

Copper Withdrawal Code Review

Under Schedule 2A of the Telecommunications Act 2001

Request for views on the effectiveness of the Copper Withdrawal Code in meeting the requirements in the Act

Date: 23 March 2023



Glossary, defined terms and abbreviations

Term	
Act	Telecommunications Act 2001
Commission	Commerce Commission
End-user	means a person who is the ultimate recipient of a copper service or of another service the provision of which relies (wholly or partly) on a copper service at a premises
LFC	Local Fibre Company
Provider	A telecommunications service provider
RSP	Retail Service Provider
TCF	Telecommunications Carriers' Forum

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Introduction

The Copper Withdrawal Code

1. The Commission is seeking feedback on the effectiveness of the Copper Withdrawal Code (**Code**) in meeting the requirements of the Telecommunications Act 2001 (**the Act**).
2. The Code regulates Chorus' withdrawal of wholesale copper services¹ (unbundled bitstream and low-frequency voice access services) in areas in which specified fibre services are available to end-users.²
3. The principal purpose of the Code is to protect the end-users of copper services where Chorus seeks to withdraw those services.³ The Code ensures this purpose by setting out minimum consumer protection requirements that Chorus must meet before Chorus can withdraw the end-user's copper service. In summary, Chorus must ensure that end-users:
 - 3.1 understand Chorus' process for withdrawal of a copper service, and how this will affect the end-user;
 - 3.2 have access to information about fibre services available to the end-user;
 - 3.3 have reasonable time to prepare for a proposed withdrawal of a copper service; and
 - 3.4 have a connection to a fibre service providing similar functionality to the copper service installed within a reasonable timeframe (if they wish to move to a fibre service)
4. The specific minimum requirements that the Code must include are set out in clause 1(3) of Schedule 2A of the Act.
5. The Code was approved by the Commission under clause 3 of Schedule 2A of the Act on 10 December 2020 and came into force on 1 March 2021.⁴
6. At the time of approving the Code, we stated our intention to review the operation of the Code in the second half of 2021. However, due to the onset of COVID-19, Chorus deferred its copper withdrawal activities, which has correspondingly delayed our review of the effectiveness of the Code.
7. Chorus has since undertaken various batches of copper withdrawal activity, filed its first Copper Withdrawal Code disclosure, and provided views on how the Code could be improved based on its experience to date.

¹ Refer to the definition of 'copper service' in section D, paragraph 6 [of the Code](#).

² Refer to the definition of 'end-user' in section C, paragraph 3 [of the Code](#).

³ The copper services covered by the Code are specified in Schedule 2A (1) of the Act.

⁴ Refer to the commencement date set out in paragraph 1 [of the Code](#).

8. We now consider that we have a sufficient foundation for moving forward with our planned review of the Code.

Reviewing the Copper Withdrawal Code

9. The Act allows us to amend the Code if we consider that the Code no longer meets all the requirements set out in the Act, and the amended Code will meet all the requirements set out in the Act.⁵
10. When considering these questions, we will consider the current Code against the minimum requirements set out in clause 1(3) of Schedule 2A, read in light of the purpose of the Code and the overall purpose in s 69AA(b) to provide protections for end-users of copper fixed line access services in deregulated areas.
11. Our review will consider whether the Code has any gaps in meeting the minimum requirements and whether the Code can be improved to better deliver on the requirements, having regard to how the Code has delivered on the requirements to date.
12. As part of our review process, we will assess evidence on the effectiveness and efficiency of the requirements in the Code (including any technical operational requirements), and whether these can be improved to better meet the minimum requirements. This will include considering whether the minimum requirements can be delivered on better by improving transparency and making information more accessible to end-users.

Process for our review

13. Our review process will follow the procedure that applies to making the Code in clause 2 of Schedule 2A of the Act.⁶
14. This includes –
 - 14.1 notifying the process that we will follow to amend the Code;
 - 14.2 consulting with interested persons on proposed amendments to the Code; and
 - 14.3 giving public notice of a draft amended Code.
15. This paper is the first step in our process and seeks stakeholder views on:
 - 15.1 the efficiency and effectiveness of the operation of the Code to date, and any improvements to better meet the minimum requirements (see the questions at paras 32 – 35 below); and

⁵ Schedule 2A, clauses 4(1) and 3 of the Act.

