MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Paul Goldsmith	**Portfolio**	Media and Communications
Title of Cabinet paper	Improving Telecommunications Regulatory and Funding Frameworks	**Date to be published**	20 March 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
December 2024	Improving Telecommunications Regulatory and Funding Frameworks	Office of the Minister for Media and Communications
2 December 2024	Improving Telecommunications Regulatory and Funding Frameworks CBC-24-MIN-0124 Minute	Cabinet Office
20 November 2024	Regulatory Impact Statement Improving Telecommunications Regulatory and Funding Frameworks	MBIE

Information redacted **YES / ~~NO~~** *(please select)*

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Some information has been withheld for the reasons of Confidential information entrusted to the Government, Commercial information and Confidential advice to Government.

Regulatory Impact Statement: Improving telecommunications regulatory and funding frameworks

Coversheet

Purpose of Document	
Decision sought:	*Analysis produced for the purpose of informing Cabinet policy decisions on changes to the telecommunications regulatory regime*
Advising agencies:	*Ministry of Business, Innovation and Employment*
Proposing Ministers:	*Minister for Media and Communications*
Date finalised:	*20 November 2024*

Problem Definition

Telecommunications markets are continuing to evolve with new technologies, business models, and competitive dynamics. While our telecommunications regime is generally serving New Zealanders well, specific issues within the regime have been identified as requiring attention. We consider that if these specific issues are not addressed, we run the risk of our regulatory regime no longer being fit for purpose and becoming less effective in delivering good outcomes for New Zealanders.

Executive Summary

Telecommunications markets are evolving rapidly with new technologies, business models, and competitive dynamics. In May 2024, the Minister for Media and Communications released a discussion document on targeted changes to improve telecommunications regulatory and funding frameworks. More significant changes to the regulatory regime had been deemed out of scope as our regulatory settings are generally delivering good outcomes for consumers. The overall purpose of the proposals in this regulatory impact statement is to ensure the telecommunications regulatory regime remains fit for purpose for current and future telecommunications markets and continues to deliver good outcomes for consumers.

The proposals relate to two key pieces of legislation underpinning the telecommunications regulatory regime: the Telecommunications Act 2001 and the Telecommunications (Interception Capability and Security) Act 2013 (TICSA).

Consumer access to telecommunications dispute resolution services

It is currently voluntary for telecommunications companies to join an industry dispute resolution scheme. Over time this has led to a growing number of consumers without access to an industry dispute resolution scheme. In 2024, this number was estimated by the Commerce Commission to be around 200,000 consumers. This is driven largely by the fact that some market entrants have not joined a scheme. We are concerned that a lack of access can lead to poor consumer outcomes, particularly because telecommunications complaints have remained high. This indicates the need for dispute resolution when using telecommunications services.

MBIE's preferred option is to amend the Telecommunications Act to introduce a mandatory requirement for retail telecommunications providers making over $10 million in annual telecommunications revenue to join an industry dispute resolution scheme. This change

will ensure most telecommunications consumers can access an industry dispute resolution scheme, while also taking into account the impact of scheme membership costs on small telecommunications providers. We also propose to amend the Telecommunications Act to widen the types of schemes that can be recognised as an industry dispute resolution scheme under the Act and clarify how those schemes are recognised by the Commerce Commission. The current drafting may prevent the formation of alternate dispute resolution schemes, which the Act provides for.

Duration and scope of rights to access shared property for fibre installations

The Telecommunications Act establishes rights for fibre providers to access shared property to install fibre, without the consent of all affected property owners, in certain circumstances. These rights are set to expire on 1 January 2025. Without the rights, it will be harder for consumers to get a fibre connection if the installation passes through shared property (for example, down a long driveway).

We are proposing to reinstate the rights on a permanent basis. We expect the rights will be needed for the foreseeable future, given New Zealanders' growing demand for data, copper withdrawal in fibre areas and the continued expansion of the fibre footprint on commercial terms. Our view is that the protective mechanisms built into the framework mitigate against potential consumer harm towards property owners that do not want fibre installed through their shared property. The protective mechanisms are: access to dispute resolution, limits on how much shared property can be impacted and requirements for reinstatement of property, plus options for objection in some instances.

We are also proposing two amendments to the operation of the rights:

- Increase the amount of property that can be impacted under the 'medium impact' category. This will allow the length of impacted property to increase from 3m to 8m. This increase is to allow for installations up longer driveways.
- Remove the requirement for the rights to be invoked by way of a retail broadband request. This will allow landlords and property developers to make their properties 'fibre ready'.

Application of regulatory regime to offshore providers

The Telecommunications Act currently has no explicit extra-territorial effect, and TICSA has limited explicit extra-territorial effect. This means, in some instances, telecommunications providers based offshore that provide services in the New Zealand market may not be subject to regulatory obligations that a telecommunications provider based onshore, offering the same services, is subject to.

We are proposing to amend the Telecommunications Act and TICSA to give certain parts of these Acts an extra-territorial effect, bringing offshore providers into scope of New Zealand's regulatory regime on the same basis as New Zealand-based telecommunications providers, where relevant to the services the provider offers. This will prevent any ambiguity around the scope of obligations on telecommunications providers due to business models or technologies they use. This includes telecommunications levy liability, retail service quality obligations and network security and interception capability obligations under TICSA. While current low-earth orbit satellite providers offering services in New Zealand have a New Zealand presence, this may not be the case in the future. We consider this proposal will ensure the regulatory regime continues to operate well, delivering good outcomes for consumers and ensuring an even-playing field between telecommunications providers based on and offshore.

Process to set the Telecommunications Development Levy amount

The Telecommunications Development Levy (TDL) is used to fund telecommunications capabilities or services that are not commercially available or are offered commercially, but not at an affordable price to end users. The TDL amount is set in the Telecommunications Act. Connectivity needs are evolving and we expect the demand for non-commercial telecommunications infrastructure and services to continue. For the TDL to effectively meet its purpose, there needs to be greater flexibility for setting the levy amount to ensure the government can deliver necessary non-commercial services efficiently. A lower degree of flexibility has already resulted in poor connectivity outcomes for those in rural areas, with Budget funding used in some cases to support connectivity improvements rather than the TDL.

MBIE's preferred option is to amend the Telecommunications Act so that the amount of the TDL is set in regulations instead of primary legislation, providing flexibility for how the TDL amount is set. This option will include safeguards, including a requirement to consult with those liable to contribute to the levy, ahead of any increase.

Limitations and Constraints on Analysis

We have a medium level of confidence in the quality of evidence available to inform this regulatory impact statement. This reflects general limitations in the evidence available to inform our analysis of the policy problems described and their options. We have largely relied on data and qualitative evidence obtained from:

- submissions on a public MBIE discussion document on targeted changes to improve telecommunications regulatory and funding frameworks
- ongoing engagement with stakeholders and other government agencies about specific issues with the regulatory regime, and/or any aspects they identified as requiring a review, and the impacts of the status quo on their businesses
- data and insights from reviews and reports developed by the Commerce Commission (most of which are publicly available).

One constraint on our understanding of the impact of the options is the lack of submissions from individual consumers or property owners. Of the 28 submissions we received on the discussion document, most were from telecommunications providers or industry associations. This may have impacted our consideration of some of the options in this regulatory impact statement. Feedback from property owners and consumers would have been particularly beneficial in relation to policy problem 2 (about the rights to access shared property) given the impact on property rights.

In place of feedback directly from consumers, we relied on qualitative evidence provided through submissions (regarding consumer experiences) and previous engagement with the industry and Commerce Commission. Despite not receiving submissions from individual consumers, submissions from the Telecommunications Users Association of New Zealand (TUANZ) and Rural Women New Zealand have provided us with some insight into the concerns of, and impact on, our proposals on consumers. We appreciate that submissions from individual consumers may have exposed issues we have not covered.

Additional limitations and constraints in this regulatory impact statement include:

- MBIE only considered targeted changes to the telecommunications regulatory regime, which limited the issues and the range of options we considered. Issues or options that will result in large-scale change to regulatory underpinnings were noted as out of scope in the discussion document. The decision to focus on

targeted changes to the regulatory regime was a decision made by MBIE, and agreed by the Minister for Media and Communications, at the beginning of this work programme. It acknowledges that current regulatory settings are largely delivering good outcomes for consumers (regarding price and quality of services) and competition, but that there are enhancements that can be made to ensure the regime remains fit for purpose and continues to deliver good outcomes for consumers and competition

- the issues and options identified are technical in nature. While MBIE wrote the discussion document with a public audience in mind, the technical nature may have impacted the level of engagement with the discussion document that informed our analysis
- analysis of the options for policy problem one is limited by assumptions made about the benefits of having access to a dispute resolution scheme that is subject to obligations under the Telecommunications Act, namely oversight by the Commerce Commission. It is unclear whether consumer outcomes will be materially better in a scheme that is subject to obligations under the Telecommunications Act, compared to another dispute resolution scheme that does not have such obligations
- the proposal to ensure key parts of the telecommunications regulatory regime apply extra-territoriality (the preferred option for policy problem 3) was not directly consulted on. The discussion document noted MBIE was considering regulatory issues in relation to the increase in satellite providers in the New Zealand telecommunications market and sought specific feedback on expanding the scope of levy liability. We consider the information we gained through consultation, including subsequent targeted consultation with two low-earth orbit satellite providers, is sufficient to inform our analysis
- the scope for amendments is limited to regulatory options only. While we did outline non-regulatory options in the document, we ultimately considered that non-regulatory options were unlikely to address the policy problems identified.

MBIE considers that the qualitative assessment based on feedback from stakeholders on the discussion document and supplementary information and discussions has provided a reasonable level of confidence for the Minister to make informed decisions on options for changes to be presented to Cabinet.

Deborah Salter

Manager

Communications Policy

Ministry of Business, Innovation and Employment

20 November 2024

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry of Business, Innovation and Employment

Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the Regulatory Impact Statement. The panel considers that it meets the quality assurance criteria.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The telecommunications market in New Zealand

1. The communications regulatory system spans fixed line, wireless and postal communications networks and includes the allocation of spectrum resources for radio technologies.

2. The telecommunications sector provides an essential service that keeps New Zealanders connected and enables us to benefit from new technologies. Retail telecommunications services in New Zealand are principally supplied over three technologies: the copper network, fibre broadband networks, and mobile and other wireless technologies, including satellites. In 1989, the New Zealand telecommunications market was deregulated allowing for new competition in the market.

3. Over the last decade digital connectivity in Aotearoa has changed substantially. This follows significant government and private sector investment in the rollout of infrastructure to support access to fast broadband for New Zealanders. Government has allocated more than $2 billion to digital connectivity and the private sector almost $16 billion. A key aspect of this progress was the government's Ultra-Fast Broadband (UFB) programme. The UFB build was completed in December 2022.

Overview of telecommunications regulatory regime

4. Regulation plays a vital role in achieving good outcomes from New Zealand's telecommunications markets. A core focus of the regulatory system is the regulation of the natural monopoly characteristics in parts of communications networks and of the quality of telecommunications services.

Telecommunications Act 2001

5. The Telecommunications Act provides the framework for the regulation of telecommunications markets in New Zealand. It promotes competition in telecommunication markets through the provision of an access regime for copper services, separation of wholesale and retail fibre services, and prohibitions on discriminatory treatment of downstream businesses (ie retail internet service providers). The Telecommunications Act is supported by a series of deeds that provide for open and competitive telecommunications markets.

6. The Telecommunications Act allows the Telecommunications Commissioner to investigate whether additional services should be regulated and to make recommendations to the Minister. The Commerce Commission can also recommend the removal of regulation if markets become more competitive.

7. In 2018, the Telecommunications (New Regulatory Framework) Amendment Bill was passed, amending the Telecommunications Act to respond to large-scale transformation of our networks from copper to fibre under the UFB initiative.

8. Subsequently, Part 7 of the Telecommunications Act provides for more regulatory oversight of telecommunications retail service quality. The Telecommunications Act gives the Commerce Commission powers to improve retail service quality including customer service, faults, installation, contracts, product disclosure, billing, switching, service performance, speed and availability. The Commerce Commission does this through monitoring retail service quality and making information available that informs consumer choice. In addition, the Commerce Commission can review industry codes, provide guidelines on these matters and create its own retail service quality codes.

9. The Telecommunications (New Regulatory Framework) Amendment Act also introduced provision for the development of consumer protection codes, such as:

    - the Copper Withdrawal Code that sets out the minimum requirements Chorus must meet before it can stop providing wholesale copper phone and broadband services, as the provider of New Zealand's copper telecommunications network
    - the 111 Contact Code that ensures vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means of contacting emergency services in the event of a power failure.

10. Part 7 of the Telecommunications Act requires that the Commerce Commission reviews industry dispute resolution schemes that hear consumer complaints in line with Commerce Commission codes described above and other retail service quality issues.

11. The Telecommunications (Property Access) Amendment Bill 2016 introduced new measures in the Telecommunications Act in relation to access to property to deploy fibre. The Telecommunications (Property Access) Regulations 2017 sets out the method of installation in a low (Category 1) impact installation, and medium (Category 2) impact installation.

The Telecommunications (Interception Capability and Security) Act 2013

12. The Telecommunications (Interception Capability and Security) Act 2013 (TICSA) is part of the telecommunications regulatory regime. The legislation was designed to prevent, sufficiently mitigate, or remove security risks from the design, build, and operation of public telecommunications works.

13. TICSA establishes obligations for telecommunications providers (network operators and service providers) in two areas: interception capability and network security.

14. The Director-General of the Government Communications Security Bureau has a regulatory role for network security under Part 3 of TICSA. A register of network operators is maintained by the New Zealand Police.

The telecommunications market is evolving

Proliferation of telecommunications services delivered by satellite

15. A significant recent development in the telecommunications landscape in New Zealand is the availability and uptake of low-earth orbit satellite broadband. Low-earth orbit satellites can provide broadband services at low latency and speeds like those of modern terrestrial-based broadband services. Satellite connections are growing quickly, reaching 37,000 in the year of June 2023. This represents 14 per cent of rural connections.

16. This new model of satellite services differs from traditional terrestrial-based telecommunications because providers may not be based in New Zealand, and/or the transmission of communications may occur outside of New Zealand. While low-earth orbit satellite providers are the current market disruptor, we expect that the business models of mid-earth orbit, high-earth orbit and geo-stationary satellites will evolve to

see them offer more direct-to-consumer or business telecommunications services in the New Zealand market that can compete with terrestrial-based services.

What is the policy problem or opportunity?

17. The rise of new technologies, business models and competitive dynamics creates challenges for our current regulatory settings. We need to ensure the regulatory regime is fit for purpose and can respond to the changing nature of the telecommunications landscape.

18. In response to this problem, this regulatory impact statement examines four specific policy problems we seek to address. Some of these policy issues include sub-issues. The following sections describe the background to the issue and the policy problem.

Policy problem 1: Consumer access to dispute resolution

19. Part 7 of the Telecommunications Act provides for one or more industry dispute resolution schemes to be set up by the telecommunications industry and reviewed by the Commerce Commission. There is currently only one scheme recognised by the Telecommunications Act, the Telecommunications Dispute Resolution scheme (TDR). The TDR does not charge consumers to make a complaint.

20. Industry dispute resolution schemes recognised under the Telecommunications Act are required to hear complaints on Commission codes and industry retail service quality codes. There are currently two Commerce Commission codes: the 111 Contact Code and the Copper Withdrawal Code. The Telecommunications Act provides for the Commerce Commission to develop other codes, including a retail service quality code. Industry retail service quality codes cover a broader range of telecommunications issues and are made by the Telecommunications Forum, the industry body representing a majority of the New Zealand telecommunications sector.

21. The Telecommunications Act does not compel telecommunications providers to join a dispute resolution scheme. However, Telecommunications Forum members (which includes the largest retail telecommunications providers in New Zealand) are required to be members of the TDR – this is a decision of the Telecommunications Forum. Non-TCF members may choose to join a recognised scheme (currently, this means the TDR as there are no other schemes recognised under the Act) or join another dispute resolution scheme not recognised under the Telecommunications Act. Schemes that are not recognised under the Telecommunications Act do not hear complaints about Commission codes. Customers of providers that are not members of a recognised scheme can still submit disputes to a recognised scheme if the issue is related to a Commission code.

22. The Government Centre for Dispute Resolution has identified that dispute resolution services are important because disputes can be damaging, expensive, and time consuming. They can affect not only individuals, but organisations, government, and the economy. Resolving disputes earlier and more effectively benefits New Zealand and the wider economy, and dispute resolution services facilitate this goal without court intervention.

