MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

# Regulatory impact statement

## Telecommunications Act review: consumer matters

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# Agency disclosure statement

This regulatory impact statement (**RIS**) has been prepared by the Ministry of Business, Innovation and Employment (**MBIE**).

This RIS examines issues relating to customer service quality and dispute resolution in the telecommunications sector.

This RIS has been prepared in the following context:

- Under section 157AA of the Telecommunications Act 2001 (the **Act**), the Minister for Communications must consider whether the existing regulatory frameworks in the Act is the most effective means to meet certain criteria by 31 March 2019.

- A September 2015 discussion document issued by MBIE *Regulating Communications for the Future* took a broad look at the underlying regulatory settings for communications markets, and set the scene for reform after 2020. Responses were received from a variety of submitters representing end-users, access seekers and network owners, and supported a case for change from the status quo.

- An options paper seeking feedback on the implementation of the proposed new regulatory framework was released in July 2016. The views of a range of businesses, representative organisations, individuals, and experts were represented in the 31 submissions received.

- A number of submissions touched on consumer service quality issues which are addressed in this RIS. Workshops on consumer matters were also conducted with interested parties.

MBIE has identified a number of options to address concerns with consumer service in the telecommunications sector. However we have not been able to precisely quantify the costs and benefits of the proposed options – rather we have taken a qualitative approach to our assessment.

A key constraint on quantitative analysis is the time lag in impact of the proposed changes on future consumer behaviour. Data availability has also compromised our ability to assess the net economic impacts of the options. Other jurisdictions have quite different regimes, so international precedent presents limited insights for the New Zealand circumstances.

Public consultation has been focused on written submissions and associated workshops.

Authorised by:

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# 1 Status quo and problem definition

## Background

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

2. The Telecommunications Act 2001 (the **Act**) provides the underlying economic regulatory settings for communications markets in New Zealand. Under section 157AA of the Act, the Minister for Communications (the **Minister**) must commence a review of the regulatory framework (the **Review**) by 30 September 2016, and use best endeavours to complete the Review by 31 March 2019.

3. In September 2015, the Minister released a discussion document which took a broad look at the underlying regulatory settings for communications markets, and set the scene for reform after 2020.[1] Responses were received from a variety of submitters representing users, access seekers, and network owners.

4. Following further consultation the Government has decided to proceed with changes in relation to consumer matters dealt with under the Act.

5. Information from a number of sources indicates that the telecommunications sector generates more consumer complaints than any other sector. These complaints include issues of poor customer service, poor quality products (coverage and speed), difficulties with installations, misleading information and billing disputes. There have been some high profile and successful prosecutions of telecommunications providers under the Fair Trading Act. The level of consumer dissatisfaction suggests that market outcomes have been mixed at best.

*Multiple sources highlight poor consumer experiences with telecommunications services*

6. Consumer NZ's recent telecommunications survey has highlighted that the most common problems consumers face in the telecommunications sector are:

   a. slower-than-expected broadband speeds

   b. disconnections or dropouts of internet services

   c. billing disputes.

7. In addition, the survey found that the process for switching to Ultra-fast Broadband (**UFB**) was problematic for a third of customers who had switched in the past year. The biggest problem in this regard was unmet timeframes for installation, which was an issue for 23 per cent of people.

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[1] *Regulating communications for the future: Review of the Telecommunications Act 2001* available at http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/consultation-8-sept-2015

8. The 2016 Telecommunications Dispute Resolution Scheme (**TDRS**) annual report also reported a significant rise in the number of complaints received by the scheme over the previous year (2,384 as compared to 1,442 for the 2014/15 year).[2]

9. For the 2015/16 year, 49 complaints were accepted by the scheme and of those 26 were settled by mediation and 23 went to adjudication.

10. The TDRS covers 95 per cent of telecommunications customers, indicating the service is actually used by a small amount of customers relative to its coverage.

11. The National Consumer Survey 2016 recently undertaken by the Ministry for Business, Innovation and Employment (**MBIE**) in collaboration with Colmar Brunton, found that 19 per cent of people had heard of the TDRS, and that generally very few people actually used a disputes resolution service (7 per cent) to deal with their most recent problem (for a broad range of services, including telecommunications, banking, electricity and gas etc.)

12. The Citizens Advice Bureau (CAB) has provided officials with information that common problem areas relating to telecommunications services include:

    a. termination fees

    b. variations to contract and possible unfair contract terms

    c. lack of a written contract putting consumers at a disadvantage

    d. long waiting times (when users attempt to contact their telecommunications service provider)

    e. poor responses from telecommunications service providers to consumers' issues or complaints.

13. This is consistent with results from the National Consumer Survey 2016, which indicated that:

    a. forty-two per cent of people have had a consumer problem with their fixed line company within the last two years (the most problematic sector)

    b. twenty-two per cent of the complaints about incorrect, misleading or insufficient information were from fixed-line telecommunications services

    c. of the complaints about hidden fees or unexpected costs, the top sector was telecommunications.

14. Telecommunications providers for many years have been the most complained about sector for Fair Trading Act 1986 (the **Fair Trading Act**) complaints to the Commerce Commission (the **Commission**).

15. A common complaint made to the Commission by end users is in relation to termination fees, (these are the fees for cancelling services and terminating customer contracts). Other common complaints include the introduction of termination fees without disclosure to consumers, and having service terminated prior to the agreed termination date, despite being charged for the whole notice period.

[2] This level of complaints needs to be considered in the context of a general market 7.4 million telecommunications connections in New Zealand.

