

Departmental Disclosure Statement

Telecommunications Amendment Bill

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;
- 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.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 October 2025

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Part One: General Policy Statement

A programme of regulatory reform is underway to ensure that the telecommunications regulatory regime continues to support a well-functioning telecommunications market to improve productivity and support economic growth.

This Bill makes targeted amendments to the Telecommunications Act 2001 (**the Act**) so that the regulatory regime keeps up with changes in the telecommunications industry.

Telecommunications dispute resolution

The Bill mandates membership of an industry dispute resolution scheme for telecommunications service providers with an annual retail telecommunications revenue over \$50 million (excluding goods and services tax). It also provides enforcement options for dealing with service providers who fail to join a scheme within 6 months of becoming liable to do so.

The Bill also ensures that industry dispute resolution schemes can emerge from outside the telecommunications industry if they serve the industry and have notified the Commerce Commission of their operation.

Access to shared property

The Bill makes permanent the rights that allow fibre providers to access shared property to install fibre in certain circumstances, while maintaining the protection mechanisms for affected persons.

The Bill allows for the rights to be invoked when a fibre installation order is placed directly with a fibre provider.

Telecommunications development levy

The Bill creates a new regulation-making power that enables the telecommunications development levy amount to be set in regulations via an Order in Council, following the recommendation of the relevant Minister under the Act. The Minister will only be able to recommend an increase in the levy after consulting levy payers.

Role for the Commerce Commission

The Bill provides for the Commerce Commission to undertake roles given to it under the constitutions of Enable, Northpower Fibre, and Tuatahi First Fibre (the 3 “other” local fibre companies that took part in the UFB initiative), but only if the Minister of Finance has given their approval. This gives effect to Cabinet decisions to broaden the permitted activities of the local fibre companies and align them with Chorus.

The Bill also makes technical amendments:

- It amends the Telecommunications (Civil Infringement Notice) Regulations 2007 to reflect that the Commerce Commission no longer accepts cheques.
- To improve clarity, the Bill makes explicit the consultation requirement in section 226 of the Act, rather than referencing another section of the Act.
- It amends the Act so that amendments to material incorporated into regulations by reference can be given legal effect through notice in the *Gazette*, to align with the recently amended Legislation Act 2019 and to improve efficiency of the Act.
- It makes minor amendments to clarify what types of remedies are available for different breaches of codes.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The regulatory impact statement 'Improving telecommunications regulatory and funding frameworks' was developed by officials at the Ministry of Business, Innovation and Employment (MBIE). It was finalised on 20 November 2024.</p> <p>The regulatory impact statement can be accessed here: https://www.mbie.govt.nz/dmsdocument/30533-regulatory-impact-statement-improving-telecommunications-regulatory-and-funding-frameworks-proactiverelease-pdf</p>	

2.3.1. If so, did the RIA Team in the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The regulatory impact statement did not meet the threshold for RIA team assessment.</p> <p>MBIE's Regulatory Impact Analysis Review Panel reviewed the regulatory impact statement. The panel considers that it meets the quality assurance criteria.</p>	

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?	YES
<p>There are some aspects of policy to be given effect by the Bill that were not specifically addressed in the regulatory impact statement. MBIE has included a discussion of these here to contextualise policy changes in the Bill.</p> <p>Firstly, the regulatory impact statement included an option to mandate membership in an industry dispute resolution scheme for retail providers that earn over \$10 million in annual retail telecommunications revenue. However, the threshold that will be given effect by the Bill is \$50 million per annum, rather than \$10 million. The increased revenue threshold will reduce the number of providers that will be liable to join an industry dispute resolution scheme from what was discussed in the regulatory impact statement. This will reduce new costs for telecommunications providers which are typically passed on to consumers. The benefits described in the regulatory impact statement, however, will also be reduced, as less consumers than initially anticipated will have access to an industry dispute resolution scheme. MBIE considers that this policy still meets the objectives described in the regulatory impact statement of promoting competition, proportionate regulation, and protecting consumer interests against potential harm, while limiting the impacts on market entry and smaller telecommunications providers.</p> <p>Secondly, the Bill introduces an information gathering power for the Commerce Commission to determine whether a telecommunications provider is liable to join an industry dispute resolution scheme and an associated offence if the provider does not comply with that information request. While the policy has not changed materially from what was considered (the Commission will still determine liability to join an industry dispute resolution scheme), the process to determine liability has changed since the publication of the regulatory impact statement. The regulatory impact statement proposed the existing process to determine liability could be used to determine liability to join an industry dispute resolution scheme. MBIE has subsequently determined that this process will not be suitable given the different groups of telecommunications providers and relevant services that are captured by the different obligations. The information gathering power will be needed to assist the Commerce Commission in determining liability.</p> <p>Lastly, the Bill introduces a new function for the Commerce Commission to undertake roles under local fibre company constitutions. This policy change was not addressed in the regulatory impact statement as the constitutions are not subject to regulatory impact assessment requirements. The inclusion of this function for the Commission in the Act is a consequential change following the policy decision relating to the constitutions. The Commerce Commission will be able to recover the costs of this role through an existing levy that supports telecommunications regulatory activity.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The size of potential costs and benefits, and impacts on particular groups or stakeholders are available throughout the regulatory impact statement located here: https://www.mbie.govt.nz/dmsdocument/30533-regulatory-impact-statement-improving-telecommunications-regulatory-and-funding-frameworks-proactiverelease-pdf.</p> <p>We did not undertake specific analysis of the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth, but in our assessment of the costs and benefits we did not identify that this would be a likely cost resulting from the policy proposals.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The Bill mandates membership in an industry dispute resolution scheme for retail telecommunications service providers with an annual retail telecommunications revenue over \$50 million.</p> <p>The potential benefits and costs of this new obligation are impacted by effective compliance from liable telecommunications providers (ie, consumers will only benefit if their liable telecommunications provider joins an industry dispute resolution scheme, and providers will only face increased costs if they newly join a dispute resolution scheme once liable). The potential benefits will also be impacted by the Commerce Commission encouraging and securing compliance with this new obligation. The Bill creates a new information gathering power so the Commission can determine liability for this obligation – this will support enforcement of the new obligation.</p> <p>The costs and benefits of this requirement are discussed in section 2, policy problem 1, of the regulatory impact statement, available here: https://www.mbie.govt.nz/dmsdocument/30533-regulatory-impact-statement-improving-telecommunications-regulatory-and-funding-frameworks-proactiverelease-pdf. Information about implementation and enforcement can be found in section 3 of MBIE’s regulatory impact statement, linked above.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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?
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The department has determined that the policy is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

