



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Broadcasting, Communications and Digital Media
Title of Cabinet paper	Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019	Date to be published	By 5 November 2019

List of documents that have been proactively released

Date	Title	Author
17 September 2019	Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019	Office of the Minister of Broadcasting, Communications and Digital Media
17 September 2019	Cabinet minute: LEG-19-MIN-0141	Cabinet Office

Information redacted

YES / NO (please select)

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Office of the Minister of Broadcasting,
Communications and Digital Media
Chair, Cabinet Legislation Committee

The Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019

Proposal

1. This paper seeks authorisation for submission to the Executive Council of the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019.

Policy

2. In November 2018, the Telecommunications (New Regulatory Framework) Amendment Act 2018 was enacted.
3. To fulfil its statutory obligations resulting from changes to the Act, the Commerce Commission sought a temporary increase to their funding of \$12.3 million over four years, up to 30 June 2022.
4. On 7 September 2018, Cabinet Economic Development Committee (DEV-18-MIN-0182) approved a one-off \$12.3 million temporary increase to Commission resourcing, and also noted that the increase in appropriation would be fully cost recovered through a commensurate increase in the Telecommunications Regulatory Levy.
5. On 1 May 2019, the Cabinet Economic Development Committee (DEV-19-MIN-0091 refers) agreed to specify levies in connection with the performance of the Commerce Commission's functions and duties, and the exercise of its powers, under section 11(3) and section 12(4) of the Telecommunications Act 2001 to recover the \$12.3 million described in paragraph 4 above.
6. Cabinet agreed on an approach to cost recovery through the Levy that will be similar to the approach taken under the Commerce Act 1986, where regulated wholesale suppliers pay for the costs of the Commission's regulatory work. The key features of the regulations include:
 - Chorus will pay for the Commission's new work relating to wholesale fibre price-quality regulation, which will only apply to Chorus.
 - Costs for the Commission's work relating to the information disclosure regime will be apportioned between Chorus and LFCs using the current allocation method outlined in the Telecommunications Act, which is apportioned on the basis of each entity's revenue.
 - The Commission's baseline funding will continue to be paid for by all liable telecommunications operators using the current allocation method outlined in the Telecommunications Act;

7. These regulations will revoke and replace the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011.

Timing and 28-day rule

8. The regulations are proposed to come into effect on 31 October 2019. A waiver of the 28-day rule is not required.

Compliance

9. The regulations comply with each of the following:
 - a) the principles of the Treaty of Waitangi;
 - b) the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - c) the principles and guidelines set out in the Privacy Act 1993 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
 - d) relevant international standards and obligations;
 - e) the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
10. Section 13 of the Telecommunications Act states that the Minister must not make any recommendation under section 11(3) or section 12(4) without first consulting those persons and organisations that the Minister considers appropriate having regard to the subject matter of the proposed regulations. These obligations have been met (see paragraph 19 – 20).
11. Section 12(5) of the Telecommunication Act states that the Minister must not recommend that regulations be made under that section unless the Minister is satisfied that the levy will not require a service provider, or a class of service providers, to pay a levy in respect of the same period (the appropriation period beginning on 1 July 2018) under both section 12(5) and section 11 for, or in connection with:
 - a) the performance of the Commission's functions and duties under Parts 2AA, 6, and 7; or
 - b) the exercise of the Commission's powers under Parts 2AA, 6, and 7.
12. The statutory prerequisite described in paragraph 11 above has been met as the regulations will not require a service provider, or a class of service providers, to pay a levy for the Commission's functions, power and duties outlined above in respect of the appropriation period beginning on 1 July 2018 under both section 12(5) and section 11.

Regulations Review Committee

13. There does not appear to be any grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

14. The regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

15. A Cost Recovery Impact Statement was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet approval was sought for the policy relating to the regulations (DEV-19-MIN-0091 refers).

Publicity

16. The communications approach to these regulations will be managed by my office, in consultation with other entities as appropriate. I expect minimal level of business and media attention.

Proactive release

17. I intend to publicly release a copy of this paper and associated decisions in accordance with Cabinet's proactive release policy.

Consultation

18. The Treasury and DPIC have been consulted, and the Commerce Commission has been informed.
19. In June 2018, MBIE conducted a one month industry consultation with levy payers, consumer groups, and other interested stakeholders.
20. In July 2019, MBIE conducted a further formal consultation with levy payers on the draft regulations.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. note that on 1 May 2019, the Cabinet Economic Development Committee (DEV-19-MIN-0091) agreed to specify levies in connection with the performance of the Commerce Commission's functions and duties, and the exercise of its powers, under the Telecommunications Act 2001.
2. note that the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 will give effect to the decision referred to in paragraph 1 above;
3. note that section 13 of the Telecommunications Act requires that the responsible Minister be satisfied that consultation has occurred before recommending the making of an Order in Council under section 11 and section 12 of the Act;

4. note that the advice of the Minister of Broadcasting, Communications and Digital Media is that the statutory prerequisite referred to in paragraph 3 above has been met;
5. note that section 12 (5) of the Telecommunication Act states that the Minister must not recommend that regulations be made under this section unless the Minister is satisfied that the levy will not require a service provider, or a class of service providers, to pay a levy in respect of the same period under both this section and section 11 for, or in connection with:
 - a) The performance of the Commission's functions and duties under Parts 2AA, 6, and 7; or
 - b) the exercise of the Commission's powers under Parts 2AA, 6, and 7.
6. note that the advice of the Minister of Broadcasting, Communications and Digital Media is that the statutory prerequisite referred to in paragraph 5 above has been met;
7. authorise the submission to the Executive Council of the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019;
8. note that the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 will come into force on 31 October 2019.

Authorised for lodgement

Hon Kris Faafoi
Minister of Broadcasting,
Communications and Digital Media