16. Poor industry practices in relation to UFB installations are also acknowledged to be a "pain point" for customers. Getting fibre installed often requires that a customer deal with multiple parties throughout the process (the Local Fibre Company (**LFC**) or Chorus, and their Retail Service Provider (**RSP**)). This means it can be difficult for a consumer to know which parties are accountable for particular process steps, leading to additional confusion and delay in some cases.

17. The Telecommunications Users Association of New Zealand has reported that the biggest frustration with the UFB installation process is caused by technicians not showing up when they said they would.

18. The number of consumers affected by these issues, and the frequency with which the same complaints are raised, suggests there is a systemic problem in how telecommunications providers engage with consumers.

19. Evidence from ministerial correspondence highlights the following key issues:

    a. poor customer service (call waiting times, consumers being told incorrect information from call centre staff, lack of urgency when remedying an issue)

    b. network coverage and speed (issues relating to older broadband equipment in smaller cabinets, lack of mobile broadband coverage)

    c. installation issues (delays, land access and consenting issues, quality of installs, the costs or difficulties of getting fibre installed in new land developments – e.g. retirement villages)

    d. faults with UFB once installed, and faults with the copper network (difficulties when switching between RSPs, broadband congestion issues and landline outages).

# Status Quo

20. This section outlines the status quo for the treatment of consumer issues under the current legislative arrangements, including market monitoring powers and codes, and under generic regulatory provisions.

## Telecommunications environment

*Current wholesale regulation creates wholesale quality standards*

21. The current regulatory tools in the Act (enforced by the Commission as the economic regulator) are focused on wholesale regulation of communications services. The Act promotes competition through wholesale regulation. This drives competition between retail providers, which is expected to result in the supply of high quality service to retail customers.

22. Current tools allow the Commission to address service quality issues between network owners such as Chorus and its wholesale customers such as Spark. For example, the Commission can set timeframes for fault rectification.

23. The Commission recently considered setting new wholesale standards for minimum performance on Chorus' copper network to require Chorus to maintain congestion-free links on parts of the network. The Commission announced its final decision on 14 March 2017, setting revised benchmarks for network congestion that suppliers are required to comply with.

24. However, the Act does not directly regulate the supply of service by retailers to end users, with

some very limited exceptions (for example, free local calling to retail customers through the Telecommunications Service Obligation (**TSO**)). Therefore there is currently limited scope to set terms of supply between retail suppliers and their customers under the current telecommunications regulatory regime.

*Post-2020 wholesale regulation will strengthen quality standards*

25. The Review has focused on changing the regulation of wholesale fixed line services to a utility regulation model (similar to Part 4 of the Commerce Act). The new regime will have a greater focus on wholesale quality measures than the current regime. In December 2016 Cabinet agreed that the new utility regulation model must cover quality and reliability requirements for the operation of networks. Specific wholesale quality measures will likely include:

    a. the time taken to respond to network faults

    b. the quality of network deployment and installation

    c. the provision of information on the reason for and likely duration and extent of a network outage.

26. These requirements would apply to the supply of wholesale services to wholesale customers (like Spark and Vodafone), in the expectation that competition would drive retail suppliers to pass these on to customers. Quality standards are integral to the regulatory regime because they prevent regulated suppliers from degrading their service to save on expenditure and hence boost their profits.

## Market monitoring powers and codes

*There are market monitoring powers that can be used to provide information on consumer matters*

27. The Commission has broad powers to monitor competition in, and the performance and development of telecommunications markets under section 9A of the Act. In practice this monitoring has focused on assessing levels of competition in markets (including retail markets). The Commission publishes the *Annual Telecommunications Monitoring Report* which provides retail market analysis. However, this report does not presently capture retail service quality measures. There is currently limited monitoring of consumer satisfaction and retail level service quality in the Commission's monitoring reports.

28. The Commission also contracts TrueNet to undertake broadband speed testing. The Commission is currently preparing a Request For Proposals for a revised speed testing system.

*Regulated codes could be used for consumer protection*

29. The Act provides for the creation of codes for regulated services under the Act. There is currently one regulated code: the Telecommunications Carriers' Forum (**TCF**) *Code for the Transfer of Customer Services*. This is an approved code under Schedule 2 of the Act and regulates the transfer of services when a retail customer switches providers. These codes can only become binding if the Commission approves them.

30. The Commission can itself develop a code for regulated services but has not used this power to date.

*Telecommunications Carriers' Forum also creates codes*

31. The TCF, as an industry self-regulatory body, can develop codes which only bind signatories. The majority of industry codes are established in this way. These codes can apply to

unregulated services. An example of this is the *Disconnection Code*, which protects customers by providing a fair, consistent standard for service provider disconnection policies. Currently only Spark, Vocus and Vodafone are signatories to this code.

32. The *Broadband Product Disclosure Code* is a mandatory code developed by the TCF which assists customers looking to purchase a fixed line broadband plan. It is binding on TCF members and non-TCF members that choose to sign up to it, and (amongst other things) aims to allow customers to compare broadband plans between service providers via a customer-friendly offer summary.

*Telecommunications Dispute Resolution Scheme resolves consumer disputes*

33. The TDRS is the telecommunications service dispute resolution scheme. It is provided by the TCF and is currently operated by FairWay Resolution Limited (an independent Crown owned company). Consumers are required to work with their RSP before engaging the TDRS.

34. For the 2014/15 year the TDRS received 1442 complaints, of which 34 were moved to the "investigation and resolution" phase. In this phase the TDRS will assist the parties to reach a negotiated settlement, using whatever process it considers appropriate. Where settlement cannot be reached it issues a final determination. In contrast, the CAB received 5083 enquiries about telecommunications issues during the same period. Systemic issues identified by the TDRS include:

- fibre installations
- charging for paper invoices
- non-availability of broadband
- service transfers.