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?

MBIE did not identify any inconsistency with the rights and interests of Māori protected by the Treaty of Waitangi.

The Bill makes permanent the rights that allow fibre providers to access shared property to install fibre in certain circumstances. When the provisions were created (by the Telecommunications (Property Access and Other Matters) Amendment Act 2017), MBIE consulted with Te Puni Kōkiri about the relationship the provisions would have to collectively held Māori land. At the time, MBIE noted that if a conflict between the provisions and the Te Ture Whenua Māori Act 1993 were to arise, it considered the Te Ture Whenua Māori Act 1993 contained appropriate safeguards to protect Māori interests.

MBIE has engaged with Te Puni Kōkiri and has been advised that the above advice still stands. Te Puni Kōkiri consider there are no anticipated impacts that the permanent reinstatement of the rights will have on collectively held Māori land. This is due to the likely scenario that the person requesting fibre is a beneficiary of the trust and will act in good faith.
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Consistency with the New Zealand Bill of Rights Act 1990

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?	
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A copy of the advice will be available at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill amends section 156B of the Act, extending existing offences to ensure they apply to the new obligation to join an industry dispute scheme. The enforcement options for this offence (ie, infringement fine, seeking pecuniary penalties from the High Court, or accepting undertakings) align with options for breaches of the Commerce Commission codes (eg the 111 Contact Code and the Copper Withdrawal Code). The Act creates one additional enforcement option, allowing the Commerce Commission to apply to the High Court for an order to compel a provider to join a scheme. The range of enforcement options gives the Commerce Commission discretion about how it will pursue breaches of the new requirement.</p> <p>The Bill also creates an information gathering power for the Commerce Commission that enables it to determine if a telecommunications provider is liable to join an industry dispute resolution scheme. Failure to comply with the notice is an offence. Without this power, the Commission would be unable to identify non-compliant providers or determine if it should undertake enforcement action against liable providers that have not joined a scheme.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted at the policy development stage from a human rights, offence and penalty perspective. The Ministry did not have any comment on these provisions.</p>	

Privacy issues

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?	NO

External consultation

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?	YES
<p>MBIE released a public discussion document in May 2024. It is available here: https://www.mbie.govt.nz/dmsdocument/28314-enhancing-telecommunications-regulatory-and-funding-frameworks-discussion-document-pdf. The discussion document identified seven telecommunications regulatory issues for consideration. The discussion document sought feedback on these issues, including on MBIE's preferred options to address some issues.</p> <p>MBIE received 28 submissions from a range of telecommunications industry stakeholders and related advocacy groups. The feedback received from the discussion document informed MBIE's advice to Government on potential regulatory changes, including the decision not to progress regulatory change in some cases. Stakeholders had different views on issues depending on the nature of their role in the sector and how they would be impacted. More information about the stakeholder feedback on each of the issues that are being progressed in the Bill can be found in the regulatory impact statement, available here: https://www.mbie.govt.nz/dmsdocument/30533-regulatory-impact-statement-improving-telecommunications-regulatory-and-funding-frameworks-proactiverelease-pdf. Public submissions are available here: https://www.mbie.govt.nz/document-library/search?keywords=telecommunicationsregulatoryfundingframeworks2024.</p>	

Other testing of proposals

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?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Telecommunications Development Levy funds non-commercial telecommunications services and infrastructure. The amount of the Telecommunications Development Levy is currently set in the Act and requires a full legislative process to increase it. The Bill creates a regulation-making power that enables the Telecommunications Development Levy amount to be set in regulations via an Order in Council, following the recommendation of the relevant Minister under the Telecommunications Act 2001, rather than a full parliamentary process to amend the legislation. This is more flexible and allows Government to respond more quickly to connectivity challenges. The levy can already be reduced by Order in Council (section 92 of the Act).</p> <p>Before recommending regulations to increase the levy amount, the relevant Minister will be required to consult with levy payers. The Telecommunications Development Levy can only be used for the purposes outlined in section 90 of the Telecommunications Act.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

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?	NO

Powers to make delegated legislation

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?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
See answer at 4.2	

Any other unusual provisions or features

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