23. Prior to the creation of Part 7 of the Telecommunications Act, the Commerce Commission reported an ongoing, high level of consumer complaints in the telecommunications sector. Despite work done by the sector this trend continues. Between 1 July 2022 to 30 June 2023 the TDR scheme reported an all-time high of 3725 complaints received. This represents a 64 per cent increase from the previous year. In 2024, nearly a quarter of consumers (24 per cent) in a New Zealand Consumer survey claim to have spent more than 10 hours trying to resolve a problem with their home-based telecommunications service (eg landline or internet), and 28 per cent

reported that their problem was not easy to resolve.[1]

24. The TDR reports it has heard and resolved a variety of disputes in 2024. These include disputes relating to unfair charges, delays in internet installation, network faults, confusing or misleading contracts, or contradictory and unhelpful customer service. The 2023 annual TDR report identifies billing as the top complaint theme, representing around 40 per cent of all complaints raised at the TDR in 2023. This includes around 850 complaints about disputed charges.

25. In 2018, it was estimated that the TDR covered 95 per cent of telecommunications customers. We expect this high level of membership was driven by the requirement of the Telecommunications Forum to join the TDR.

Problem definition

26. In 2024, the Commerce Commission estimated that 200,000 New Zealanders did not have access to a telecommunications industry dispute resolution scheme recognised by the Telecommunications Act. This number has increased from the estimated 120,000 consumers without access to such a scheme in 2022. We expect that part of this growth of consumers without access is from the increase in uptake of low-earth orbit satellite broadband services that do not offer access to an industry dispute resolution scheme. As the market evolves and more non-Telecommunications Forum members gain market share, we are concerned that the number of consumers unable to access independent and industry-specific dispute resolution schemes will only continue to grow.

27. Given the technical nature of telecommunications issues and information asymmetry between consumers and their telecommunications provider, MBIE is concerned about consumers not having access to an impartial and regularly reviewed dispute resolution scheme providing advice on telecommunications issues. Customers without access to a scheme do not have an expert and impartial body to consult with on issues of unfair charges, unreasonable delays in their fibre installation, or confusing contract clauses. We are concerned that the ongoing growth in customers without access to an industry dispute resolution scheme will result in higher levels of unresolved complaints and poorer outcomes for consumers.

Definition of 'industry dispute scheme'

28. The Telecommunications Act currently allows for more than one industry dispute resolution scheme 'set up by the telecommunications industry' to emerge. Industry dispute resolution scheme is defined in section 232 of the Telecommunications Act. It is currently defined as a) the TDR or b) "any other dispute resolution scheme that has been set up by the telecommunications industry and deals with consumer complaints". Thus far, the TDR is the only scheme that has been recognised under the Telecommunications Act as a telecommunications industry dispute resolution scheme.

29. The telecommunications market has evolved, demonstrated by the rise of both low-earth orbit satellite providers, and providers offering telecommunications bundled with other utilities (referred to as bundled service providers). As the options within the market have expanded, consumers may be better served by alternate dispute resolution schemes that have expertise in the type of services they are receiving.

30. We consider the current definition of 'industry dispute resolution scheme' may be too narrow and place undue emphasis on the origin of a dispute resolution scheme, rather than who it serves. The narrow definition may prevent alternate dispute resolution

[1] New Zealand Consumer Survey 2024 Report, NZ CONSUMER SURVEY 2024 – SUMMARY REPORT

schemes that serve telecommunications providers with varied or alternate needs (for instance smaller niche providers or those providing bundled services) to be recognised under Part 7 of the Telecommunications Act. We want to ensure that dispute resolution schemes with industry expertise can emerge, regardless of who established them.

Policy problem 2: Accessing shared property for fibre installations

31. In 2017, a regulatory framework was established to support increased fibre uptake following significant government investment in the Ultra-Fibre Broadband (UFB) programme. The framework, set out in the Telecommunications Act, provides statutory rights to access shared property to install, maintain, repair and upgrade fibre. It balances connecting as many dwellings as possible to fibre with the impact on property rights.

32. The rights allow fibre providers to access shared property to install fibre connections in some circumstances, where the consent of more than one party would otherwise be required. For example, the rights allow a provider to lay fibre in a shared driveway even if one neighbour, who co-owns the driveway, has not consented to the work.

33. These rights can only be used by fibre providers that are members of the prescribed disputes resolutions scheme, the Broadband Shared Property Access Disputes Scheme ('BSPAD' scheme) administered by the Utilities Disputes Limited (UDL). Other conditions include notification requirements, limits on invasiveness, and the requirement to reasonably reinstate the modified area.

34. The rights can only be used for low (Category 1) and medium (Category 2) impact fibre installations. Category 1 installs relate to soft surface modifications (for example digging into grass). Category 2 installs have a more lasting impact than Category 1 installations (for example, digging into and resealing a small part of a concrete drive to conceal a cable). The installation details of the two categories are set out in the Telecommunications (Property Access) Regulations 2017.

35. The rights have been used extensively by New Zealand's three largest local fibre companies (Chorus, Enable Networks, and Tuatahi First Fibre) to deploy fibre to premises requiring access to shared property.

36. The rights are set to expire on 1 January 2025. The Minister for Media and Communications is currently seeking a temporary continuation of the rights through the Regulatory Systems (Economic Development) Amendment Bill, while the long-term future duration and scope of the rights is being determined (which is the focus of this regulatory impact statement).

Problem definition

37. As noted above, the rights to access shared property to install fibre are set to expire on 1 January 2025. Based on the current level of uptake, the continued expansion of the fibre footprint and the copper withdrawal process in fibre areas, we need to consider whether it is appropriate to extend the rights beyond 1 January 2025 to continue to support fibre uptake.

38. At the time the provisions were created, this expiry date was the date which the bulk of fibre connections were anticipated to be complete by. However, fibre uptake within the existing UFB footprint is still sitting around 76 per cent, and copper is now actively being withdrawn in areas where fibre is available. We expect a sharp increase in requests for connections to fibre (and other connectivity technologies) in the next few years. Fibre providers are also still expanding their networks on commercial terms, therefore providing further opportunities for consumers to connect to fibre.

39. Without legislative support, providers will need to rely on alternative ways of pursuing access to shared property to install fibre, such as easements (if available) or engaging directly with property owners. Easements are not equally available to all fibre providers. Where an easement can be applied, it can be a timely process and can incur an administrative cost. Additionally, manually obtaining consent from property owners means that one person may delay a fibre installation for multiple people. In these scenarios, installations that require access to shared property are likely to be more difficult and costly, and in some cases, the fibre installation will be cancelled. The rights were established to mitigate these factors.

40. Some New Zealanders do not have access to fibre (currently 13 per cent of New Zealanders live outside of existing fibre areas). Where fibre is available, it provides New Zealanders with the opportunity to access a connectivity technology that can handle very high data loads. There has been a significant increase in New Zealanders' average data demands in recent years, and we expect this trend to continue. For example, average monthly data use for Chorus' fibre network was around 350GB per month in 2020. This average now sits at just under 600GB per month. We need to consider whether the rights should still be available, to make it as easy as possible for New Zealanders to connect to fibre, future proofing the regulatory framework to meet increasing data demands.

Amending regulations to increase scope of medium impact installations

41. The statutory rights have remained unchanged since implementation in 2017. We have had feedback from fibre providers that there are some installations that are out of scope of the rights, which in their view, will still only have a medium impact on property.

42. The impact of this problem is that some people may not be able to get fibre deployed through shared property, even though the actual impact to the shared property is very similar to what the rights already allow for. This creates inconsistency of outcomes for consumers, perhaps unnecessarily limiting access to fibre for consumers that want it.

43. We are aware of situations where a fibre installation has dragged out over years because the impact of the install is slightly greater than what is allowed for in regulations (and therefore the rights cannot be used). For example, a consumer wrote to the Minister for Media and Communications noting several property owners on a shared accessway were frustrated by the inability to invoke the rights to install fibre, which they considered would best meet their connectivity needs. This is because the installation required work to a long driveway.

44. Based on such feedback, we are considering whether the scope of the rights for a medium impact (Category 2) installation should be expanded if the rights are reinstated in some form beyond 1 January 2025.

Retail order clause

45. The rights can only be used where the consumer has ordered a fibre internet connection from a retail service provider. The retailer then contacts a fibre provider to complete the installation. This makes it difficult for landlords and developers to rely on the rights when getting fibre to their property because they will not want to order a broadband subscription (because they will not be living at the address).

46. We understand the impact of this is that it creates inefficiency in the process to use the rights to deploy fibre. While tenants and homeowners will ultimately be able to order a fibre broadband product once they move in, the home could have been made 'fibre ready' if the landlord or property developer could get the installation done by dealing directly with the fibre provider.

Policy problem 3: Application of regulatory regime on providers based offshore

47. As noted above, there has been an increase in the availability and uptake of telecommunications services provided directly to consumers via satellites based outside of New Zealand. We expect this trend to continue, particularly in rural areas of New Zealand, given the coverage offered via satellite technology.

48. Given this development, MBIE consulted on whether telecommunications levy liability should be amended so that it explicitly captures these providers and other providers based offshore. The discussion document also noted that we were considering the impact of this market development on other parts of the regulatory regime, such as access to consumer dispute resolution and obligations under TICSA.

49. Telecommunications services delivered via satellite differ from traditional terrestrial-based telecommunications because, in some cases, providers may not be based in New Zealand and/or the transmission of communications may occur outside of New Zealand (even if there is a New Zealand registered business). Some telecommunications providers that deliver services via satellite use earth stations based outside of New Zealand (ie they may not have earth station infrastructure in New Zealand). The location of earth stations varies by business model, network design and how many customers they are looking to support in New Zealand.

50. The Telecommunications Act does not have any explicit extra-territorial clauses, while TICSA has some. For example the definition of 'service provider' in TICSA can capture any person within or outside New Zealand that is providing or making available services in New Zealand. At the time the Telecommunications Act and TICSA were enacted, it was not foreseen that network operators that provide mass market services (ie direct to consumers) would be based offshore and use technologies, such as satellites, to provide services directly to New Zealanders.

51. Under current settings, offshore providers can operate in our telecommunications market, but some may not be subject to our core telecommunications regulatory obligations because of their business model (ie providing transmissions via satellite outside of New Zealand or otherwise being based offshore). In other cases, the lack of explicit extra-territorial effect in legislation may cause uncertainty about whether a provider is subject to such obligations.

52. This means that some telecommunications providers that offer services in the New Zealand market may not be subject to the same levels of regulatory compliance as New Zealand-based telecommunications providers if they do not have a New Zealand presence or their technology is based offshore (for example, in space). For example, some offshore providers may be excluded from existing levy liability provisions, from complying with retail service quality obligations and obligations to engage with the network security and interception capability framework. While existing low-earth orbit satellite providers in New Zealand are aware of their regulatory obligations, this may not be in the case as more providers enter our market.

Problem definition

53. The 'regulatory gap' between the providers operating in our telecommunications market and subject to our regulatory regime, and those operating in our telecommunications market but not subject to the same obligations, raises various issues. For example, it may:

    - create an inconsistency in the regulatory regime, where offshore providers have an unfair competitive advantage over New Zealand-based providers because they are not subject to the same regulatory obligations and associated costs. In this scenario, the provider with the advantage can price their services more

competitively (in a way that may not be possible for an onshore provider) and gain more market share. Such a competitive advantage is likely to impact competition in the market and in certain cases, can lead to onshore businesses leaving the market because they cannot compete on the same terms. This will have consequences for availability of connectivity options for consumers.

- leave consumers of telecommunications services provided by offshore companies without the consumer protections provided by of the telecommunications regulatory regime.

54. While we are currently considering the question of the extra-territorial application of the telecommunication regulatory regime regarding satellite providers, we note that we also need to consider how this applies more generally to any telecommunications provider based partially or wholly offshore (ie businesses or telecommunications services based outside of New Zealand). Telecommunications technology evolves quickly - to ensure our regulatory system is fit for purpose, it must be flexible enough to address business models that were not anticipated.

Policy problem 4: Setting the amount of the Telecommunications Development levy

55. The Telecommunications Development Levy (TDL) was established by legislation in June 2011 to fund telecommunications infrastructure and services in the public interest which are otherwise not expected to be available commercially, or which are unaffordable.

56. The total amount collected for the TDL is set in Schedule 3B of the Telecommunications Act. It was initially set at $50 million per annum until the end of the 2015/2016 financial year. It was then decreased to $10 million per annum and thereafter. This change was made because the deployment of network infrastructure through the Rural Broadband Initiative was expected to be complete. The TDL is further adjusted by CPI accounting for inflation each year.

57. The Commerce Commission determines liable persons for the purpose of the TDL. A liable person (or company) is one that provides a telecommunications service in New Zealand by means of operating a component of a public telecommunications network. These services may be the transmission of voice, data, or any other content over mobile or fixed line public networks. Only those parties that earn more than $10 million in telecommunications revenue in the preceding financial year must contribute to the TDL. These parties are known as ‘qualifying liable persons’. At the end of June each year, the Commerce Commission releases the list of qualifying liable persons. The Commerce Commission then determines the amount each qualifying liable person must contribute to the TDL, proportionate to their earnings.

58. The TDL has been used to provide funding for rural telecommunications infrastructure (for example, the first phase of the Rural Broadband Initiative), upgrades to the emergency service calling system, the New Zealand Relay Service (for Deaf, hard of hearing, speech-impaired and deafblind New Zealanders), and backhaul infrastructure for the Chatham Islands. These services are often non-commercial and are therefore less likely to be provided by telecommunications providers, or they are provided but at very high prices to New Zealanders. The TDL provides a sustainable funding source for services such as those described.

59. An increase of the TDL amount requires an amendment to the Telecommunications Act, which requires a full parliamentary process. This may be constrained by legislative resourcing and bidding considerations. Any decrease to the levy amount can be done by an Order in Council following a recommendation from the Minister for Media and

Communications. A decrease to the levy amount is administratively and procedurally easier because it does not need to undergo the full parliamentary process.

Problem definition

60. It is important that the TDL can be used to fund telecommunications services that are in the public interest to provide but are not available commercially. However, there is a risk under the status quo that when connectivity issues that require TDL funding arise, these issues will not be addressed in a timely and efficient manner because of the process required to increase the levy amount.

61. New Zealand's connectivity needs evolve and change over time. For example, the increase in general population and changes in how people use telecommunications networks are contributing to higher demand on the capacity of rural mobile towers. We are concerned that if an increase to the levy amount is required, the administrative and procedural realities of amending the levy amount takes too long. This leads to the adoption of a piecemeal approach to address connectivity challenges which often require immediate and efficient responses.

62. If the Government is unable to respond appropriately and efficiently to the needs and demands of end users, this will prolong the delivery of often essential services at the standard needed for New Zealanders to enjoy good connectivity and make the most of the digital environment. Those who already face more connectivity challenges (for example, those in rural areas) are likely to be most impacted by this risk.

What objectives are sought in relation to the policy problem?

63. The objectives of this policy work are to produce outcomes that:

- are consistent with the original intent of the regulatory regime
- protect consumer interests against potential harm
- ensure New Zealanders have access to high-quality connectivity infrastructure and services that meet their needs
- promote competition in the telecommunications market
- are proportionate to the issue being addressed and are transparent, and
- incentivise innovation and further investment in telecommunications networks.

64. Trade-offs between the different objectives will need to be balanced where competing interests exist. For example, introducing regulatory obligations on service providers can be in the interest of consumers, but may create barriers to market entry, lowering competition.

Consultation

65. In May 2024, the Minister for Media and Communications released a discussion document on targeted changes to improve telecommunications regulatory and funding frameworks.

66. We received 28 submissions from mobile network operators, representative groups (of consumers and the industry), retail service providers, local fibre companies, wireless internet service providers, satellite providers, dispute resolution schemes, a professional association, an emergency service provider and a mobile tower company. We note the emergency service provider (Hato Hone St John) submitted solely on an issue which is no longer part of this policy work and is therefore excluded from the regulatory impact statement.

67. We did not receive any feedback from specific individual consumers or owners of shared property. However, we did receive a submission from the Telecommunications Users Association of New Zealand as a representative group of consumers and the New Zealand Law Society which was concerned with property owners' rights.

68. We have included stakeholder views on the specific policy issues in section 2 below.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

69. The proposals will be assessed against the criteria below, which has been derived from the above policy objectives:

- **Consistency with the existing regulatory regime:** Is the option consistent with the policy intent of the existing Telecommunications Act and regulations?
- **Protecting consumer interests against potential harm:** Does the option address information asymmetry between consumers and telecommunications service providers? Does the option protect consumers against harm from the actions of telecommunications providers? When things go wrong, do consumers have access to tools to assist them?
- **Consumer access to high quality connectivity infrastructure and services for New Zealanders:** Does the option support consumers to have access to high-quality connectivity options that meet their needs?
- **Promoting competition:** Does the option support a low barrier to entry to the telecommunications market? Does the option result in consistency of regulatory obligations across the market?
- **Proportionate and transparent regulatory design:** Are telecommunications providers and consumers likely to understand their obligations? Is the option proportionate to the issue being addressed, given:
    - excess regulatory obligations can drive costs that are passed onto consumers
    - not imposing regulations where they might be needed can create ambiguity and drive costs for regulators, the government and therefore New Zealanders.
- **Incentivising innovation and further investment in telecommunications:** Does the option support the delivery, and investment in, products and services to deliver better connectivity options for New Zealanders?