*There is (untriggered) legislative provision for a new consumer complaints system*

35. The government can prescribe a new consumer complaints system in accordance with a (currently dormant) section of the legislation.[3] This can be used to set up a new consumer complaints scheme, adjudicator and levy on industry, through an Order in Council, if specific conditions are met.

## Generic regulation

*The Fair Trading Act protects against false and misleading statements*

36. The Commission performs a regulatory function in the telecommunications retail sector through the enforcement of the Fair Trading Act 1986 (the **Fair Trading Act**). It has the power to prosecute companies and issue infringement notices in relation to false and misleading consumer information. It also engages with the sector to educate and support compliance with fair trading obligations.

37. The Commission continues to use its enforcement powers in the telecommunications area. Trustpower was recently fined $390,000 for advertising misleading prices in multi-year broadband contracts.

38. Vodafone has also been subject to fines under the Fair Trading Act in recent years. In 2016

[3] Part 4B of the Telecommunications Amendment Act (No. 2) 2006.

Vodafone was fined $165,000 for making false representations on invoices where a $10 discount should have been applied. This affected approximately 15,000 customers.

39. In 2012 Vodafone was also fined close to $1.5 million over marketing campaigns that breached the Fair Trading Act, the highest ever penalty imposed on a single defendant at the time.

40. The Commission, in its latest annual *Consumer Issues Report* relating to Fair Trading Act complaints, identified telecommunications providers as the most complained about sector for Fair Trading Act complaints. It also made comparisons between different major RSPs as to the sorts of Fair Trading Act issues consumers are facing. For example analysis of complaints to the Commission about telecommunications providers identified that Spark was named in the majority of complaints about charges, and Vodafone was name in the majority of complaints about inaccurate invoicing.

*Fair Trading Act unfair contract terms protections*

41. The Fair Trading Act was amended in 2014 to introduce provisions protecting consumers from unfair contract terms. The Commission has subsequently reviewed a number of service contracts in the telecommunications sector. This review was driven by the number of complaints received by the Commission domestically and the fact that overseas regulators identified the New Zealand telecommunications industry as an industry where potential unfair contract terms were common.

42. Although the Commission found that the majority of the telecommunication companies had made real efforts to comply with the new provisions, there were still 66 terms identified as being potentially unfair.

# Problem definition

43. Feedback received from consultation on consumer issues throughout the Review has focused on the issues relating to consumer dispute resolution under the TDRS, such as whether to modify its scope and coverage. Issues identified with the TDRS include:

- *lack of mandatory membership*: membership of the TDRS is compulsory for TCF members. However TCF membership is voluntary. In this sense the TDRS is not a mandatory scheme (although it does capture the RSPs that serve the majority of customers). Some prominent RSPs are not TCF members (e.g. MyRepublic);

- *limited wholesale provider accountability (Chorus and Local Fibre Companies)*: the TDRS requires a billing relationship between an "end-user" lodging a complaint and a scheme member. This means that wholesale are not directly accountable to customers in the TDRS. However Chorus and LFCs have been supporting resolution of complaints through assistance and provision of information to RSPs;

- *lack of scheme independence*: the TCF currently contracts FairWay as an independent provider to manage and provide resolution services under the TDRS. However, the TCF provides general governance for the scheme, and funds it; and

- *lack of awareness*: there is a lack of awareness among consumers about the scheme.

44. Consultation through the Review has also identified the provision of information about telecommunications service as being another problematic area. There are concerns that consumers find the information about telecommunications products unclear, confusing and difficult to compare.

45. The current framework relies primarily on competition being the driving force for improvements in customer service quality. The level of consumer dissatisfaction suggests that market outcomes have been mixed at best. Relying on existing competitive influences to date has not been as effective as hoped for in delivering high quality customer service.

46. The positive impacts of competition would be better enabled through more accessible comparative information for consumers on how RSPs perform relative to each other, on both service quality and price. Consumer responsiveness would also be supported by having some common minimum standards in service delivery against which suppliers can be held accountable.

47. More specifically, consumer responsiveness tends to be improved when information asymmetries between supplier and consumer are addressed, and when codes and standards of service delivery at the retail level are available and performance can be assessed. These measures, combined with a credible threat of mandatory consumer code regulation, are likely to incentivise better coverage and depth of information to consumers and greater responsiveness to consumer preferences (in both price and quality) by suppliers.

48. This RIS examines the three key issues as an integrated set of interventions that are likely to better support effective competition as the primary means of lifting customer service quality.

# 2 Objectives

## Wider policy objectives

49. The Government's long-term goal is to support a vibrant communications environment that provides high quality and affordable services for all New Zealanders at competitive prices, and enables our economy to grow, innovate and compete in a dynamic global environment.

50. To achieve this:

- high quality fixed and mobile broadband connectivity at competitive prices should be readily available to all New Zealanders, and to sectors critical for growth (for example, business, education, health and government). By 2025, the Government's vision would see:
    i. 99 per cent of New Zealanders able to access broadband at peak speeds of at least 50 Mbps
    ii. The remaining one per cent able to access at least 10 Mbps
- providers in the communications environment should be able to innovate, invest and compete, without being unnecessarily constrained by out-of-date regulatory approaches;
- businesses and the broader economy should be able to take advantage of the opportunities provided by high speed connectivity to expand and compete in new markets; and
- key communications infrastructure and networks should be reliable, secure and resilient in the eyes of end-users.

