

Telecommunications (Property Access and Other Matters) Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Telecommunications (Property Access and Other Matters) Amendment Bill and recommends that it be passed with the amendments shown.

The purpose of the bill

The Telecommunications (Property Access and Other Matters) Amendment Bill seeks to support the effective operation of the telecommunications market, and the efficient roll-out of modern telecommunications networks to New Zealanders.

The bill's three main objectives are:

- to reduce compliance costs for Telecommunications Development Levy payers by improving the liability allocation process
- to allow more people to realise the benefits of next-generation telecommunications networks such as fibre-to-the-premises
- to reduce the time it takes to obtain the consent of all parties who have an interest in a property on which a next-generation telecommunications connection is laid.

Structure of the bill

The Telecommunications (Property Access and Other Matters) Amendment Bill as introduced would make amendments to the Telecommunications Act 2001 in two parts.

Part 1 contains amendments about:

- improvements to the allocation of Telecommunications Development Levy liability
- property access for next-generation telecommunications networks
- regulatory requirements for the Ultra-Fast Broadband extension programme.

Part 2 contains two new schedules supporting changes to property access for next-generation telecommunications networks:

- Schedule 1AA: Transitional, savings, and related matters
- Schedule 3C: Dispute resolution scheme.

This commentary covers the main changes we recommend to the bill. It does not include minor or technical changes.

Commencement

We recommend inserting clause 2(1) to provide that clause 13A of the bill (new sub-part 7 of Part 4AA) would come into force on a date to be appointed by the Governor-General by Order in Council. New section 156AZF(2) of clause 13A would apply the restrictive trade practices authorisation in respect of transactional arrangements for Rural Broadband 2 and the Mobile Black Spot Fund retrospectively, once the section commenced, to all relevant arrangements entered into before commencement. The statutory authorisation then applies, after the section commenced, to all relevant arrangements entered into within six months.

We recognise the need to ensure that the period for contracts to be covered by statutory authorisation provides enough time to enable contracts and open access deeds to be concluded with selected network operators. This period needs to include the uncertain timeline for all the tender/procurement processes and the final negotiations, as well as the uncertain timeline for passage of the bill. Setting the period by Order in Council would enable the flexibility required.

New clause 2(2) would provide for the rest of this bill to come into force 15 days after the date on which it receives the Royal assent.

Telecommunications Development Levy liability allocation process

Where a non-liable person acquires assets of a liable person

We recommend inserting new section 81A to specify that, if a non-Telecommunications Development Levy liable company acquires some or all of the assets of a levy-liable company, the liability in relation to those assets is transferred to the purchaser. This change would clarify how liability would be transferred when a liable company sells some or all of its telecommunications assets. This would mitigate the risk should a situation arise where a non-liable company purchases a liable company's assets, and neither the seller of the assets or the purchasing company may be ultimately liable (in the latter case because they did not have any telecommunications revenue in the previous year).

Where two or more bodies corporate are treated as one person

We also recommend inserting new clause 5A, which would add new section 79(4) to the Telecommunications Act to provide that, if two companies become linked for the purposes of levy liability through section 79, they must be treated as one person in respect only of that part of the year when the relevant circumstances applied. We consider that this would be more equitable than the current situation where, if two companies become linked, the Telecommunications Act treats their revenue as being joined for the whole year.

Liable persons must produce information for purposes of liability allocation determination

Clause 8 of the bill as introduced would amend section 83 of the Telecommunications Act to give the Commerce Commission discretion to set an alternative form of assurance for financial information supplied by persons liable for a share of the Telecommunications Development Levy.

We recommend amending clause 8 to include a safeguard in section 83(1)(b)(ii) so that the Commerce Commission could specify an alternative form of assurance only if it was satisfied that the alternative would enable it to make a determination.

Property access rights for installing next-generation telecommunications

Clause 10 of the bill as introduced would replace subpart 3 of Part 4 with a new subpart 3. This new subpart (incorporating new sections 155A to 155ZP) deals with access to property involving the rights of multiple parties, to deploy fibre optic media and other technology. The rights given by subpart 3 apply only when there are legal rights of multiple parties over a property.

Narrowing the definition of property

We recommend amending section 155A(a), the purpose of subpart 3, to recognise that more than one person's consent is required to access a property because each person has some form of legal right in respect of the same property. We also recommend amending section 155B(1)(a) of the overview to provide that the private property being accessed is property that is subject to the legal rights of multiple persons.

These amendments would narrow the definition of property to shared property where at least one party with an interest in the property has requested a fibre-to-the-premises service.

Provision of preliminary notice to each affected person and person who placed order

We recommend amendments to section 155B(1)(d)(ii) and (iii) to provide that a person who has ordered a fibre-to-the-premises service is required to be provided with a preliminary notice of category 1 or category 2 installation work by the service provider. This would ensure that people who have ordered the service are provided the

same information as affected persons. We also recommend amending the example scenario in section 155D to reflect this.

Similarly, we recommend amendments to sections 155K(1) and 155L(1)(a) to require a service provider or network operator to give each affected person, and the person who placed the order, a preliminary notice for a category 1 installation and a preliminary notice and high-level design plan of the installation for a category 2 installation.

Ability to cancel fibre-to-the-premises order

We recommend inserting new section 155N(3), which would affirm the right of a person to cancel their order for a fibre-to-the-premises service to be installed.

Access to common areas of body corporate administered properties for designing installations

We recommend replacing section 155Q(2) of the bill as introduced with new sections 155Q(2)(a) and (b), and 155Q(3) about fibre-to-the-premises service providers or network operators accessing body corporate administered properties for design purposes.

Our amendments would strengthen the statutory right contained in the bill for service providers or network operators to enter common areas of a body corporate administered property. They would do this by building on the right of access to areas that are freely accessible by unit owners, and including a new obligation that access to other common areas of a body corporate administered property for scoping purposes must not be unreasonably withheld. It is still the case that before entering any area of a property that is not common property (for example, a person's unit in a unit title development), permission must first be obtained.

We consider that these access provisions fairly take account of the difference between common areas of a body corporate administered property and those that are private.

Grounds and time for body corporate objection

We recommend amending new section 155T(a) to limit the ground for objection by a body corporate to where the installation causes disruption to the availability of telecommunications services to unit owners "during business hours".

We also recommend the addition of new section 155U(3) to provide that a fibre-to-the-premises service provider or network operator must not unreasonably withhold permission on receiving a request for an extension to the time frame for a body corporate to object to a category 1 or 2 installation. We consider that this would allow bodies corporate flexibility with how they organise an objection, and for the objective circumstances of the request to be taken into account.

Reasonable notice of start of installation

We recommend adding new section 155Z(1)(a)(i) and (ii) to clarify that the requirement to provide affected persons and occupiers of a property with reasonable notice of when an installation will begin applies only if the preliminary notice those parties received did not include a date for service, or if a specified date for service has since

changed. We consider that this would address any concerns about not knowing ahead of time when an installation will take place, while allowing efficiency in instances where that date is known.

Reinstatement of property

We recommend amending section 155ZB to require only the area affected or disturbed by an installation to be reinstated as closely as reasonably possible to its original condition before the installation. This would narrow the more general requirement in the bill as introduced to “reinstate the property”, which might have had the unintended consequence of obliging service providers or network operators to carry out unnecessary work at a cost to them.

Rights of access

Ongoing rights of access

We recommend inserting new section 155H(1)(b) to clarify that the sunset clause in section 155H(1)(a) does not apply to the ongoing rights of access given by section 155ZD(1)(a)(i) and (ii) for inspection, maintenance, repairing, or upgrading work. Section 155H(1)(a) states that the statutory rights of access given by this subpart expire on 1 January 2025.

As the ongoing rights of access are also provided by the same subpart, the bill as introduced could be understood to provide that these ongoing rights are also intended to expire on 1 January 2025. This is not the intention and would not fit with the bill’s intent of facilitating access to next-generation telecommunications services. Our amendment would resolve this situation.

Time frame and purpose for right of re-entry

We recommend amending section 155ZD(1)(a) to insert the time frame of “any time before or after 1 January 2025” during which a fibre-to-the premises service provider or a network operator has a right of re-entry to a property for the purposes of inspecting, maintaining, repairing, or upgrading work.

We recommend inserting new sections 155ZD(b)(i) and (ii) to provide that the right to re-enter property at any time before 1 January 2025 is for the purpose of extending an installation if this does not involve a change to the original design plan, or permanently reinstating an area that, in the course of installing, maintaining, repairing, or upgrading a fibre connection has been reinstated only on a temporary basis.

We recommend inserting new section 155ZD(6)(a) to define what is meant by maintaining, repairing, or upgrading. Our recommended new section 155ZD(6)(b) would protect affected persons against substantial physical effects to property by ensuring that their land would not be injuriously affected by any replacement or upgrade work.

Entry to property in exceptional circumstances

We recommend the addition of new section 155ZE(2) to allow for a right of entry to shared property in exceptional circumstances. These include where there is probable

danger to life or property, or where entry is immediately necessary to maintain the continuity or safety of the supply of telecommunications. We consider that facilitating access in emergency situations would benefit end users. This amendment is also consistent with the provisions in the Telecommunications Act governing access for existing copper lines.

Protection of interests in installations

We recommend inserting new section 155ZF(1)(b) and (ba) so that the protection of interest provision would apply to installations carried out after 1 July 2012, provided that the required consents were obtained, and the same tests as in section 155ZD(3) about the legitimacy of the installation were applied. This would align the commencement of the protection of interest provision with that of the ongoing rights of access, provided the protection of interests is limited only to the equipment installed on shared property, and the limitations in section 155ZD(3).

Dispute resolution scheme

Levy payers for regulated dispute resolution scheme

We recommend amending section 155ZH(1) to clarify that the requirement to be a member of the regulated dispute resolution scheme would not apply to those fibre-to-the-premises service providers and network operators only using the statutory rights to enter the property at any time before 1 January 2025 to inspect, maintain, repair, or upgrade a fibre installation. Similarly, we also recommend the insertion of new section 155ZN(2A) to clarify that these service providers and network operators do not need to pay a levy for the scheme.

We recommend an amendment to section 155ZN(2) to reflect the intent of the legislation to just levy those who make use of the broader statutory access rights, rather than all network operators.

Status of exemption from membership of Dispute Resolution Scheme

We recommend the addition of section 155ZH(6) to clarify that an exemption under section 155ZH(2) from the statutory obligation to be a member of the Dispute Resolution Scheme is not a disallowable instrument for the purposes of the Legislation Act 2012. The Regulations Review Committee suggested this change to clarify the status of the exemption.

Applicants and providers of Dispute Resolution Scheme

Schedule 3C of the bill deals with the Dispute Resolution Scheme. We recommend amending the definition of provider in Schedule 3C to clarify that, in relation to a proposed scheme, the provider is the person who is proposed to be responsible for that scheme. We are keen to see that people not currently providing dispute resolution services could apply to provide the approved dispute resolution scheme. We consider that the legislation should not unnecessarily limit who can apply to become the approved provider of the scheme.

Ministerial approval of changes to rules of approved Dispute Resolution Scheme

We recommend inserting new clause 7(2A)(a) and (b) in Schedule 3C to give the Minister the ability to require further information from the scheme provider before approving or declining any proposed changes 45 days after receiving that information, unless the Minister declines approval within the 45-day period. We consider this flexibility to be desirable, particularly where the proposed changes are substantial, contentious, or complex.

Time period from which obligations on Ultra-fast Broadband 2 local fibre companies apply

We recommend inserting new clause 11A to amend section 156AD of the Telecommunications Act to state that the relevant obligations on Ultra-fast Broadband 2 local fibre companies apply from 1 January 2026. The relevant obligations on Ultra-fast Broadband 1 local fibre companies in relation to their Ultra-fast Broadband 1 networks would continue to apply from 1 January 2020.

This amendment would ensure that the Telecommunications Act is consistent with the policy intent that the obligations should apply from the end of the relevant ultra-fast broadband build period.

Collaboration between service providers

We recommend inserting new subpart 7 of Part 4AA to authorise contracts, arrangements, or understandings between the Crown/Crown Fibre Holdings and service providers for the purposes of implementing the Rural Broadband Initiative 2 (the second phase of this initiative), and the Mobile Black Spot Fund programme. We consider that this would enable potential efficiency gains from collaboration between providers.

Fibre deployment on electricity lines

We recommend inserting new subpart 4 of Part 4, which sets out provisions in new sections 155ZQ to 155ZZA that would grant statutory rights of access to use existing electricity works (for example power poles) for deploying fibre optic cable.

We consider that utilising existing infrastructure for this purpose provides an opportunity to improve rural connectivity in a cost-effective way, while also making progress towards connecting as many New Zealanders as possible to better communications networks. The proposal also meets the bill's objective of allowing more people to realise the benefits of next-generation telecommunications networks, and it is widely supported by submitters.

Overview of new subpart 4

We recommend amending clause 4 to include new section 4(gaab) which would provide an overview of new subpart 4. This would clarify that the statutory rights for owners of existing electricity works would include using those existing works for

undertaking fibre optic works or entering into arrangements for third parties to exercise those rights.

Purpose of new subpart 4 of Part 4

Section 155ZQ sets out the purpose of new subpart 4. The purpose reflects our desire to see existing electricity infrastructure used for deploying fibre optic cable to make a significant contribution to the work and personal lives of people residing in rural areas of New Zealand. Through these means we are seeking to accelerate the roll-out of fibre-to-the-premises in rural areas to enable access to high-speed communications for businesses, schools, and individuals.

We would like to see this achieved by providing owners of existing works (including power poles, overhead lines, and other infrastructure connected with the provision of electricity) with a right to enter the land on which those works are located, and use the works to deploy, maintain, and upgrade fibre optic cable for delivering telecommunications services. To offset the impact of the right of entry on the landowner's own property rights, the owner of the existing works would provide the landowner with direct benefits.