What scope will options be considered within?

70. The options considered to address each policy problem include options proposed in MBIE's discussion document and in some cases, new options that MBIE has developed after further analysis of submissions.

71. Options that have been ruled out of scope and non-regulatory options have been discussed at the end of each of the policy problems below.

72. Relevant experience from other countries such as Australia, the United States of America and the United Kingdom have also been considered in the policy problems.

What options are being considered?

Policy problem 1: Consumer access to dispute resolution

73. The following options were considered:

- Option 1 – Status quo: Membership in an industry dispute resolution scheme remains voluntary.
- Option 2 – Amend the Telecommunications Act so that it is a requirement to join an industry dispute resolution scheme for:
    - Option 2a – all retail telecommunication providers offering services in New Zealand
    - Option 2b – only those retail telecommunication providers that earn over $10 million in annual New Zealand telecommunications revenue.

74. As noted in the section on limitations and constraints, the options below assess whether membership should be mandatory, or partially mandatory, in a scheme that is subject to obligations under the Telecommunications Act. This supports the self-regulatory framework established under the Telecommunications Act, ie that the industry can determine a number of self-regulatory requirements under the Act with the oversight of the Commerce Commission. We consider it is appropriate that any intervention in regard to dispute resolution membership should be consistent with the approach set out under the Telecommunications Act, otherwise a broader review of the self-regulatory model would be required. We do not consider, based on the evidence we have, that such a review is warranted at this time. This approach further links to what we have outlined in our disclosure statement above: that the regulatory framework is generally delivering good outcomes for consumers and a more significant review is not required.

75. However, we also note that we do not have evidence to show that consumer outcomes will be materially better if access to a dispute resolution service that is subject to obligations under the Telecommunications Act is required, compared to requiring access to dispute resolution services that are not subject to such requirements. We are assuming that adhering to requirements under the Telecommunications Act, namely the review by the Commerce Commission, will improve quality and consistency of telecommunications services, but this is an assumption only. The following analysis should be read with this limitation in mind.

Option 1 – Status quo: Membership in an industry dispute scheme remains voluntary

Description

76. This option will keep current legislative settings. The Telecommunications Act currently does not require telecommunications providers to be members of an industry dispute resolution scheme.

77. The Telecommunications Forum is the industry body representing the majority of the telecommunications sector in New Zealand. The Telecommunications Forum has a regulatory role to develop industry retail service quality codes that set various telecommunications standards. These are heard by the TDR.

78. The Telecommunications Forum requires all members to be a member of the TDR. The TDR hears complaints on the industry code that governs telecommunications service

quality, called the Customer Care Code. Consumers must engage their provider on their complaint in the first instance, before they can lodge a dispute with the TDR.

79. As mentioned above, telecommunications providers can choose to join any dispute resolution service, including ones not recognised under the Telecommunications Act. For instance, UDL currently offer a telecommunications disputes scheme known as the Telecommunications Complaints Scheme. One telecommunications provider is a member of this UDL telecommunications scheme. The UDL also offers dispute resolution schemes for utilities such as electricity, gas, and water.

80. Any industry dispute resolution scheme is required to hear complaints related to Commerce Commission codes. The TDR can hear complaints from consumers about Commission codes whether a provider is a member of the scheme or not. However, for other issues, only consumers whose provider is a member of the scheme can complain to that scheme.

81. If a telecommunications provider is not a member of a telecommunications dispute resolution scheme, and the dispute is not related to a Commission code, a consumer can take their dispute to the Disputes Tribunal. Engaging the Disputes Tribunal involves a fee between $45 - $180, depending on the amount the consumer is claiming.

82. The TDR is free for consumers to engage with and is funded through a tiered fee structure paid for by providers annually. The amount a provider pays to be in the scheme is based on annual revenue. Confidential information entrusted to the Government

Advantages/Benefits

83. The primary benefit of this option is that it imposes no additional regulatory or compliance costs (ie membership fees) on the sector which might be passed onto consumers. Consumers' bills are less likely to be increased if their providers do not face new regulatory or compliance costs (assuming that providers will pass these costs onto consumers). Lower costs benefit consumers by making it easier to have access to high quality connectivity services.

84. Lower regulatory costs can provide opportunity for business reinvestment into their own networks. This meets the objective of incentivising investment in telecommunications. Although we note that based on our understanding of how regulatory costs are typically dealt with, it is likely that telecommunications providers would pass costs onto consumers and there would be no impact on funds available for business reinvestment when compared to option 2.

85. This option contributes to a lower barrier of entry to the market because new entrants face lower regulatory costs. Encouraging new entrants in the market will promote competition. New entrants broaden consumers' connectivity options and support sector competition, which can positively impact consumer pricing and quality.

86. This option retains control for a provider to decide whether joining a dispute resolution scheme is right for their business, relative to the cost to join and use the scheme. The provider can assess whether a scheme is needed based on a variety of factors (size of customer base, customer service, level of complaints) that may vary each year.

Disadvantages/Costs

87. The disadvantage of the status quo is that certain providers will choose not to join an industry dispute resolution scheme, even though their customers may require one.

These consumers may be unhappy with the service they are receiving, unfairly charged or have installation issues, and have trouble engaging with their provider on these issues. Lack of access to an impartial and expert dispute resolution scheme will, in these cases, expose consumers to harm. This works against the objective of preventing consumer harm.

88. Telecommunications service complaints are often of low nominal value, so under current regulatory settings not all consumers will be incentivised to seek redress against their provider. The 2024 New Zealand Consumer Survey noted that home and mobile based telecommunication service issues were mostly valued between $50-$100. Currently, if a provider is not a member of the TDR and the complaint is not about a Commission code, the Disputes Tribunal is the only recourse available to a consumer. Engaging the Disputes Tribunal incurs a fee between $45-$180 depending on the amount the consumer is claiming. Consumers whose providers are not part of the TDR may not see the value in engaging the Disputes Tribunal over a complaint that potentially is for the same amount as the fee for the Tribunal itself. This could result in some consumers not seeking redress against their provider for telecommunications service issues and therefore poorer consumer outcomes.

89. Under current settings, non-members that do not pay fees still benefit from some of the services provided by the TDR. As noted above, regardless of a provider's membership status, any consumer can complain to the TDR on breaches of the Commission codes. This means that current paying members are compensating for providers that are not in the scheme, but whose consumers still benefit from its protection. This means that some telecommunications providers have lower operational costs because they are not members of a dispute resolution scheme and could therefore price their services lower than a provider that is in a scheme. This can impact competition in the market and create an uneven playing field.

Stakeholder views

90. Of 22 submitters that provided feedback on this issue, nine considered the status quo should be maintained. These were mostly smaller providers that are not currently members of the TDR or any other industry dispute resolution scheme. Industry bodies representing smaller internet service providers were also in favour of the scheme remaining voluntary.

91. Small to medium-sized providers noted in their submissions that scheme fees were an unnecessary cost given that their internal dispute processes were functioning well. These submitters noted they did not want to place additional charges on their customers for a service they will not use. They also noted that consumers can already make informed choices and choose a provider that is a member of a dispute resolution scheme if that is important to them.

Option 2a – Mandatory membership in a dispute resolution scheme for all retail telecommunications providers

Description

92. Under this option, the Telecommunications Act will be amended to require all retail telecommunications providers offering services in New Zealand to become members of an industry dispute resolution scheme, as defined in Part 7 of the Telecommunications Act. This will mean that the estimated 200,000 telecommunications consumers that do not currently have access to an industry dispute resolution scheme will have access to such a scheme.

93. Currently, only the TDR is a recognised industry dispute resolution scheme as defined in the Act. Alternate dispute resolution schemes may seek recognition under Part 7 of the Telecommunications Act (this issue is discussed further in sub-issue 1 below), an option the Act already provides for.

Advantages/Benefits

94. The main benefit of this option is that all telecommunication consumers, regardless of their telecommunications provider, will have access to an industry dispute resolution scheme that is reviewed by the Commerce Commission. This has several benefits for protecting consumers against potential harm:

- It will increase the number of early resolutions of disputes between consumers and their retail providers. In 2023, 97.5 per cent of complaints made to the TDR were resolved or closed by the telecommunications provider after the initial, informal TDR process was undertaken. Mandatory membership will increase the number of consumers able to access a recognised scheme and have their disputes resolved earlier than they otherwise would without the support of a scheme. This will reduce potential consumer harm by allowing consumers to resolve issues promptly with an impartial mediator as they arise and before they escalate.
- Every telecommunications consumer will have access to a dispute resolution scheme with industry-expertise that can help them navigate issues relating to telecommunications retail service quality. Consumers' confusion on technical telecommunications offerings or services is seen and expressed in TDR complaints on billing and installation issues. The New Zealand Consumer survey referred to above noted that 28 per cent of consumers with home-based telecommunications service issues found the problem 'not easy' to resolve, which is significantly higher than the average across the other industries in survey. Industry dispute resolution schemes offer independent advice and engage with the provider on technical issues on the consumers' behalf.
- Eliminating consumer confusion around who is and who is not a member of a scheme. This option removes the onus on consumers to research and know ahead of time whether their provider is a member of an industry dispute resolution scheme recognised by the Act, as all providers will be members by default.
- Consumers may only realise they need an industry dispute resolution scheme after they encounter a problem and engage with their provider. Even after engaging their provider, consumers may feel that the issue has not been appropriately resolved and may want to escalate their dispute or seek mediation. Under this option, all consumers can be confident that any retail provider they choose will offer access to an industry dispute resolution scheme that is reviewed by the Commerce Commission.

95. Compulsory membership will also benefit consumer access to high quality connectivity services that meets their needs. It will do this by:

- ensuring all consumers have the benefit of belonging to an industry scheme that is regularly reviewed by the Commerce Commission. This review provides an opportunity for consumers and providers alike to comment on the functioning of the scheme, and for the Commerce Commission to make recommendations on how the scheme can improve its service. This improves consumer and provider confidence that industry dispute resolution schemes are fit for purpose, giving consumers access to high quality connectivity services (in this case, a dispute scheme) that meets their needs
- increasing consumer confidence in the wider telecommunications market through mandatory membership. Even if consumers do not engage with an industry

dispute resolution scheme, they will benefit through the incentivisation of good behaviour from their service provider which builds consumer trust in the industry. This meets our objective of ensuring the consumer access to high quality connectivity infrastructure and services, because quality of service is part of the overall product offering.

96. This option aligns with the consistency of regulatory regime policy objective, as it preserves the intent of the self-regulatory model of the telecommunications industry. Ensuring all retail providers are members of a recognised scheme further allows the Commerce Commission, though its regular review of all industry dispute resolution schemes, to ensure that the regulatory model is functioning effectively. Its review allows the Commission to check systemic telecommunications issues are being monitored, ensure providers are meeting consumers' needs, and appropriately addressing consumer harm when issues arise.

97. This option will create a level playing field between all telecommunications retail providers, who will all be required to join an industry dispute resolution scheme. This option will therefore support competition by ensuring the consistency of regulatory obligations across the market.

Disadvantages/Costs

98. The main disadvantage of this option is that retailers that are not members of a disputes resolution scheme will have to pay the membership fees to join an industry dispute resolution scheme. This will have flow on impacts:

- A likely price increase for consumers whose providers were not already in a dispute resolution scheme, as telecommunications providers that are newly required to join a scheme are likely to pass on the cost of membership. If providers pass on this cost (as we expect them to) this may impact our objective of ensuring consumer access to high quality connectivity services that meet their needs because connectivity product pricing will be slightly higher on average than what they were under the status quo (where the provider was not in a scheme).

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- Annual charges to be part of an industry dispute resolution scheme can have a disproportionate impact on small or medium-sized providers and go against the stated objective of proportionate regulatory design. The potential increase in consumer costs due to scheme fees could outweigh consumer benefit for smaller providers that have less consumers to pass on additional cost to.

- This can negatively impact competition in the market by increasing the barrier to entry, thus disincentivising new providers from entering the market. This will decrease competition and can worsen outcomes for consumers by limiting their connectivity choices.

99. This option will go further than the original policy intent created when the dispute resolution framework was established in 2018. The original intent was to establish an

industry-led, voluntary framework, where most consumers will have access to an independent dispute resolution scheme. While joining a scheme was voluntary, in 2018 the TDR covered 95 per cent of consumers. This option will go further than the policy intent by mandating dispute scheme membership for every telecommunications provider.

Stakeholder views

100. A slight majority of submitters on this issue, notably many existing TDR members, supported mandatory membership in a dispute resolution scheme. They expressed this will allow all consumers to have access to appropriate telecommunications dispute resolution pathways, while ensuring a level playing field between providers.

101. In contrast, some submitters were concerned with the prohibitive compliance costs associated with this option, particularly on smaller providers, citing the existing annual fees of the TDR as prohibitive. These submitters were also concerned about the potential negative flow on effects costs will have on innovation and market competition.

102. Submitters that were not consumer facing were concerned about being mandated to join an industry dispute scheme. As they have no consumer facing presence, they are less likely to have disputes with consumers, In addition, mandatory membership would raise their regulatory costs with little ability for them to pass costs on. These companies include tower companies – companies that own the physical infrastructure of telecommunications sites, but do not serve consumers directly. This can be mitigated by only mandating retailers to join a dispute scheme, thus excluding telecommunications companies without consumer bases.

103. While Part 7 does not apply to wholesale telecommunications providers, wholesale providers were generally positive about mandating dispute resolution. In its public submission on the 2024 review of the TDR, Chorus notes that the TDR's improved integration of wholesalers has been beneficial.

Option 2b: Mandatory membership in a dispute resolution scheme for retail providers making over $10 million in annual telecommunications revenue

Description

104. Under this option, the Telecommunications Act will be amended to make it mandatory for telecommunications retail providers that make over $10 million in annual telecommunications revenue be part of an industry dispute resolution scheme, as defined in the Telecommunications Act.

105. MBIE developed this option in response to concerns raised in submissions about the impact of fees on small providers.

106. The $10 million annual revenue threshold in this option has been proposed to align with the existing revenue threshold of qualifying liable persons for the purpose of the Telecommunications Development Levy, set in the Telecommunications Act. In general, if a retail provider is subject to contribute to the Telecommunications Development Levy, they will similarly be obligated to join an industry dispute resolution scheme.

107. We expect the following retailers, which are not currently in an industry dispute resolution scheme recognised by the Act, will be captured by this option: Contact Energy, Starlink, Lightwire, Voyager, Wireless Nation and Inspire Net. This is based on the annual telecommunications revenue reported by the Commerce Commission in the public 2023/24 Telecommunications Development Levy allocation. We note that Contact is already a member of a dispute resolution scheme (operated by the UDL), although UDL's scheme is not recognised under the Telecommunications Act.

108. Under this option, we estimate that approximately 160,000 more consumers will have access to an industry dispute resolution scheme recognised by the Act than compared to the status quo. This is an estimate based on publicly available customer figures of the telecommunications providers that we expect will be captured by this option (named in the previous paragraph). We note that annual revenues and customer numbers are subject to change and so this is only an estimate of the impact of this option.

109. The Telecommunications Development Levy threshold is set at a level where the Government considers a provider is sizeable enough to contribute towards funding for telecommunications services in the public interest. Subsequently, MBIE views this threshold is a good proxy for ensuring that the legal and financial obligations placed on providers are proportionate with their size and market share. This threshold also ensures a level of consistency across a portion of the telecommunications regulatory landscape, although less than when compared to option 2a, where every provider is liable to join a scheme.

Advantages/Benefits

110. A benefit of this option is that it only captures retail providers that make over $10 million in telecommunications revenue. This threshold will mitigate adverse impacts of scheme membership fees on smaller providers, including new market entrants. Against our criteria, this will:

- promote competition in the market by maintaining a low barrier to entry for new market entrants. Providers will not be subject to higher compliance costs when establishing their business, ensuring a low barrier to entry that encourages competition and furthers connectivity choices for consumers
- constitute proportionate regulatory design. For customers of smaller telecommunications providers, the increase in consumer protection may be outweighed by the potential increase in consumer fees as scheme providers are likely to pass on higher compliance costs to consumers. A minimum threshold accounts for the fact that smaller providers are likely to have a smaller customer base with which to distribute scheme fees
- incentivise smaller providers to reinvest in their telecommunications services. Providers with revenues under the threshold will not have to allocate money to scheme fees until they reach a certain size, and so can invest money back into their own telecommunications operations rather than paying it to a dispute resolution scheme. Noting however that we expect most providers would pass regulatory costs onto consumers and so this may not impact revenue for reinvestment.