## Specific policy objectives for consumer issues

51. The Government has four policy objectives for consumer service quality in the telecommunications sector:

- **Objective A:** consumers should be able to make informed choices about retail telecommunications services
- **Objective B:** consumers should be able to expect service quality at competitive levels, as well as competitive prices
- **Objective C:** if problems arise, there should be efficient and responsive complaint and dispute resolution procedures
- **Objective D:** the level of regulatory intervention for consumer service quality issues should be proportionate to the problem it seeks to address.

# 3 Issues

52. This RIS examines three issues:

a. **provision of information to retail customers**: how the provision of information about telecommunications services to retail customers can be improved

b. **quality of service provided by telecommunications operators at the retail level**: how the quality of service provided by telecommunications operators at the retail level can be improved

c. **complaints and dispute resolution procedures**: how the operation of complaints and dispute resolution procedures for telecommunications services can be improved.

# 4 Improving information available to retail customers

53. The first issue is how the provision of information to consumers about telecommunications services can be improved. This means improving the quality, timeliness and comparability of information.

54. There are two options to address this issue:

    a. **Option One (status quo):** take steps under the existing arrangements; and

    b. **Option Two:** modify the Commission’s monitoring powers (preferred option).

## 4.1 Option One – Status Quo

### 4.1.1 Outline of Option One

55. Under Option One, the Minister for Communications would write to the Commission and request that it exercise its powers under section 9A of the Act to carry out an inquiry, review or study into the provision of information to consumers by telecommunications providers, with a view to identifying ways to improve the quality, timeliness and comparability of information that is provided.

### 4.1.2 Benefits and costs of Option One

56. The main benefit of this option is that it does not require regulatory or legislative change and could be implemented relatively quickly. It would also likely have some benefit of increasing the quality, timeliness and comparability of telecommunications service information, but not to the degree or specificity needed to improve informed consumer choice.

57. There are limited additional costs for this option. However the effectiveness of the reporting under the existing regime is questionable, given the level of consumer concern evident.

### 4.1.3 Overall assessment of Option One

58. Overall, we consider that the benefits of Option One are likely to be minimal and an opportunity to take more effective steps would be lost.

59. In terms of the objectives, Option One partially meets Objective A, in that the regulatory regime has some powers at present which can be used to improve consumer information for telecommunications services. However, we consider that these powers are not adequate. Option One partially meets Objective B for the same reason. Option One is neutral with regard to Objective C.

60. Option One performs well against Objective D, by not imposing any additional burden on firms.

61. There are existing measures to make information available to retail customers (outlined below), but in our view they do not go far enough. There are privately run broadband *price*

comparison websites to facilitate customer switching between RSPs.[4] In contrast, there is limited comparative information available to consumers about retail service quality (for example customer satisfaction for different retail services, or the number of complaints for different RSPs).

62. A common feature of the Commission reporting is that it is not reported on sufficiently frequently (i.e. annual publications). It is also not currently reported on for the purpose of assisting consumers to choose between different retail service providers. Given the rapid rate of change in the telecommunications sector, it is recommended that additional measures are needed to address information on retail service quality more frequently and to assist consumers make informed decisions.

63. The Commission's *Consumer Issues Report* is useful, but it is focussed on misleading behaviour investigation, prompted by specific Fair Trading Act complaints, and not broader customer service issues.

## 4.2 Option Two – Modify the Commission's monitoring powers

### 4.2.1 Outline of Option Two

64. Under Option Two, the Commission's monitoring powers would be modified to:

    a. specifically require more detailed and specific reporting on retail service quality for telecommunications consumers; and

    b. make such information readily accessible to consumers.

65. This option would require an amendment to existing monitoring powers under section 9A of the Act.

### 4.2.2 Benefits of Option Two

66. Relative to the status quo, we consider that Option Two has the advantage of providing additional emphasis for the Commission, as the independent regulator, to specifically improve the provision of information about telecommunications services to customers. It would have the advantage of focussing the regulator on the specific issues that are of concern in retail service quality. Specifically requiring the Commission to report on these matters would signal to industry that retail service quality is a high priority.

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[4] For example, ***www.glimp.co.nz*** and ***www.broadbandcompare.co.nz***.

### 4.2.3 Costs of Option Two

67. Option Two could increase costs for the Commission and for affected telecommunications operators. The Commission would need to dedicate resources to the new responsibilities for the powers proposed. We estimate that the Commission would require an additional 1 – 2 Full Time Employees plus administrative costs to carry out the new responsibilities, but these costs could likely be met within existing resources. Consultation would be required if any additional levy funding was needed to enable function.

68. It is difficult to quantify any consequent costs to affected telecommunications operators. We do not consider such costs as likely to be significant, and it is unlikely that the resources required for this function will materially affect the total levy impost to industry. There may be some further information disclosure obligations on firms associated with the new approach to reporting. This would be established in future guidance to be developed by the Commission, with stakeholder input.

### 4.2.4 Overall assessment

69. Overall, we consider that the benefits of Option Two exceed the costs.

70. In terms of the objectives, Option Two performs strongly against Objective A, because more focused reporting is likely to improve the ability of customers to make informed choices. We consider that Option Two supports the achievement of Objective B by increasing reporting and consumer understanding, which should shift the focus of competition increasingly onto customer service quality. Option Two performs moderately against Objective C because it should reduce the need for consumer dispute resolution.

71. Finally, Option Two performs well against Objective D as it is a proportionate response given the level of dissatisfaction with current consumer information and reporting in the telecommunications sector.