Section 155ZQ(2)(c) provides that owners of existing works and third parties would be subject to open access obligations enforceable by the Commerce Commission. Owners of existing works may also be subject to other regulatory action if they do not exercise their rights under the subpart, and at the same time fail to properly consider a third party's request to use those rights for deploying fibre optic cable.

Interpretation

New section 155ZR would define the following key terms used in the subpart: breakout point, connection point, existing works, fibre optic works, layer 1, layer 1 service, layer 2, layer 2 service, maintenance, OSI model, point of supply, re-purposed fibre, service provider, and third party.

In particular, the definition of "existing works" would mean that the use of the rights under this subpart to repurpose existing fibre from fibre used for electricity network purposes to fibre used for telecommunications purposes would be limited to existing works with fibre optic cables that were installed on them before 1 December 2016. We consider that this would stop companies from repurposing existing fibre using the rights in this subpart and escaping the obligation to provide a breakout point and a fibre connection from new fibre.

Right to enter land and carry out fibre optic works

New section 155ZS would provide for an owner of existing works to enter a property to access the existing works and carry out fibre optic works. We understand that existing works are generally located on private land, but we do not want to limit the scope of this right by specifying the type of land on which existing works are located.

This right of entry would be conditional on the owner of the existing works complying with the notice requirements in section 155ZZA(2)(c) to (g), providing the land-

owner with the capability to connect to a fibre optic communications network, and providing a single fibre connection to the primary residential building on the land or another building nominated by the landowner that meets the requirements in section 155ZT.

Section 155ZS(2)(b) would provide that the capability to connect to a fibre optic communications network could be achieved by including a breakout point in a position considered appropriate by the existing works owner when the fibre optic cable is deployed, or by any other means suitable for ensuring connectability between the landowner's property and a fibre optic communications network.

We consider that this provision is flexible enough to ensure the requirement to provide a breakout point is not so prescriptive as to determine its location, and it would not rule out the ability to provide the breakout point or connectability in the most effective way (for example, in the event that a landowner could be more efficiently provisioned through existing fibre located in the road reserve). It would also provide for the existing works owner to determine the location of an appropriate breakout point. We consider this to be appropriate because the existing works owner would need to design the connection.

Section 155ZS(3) would mean that, where existing fibre is repurposed for telecommunications under this subpart, the requirement to provide a breakout point, or equivalent, and a fibre connection would not apply. This is because the cost of retrofitting a fibre breakout point is substantially higher than the cost of installing a breakout point at the time that the distribution fibre network is installed. Also, with repurposed fibre there are no additional fibre cables placed on the property of affected landowners.

Length of fibre optic cable that owner of existing works is to provide for landowner

We carefully considered the maximum funded length of fibre optic cable which a landowner would be entitled to as recompense for the right to install fibre optic works on existing works located on their property. We wanted to strike the right balance between connecting as many people as possible, and ensuring that the maximum length was not so great that it prevented uptake of the right because of the costs involved for existing works owners.

Section 155ZT sets out provisions concerning standard connections, non-standard connections, trenching, and variations to the rights and obligations.

Standard connections

Section 155ZT(1) requires the owner of the existing works to provide a standard connection where the distance between the breakout point (or other method of providing the landowner with the capability to connect to a fibre optic network) and the primary residence, or other building nominated by the landowner, is 200 metres or less. Section 155ZT(2) requires the aerial installation of 200 metres of fibre optic cable at no cost to the landowner.

We consider that allowing for the capability to connect to a fibre optic network would facilitate the easy insertion of a breakout point at a later stage, should the landowner not request a connection immediately. This would enable future developments on a property where access to the fibre network is needed.

Non-standard connections

Section 155ZT(3) and (4) would require the owner of existing works to provide a non-standard connection if the distance between the breakout point (or equivalent) and the connection point is more than 200 metres. Beyond 200 metres, the owner of existing works is to contribute 50 percent of the cost of aurally installing the fibre optic cable up to a distance of 500 metres.

We are satisfied that the works owner would have to agree on a contribution from the landowner up front before installing the connection, and therefore would have a near guarantee from the landowner of take-up of the service. We consider that having a co-funding arrangement that takes into account the variation of distances involved in connecting properties would achieve a good balance between incentivising companies, in terms of lowered costs, to take up the right, and providing landowners with assistance to achieve a fibre connection.

Provision for trenching

Section 155ZT(5) provides that, if an aerial installation is not practicable and trenching is required at any point, the landowner must undertake, or meet the cost of, that trenching. The obligation of the owner of the works concerned is otherwise not affected.

Provision to vary rights and obligations

Section 155ZT(6) says that nothing prevents an owner of existing works and a landowner from entering into an agreement to replace or vary the rights and obligations provided for in the section.

Third party use of existing works for carrying out fibre optic works

We recommend inserting section 155ZU(1) to provide that an owner of existing works and a third party may enter into an arrangement for the third party to use the owner's existing works for carrying out fibre optic works. Section 155ZU(2) would provide that this right applies only if the owner of the existing works remains responsible to the landowner for the performance of all obligations and the discharge of all liabilities under this subpart, (except in relation to services that are subject to the open access obligations under this subpart and that are provided by a third party).

Third party requests to use existing works for carrying out fibre optic works

We expect that third parties using existing works to deploy fibre optic works will play an important part in enabling access to high-speed communications in rural areas, and the provisions in this subpart provide for competitive incentives and outcomes to this end.

Although the provisions do not oblige an existing works owner to enter into an arrangement with a third party, we do want owners of existing works to consider and not unreasonably refuse third party applications for access. We have considered how to ensure this happens.

We have outlined a process for consideration of third party requests in our proposed sections 155ZV to 155ZY. This includes provisions which provide for a regulation-making power which would enable the Minister for Communications to intervene and, after considering the Commerce Commission's report about third party requests, to recommend regulations in relation to existing works that the owners of those works may confer on third parties. Our view is that this would provide a useful way to address any issues that might arise in the future.

Section 155ZV(1) and (2) provides for a third party to request, in writing, an owner of existing works who is not exercising the rights under this subpart to enter into an arrangement with them under section 155ZU. Under section 155ZV(3) the third party who makes the request must provide the existing works owner with any relevant information that that person considers necessary to properly consider the request. However, section 155ZV(4) provides that the third party may withhold from disclosure any information that the party considers commercially sensitive or subject to legal protection. In that case, the party must provide an explanation for withholding that information.

Section 155ZW(1) provides that an owner of existing works must consider a request for approval as soon as practicable after receiving it. In considering the application, under section 155ZW(2) the works owner must act in good faith and take into account the purposes of the subpart.

Section 155ZX requires an existing works owner who refuses a request to give a notice to the third party that records the refusal, and to give a copy of that notice and the third party's request to the Commerce Commission.

Under section 155ZY the Minister may require the commission to report to them about the information received under section 155ZX. After considering the commission's report, the Minister may decide whether to recommend that regulation be imposed, and, if so, the type or types of regulation.

Arrangements for third party to use existing works

New section 155ZZ sets out conditions that owners of existing works must meet so that an arrangement for a third party to use existing works on the landowner's property does not increase the impact of having those works on their property.

Under section 155ZZ(2) the owner of the existing works (and not the third party) would be responsible for all communications with the affected landowner concerning fibre optic works installed on existing works.

We consider that as the owner of the existing works is accountable to the landowner for the actions of the third party, it is appropriate that they are also responsible for communications with the landowner. Having a single point of recourse for any griev-

ance that may arise would also minimise the effect on landowners of having two separate companies entering the property to maintain two separate networks.

However, section 155ZZ(2)(b)(i) would provide for the landowner to authorise the third party to conduct communications either generally or from time to time. Section 155ZZ(2)(b)(ii) would also allow the third party to communicate with the affected landowner in circumstances of probable danger to life or property, or where communications are immediately necessary to maintain the continuity of telecommunications services.

Section 155ZZ(3) would require the owner of the existing works (and not the third party, except as provided for in section 155ZZB(3)) to pay compensation to the landowner for damage, loss, or injury as provided in section 155ZZB.

Powers and duties of owners of existing works and landowners

Section 155ZZA(1) would provide that the references in section 155ZZA(2) to sections 22 to 23 of the Electricity Act 1992 apply to the owner of the existing works and the landowner as if every reference to existing works in those provisions included fibre optic works.

Compensation for damage

Section 155ZZB would provide for full compensation for all loss, injury, or damage suffered by every person with a right or interest in land or property that is damaged or injuriously affected by an owner of existing works or a third party exercising any of the rights under this subpart.

We would like to reiterate that any claim for compensation would need to have arisen in the course of exercising the rights given by the subpart. We have made the compensation provision wide enough to allow landowners to make claims for damage which do not necessarily affect land value, for example if livestock was lost as a result of the exercise of these rights.

Section 155ZZB(3) would provide that the owner of the existing works would be liable to the landowner for payment of the compensation, regardless of whether the owner of the existing works, a third party, or both of those persons were responsible for the loss, injury, or damage. However, section 155ZZB(2B) would not prevent an owner of existing works from claiming an indemnity or a contribution from the third party where the owner of the existing works alleges that the third party was wholly or partly responsible.

If the parties cannot reach an agreement about compensation, a claim for compensation, as specified in the Public Works Act 1981, may be made, and the provisions of that Act would apply in relation to the claim.

Services provided using rights under subpart 4 of Part 4

Section 155ZZC deals with the services provided using rights under the subpart. It distinguishes between telecommunications services provided using re-purposed fibre

optic cable, and new fibre optic cable. We consider that it would be useful, for practical reasons, to differentiate between the use of existing and new fibre.

Section 155ZZC(1) requires an owner of existing works or a third party who provides a telecommunications service under this subpart using re-purposed fibre optic cable to offer a layer 1 service, where capacity exists, and to provide that service on non-discriminatory terms. If the owner of the existing works (or the third party) chooses to provide a layer 2 service, that service must be provided on an open access basis and on non-discriminatory terms. This provision reflects our consideration of the physical characteristics and practical constraints of existing fibre optic cable which may already be in use for electricity purposes.

Section 155ZZC(2) requires an owner of existing works or a third party who provides a telecommunications service under this subpart using new fibre optic cable to offer a layer 2 service on an open access basis, and non-discriminatory terms. If the owner of the existing works chooses to provide a layer 1 service, that service must be provided on an open access basis, and non-discriminatory terms. We consider that provision of layer 1 services should not be a requirement under this section.

Section 155ZZC(3) would provide that, if an owner of existing works enters into an arrangement with a third party under section 155ZU, the third party is under the obligations in this section (and not the owner of the existing works).

Section 155ZZC(4) defines “non-discrimination” and “non-discriminatory”.

Power to grant relief in respect of open access obligations

Section 155ZZD provides the High Court with a power to make orders where it considers that an owner of existing works or a third party intends to, is, or has breached section 155ZZC (concerning the offer of layer 1 and layer 2 services). The orders the High Court may make, on the application of the Commerce Commission, include that the existing owner refrain from, or engage in, a particular conduct.

Section 155ZE states that if a person uses the rights under this subpart to build a network under the UFB initiative, the deed of open access entered into will override the obligations of this subpart.

Right of entry does not affect existing works owner’s rights and obligations under Electricity Act 1992

Section 155ZF would provide that the right of access under section 155ZS does not affect any rights or obligations of the owner of the existing works under the Electricity Act 1992.

Provision to make regulations

We recommend including section 155ZZG, which would provide that the Governor General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing aesthetic standards concerning the installation of fibre; prescribing procedural standards for how communications with landowners are undertaken, and how people must act when exercising the rights provided by this subpart

on property; prescribing protocols for ensuring the inter-operability of equipment installed; prescribing minimum clearance distances for fibre optic works involving existing works; and imposing regulation on the rights concerning existing works that the owners of those works may confer on third parties under this subpart.

Section 155ZZG(2) provides that the Minister must, before recommending the making of regulations under this section, consult with the Minister responsible for administration of the Electricity Act 1992, the owners of existing works or their representatives, and other persons who the Minister considers will be substantially affected by the regulations made. Section 155ZZG(3) would provide that failure to consult as outlined in subsection (2) would not affect the validity of regulations.

Appendix

Committee process

The Telecommunications (Property Access and Other Matters) Amendment Bill was referred to the committee on 5 July 2016. The closing date for submissions was 18 August 2016. We received and considered 33 submissions from interested groups and individuals. We heard oral evidence from 14 submitters.

The committee presented an interim report to the House on 3 November 2016, and called for submissions on a new proposed subpart 4 of Part 4 of the bill. The closing date for submissions was 10 November 2016, and the committee received 54 submissions.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in clause 10 of the bill.

