



Telecommunications (Property Access and Other Matters) Amendment Bill

Interim Report of the Commerce
Committee

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Telecommunications (Property Access and Other Matters) Amendment Bill

Recommendation

The Commerce Committee is considering the Telecommunications (Property Access and Other Matters) Amendment Bill and recommends that the House take note of its interim report on 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.

In the process of considering this bill, we are proposing to insert a new subpart 4 of Part 4 to the bill as introduced to encourage the deployment of fibre as widely as possible, including in those areas of the country where it is generally more difficult to deploy fibre optic cable than in urban areas. Our new subpart would set 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 this proposal would meet the bill's objective of allowing more people to realise the benefits of next-generation telecommunications networks.

We would like to give those affected by this proposal the chance to provide us with their views on the draft text. In particular, we would like to test the economics of several assumptions of potential maximum distance from breakout point to end-user premises. The committee would like to test maximum distance scenarios of 200 metres and 500 metres. Therefore, we are presenting this interim report to enable us to call for and consider submissions on our proposal. We have appended the draft addition of new subpart 4 of Part 4 to the bill, and we invite submitters to provide us their feedback on it.

The deadline for submissions addressing the details proposed in subpart 4 of Part 4 is Thursday 10 November 2016.

Appendix A

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.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to us 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

Appendix B

Proposed new subpart 4 of Part 4

Our proposed new subpart 4 of Part 4 is attached.

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

155ZQ Purpose of subpart

The purpose of this subpart is to —

- (a) provide owners of existing works situated on private land (including power poles, overhead lines, and other infrastructure connected with the generation, conversion, transformation, or conveyance of electricity) with a right to—
 - (i) enter that land and use the existing works for deploying, maintaining, and upgrading fibre optic cable; and
 - (ii) where fibre optic cable is installed on the existing works and is itself an existing work, use that cable for delivering telecommunications services; and
- (b) ensure that owners of the existing works provide the private land owners on whose land those works are situated with direct benefits to offset the impact of the right of entry on the land owner's own property rights; and
- (c) ensure that owners of existing works are subject to open access obligations enforceable by the Commission.

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

existing works—

- (a) has the same meaning as in section 2 of the Electricity Act 1992; and
- (b) includes fibre optic cable installed on existing works that is itself an existing work

fibre optic works means—

- (a) fittings, including fibre optic cable and related materials, used or intended for use 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
- (b) the installing, maintaining, or upgrading of any part of a fibre-based network for telecommunications as described in **paragraph (a)**, as long as the land on which the existing works are situated will not be injuriously affected as a result of that installation, maintenance, or upgrade

maintenance means—

- (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
private land, in relation to existing works, means land on which the existing
works are situated and that is privately owned by a person other than the owner
of the existing works

point of supply has the same meaning as in section 2 of the Electricity Act
1999

service provider has the same meaning as in section 5.

third party means—

(a) a service provider;

(a) a network operator.

Compare: 1992 No 122 s 23(3)

155ZS Right to enter private land and carry out fibre optic works

- (1) An owner of existing works situated on private land may enter that land for the
purpose of accessing the existing works and carrying out fibre optic works.
- (2) This right of entry applies only if—
 - (a) the owner of the existing works has complied with the notice require-
ments in **section 155ZV(2)(c) to (g)**; and
 - (b) the owner of the existing works, at the time that a fibre optic cable is
first being deployed using those works, provides an appropriate break-
out point to enable a fibre connection to be provided to the landowner;
and
 - (c) the land on which the existing works are situated will not be injuriously
affected as a result of the installation, maintenance, or upgrade.
- (3) In **subsection (2)(c)**, installation includes the ongoing presence of the fibre
optic cable on the land as well as the process of installing that cable.
- (4) **Subsection (2)(b)** does not apply in relation to existing works within the
meaning of **paragraph (b)** of the definition of that term in **section 155ZR**.

155ZSA Third party may use right

- (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 the private landowner 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 155ZX(2)**.

155ZSB Condition of right under section 155ZSA

- (1) For the purpose of ensuring that an arrangement under **section 155ZSA** does not increase the impacts for an affected landowner of having existing works on his or her property, every arrangement entered into under that section is subject to the condition that the owner of the existing works (and not the third party)—
- (a) is the person responsible for all communications with the affected land owner concerning the existing works, in so far as these involve fibre optic works; and
 - (b) is the only person who may conduct those communications, unless—
 - (i) the affected landowner authorises the third party to conduct communications, either generally or from time to time; or
 - (ii) it is necessary for the third party to communicate with the affected landowner because there are circumstances of probable danger to life or property or it is immediately necessary to maintain the continuity of telecommunications services.
- (2) In this section, affected land owner means an owner of land that has existing works situated on it where the owner of those works has entered into an arrangement with a third party under **section 155ZSA**.