## 4.3 Conclusion and recommendation

**Conclusion**

72. Table One assesses the options against the objectives set out above.

**Table One: Assessment of options against objectives**

| Objective | Option One: Status Quo | Option Two: Modify the Commission's monitoring powers (preferred option) |
|---|---|---|
| *Objective A*<br>Consumers should be able to make informed choices about retail telecommunications services | ✓ | ✓✓✓ |
| *Objective B*<br>Consumers should be able to expect service quality at competitive levels, as well as competitive prices | - | ✓✓ |

| | | |
|---|---|---|
| *Objective C*<br><br>If problems arise, there should be efficient and responsive complaint and dispute resolution procedures | - | ✓ |
| *Objective D*<br><br>The level of regulatory intervention for consumer service quality issues should be proportionate to the size of the problem | ✓ | ✓✓ |

**Recommendation**

73. The preferred option is to modify the Commission's monitoring powers (Option Two).

74. This option would provide more useful, regular information to be available to consumers when considering which RSP to sign up with and in the selection of telecommunications services. It would expand the type of information already reported on (for example this could include customer satisfaction surveys, complaints per 100,000 for given issues per themes identified) and would provide evidence to identify systemic issues at the retail level. The required frequency of reporting could be specified to ensure that information is regularly updated for consumers.

# 5 Improving quality of service at the retail level

75. The second issue is how to improve the quality of service for telecommunications services at the retail level. Despite retail competition, there are consistent customer service issues which have emerged.

76. There are three options to address this issue, all relating to the development of a code for common minimum standards in service delivery:

- **Option One (status quo):** take steps under the existing arrangements, relying on existing voluntary codes and industry consensus;
- **Option Two: medium-level intervention (preferred option):** this would progress a legislative amendment to the Act to enable the Commission to establish regulated codes, if satisfactory voluntary codes do not emerge; and
- **Option Three: high-level intervention:** mandatory and detailed, enforceable retail service level standards for telecommunications services in legislation (or secondary instrument) that would be implemented immediately and apply to all RSPs, with substantial financial penalties for non-compliance.

## 5.1 Option One – Status Quo

### 5.1.1 Outline of Option One

77. Option One is to continue with the status quo and rely on competition between RSPs at the retail level to drive improvements in customer service quality, which would be reflected in an industry code.

### 5.1.2 Benefits and costs of Option One

78. The main benefit of this option is that it does not involve any regulatory or legislative change and would be relatively quick to implement. Competition in the retail market for fixed line services is continuing despite some industry consolidation in recent years. The TCF would be encouraged to focus on customer service quality and the Commission could also focus more on these aspects using its existing powers.

79. There are minimal additional costs associated with this option, but there are limited additional benefits that may accrue in the quality of customer service for telecommunications services. Voluntary code development can take a long time, and is prone to extended negotiation and hard won member consensus.

### 5.1.3 Overall assessment of Option One

80. Overall, we consider that there are minimal benefits to retaining the status quo (Option One).

81. In terms of the objectives, Option One partially meets Objective A in that the Commission could use its existing monitoring powers to promote consumers' ability to make informed choices about services. Option One partially meets Objective B, in that the current regulatory

regime does provide tools to incentivise service quality at competitive levels, as well as competitive prices. For example, the TCF could be encouraged to develop a retail code applying to RSPs that deal with customer service quality matters. Option One moderately satisfies Objective C as the TDRS does achieve this objective to an extent, and it could be more widely promoted. However, we consider that these tools are not adequate, and this option would forego the wider consumer and competitive benefits that may accrue with further intervention.

82. Option One performs well against Objective D, by not imposing any additional burden on firms.

## 5.2 Option Two – medium level intervention

### 5.2.1 Outline of Option Two

83. Option Two is characterised as a medium level intervention. It is to make a legislative amendment to the Act to enable the Commission to establish regulated codes:

- with wide industry coverage – for example applying to all RSPs providing particular telecommunications services (beyond just TCF members and regulated suppliers as under the status quo)
- applying to unregulated services
- with a focus on improving customer service quality at the retail level (giving rise to obligations between a retail supplier and a retail customer),

if the industry fails to establish codes on these matters to a sufficient standard.

### 5.2.2 Benefits and costs of Option Two

84. The main benefit of this option is that it would widen the power for the Commission to develop regulated codes, in particular enabling more focus on specific issues relating to customer service quality. It would still be an industry-led approach as in Option One but with a credible regulatory threat in place.

85. The main costs of this option are an increase in resourcing for the Commission to carry out these new functions, and the costs of compliance for affected industry participants. Consultation would be required should any additional levy funding be needed to enable these contingent code-making obligations.

### 5.2.3 Overall assessment of Option Two

86. Overall, we consider that the benefits of Option Two (in terms of the benefits likely to derive from the new powers and requirements) exceed the costs.

87. In terms of the objectives, Option Two performs very well against Objective A in that it specifically increases the measures available to the Commission to influence the development of regulated codes for the benefit of consumers, and this is likely to directly lift the ability to make informed service choices. Option Two performs well against Objective B because the code making powers should result in higher service standards generally. Option Two performs well on Objective C because it should reduce the need for dispute resolution.

88. Option Two also meets Objective D because it is a proportionate response to the problem – the new powers enable further rule-making by the Commission but with a focus on adequate specification of consumer service quality.

## 5.3 Option Three – high level intervention

### 5.3.1 Outline of Option Three

89. Option Three is characterised as a high level intervention. It is for the government to specify mandatory and detailed enforceable retail service level standards for telecommunications service quality directly in legislation (or secondary instrument) that would apply to all RSPs. This would be modelled on the *Customer Service Guarantee Standard*, in force in Australia for fixed line phone services. It provides for maximum timeframes which must be met in relation to fault repairs and appointments with customers. If the standards are not met, there are financial penalties which accrue.