Committee membership

Melissa Lee (Chairperson)

Kanwaljit Singh Bakshi

Ria Bond

Dr David Clark

Hon David Cunliffe

Clare Curran

Brett Hudson

Gareth Hughes

Alfred Ngaro

Simon O'Connor

**Telecommunications (Property Access and Other
Matters) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Amy Adams

Telecommunications (Property Access and Other Matters) Amendment Bill

Government Bill

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	Schedule 1	
	New Schedule 1AA inserted	
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	New Schedule 3C inserted	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Telecommunications (Property Access and Other Matters)
Amendment Act **2016**.
- 2 Commencement**
This Act comes into force on the 15th day after the date on which it receives
the Royal assent.
- (1) **Section 13A** comes into force on a date to be appointed by the Governor-
General by Order in Council.

cl 3	Telecommunications (Property Access and Other Matters) Amendment Bill	
(2)	<u>The rest of this Act comes into force 15 days after the date on which it receives the Royal assent.</u>	
3	Principal Act This Act amends the Telecommunications Act 2001 (the principal Act).	
	Part 1 Amendments to Parts 1, 3, 4, and 4AA <i>Amendments to Part 1 (preliminary)</i>	5
4	Section 4 amended (Overview) After section 4(g), insert: (gaaa) subpart 3 of Part 4 sets out provisions granting statutory rights of access to <u>private</u> property for the purpose of installing certain fibre optic and other technology in circumstances where the consent of multiple parties would otherwise be required, together with provisions for establishing a dispute resolution scheme to deal with disputes relating to those rights of access (<i>see also</i> Schedule 3C); and (gaab) subpart 4 of Part 4 sets out provisions granting statutory rights for <u>owners of existing electricity works (for example, power poles) to enter land where those works are situated and use the existing works for undertaking fibre optic works; and</u>	10 15
5	New section 7A inserted (Transitional, savings, and related provisions) After section 7, insert: 7A Transitional, savings, and related provisions The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.	20
	<i>Amendments to subpart 2 of Part 3 (amounts payable by liable persons to the Crown)</i>	25
5A	<u>Section 79 amended (When 2 or more bodies corporate must be treated as 1 person)</u> After section 79(3), insert: (4) <u>If any of the circumstances described in subsection (1)(a) to (e) apply to 2 or more bodies corporate for part of a year, those bodies corporate must be treated as 1 person in respect of that part of the year to which the relevant circumstance applies.</u>	30

6 Section 80 amended (Interpretation)

In section 80, replace the definition of **financial statements** with:

financial reporting standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

financial statements—

- (a) has the same meaning as in section 6 of the Financial Reporting Act 2013, unless section 79 applies; and
- (b) if section 79 applies and an applicable financial reporting standard requires the bodies corporate to produce group financial statements (within the meaning of section 7 of the Financial Reporting Act 2013), means those financial statements

7 Section 81 amended (Subpart does not apply to certain liable persons)

Replace section 81(2)(a) with:

- (a) the person's financial statements for the year preceding financial year A, which may be the financial statements for—
 - (i) the financial year as defined in section 5; or
 - (ii) if the person has a different accounting period, the relevant period for that person, provided that the financial statements are for a period of 12 consecutive months ending not more than 6 months before 30 June in the year preceding financial year A; and

7A New section 81A inserted (Application of subpart if non-liable person acquires assets of liable person)

After section 81, insert:

81A Application of subpart if non-liable person acquires assets of liable person

- (1) **Subsection (2)** applies if, during a financial year, a liable person disposes of assets used to generate qualified revenue and a person who acquires those assets is a non-liable person.
- (2) The acquirer of the assets must, in relation to revenue associated with those assets, pay the amount of the telecommunications development levy determined under section 88(b), and any further amounts that may be payable to the Crown under section 89, as if the acquirer were the liable person, regardless of whether any part of the revenue taken into account in calculating that liability was received before the person acquired the assets.
- (3) To avoid doubt, an acquirer of assets who does not reach the minimum telecommunications revenue is not a liable person.

8 Section 83 amended (Liable persons must produce information for purposes of liability allocation determination)

- (1) Replace section 83(1)(b) with:

- (b) either—
- (i) a report on the information provided by the liable person under subsection (1)(a), prepared by a qualified auditor in accordance with an auditing and assurance standard issued under section 12 of the Financial Reporting Act 2013, as specified by the Commission; or
 - (ii) an alternative form of assurance, as specified by the Commission, that the Commission is satisfied will enable it to make a determination.
- (2) Repeal section 83(2).

9 Section 91 amended (Commission must notify final liability allocation determination before notifying TSO cost calculation determination)

Repeal section 91(2).

Amendments to Part 4 (networks)

10 Subpart 3 of Part 4 replaced

Replace subpart 3 of Part 4 with:

Subpart 3—Access to property, involving rights of multiple parties, to deploy fibre optic media and other technology

Preliminary

155A Purpose

The purpose of this subpart is to enable more people and businesses to obtain the benefits of fibre-to-the-premises and other technology, within a shorter time frame, by—

- (a) recognising that, when more than 1 person's consent is required for an FTTP service provider or a network operator to access a property because each of those persons has some form of legal right in respect of that property, and there are difficulties in obtaining those consents, the process of installing infrastructure (such as fibre optic media) is delayed and opportunities to realise the benefits of that technology are missed; and
- (b) providing for a tiered system of statutory rights of access—
 - (i) that FTTP service providers and network operators may use to access property and carry out installations in those situations; and
 - (ii) that imposes different requirements for different methods of installation in order to ensure that the requirements are appropriate to the methods and their impact on the property; and

- (c) providing for a scheme for efficiently and effectively resolving disputes that may arise about rights and obligations under this subpart.

155B Overview

(1) This subpart—

- (a) provides statutory rights of access that FTTP service providers and network operators may use to access ~~certain~~ private property that is subject to legal rights of multiple persons in order to install, maintain, repair, and upgrade fibre optic media in circumstances where, but for those rights, the service providers or network operators would need to obtain the consent of ~~1 or more persons~~ more than 1 person (an **affected person**) to enter the property and carry out that work (for example, where a driveway is shared by several neighbours, or where a building is a company share property or part of a unit title development); and 5 10
- (b) enables the statutory rights of access to be applied to network operators that install prescribed other technology (*see sections 155E and 155Z0(1)(b)*); and 15
- (c) sets out general preconditions for the statutory rights of access to apply, including that the installation does not involve affected persons paying for any costs of the installation (*see section 155J*); and
- (d) sets out particular preconditions that an FTTP service provider or a network operator must satisfy before exercising the statutory rights, and provides that those preconditions— 20
- (i) depend on whether the method that the service provider or network operator intends to use for installing the fibre optic media or prescribed other technology is prescribed as a category 1 installation or category 2 installation: 25
- (ii) require the service provider or network operator to give every affected person, and the person who placed the order with a retail provider for the FTTP service to be installed, a preliminary notice of its intention to enter property and carry out a category 1 installation, but do not require it to obtain the consent of any affected person's consent of those persons (*see section 155K*): 30
- (iii) require the service provider or network operator to give every affected person, and the person who placed the order for the FTTP service to be installed, a preliminary notice of its intention to enter a property and carry out a category 2 installation and, unless ~~the affected person~~ any affected person objects within the time allowed, deem each affected person to have consented to the entry and installation (*see sections 155L to 155P*): 35
- (iv) in the case of a body corporate administered property, require the service provider or network operator to satisfy the preconditions 40

- for a category 2 installation, regardless of whether the installation is a category 1 or a category 2 installation (*see sections 155Q to 155X*); and
- (e) provides for the grounds on which an affected person may object to a category 2 installation and, for body corporate administered properties, also provides additional grounds for objection (*see sections 155N and 155T*); and 5
 - (f) in the case of a body corporate administered property,—
 - (i) provides a separate statutory right of access for FTTP service providers and network operators to enter the property in order to design installations (*see section 155Q*); and 10
 - (ii) requires the body corporate to give to all owners of flats and units forming part of the property the body corporate's reasons for objecting to an installation (*see section 155W*); and
 - (g) provides for how FTTP service providers and network operators must exercise their statutory rights of access (*see sections 155Z to 155ZB*); and 15
 - (h) for non-prescribed methods of installation, confirms that the rights that an FTTP service provider or a network operator has to enter property and carry out work for the purposes of the installation are the rights (if any) that it has under the general law and any relevant enactments (*see section 155ZC*); and 20
 - (i) provides for statutory rights of access for FTTP service providers and network operators to re-enter property for the purpose of inspecting, maintaining, repairing, or upgrading all or part of a fibre-to-the premises access network if certain preconditions are met (*see sections 155ZD and 155ZE*); and 25
 - (j) provides for a dispute resolution scheme to be established for resolving disputes relating to the statutory rights of access given by this subpart (*see sections 155ZG to 155ZN and Schedule 3C*); and 30
 - (k) provides for methods of installation to be prescribed as category 1 or category 2 installations for the purposes of the subpart, depending on the impact that the method of installation may have on the property, and for other matters to be prescribed by regulations for the purposes specified in *section 155ZO*; and 35
 - (l) grants the body corporate of a unit title development an exemption from the duty to maintain fibre networks installed as part of the UFB initiative (which would otherwise arise under the Unit Titles Act 2010) (*see section 155ZP*). 40
- (2) This section is a guide only to the general scheme and effect of this subpart. 40

155C Status of examples

- (1) An example used in this subpart is only illustrative of the provision to which it relates. It does not limit the provision.
- (2) If an example and the provision to which it relates are inconsistent, the provision prevails.

5

155D Interpretation

- (1) In this subpart, unless the context otherwise requires,—
affected person, in relation to property and a category 1 or category 2 installation,—
 - (a) means a person whose consent an FTTP service provider or a network operator would, but for this subpart, have to obtain before entering the property or carrying out the installation; and
 - (b) does not include the person who placed the order with a retail provider for the FTTP service to be installed

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Example

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A flat-owning company owns a property comprising a block of 20 flats (and the land on which it is built). It is a company share property.

The flats are situated at the end of a driveway. Three easements over the driveway enable residents of the flats as well as 2 neighbours, each living in a stand-alone house on either side of the driveway, to access their respective properties.

20

Mark rents one of the flats. He wants an Ultra-fast Broadband connection, so he obtains his landlord's agreement to place an order for an FTTP service to be installed to the flat. Mark, acting as agent for the landlord, places the order with a retail provider.

25

To get fibre optic media from the road through to Mark's flat, the FTTP service provider has to use a method of installation that depends on the service provider being able to carry out work on the driveway.

The body corporate and the neighbours on either side of the driveway are the only affected persons in relation to the installation. This is because they are the persons whose consent to the entry and installation would be required at law,—

30

- in the case of the body corporate, as the owner of the property in which the installation is to be carried out and also as a person with rights under an easement over the driveway:
- in the case of each of the 2 neighbours, as persons with rights under their easements over the driveway.

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Mark's landlord, on whose behalf Mark is acting when he places the order for an FTTP service, is not an affected person because of the exclusion in **paragraph (b)**. (However, this subpart does expressly provide certain rights for the person with a legal interest in the shared property who has placed the order for the FTTP service to be installed, for example, rights to receive certain notices.)

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Mark is not an affected person because he does not have any legal interest in the flat and is therefore not a person whose consent the FTTP service provider would have been required to obtain were it not for this subpart.

body corporate administered property means—

- (a) a company share property:
- (b) a unit title development:
- (c) real property owned under another legal structure (if any) that—
 - (i) comprises 2 or more distinct units (for example, within a building) or a group of buildings used communally; and
 - (ii) is administered by a body corporate

category 1 installation means a method of installation prescribed as a category 1 installation

category 2 installation means a method of installation prescribed as a category 2 installation

company share property means a building (including the land on which it is sited) owned by a flat or office owning company (within the meaning of Part 7A of the Land Transfer Act 1952) that issues licences to shareholders to occupy or use specified residential flats or offices forming part of the building

dispute resolution scheme has the same meaning as in **section 155ZG**

fibre-to-the-premises access network has the same meaning as in section 156AB

FTTP service means a telecommunications service delivered over fibre optic media to an end-user's premises

FTTP service provider means the owner or operator of a fibre-to-the-premises access network

installing and carrying out an installation, in relation to fibre optic media or other prescribed technology, includes maintaining, repairing, and upgrading that media or technology

maintaining, repairing, or upgrading has the same meaning as in **section 155ZD(5)**

maintenance has the same meaning as in section 117

non-prescribed installation means a method of installation that is not prescribed as a category 1 or a category 2 installation

prescribed means prescribed by regulations made under **section 155ZO** or **clause 16 of Schedule 3C**

prescribed other technology means technology prescribed under **section 155ZO(1)(b)**

property means real property in respect of which more than 1 person has a legal right

	UFB initiative has the same meaning as in section 156AB	
	unit owner includes a person who is a shareholder in a flat or office owning company (within the meaning of Part 7A of the Land Transfer Act 1952) and who has a licence to occupy or use a specified residential flat or office forming part of a building under a licence from the company	5
	unit title development has the same meaning as in section 5(1) of the Unit Titles Act 2010.	
(2)	In this subpart, unless the context otherwise requires, a reference to a person who places an order for an FTTP service to be installed is a reference to the owner of the property (or, in the case of a body corporate administered property, the unit owner) to which the order relates, regardless of whether the owner places the order himself or herself or authorises another person (for example, a tenant) to place the order as agent on the owner's behalf.	10
155E	References to fibre optic media, etc, include other prescribed technology	
	In this subpart, unless otherwise stated or the context otherwise requires,—	15
(a)	a reference to an installation of fibre optic media or an FTTP service includes a reference to the installation of a prescribed other technology or a service involving the installation of a prescribed other technology; and	
(b)	a reference to a fibre-to-the-premises access network includes a reference to a network comprising prescribed other technology or of which prescribed other technology forms a part.—	20
	(i) <u>that comprises prescribed other technology; or</u>	
	(ii) <u>of which prescribed other technology forms a part.</u>	
155F	Relationship with other statutory rights of access	
	This subpart does not limit the statutory rights of access <u>for existing works provided for</u> in sections 120 to 127 (which provide for network operators to apply to a District Court for an order authorising entry to land to perform certain work).	25
155G	Notices under <u>this</u> subpart	
	A notice required to be given to a person under this subpart must, unless otherwise stated,—	30
(a)	be in writing; and	
(b)	be given in the prescribed manner.	
	<i>Nature and application of statutory rights of access under subpart</i>	
155H	How long statutory rights of access apply for	35
	The statutory rights of access given by this subpart apply,—	

- (a) in relation to FTTP service providers and network operators installing fibre optic media, for the period starting on the date that this subpart comes into force and ending on 1 January 2025; and
 - (ab) in relation to FTTP service providers and network operators exercising certain ongoing rights of access to installed fibre optic media, for the periods specified in **section 155ZD**; and 5
 - (b) in relation to network operators and installations of prescribed other technology, for the prescribed period.
- 155I Nature of statutory rights of access**
- (1) The statutory rights of access given by this subpart are that an FTTP service provider or a network operator may, for the purpose of carrying out a category 1 or category 2 installation of fibre optic media as part of a fibre-to-the-premises access network,— 10
 - (a) enter property at reasonable times, and may enter the property with a person who is, or thing that is, reasonably necessary for the purposes of carrying out the installation; and 15
 - (b) perform work that is reasonably necessary for the purposes of that installation.
 - (2) The statutory rights of access referred to in **subsection (1)** apply only if— 20
 - (a) the general preconditions stated in **section 155J** are satisfied (regardless of whether the installation is a category 1 or a category 2 installation); and 20
 - (b) the FTTP service provider or network operator has complied with the particular preconditions,— 25
 - (i) for a category 1 installation, stated in **section 155K**: 25
 - (ii) for a category 2 installation, stated in **section 155L**:
 - (iii) for an installation in a body corporate administered property (regardless of whether the installation is a category 1 or a category 2 installation), stated in **section 155R**.
 - (3) If an installation is in a property other than a body corporate administered property and involves both category 1 and category 2 installations, the FTTP service provider or network operator must treat the whole installation as a category 2 installation and (in addition to complying with the general preconditions stated in **section 155J**) must comply with the particular preconditions stated in **section 155L**. 30 35
 - (4) A further statutory right of access is given to FTTP service providers and network operators for designing installations in body corporate administered properties (*see* **section 155Q**).