111. This option will benefit customers of telecommunications providers that are not already members of a dispute resolution scheme but make over $10 million in annual telecommunications revenue. As noted above, we expect this will capture a significant portion of the estimated 200,000 consumers that do not have access to an industry dispute resolution scheme. This is because the threshold captures medium-sized providers that are likely to have larger customer bases than those providers making under ten million dollars. This option will reduce potential consumer harm by:

- increasing the number of resolutions of disputes between consumers and their retail providers compared to the status quo, under which some consumers do not have access to any industry dispute resolution scheme and must rely on the Disputes Tribunal or advocate for themselves with their provider. Increased consumer access to dispute resolution schemes will allow consumers to resolve

issues promptly with an impartial mediator as they arise, and before they escalate, reducing potential harm

- ensuring a majority of consumers can access a dispute resolution scheme with industry-expertise. Consumers' confusion on technical telecommunications offerings or services is seen and expressed in TDR complaints on billing and installation issues. Dispute resolution schemes will be able to offer expert advice and engage with the provider on technical issues on the consumers behalf

- acknowledging consumers may only think they need a dispute resolution scheme retroactively after they have encountered a problem and engaged with their provider. Even after engaging their provider, consumers may feel that the issue has not been appropriately resolved and may want to seek further recourse. This option provides a majority of consumers the insurance of dispute resolution support proactively, before they may realise that they require the service.

112. This option will also meet the objective of ensuring that consumers have access to high quality connectivity services, as a majority will belong to an industry scheme that is regularly reviewed by the Commerce Commission. The Commission's review provides an opportunity for consumers and providers to comment on the functioning of industry dispute resolution schemes, and for the Commission to make recommendations for how the scheme can improve its service. This improves both consumer and provider confidence that the scheme is fit for purpose.

113. This option aligns with the consistency of regulatory regime policy objective, as it preserves the intent of the self-regulatory model of the telecommunications industry. Ensuring a majority of providers are members of a recognised scheme further allows the Commerce Commission, though its regular review of all industry dispute resolution schemes, to ensure that the regulatory model is functioning effectively. Its review allows the Commission to check systemic telecommunications issues are being monitored, ensure providers are meeting consumers' needs, and appropriately addressing consumer harm when issues arise.

114. This option aligns closer with the original policy intent of the dispute resolution framework, compared to option 2a. The original intent was to establish an industry-led, voluntary framework where most consumers will have access to an independent dispute resolution scheme. While joining a scheme was voluntary, in 2018 the TDR covered 95 per cent of consumers. We believe recent market trends, outlined in the problem definition, may justify a shift from the existing voluntary nature of the scheme.

Disadvantages/Costs

115. As with option 2a, there is still some risk of regulatory costs being passed on to consumers, despite this being mitigated by the minimum revenue threshold. Telecommunications providers that will be required to join a scheme are likely to pass the cost of membership on to their consumers' regular telecommunications bill.

116. This option may result in less transparent regulatory design. If provider revenue fluctuates each year above and below $10 million, they may be required to join a dispute scheme on an uneven basis. This option may also be less transparent for consumers, as membership will be dependent on the revenue of individual providers and it may be more difficult to know if their provider is required to be a member of a scheme or not.

Stakeholder views

117. MBIE did not consult on a specific minimum revenue threshold. This option was the result of submitter feedback about the potential disproportionate affects scheme fees can have on smaller telecommunications businesses. Smaller and medium-sized

telecommunications providers, alongside their industry bodies, submitted that they have had a very small number of complaints, and that the complaints they did have will be better addressed 'in-house', without the involvement of a dispute resolution scheme.

How do the options compare to the status quo/ counterfactual?

	Option 1 – Status quo: Membership of industry dispute resolution scheme remains voluntary.	Option 2a – Mandatory membership for all retail providers offering services in New Zealand	Option 2b – Mandatory membership for retail providers making over $10m in annual telecommunications revenue
Consistency with existing regulatory regime	0	- Shift from existing voluntary membership but does allow all consumers to access dispute resolution services. Goes further than original policy intent by capturing all providers in mandatory provision.	- Shifts from existing voluntary membership, but closer to original policy intent to capture the majority of consumers.
Consumer access to high quality connectivity options	0	+ All consumers have access to dispute resolution services to ensure their telecommunications options continue to meet their needs, but it is likely new costs will be passed onto consumers, increasing the price of some connectivity products of providers that were not previously in a scheme.	+ Most consumers have access to dispute resolution services to ensure their telecommunications options continue to meet their needs and mitigates risk of new costs being passed on to consumers by only capturing medium/large providers.
Promoting competition	0	+ Ensures consistency of regulatory obligations for all telecommunication providers, but benefits are negated by an increased barrier of entry to the market that comes from having to pay membership fees in a dispute resolution scheme.	+ Creates inconsistency in regulatory obligations (based on revenue), but this is balanced by keeping barrier for entry low for new providers.
Protecting consumer interests	0	+ Ensures all consumers have access to dispute resolution.	+ Ensures most consumers have access to dispute resolution.
Proportionate and transparent regulatory design	0	- Easier to understand for consumers as all providers are subject to join a scheme,	+ Less transparent about which providers are subject to obligation, but threshold

		but we do not consider this a proportionate response to the issue as increased compliance costs will likely be disproportionately passed onto consumers of smaller providers.	makes regulation more proportionate for impact on compliance costs.
Incentivising innovation and further investment in telecommunications	0	0 Providers typically pass on regulatory costs to consumers through higher prices and so this option should be neutral against whether providers have funds to reinvest and innovate.	0 Providers typically pass on regulatory costs to consumers through higher prices and so this option should be neutral against whether providers have funds to reinvest and innovate.
Overall assessment	0	+1	+3

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

118. Our preferred option is option 2b, mandatory membership in an industry dispute resolution scheme for retail providers making over $10 million in annual telecommunications revenue. This option best meets our objectives of promoting competition, proportionate regulation, and protecting consumer interests against potential harm, while limiting the impacts on market entry and smaller telecommunications providers. This option ensures most consumers have access to a scheme while maintaining a low barrier to market entry.

119. This option will ensure that most consumers will have access to an industry dispute resolution scheme that protects their interests and limits potential harm. A majority of consumers will be able to access expert, impartial advice before disputes escalate to the courts. This is beneficial in the telecommunications industry, where many complaints have a low nominal value.

120. Our recommendation is informed by the original policy intent of the provision, which was that voluntary membership of telecommunications industry dispute resolution schemes would mean most consumers have access to a dispute resolution scheme. However, contextually this was during times where TDR membership represented around 95 per cent of New Zealand consumers. As we discussed in the problem definition, more telecommunications providers are choosing not to join an industry dispute resolution scheme, meaning more consumers do not have access to a scheme. We believe the growth in consumers without access to an industry dispute resolution scheme justifies a shift in the original policy intent, as it preserves the underlying objective that a majority of the telecommunications consumers will have recourse with an industry dispute resolution scheme. This is a smaller shift from the original policy intent compared to option 2a.

121. Under option 2b, telecommunications providers that make under $10 million in annual telecommunications revenue (and are therefore not subject to join a scheme) may choose not to join an industry dispute resolution scheme (as under the status quo). This presents a risk for consumers of these services, as they will not have access to industry-specific dispute resolution services in cases of consumer harm. However, when balancing the needs of a small group of consumers that may continue to not

have access to a dispute resolution scheme with our objectives to promote competition (and retain low barriers of entry to the market) and create a proportionate regulatory regime, we consider that this risk is acceptable.

122. There is also a risk that providers that are required to a join scheme will pass on the full cost of membership in that scheme to their consumers. We consider these risks are mitigated by the revenue threshold, which ensures consumers of services offered by smaller providers are not disproportionately shouldering scheme costs.

Non-regulatory options

123. The Commerce Commission and the TDR have previously made non-regulatory interventions to raise consumer awareness of the industry dispute resolution scheme and encourage telecommunications providers to join the scheme. This work involved education campaigns and public identification of telecommunications providers that were not members of an industry dispute resolution scheme. We do not consider that these interventions have resolved the policy issue (as a significant group of consumers continue to not have access to the scheme). The Commerce Commission's work consistently names the same providers that have not joined a dispute resolution scheme.

124. Submissions confirmed that some providers do not wish to join an industry dispute resolution scheme, regardless of information/education campaigns. We consider it unlikely that non-regulatory options will be sufficient to address the policy problem.

Out of scope options

125. Submitters raised certain issues we consider out of scope:

- Mandating wholesalers to become members of a dispute resolution scheme – wholesalers are not captured by Part 7 of the Telecommunications Act because it only covers retailers engaging directly with consumers. We do not consider that mandating wholesalers to be part of an industry dispute resolution scheme will address the policy problem that a group of consumers do not have access to a scheme for disputes with their retail telecommunications provider. We understand that wholesalers do often participate in dispute resolution processes when the wholesale provider can provide a useful insight into the situation.
- Basing membership fees on a pay per dispute or on a differential basis – we understand different dispute resolution schemes, including the TDR, use various methods to collect fees from members. This is an operational issue for the individual scheme, rather than one requiring regulatory intervention. We note that individual schemes are responsible for their own fee collection, and that the Commerce Commission can comment on this through its regular reviews.

Sub-issue 1: definition of 'industry dispute resolution scheme'

126. The following options were considered:

- Option 1 - Status quo: Keep current definition of industry dispute resolution scheme.
- Option 2 – Legislative change. Amend definition to expand the schemes that can be an industry dispute resolution scheme under Part 7.

Option 1 – Status quo: Keep current definition of industry dispute resolution scheme

Description

127. Under this option, the definition of industry dispute resolution scheme will remain defined as either a) the TDR or b) “any other dispute resolution scheme that has been set up by the telecommunications industry and deals with consumer complaints”.

128. This language allows for alternate dispute resolution schemes to emerge. However, a new scheme provider has never been recognised under the Telecommunications Act. The section explicitly excludes the property access dispute resolution scheme (which is the scheme used to resolve disputes relating to the framework of rights to access shared property to install fibre).

Advantages/Benefits

129. The current definition of industry dispute resolution scheme allows for alternate schemes to be set up by the telecommunications industry. This provides for, to some extent, the possibility of competition within telecommunications industry dispute resolution schemes.

130. The current definition also ensures that an industry dispute resolution scheme is most likely to have specific industry knowledge, because it requires any alternative scheme to be set up by the telecommunications industry.

Disadvantages/Costs

131. The disadvantage of the current definition is that, although the Telecommunications Act provides for the possibility of more than one scheme to be recognised under the Act, the definition may be prohibiting this from happening because of the emphasis on alternative schemes being set up by the telecommunications industry. For example, this language may preclude schemes that serve the telecommunications industry but are not necessarily ‘set up’ by an entity that is from the telecommunications industry. We consider this definition is too narrow, limiting the scheme choices of providers. We view this is likely to impact competition and may mean that providers and consumers are not getting access to schemes which may best suits their needs.

Stakeholder views

132. MBIE has proposed this amendment following analysis of submissions on the issue of consumer access to dispute resolution schemes.

133. The TDR submitted that the Telecommunications Act should require membership to the TDR scheme already established under Part 7. The TDR also noted that a single scheme minimises consumer confusion and inconsistency of industry approach to disputes. The TDR further noted that competition between schemes can incentivise providers to join the cheapest scheme.

134. Only one submitter commented on specific issues with the wording in the Telecommunications Act. Contact Energy submitted that if mandatory membership was pursued, then the wording in section 232 of the Telecommunications Act should be amended to mandate membership into any ‘reputable’ industry telecommunications scheme. Contact Energy is currently the only member of the Telecommunications Complaints Scheme that is run by the UDL and not recognised by Part 7.

Option 2 – Legislative change: Amend definition to expand the schemes that can be an industry dispute resolution scheme under Telecommunications Act.

Description

135. This option will amend the Telecommunications Act to ensure industry dispute resolution schemes that serve the telecommunications industry can be recognised under the Act. This will remove the requirement for industry dispute resolution schemes other than the TDR to be 'set up' by the telecommunications industry.

136. Industry dispute resolution schemes are currently required to hear complaints on Commerce Commission codes and industry retail service quality codes made by the Telecommunications Forum. There may be a need to adjust the legislated purpose of an industry dispute resolution scheme to ensure that alternate schemes can hear complaints on their own codes, as well as Commerce Commission codes, and that there is a level of consistency across the types of issues that are heard by schemes. We expect that the regular Commerce Commission reviews, already provided for in the Act, would provide an appropriate level of scrutiny of other codes. Further work on this will be done in consultation with the industry, including the Telecommunications Forum prior to drafting.

137. The Telecommunications Act requires all industry dispute resolution schemes to be reviewed regularly by the Commerce Commission. This requirement will be maintained.

138. This option will amend the Telecommunications Act to require any potential schemes that wish to be recognised under Part 7 to notify the Commerce Commission of their entry to the market. As the Commerce Commission is required to review industry dispute resolution schemes at least once every three years, schemes will need to identify themselves to the Commerce Commission to facilitate this process.

Advantages/Benefits

139. The original policy intent of the industry dispute resolution framework was that the definition of industry dispute resolution scheme "includes industry dispute resolution schemes other than the Telecommunications Dispute Resolution scheme" (Supplementary Order Paper number 118 on the Telecommunications (New Regulatory Framework) Amendment Bill). While this option represents an expansion of the definition of what can be considered an industry dispute resolution scheme, we consider it aligns with the intent to facilitate more schemes (beyond the TDR) that serve the telecommunications industry.

140. As the telecommunications market has grown, its services are expanding (for example, telecommunications services bundled with electricity). Confusion for consumers regarding these technical services can be high. Consumers may be better served by a dispute resolution scheme that can address specific needs that come from newer services. For example, an industry dispute scheme that has experience resolving disputes relating to bundled services may be able to better advise consumers on such disputes, particularly regarding billing disputes where consumers are paying for several services at once.

141. This option will better facilitate other industry dispute resolution schemes that serves the telecommunications industry to emerge. We expect that having more than one scheme recognised by the Telecommunications Act will allow consumers to have access to high quality connectivity services that meet their needs, and prevent potential consumer interests against potential harm by:

    - allowing telecommunications providers to join a scheme that is better tailored to the services they provide, and therefore, giving their customers access to a scheme that better aligns with their connectivity needs. This is particularly

relevant in light of the policy proposal above, to mandate membership in an industry dispute resolution scheme for certain providers.

- providing more options of dispute resolution schemes for telecommunications providers to join, potentially incentivising them to join a scheme when they have not done so previously. This will mean that more consumers have access to an industry dispute resolution scheme, specifically one that is reviewed by the Commerce Commission. The Commerce Commission's review can look at if the scheme's rulings are consistent and meet needs of consumers and providers. This regular review provides an opportunity for consumers and providers to comment on how the scheme is functioning and for the Commerce Commission to make recommendations for how the scheme can improve its service. This ensures any potential schemes are fit for purpose, while catering to alternate consumer needs.

142. This option promotes competition by expanding what types of schemes can be recognised as an industry dispute resolution scheme and therefore facilitating the emergence of a new scheme. Potential alternate schemes can compete among telecommunications providers for speed of resolution, price per dispute, and experience of both consumer and provider when engaging with the scheme. This allows potential alternate schemes to emerge that are encouraged to perform and adapt to the service of the provider and the needs of the consumer.

Disadvantages/Costs

143. One disadvantage of this option is that it could lead to a proliferation of bespoke telecommunications industry dispute resolution schemes. There are disadvantages of this possible scenario:

- Causing poor consumer outcomes through confusion about which scheme their provider is a part of.
- Encouraging providers to move from scheme to scheme based on who has the most favourable outcomes and lowest fees. This could cause harm for consumers and undermine confidence in the market.
- Increasing the regulatory workload and costs for the Commerce Commission because of the requirement under the Telecommunications Act for the Commerce Commission to review these schemes at least once every three years.

Stakeholder views

144. As noted above, we did not consult on amending the definition as part of our discussion document. This proposal is predominately driven by the need to address concerns raised through analysis and in the submissions process.

145. Contact Energy identified issues with the current wording and want to see it expanded to easily allow other reputable disputes resolution schemes to emerge.

How do the options compare to the status quo/ counterfactual?

