



TCF submission on the MBIE discussion document: enhancing telecommunications regulatory and funding frameworks

19 June 2024

Introduction

1. Thank you for the opportunity to make a submission on the [MBIE discussion document on enhancing telecommunications regulatory and funding frameworks](#) (the discussion document).
2. This submission is made on behalf of the New Zealand Telecommunications Forum (TCF). The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand telecommunications customers. Our members include network operators, retail service providers and the tower companies that own and operate cell towers.
3. A number of TCF members will be making individual submissions as well.

Consumer access to dispute resolution

4. The TCF is of the view that all consumers of telecommunications services should have access to a telecommunications dispute resolution scheme. Reliance on more general dispute resolution processes, such as the Disputes Tribunal, is not sufficient. This is because generalists would struggle to address specialist telco issues in a timely way. Specialist dispute resolution of this sort is seen as best practice.
5. Ensuring that all consumers have access to an industry scheme is unlikely to happen if membership is not made mandatory. We therefore support option two - making

membership of an industry dispute resolution scheme mandatory for all retail providers of telecommunications services. This could, for example, be membership of the existing scheme, [Telecommunications Dispute Resolution](#) (TDR).

6. You might also consider looking at the references throughout the Act to 'a' and 'the' scheme to ensure these are used appropriately.

Accessing shared property for fibre installations

Issue one: expiry of statutory rights for fibre installations

7. The TCF supports extending the statutory rights to access shared property to install fibre, and putting in place a new expiry date. As noted in the discussion document, demand for fibre is continuing, and the access regime is currently used for between 10 to 30 percent of installations.
8. We note MBIE's comment in the discussion document that "...it is unlikely there will be time to amend the Act to change the expiry date of the rights before 1 January 2025...". The TCF view is that the access rights should not be allowed to expire. If this happens fibre providers and their retail customers will need to materially shift their processes. These changes are expected to increase uncertainty, could lead to more complaints (relating to fibre installation delays and cancellations) and may reduce fibre uptake. MBIE could look at an alternative legislative vehicle to address this.

Issue two: invoking statutory rights for high impact installations

9. The TCF supports potential expansion of the scope of the land access regime to include installations that have a larger impact.
10. It may not be accurate to call extended trenches and larger areas of driveways "high impact" installations. Trench length does not necessarily indicate impact.
11. We recommend MBIE come back to industry with proposals when this issue has been considered further.

Telecommunications levy settings

Issue one: identifying liable persons

12. The TCF supports option two, legislative change to amend liability provisions to capture all satellite providers and to future-proof provisions. This would promote a more level playing field.
13. When thinking about how to future proof the liability pool we recommend MBIE look to include service providers that generate data growth which requires significant and sustained investment in these services, for example over the top providers.
14. We would be happy to have further conversations with MBIE about the options and implications.

Issue two: regulatory process to set the total Telecommunications Development Levy amount

15. The TCF supports option one, status quo, where the Telecommunications Development Levy amount remains set under Schedule 3B of the Act. We support this option for the following reasons:
 - a. The discussion document does not set out the problem to be solved with this proposed amendment, beyond administrative convenience.
 - b. The amount of the levy does not need to be changed regularly, so the timeframe under the current process should be suitable.
 - c. The Government's ability to levy industry is a significant matter that requires the checks and balances the parliamentary process brings.
16. In proposing this change, the Government is signalling to the sector that the levy amount - which is ultimately borne by our customers - is likely to change at some point in the future. In a challenging economic environment, and with customers' wallets already stretched, this introduces considerable uncertainty for telecommunications service providers and our customers. If this Government does not intend to increase the levy in the current term, we believe it should remove uncertainty for the sector by leaving the power to set a new levy amount where it rightly sits, with Parliament. With many input costs continuing to increase and others including energy prices forecast to increase in the near future, the Government could help our sector and our customers by removing uncertainty over another potential cost increase.
17. If this Government is intending to increase the levy in the current term, we would prefer it was upfront about that and consulted properly with the sector on changes to the legislative framework for the levy that can ensure any increase is applied fairly and consistently across the sector with the minimum administrative costs possible.
18. For example, if the Government was to put the levy making power into secondary legislation, we make the following points:
 - a. The enabling provision in the primary legislation would need to contain checks and balances, including limits on what the levy could be used for, reasons the levy amount could be changed, and maximum increase that would be allowed using the regulation making power.
 - b. Adjustments would be needed to the method that is used to calculate the TDL. If it is easier for government to increase the levy amount, it is reasonable that those paying the increased levy are able to pass that increased cost (imposed by government) on to customers in a transparent and competitively neutral way. The way the levy is currently calculated is too complex and results in some consumers contributing more to the levy than others. It needs to be easier to calculate and explain to customers. MBIE has said this issue is out of scope. We argue it should be in scope for these reasons:

- i. If you are amending the Act to create a regulation making power for the levy, you also have a legislative vehicle to address the levy calculation issues. This legislative vehicle will not come around again quickly.
- ii. It is unfair for the Government to provide itself with a power to increase the levy, but not remove administrative burdens that make it difficult for telecommunications providers to explain that cost to customers.
- iii. The current levy design and settings is complex and unwieldy. It is not predictable for service providers or their customers who pay it, and it has a high administration cost as it requires the Commerce Commission to carry out a lengthy process each year for calculating and consulting on the levy contributions of each service provider.
- iv. A review of the levy design and settings is well overdue. It was designed in a different time for a different levy with a different purpose and does not comply with the Government's own guidance for design and implementation of cost-recovery levies.¹
- v. Fixing these issues would reduce administrative burdens for industry as well as for the Commerce Commission. The Government has said it wants to reduce administrative burdens and red tape.

Identifying participants in the market

19. The TCF does not have strong views on this issue, but could support the introduction of mandatory registration (option two), subject to the points made in the following paragraph. However we would like to know how much benefit, in terms of efficiency gains, this would bring to the Commerce Commission. For example, how much time is the Commission currently spending on the task of understanding who is in the market, and how does this stack up against the costs of establishing and running a registration system? What long term benefits would result?

20. Our support for the establishment of a registration system is contingent on:

- a. There being no disproportionate compliance for industry. Registering should not be difficult.
- b. There being no additional costs to industry. Industry should not have to pay the government to run a registration process, or to register. If the intended outcome is to save the Commerce Commission time and effort, then some of those time savings could be used to run the register (which could presumably be a relatively simple spreadsheet or similar).

¹ Setting and administering fees and levies for cost recovery: Good practice guide, Office of the Auditor-General: <https://oag.parliament.nz/2021/fees-and-levies/docs/fees-and-levies.pdf> ; Guidelines for Setting Charges in the Public Sector , The Treasury: <https://www.treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf>.

21. The requirement applying universally to anyone offering telecommunications/connectivity services in New Zealand. There should not be exclusions for some operators if mandatory registration is brought in.

Enhancing information flow to the Emergency Location information System

Issue: Contractual arrangements for the Emergency Location Information System

22. We would like to clarify under paragraph 87 that the TCF Emergency Calling Code is currently a mandatory code and compliance is monitored through the TCF Code Compliance Framework.
23. Any potential future applications of, or changes to, the emergency location information system, including requiring device location information to be provided, should be led by MBIE in consultation with the industry.

Other matters

Issue one - considering non-regulated fibre networks in specified fibre areas

24. The TCF supports further consideration of option two - enabling fibre built by non-regulated fibre service providers to be considered when making decisions about specified fibre areas.
25. As noted in our recent [submission](#) to the Commerce Commission on its Copper Services Investigation, it is important that existing regulations are reviewed from time to time to understand whether they are still fit for purpose and proportionate to the harm they were designed to avoid. This also applies to the 'specified fibre area' (SFA) concept, part of the copper deregulation framework in Part 2AA of the Act.
26. It is also important that the telecommunications regulatory framework keeps pace with changes in the telecommunications landscape, including technology advancements, new and expanded services, and consumer preferences.
27. Copper is being withdrawn and the benefit of declaring an area as an SFA is the certainty it gives consumers and the industry knowing when that will happen and the process that will follow (as contained in the Copper Withdrawal Code).

Register of eligible persons

28. We recommend MBIE consider whether the register of eligible persons is still required, as part of the set of minor changes and clarifications that could be made to the Act.
29. This register is maintained by the Commerce Commission (see section 4 of Schedule 2 to the Act and this page on the Commission's website). Its purpose is to ensure the TCF consults with the right companies when developing a telecommunication access code. If the TCF proceeded to develop such code it would ensure that it consults with affected parties and or include them in the development of the code. For the Commission to have to maintain such a register seems redundant in our current environment. Noting that the register is currently

out of date, with the last update made a year ago. We note that 'eligible persons' is different from 'liable persons'.

Questions

30. If you have any questions about this submission please contact Kim.Connolly-Stone@tcf.org.nz in the first instance.