155ZSC Application of provisions of this subpart to third parties

If the owner of existing works enters into an arrangement under **section 155ZSA**, the provisions of this subpart apply to the third party

- (a) as if every reference to the owner of the existing works were a reference to the third party; and
- (b) as if, in the provisions of the Electricity Act 1992 specified in **section 155ZV(2)**, every reference to a line owner were a reference to the third party; and
- (c) subject to any other necessary modifications.

155ZT Provision of fibre connection for land owner

- (1) Where the owner of existing works situated on private land wishes to enter that land for the purpose of accessing the existing works and carrying out fibre optic works, the owner of the existing works must, if the landowner requests, provide the following:
- (a) a single fibre connection to the primary residential building on the property (or another building on the property that the land owner nominates in substitution for the primary residential building) with the fibre installed along an existing aerial electricity feeder, if the distance between the most appropriate breakout point and the connection point is less than X metres; or

- (b) if the distance between the most appropriate breakout point and the connection point is more than X metres, at least X metres of fibre optic cable installed along an existing aerial electricity feeder from the most appropriate breakout point, as a contribution towards a single fibre connection to a building on the property.
- (2) Despite **subsection (1)**, if access using existing aerial electricity feeder is not practicable and trenching is required,—
 - (a) the landowner must provide, or meet the cost of, that trenching; and
 - (b) the obligation on the owner of the existing works to provide up to X metres installed along an existing electricity feeder is unaffected except to the extent, only, that in any place where the fibre cannot be installed aerially the landowner is responsible for trenching in that place as provided in **paragraph (a)**.

155ZV 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 the 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);
 - (e) 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).

155ZW Compensation for damage

- (1) Every person who has a right in respect of, or interest in, any land or property that is injuriously affected by an owner of existing works or a third party exercising the statutory rights given by this subpart is entitled to full compensation for the loss or damage that the person suffers as a result.

- (2) The owner of the existing works is liable to the landowner for payment of any compensation ordered to be paid on a claim by the landowner under this section.
- (2A) **Subsection (2)** applies regardless of whether the owner of the existing works, a third party within the meaning of **section 4**, or both those persons were responsible for the loss or damage.
- (2B) However, subsection (2) does not prevent an owner of existing works from claiming an indemnity from a third party where that third party was responsible, in whole or in part, for the loss or damage suffered by the landowner and for which the owner of the existing works has paid compensation.
- (3) If the landowner and the owner of the existing works are unable to reach an agreement concerning compensation,—
- (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.

Compare: 1992 No 122 s 57

155ZX Services provided using rights under subpart

- (1) An owner of existing works who uses the rights under this subpart must, to the extent of any relevant services,—
- (a) offer a wholesale layer 2 service to retail service providers on non-discriminatory price and non-price terms; and
- (b) regularly provide relevant information to the Commission to support assessments of compliance with the obligations under this section.
- (1A) Despite **subsection (1)**, if an owner of existing works enters into an arrangement with a third party under **section 155ZSA**, the third party is under the obligations in this section (and not the owner of the existing works).
- (2) In this section,—

layer 2 service has the same meaning as in section 69R

non-discrimination, in relation to a relevant service, means that the service provider must not treat access seekers differently or, where the service provider supplies itself with a relevant 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

relevant service means a wholesale telecommunications service that is provided using existing works in reliance on the rights given by this subpart to enter private land and carry out fibre optic works (whether that reliance is direct, on the part of the owner of the existing works, or indirect, on the part of a service provider under an arrangement with the owner of the existing works).

155ZY Power to grant relief in respect of open access obligations

If, on the application of the Commission, it appears to the High Court that an owner of existing works or third party intends to engage, is engaging, or has engaged in conduct that constitutes, or would constitute, a breach of **section 155ZX**, 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.

155ZZ Right of entry does not affect existing works owner's rights and obligations under Electricity Act 1992

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.

155ZZA Regulations

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 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
- (c) prescribe protocols for ensuring inter-operability of equipment installed.
- (d) prescribe minimum clearance distances for fibre optic works involving existing works.