### 5.3.2 Benefits and costs of Option Three

90. The main benefit of this option is that it would provide a high degree of certainty that there will be a focus by the regulator and all RSPs on customer service quality issues, and if the standards are correctly specified and implemented then there could be a rapid and considerable lift in customer service quality.

91. The main cost of this option is that the standards would be at significantly greater risk of not being fit for purpose due to the lack of industry involvement in their development. Accordingly this option would carry a high risk of unintended outcomes. It would be difficult to specify the service standards directly in legislation (or in regulation a secondary instrument) in a way that would be enduring as technology and the market context changes over time.

### 5.3.3 Overall assessment of Option Three

92. Overall, we consider that the costs of Option Three (in terms of the risk of unintended outcomes) exceed the benefits.

93. In terms of the objectives, Option Three partially meets Objective A as it should result in more informed decision making – but this benefit would be undermined by the risk of the standards being wrong or out of date. Option Three partially meets Objective B for the same reason. Similar to the other options, Option Three also performs well on Objective C because it should reduce the need for dispute resolution.

94. Option Three performs poorly against Objective D because it would be a significant and overly prescriptive intervention, and hence a disproportionate response.

# 5.4 Conclusion and recommendation

**Conclusion**

95. Table Two assesses the options against the objectives set out above.

**Table Two: Assessment of options against objectives**

| Objective | Option One: Status Quo | Option Two: Medium level intervention (preferred option) | Option Three: High level intervention |
|---|---|---|---|
| *Objective A*<br>Consumers should be able to make informed choices about retail telecommunications services | ✓ | ✓✓✓ | ✓✓ |
| *Objective B*<br>Consumers should be able to expect service quality at competitive levels, as well as competitive prices | ✓ | ✓✓ | ✓✓ |
| *Objective C*<br>If problems arise, there should be efficient and responsive complaint and dispute resolution procedures | ✓ | ✓ | ✓ |
| *Objective D*<br>The level of regulatory intervention for consumer service quality issues should be proportionate to the size of the problem | ✓ | ✓✓✓ | X |

**Recommendation**

96. The preferred option is Option Two, being a medium level intervention enabling the Commission to develop regulated codes relating to retail customer service quality matters, should industry codes not be sufficient.

97. The limited tools in place to deal with these issues are not proving to be effective, and so intervention is required. Code making is a proportionate response as codes can be developed with close reference to the current market and technology context, and can take into account the views and expectations of consumers. They can be relatively easily updated to remain relevant over time.

98. This power would be used as a backstop measure and an additional lever in the Act to incentivise improvements from industry. The option would give industry the opportunity to

continue to improve the customer experience in the first instance and to develop a code, prior to implementation of the code making power and would therefore ensure a proportionate response.

99. Option Three would be too prescriptive and disproportionate to the issue at hand. It would also likely add significant implementation costs. It would require that retail standards be set in primary legislation (or secondary instrument) for the introduction of new services and therefore would run the risk of becoming outdated quickly.

# 6 Improving complaints and dispute resolution procedures

100. The third issue is how the operation of complaints and dispute resolution procedures for telecommunications services can be improved.

## 6.1 Option One – Status Quo

### 6.1.1 Outline of Option One

101. Option One is to continue with the status quo by continuing to encourage the TCF to make improvements to the existing dispute resolution scheme, the TDRS.

102. Part 4B of the Telecommunications Amendment Act (No. 2) 2006 provides a trigger for establishment of a consumer complaints system through an Order in Council by the Minister for Communications. In the case where an industry-based scheme is already in existence (the TDRS), a new consumer complaints system can be brought in under 4B in the following circumstances:

   a. where the industry-based system has failed to achieve the purpose of facilitating the resolution of complaints by consumers against service providers

   b. where the industry-based system failed to achieve the objectives of a consumer complaints system under Part 4B (including such things as ensuring that complaints are investigated in a timely manner, and that all reasonable steps are taken to investigate complaints).

### 6.1.2 Benefits and costs of Option One

103. The main benefit of this option is that it does not require any regulatory or legislative change.

104. The main cost of this option is the ongoing dissatisfaction with customer service quality that is being seen today. The main limitation of the status quo is that there may be little incentive on the TCF and industry to continue to improve the functioning of the unregulated scheme. The TDRS has been responsive to some of the issues raised but more improvements need to be made.

### 6.1.3 Overall assessment of Option One

105. Overall, we consider that the costs of Option One exceed the benefits.

106. In terms of the objectives, Option One does not meet Objective B, as the current tools in the regime are not producing adequate improvements. It performs poorly against Objective C because the TDRS is not meeting objectives.

107. Option One performs well against Objective D, by not imposing any additional burden on firms.

108. There is currently no regulated disputes resolution scheme and there is a risk that without the real threat of regulatory intervention, industry may not continue to make improvements to the TDRS.

109. Part 4B as it stands is arguably not a credible regulatory threat, since there is no ongoing requirement to assess whether the trigger for implementation has been met. In this sense it is

arguably not as effective as it could be. Scheduling a regular review would signal to industry that improving the disputes resolution scheme is a high priority and that the Part 4B backstop measure will be brought in if necessary.

# 6.2 Option Two – low level intervention

## 6.1.1 Outline of Option Two

110. Option Two is characterised as a low level intervention. It would involve scheduling a periodic review by the Commission of whether the trigger for implementing Part 4B of the Act has been met, and to make an assessment as to whether current improvements by the TDRS warrant introduction of Part 4B of the Act, or some alternative provision of the dispute resolution service by another provider through an alternative regulatory arrangement.