	Option 1 – Status quo: Keep the current definition of what can be an industry dispute resolution scheme.	Option 2 – Legislative Change: Amend definition to expand the schemes that can be an industry dispute resolution scheme under Telecommunications Act.
Consistency with existing regulatory regime	0	+ Updates language to better adhere to original policy intent in light of growth in the telecommunications market (eg rise of bundled services).
Consumer access to high quality connectivity options	0	+ Widens what types of schemes can be recognised under the Act and clarifies how they are recognised. Alternate schemes may better meet consumer needs in a changing telecommunications market (eg consumers using satellite broadband or bundled services who may have alternate dispute needs around billing, installation, etc).
Promoting competition	0	+ Clarifies barrier for entry for alternate scheme to emerge (ie notification to Commission once they meet the definition in the Act). Better allows for other schemes to emerge and compete for dispute resolution services.
Protecting consumer interests	0	+ Provides more opportunity for alternate scheme to emerge that may better serve consumers interests in a changed telecommunications market and prevent potential harm (eg consumers using satellite broadband or bundled services who may have alternate dispute needs around billing, installation etc).
Proportionate and transparent regulatory design	0	+ Clarifies existing law to ensure it is fit for purpose. Means telecommunications dispute resolution schemes that serve telecommunications industry can be recognised under the Act. Potential impact on costs of Commerce Commission, which may be cost recovered through telecommunications regulatory levy.
Incentivising innovation and further investment in telecommunications	0	0
Overall assessment	0	+5

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

146. MBIE's preferred option is option 2, to amend the definition to expand what schemes can be recognised as an industry dispute resolution scheme under Part 7 of the Telecommunications Act. We consider this option best delivers on our objectives of promoting competition and protecting consumer interests.

147. While the expansion of the definition represents a shift from the original policy intent regarding the types of entities that can establish an industry dispute resolution scheme, it delivers on the intent to allow for multiple industry dispute schemes to emerge. We consider that this updated definition better reflects the changing telecommunications market and ensures that alternate schemes that reflect new business models or needs of consumers and providers can be recognised under the Act.

148. While we consider that on balance, it is better to facilitate for more schemes to emerge, having more schemes in the market may cause confusion for consumers and can create inconsistences in dispute handling for the telecommunications sector. However, we consider these risks are mitigated by the mandatory review the Commerce Commission must undertake of all recognised schemes. On balance, we consider ensuring consumers have access to a potential dispute scheme that can appropriately meet their needs outweighs potential concerns about multiple schemes existing.

Non-regulatory options

149. We have not identified any non-regulatory options related to this option.

Out of scope issues

150. Submitters raised certain issues we consider as out of scope:

- Mandating membership in a single dispute resolution scheme (either telecommunications-specific or one that covers all utilities) – Part 7 of the Telecommunications Act already supports the existence of multiple telecommunications dispute resolution schemes. We do not consider that such a shift from the original policy intent is justified, and reducing the number of mandated schemes does not address the policy issue that we have identified (that an increasing number of consumers do not have access to an industry dispute resolution scheme).

Policy problem 2: Accessing shared property for fibre installations

Issue 1: Expiry of the statutory rights for fibre installations

The following options were considered:

- Option 1 - Status quo: Rights to access shared property to install fibre expire on 1 January 2025.
- Option 2 - Reinstate the rights temporarily.
- Option 3 - Reinstate the rights permanently.

151. The analysis of the three policy issues in this section excludes assessment against our criteria of protecting consumers. This is because the objective of consistency with the existing regulatory regime encapsulates the original policy of the shared property provisions: that the policy balances access to fibre connectivity against the potential

harm to property owners who do not want fibre deployed through shared property they own with their neighbours.

Option 1 - Status quo: Rights to access shared property to install fibre expire on 1 January 2025

Description

152. Under the status quo the rights to access shared property to install fibre will expire on 1 January 2025, as reflected in the Telecommunications Act. Following this date, fibre providers and consumers will need to rely on alternative methods to gain access to shared property for fibre installations. This could be easements (where these are available), obtaining consent from all affected property owners, or legal pathways such as through the courts.

153. The requirement to be a member of the prescribed broadband shared property disputes resolution scheme will expire on 1 January 2026. After this date, any disputes regarding instances where the rights were invoked will need to be raised with the fibre provider directly, any disputes resolution scheme the provider is a member of (if applicable), or through the courts if no agreement can be reached.

154. As noted above, the Minister for Media and Communications is currently seeking a temporary continuation of the rights through the Regulatory Systems (Economic Development) Amendment Bill, while their long-term future is considered in this regulatory impact statement.

Advantages/Benefits

155. The main benefit of this option is that it supports the property rights of owners that do not want fibre deployed through the shared property they own with their neighbours, working towards partially fulfilling the original policy intent.

156. However, this is balanced against the fact that the original policy intent was that the rights would expire at the time when most consumers were expected to have fibre connections: this is not the case currently. Fibre uptake within the existing footprint is sitting around 76 per cent, and copper is actively being withdrawn in areas where fibre is available. Additionally, fibre providers are still expanding their networks on commercial terms, therefore providing further opportunities for consumers to connect to fibre. Based on the current level of fibre uptake, the continued expansion of the fibre footprint and the copper withdrawal process in fibre areas, we expect a sharp increase in requests for fibre connections (and other connectivity technologies) in the next few years.

157. Telecommunication providers that offer non-fibre services may see a positive impact on revenue because consumers would need to choose other communications technologies for example, wireless broadband services or satellite services, if they cannot have fibre installed. Higher revenue will provide opportunity for reinvestment in their own networks.

Disadvantages/Costs

158. The main disadvantage with this option is consumers that want/need fibre may not be able to get it. If consumers have high data needs this could impact their ability to engage digitally. Further, consumer data needs have been trending upwards as noted above. Consumers that cannot access fibre will need to rely on alternative technologies such as wireless or satellite connections. The Commerce Commission has previously stated that *"the dominant trend in consumer demand is towards higher speed plans that, in most areas of the country, can only currently be provided on fibre networks".* This means over time a greater number of consumers will need access to fibre to meet their connectivity needs.

159. The expiry of the rights may negatively impact the revenue of fibre providers that have previously relied on the rights to access shared property to install fibre. This loss in revenue will impact the amount these providers have available to reinvest in other areas of their business, such as expanding fibre networks and connecting more consumers. Without the rights there could be less incentive for fibre providers to commercially invest in their networks (beyond the existing footprint). Fibre technology costs more to deploy than other communications technologies. The rights provide greater certainty for fibre providers that if they expand their network, they will be able to connect customers, even if they need to deploy through shared property. Commercial Information

160. However, as noted above, this loss of revenue for a fibre provider would be collected by providers of other technologies. When considering this impact against our objective to ensure our regulatory settings incentivise investment in telecommunications networks and services, this option is neutral.

161. This option works against our objective of ensuring New Zealanders have high quality connectivity options that meet their needs. Fibre technology can carry a very high data load compared to other technologies, making it better equipped to meet the needs of a wider range of New Zealanders. Reducing the ease with which people can connect to fibre, and the incentive for fibre providers to invest in their networks, would limit the connectivity options for some New Zealanders. For example, those living in urban-fringe areas that do not live within areas where fibre is deployed, but could if the fibre footprint was expanded commercially, and the approximately 24 per cent of New Zealanders that have not yet connected to fibre but are within the existing footprint.

Stakeholder views

162. Fibre providers that utilise the rights to install fibre through shared property were concerned that the expiry of the rights would have a significant negative impact on their business, such as increases in compliance costs and failed or abandoned installations.

163. Other submitters, such as Inspire Net and Northpower (other businesses that provide fibre installations) indicated that although they do not currently use the rights, they may wish to use them in future. Under the status quo, this would not be possible because the rights would have expired.

Option 2: Reinstate the rights temporarily

Description

164. Under this option, the Telecommunications Act would be amended to reinstate the rights, in their current form, with a new sunset date of 1 January 2032. To align with the extension of the rights to 2032, the requirement to be part of the dispute resolution scheme established for the rights, would be extended to 2033. This would continue for one year longer than the rights, so that any outstanding disputes can be addressed through the scheme. Other protective measures for affected persons (the notification period and objection period) would remain and providers would continue to be responsible for reinstating the shared property to a reasonable standard after installation.

Advantages/Benefits

165. For consumers, this option would provide a longer period for which they would have easier access to fibre installs. This meets the objective of ensuring those consumers within the existing fibre footprint and in urban-fringe areas that might be in line for

commercial expansion of fibre have access to a wide range of connectivity options that meet their needs. Under this option, consumers would have easy access for a longer period to a full range of connectivity options: fibre broadband, wireless broadband and mobile connectivity, and satellite broadband. There is a risk however that a temporary extension will again result in a situation where people who want fibre cannot connect to it because the rights have expired and their neighbours object to installation.

166. For fibre providers, this option gives more certainty of investment compared to the status quo, supporting investment in fibre networks. As noted above, the rights make it easier to connect consumers to fibre. Investment in fibre network expansion is likely more attractive if it is easier to connect consumers once the network has been extended. This meets our objective of incentivising investment in telecommunications networks. However, as noted above, revenue gain for a fibre provider is a loss in revenue for another type of telecommunications provider. Subsequently, this option is neutral against the objective of incentivising investment in telecommunications networks.

167. In terms of supporting competition in the market, this option would enhance competition because it will ensure that in many instances it is as easy to get fibre deployed as it is for wireless connectivity options. Given fibre cables need to be physically deployed over property (as opposed to wireless solutions that do not impact property), without the rights in place it will be harder for people to get fibre compared to wireless products.

Disadvantages/Costs

168. The main disadvantage of a reinstatement is that having the rights in place for longer is likely to result in a higher number of shared property owners being impacted over the extended period, because the rights can be invoked in more instances (compared to if they expire in the status quo). The protective elements of the framework (access to dispute resolution, requirement for reinstatement and ability for consumers to object) help mitigate the potential impact on property owners that do not want their shared property impacted. However, there would still be instances where some peoples' property rights will be overridden because their neighbour/s want fibre.

Stakeholder views

169. The majority of submitters supported a reinstatement of the rights following the current expiry date of 1 January 2025, although views were mixed on how long for.

170. Those in support of a temporary reinstatement included wireless service providers and both telecommunications and non-telecommunications representative groups. Submissions noted that alternative technologies (for example, fixed wireless broadband or satellite) would still be available for consumers that did not manage to get a fibre connection before the temporary extension expired.

171. One retail service provider that offers fibre as well as alternative connectivity options stated that there needs to be evidence of consumer demand to reinstate the rights, and that the commercial operations of those that use the rights do not justify a reinstatement. Commercial Information

Option 3: Reinstate the rights permanently

Description

172. Under option 3, the Telecommunications Act would be amended to reinstate the rights permanently in their current form (without an expiry date). This option would also reinstate the requirement to be a member of the prescribed disputes resolution scheme to use the rights on a permanent basis.

Advantages/Benefits

173. The main benefit of this option is that consumers within the fibre footprint (current and future expansions) would permanently have the opportunity to easily connect to fibre, giving them access to a full range of connectivity options that will meet their needs. Given there is expansion of the fibre network on commercial terms, this option better meets this objective than a temporary reinstatement. There could be fibre network expansion in years to come as urban-fringe areas become more densely populated and housing density increases in urban areas. This option would ensure that those within the expansion areas would be able to easily connect to fibre, even if their install has to go through shared property.

174. This option would permanently support competition in the market across different types of connectivity technologies.

Disadvantages/Costs

175. The main cost associated with this option is the permanent impact on property rights for owners of shared property. As noted above, while there are protective mechanisms in place to limit the impact on those property owners, it would still result in a permanent impact on the rights of some property owners that do not want their shared property modified.

Stakeholder views

176. Submitters that supported a permanent reinstatement of the rights were three local fibre companies that use the rights, one telecommunications industry representative group, and one wireless internet service provider. Submissions supporting this option said reinstating the rights on a permanent basis would encourage further fibre investment, provide consumers with certainty that fibre installations would be carried out and in a timely manner, and that it would support business operations that rely on the rights. One submitter also suggested a ten-year review of the rights.

177. The New Zealand Law Society raised concerns about the impacts that a permanent reinstatement of the rights would have on the rights of affected shared property owners. The underlying concern was that there was not enough information available to justify a permanent reinstatement. In comparison, another submitter argued that the shared property rights support a property owner's right to upgrade their own individual property, while balancing the impact on affected persons.

How do the options compare to the status quo/counterfactual?

	Option 1 – Status quo: Rights expire on 1 January 2025	Option 2 – Reinstate the rights temporarily	Option 3 – Reinstate the rights permanently
Consistency with existing regulatory regime	0	+ Is consistent with original policy intent that the rights are temporary to	+ Inconsistent with original policy intent to make rights temporary to limit impact on

		limit permanent impact on property rights. However, the original policy was primarily to support access to fibre, and mechanisms were built into the framework to limit impact on property rights. Given trends in the market we are concerned that a further temporary period will be insufficient to support access to fibre.	property rights but would support access to fibre and provide more certainty about consumers' ability to access fibre connectivity options.
Consumer access to high quality connectivity options	0	+ Provides access to a full range of connectivity options for consumers within the fibre footprint for a period of time, but there is a risk that once the rights expire again there would still be a need for the rights because of fibre expansion.	++ Provides access to a full range of connectivity options for consumer within the fibre footprint permanently.
Promoting competition	0	+ Temporarily supports competition.	++ Permanently supports competition.
Fair and transparent regulatory design	0 .	+ We consider that the existing framework of the rights (impact, reinstatement, access to dispute resolution) is an appropriately balanced and proportionate response to the issue of making it easier for fibre to be deployed through shared property.	+ We consider that the existing framework of the rights (impact, reinstatement, access to dispute resolution) is an appropriately balanced and proportionate response to the issue of making it easier for fibre to be deployed through shared property.
Incentivising innovation and further investment in telecommunications	0	0 Potentially increases revenue for fibre providers for a period of time, but potentially reduces revenue for those telecommunications operators that supply other connectivity technologies.	0 Potentially increases revenue for fibre providers but potentially reduces revenue for those telecommunications operators that supply other connectivity technologies.
Overall assessment	0	+4	+6

What option is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

178. Our preferred option is option 3, a permanent reinstatement of the rights. This was a finely balanced decision because of the need to consider the opposing costs and benefits to two different sets of consumers. To meet the objective of supporting the delivery of high-quality connectivity options to New Zealanders, this is traded off against the impact on property rights for people that do not want any impact on the shared property they own with their neighbours. We have considered the competing interests between both groups of consumers. On balance, we consider that the long-term benefit of providing as many New Zealanders as possible with access to fibre outweighs the potential harm to consumers that do not want their shared property impacted. As noted above, New Zealanders' data demands are increasing each year. With a lot of our social, educational and economic needs being met through online services, interactions and trade, access to fibre services is likely to increasingly underpin this activity into the future.

179. Our recommendation is also informed by the fact that we are proposing to carry forward the existing framework for the rights, which has in-built consumer protection mechanisms. This ensures that the impact of the policy is proportionate: limiting the impact on property by prescribing the specific circumstances in which property can be impacted, and by how much (ie only low-medium impact), providing access to means for objections for certain installation scenarios and dispute resolution services and requiring fibre providers to reinstate the property that is impacted.

180. We also note that option 2 carries the risk that when fibre networks are being expanded in urban-fringe areas to meet the demands of population and housing density increases, the rights would expire again. This continued expansion means that we cannot easily predict when the rights would no longer be needed. With a permanent reinstatement of the rights, the Government could still repeal the rights, should they become redundant in the future.

Non-regulatory options

181. MBIE considered a non-regulatory option to raise awareness of the benefits of fibre to try and improve the success rate of obtaining consent from affected property owners once the rights expire. We have not included this option in our analysis, and do not consider that it would address the policy problem. For example, the reason for consent being withheld is not always due to a lack of information about the benefits of fibre. We are aware of instances where consent has been withheld because of neighbourly disputes.

Out of scope

182. One submitter that does not use the rights suggested that the liabilities and penalties related to the use of the statutory rights are excessive and too burdensome for providers. The details of the liabilities and penalties in the shared property access framework are outside the scope of the policy problem that we are considering. We note that liabilities and penalties are necessary to give assurance to property owners that installations will not have major impacts on their properties.

Sub-issue 1: Expanding the scope of the 'medium impact' installation category

183. This sub-issue would only be taken forward if the rights were reinstated.

184. The existing rights to access shared property can only be used for low and medium impact fibre installations. There are two categories of installations that are permitted, as set out in the Telecommunications (Property Access) Regulations:

- Category 1: ‘Low impact installations’ refer to installations on soft surfaces or aerial instalments on existing works such as power lines.
- Category 2: ‘Medium impact installations’ refer to installations on hard surfaces that require trenching, or the installation of a pole to support an aerial connection. These typically have more of a lasting impact (for example, drilling into and resealing a small part of a concrete drive to conceal a cable). Permitted methods are measured by the required reinstatement area.

