

The Chair
Cabinet Economic Growth and Infrastructure Committee

Improvements to the Telecommunications Development Levy liability allocation process

Proposal

- 1 I propose to improve the allocation process for the Telecommunications Development Levy to increase its efficiency and reduce compliance costs.

Executive summary

- 2 The Telecommunications Development Levy (TDL) was established through a 2011 amendment to the Telecommunications Act 2001 (the “Act”). The TDL is used to subsidise telecommunications capabilities which are not available commercially, or that are offered commercially but not at a price that is affordable to end users. The Crown may only use the TDL funds for purposes prescribed in the Act.
- 3 The TDL is applied to the telecommunications industry and is payable by service providers that are “liable persons”. Various improvements to the liability allocation process for the TDL have been identified. The changes required to implement these improvements are minor, and are expected to reduce compliance costs for service providers.

Background

- 4 The TDL is collected from telecommunications service providers and was established through the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011. The TDL subsidises telecommunications capabilities in the public interest which are otherwise not expected to be available commercially, or not at an affordable price. The Crown may only use the TDL funds for the purposes prescribed in the Act.
- 5 The TDL was originally set at a level of \$50 million per year until the end of the 2015/16 financial year, and then \$10 million for 2016/17 and subsequent years (inflation adjusted). In 2015, the \$50 million level was extended to the 2018/19 financial year to fund the planned second phase of the Rural Broadband Initiative and establishment of the Mobile Black Spot Fund.
- 6 Service providers are identified as liable persons for paying the TDL through a statutory determination process administrated by the Commerce Commission. Service providers are first assessed to identify those that are potentially liable to pay the TDL (as *prospective liable persons*). They are then assessed to identify which of them are actually liable to pay the TDL (as *qualifying liable persons*). To qualify to pay a share of the TDL, service providers must have qualified (telecommunications) revenue above \$10 million in a financial year.

Allowable uses of TDL funds

- 7 The Crown may use TDL funds for the following prescribed purposes:
 - to pay Telecommunications Service Obligations (TSO) charges;
 - to pay for non-urban telecommunications infrastructure development;
 - to pay for upgrades to the emergency service calling system;
 - any other purpose that the Minister considers will facilitate the supply of certain telecommunications services to groups of end-users within New Zealand to whom those telecommunications may not otherwise be supplied:
 - i on a commercial basis; or
 - ii at a price that is considered by the Minister to be affordable to those groups of end-users.
- 8 Proposed spending under the fourth ‘other’ category requires consultation with TDL payers and any other persons or organisations that the Minister considers appropriate, having regard to the proposed use of TDL funds.
- 9 To date, the TDL has funded the TSO Relay Service for deaf and hearing impaired users, together with the first phase of the Rural Broadband Initiative. Cabinet has agreed to TDL funds extending the Rural Broadband Initiative, establishing the Mobile Black Spot Fund, and funding a mobile caller location system for emergencies. Potential future applications of TDL funding are expected to include [REDACTED] s9(2)(f)(iv) [REDACTED] and broadband backhaul for the Chatham Islands.
- 10 The telecommunications industry has suggested applying the TDL as a surcharge on customers’ bills, in a manner similar to GST. At this stage I have elected to not proceed with a fundamental change of this kind. However, the proposals presented in this paper will result in reduced compliance costs.

Comment

- 11 A number of potential improvements have been identified to the liability allocation process for the TDL. I undertook a targeted consultation with TDL payers and industry groups in relation to these proposed changes in September 2015. The responses received in that consultation process have informed the changes I have chosen to proceed with.
- 12 The minor improvements I propose to proceed with are:
 - to increase flexibility in the financial information reporting of service providers;
 - to rationalise this reporting; and
 - allowing the final determination of the cost of the Telecommunications Service Obligation relay service before the TDL liability allocation determination is finalised.

Flexibility in the financial year end date requirements

- 13 The Act requires that before the end of each financial year, prospective liable persons disclose financial information to the Commerce Commission to determine their TDL liability status. The information is required to correspond to a financial year-end date of 30 June. This can create problems for small industry players who use a March or December financial year-end, who must therefore incur the expense of providing information in the year-ending-30-June format, even if they are ultimately not liable.
- 14 I consider that the Act should be amended to allow prospective liable persons to provide financial information that relates to the same reporting period as their financial statements. That is, prospective liable persons should be able to meet the requirements in the Act with financial information relating to their chosen financial year end date.
- 15 It is important to note that the TDL information disclosure requirements determine whether a service provider is liable to pay a TDL contribution. If a provider is determined to be a liable person, they will then have to provide financial statements for the relevant year ending 30 June. The amount payable is in proportion to the provider's share of revenue for all liable persons in the relevant financial year ending 30 June.
- 16 This TDL process change would reduce compliance costs for service providers who are potentially liable but who do not end up paying any share of the TDL.

