

19 June 2024

Communications Policy, Building, Resources and Markets Group
Ministry of Business, Innovation and Employment

By email: communicationspolicy@mbie.govt.nz

Tēnā koe

Re: Enhancing telecommunications regulatory and funding frameworks

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the enhancing telecommunications regulatory and funding frameworks discussion document (**Discussion Document**), prepared by the Ministry of Business, Innovation and Employment (**MBIE**).
- 1.2 The Law Society supports the intention to update the regulatory framework on telecommunications to ensure it remains fit for purpose. This submission outlines potential workability issues and, where possible, suggests recommendations to address these.
- 1.3 This feedback has been prepared with input from the Law Society's Commercial and Business Law Committee.¹

2 Section 2: Accessing shared property for fibre installations

Extending the installation rights

- 2.1 The Law Society considers that the general premise of extending the rights of shared access for fibre installations is sensible in light of the need to continue installing fibre for the remaining thirteen percent of the population who do not yet have access to a fibre connection. However, on the basis of the information provided, the Law Society does not consider a permanent extension is warranted. A temporary extension seems more appropriate given the impact on property rights and the potential for ongoing technological developments, which may offer a preferable alternative.

¹ More information about this committee can be found on the Law Society's website:
<https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/commercial-li/>

High impact installations

- 2.2 The Law Society recommends that the expansion of the rights to cover ‘high impact’ installations is carefully considered.
- 2.3 It is unclear from the discussion document how large a problem this issue is. For example, the number of installations refused by neighbours. This information would assist in determining whether the problem is sufficient to warrant a regulatory response, and if so, inform how extensive it should be.
- 2.4 If it is determined that Option 2 is preferred, the Law Society notes that the potential test (based on the length of trenches or size of the driveway) seems to be a proxy for impact that may not adequately measure impact on property owners. We recommend that consideration is given as to whether the test should accommodate installations that fall below the length or size thresholds but are likely to meet other criteria which indicate there could be a major impact on the property owner, such as:
 - (a) The length of time the work would take;
 - (b) Whether the work will impede access to a person’s home; or
 - (c) The availability of public parking space where the installation impacts access to their driveway or garage.

3 Section 3: Telecommunications levy settings

Identifying liable persons

- 3.1 It is not clear whether the intention is to broaden the application of the levy to just satellite broadband providers or all satellite service providers. Section 3 discusses both, but the problem definition specifies satellite broadband providers.
- 3.2 The Discussion Document does not outline a strong rationale for broadening the application of the levy. Further consideration should be given to whether there is a genuine problem at present and whether there may be a risk that satellite service providers could, through the levy, end up contributing to competitors filling gaps in their coverage.

Telecommunications Development levy amount

- 3.3 If the preferred option is progressed, the Law Society agrees that the controls identified at paragraph 76 are drafted into the regulation-making power, and are not left as a matter of practice or policy. This would include:
 - (a) Criteria guiding the justification for, and amount of, increase.
 - (b) That the increase is consistent with the purpose of the Telecommunications Development Levy.
 - (c) A requirement to consult with those liable for the levy.
- 3.4 In the absence of such controls, such an amendment may bring about unintended consequences, through increasing uncertainty in the market and disincentivising new market entrants.

4 Next steps

- 4.1 We would be happy to answer any questions or to discuss this feedback further. Please feel free to get in touch via the Law Society's Law Reform & Advocacy Advisor, Shelly Musgrave (shelly.musgrave@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Jesse Savage'.

Jesse Savage
Vice President