185. The following options were considered:

- Option 1 - Status quo: No changes to the permitted categories of installations.
- Option 2 - Expand the scope of Category 2 by increasing some reinstatement area limits.

Option 1 - Status quo: No changes to the permitted categories of installations

Description

186. Under the status quo, there would be no changes to the permitted categories of installations under the rights. Regulations set out that the permitted methods of installations in Category 2 are limited to 3 meters length and 4 square metres overall. Fibre installation methods that are greater than this scope require the consent of all shared property owners (ie the rights to access shared property could not be used).

Advantages/Benefits

187. A benefit of this option is that affected shared property owners can withhold consent for fibre installations through shared property if the installation method exceeds the current permitted limits. This would mean less disruptions from installations on the affected shared property owners.

188. Providers of alternative telecommunications services may benefit from this option because they will be able to service the customers that cannot get a fibre installation when the rights cannot be invoked. As with the options above, this option is neutral in terms of incentivising investment in telecommunications networks because either fibre, wireless, copper or satellite providers will benefit depending on the option chosen. Under all scenarios there are opportunities for further investment into telecommunications networks.

189. Our assessment of the status quo against the objective of fair and transparent regulatory design is the same as our analysis in the policy problem above if the rights were to be reinstated in some form.

Disadvantages/Costs

190. The main disadvantage of this option is that the current scope of the medium installation category (Category 2) means that the rights are not available to use for common methods of installation, despite not being overly invasive to shared property. We are basing this assessment on feedback from fibre providers that there are some scenarios they have identified as still being of medium impact that fall outside the scope of the impact limits of Category 2, based on the real-world experience of using the rights in their current form. To maintain the rights in their current form may unnecessarily restrict the range of connectivity options available for some New Zealanders, working against the objective of supporting the delivery of high-quality connectivity options.

Stakeholder views

191. The New Zealand Law Society did not consider there was enough information provided to justify an increase to the scope of permitted installations under Category 2.

192. Submitters that agreed with this option noted that the status quo struck a balance with property rights and that an increase would impose on these rights. These comments predominantly came from wireless internet service providers, which typically provide alternative telecommunications services to fibre.

Option 2: Expand the scope of Category 2 by increasing some reinstatement area limits

Description

193. Option 2 would amend the Telecommunications (Property Access) Regulations 2017 to increase two reinstatement limits of Category 2 when using the rights:

- The maximum length of reinstatement area would be increased from 3 to 8 metres per premises.
- The maximum reinstatement area of the entire fibre installation per premises (width x length of entire reinstatement area) would be increased from 4 to 5 square metres per premises.

194. As noted above, these proposed changes are based on what fibre providers have told us would support further fibre installation through shared property while still being within the limits of what can be considered a 'medium impact' installation.

195. Commercial Information

Advantages/Benefits

196. The main advantage of this option is that it would allow the rights to be invoked in more scenarios, aligning with the original policy intent to support further fibre uptake. This option will mean that some consumers will have more connectivity options to meet their needs. The increase in the maximum length of reinstatement from 3 to 8 metres will enable the rights to be used to connect more consumers as, for example, fibre could be deployed further down a long driveway.

197. As in issue 1, this option will support competition in the market because it will ensure that in many instances it is as easy to get fibre deployed as it is wireless connectivity options.

198. The proposed increases are still restrictive and considered 'medium' as per the original intent of the rights because the increase does not provide for modifications to the entire length of all shared areas. Therefore, we consider that the design of the framework for the rights (ie dispute resolution, requirement to reinstate) should still balance out the potential impact, delivering a proportionate response to the policy problem.

199. We also note that fibre providers would be incentivised to complete installs in the least invasive manner because the less disruption caused during install would result in less property that would have to be reinstated, lowering the overall cost. Subsequently, this would not necessarily utilise the new limits in full for every install.

Disadvantages/Costs

200. The main disadvantage of this option is the increase in the number of shared property owners that could be affected. These affected persons may be unsatisfied that they cannot object to a fibre installation, with a higher visual impact (ie a longer stretch of driveway that has been reinstated) than what has previously been permitted.

Stakeholder views

201. Fibre providers that use the rights supported an increase in the scope of permitted impacts under Category 2 because this would support fibre rollout. However, some wireless internet service providers and one mobile network operator were concerned the increase in permitted impact would negatively impact property rights. We did not receive any feedback from property owners or property groups on this issue.

202. We acknowledge (as discussed above) the New Zealand Law Society's comment about a lack of evidence of the problem definition that would justify this option.

How do the options compare to the status quo/counterfactual?

	Option 1- Status quo: Maintain the scope of Category 2	Option 2 – Expand scope of Category 2
Consistency with existing regulatory regime	0	+ Supports intent of the original policy to increase fibre uptake in more instances, but as with our assessment above we need to take into account the potential impact on property rights, this limits the overall benefit that can be assigned to this option.
Consumer access to high quality connectivity options (higher priority objective)	0	+ Supports uptake of full range of connectivity options in a broader range of scenarios.
Promoting competition	0	+ Supports competition by facilitating access to fibre.
Fair and transparent regulatory design	0	+ We consider the existing framework of the rights (impact, reinstatement, access to dispute resolution) is an appropriately balanced and proportionate response to the issue of making it easier for fibre to be deployed through shared property. Given the increase in impact to property is still only for less invasive forms of fibre installations our view is that this assessment can be maintained.

Incentivising innovation and further investment in telecommunications	0	0 Potentially increases revenue for fibre providers but potentially reduces revenue for those telecommunications operators that supply other connectivity technologies.
Overall assessment	0	+5

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

203. We consider option 2 is likely to deliver the highest benefits. This option would allow the rights to be invoked in more scenarios, meeting the objective of supporting the delivery of high-quality connectivity options to a higher number of New Zealanders than if the scope of Category 2 was not expanded.

204. As noted above, we acknowledge that under this option we are essentially balancing interests and rights of two different groups of consumers. We have considered the competing interests between both sub-groups of consumers, and on balance, consider that expanding the medium impact category would not significantly impact property owners compared to the status quo. We note the protective mechanisms within the framework for the rights, and the benefits gained for consumers through being able to access fibre as outweighing this change to the medium impact category.

205. The increase maintains that Category 2 remains a category that allows medium impact installations on shared property, as the proposed limits would not provide for all methods of installations through shared property.

Out of scope

206. One submission suggested expanding the scope of what is permitted under the rights to capture higher impact installations on multi-dwelling units (such as running a cable inside shared walls). We have not included this option in our analysis and consider it out of scope to the targeted changes we are considering to the framework. We note that such a change would require a significant consultation process and design with property owners and body-corporate representatives.

207. Two submissions also proposed increasing the 30 per cent limit for the reinstatement area for the width of a driveway. MBIE considered this option and consulted further with local fibre companies that use these rights on this matter. We heard that anything less than allowing impact to 100 per cent width of the driveway would have no additional benefits to fibre rollout than the status quo. MBIE considers that 100 per cent is too great of an impact to be included in the medium impact category. Therefore, we have not proposed any changes to the amount a driveway can be impacted in terms of its width.

Sub-issue 2: Requirement of a retail connection order to invoke the rights

208. The rights to access shared property to install fibre are currently premised on a person having ordered a fibre broadband service from a retail internet service provider.

209. We note that this change would only be progressed if the rights were reinstated.

210. The following options were considered:

- Option 1 - Status quo: Maintain the requirement to have a retail connection order.
- Option 2 - Remove the requirement to have a retail connection order.

Option 1 - Status quo: Maintain the requirement to have a retail connection order

Description

211. Under the status quo, the requirement to have a retail connection order placed before the rights can be used would remain in place. It would mean the rights cannot be invoked in cases where there is no one at the premise who wants to purchase a broadband connection from a retail service provider.

212. For example, a landlord or property developer might want fibre installed but does might not want to sign up for an ongoing broadband subscription at the property. In this case, the rights cannot be invoked. This is particularly relevant to new developments where a property developer may wish to make the property 'fibre ready' but the fibre must be deployed through shared property (for example, they are building on a plot of land that shares a driveway with other owners).

Advantages/Benefits

213. The main benefit of this option is that shared property will not be impacted unless and/or until an active fibre connection is needed. This means consumers that do not want fibre deployed through their shared property will not be impacted until someone is living at the address and makes a fibre request.

214. Our assessment of the status quo against the objective of fair and transparent regulatory design, is the same as our analysis in the policy problem above if the rights were to be reinstated in some form.

Disadvantages/Costs

215. The main disadvantage is that developers and landlords may not be able to make their properties 'fibre ready'. We note however that once a person occupies the property, they will be able to order a broadband subscription, and then, because the retail order has been made, fibre could be deployed through shared property in accordance with the rights. Under the status quo, the main disadvantage is delay and inefficiency in the delivery of that same fibre service to the property.

216. Our assessment of the status quo against the objective of fair and transparent regulatory design, is the same as our analysis in the policy problem above if the rights were to be reinstated in some form.

Stakeholder views

217. One retail service provider that offers alternatives to fibre supported this option, stating that fibre providers should not be able to invoke the rights in the absence of an expressed consumer's wish to use fibre services.

Option 2 - Remove the requirement to have a retail connection order

Description

218. Option 2 would amend the Telecommunications Act to remove the requirement for a consumer to have placed a retail connection order to use the rights.

Advantages/Benefits

219. This option would make it easier and potentially more efficient to deploy fibre through shared property, leading to the easier delivery of the full range of connectivity options

to occupants of the properties. Property owners and developers would benefit by being able to use the rights to get their premises 'fibre-ready' in preparation to sell or rent it. This would improve the efficiency and timeliness with which fibre can be delivered in these types of scenarios.

220. As in issue 1, this option will support competition in the market because it will ensure that in many instances it is as easy to get fibre deployed as it is wireless connectivity options.

221. Our assessment of the status quo against the objective of fair and transparent regulatory design, is the same as our analysis in the policy problem above if the rights were to be reinstated in some form.

222. As with the other options noted above, this option is neutral in terms of supporting investment in telecommunications networks.

Disadvantages/Costs

223. The impact on competition would be as per our assessment in the main policy problem above (ie making the rights available supports fibre uptake beyond what would be observable under normal market conditions).

224. Under this option, there is no increase in consumer harm (for shared property owners) because even without this change, once people move into a property they can still order a fibre broadband subscription from a retail service provider and the rights can be invoked.

Stakeholder views

225. Submissions from varying stakeholders supported the clause being removed as there was no clear impact from removing the clause.

226. Two wireless internet service providers, and three fibre providers supported property owners having the ability to upgrade their property to a fibre ready status without having ordered a fibre broadband service.

How do the options compare to the status quo/counterfactual?

	Option 1 – Status quo: Maintain requirement to have a retail connection order	**Option 2 – Remove the requirement to have a retail connection order**
Consistency with existing regulatory regime	0	0 Typically requests for fibre go through retail internet service providers, however we do not consider the change is significant enough to warrant a positive or negative impact.
Supporting access to high quality connectivity options	0	++ The option makes delivery of fibre more efficient (with impact aligned to taking preferred reinstatement option forward).
Promoting competition	0	+

		Supports competition by facilitating access to fibre.
Fair and transparent regulatory design	0	+ Aligns with impact of taking preferred reinstatement option forward.
Incentivising innovation and further investment in telecommunications	0	0 Potentially increases revenue for fibre providers but potentially reduces revenue for those telecommunications service providers that supply other connectivity technologies.
Overall assessment	0	+4

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

227. We consider that option 2 would deliver the highest benefits. We note that while this option is a shift from the status quo in that it allows a property developer or landlord to go directly to a fibre provider, we do not consider that this is such a significant shift in impact on the outcome. The main benefit of this option is it improves the efficiency and timeliness with which fibre can be delivered, but does not alter whether fibre can be deployed overall (ie when a person moves into a property, they could still order a fibre broadband connection and the rights could be invoked that way to deploy the fibre through shared property).

Policy problem 3: Application of telecommunications regulatory regime on providers based offshore

The following options have been considered:

- Option 1 – Status quo: Keep current legislative settings. Limited express extra-territorial effect in Telecommunications Act and TICSA.
- Option 2- Amend Telecommunications Act and TICSA to give certain parts of the regime an explicit extra-territorial effect.

Option 1 – Status quo: Keep current legislative settings

Description

228. This option will retain current legislative settings. Telecommunications legislation is typically silent on the extra-territorial effect of obligations in the Telecommunications Act and TICSA. Under the status quo, there are several regulatory obligations that New Zealand based telecommunications providers and other providers with infrastructure in New Zealand are subject to that may not apply to those providers based offshore but providing services to New Zealanders.

Advantage/Benefits

229. This option will have the least potential impact on the operation of offshore providers in the New Zealand telecommunications market, contributing to a low barrier of entry for new entrants to the New Zealand telecommunications market. A low barrier of entry

contributes to our objective to support competition in the market and better supports access to a range of connectivity options for New Zealand consumers.

230. In addition, this option will not introduce new regulatory costs on offshore providers. For example, offshore providers may not be subject to levy liability (depending on their business model and/or whether they have any infrastructure in New Zealand) and therefore will not be allocated a portion of telecommunications levies to pay. In this case, offshore providers will not face increased regulatory costs that will likely be passed on to their customers in New Zealand.

Disadvantages/Costs

231. The main disadvantage of this option, as highlighted in the problem definition, is that some providers offering services in the New Zealand telecommunications market are not expressly subject to the same regulatory obligations and associated costs as others. This 'uneven playing field' between telecommunications providers has two main impacts:

- It is likely to negatively impact competition in the telecommunications market because it creates an uneven playing field due to an inconsistency in regulatory obligations. There are costs related to complying with telecommunications regulatory obligations. Offshore providers that are out of scope of our regulatory obligations may receive an unfair advantage from not having to comply with the same obligations.

- Consumers receiving services from telecommunications providers outside of the scope of telecommunications consumer protection obligations (such as compliance with Commerce Commission codes) do not benefit from these protections. This does not meet our objective of protecting good consumer outcomes and can expose consumers to harms, without any tools to assist them when this occurs.

232. A lack of clarity about the extent to which offshore providers are subject to regulatory obligations can make it difficult to promote compliance with, and where necessary, enforcement of, obligations. Existing regulatory settings therefore impact the effectiveness of the telecommunications regulatory regime, including the work of regulators and operational agencies. This results in a status quo that does not meet our objective of a proportionate and transparent regime.

233. Under the status quo, lengthy and expensive legal processes may be required to determine the scope of provider obligations, for example, previous High Court determinations on whether any broadcasters are liable for to pay the Telecommunications Development Levy. The costs of these processes will typically be met through the Telecommunication Regulatory Levy (where the Commerce Commission must undertake court proceedings) or taxes (where another government agency leads the process). This means that ultimately, New Zealanders are paying for the regulatory uncertainty.

234. We are aware that more telecommunications providers based offshore are intending to enter the New Zealand market and expect that the market share of these types of businesses will continue to increase. Amazon's Project Kuiper (which uses low-earth orbit satellites to provide telecommunications services to end users) has publicly indicated its intentions to enter the New Zealand market. This means that the impact on our regulatory system, competition, and consumer outcomes will continue to grow under the status quo.

Stakeholder views

235. One low-earth orbit satellite provider noted in general comments on the discussion document that New Zealand's light-touch approach to regulation of telecommunication services has positive outcomes for the industry and consumers. It did not support changes to the light-touch approach to introduce 'additional regulatory red tape' unless there was a demonstrated justification for doing so.

Option 2 – Amend Telecommunications Act and TICSA to give certain parts of the Acts explicit extra-territorial effect

Description

236. Under option 2, the Telecommunications Act and TICSA will be amended so that it is made explicit that offshore telecommunications providers are also subject to relevant parts of these Acts (as set out in the next paragraph). This means that all providers offering telecommunications services to consumers in New Zealand will be subject to relevant regulatory obligations, regardless of where they are based. Amendments to legislation will be required to give this extra-territorial effect because the common law presumption is that domestic statutes do not apply extra-territorially except to the extent permitted by law (as upheld by the Supreme Court in *Poynter* and stated in the Legislation Guidelines 2021*)*. The effect of this option is that offshore providers will be treated essentially the same as other telecommunications providers operating from New Zealand under the telecommunications regime.