155J General preconditions for statutory rights of access to apply

- (1) The general preconditions for the statutory rights of access given by this subpart to apply are that—
 - (a) a person has, after the commencement of this subpart, placed an order with a retail provider for an FFTP service to be installed; and 5
 - (b) the installation involves 1 or more affected persons; and
 - (c) no affected person is liable to pay for the costs of the installation, or part of those costs, without the affected person's express agreement; and
 - (d) the FFTP service provider or network operator carrying out the installation is a member of the dispute resolution scheme. 10
- (2) In relation to **subsection (1)(a)**, *see clauses 2 to 5 of Schedule 1AA*, which provide for how FFTP service providers and network operators may treat orders for FFTP services placed before the commencement of this subpart (as replaced by **section 10** of the Telecommunications (Property Access and Other Matters) Amendment Act **2016**), for the purpose of obtaining access to property. 15

Particular preconditions for category 1 and category 2 installations (in properties other than body corporate administered properties)

155K Particular preconditions before exercising statutory right of access to carry out category 1 installation 20

- ~~(1) Before an FFTP service provider or a network operator enters a property and carries out a category 1 installation under this subpart, the service provider or network operator must first have given a preliminary notice to each affected person.~~
- (1) Before an FFTP service provider or a network operator enters a property and carries out a category 1 installation, the service provider or network operator must first give a preliminary notice to— 25
 - (a) each affected person; and
 - (b) the person who placed the order with a retail provider for an FFTP service to be installed. 30
- (2) The preliminary notice must—
 - (a) be given not less than 5 working days before the service provider or network operator enters the property to carry out the installation; and
 - (b) state when the service provider or network operator is intending to enter the property and carry out the installation; and 35
 - (c) include a general explanation of what will be involved in carrying out the installation; and
 - (d) identify any access areas that the service provider or network operator may want to use when carrying out the installation; and

(e)	comply with the prescribed requirements (if any).	
(3)	This section does not apply to a category 1 installation in a body corporate administered property (<i>see sections 155Q and 155R</i>).	
155L	Particular preconditions before exercising statutory right of access to carry out category 2 installation	5
(1)	Before an FTTP service provider or a network operator enters a property and carries out a category 2 installation under this subpart, the service provider or network operator must—	
(a)	first have given each affected person give a preliminary notice and a high-level design plan of the installation that set out the information described in section 155M ; and to—	10
(i)	each affected person; and	
(ii)	the person who placed the order with a retail provider for the FTTP service to be installed; and	
(b)	not have received an objection under section 155N from any affected person.	15
(2)	This section does not apply to a category 2 installation in a body corporate administered property (<i>see section 155R</i>).	
155M	Requirements in respect of preliminary notice and design plan for category 2 installations	20
(1)	The preliminary notice about a category 2 installation given to each affected person under section 155L(1)(a) must—	
(a)	state when the FTTP service provider or network operator is intending to enter the property and carry out the installation; and	
(b)	include a general explanation of what will be involved in carrying out the installation; and	25
(c)	identify any access areas that the service provider or network operator may want to use when carrying out the installation; and	
(d)	set out the grounds on which an affected person may object to the FTTP service provider or network operator entering the property and carrying out the installation under this subpart; and	30
(e)	state how an affected person may object and the time within which an objection must be made; and	
(f)	comply with the prescribed requirements (if any).	
(2)	The high-level design plan required under section 155L(1)(a) must describe or illustrate—	35
(a)	where the installation method (or, if more than 1, where each installation method) is to be used on the property; and	

- (b) where the network equipment (if any) associated with that installation method is proposed to be put.

Objections to exercise of statutory right of access to carry out category 2 installations

155N Grounds and time for objecting to exercise of statutory right of access to carry out category 2 installation 5

- (1) An affected person may, ~~by notice given to an FTTP service provider or a network operator within 15 working days after receiving a preliminary notice and high-level design plan for a category 2 installation under **section 155L**, object to the FTTP service provider or network operator exercising a statutory right of access to enter property and carry out the a category 2 installation, on 1 or more of the following grounds:~~ 10

- (a) the person disputes ownership of property that the proposed installation will make use of or disturb:
- (b) the person can demonstrate that the installation will have a materially negative impact on the value of the person's property: 15
- (c) the person can identify ways in which the proposed installation will unreasonably impact on the person's enjoyment of the property, or worsen an existing problem with the property, other than by having a visual impact alone: 20
- (d) the person can demonstrate that the proposed installation will impede the person's plans for development of the property:
- (e) the person has an easement over the property affected and can demonstrate that the proposed installation will have an enduring impact on the terms and conditions of that easement: 25
- (f) the prescribed grounds (if any).

- (2) An affected person who wants to object to a network operator exercising a statutory right of access under this section must do so by giving a notice of objection to the FTTP service provider or network operator within 15 working days after receiving the preliminary notice and high-level design plan for the installation under section **155L(1)(a)**. 30

- (3) Nothing in this section, or any other provision of this subpart, affects the right of a person to cancel an order that the person has placed for an FTTP service to be installed.

155O Effect of objection to exercise of statutory right of access for category 2 installation 35

- (1) If the FTTP service provider, network operator, or person who ~~ordered the installation~~ placed the order with a retail provider for the FTTP service to be installed (in each case, **person A**) disputes the validity of an affected person's

objection under **section 155N**, person A may refer the dispute to the dispute resolution scheme.

- (2) If person A refers the dispute to the dispute resolution scheme, the FTTP service provider or network operator has no statutory right of access to enter the property and carry out the installation unless there is a binding resolution of the dispute under the rules of the scheme or an order of a the District Court allows it to exercise that right.

155P Deemed consent to category 2 installation

Each affected person is deemed to have consented to an FTTP service provider or a network operator entering the property and carrying out a category 2 installation if the preconditions in **sections 155J and 155L** are satisfied.

Statutory rights of access to body corporate administered properties

155Q Statutory right of access to common areas of body corporate administered properties for designing installations

- (1) The statutory right of access given by this section applies after a person has placed an order with a retail provider for an FTTP service to be installed in a body corporate administered property.
- (2) ~~For the purpose of inspecting the property to design an installation, an FTTP service provider or a network operator has a statutory right to enter those areas of the property that are owned by the body corporate on behalf of unit owners as common property and that unit owners are able to freely access on a day-to-day basis.~~
- (2) For the purpose of inspecting the property, to design an installation, an FTTP service provider or a network operator—
- (a) has a statutory right to enter those areas of the property that are owned by the body corporate on behalf of unit owners as common property and that unit owners are able to freely access on a day-to-day basis; and
- (b) may, with the permission of the body corporate (which must not be unreasonably withheld), enter other areas of the property owned by the body corporate on behalf of unit holders as common property.
- (3) ~~Before entering any other area of the property, the FTTP service provider or network operator must obtain the permission of the body corporate or person with the authority to grant permission to enter that area of the property that is not common property (for example, a person's unit in a unit title development or a flat or an office in a building owned by a flat or office owning company within the meaning of Part 7A of the Land Transfer Act 1952), the FTTP service provider or network operator must obtain the permission of the owner or~~

another person who has the legal right to occupy or exclusively use that area of the property.

Example

The owner of an apartment on the top floor of a 3-storey apartment building places an order with a retail provider for an FTTP service to be installed. There are 3 external access ways on the building, one running along the back of each floor, and external staircases that link the access ways. Apartment owners can use these access ways and stairs to move between floors. The FTTP service provider wants to find out whether it will be possible to carry out the installation to the apartment using external conduit alone.

The access ways and staircases are owned and held by the body corporate of the building as common property and there are no barriers restricting free access to those parts of the building. The FTTP service provider therefore has a statutory right to enter the property and inspect the external access ways and staircases up to the top floor for the purposes of finding out whether it will be possible to use external conduit and to design a suitable installation.

155R Particular preconditions before exercising statutory right of access to body corporate administered property for carrying out category 1 and 2 installations

Before an FTTP service provider or a network operator enters a body corporate administered property and carries out a category 1 or a category 2 installation in reliance on a statutory right of access under this subpart, the service provider or network operator must—

- (a) ~~first have given~~ give the body corporate a preliminary notice and high-level design plan in accordance with **section 155S**; and
- (b) not have received an objection under **section 155T**.

155S Requirements in respect of preliminary notice and design plan given to body corporate

- (1) The preliminary notice and high-level design plan given to a body corporate about a category 1 or category 2 installation under **section 155R** must include the information set out in **section 155M** as if each reference to an affected person were a reference to the body corporate and each reference to a category 2 installation were a reference to a category 1 or category 2 installation.
- (2) However, in complying with **section 155M(1)(d)**, the statement of grounds for objection must include the grounds stated in **section 155T** as well as those in **section 155N**.

155T Grounds and time for body corporate objecting to statutory right of access to carry out category 1 or category 2 installation

The body corporate may object to a category 1 or category 2 installation under **section 155R** within the same time and on the same grounds as stated in **section 155N** as well as on 1 or more of the following additional grounds:

(a) the body corporate considers that the installation will result in unacceptable disruption to the availability of telecommunications services to unit owners <u>during business hours</u>; (b) the body corporate considers that there is a real likelihood the installation as designed would breach 1 or more enactments applying to the body corporate and the property (for example, the Building Code, the Heritage New Zealand Pouhere Taonga Act 2014, or the Health and Safety at Work Act 2015): (c) the body corporate considers that the proposed installation will prevent it from meeting its existing contractual obligations and the body corporate can provide documentation confirming this: (d) any prescribed grounds.	5 10
155U FTTP service provider or network operator may extend time for body corporate objections	
(1) An FTTP service provider or a network operator may, on its own initiative or at the request of the body corporate, extend the time for a body corporate to object to a category 1 or category 2 installation under section 155T. (2) If a body corporate wants to request an extension under this section, it must do so by giving a notice to the FTTP service provider or network operator before the end of the 15-working-day period allowed for objecting under section 155T (as set out in section 155N). (3) <u>An FTTP service provider or a network operator must not unreasonably withhold permission if it receives a request for an extension under subsection (2).</u>	15 20
155V Effect of body corporate objections	
If an FTTP service provider or a network operator disputes the validity of a body corporate's objection under section 155T,— (a) the service provider or network operator may refer the dispute to the dispute resolution scheme; and (b) section 155O(2) applies.	25
155W Requirement for governing bodies to give unit owners reasons for objections	
(1) A body corporate that objects to an installation under section 155T must notify each unit owner of its reasons for deciding to object. (2) The notice must— (a) be in writing; and (b) be given not later than 10 working days after the body corporate lodges its objection.	30 35

155X Deemed consent of body corporate to category 1 or category 2 installation

The body corporate of a body corporate administered property is deemed to have consented to an FTTP service provider or a network operator entering the property and carrying out a category 1 or category 2 installation if the preconditions in **sections 155J and 155R** are met.

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Exercising statutory rights of access for category 1 and category 2 installations

155Y Application of sections 155Z to 155ZB

Sections 155Z to 155ZB apply to category 1 and category 2 installations, regardless of the type of property accessed or to be accessed.

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155Z How statutory rights of access must be exercised

(1) An FTTP service provider or a network operator must comply with the following requirements when exercising its statutory right of access under this subpart to enter property and carry out an installation:

(a) the owner and the occupier of the property must be given reasonable notice of the service provider's or network operator's intention to enter the property to start the installation; ~~and if,—~~

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(i) the FTTP service provider or network operator did not, in the preliminary notice given under **section 155K or 155L**, specify a fixed date for entering the property and carrying out the installation; or

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(ii) the FTTP service provider or network operator specified a date in that preliminary notice but that date has changed; and

(b) from the start to the completion of the installation, entry to the property must be made at reasonable times; and

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(c) entry to the property must be made only by an officer, employee, or agent of the service provider or network operator authorised by it in writing; and

(d) the person authorised to enter must produce evidence of his or her authority and identity if asked to do so.

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(2) In **subsection (1)**, **evidence of authority** has the same meaning as in section 118, with any necessary modifications.

155ZA Restrictions on use of access areas during installations

An FTTP service provider or a network operator using an access area to carry out a category 1 or category 2 installation may restrict or block other persons from using the access area only for the prescribed period of time reasonably necessary to complete the installation.

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155ZB Obligation to reinstate property

An FTTP service provider or a network operator must, as soon as practicable after completing an installation, reinstate the area of the property impacted or disturbed by the installation as closely as reasonably possible to its original condition before the installation.

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Non-prescribed installations

155ZC Non-prescribed installations

If an FTTP service provider or a network operator wants to enter property and carry out a non-prescribed installation involving 1 or more affected persons,—

- (a) none of the statutory rights of access under this subpart applies; and
- (b) the service provider or network operator must obtain rights to enter the property and carry out the installation in accordance with the general law and any relevant enactment applying at the time.