## 6.1.2 Benefits and costs of Option Two

111. The main benefit of this option is that it would establish whether there is a need for further regulation through review of the TDRS against Part 4B. It would allow the TDRS to continue to make improvements and scheduled reviews could encourage industry to address remaining gaps in performance, for example:

    a. improved transparency of decision-making from the TDRS; and

    b. better public reporting (for example, wider publication and investigation of common themes of complaints escalated for disputes resolution; more specific information on the number complaints received by the TDRS broken down by provider; increased frequency of reporting on telecommunications complaints; and report on TDRS members' share of complaints that reach deadlock).

112. Option Two is one step short of direct Part 4B intervention and would seek to encourage current responsiveness from industry. It is proportionate as no significant change to the status quo is suggested unless there is evidence to support change.

113. The main cost of this option is that it would add to the Commission's current work programme and consultation would be required for any additional levy funding needed to enable it.

## 6.1.3 Overall assessment of Option Two

114. Overall, we consider that the benefits of Option Two (in terms of the likely improved outcomes) exceed the costs (in terms of additional Commission resourcing).

115. In terms of the objectives, Option Two performs well against Objective B because it has the greatest likelihood at being effective, thereby improving customer service quality. It performs very well against Objective C as it ensures the dispute resolution scheme in place is fit for purpose. It provides a proportionate set of tools to deal with improving the consumer disputes resolution scheme and so performs well against Objective D.

# 6.2 Option Three – high level intervention

## 6.2.1 Outline of Option Three

116. Option Three is characterised as a high level intervention. It is to implement Part 4B of the Telecommunications Amendment Act (No. 2) 2006 immediately, without waiting for the legislative trigger to be met.

## 6.2.2 Benefits and costs of Option Three

117. The main benefit of this option is that it is very direct and would result in a new consumer disputes resolution scheme being implemented quickly compared to the other Options.

118. The main cost of this option is that it is disproportionate in light of recent industry responsiveness, and would be likely to result in unintended consequences.

## 6.2.3 Overall assessment of Option Three

119. Overall, we consider that the costs of Option Three (in terms of it being a disproportionate intervention and having a likelihood of resulting in unintended consequences) exceed the benefits (in terms of an improved disputes resolution scheme).

120. In terms of the objectives, Option Three performs moderately against Objective B, in that it is only likely to result in slight improvements to customer service quality over time (because, given this would not be an evidence-based response, there is a high risk that the scheme would not be effective). It performs moderately for the same reason.

121. Option Three performs very poorly against Objective B as it is not a proportionate response to the problem.

# 6.3 Conclusion and recommendation

**Conclusion**

122. Table Three assesses the options against the objectives set out above.

**Table Three: Assessment of options against objectives**

| Objective | Option One: Status Quo | Option Two: Low level intervention (preferred option) | Option Three: High level intervention |
|---|---|---|---|
| *Objective A*<br>Consumers should be able to make informed choices about retail telecommunications services | ✓ | ✓ | ✓✓ |
| *Objective B*<br>Consumers should be able to expect service quality at competitive levels, as well as competitive prices | ✓ | ✓✓✓ | ✓ |
| *Objective C*<br>If problems arise, there should be efficient and responsive complaint and dispute resolution procedures | ✓ | ✓✓✓ | ✓✓ |
| *Objective D*<br>The level of regulatory intervention for consumer service quality issues should be proportionate to the size of the problem | ✓ | ✓✓✓ | X X |

**Recommendation**

123. The preferred option is Option Two. The Commission would monitor current improvements by the TCF to the TDRS but there would be a clear signal that if improvements are not made and maintained, then wider regulatory intervention will follow.

124. This option performs best against the objectives and is both proportionate and evidence-based.

125. We note that Option Two is the preferred option in combination with the other changes discussed in this RIS (in particular expanding the Commission's code making powers). The expansion of Commission code making powers alone would not be sufficient to deal with the issues around improving the consumer dispute resolution processes.

# 7 Conclusion and package of recommendations

126. In conclusion, the recommended positions are:

    a. the Commission’s monitoring powers should be modified to:

        i. specifically require reporting on retail service quality for telecommunications consumers

        ii. make such information readily accessible to consumers

    b. in order to improve the quality of service for telecommunications services at the retail level, government should progress a legislative amendment to the Act to enable the Commission to establish regulated codes for customer service quality, if satisfactory voluntary codes do not emerge

    c. there should be a periodic review by the Commission of whether the trigger for implementing Part 4B of the Act has been met, and to make an assessment as to whether current improvements by the TDRS warrant introduction of Part 4B of the Act, or some alternative provision of the service by another provider, through an alternative regulatory arrangement.

127. It is important to note that these recommendations come as an integrated set, as they are heavily inter-related.

128. The set of recommendations will provide the Commission with the right level of monitoring powers, and also focus the Commission on retail service quality issues. The accessibility, quality and comparability of information about telecommunications services should be improved. These things should result in a decrease in the need for consumer dispute resolution, but dispute resolution will still be needed and so the final recommendation gives the Commission the ability to ensure the TDRS is continuing to improve

129. Addressing information asymmetry is a very important but not a sufficient response on its own. To better support informed consumer choice and effective competition, we need to realign the incentives on suppliers, so that they broaden and accelerate voluntary code development, and widen dispute resolution coverage and depth. This can be achieved through enhancing a credible mandatory regulatory threat, and establishing independent third party review functions to further incentivise improvement in voluntary consumer codes and industry dispute resolution practice.

# 8 Consultation

130. Consumer matters and opportunities for enhancing informed choice have been consulted on publicly throughout the review of the Act (through a Discussion Document released in late 2015, and an Options Paper released in mid-2016).