237. Under this option we are proposing to amend the following parts of the Telecommunications Act and TICSA to make it explicit that they have an extra-territorial effect (ie that they will apply to relevant telecommunications providers, regardless of the where the transmission originates or where their infrastructure and/or business is located):

- Provisions in the Telecommunications Act dealing with the two telecommunications levies. These are the Telecommunications Operators (Commerce Commission Costs) Levy (often referred to as the 'telecommunications regulatory levy' which covers the Commerce Commission costs of regulating the market) and the Telecommunications Development Levy (which provides funding for uneconomic telecommunications infrastructure and services in the public interest).
    - It is important to ensure that those that benefit from operating within our telecommunications market are contributing to the costs of regulating that market and supporting services and infrastructure that are in the public good to deliver.
- Part 7 of the Telecommunications Act, which regulates aspects of the provision of services by retail telecommunications providers to end users (ie consumers).
    - This includes the proposed amendment to mandate membership in an industry dispute resolution scheme discussed in policy issue 1 of this regulatory impact statement.
- Regulation-making powers in Part 5 of the Telecommunications Act, where applicable to the services the providers are offering.
    - For example, Part 5 provides for the making of regulations setting out minimum requirements for emergency call services. If the Minister sought to make regulations of this nature it will be appropriate that all

telecommunications providers that offer telecommunications services that can be used to make emergency calls can be in scope of the regulations.

- Part 2 of the Telecommunications Act that regulates the supply of certain wholesale services to promote competition for the long-term benefit of end users.
    - This may be applicable where the service the offshore provider is offering in New Zealand is made a designated or specified service under Schedule 1 of the Telecommunications Act (for example, if the offshore provider is operating a cellular mobile network in New Zealand). In addition, there may be scenarios where an offshore-based provider interconnects with regulated services under this Part. In this scenario, we consider it will be necessary for the associated obligations to flow through to the offshore provider.
- The definition of network operator in TICSA, to clarify that offshore providers are in scope of this definition and are subject to the relevant interception capability and network security obligations of network operators. These obligations include establishing interception capability by New Zealand agencies and notifying the GCSB of proposed changes to their networks to ensure network security.
    - The TISCA framework addresses security risks from the design, build and operation of telecommunications networks. Network security has become a key area of concern for preserving New Zealand's national security, including its economic well-being.

238. Under this option, telecommunications providers based offshore and providing services in the New Zealand market will only be required to comply with obligations in legislation that expressly state extra-territorial application and that are relevant to the services they are offering. For example, telecommunications providers will only be considered a liable person for the purpose of levy payment if their business earnings (from serving customers based in New Zealand) in the preceding year meets the $10 million revenue threshold established in the Telecommunications Act.

Advantage/Benefits

239. The main benefit of this option is that it creates an 'even playing field', where all providers operating in the New Zealand telecommunications market are subject to relevant regulatory obligations. Under current settings, some telecommunications providers operating in the market may be in scope of regulatory obligations and others may not be. This will be dependent on the business model and technologies used by providers that enter the New Zealand market. Addressing this inequity through option 2 addresses a number of our objectives:

    - Protecting consumer interests against potential harm. This option has direct benefits for consumers by bringing offshore providers explicitly into scope of the regulatory regime, particularly the parts relating to retail service quality. This option will mean that consumers have greater protections because their telecommunications providers must comply with Commerce Commission codes and the proposed requirement to provide access to dispute resolution services, even if their provider is based offshore. There are also indirect benefits for consumers from ensuring that all providers are subject to regulatory obligations in TICSA (through improved network and national security).
    - Promoting competition, as all telecommunications providers in the market will be subject to relevant regulatory obligations and costs. Offshore providers will not

receive an unfair competitive advantage (ie from having lower/no regulatory costs) that means they can price their services competitively.

- Proportionate and transparent regulatory design, by addressing any existing ambiguity about whether government agencies can enforce certain regulatory obligations on providers. This may avoid lengthy and costly legal proceedings to clarify legislation, ultimately reducing costs to New Zealanders who fund those activities through regulatory levies and taxpayer funding.

240. There may also be benefits for telecommunications providers that are currently liable to contribute to the Telecommunications Development Levy, as the total amount of the levy will be distributed across more payees. It is consistent with the existing policy intent of the Telecommunications Act that the levy burden is shared in a manner that is reflective of market dynamics.

241. Lastly, this option will 'future proof' the regulatory regime by ensuring that future technology and business models that we cannot predict, that do not provide services via traditional terrestrial means, are captured by the regulatory regime. While low-earth orbit satellites have prompted us to consider these issues, we expect that other technologies and business models will emerge in this space. This option will reduce the likelihood that future legislative amendments will be needed when the technology or business model outpaces the regulatory regime.

Disadvantages/Costs

242. There is a risk that bringing offshore providers into scope of regulatory obligations can have an impact on these providers choosing to enter, or remain in, the New Zealand telecommunications market. As well as creating a barrier to entry (and potentially limiting competition), this option works against our objective of ensuring consumers have access to a range of connectivity options that meets their needs. If there were fewer providers in the New Zealand market, this can particularly impact our rural communities which tend to rely more on satellite technologies in the absence of, or poor availability of, fixed or wireless connectivity solutions (for example, fibre or mobile tower infrastructure).

243. Bringing offshore providers into scope of our regulatory regime will increase costs for those telecommunications providers to operate in the New Zealand market. This will be through direct costs (such as the portion of the Telecommunications Development Levy, if liable) and indirect costs (such as compliance with relevant Commerce Commission codes or the proposed requirement for certain telecommunications providers to join an industry dispute resolution scheme). There is a risk that these regulatory costs will be passed on to New Zealand consumers, resulting in higher prices. This impact will be limited to those that purchase telecommunications services from these providers.

Stakeholder views

244. MBIE consulted on expanding telecommunications levy liability to capture satellite providers and in the future, capturing other categories of providers via regulations. The discussion document also noted that we were considering the impact on these types of providers on consumer access to dispute resolution. We did not publicly consult on option 2 as described here (to expand extra-territoriality to a number of parts of the telecommunications regulatory regime). However, we consider the information we gained through consultation is sufficient to inform our analysis.

245. A large majority of submitters (including both low-earth orbit satellite providers that submitted) agreed that it is fair for levy liability to be expanded to capture all satellite telecommunications providers, regardless of where they were providing their services from. Arguments in support of this change included:

- submitters considered that all providers benefiting from the market will contribute to the costs of regulating the market and of supporting non-commercial telecommunications services
- that expanding levy liability to offshore providers will address any unfair advantage these providers currently have over other market players and result in a more equal playing field. Submitters identified that this will have positive impacts on competition by ensuring that all telecommunications providers operating in the market are subject to regulatory costs, and that this can have positive flow-on effects on innovation and further investment in telecommunications.

246. Two submitters (a consultancy and a representative group) were concerned that bringing offshore telecommunications providers into scope of levy liability may have potential flow-on effects on consumers (ie through increased costs) or on availability of connectivity options (for example, if a provider chooses not to operate in the New Zealand telecommunications market because of regulatory obligations).

How do the options compare to the status quo?

	Option 1 – Status quo: Keep legislative settings	Option 2 – Make parts of legislation apply extra-territorially
Consistency with existing regulatory regime	0	+ Aligns with the intent of telecommunications regulatory regime that all telecommunications providers operating in New Zealand are subject to relevant regulatory obligations.
Promoting competition	0	+ Ensures consistency of obligations across the market so New Zealand providers and offshore providers are competing on a more even playing field.
Protecting consumer interests against potential harm	0	+ Ensures that consumers of services provided by offshore providers are subject to telecommunications consumer protections.
Access to high quality connectivity infrastructure and services for New Zealanders	0	- Some risk offshore providers will on-charge consumers or withdraw their services.
Proportionate and transparent regulatory design	0	++ Parts of the legislation that apply extra-territorially will be clearly re-demarcated to capture offshore providers. Lack of clarity makes it more efficient for government to seek to enforce obligations on providers and avoids the need for legal processes to

		determine scope of different parts of legislation.
Incentivising innovation and further investment in telecommunications	0	- Regulatory obligations may increase barrier of entry for offshore providers or create a 'chilling' effect, limiting access to new types of connectivity
Overall assessment	0	+3

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

247. MBIE's preferred option is option 2, amending the Telecommunications Act and TICSA to give certain parts of the Acts an extra-territorial effect. To meet the objectives of consistency with the existing regulatory regime, promoting competition, and proportionate and transparent regulatory design, this is traded off against the potential negative impact on access to connectivity options (through decreased availability or increased costs) for consumers brought from introducing regulatory obligations on offshore providers.

248. We have considered these competing objectives and on balance, view that the benefits of option 2 outweigh the potential negative impacts identified. Option 2 ensures that we can future-proof the telecommunications regulatory regime, ensuring it continues to operate effectively, delivering long-term benefits for competition and consumers. The scale of these benefits will increase as more offshore providers enter the New Zealand telecommunications market.

249. We consider that the risk of offshore providers leaving the New Zealand telecommunications market because of this proposal is relatively low for two reasons discussed below.

250. Firstly, there is some precedent for offshore providers having to comply with telecommunications law before being granted approval to operate in a market in other jurisdictions. For example, Australia requires all telecommunications providers to register for a carrier licence before operating in the market. A holder of the carrier licence is required to comply with the Australian Telecommunications Act 1997, Telecommunications (Consumer Protection and Service Standards) Act 1999, and Telecommunications (Interception and Access) Act 1979 (Chapter 5), among other pieces of legislation. Telecommunications providers are therefore likely to expect to need to comply with some regulatory obligations to operate in a market. This expectation was confirmed in submissions from two low-earth orbit satellite providers on the discussion document.

251. Secondly, as more offshore providers begin to offer services in New Zealand, the risks that consumers are left without a connectivity option (particularly rural consumers that are reliant on satellite technology) decreases as there are more choices. More choices, particularly where they provide similar coverage for consumers, is likely to support competition on price and quality as those providers seek New Zealand customers.

252. We acknowledge that introducing extra-territorial application to parts of the Telecommunications Act and TICSA may raise related enforcement issues. A discussion of this has been included in section 3.

Non-regulatory options

253. As the policy problem relates to the applicability of regulation obligations set out in primary legislation we have not considered any non-regulatory options.

254. We consider it highly unlikely that a voluntary approach will make providers not subject to regulatory obligations choose to comply with them, particularly obligations that have associated regulatory costs. We note that if an offshore provider does voluntarily opt to comply with part of our telecommunications regulatory regime (for example, to comply with a Commerce Commission code), current legislative settings will mean that the regulator cannot enforce any breaches of the regulatory setting, if these occur.

Out of scope

Amending levy liability only

255. The MBIE discussion document included a proposal to expand levy liability to capture all satellite providers and/or future categories of providers. This will create an extra-territorial effect in only one part of the telecommunications regulatory regime. As described above, MBIE considered that all those that benefit from operating within our telecommunications market should contribute to the costs of regulating that market and supporting non-commercial telecommunications services that are in the public good to deliver.

256. We have not included this option in our analysis because we consider that the narrow scope of levy liability does not sufficiently address the wider problem emerging in the regulatory regime. A similar argument can be applied to all relevant parts of the telecommunications regulatory regime – specifically, that there should be an even-playing field for those that operate in the New Zealand market in regard to regulatory obligations and associated costs.

257. We consider that the benefits of the option to amend levy liability only are captured in MBIE's preferred option. This option will slightly reduce the risks relating to increased costs and regulatory burdens for offshore providers operating in our market by only making them subject to one part of the regime.

Regulation-making power

258. One of MBIE's proposed options included establishing a regulation-making power to capture other categories of offshore providers or technologies that have not been anticipated in the Telecommunications Act, as the need arises. The intention of this option was to provide a simpler way to clarify levy liability to providers that may be using new technologies or business models to provide telecommunications services in New Zealand that did not meet the "in New Zealand" limb of levy liability. We have not considered this as an option in our analysis.

259. The regulation-making power was proposed alongside an option that would have amended levy liability to capture all *satellite providers* (in addition to current liable persons). Given MBIE's preferred option is to expand levy liability so that *any* offshore provider is in scope of levy liability, there is no need for a regulation-making power to name other types of offshore providers. Any offshore provider that meets the test in the Act will be in scope of levy liability in MBIE's preferred option. The requirement to meet the test in the Telecommunications Act would be the same if proceeding with a regulation-making power (ie the regulation making power could not expand liability to those that do not meet the primary test in the Telecommunications Act).

260. For this reason, we consider that a regulation-making power offers no new benefit that would not already be provided for through MBIE's preferred option.

Over-the-top providers

261. In submissions on the specific levy liability issue in the discussion document, several submitters suggested levy liability should further expand to cover over-the-top providers, such as providers of internet application services, as they benefit from the telecommunication networks in New Zealand.

262. Over-the-top providers are currently excluded from the levy liability regime because they do not operate or own the network in whole or in part. Over-the-top providers merely use telecommunications networks to deliver their services. While some New Zealand legislation may apply to such providers in certain circumstances, they are not currently captured by the Telecommunications Act or its levy settings. We consider that capturing these providers would be inconsistent with the general framework of the Telecommunications Act, including the policy intent behind levy liability, and the regulatory focus on operating a network.

263. We note that there is already scope for TICSA to capture over-the-top providers in relation to interception capability.

Policy problem 4: Regulatory process to set the Telecommunications Development Levy amount

The following options have been considered:

- Option 1 – Status quo: Telecommunications Development Levy amount remains set in the Telecommunications Act.
- Option 2 - Legislative change: Telecommunications Act is amended so that the Telecommunications Development Levy amount is set in regulations.

Option 1 – Status quo: Telecommunications Development Levy amount remains set in the Telecommunications Act

Description

264. This option would maintain current legislative settings, keeping the Telecommunications Development Levy (TDL) amount set in Schedule 3B of the Telecommunications Act. No changes would be made to how the levy amount is increased.

265. We note that for this policy problem we have not analysed the options against the objective of potential consumer harm as the policy problem is not relevant to that objective.

266. We note also that levy increase is possible under both options, but the process to amend the amount would take longer under option one. While the costs of levies are often passed on to consumers in the form of higher prices, we have not analysed the impact of this potential price increase because both options allow for this increase, within different timeframes. We also note that while the levy could be more flexibly increased under option 2, the Crown can only use TDL funding for the purpose prescribed in the Telecommunications Act (ie the Crown cannot collect levies for the purpose of non-commercial telecommunications infrastructure and then use the funds elsewhere if there proves to be no need after the collection).

267. We have rated the options as neutral against our objective of impact on competition. This is because any change in impact on competition from the status quo would only follow if there was an increase in levy amount, and what that increase was used for. For example, an increase in levy to support the delivery of more mobile towers in rural areas would provide increased revenue opportunities for mobile networks operators (for example, Spark, One NZ, 2degrees), potentially impacting on other service

providers in those areas (for example, Chorus through its copper network and low-earth orbit satellite broadband providers). It also means there is a transfer of funds from those providing services in urban areas (typically fibre providers) to those providing services in rural areas (typically mobile network operators).

Advantages/Benefits

268. The key advantage of keeping the levy amount set in the Telecommunications Act is that it provides the most regulatory certainty for telecommunications providers, as the administrative process to progress a bill to increase the amount makes it less likely that an increase will occur.

269. Regulatory certainty is likely to support our objective of incentivising innovation and further investment in telecommunications because liable telecommunications providers will have more certainty (compared to option 2) about the total amount of the levy, and therefore how much they may be liable to pay. This is beneficial for the businesses' future planning and investment decisions.

Disadvantages/Costs

270. The main disadvantage of this option, as highlighted in the problem definition, is that having the amount set in primary legislation makes it more difficult for the Government to increase the levy amount, should this be needed.

271. Such an increase may be needed if the Government intended to address a non-commercial connectivity issue, such as delivering improvements to the 111 service, rural connectivity infrastructure or funding telecommunications services for people that are hearing or speech impaired. For example, there may be a need for the Government to further support improved capacity on rural connectivity infrastructure. Rural connectivity services are typically delivered through wireless cell towers. Due to growing data demands in recent years, there have been capacity issues on those towers, impacting performance (ie slow broadband) or the ability for people to even get service off a particular tower. In recent years, the levy has not been able to be used to appropriately address this because the total amount is already allocated to fund ongoing non-commercial services. Budget funding of around $100 million has been used to address rural connectivity issues instead, but as with any Budget funding process, there is always uncertainty around whether funding will be secured.

272. This option does not meet our objective of ensuring New Zealanders have access to high quality connectivity options that meet their needs because the Government is unable to respond in a timely manner when there is an identified need to fund non-commercial telecommunications infrastructure and services.

273. Our view is that the status quo does not meet the objective of fair and transparent regulatory design. Arguably, having the levy amount set in primary legislation is not an appropriate solution to the evidenced need for non-commercial telecommunications infrastructure as it has not been able to be adjusted to address rural connectivity issues. Further, we would argue that the current way in which the TDL amount is set does not allow it to efficiently and effectively meet the purpose for which the TDL is intended to be used. The status quo is inconsistent with the original policy intent of the TDL, and therefore counteracts the policy objective of consistency with the policy intent of the current regulatory regime.