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Ongoing rights of access to installed fibre infrastructure

155ZD Ongoing rights of access

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- (1) The rights of access given by this section are for an FTTP service provider or a network operator to,—

- (a) ~~re-enter property for the purpose of inspecting, maintaining, repairing, or upgrading all or any part of a fibre-to-the-premises access network that the service provider or network operator owns and that was installed at any time after 1 July 2012; and~~

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- (b) ~~perform any act or operation necessary for the purpose of inspecting, maintaining, repairing, or upgrading that access network or part of it.~~

- (a) at any time before or after 1 January 2025, for an indefinite period, re-enter property to perform any act or operation necessary for the purpose of inspecting, maintaining, repairing, or upgrading all or any part of a fibre-to-the-premises access network that the service provider or network operator owns and that was installed at any time after 1 July 2012; and

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- (b) at any time before 1 January 2025, re-enter property to—

- (i) extend an installation that forms part of a fibre-to-the-premises access network described in **paragraph (a)** if the extension does not involve a change to the design plan originally provided under this subpart to affected persons and the person who placed the order for the FTTP service to be installed; or

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- (ii) permanently reinstate an area where, at the time of installing, maintaining, repairing, or upgrading part of the fibre-to-the-premises access network, the service provider or network operator rein-

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stated the property on an interim basis only, until a permanent re-instatement could be undertaken.

- (2) The rights of access apply if—
 - (a) the FTTTP service provider or network operator entered the property and carried out the original installation after obtaining the consent of 1 or more persons, or entered the property under this subpart; and 5
 - (b) the FTTTP service provider or network operator complies with the conditions in **section 155ZE**; and
 - (c) neither of the circumstances in **subsection (3)** applies.
- (3) The rights of access given by this section do not apply if— 10
 - (a) the FTTTP service provider or network operator has rights of access equivalent to the rights in **subsection (1)** under 1 or more easements in respect of the part of the fibre-to-the-premises access network that the service provider wants to access; or
 - (b) the part of the fibre-to-the-premises access network that the FTTTP service provider or network operator wants to access was installed in breach of legal rights or obligations in that the service provider or network operator that carried out the original installation— 15
 - (i) failed to obtain all necessary consents for the installation; or
 - (ii) acted outside the terms of 1 or more consents given by persons in respect of the installation. 20
- (4) To avoid doubt, this section applies, with all necessary modifications, to a network operator and prescribed other technology that is installed in reliance on the rights of access given by this subpart.
- (5) In this section, **maintaining, repairing, or upgrading** includes— 25
 - (a) any repairs and any other activities for the purpose of maintaining, or that have the effect of maintaining, part of the fibre-to-the-premises access network; and
 - (b) the carrying out of any replacement or upgrade of existing works, as long as the land will not be injuriously affected as a result of the replacement or upgrade. 30

Compare: 1992 No 122 s 23(3)

155ZE Conditions of ongoing rights

- (1) The rights of access given by **section 155ZD** are subject to the following conditions: 35
 - (a) entry to the property must be made only by a person who—
 - (i) is an officer, employee, or agent of the FTTTP service provider or network operator; and

- (ii) is authorised by the service provider or network operator, in writing, to make that entry; and
 - (b) the owner and the occupier of the property must be given reasonable notice of the intention to enter the property; and
 - (c) entry must be made at reasonable times; and 5
 - (d) the person entering must produce evidence of his or her authority and identity, if asked to do so; and
 - (e) the property must be reinstated as provided in **section 155ZB**.
 - (2) The conditions in **subsection (1)** do not apply if entry on the land is—
 - (a) necessary in circumstances of probable danger to life or property; or 10
 - (b) immediately necessary to maintain the continuity or safety of the supply of telecommunications.
- Protection of interests in installations*
- 155ZF Protection of interests in installations**
- (1) This section applies to a category 1 or category 2 installation that forms part of a fibre-to-the-premises access network, including any work in relation to or in connection with the installation, if— 15
 - (a) it is fixed to, or installed under or over, land that is not owned by the FTTP service provider or network operator; and
 - (b) the service provider or network operator carried out the installation after 1 July 2012; and 20
 - (ba) the FTTP service provider or network operator entered the property and carried out the installation after obtaining the required consents or entered the property under this subpart; and
 - (b) ~~the FTTP service provider or network operator carried out the installation in reliance on the statutory rights of access given by this subpart (as replaced by **section 10** of the Telecommunications (Property Access and Other Matters) Amendment Act 2016); and~~ 25
 - (c) neither of the circumstances described in **section 155ZD(3)** applied in relation to the installation so as to disentitle the FTTP service provider or network operator from exercising ~~those~~ the statutory rights of access. 30
 - (2) If this section applies,—
 - (a) the installation and work are deemed to be lawfully fixed or installed and continues to be lawfully fixed or installed until the FTTP service provider or network operator decides otherwise; and 35

- (b) no person other than the FTTP service provider or network operator has an interest in the installation or work by reason only of having an interest in the land.

Compare: 2001 No 103 s 155

Dispute resolution process

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155ZG Dispute resolution scheme

- (1) The **dispute resolution scheme** is—
- (a) the approved scheme defined in **clause 2** of **Schedule 3C**; or
 - (b) the regulated scheme provided for in regulations made under **clause 16** of **Schedule 3C**.
- (2) The procedures for referring disputes to the dispute resolution scheme are as set out in the rules of the dispute resolution scheme.

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Compare: 2010 No 116 s 95

155ZH FTTP service providers and network operators exercising statutory access rights must be members of dispute resolution scheme

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- (1) Every FTTP service provider and network operator that relies on a statutory right of access under this subpart (other than an FTTP service provider or network operator that relies on the statutory rights of access given by section **155ZD(1)(b)** only)—
- (a) in order to install fibre optic media must be a member of the dispute resolution scheme and must remain a member of the scheme until 1 January 2026;
 - (b) in order to install a prescribed other technology must be a member of the dispute resolution scheme for the period that—
 - (i) starts on the day after the date on which the order prescribing that technology as other technology for the purposes of this subpart comes into force; and
 - (ii) ends on the date that is 10 years later.
- (2) Despite **subsection (1)**, an FTTP service provider or a network operator does not need to be a member of the dispute resolution scheme if the Minister exempts that person by issuing an individual exemption notice in the *Gazette* that—
- (a) identifies the person that is exempt from the obligation to be a member; and
 - (b) gives reasons for the exemption.
- (3) The Minister may grant an individual exemption to a person only if he or she is satisfied that membership of the dispute resolution scheme by the person is not

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necessary in order to meet the purpose of the dispute resolution scheme (as set out in clause 1 of Schedule 3C) because—	
(a) that person has permanently stopped carrying out installations; and	
(b) all disputes involving that person that have been referred to the scheme (if any) have been dealt with; and	5
(c) it is unlikely that other disputes involving that person are yet to be referred to the scheme.	
(4) The Minister may amend or revoke an individual exemption by issuing a notice in the <i>Gazette</i> that identifies the exempt participant and gives reasons for the amendment or revocation, but only if the Minister—	10
(a) first notifies the exempt person (where possible) of the proposed amendment or revocation and gives the person a reasonable opportunity to comment on the proposal; and	
(b) is satisfied that the amendment or revocation is necessary or desirable in order to meet the purpose of the dispute resolution scheme.	15
(5) The Ministry must ensure that an up-to-date list of all exemptions is available at all reasonable times on an Internet site maintained by or on behalf of the Ministry.	
(6) <u>An exemption that is granted, amended, or revoked under this section is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.</u>	20
Compare: 2010 No 116 s 96	
155ZI Disputes may be referred to dispute resolution scheme	
(1) A dispute between the following persons about their rights and obligations under this subpart in relation to an installation may be referred to the dispute resolution scheme by any of the parties to the dispute:	25
(a) a dispute between an FTTP service provider or a network operator and—	
(i) a person who places an order with a retail provider for an FTTP service to be installed:	30
(ii) the body corporate of a body corporate administered property:	
(iii) an affected person; and	
(b) a dispute between a person who places an order with a retail provider for an FTTP service to be installed and an affected person; and	
(c) <u>a dispute between an FTTP service provider or a network operator and a person affected by a re-entry under section 155ZD(1)(b).</u>	35
(2) Subsection (1)(b) does not apply if the person who places the order with the retail provider is a unit owner or person occupying a unit in a body corporate administered property.	

- (3) Disputes that may be referred to the dispute resolution scheme include disputes about—
- (a) whether a statutory right of access under this subpart applies for an FTTP service provider or a network operator to enter a property and carry out a proposed installation: 5
 - (b) the validity of a person's grounds for objecting to an FTTP service provider or a network operator exercising a statutory right of access under this subpart to carry out a category 2 installation (or, in the case of a body corporate administered property, a category 1 or category 2 installation): 10
 - (c) whether an FTTP service provider or a network operator has complied with requirements under this subpart when exercising a statutory right of access (including the requirement to reinstate property when an installation is completed):
 - (d) other matters provided for in the rules of the scheme. 15

Example

This example refers to the situation set out in the example in **section 155D(1)** concerning the meaning given to the term affected person.

The method that the FTTP service provider has to use in order to get fibre optic media from the road to Mark's flat via the driveway is prescribed as a category 2 installation. The FTTP service provider therefore gives the flat-owning company and each of the 2 neighbours a notice and high-level design plan that set out the information required under **section 155R**. 20

Within 15 working days after receiving the notice, one of the neighbours objects, on the grounds that the work involved may worsen a subsidence problem in one corner of that person's property (**section 155N**). The body corporate also objects, on the ground that it considers the installation will result in an unacceptable disruption to telephone services, during business hours, for other flat owners (**section 155T(a)**). 25

The FTTP service provider is unable to reach an agreed settlement with either the neighbour or the body corporate concerning the validity of their objections and therefore refers each dispute to the dispute resolution scheme. After further unsuccessful attempts to settle each dispute, the FTTP service provider requests that a determination be made on each dispute under the rules of the scheme. 30

The person determining the disputes concludes that there are no grounds for the body corporate's objection. This determination is binding on the FTTP service provider as a member of the scheme (**section 155ZJ(2)**) but not on the body corporate, which can, within 5 working days of being notified of the determination, appeal against it to a the District Court (**sections 155ZK and 155ZL**). 35

However, the neighbour's objection is determined to be valid, meaning that the FTTP service provider cannot exercise a statutory right of access to carry out the installation. This is binding on the FTTP service provider and it cannot appeal to the District Court (**section 155ZJ(2)**). 40

The owner of Mark's flat, as the person who placed the order for the installation, does not have a right to refer a dispute to the dispute resolution scheme, either in relation to the body corporate's objection or in relation to the neighbour's objection (**subsection (2)** of this section). Any dispute between the owner of Mark's flat and the body corporate over the body corporate's objection to the FTTP service provider entering the block of flats and carrying out the installation would be a matter to be resolved in accordance with the relevant provisions (if any) of the owner's licence and the rules of the body corporate (or, if the flat is part of a unit title development instead of a company share property, in accordance with the provisions of Part 4 of the Unit Titles Act 2010).

Mark does not have any right to refer a dispute to the dispute resolution scheme under this section either. He is not the person who placed the order for the installation (see **section 155D(2)**) and he is not an affected person (see **section 155D(1)**).

155ZJ Determinations binding on members and certain other parties

- (1) This section applies if a dispute is referred to the dispute resolution scheme and a determination is made on the dispute under the rules of the scheme.
- (2) The determination is binding on each party to the dispute that is a member of the dispute resolution scheme (except to the extent that it may be modified by a the District Court under **section 155ZM(3)**), and the scheme member has no right of appeal against the determination.
- (3) The determination is binding on each party to the dispute who is not a member of the dispute resolution scheme, except if one of those parties lodges an appeal against the determination under **section 155ZK** and the court modifies or reverses the determination.

155ZK Appeals against determinations

- (1) A party to the dispute that is not a member of the scheme may, within the time allowed under **section 155ZL(1)**, appeal to a the District Court against a determination.
- (2) The court may confirm, modify, or reverse the decision appealed against.
- (3) The decision of the court on the appeal is binding on all persons named as parties in the determination, and there is no right of appeal against the court's decision.

155ZL Procedure on appeal

- (1) An appeal under **section 155ZK** must be brought and determined in accordance with the rules of court, except that—
 - (a) an appeal must be brought within 5 working days after the determination appealed against is notified to the party wanting to lodge the appeal, or any further time the court allows on an application made before or after that period ends; and

- (b) the dispute resolution scheme, as the maker of the determination appealed against, is not entitled to be represented at the hearing of the appeal; and
 - (c) the court on appeal may not refer the determination back to the dispute resolution scheme for any purpose. 5
- (2) The court may hear all evidence provided and representations made by or on behalf of any party to the appeal that the court considers relevant to the appeal, whether or not the evidence would be admissible in a court.

155ZM Compliance with rules, binding settlements, and determinations

- (1) Members of the dispute resolution scheme and each party to a dispute that is referred to the scheme must comply with the rules of the scheme. 10
- (2) On the application of the person responsible for the dispute resolution scheme, ~~a the~~ District Court may require a member of the dispute resolution scheme or other person who is a party to a dispute to—
 - (a) comply with the rules of the scheme: 15
 - (b) comply with the terms of a binding settlement or determination made under the rules of the scheme.
- (3) If the District Court is satisfied that the terms of a binding settlement or determination are manifestly unreasonable, the court's order under **subsection (2)(b)** may modify the terms of the binding settlement or determination, but only to the extent that the modification results in a binding settlement or determination that could have been made under the dispute resolution scheme. 20
- (4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by ~~a the~~ District Court for the payment of a sum of money. 25
- (5) A reference in this section to a member includes a reference to a person who was a member of the dispute resolution scheme at the relevant time but is no longer a member at the time of the application or order. 30

Compare: 2010 No 116 s 97

155ZN Levy for regulated dispute resolution scheme

- (1) This section applies if the dispute resolution scheme is the regulated scheme.
- (2) Every FTTP service provider and network operator that relies on a statutory right of access under this subpart (or a prescribed class of those persons) must pay to the Minister in each financial year or part financial year (as the case may require) a prescribed levy. 35
- (2A) **Subsection (2)** does not apply to an FTTP service provider or network operator that relies on the statutory rights of access given by **section 155ZD(1)(b)** only.

- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy.
- (4) The levy must be prescribed on the basis that the costs of establishing and operating the dispute resolution scheme should be met fully out of the levy.
- (5) The Governor-General, in making regulations under this section, has the same powers as those set out in section 11(3). 5

Regulations and exemption

155ZO Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with **subsections (2) to (4)**, make regulations for all or any of the following purposes in respect of this subpart: 10
 - (a) prescribing, for the purposes of **section 155G**, how notices may or must be given and other matters relating to that procedure (including when the notice is treated as having been received or as having been given for the purposes of this subpart): 15
 - (b) prescribing other technology for the purposes of this subpart:
 - (c) prescribing how long statutory rights of access apply for a prescribed other technology for the purposes of **section 155H(b)**:
 - (d) prescribing requirements for preliminary notices for the purposes of **section 155K(2) or 155M(1)**: 20
 - (e) prescribing methods of installations as category 1 installations for the purposes of this subpart:
 - (f) prescribing methods of installations as category 2 installations for the purposes of this subpart:
 - (g) prescribing grounds on which affected persons may object to category 2 installations for the purposes of **section 155N**: 25
 - (h) prescribing grounds on which the body corporate of a body corporate administered property may object to a category 1 or category 2 installation for the purposes of **section 155T**:
 - (i) prescribing when grounds for objection apply, do not apply, or apply with modifications: 30
 - (j) prescribing periods of time reasonably necessary to complete category 1 and category 2 installations for the purposes of **section 155ZA**:
 - (k) prescribing fees payable by scheme members in respect of any matter relating to disputes under this subpart, or the manner in which such fees may be calculated: 35
 - (l) prescribing how information may or must be given to, provided to, or served on any person under this subpart and other matters relating to that procedure (including when the information is treated as received or as

	having been given, provided, or served for the purposes of this subpart and the regulations).	
(2)	Before recommending regulations prescribing other technology under subsection (1)(b) , the Minister must—	
(a)	consult the persons or organisations that appear to the Minister to be representative of the interests of those persons likely to be substantially affected by the regulations; and	5
(b)	be satisfied that the technology proposed—	
(i)	is to be deployed on a large scale; and	
(ii)	will provide benefits to New Zealand; and	10
(iii)	cannot be installed without the consent of multiple parties first being obtained and this requirement is preventing, or is likely to prevent, the benefits to New Zealand of the technology being realised.	
(3)	Before recommending regulations prescribing a method of installation as a category 1 installation under subsection (1)(e) , the Minister must be satisfied that the installation will not have any lasting, substantial, physical impact on the property.	15
(4)	Before recommending regulations prescribing a method of installation as a category 2 installation under subsection (1)(f) , the Minister must be satisfied that—	20
(a)	any disruption that the installation may cause for users of the property will be temporary; and	
(b)	any lasting, substantial, physical impact that the installation may have on the property is justifiable in support of the mass market roll-out of a telecommunications network.	25
Examples of category 1 and category 2 installations		
Examples of category 1 installations are—		
•	an installation that uses existing equipment such as ducts or conduit:	
•	an aerial installation:	30
•	an installation that only disturbs soft surfaces and where those surfaces can easily be restored.	
Examples of category 2 installations are—		
•	micro-trenching where the width of the cut is not more than the prescribed width:	35
•	an installation that is predominantly below the surface, such as directional drilling, where the physical impact is limited to access points, or entry and exit points, that do not exceed the prescribed size:	
•	open trenching where the size of the trench, once reinstated, is not more than the prescribed size.	40

- (5) A failure to comply with this ~~subsection~~ section does not affect the validity of the regulations made.

155ZP Exemption from body corporate duties of repair and maintenance

- (1) A body corporate is exempted from any obligation to repair and maintain fibre network equipment installed in its complex if that network was installed as part of the UFB initiative. 5
- (2) **Subsection (1)** applies despite—
- (a) section 138 of the Unit Titles Act 2010;
 - (b) the terms of any licence, lease, or other instrument that, but for this section, would require a body corporate to repair and maintain that equipment. 10

Subpart 4—Right of access to use existing electricity works for telecommunications and deploying fibre optic cable

155ZQ Purposes

- (1) The overall purpose of this subpart is to make a significant contribution to the work and personal lives of people residing in rural areas of New Zealand, in particular, by enabling existing electricity infrastructure to be used for deploying fibre optic cable and, by that means,— 15
- (a) accelerate the roll-out of fibre-to-the-premises in those areas; and
 - (b) enable access to high-speed communications for businesses, for schools, and for individual purposes, including for accessing health, banking, and other services, and for establishing and maintaining social and support networks. 20
- (2) To those ends, the other purposes of this subpart are to—
- (a) provide owners of existing works (including power poles, overhead lines, and other infrastructure connected with the generation, conversion, transformation, or conveyance of electricity) with a right to enter rural and other land on which those existing works are situated and use the works for the purposes of deploying, maintaining, and upgrading fibre optic cable for delivering telecommunications services; and 25 30
 - (b) ensure that the owners of the existing works provide the owners of the land on which those works are situated with direct benefits to offset the impact of the right of entry on the landowner's own property rights; and
 - (c) ensure that owners of existing works and third parties are subject to open access obligations enforceable by the Commission and that owners of existing works may be subject to other regulatory action if they are not exercising their rights under this subpart and are refusing third party requests for arrangements enabling third parties to use those rights for deploying fibre optic cable. 35

155ZR Interpretation

In this subpart, unless the context otherwise requires,—

breakout point means a point along a fibre optic cable where provision is made for the installation of 1 or more fibre optic connectors

connection point means the primary residence or any other building that a landowner nominates for a fibre connection under this subpart 5

existing works—

(a) has the same meaning as in section 2(1) of the Electricity Act 1992; and

(b) includes works comprising fibre optic cable installed on existing works before 1 December 2016 and used or intended to be used in connection with the conveyance of electricity (for example, fibre optic cable installed for the purposes of monitoring and ensuring control of the electricity network) 10

fibre optic works—

(a) means fittings, including fibre optic cable and related materials, used or intended to be used in connection with installing, maintaining, or upgrading any part of a fibre-based network for telecommunications that incorporates fibre optic cable deployed on existing works; and 15

(b) means the installation, maintenance, or upgrading of any part of a fibre-based network for telecommunications as described in **paragraph (a)**; but 20

(c) does not include fibre optic cable that falls within **paragraph (b)** of the definition of existing works, unless it is repurposed fibre

layer 1 means layer 1 of the OSI Model, which is normally associated with passive fibre optic network infrastructure 25

layer 1 service means any service that operates at layer 1

layer 2 means layer 2 of the OSI model, which is normally associated with active fibre optic network infrastructure

layer 2 service means any service that operates at layer 2

maintenance means— 30

(a) repairs and other activities for the purpose of maintaining, or that have the effect of maintaining, fibre optic works; and

(b) the carrying out of any replacement or upgrade of fibre optic works

OSI Model means the 7 layer model of network architecture known as the Open Systems Interconnection Model 35

point of supply has the same meaning as in section 2(3) of the Electricity Act 1992

repurposed fibre means fibre optic cable that falls within **paragraph (b)** of the definition of existing works but which, in addition to being used for pur-

poses connected with the conveyance of electricity, may also be used for the purposes of exercising the rights under this subpart

service provider has the same meaning as in section 5

third party means—

- (a) a service provider:
- (b) a network operator.

Compare: 1992 No 122 s 23(3)

155ZS Right for owners of existing works to enter land and carry out fibre optic works

(1) An owner of existing works may enter land on which the works are situated for the purpose of accessing those works and carrying out fibre optic works.

(2) The right of entry is subject to the conditions that the owner of the existing works—

(a) complies with the notice requirements in **section 155ZZA(2)(c) to (g)**; and

(b) provides the landowner with the capability to connect to a fibre to the premises network (whether by including, when the fibre optic cable is first being deployed on the existing works, a breakout point in a position that the owner of the existing works considers appropriate, or by any other means suitable for ensuring connectability between the landowner's property and a network); and

(c) provides a single fibre connection to the primary residential building on the land, or to another building on the land that the landowner may nominate, that meets the relevant requirements in **section 155ZT**.

(3) The requirements in **subsection (2)(b) and (c)** do not apply in relation to repurposed fibre.

155ZT Fibre optic connections that owners of existing works must provide to landowners

Standard connections

(1) If the distance between the breakout point (or equivalent) and the primary residence or other building that the landowner nominates for the fibre optic connection is 200 metres or less, the owner of the existing works must provide the landowner with a standard connection.

(2) The owner of the existing works provides a standard connection by aerially installing up to, and including, 200 metres of fibre optic cable between the breakout point (or equivalent) and the connection point, at no cost to the landowner.

Non-standard connections

(3) If the distance between the breakout point (or equivalent) and the connection point is more than 200 metres, the owner of the existing works must provide the landowner with a non-standard installation.

(4) The owner of the existing works provides a non-standard installation by—

(a) aerially installing up to, and including, 200 metres of fibre optic cable along the distance between the breakout point (or equivalent) and the connection point, at no cost to the landowner; and

(b) contributing 50% of the costs of aerially installing fibre optic cable over the remaining distance, up to, and including, 500 metres, between the 200 metres installed under **paragraph (a)** and the connection point.

Rights and obligations of owner of existing works and landowner where aerial installation not possible

(5) Despite **subsections (1) to (4)**, if an aerial installation is not practicable and trenching is required at any point,—

(a) the landowner must provide, or meet the cost of, that trenching; and

(b) the obligation of the owner of the existing works is not affected, except to the extent that, in any place where the fibre optic cable cannot be installed aerially, the landowner is responsible for trenching in that place as provided in **paragraph (a)**.

Variations

(6) Nothing in this section prevents an owner of existing works and a landowner from entering into an agreement to replace or vary the rights and obligations concerning the installation of a fibre connection to a building on the landowner's property provided for in this section.

(7) In this section, an **equivalent**, in relation to a breakout point, means any means by which the owner of the existing works provides the landowner with the capability to connect to a fibre-to-the-premises network, as referred to in **section 155ZS(2)(b)**, other than by including a break-out point.

Third party use of existing works

155ZU Third party use of existing works for carrying out fibre optic works

(1) An owner of existing works and a third party may enter into an arrangement for the third party to use the owner's existing works for carrying out fibre optic works.

(2) The right under **subsection (1)** applies only if the owner of the existing works remains responsible to any landowner on whose land the existing works are situated for the performance of all obligations and the discharge of all liabilities under this subpart relating to fibre optic works.

(3) **Subsection (2)** is subject to **section 155ZZ(3)**.

- (4) Nothing in this section or **sections 155ZV to 155ZZB** affects an arrangement between the owner of existing works and a third party, if the arrangement is entered into before the date of commencement of this subpart, for the third party to use the existing works for the purposes of carrying out fibre optic works.

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155ZV Third party request to use existing works for carrying out fibre optic works

- (1) A third party may request an owner of existing works who is not exercising the rights under this subpart to enter into an arrangement under **section 155ZU**.
- (2) A request must be made in writing.
- (3) The third party who makes the request must provide to the owner of the existing works any relevant information that the owner considers necessary to properly consider the request.
- (4) However, the third party may choose to withhold any information that the third party considers is commercially sensitive or subject to legal protection and, in that case, must substitute an explanation for the information withheld.

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155ZW Owner of existing works must consider request

- (1) An owner of existing works must consider a request as soon as practicable after receiving it.
- (2) In considering the request, the owner of the existing works must—
- (a) act in good faith; and
- (b) take into account the purposes of this subpart.

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155ZX Requirements on owner of existing works if request refused

If the owner of the existing works refuses the request, the owner must—

- (a) give a notice to the third party that records the refusal; and
- (b) give a copy of the third party's request and the notice under **paragraph (a)** to the Commission.

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155ZY Minister may intervene

- (1) The Minister may require the Commission to report to the Minister about the information received under **section 155ZX** concerning—
- (a) the requests made to existing works owners by third parties; and
- (b) the requests refused.
- (2) The Minister may, after considering the Commission's report, decide whether to recommend that regulation be imposed and, if so, the type or types of regulation.

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Arrangements for third party to use existing works

155ZZ Conditions of right under section 155ZU

- (1) For the purpose of ensuring that an arrangement under **section 155ZU** does not increase the negative impacts for the landowner of having existing works on his or her property, every arrangement entered into under that section is subject to the conditions in **subsections (2) and (3)**.

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Condition concerning communications

- (2) The owner of existing works (and not the third party)—
- (a) is the person responsible for all communications with the landowner concerning the existing works, in so far as the communications involve fibre optic works; and
- (b) is the only person who may conduct those communications, unless—
- (i) the landowner authorises the third party to conduct those communications, either generally or from time to time; or
- (ii) it is necessary for the third party to communicate with the landowner because there are circumstances of probable danger to life or property or it is immediately necessary to maintain the continuity of telecommunications services.

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Condition concerning compensation

- (3) The owner of the existing works (and not the third party, except as provided in **section 155ZZB(3)**) must pay compensation to the landowner for damage, loss, or injury as provided in **section 155ZZB**.

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Rights and obligations concerning exercise of rights

155ZZA Powers and duties of owners of existing works and landowners

- (1) The provisions of the Electricity Act 1992 specified in **subsection (2)** apply to the owner of existing works and the owner of the land on which those works are situated—
- (a) as if every reference to existing works in those provisions included fibre optic works; and
- (b) with all other necessary modifications.
- (2) The provisions of the Electricity Act 1992 are—
- (a) section 22 (protection of existing works);
- (b) section 22A (owners of land not responsible for maintenance);
- (c) section 23 (rights of entry in respect of existing works);
- (d) section 23A (line owner must give written notice of intention to maintain or complete existing works):

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- (e) section 23B (line owner must give notice of intention to inspect or operate existing works):
- (f) section 23C (notice in emergencies):
- (g) section 23D (land owner may set reasonable conditions on line owner's entry):
- (h) section 23E (agreements preserved):
- (i) section 23F (disputes about land access).