Clarifications to financial statement requirements

- 17 I consider that section 80 of the Act could be improved to reduce the requirements for financial information disclosure and to improve the clarity of requirements.
- 18 Since the Act was last amended, the Financial Reporting Act 2013 has come into force. Although the Act now refers to the Financial Reporting Act, changes to the Act are needed to clarify requirements. The term "consolidated financial statements" currently in the Act should be replaced with "group financial statements" for consistency with the Financial Reporting Act 2013.
- 19 Section 79 of the Act relates to where two or more bodies corporate must be treated as one person for the purposes of TDL liability. I propose to amend the Act so that service providers captured by section 79 should not be required to provide the Commission with a consolidated statement of financial performance that covers all of a service provider's activities, including any non-telecommunications activities, unless a group financial statement is already required under other legislation. However, liable persons should still be required to provide (individual) financial statements in accordance with section 6 of the Financial Reporting Act 2013. This change should reduce compliance costs for some service providers, and allow for the information prepared to be more focussed on the TDL requirements.

Increased flexibility in audit and assurance requirements

- 20 The Act specifies in section 83(2) that liable persons must provide a report prepared by a qualified auditor that includes a statement of the extent to which the information provided is "correct and complete". This standard is unfamiliar to auditors, and I consider it should be changed to be more consistent with the auditing and assurance standards referred to in the Financial Reporting Act 2013.

- 21 For some liable persons the costs incurred in commissioning an assurance report just for TDL purposes can be large compared to the TDL amount that they are ultimately liable to pay. In some cases it may be appropriate and cost effective to use either an existing audit report (e.g. one prepared for statutory reporting purposes) or an alternative form of assurance. The Commerce Commission should have the flexibility to decide what is appropriate on a case-by-case basis.
- 22 This flexibility should allow the Commerce Commission, when it considers it appropriate, to depart from the auditing and assurance standard specified in the Act.

Timing of TSO and TDL Determinations

- 23 The Act specifies that the Commission must complete its final liability allocation for the TDL before it publicly notifies any final Telecommunications Service Obligation (TSO) cost calculation for a given financial year. This provision has had the effect of unnecessarily delaying the finalisation of TSO charges paid to the TSO Relay Service Provider.
- 24 I am proposing to repeal section 91(2) to enable more timely final payments of TSO charges.

Consultation

- 25 The Treasury was consulted during the preparation of this paper. The Department of Prime Minister and Cabinet was informed.
- 26 The Commerce Commission was also consulted and provided input.

Financial Implications

- 27 This proposal has no financial implications for the Crown.

Human Rights

- 28 This proposal has no human rights implications.

Legislative Implications

- 29 Implementation of this proposal will require minor amendments to the Telecommunications Act 2001.
- 30 The legislative vehicle available for these amendments is the Telecommunications (Land Access and Other Matters) Bill. This Bill is scheduled to be introduced to the House in May 2016.

Regulatory Impact Analysis

- 31 The Treasury has determined that, due to their minor nature, the TDL changes are exempt from the need for a regulatory impact assessment.

Gender and disability implications

- 32 This paper has no gender or disability implications.

Publicity

- 33 The communications approach around this paper and associated issues will be managed by my office, in consultation with other offices as appropriate.

Recommendations

The Minister for Communications recommends that the Committee:

1. **agree** to allow prospective TDL liable persons to provide financial information that relates to the same reporting period as their financial year for the purpose of determining whether they are liable for amounts payable to the Crown;
2. **agree** to update the definition of financial statements for consistency with the Financial Reporting Act 2013 so that it refers to 'group financial statements' instead of 'consolidated financial statements';
3. **agree** to only require group financial statements from prospective TDL liable persons if they are already required to produce group financial statements under other legislation;
4. **agree** to amend the default audit and assurance requirements for liable persons for the purposes of liability allocation, for more consistency with the Financial Reporting Act 2013;
5. **agree** to amend the requirements for information liable persons are required to provide for the purposes of liability allocation, so that the Commerce Commission has discretion to determine a different method of audit and certification when appropriate;
6. **agree** to repeal the provision which prevents the finalisation of the Telecommunications Service Obligation relay service cost until the TDL liability allocation is finalised; and
7. **invite** the Minister for Communications to issue drafting instructions to Parliamentary Counsel Office to give effect to these recommendations;
8. **authorise** the Minister for Communications to make further minor or technical changes, consistent with the policy framework in this paper, on any issues that arise during the drafting process.

Hon Amy Adams
Minister for Communications

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