Stakeholder views

274. A total of 17 submitters responded on the question of whether the amount of the Telecommunications Development Levy should be set in regulations, rather than in the Telecommunications Act. 11 submitters preferred the status quo.

275. Those in support of the status quo were the more established telecommunications providers that currently pay telecommunications levies (such as the local fibre companies and mobile network operators) and the Telecommunications Forum. Common themes in the arguments supporting the status quo included:

- a high level of certainty – submitters felt that having the levy amount set in primary legislation provides regulatory certainty for telecommunications providers
- lack of issues with status quo – some providers have no issues with the current process for setting the amount of the levy and/or do not consider there is compelling evidence of an issue that would justify amendment, beyond administrative convenience
- more checks and balances – submitters consider the 'checks and balances' as part of amending the Telecommunications Act are necessary in the context of a levy increase, to mitigate the risk of large increases.

276. Strong opposition of the status quo was received from Rural Women NZ which stated that the current framework does not allow for the flexibility required to address changes in the market, particularly those challenges faced by rural communities where critical infrastructure is needed. One wireless internet service provider described the status quo as no longer being fit for purpose.

Option 2 – Telecommunications Act is amended so Telecommunications Development Levy amount is set in regulations

Description

277. Under this option, an amendment to the Telecommunications Act would be progressed to create a new regulation-making power. This power would enable 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.

278. Under this option, we would include a safeguard that providers that have been identified as liable to pay the TDL are consulted before any increase. This would ensure the views of those that are directly impacted are considered.

Advantages/Benefits

279. This option would allow the Government to increase the levy amount more easily because amending regulations is typically faster than amending primary legislation.

280. We consider that the increased flexibility to set the amount through regulations aligns with our objective to ensure consumers have access to high quality connectivity infrastructure and services. This is because the Government would be able to be more responsive to the needs of end users which are not being met through the commercial delivery of telecommunications services. The result is that consumers would have access to a range of connectivity infrastructure and services that they would not otherwise have access to, in a timelier manner when compared to the status quo. The TDL has funded, or is still funding, connectivity infrastructure and services that are incredibly important to many New Zealanders, such as rural connectivity, emergency calling services and the New Zealand Relay Service. In these cases, the speed at which the Government can respond is important and this option enables the Government to be more responsive.

281. The conditions we have proposed as part of option 2 support our objective of transparent regulatory design, by setting out the reason the Government is seeking to increase the levy and providing an opportunity for consultation with affected parties.

We consider building this into the design of this option supports a proportionate response to the policy issue we are seeking to address, ie it would better meet the connectivity needs of many New Zealanders, while taking into account the potential impact on providers and their need for clarity about their regulatory costs and obligations.

282. This option better meets the objective of aligning with the policy intent of the existing regulatory regime. As noted above, the challenges in addressing rural capacity issues in recent years has shown that the TDL is not meeting its intended purpose (ie to deliver a sustainable funding source for telecommunications infrastructure and services in the public interest which are otherwise not expected to be available commercially, or which are unaffordable) because Budget funding has had to be used instead to address non-commercial telecommunications infrastructure needs in rural areas.

Disadvantages/Costs

283. Moving the levy amount into regulations could create ambiguity about if, or when, the levy amount may increase, because it will be faster to increase it than compared to the status quo. This could create some level of regulatory uncertainty for telecommunications providers.

284. A consequence of regulatory uncertainty is that telecommunications providers might invest less into their connectivity networks if they are unsure when, or if, a levy increase might occur. This could have implications for the availability of connectivity options for consumers. We note that telecommunications providers typically invest directly into urban areas, but that the TDL is used to fund rural connectivity and other uneconomic infrastructure and services. Under this option, we are therefore trading off a potential decrease in investment in urban areas to support more direct investment, via the TDL, into rural and other uneconomic areas. The safeguards we have proposed in option 2 are intended to address concerns around regulatory uncertainty, but we acknowledge that the safeguards do not remove the uncertainty entirely.

Stakeholder views

285. Of the 17 submitters on this issue, 6 supported the amount being moved into regulations. Those in support of option 2 included smaller telecommunications service providers and representative bodies not currently subject to the levy. These submitters considered setting the amount in regulations would allow for greater flexibility to address connectivity challenges such as those faced by rural communities. One local fibre company noted that it was typical for levies to be set in secondary legislation, but expressed concerns that appropriate controls would need to be established if the levy amount was moved into regulations.

286. The 11 submitters that did not support shifting the levy amount into regulations included mobile network operators, some local fibre companies, the Telecommunications Forum and a low-earth orbit satellite broadband provider. Those against option 2 raised the following issues:

- Lack of justification/policy direction for change - submitters did not consider there was a policy direction justifying the need for a more flexible approach to setting the levy amount in regulations. A point was made that when the TDL was established the levy amount was intentionally set in primary legislation.

- Checks and balances will be compromised - there was concern that increased flexibility is traded off against the protective measures that come from the full Parliamentary process. Some submitters considered having the levy amount set in primary legislation strikes the right design balance, because it produces a high level of scrutiny and transparency through the Parliamentary process. It was made clear by those against option 2 that if a new regulation making power is

established, rules and/or controls will need to be set around increases to the levy amount, the use of the TDL (to ensure that any increase is to supply funds consistent with the purpose of the TDL) and proper consultation with providers that pay the TDL.

How do the options compare to the status quo/ counterfactual?

	Option 1 – Status quo: Telecommunications Development Levy amount remains set in the Telecommunications Act	Option 2 – Telecommunications Development Levy amount to be set in regulations.
Consistency with existing regulatory regime	0	+ The levy amount could be increased faster to fund uneconomic infrastructure and services as needs arise, aligning with the purpose of the levy.
Promoting competition	0	0
Consumer access to high quality connectivity infrastructure and services	0	+ More flexibility when increasing the amount of the levy would support the Government to respond to New Zealanders' need for non-commercial infrastructure and services, resulting in better connectivity quality and/or options for consumers.
Protecting consumer interests against potential harm	0	0
Proportionate and transparent regulatory design	0	+ We consider that the proposed safeguards support a proportionate response to the policy problem.
Incentivising innovation and further investment in telecommunications	0	- Regulatory uncertainty for providers that pay the TDL may impact on investment decisions of telecommunications providers.
Overall assessment	0	+2

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

287. MBIE's preferred option is option 2, setting the Telecommunications Development Levy amount in regulations.

288. This option allows for the creation of a more efficient means to address New Zealanders' needs for non-commercial telecommunications infrastructure and services. This will have the impact of supporting the delivery of high-quality connectivity options

for New Zealanders that need them. This option also better meets our objective of consistency with the existing policy intent of the regulatory regime. Our view is that this option better meets the purpose for which the TDL has been set.

289. We acknowledge that the option creates some level of regulatory uncertainty for telecommunications providers. We have sought to address this concern by building in consultation requirements, should a TDL increase be proposed. We consider that this creates a proportionate response to the issues that have been raised.

Non-regulatory options

290. As the levy amount is set in the Telecommunications Act itself, we did not consider any non-regulatory options.

Out of scope options

291. We did not consider disestablishing the TDL. The TDL still plays an important role in supporting connectivity in New Zealand, particularly in rural areas where it is often uneconomic for commercial telecommunications providers to offer services. Without the TDL, infrastructure and services that are currently supported by levy funding (for example, the New Zealand Relay service) would not be provided, with consumers ultimately facing the consequences of this lack of availability.

Section 3: Delivering an option

How will the new arrangements be implemented?

292. Our preferred options will require legislative amendments to the Telecommunications Act 2001, associated regulations, and the Telecommunications (Interception Capability and Security) Act 2013. MBIE is also proposing to make amendments to the Radiocommunications Act 1989 for enforcement purposes (see additional details below).

293. MBIE will communicate Cabinet's final policy decisions. This includes notifying those that submitted on the discussion document, publishing information on the MBIE website within a reasonable timeframe, and through MBIE's regular stakeholder engagement.

294. In addition, we will ensure that any telecommunications providers that are subject to new regulatory requirements (for example, telecommunications providers that are subject to joining an industry dispute resolution scheme) are made aware of this.

Consumer access to dispute resolution

295. The Commerce Commission currently determines liability for telecommunications levies (the Telecommunications Development Levy and the Telecommunications Regulatory Levy) each year, as part of its role set out in the Telecommunications Act. We have proposed that the threshold where it becomes mandatory to join an industry dispute resolution scheme is set at $10 million in annual telecommunications revenue in New Zealand, the same as the threshold for levy liability. The Commerce Commission determine levy liability and publish a list of qualifying liable persons at the end of June each year. Information from this process will be used to inform liability to join a dispute resolution scheme.

296. Enforcement options in section 156B of the Telecommunications Act will apply where a telecommunications provider in scope of the requirement to join a scheme has not done so. This aligns with enforcement options for breaches of the Commerce Commission codes (eg the 111 Contact Code and the Copper Withdrawal Code). This will give the Commerce Commission discretion about how it will pursue breaches of the

obligation. Options include accepting written undertakings, civil infringement notice or a pecuniary penalty.

297. MBIE's preferred option for this issue is a shift from the existing voluntary nature of dispute resolution scheme membership. As such, we are proposing to introduce a transitional arrangement so that providers will have six months, from when they become liable, to join an industry dispute scheme. This will ensure providers have sufficient time to join a scheme after they become liable.

Shared property access framework

298. As the shared property access framework is not a new regime, implementation will only require amendments to Subpart 3 of Part 4 of the Telecommunications Act, and the supporting regulation Telecommunications (Property Access and Other Matters) Amendment Act 2017. Once the amendments are in force, fibre providers will be able to continue to use the rights.

299. Contractual agreements for the prescribed disputes resolution scheme provider will also need to factor in any changes to the duration of the rights.

300. We considered the effect that reinstating the rights may have on collectively owned Māori land. We understand that in certain situations Te Ture Whenua Māori Act 1993 includes safeguards that protect Māori interests. MBIE has received advice from Te Puni Kōkiri on the urgent amendment the Minister is seeking in the Regulatory Systems (Economic Development) Amendment Bill and will continue to engage with Te Puni Kōkiri on the long-term impacts of the rights. We understand that Te Ture Whenua Māori Act continues to provide the same safeguards to protect Māori interests, as it did when the relevant access rights were initially provided under the Telecommunications (Property Access and Other Matters) Amendment Act 2017. We would seek to amend the Telecommunications Act, if necessary, to clarify this position if there is any ambiguity that arises during the drafting process.

Application of telecommunications regulatory regime on offshore providers

301. We are not aware of any telecommunications providers operating from offshore that are not currently engaging with the New Zealand government, in some capacity. We note that identifying and communicating effectively with offshore telecommunications providers that enter our market may be a challenge in the future. However, we expect that most providers subject to regulatory obligations will need to identify themselves to the government, for example, through the radio spectrum function within MBIE. This will support us in notifying telecommunications providers of relevant regulatory obligations. We cannot be certain how many telecommunications providers this proposal will impact because it will be dependent on the business model and technologies used by providers as to whether they are 'offshore' or are providing services "in New Zealand". However, MBIE's preferred policy changes will prevent any potential confusion or need for legal determinations, as all telecommunications providers delivering services in New Zealand will be subject to telecommunications regulatory obligations that relate to the services they offer.

Enforcement of regulatory obligations on offshore providers

302. There are enforcement challenges related to creating an extra-territorial effect in legislation, as existing enforcement mechanisms in the Telecommunications Act and TICSA are given effect through New Zealand courts. This enforcement pathway may be impractical if an offshore provider does not have a presence in New Zealand and refuses to acknowledge its obligations under New Zealand law.

303. To address this issue, MBIE is proposing to create an enforcement regime that prohibits or restricts an offending party's ability to hold or use radio spectrum licences if existing enforcement mechanisms are exhausted or not feasible. For example, if a telecommunications provider breaches a regulatory obligation, the regulator could take the action(s) set out in legislation (such as issuing a penalty or notice) against the offending party. If the offending party does not respond to, or comply with, that action, it may result in the revocation of the non-compliant party's licence or restricting other licence holders from supplying access to radio spectrum to them. In addition, we consider it will be appropriate to restrict a non-compliant party's future access to spectrum.

304. Subject to further advice from Parliamentary Counsel Office on drafting, we expect this will require amendments to the Telecommunications Act, TICSA, and the Radiocommunications Act.

305. Schedule 1 of the Radiocommunications Act sets out requirements in relation to radio licences and spectrum licences. The Radiocommunications Regulations 2001 provide a basis for the Chief Executive of MBIE to revoke a radio licence should a term, condition, or restriction of the licence be breached. Revocation grounds for spectrum licences are set out in spectrum licence agreements. We note that legislation may need to be clarified during drafting to ensure it is sufficiently transparent that a breach of relevant telecommunications obligations could result in the revocation of a radio or spectrum licence.

306. The obligation to comply with Schedule 1 conditions carries through to any party with whom a licence holder contracts.

307. We expect that this power would only be used once existing mechanisms through the New Zealand courts have been exhausted or are impractical (ie the offshore provider does not submit to the jurisdiction of the New Zealand court or acknowledge their obligations under New Zealand law). The regulator would first seek to use existing enforcement mechanisms for the relevant obligation (for example, penalties or undertakings enforced through the courts). However, where existing mechanisms are not practical or feasible because the provider does not submit to the jurisdiction of the New Zealand court system, the MBIE Chief Executive could consider revoking or limiting the licence.

308. Such enforcement action would prevent the telecommunications provider from being able to operate their business in New Zealand in the same way (because they would not have access to the same protected and exclusive use of the specific radio spectrum frequency). We acknowledge that revoking a provider's licence would have impacts on the provider's customers in New Zealand. This would be likely to impact rural and remote consumers that rely on connectivity offered via satellite (which are more likely to be offshore) in particular, because of the high level of coverage of such areas offered by these services (compared to terrestrial and fixed networks). We note this risk is likely to decrease as more satellite broadband providers enter the New Zealand telecommunications market.

309. We note that there may be a need to reflect the linkages between the Telecommunications Act, TICSA and the Radiocommunications Act to introduce this enforcement mechanism. This will be given effect during drafting with the Parliamentary Counsel Office.

Alternative enforcement mechanisms

310. Enforcement of telecommunications regulatory obligations is often dealt with in other countries (for example, Australia) through 'carrier licences', or licences that the government issues for telecommunications providers to operate in the country. This is

separate to licences to use the radio spectrum and often requires providers to commit to complying with certain telecommunications and radiocommunications legislation.

311. New Zealand does not require telecommunications providers to be licenced to operate in our market and we do not consider there is a need to do so. We do not consider that introducing a licensing regime would be a proportionate way to deal with the potential enforcement issues raised by policy issue 3. Such a regime would be unnecessary for the large majority of telecommunications providers and would be expensive to establish and operate. It would create new regulatory costs for telecommunications providers that would likely be passed on to consumers.

312. In addition, we considered the benefits of introducing a power to seize assets owned by the offshore provider, including infrastructure and/or revenue streams in New Zealand. We do not consider these powers would provide an effective or practical enforcement mechanism. Seizing infrastructure assets is complicated by the ownership models of assets such as earth stations (the most likely infrastructure asset used by offshore providers). These can be owned by other companies that provide earth station services, rather than owned by the telecommunications provider themselves. This may penalise an unrelated company, rather than the provider that breached their obligations.

Telecommunications Development Levy

313. We may need to build in a transitional arrangement with the Parliamentary Counsel Office to ensure that during the time the levy amount is removed from primary legislation, and moved into regulations, that the levy amount remains in place. This would be to ensure there is no perceived or actual ‘gap’ in time where the levy effectively is not in place at all.

314. MBIE will be responsible for communicating Cabinet’s decision regarding this policy issue. Should the amount be moved to regulations, we will liaise with the Commerce Commission to ensure we have contacted all providers that contribute to the TDL.

How will the new arrangements be monitored, evaluated, and reviewed?

315. MBIE will continue to carry out its responsibilities and monitoring role under the Telecommunications Act and TICSA. While we do not have any formal plans to review these changes, we regularly evaluate any amendments to the law we administer. We will continue to monitor our proposed changes and their impacts to ensure their original intent and purposes are met.

316. We also rely on ongoing engagement with the Commerce Commission and stakeholders to provide information and monitor how any new arrangements are operating in practice. These opportunities will help us identify any impacts on affected parties, or any other issues that were not anticipated.

317. Regarding the reinstatement of the rights to access shared property to install fibre, MBIE will continue to receive monthly reports from the dispute resolution scheme, UDL. As noted in our preferred option, we will also review the need to have the rights on an ongoing basis (ie if fibre network expansion stalls, we will consider repealing the rights, or put in a new expiry date).