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155ZZB Compensation for damage, etc

- (1) Every person who has a right in respect of, or interest in, any land or property that is damaged or injuriously affected by an owner of existing works or a third party exercising any of the statutory rights given by this subpart is entitled to full compensation for all loss, injury, or damage that the person suffers as a result.
- (2) The owner of the existing works is liable to the landowner for payment of the compensation, regardless of whether the owner of the existing works, a third party within the meaning of **section 155ZR**, or both those persons were responsible for the loss, injury, or damage.
- (3) However, **subsection (2)** does not prevent an owner of existing works from claiming an indemnity or a contribution from the third party where the owner of the existing works alleges that the third party was wholly or partly responsible.
- (4) If the landowner and the owner of the existing works are unable to reach an agreement concerning compensation for loss, injury, or damage suffered by the landowner,—
 - (a) a claim for compensation under this section may be made within the time and in the manner specified in the Public Works Act 1981; and
 - (b) the provisions of that Act, as far as they are applicable and with all necessary modifications, apply in relation to claims under this section.

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Compare: 1992 No 122 s 57; 2001 No 103 s 154

Open access obligations

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155ZZC Services provided using rights under subpart

- (1) An owner of existing works who provides a telecommunications service under this subpart using repurposed fibre optic cable must,—
 - (a) where capacity exists, offer a layer 1 service and provide that service on non-discriminatory terms; and
 - (b) if the owner of the existing works elects to provide a layer 2 service, provide that service on an open access basis and on non-discriminatory terms.

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- (2) An owner of existing works who provides a telecommunications service under this subpart using fibre optic cable other than repurposed fibre optic cable must—
- (a) offer a layer 2 service and provide that service on an open access basis and on non-discriminatory terms; and 5
 - (b) if the owner of the existing works elects to provide a layer 1 service, provide that service on an open access basis and on non-discriminatory terms.
- (3) If an owner of existing works enters into an arrangement with a third party under **section 155ZU**, the third party (and not the owner of the existing works) is under the obligations in this section. 10
- (4) In this section, **non-discrimination**, in relation to a service, means that the service provider must not treat access seekers differently or, where the service provider supplies itself with a service, must not treat itself differently from other access seekers, except to the extent that a particular difference in treatment is objectively justifiable and does not harm, and is unlikely to harm, competition in any telecommunications market; and **non-discriminatory** has a corresponding meaning. 15
- 155ZZD Power to grant relief in respect of breach of open access obligations**
- If, on the application of the Commission, it appears to the High Court that an owner of existing works or a third party intends to engage, is engaging, or has engaged in conduct that constitutes, or would constitute, a breach of **section 155ZZC**, the court may make orders on any terms and conditions that it thinks appropriate, including, without limitation, an order that the existing works owner or third party refrain from, or engage in, a particular conduct. 20 25
- 155ZZE Undertaking under Part 4AA overrides open access obligations under subpart**
- If a person uses the rights under this subpart as part of a build of infrastructure under the UFB initiative, the provisions of the deed of undertaking entered into by that person under Part 4AA override the open access obligations in this subpart. 30
- 155ZZF Right of entry does not affect existing works owner's rights and obligations under Electricity Act 1992**
- The right of entry under **section 155ZS** does not affect any rights or obligations of the owner of the existing works under the Electricity Act 1992. 35
- 155ZZG Regulations**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—

- (a) prescribe aesthetic standards concerning the way in which fibre optic technology and associated equipment must be installed when exercising the rights under this subpart; and
- (b) prescribe procedural standards for how communications with landowners are undertaken and how persons exercising the rights given by this subpart must act when on private property; and 5
- (c) prescribe protocols for ensuring the interoperability of equipment installed; and
- (d) prescribe minimum clearance distances for fibre optic works that involve existing works; and 10
- (e) impose regulation on the rights given by this subpart, in relation to existing works that the owners of those works may confer on third parties under this subpart.
- (2) The Minister must, before recommending the making of regulations under this section,— 15
 - (a) consult the Minister who is responsible for the administration of the Electricity Act 1992, the owners of existing works (or representatives of those persons) and other persons or their representatives who the Minister considers will be substantially affected by the regulations made in accordance with the recommendation; and 20
 - (b) in the case of regulations under **subsection (1)(e)**, consult the Commission after taking the steps in **section 155ZY**.
- (3) Failure to comply with **subsection (2)** does not affect the validity of the regulations.

Amendments to Part 4AA (services provided using networks developed with Crown funding: undertakings regime and Commerce Act 1986 authorisations) 25

11 Section 156AB amended (Interpretation)

In section 156AB, replace the definition of **UFB initiative** with:

UFB 2 has the meaning given to it by ~~paragraph (b)~~ **paragraph (b)(i)** of the definition of **UFB initiative** 30

UFB initiative—

- (a) means the competitive tender programme, known as the Ultra-fast Broadband Initiative, to develop fibre-to-the-premises broadband networks connecting 75% of New Zealand households, with the support of \$1.5 billion of Crown investment funding; and 35
- (b) ~~includes the extension to that programme, known as UFB 2, to develop fibre-to-the-premises networks connecting at least 80% of New Zealand households~~
- (b) includes—

	(i) <u>the extension to that programme known as UFB 2, to develop fibre-to-the-premises networks connecting at least 80% of New Zealand households; and</u> (ii) <u>any other extension to that programme</u>	
11A	Section 156AD amended (Main requirements for undertakings)	5
(1)	<u>In section 156AD(2)(b), (c)(ii), and (c)(iii), replace “1 January 2020” with “the specified date”.</u>	
(2)	<u>After section 156AD(5), insert:</u>	
(6)	<u>In this section,—</u>	
	<u>specified date</u> means,—	10
(a)	<u>in relation to UFB 1 LFCs, 1 January 2020, unless paragraph (c) applies; and</u>	
(b)	<u>in relation to UFB 2 LFCs, 1 January 2026; and</u>	
(c)	<u>in relation to UFB 1 LFCs that win contracts for UFB 2,—</u>	
	(i) <u>1 January 2020 for the UFB 1 part of the relevant network; and</u> (ii) <u>1 January 2026 for the UFB 2 part of the relevant network</u>	15
	<u>UFB 1 has meaning set out in paragraph (a) of the definition of UFB initiative in section 156AB.</u>	
12	Section 156AZC amended (Restrictive trade practices authorisations in respect of participation in Ultra-fast Broadband Initiative)	20
	<u>After section 156AZC(2), insert:</u>	
(2A)	<u>Despite subsection (2), the authorisations—</u>	
(a)	<u>apply to any contract, arrangement, or understanding that is entered into in respect of UFB 2 before the date on which this subsection comes into force, as if the authorisation were in force at the time of the entry; but</u>	25
(b)	<u>do not apply to any contract arrangement or understanding in respect of UFB 2 that is entered into more than 2 years after the date on which this subsection comes into force.</u>	
13	Section 156AZD amended (Business acquisition authorisations in respect of participation in Ultra-fast Broadband Initiative)	30
(1)	<u>In section 156AZD(2), after “the date on which this section comes into force”, insert “, except an acquisition under UFB 2”.</u>	
(2)	<u>After section 156AZD(2), insert:</u>	
(2A)	<u>The authorisations do not apply to any acquisition under UFB 2 that is made more than 2 years after the date on which this subsection comes into force.</u>	35
(2A)	<u>The authorisations—</u>	

- (a) apply to any acquisition under UFB 2 that is made before the date on which this subsection comes into force, as if the authorisation were in force at the time the acquisition was made; but
- (b) do not apply to any acquisition under UFB 2 that is made more than 2 years after the date on which this subsection comes into force.

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(3) After section 156AZD(3), insert:

- (3A) However, if the authorisations are for any acquisitions under UFB 2, the authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 67(3)(b) of the Commerce Act 1986 on the date on which this subsection comes into force.

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13A New subpart 7 of Part 4AA inserted

After section 156AZD, insert:

Subpart 7—Commerce Act 1986 authorisations in respect of Rural Broadband Initiative 2 and Mobile Black Spot Fund

156AZE Interpretation for this subpart

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In this subpart, unless the context otherwise requires,—

Crown includes Crown Fibre Holdings Limited

MBSF means the Mobile Black Spot Fund announced by the Minister on 12 March 2015

RBI2 means the extension of the Rural Broadband Initiative announced by the Minister on 12 March 2015

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relevant service means,—

- (a) in relation to RBI2, a wholesale telecommunications service that is provided using, or that provides access to, infrastructure forming part of a broadband network where infrastructure was constructed with funding provided, in whole or in part, by the Crown as part of RBI2; and

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- (b) in relation to MBSF, a wholesale service that is provided using, or that provides access to, a cellular mobile telephone network constructed, in whole or in part, with money provided by the Crown as part of the MBSF

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service provider means a provider of a relevant service.

156AZF Restrictive trade practices authorisations in respect of transactional arrangements for RBI2 and MBSF

- (1) Any contract, arrangement, or understanding between the Crown and 1 or more service providers to provide funding for those service providers, in accordance with RBI2 or the MBSF, is authorised.

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- | | | |
|-----|--|----|
| (2) | The authorisation applies to any contract, arrangement, or understanding that is entered into before the date on which this section comes into force as if the authorisation were in force at the time that it was entered into. | |
| (3) | The authorisation does not apply to a contract, arrangement, or understanding that is entered into later than 6 months after the date on which this section comes into force. | 5 |
| (4) | The authorisation must be treated as if it were an authorisation granted by the Commission under section 58(1), (2), (5), and (6) of the Commerce Act 1986. | |
| (5) | Sections 65 and 91 to 97 of the Commerce Act 1968 do not apply to the authorisation. | 10 |
| (6) | The effect of the authorisation is the same as the effect stated in section 58A(1) and (2) of the Commerce Act 1986. | |

Amendment to Electricity Act 1992

13B Amendment to Electricity Act 1992

- | | | |
|-----|---|----|
| (1) | This section amends the Electricity Act 1992. | 15 |
| (2) | After section 23(3), insert: | |
| (4) | Further rights of entry, which concern the use of existing works to deploy and use fibre optic cable for telecommunications purposes, are provided for in the Telecommunications Act 2001 (<i>see sections 155ZQ to 155ZZG</i> of that Act). | |

Part 2

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**New schedules concerning transitional and related matters and
dispute resolution scheme**

14 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

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15 New Schedule 3C inserted

After Schedule 3B, insert the **Schedule 3C** set out in **Schedule 2** of this Act.

Schedule 1
New Schedule 1AA inserted

s 14

Schedule 1AA
Transitional, savings, and related matters

5

s 7A

Part 1
Provisions relating to Telecommunications (Property Access and
Other Matters) Amendment Act 2016

- 1 Interpretation** **10**
- In this Part,—
- amendment Act** means the Telecommunications (Property Access and Other Matters) Amendment Act **2016**
- commencement date** means the date on which new **subpart 3 of Part 4** comes into force **15**
- consent process**, in relation to an installation, means the process of sending to each affected party a request for that person's consent to the FTTP service provider or network operator entering the relevant property and carrying out the installation
- new subpart 3 of Part 4** means **subpart 3 of Part 4** of the principal Act as replaced by **section 10** of the amendment Act **20**
- principal Act** means the Telecommunications Act 2001.
- Orders for FTTP services placed before commencement of new subpart 3 of Part 4: transitional provisions*
- 2 Application of clauses 3 to 5 to installations ordered before commencement date** **25**
- Clauses 3 to 5** apply to an FTTP service provider or a network operator and an installation of an FTTP service where—
- (a) the order for the installation was placed with a retail provider before the commencement date; and **30**
- (b) the installation is prescribed as a category 1 or category 2 installation for the purposes of **new subpart 3 of Part 4**.

3	New subpart 3 of Part 4 applies if consent process not begun as at commencement date	
	If the consent process has not begun as at the commencement date, then, despite section 155J(1)(a) , new subpart 3 of Part 4 applies as if the order had been placed after the commencement date.	5
4	FTTP service provider or network operator may elect to use statutory procedure if consent process begun but not responded to as at commencement date	
(1)	If the consent process has begun as at the commencement date but no affected person has responded to the request for consent by that date, the FTTP service provider or network operator may elect to—	10
(a)	obtain the necessary consents by continuing the process already begun; or	
(b)	meet the preconditions for exercising a statutory right of access under new subpart 3 of Part 4 by—	15
(i)	giving affected persons the notice and the further information required under section 155K, 155L, or 155R (whichever applies) as documents in substitution for the request for consent previously made; and	
(ii)	proceeding in accordance with new subpart 3 of Part 4 .	20
(2)	Subclause (1)(b) does not affect the application of section 155J (general preconditions for statutory rights of access to apply) except to the extent that section 155J(1)(a) requires the order for the installation to have been placed after the commencement date.	
5	Consent process begun and some responses received	25
(1)	If, as at the commencement date, the consent process has begun and some affected persons have given their consent but others have not responded to the request for consent, the FTTP service provider or network operator may elect to—	
(a)	obtain the consents of those who have not responded, by continuing the process already begun; or	30
(b)	meet the preconditions for exercising a statutory right of access under new subpart 3 of Part 4 by—	
(i)	giving to the affected persons who have not responded the notice and the further information required under section 155K, 155L, or 155R (whichever applies) as documents in substitution for the request for consent given before the commencement date; and	35
(ii)	proceeding in accordance with new subpart 3 of Part 4 in respect of those persons.	

