumer needs. These arrangements enable the Commission—

- to collect information and report on the quality of retail service delivery in a way that is accessible to consumers;
- to establish regulatory codes to improve retail service quality, if industry self-regulation is inadequate;
- to undertake periodic reviews of the industry-led dispute resolution schemes.

### **Specific changes provided by the Bill**

The Bill—

- provides for the establishment of a new utility regulation framework for fibre fixed line access services from the implementation date:
- deregulates copper fixed line access services in areas where fibre services are available to consumers, while retaining regulation in areas where fibre is not available:
- puts in place consumer safeguards when copper services are to be withdrawn:
- streamlines the process for recommending regulation of services in Schedule 3 of the Act:
- requires the Commission to undertake retail service quality monitoring:

- provides more regulatory oversight of retail service quality, associated consumer codes and dispute resolution processes in the telecommunications sector.
- provides for technical revisions to the Telecommunications Regulatory Levy (TRL), which provide for consistency with the levy arrangements for utility regulation under the Commerce Act 1986.
- repeals unused, unnecessary, or expired provisions, and updates organisational references.

These specific aspects of the Bill are addressed in further detail below.

### ***A New Regulatory Framework***

The Bill incorporates into the Act arrangements for utility regulation that have been tested in Part 4 of the Commerce Act 1986. The Commission will establish input methodologies and undertake other preparatory work, with the aim of applying the new regulatory framework from 1 January 2020.

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

The new regulatory framework in the Bill will apply the following forms of regulation to Chorus:

- price-quality regulation, where price or revenue controls and requirements for service quality are placed on Chorus:
- information disclosure regulation, which ensures that sufficient information about Chorus's performance is available to assess whether the purpose of the regulation is being met.

The Bill provides that Local Fibre Companies (LFCs) that are building networks pursuant to the Government's Ultra-Fast Broadband (UFB) initiative will also be subject to information disclosure regulation, but will not be subject to price-quality regulation. Any LFC may later become subject to price-quality regulation, should the Minister accept a recommendation from the Commission that price-quality regulation is necessary.

#### *Establishment of input methodologies*

The Bill provides that input methodologies will be developed by the Commission to specify in advance the rules and processes applying to information disclosure and price quality regulation.

The input methodologies will set out rules which apply to the initial setting of the regulated asset base (subject to some additional rules in the Bill itself) and to determining the allowable revenue for Chorus. They will also be used to establish a stable price path for fibre anchor services from the implementation date onwards.

Input methodologies will, at a minimum, relate to the following topics:

- cost of capital:

- asset valuation:
- allocation of costs:
- treatment of taxation:
- regulatory processes and rules for the specification of prices and service costs:
- efficient capital expenditure:
- quality dimensions for service provision.

#### *Anchor services*

The Bill also requires Chorus to offer anchor services, which are wholesale fibre services with price caps based on existing UFB prices. Anchor services are intended to ensure that entry-level broadband and voice-only fibre services are provided by Chorus at reasonable prices and to specific quality standards.

These anchor products will also have an impact beyond the products directly covered, as they will constrain the price of other fibre services provided by Chorus.

#### *Price regulation of Direct Fibre Access Services*

The Bill provides for pro-competitive regulation of direct fibre access services (**DFAS**).

DFAS are business-grade layer 1 fibre services that connect large commercial users to the fibre network. It is used by mobile providers to provide dedicated fibre links to the mobile towers that enable mobile companies to provide fixed-wireless services, and by retail service providers for backhaul and to supply large commercial customers. Specific price regulation of this service is included in the Bill to reduce the opportunity for Chorus to arbitrarily increase the costs of this key input to the services of fixed wireless competitors. DFAS will have a price cap based on the existing UFB price.

#### *Retention of requirement to offer unbundled fibre services*

The Bill maintains the existing obligations for regulated fibre service suppliers to provide unbundled fibre services from the implementation date. The Bill also enables the Commission to investigate establishing an unbundled fibre service as a price-regulated service from 2023. These open access arrangements will enhance service innovation, and support the introduction of new network technologies in the future.

#### *Deregulation of certain copper fixed line access services*

The Bill refines the regulation of copper fixed line access services from 2020. In areas where fibre is available, Chorus will no longer be required to supply copper fixed line access services, or meet the obligations specified in TSO instruments. However, in areas where fibre services are not available, copper regulation will be maintained. In those areas Chorus will be required to continue to supply certain regulated copper services, capped at regulated 2019 prices, with inflation adjustments over time. Chorus's TSO obligations will also be retained in those areas.