⁶ Schedule 2A, clause 4(2) provides that the same procedure that applies to making the Code in clauses 2 and 3, must be followed to make an amendment or a revocation to the Code.

15.2 Chorus' proposals for amendment to the Code – see para 36 and [Appendix 1](#).

Industry and consumer groups

16. The wider industry, through the Telecommunications Carriers' Forum (**TCF**), played an important role in the development of the Code. We are again seeking the TCF's feedback on the operation of the Code from an industry perspective. We would equally welcome submissions from individual stakeholders who want to respond to the Commission directly. We also invite submissions from consumer advocacy groups to help us understand the impact of Chorus' copper withdrawal process on end-users.

End-users

17. We will separately be seeking the views of end-users who have experienced Chorus' copper withdrawal process to specifically test whether the Code is achieving its purpose. We will explore with them their perspectives on whether the minimum requirements of the Act are being met and what, if anything, could be improved.
18. We recognise that there is an overlap with industry led work to withdraw copper services that do not fall within the scope of the Code (for example, retiring the Public Switched Telephone Network (**PSTN**) and ceasing the supply of copper-based services). Any submissions relating to matters not captured by the Code, which is focused on Chorus, may be used to inform other work we are doing. This includes our review of the guidelines we issued in 2020 to improve the marketing of broadband to consumers coming off copper services which is also occurring this year.

Process following request for views

19. Following assessment of all views and evidence received through the processes outlined above, we will prepare a draft decision and reasons paper for consultation with interested parties (including consumer advocacy groups, but also the TCF and its members).
20. If we propose to amend the Code, we will also prepare and consult on a draft amended Code which we will publish alongside our draft decision and reasons paper.
21. We will publish a final decision and reasons paper and amended Code (if we decide to amend the Code).
22. An indicative timeframe for our process is set out below.

Next Steps	Indicative timeframe
Request for Views Document issued	23 March 2023
End-user engagement	April 2023
Submissions received	4 May 2023

Draft Decision paper issued	19 June 2023
Draft Amended Code issued, and public notice given (only if the draft decision is to amend the Code)	
Submissions received	31 July 2023
Cross-Submissions received	14 August 2023
Final Decision paper issued	September 2023
Amended Code issued (only if the decision is to amend the Code)	

Invitation to provide submissions

23. We invite submissions and feedback on:

- 23.1 the questions set out in this paper; and
- 23.2 any issues or opportunities for the future of the Copper Withdrawal Code that you consider relevant that may not be addressed in this paper.

Information for interested parties on making a submission

24. We are seeking submissions on our paper by **5pm on 4 May 2023**.

How to provide your submissions

- 25. Your submission should be provided as an electronic copy in an accessible form. Please email your submission to market.regulation@comcom.govt.nz with the subject line **“Submission: Copper Withdrawal Code Review.”**
- 26. If you wish to provide commercially sensitive information in your submission, we request that you provide, as necessary, confidential, and public versions of your submission.
- 27. When including commercially sensitive or confidential information in your submission, we offer the following guidance:
 - 27.1 please provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.
 - 27.2 please provide reasons alongside any information in the confidential version as to why it is commercially sensitive or confidential information; and
 - 27.3 the responsibility for ensuring confidential information is not included in a public version of a submission rests entirely with the party making the submission.

28. If we consider disclosure of information, for which confidentiality is claimed to be in the public interest, we will consult with the party that provided the information before any public disclosure of that information is made.

Questions

Minimum Requirements of the Code

29. We are interested in stakeholder views on whether the Code is meeting the requirements set out in the Act.
30. We consider there may be opportunity to improve the Code by addressing issues that have been identified from the steps taken under the Code in relation to copper withdrawal.
31. We ask stakeholders to include in their responses as much evidence of what is and is not working as possible, particularly if it is believed the current Code should be amended to better meet or fulfil these requirements. [Appendix 2](#) provides a summary of the minimum requirements of the Code and questions for stakeholders.