- (2) The FTTP service provider or network operator may, at its discretion, accept an affected person's retraction of his or her consent given before the commencement date.
- (3) **Subclause (1)(b)** does not affect the application of **section 155J** (general preconditions for statutory rights of access to apply) except to the extent that **section 155J(1)(a)** requires the order for the installation to have been placed after the commencement date.

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Exercise of Minister's powers in connection with dispute resolution scheme

6 Action taken by Minister on dispute resolution scheme

- (1) **Subclause (2)** applies if, before the commencement of **sections 10, 14, and 15** of the amendment Act, any action is taken by or on behalf of the Minister in doing any of the following:
- (a) notifying in the *Gazette* the information that a person applying for approval of a scheme as the dispute resolution scheme must include in an application:
 - (b) seeking and accepting applications for approval of a scheme as the approved scheme:
 - (c) consulting industry bodies and other persons that the Minister considers would be likely to be substantially affected by a potential approval.
- (2) The action taken is deemed to have been taken by the Minister under, and for the purposes of, **clauses 3 and 4 of Schedule 3C** of the principal Act, before deciding, in connection with the commencement of the amendment Act, to approve a dispute resolution scheme under **clause 5 of Schedule 3C**.

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Schedule 2 New Schedule 3C inserted

s 15

Schedule 3C Dispute resolution scheme

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ss 155ZG, 155ZH

1 Purpose of dispute resolution scheme

- (1) The purpose of the dispute resolution scheme is to ensure that, if 2 or more persons have a dispute within **section 155ZI** in relation to an installation, they have access to a dispute resolution scheme for resolving that dispute. 10
- (2) To ~~that end~~, achieve the purpose, a scheme is to be established that—
 - (a) provides for a range of dispute resolution processes, including facilitative, evaluative, and determinative processes, so that—
 - (i) each dispute can be resolved through the process assessed to be the most appropriate to the particular dispute, having regard to the nature and circumstances of that dispute; and 15
 - (ii) if the dispute cannot be resolved by agreement between the parties, the dispute is determined by a neutral third party whose decision is legally binding on the FTTP service provider or a network operator (if either is a party to the dispute); and 20
 - (iii) the scheme combines both formality and flexibility in a manner most likely to achieve the purposes referred to in **paragraph (b)**; and
 - (b) provides for disputes to be assessed promptly after they are received for the purposes of— 25
 - (i) identifying the process that is the most appropriate for resolving the dispute; and
 - (ii) ensuring that the dispute is resolved within the time provided in the rules of the scheme, whether by agreement between the parties or determination by a neutral third party. 30

2 Interpretation

In this schedule, unless the context otherwise requires,—

affected person has the same meaning as in **section 155D**

approved scheme is the disputes resolution scheme approved by the Minister under **clause 5** (provided that the scheme's approval has not been withdrawn) 35

dispute resolution scheme, at any time, means whichever of the following is in force under this schedule at the time:

	(a) the approved scheme:	
	(b) the regulated scheme	
	installation includes a proposed installation, an installation being carried out, and an installation that is completed (or claimed or disputed to be completed)	
	member , in relation to the dispute resolution scheme, means an FTTP service provider or a network operator	5
	provider, in relation to a scheme, means the person responsible for the scheme	
	provider, —	
	(a) <u>in relation to a scheme, means the person responsible for that scheme;</u>	
	<u>and</u>	10
	(b) <u>in relation to a proposed scheme, means the person proposed to be responsible for that scheme</u>	
	regulated scheme means the scheme provided for in regulations made under clause 16 .	
	<i>Approved scheme: approval and withdrawal of approval</i>	15
3	Application for approval	
(1)	The provider of a scheme may apply to the Minister for approval of the scheme as the approved scheme.	
(2)	The application must include—	
	(a) the rules of the scheme; and	20
	(b) any other information that the Minister, by notice in the <i>Gazette</i> , prescribes as being required to be included in an application under this clause; and	
	(c) the prescribed fee (if any).	
(3)	The Minister may ask an applicant to supply any further information or documentation in support of the application.	25
	Compare: 2008 No 97 s 51; 1992 No 122 s 4	
4	Mandatory considerations for approval	
(1)	When considering an application under clause 3 , the Minister must have regard to the following considerations in light of the principles listed in sub-clause (2) :	30
	(a) whether the scheme is capable of meeting the purpose of the dispute resolution scheme as set out in clause 1 :	
	(b) the views of persons who are required to be members:	
	(c) whether the scheme is capable of dealing with the wide range of disputes that persons and entities are entitled to refer to it:	35

(d)	whether the applicant has adequate funding to enable it to operate the scheme according to its purpose and in accordance with its rules:	
(e)	whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme:	
(f)	whether the rules of the scheme are adequate and comply with—	5
(i)	the principles listed in subclause (2) ; and	
(ii)	the requirements of clause 12 (rules of approved scheme).	
(2)	The principles are—	
(a)	accessibility:	
(b)	independence:	10
(c)	fairness:	
(d)	accountability:	
(e)	efficiency:	
(f)	effectiveness.	
	Compare: 2010 No 116 s 5	15
5	Minister must decide application for approval	
(1)	After considering an application made under clause 4 , the Minister may—	
(a)	approve the scheme as the approved scheme; or	
(b)	decline the application.	
(2)	The Minister may decide whether to approve the scheme or decline the application only after consulting—	20
(a)	the industry bodies (if any) for the telecommunications industry; and	
(b)	any other persons (or their representatives) that the Minister considers are likely to be substantially affected by the approval.	
(3)	A failure to consult the persons referred to in subclause (2) does not affect the validity of any approval of the scheme.	25
(4)	The Minister may approve a scheme if there is already another approved scheme, but in that case the approval does not take effect until the approval of the other scheme is withdrawn.	
	Compare: 2010 No 116 s 6	30
6	Decision must be notified and publicised	
	The Minister must, as soon as practicable after deciding an application,—	
(a)	notify the applicant of the decision; and	
(b)	if the decision is to approve the application, ensure that the approval is publicised.	35
	Compare: 2010 No 116 s 7	

7	Rules of approved scheme not to change without ministerial approval	
(1)	The rules of the approved scheme must not be changed unless the Minister approves the change.	
(2)	If the provider of the approved scheme notifies the Minister of a proposed rule change, the rule change is deemed to be approved by the Minister 45 days after the date of notification, unless the Minister declines approval within that 45-day period.	5
(2A)	Despite subclause (2) ,—	
(a)	<u>the Minister may require the provider of the approved scheme to provide further information before the Minister decides whether to approve or decline the proposed rule change; and</u>	10
(b)	<u>if the Minister requires further information to be provided, the rule change is deemed to be approved by the Minister 45 working days after the Minister receives that information, unless the Minister declines approval within the 45-day period.</u>	15
(3)	The Minister may decline approval for a rule change only on the grounds that, if the rules were changed as proposed, they would not comply with the principles listed in clause 4(2) or the purpose in clause 1 . Compare: 2010 No 116 s 8	
8	Notice of intention to withdraw approval	20
(1)	If the Minister proposes to withdraw approval for an approved scheme, the Minister must notify the provider.	
(2)	The Minister's notice must—	
(a)	state that the Minister intends to withdraw approval of the scheme; and	
(b)	identify which of the 1 or more grounds described in subclause (3) apply; and	25
(c)	state why the Minister considers those grounds apply; and	
(d)	specify the notice period, which must be at least 3 months, during which the provider may object, under clause 9 , to the intended withdrawal.	
(3)	The only grounds for withdrawing approval are as follows:	30
(a)	the scheme is not, or is no longer, capable of meeting the purpose of the dispute resolution scheme as set out in clause 1 :	
(b)	there has been a loss of broad support for the scheme:	
(c)	there has been a failure to comply with the rules of the scheme:	
(d)	the provider has not publicised the rules as required by clause 12(2) :	35
(e)	the provider has not supplied the Minister with either or both of the following:	
(i)	a report of a review as required by clause 14 :	

	(ii) any further information requested by the Minister under clause 15 :	
	(f) the provider has not notified the Minister before changing the rules of the scheme as required by clause 7 :	
	(g) the scheme no longer complies with the principles listed in clause 4(2) .	5
(4)	The Minister's notice may require the provider to—	
	(a) notify all members of the Minister's intention to withdraw approval of the scheme; or	
	(b) provide the Minister with a list of the names and business addresses of current members so that the Minister can, if the Minister wishes, notify all members of the Minister's intention to withdraw the scheme's approval.	10
	Compare: 2010 No 116 s 9	
9	Objection to withdrawal of approval	
(1)	During the notice period, the provider may object (with reasons) to the proposed withdrawal of approval.	15
(2)	The Minister must consider any objection that is received before the end of the notice period.	
	Compare: 2010 No 116 s 10	
10	Withdrawal of approval	20
(1)	If the Minister has given notice of intention to withdraw his or her approval, the Minister may withdraw the approval at any time after the expiry of the notice period.	
(2)	When considering whether to withdraw approval, the Minister must have regard to the considerations referred to in clause 4(1) in light of the principles listed in clause 4(2) .	25
(3)	The Minister must withdraw the approval of an approved dispute resolution scheme if the provider requests that it be withdrawn, in which case the scheme is no longer approved from the date that is 6 months after the date of withdrawal of approval.	30
	Compare: 2010 No 116 s 11	
11	Effect of withdrawal of approval	
	On the date that the withdrawal of approval of a scheme takes effect, the members of the scheme become members of—	
	(a) any other approved scheme that is approved with effect from that date; or	35
	(b) the regulated scheme.	
	Compare: 2010 No 116 s 12	

*Approved scheme: rules and obligations***12 Rules of approved scheme**

- (1) The rules of the approved scheme must provide for, or set out, the following:
- (a) who may refer disputes to the scheme for resolution:
 - (b) how disputes may be referred to the scheme: 5
 - (c) the kinds of disputes that the scheme will deal with:
 - (d) when a dispute referred to the scheme may be investigated under the scheme:
 - (e) that any investigation as part of a process for resolving a dispute must be undertaken in a way that is consistent with the rules of natural justice: 10
 - (f) when a neutral third party may make a determination on a dispute referred to the scheme:
 - (g) that a hearing for the purposes of making a determination on a dispute is to be conducted on the papers, unless the person making the determination thinks that an oral hearing is required: 15
 - (h) the procedure for conducting a hearing on the papers:
 - (i) the time within which a determination on a dispute is to be made:
 - (j) that a determination must be made in writing and include the reasons of the decision maker:
 - (k) that, in relation to a dispute, any information may be considered and any inquiry may be made, that is fair and reasonable in the circumstances: 20
 - (l) the kinds of remedial action that the scheme may require FTTP service providers or network operators to take in order to resolve disputes (for example, a requirement to compensate up to a certain amount stated in the rules, or to carry out reinstatement work, or, in the case of an affected person, to consent to a category 2 installation): 25
 - (m) when parties to a dispute are bound by an agreement or a determination under the scheme and what rights parties to a dispute (other than scheme members) have to appeal against a determination:
 - (n) that the scheme may stop investigating and resolving a dispute if any party to the dispute takes alternative court action against another party to the dispute: 30
 - (o) that the scheme will not charge any person (other than a scheme member) a fee for an investigation or assistance to resolve a dispute (including by determination, if the parties to the dispute are unable to resolve the dispute by agreement): 35
 - (p) how the provider will promote knowledge about, and access to, the scheme to members and persons entitled to make a complaint.

(2)	The responsible person of the approved scheme must publicise the rules. Compare: 2010 No 116 s 13	
13	List of members The provider of the approved scheme must maintain and publicise a list of current members of the scheme. Compare: 2010 No 116 s 14	5
14	Five-yearly review	
(1)	The provider of the approved scheme must ensure that, 2 years after the scheme starts and at least every 5 years after that, a review of the scheme is carried out and a report of the review is provided to the Minister within 3 months of its completion.	10
(2)	The report may be of an independent review or a review by the provider, whichever the Minister thinks appropriate, having regard to all the circumstances at the time, including the likely costs associated with an independent review and whether those are justified, having regard to the scheme's operations and performance. Compare: 2010 No 116 s 15	15
15	Provision of information	
(1)	The provider of the approved scheme must, on request by the Minister, provide information on the following: (a) matters relating to the most recent annual report: (b) the scheme's compliance with the principles listed in clause 4(2) .	20
(2)	Nothing in this clause or clause 14 authorises a breach of the Privacy Act 1993 or any obligation of confidentiality. Compare: 2010 No 116 s 17	25
	<i>Regulated scheme: rules of scheme and appointment of provider</i>	
16	Regulations setting out rules of regulated schemes	
(1)	The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the regulated scheme.	
(2)	The regulations must— (a) set out the rules of the scheme, which must comply with clause 12 ; and (b) be consistent with the purpose in clause 1 .	30
(3)	Before recommending that regulations be made, the Minister must consult— (a) the industry bodies (if any) for the telecommunications industry; and (b) any other persons (or their representatives) that the Minister considers are likely to be substantially affected by the recommendation.	35

- (4) However, a failure to consult the persons referred to in **subclause (3)** does not affect the validity of the regulations.

Compare: 2010 No 116 s 18

17 Order in Council appointing provider of regulated scheme

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint a person to provide the regulated scheme. 5
- (2) The Minister may make a recommendation under this clause only if the Minister is satisfied that the person appointed as the provider—
- (a) is a formally constituted dispute resolution body; and
 - (b) is capable of providing the scheme in accordance with the purpose in **clause 1** and the rules of the scheme. 10

Compare: 2010 No 116 s 19

18 Notice of intention to revoke appointment

- (1) An appointment made by Order in Council may not be revoked on the ground that the Minister has approved, or intends to approve, an approved scheme under **clause 5** unless the Minister has given the scheme provider at least 3 months' notice in writing of the intention to revoke the appointment. 15
- (2) Nothing in this clause limits the grounds on which the Minister may otherwise recommend the revocation of any appointment.

Compare: 2010 No 116 s 20

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Legislative history

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5 July 2016

Introduction (Bill 146–1)
First reading and referral to Commerce Committee