#### *Copper withdrawal code*

Clause 7 of the Bill inserts new section 69AG into the Act to provide consumer protection measures for consumers of copper fixed line access services, in the event that Chorus seeks to stop supplying copper network services. Before Chorus is permitted to stop supplying a copper service, comparable alternative fibre services

must be available at similar prices, with similar functionality, and certain processes must be followed to reduce transitional risks.

### ***Competition in mobile telecommunications markets—Schedule 3 streamlining***

The Bill aims to encourage further competition in the mobile market through streamlining the process for Commission investigations into regulating telecommunications services in Schedule 3 of the Act.

The Bill will amend the Schedule 3 process to—

- impose a hard deadline of 240 working days for the Commission to complete its investigation and recommend to the Minister for Communications whether to regulate a telecommunications service (120 working days for investigations in relation to the upgrade of an existing service):
- provide the Commission with the flexibility to decide whether to hold conferences and public hearings:
- allow for a single undertakings process in place of successive incremental undertakings, which can reduce the effect of the regulatory process and delay determinations:
- enable the Commission to propose a single-stage pricing process when recommending regulation to the Minister for Communications (instead of a 2-stage process involving first international benchmarking and then cost modelling).

These changes allow for more timely intervention by the Commission when issues are identified, and further encourage commercial settlements as an alternative to regulation.

### ***Improving consumer retail service quality***

The Bill aims to assist consumers to make informed choices about retail telecommunications services by improving the information available to consumers. More regulatory oversight of the development and maintenance of consumer codes will provide retail service providers with more incentives to improve the quality of their services. The Bill will also support more efficient and responsive dispute resolution procedures for consumers.

To meet these policy objectives the Bill—

- requires the Commission to monitor and report on retail service quality for telecommunications consumers, and to make such information readily available to consumers:
- allows the Commission to monitor industry-based retail service quality codes and allows the Commission to make such codes should industry-led codes be assessed as inadequate:
- provides the Commission with the ability to review the performance of industry-led dispute resolution providers and recommend change:
- incorporates certain remedies from the Fair Trading Act 1986 along with information disclosure, compliance and enforcement powers from the

Commerce Act 1986, with some refinements. These compliance and enforcement measures allow the Commission to issue civil infringement notices or apply for pecuniary penalties or other remedies:

- provides for the Commission to accept enforceable undertakings in relation to breaches of Commission retail service codes.

Following a Commission retail service quality code breach, the Commission may also seek orders from the High Court for the disclosure of information or publication of corrective statements.

Remedies equivalent to those in the Fair Trading Act 1986 will enable the High Court to issue orders directing the payment of a refund, return of property, payment of loss or damage, and supply of specified services.

### ***Technical revisions to levy provisions***

The new regulatory obligations to be inserted in *new Part 6* of the Act will take a number of years to complete and implement. The Bill provides for a minor change in levy arrangements to enable levies to be set over a multi-year appropriation period, rather than a financial year. This enables consistency with similar levy-setting arrangements provided in Part 4 of the Commerce Act 1986. The approach in the Bill enables the TRL to be revised on a multi-year basis, subject to full consultation. It also enables input methodology regulatory development to be commenced and resourced before the first regulatory period commences.

### ***Miscellaneous revisions***

The Bill repeals redundant miscellaneous provisions in the Act, as follows:

- an outdated criminal offence of indecent telephone calls for pecuniary gain (section 113):
- sections within Part 2A relating to the structural separation of Telecom that are no longer needed:
- expired provisions in the Act:
- the requirement for the Minister to review the regulatory framework, as this review has now been completed:
- line-of-business restrictions for Chorus that do not add to the retained fundamental prohibition on participation in retail (section 69R and 69S).

In addition, outdated references to Telecom, Spark, and the Ministry of Economic Development will be updated.



## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>The policy content of the Bill has been subject to extensive consultation and review over the 2012-2017 period, with four public consultation documents and submission processes, and three regulatory impact statements prepared influencing policy choices and design:</p> <p>The publicly available Review reports, submissions and papers are available at: <a href="http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001">http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001</a>.</p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
<p>There are no material implications for New Zealand international treaties or New Zealand actions in relation to those treaties.</p>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>There were three regulatory impact statements (<b>RISs</b>) prepared that informed policy development. The links to these documents are provided below:</p> <ol style="list-style-type: none"><li>1. <a href="http://www.mbie.govt.nz/publications-research/publications/telecommunications/ris-initial-policy-decisions-for-fixed-line-framework.pdf">http://www.mbie.govt.nz/publications-research/publications/telecommunications/ris-initial-policy-decisions-for-fixed-line-framework.pdf</a></li><li>2. <a href="http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/further-consultation-on-fixed-line-communications-services/regulatory-impact-statement.pdf">http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/further-consultation-on-fixed-line-communications-services/regulatory-impact-statement.pdf</a></li><li>3. <a href="http://www.mbie.govt.nz/publications-research/publications/telecommunications/ris-consumer-matters.pdf">http://www.mbie.govt.nz/publications-research/publications/telecommunications/ris-consumer-matters.pdf</a></li></ol> <p>The statements made in Cabinet papers with respect to these RISs were as follows:</p> <p><u>RIS 1</u></p> <p>The Regulatory Impact Analysis Team (<b>RIAT</b>) considers that the RIS meets the quality assurance criteria.</p>	

### RIS 2

Treasury's Regulatory Quality Team has reviewed the RIS prepared by MBIE and associated supporting material, including an earlier RIS in which a wider range of feasible options was examined and narrowed down.

The team considers that the information and analysis summarised in the RIS meets the quality assurance criteria. The evidence and analysis provided is sufficient to provide confidence in the high level decisions being proposed at this stage.

However, consultation shows that the detailed design and manner of implementation of these decisions will be critical, and that stakeholders continue to hold a range of views on these. Continuing stakeholder engagement should help to inform high-quality decisions and stakeholder acceptance of those details.

### RIS 3

The Regulatory Impact Analysis (RIA) requirements apply to the previously agreed proposal on the regulation of fibre and copper. A RIS was prepared for those proposals. The changes proposed here are refinements that are within the scope of the high-level choices outlined in that RIS.

The significance of the changes to Schedule 3 processes do not warrant a RIS being conducted as they do not create any additional regulatory costs, but simply support greater timeliness in decision making.

The RIA requirements apply to the consumer proposals in this paper and a further RIS has been prepared and is attached.

The RIAT and MBIE's Regulatory Impact Analysis Review Panel (the QA reviewers) have jointly reviewed the RIS prepared by MBIE on consumer matters and associated supporting material, and consider that the information and analysis summarised in the RIS meets the quality assurance criteria.

The QA reviewers note this assessment reflects the availability of evidence of consumer problems and the quality of engagement with stakeholders to develop the package of preferred options to improve consumer outcomes.

They see the active monitoring and reporting by the Commission of outcomes for consumers as a critical component of this package.

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
Yes all RISs were assessed by the Regulatory Quality Team in Treasury, with independent opinion provided.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
The core policy aspects have been addressed in the Cabinet papers that have incorporated relevant RISs.	