131. Prior to receipt of submissions on the Options Paper, MBIE held a series of workshops with industry (with participation from user groups, wholesale providers and RSPS), indicating industry preferences for change and to identify consumer issues of concern. These included:

    a. maintenance of the TDRS

    b. retaining Part 4B as a regulatory threat

    c. the accountability of participants under the TDRS

    d. seeking improvements to the TDRS (for example to enhance consumer awareness and to improve effectiveness and governance).

132. Submissions to the Options Paper from user groups also sought change to better support informed consumer choice and transparency (to help overcome information asymmetry between the industry and consumers).

133. These views are reflected in the issues and option set developed in this RIS.

134. The proposed amendments to the Act for the purposes of this RIS have been consulted on with the Commission and other relevant government agencies.

135. Further industry and consumer input will be sought on the proposed changes consequent to Cabinet approval, through the legislative development process, and as the Commission establishes consequent guidance.

# 9 Implementation plan

136. If the status quo is retained, no legislative change or increase in funding will be required in respect of the issues discussed in this RIS.

137. All of the preferred options would involve legislative amendment to the Act.

138. In relation to issue one, the preferred option is to modify the Commission's market monitoring powers. This will not require any specific implementation steps from Government other than implementing enabling legislation. MBIE will monitor the success of the changes as part of its general function monitoring the operation of the telecommunications regulatory regime.

139. In relation to issue two, the preferred option is a medium level intervention enabling the Commission to develop regulated codes relating to retail customer service quality matters, should industry codes not be sufficient. Implementation of this intervention is similar to issue one. It will not require any specific implementation steps from Government other than implementing enabling legislation and supporting the establishment of relevant assessment criteria. MBIE will monitor the success of the changes as part of its general function monitoring the operation of the telecommunications regulatory regime.

140. In relation to issue three, the preferred option is a low level intervention, where the Commission would monitor current improvements by the TCF to the TDRS with the ability for the Commission to implement a new consumer complaints resolution scheme if the improvements are not sufficient. Criteria for the assessment of improvements by the TCF will need to be developed as part of legislative development, as well as the future terms of reference for any periodic review of further TDRS improvements by the Commission. These will be consulted on during the legislative process.

# 10 Monitoring, evaluation and review

141. MBIE will monitor the success of the changes as part of its general function monitoring the operation of the telecommunications regulatory regime.

142. The decision to progress to develop a Commission code would be conditional upon stakeholder input on the proposal and MBIE and Ministerial review.

# 11 Glossary

| | |
|---|---|
| **Broadband** | Broadband is a general term that refers to the wide bandwidth, or high capacity of a connection. |
| **Cabinet** | Roadside infrastructure that provides the aggregation point between individual end-user telecommunications connections (for example, the connections of all residents in a subdivision or set of streets) and the nearest exchange (which serves a wider area). |
| **Communications** | The broad sector which includes telecommunications network providers, retail service providers, broadcasters (whether over television, radio or internet), content aggregators and providers, and internet services companies. |
| **Copper** | The original national fixed line telephone network is a copper network. It allows electrical currents to flow, and was designed exclusively for telephony, but is now also used for internet services. The network is owned and operated by Chorus. |
| **Economic regulation** | In the communications context, we use this phrase to refer to regulation adopting cost-based measures to control monopoly pricing, to ensure services are of a suitable quality and to ensure access is provided to regulated infrastructure on a timely basis. |
| **End-user** | A telecommunications service end-user is a person (or business) who is the ultimate recipient of a telecommunications service (for example, the person using a broadband internet connection), or a service that relies on a telecommunications service (for example, the user of a monitored health alarm). |
| **Fibre or fibre optic** | An optical fibre is a very thin strand of glass that is used to transport information via a beam of light. |
| **Fixed line services** | Services provided over fixed line networks including copper, fibre and Hybrid fibre-coaxial networks. |
| **Local Fibre Companies (LFCs)** | Companies formed with the Government’s partners in the UFB initiative (other than Chorus) to deliver wholesale fibre services in certain areas: Northpower Limited, Ultrafast Fibre Limited and Enable Services Limited, and any such companies formed under the extension to the UFB initiative. |

| | |
|---|---|
| **Regulatory framework** | The regulatory framework is the system of laws, regulations, rules, procedures and organisations within which the regulation of communications services takes place. Components include the access regime (and any associated price control), the regulatory decision maker, rules and procedures for decision making, requirements that regulated entities must comply with, and other matters. |
| **Retail Service Provider (RSP)** | A telecommunications provider offering services directly to end-users for their own consumption. |
| **Telecommunications** | Delivery of information over networks using broadband and telephone services, and associated activities. |
| **Telecommuncations Carriers' Forum** | An industry self-regulatory body that develops codes for telecommunications services provided by members and oversees the telecommunications disputes resolution scheme. |
| **Telecommunications Disputes Resolution Scheme (TDRS)** | The TDRS is a body for dealing with customer complaints from customers of RSPs. It is an industry-run scheme and operated by FairWay Resolution (and independent Crown owned company). Customers are first required to work with their RSP before engaging with the TDRS. |
| **Telecommunications Service Obligations** | The telecommunications service obligations (**TSO**) are a set of obligations established under the Telecommunications Act to ensure certain telecommunications services are available and affordable. There are two current TSO services: the Deaf Relay Service, and a Local Service Obligation regarding the provision of residential telephone services. |
| **Ultra-fast Broadband (UFB)** | The Ultra-fastast Broadband initiative is a New Zealand government programme of building fibre-to-the-home networks with a goal for 85 per cent of New Zealanders to have access to fibre broadband by the end of 2024. |