### **Extent of impact analysis available**

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>N/A</b>
<p>These matters were addressed in the RISs that were prepared to inform the Cabinet decisions, where a qualitative assessment of net impact is presented. Available at: <a href="http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/further-consultation-on-fixed-line-communications-services/regulatory-impact-statement.pdf">http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/further-consultation-on-fixed-line-communications-services/regulatory-impact-statement.pdf</a>; and, <a href="http://www.mbie.govt.nz/publications-research/publications/telecommunications/ris-consumer-matters.pdf">http://www.mbie.govt.nz/publications-research/publications/telecommunications/ris-consumer-matters.pdf</a>.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The Commission will implement the new regulatory framework, consistent with its capabilities in technical regulation of utilities networks. New input methodologies will be developed, mirroring existing Part 4 Commerce Act 1986 regulatory arrangements that the Commission currently administers. The compliance and enforcement arrangements are set out in the Bill. Compliance and enforcement of the new regulatory arrangements will be part of the core business capabilities of the Commission, and resourced through existing and future appropriations. (See M88 in the Communications vote.)</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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Consultation with the Ministry of Foreign Affairs and Trade ( <b>MFAT</b> ) Treaties Unit and Trade Negotiations Division has been undertaken. MFAT officials have advised that they do not have any concerns with the Bill and its consistency with international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Te Puni Kōkiri was consulted through the Cabinet paper development. No inconsistency with Treaty of Waitangi principles was identified.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>Yes</b>
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The Ministry of Justice has been consulted. Advice provided to the Attorney-General by the Ministry of Justice, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry of Justice's website at <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights</a> .
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The Ministry of Justice has advised that a section 7 report of the Attorney-General will not be required.
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
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There is some further use of existing penalties in the Act, the Part 4 provisions of the Commerce Act 1986, and the Fair Trading Act 1986. These penalties relate to consumer monitoring and consumer code development powers, and information disclosure and price-quality obligations for regulated providers of communications services.
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
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Yes. The Ministry of Justice has worked with MBIE on offence and penalty provisions applying in the event of non-compliance with the consumer codes. The Ministry of Justice has no concerns with the offences and penalties proposed in the Bill.
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## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>There is a possible aspect of collection of personal information matters associated with the Bill. This is confined to the Commission possibly receiving personal information related to consumers from its review of consumer complaints schemes. Any such collection of personal information would be very confined, and treated on the same basis as the Commission's existing Fair Trading Act 1986 consumer complaints information collection that currently complies with all relevant privacy principles.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner was consulted and briefed on the matter and relevant provisions of the Bill. The Commissioner's view is that the Bill is consistent with the principles in the Privacy Act.</p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>There has been extensive external stakeholder consultation on the new telecommunications regulatory framework, over a number of years, as follows:</p> <p>In September 2015, a discussion document <i>Regulating Communications for the Future</i> was released. This document took a broad look at the underlying regulatory settings for communications markets, and set the scene for reform after 2020. Responses were received from users, RSPs and network owners.</p> <p>In April 2016, Cabinet considered high level policy decisions, and agreed to progress a utility-style regulatory framework with 'building blocks model' pricing for fixed line services implemented from 2020; and to establish a new regulatory framework in the Telecommunications Act rather than the Commerce Act. (EGI-16-MIN-0040 refers).</p> <p>In July 2016, Cabinet agreed to the release of an <i>Options Paper</i> seeking feedback on detailed aspects of a reform package (EGI-16-MIN-0164 refers).</p> <p>In December 2016, Cabinet agreed to the detailed policy proposals for fixed line services (EGI-MIN-0361 refers). Cabinet agreed that fibre networks should be regulated under the new regulatory framework, but that copper should be treated differently and that a further round of consultation be conducted on these decisions.</p> <p>Throughout early 2017 public submissions were sought on these decisions with a consultation document laying out all the key features of the proposed new regulatory framework.</p> <p>In May 2017 Cabinet considered the final policy settings for the new regulatory framework, informed by 2017 submissions. (EGI-17-MIN-0087 refers.) EGI-17-SUB-0087 summarises submitters' input. See: <a href="http://www.mbie.govt.nz/publications-research/publications/telecommunications/telco-review-cab-paper.pdf">http://www.mbie.govt.nz/publications-research/publications/telecommunications/telco-review-cab-paper.pdf</a></p>	

Wider feedback presented in public submission across the various tranches of consultation is available on the MBIE website. See:

<http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/submissions-received-discussion-paper>

<http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/submissions-received-options-paper>

<http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/submissions-received>

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
Yes, through testing the provisions with the Commission, which will be required to implement the changes.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
The Bill does not create a power to impose a levy, as general levy powers are already provided in Section 11 of the existing Act to fund the Commission's regulatory work in telecommunications. The regulatory development costs associated with the input methodologies required for the New Regulatory Framework can be incorporated in existing levy measures. The Bill does provide a technical amendment to Section 11 of the Act to enable the Telecommunications Regulatory Levy (TRL) to be set over a multi-year appropriation period, rather than a financial year. This enables the TRL to be used more flexibly.	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
The Bill introduces new infringement offences. These offences are consistent with the existing strict liability infringement offences in the Telecommunications Act 2001.	
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>The Bill provides for some terms to be defined by reference to regulations. The parties to be covered by fibre regulation, and certain types of services, are to be prescribed in regulation. This will allow the providers and services that are regulated to change over time as the Minister and the Commission make recommendations, to ensure the regulatory regime meets the purpose of the Act.</p> <p>The Bill also provides for the Commission to exempt persons from the obligation to publically disclose commercially sensitive information on terms and conditions that it thinks necessary. This is consistent with the Commission's exemption power in the Commerce Act 1986.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>There are new regulation making powers related to fibre fixed line access services similar to the existing powers in the Act for setting out the details of currently regulated designated and specified services. The new regulation making powers allow regulations to be made that set out the technical details of services for the new fibre framework.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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