Requirement 1: End-users understand Chorus' process for withdrawal of the copper service, and how this will affect them

32. Question 1: In your experience do end-users understand Chorus' process for withdrawal of copper services and how it will affect them? Please provide any evidence you have which supports your views.

Requirement 2: End-users have access to information about fibre services available

33. Question 2: In your experience are end-users receiving information from Chorus that enables them to understand the fibre service options available to them? What are the reasons for your view?

Requirement 3: End-users have reasonable time to prepare for a proposed withdrawal of their copper service

34. Question 3: Do you believe end-users are being given a reasonable amount of time to prepare for a proposed withdrawal of their copper service by Chorus? Why do you hold this view?

Requirement 4: End-users have a connection to a fibre service installed (if they wish to move to a fibre service), and the fibre service provides similar functionality to the copper service

35. Question 4: In your experience, are end-users able to have a fibre service (providing similar functionality) installed by Chorus within a reasonable timeframe?

Initial Feedback from Chorus

36. Chorus has provided feedback following withdrawal of copper services to date under the Code. That feedback is summarised in [Appendix 1](#) and relates to:

- 36.1 the overall effectiveness of the process and communications issued;
 - 36.2 delivery issues arising from address data errors and the complications these errors introduce in the process; and
 - 36.3 the quality of interactions between stakeholders that occur during this process (fibre company, retail service provider, end-users).
37. Stakeholders are asked to provide their views on the proposals for change put forward by Chorus. We have not assessed or formed any views on Chorus' proposals.

General questions

- 38. We also request submissions on the following questions:
- 39. Question 5: Do you have any changes you would suggest making to the Code to improve its effectiveness and outcomes for end-users?
- 40. Question 6: To what extent are the roles of Chorus and RSPs not sufficiently clear to end-users and how can this be improved?

Appendix 1: Chorus Proposal for Changes to the Code

Chorus' proposed Copper Withdrawal Code changes for the Commerce Commission's Code Review

ID	Proposal	Reasoning	Impact	Relevant Code Reference
1	<p>Amend the notice process to improve clarity of outcome for consumers</p> <p>Amend the notice requirements so that:</p> <ul style="list-style-type: none"> the Final Notice outlines the potential outcome/s for consumers, with the actual intended withdrawal date, and there is no requirement to send a separate notice within a month after the notice period ends. This removes the Confirmation Notices entirely and limits the sending of a Continuation Notice to only those circumstances where Chorus fails to meet the minimum requirements. <p>The Final Notice would go to all consumers whose copper had not been disconnected (as it does today) and would confirm the below next steps:</p> <ol style="list-style-type: none"> If they have taken no action: their copper services will be withdrawn at X date; or If they have a fibre order / install in progress: their copper will be withdrawn once this is complete (rather than at the proposed withdrawal date); or If there are other circumstances specific to the consumer that apply, copper may be withdrawn at a later date confirmed with you or your RSP. <p>In terms of (3), these would be limited circumstances covering situations where more time is appropriate, such as: to progress an issue/dispute with a third party, or where an RSP has flagged that a consumer has a specific need and requires more time to transition to a replacement service.</p> <p>Note: As above, if Chorus failed to meet its minimum Code requirements the consumer would still be sent a Continuation Notice – from our experience this would be very rare as almost all Continuation Notices were sent to consumers whose fibre order was not complete by the end of the notice period.</p>	<p>The Telecommunications Act requires the Code to provide for “reasonable notice of the proposed withdrawal of the copper service”. The Code requires three notices to be sent during the notice period (i.e., the First, Further and Final Notices). It also requires a subsequent notice after the notice period has ended that indicates the ‘outcome’ for an end-user (i.e., either a Confirmation or Continuation Notice).</p> <p>Informing consumers of the outcome after the notice period has lapsed can create confusion and uncertainty – particularly as consumers will have already received a notice that states it is “final”, and as the Confirmation Notice will contain a different proposed withdrawal date (i.e., as currently defined, the proposed withdrawal date relates to the end of the notice period).</p> <p>We think a better way to communicate and confirm the outcome for consumers is to inform them via the Final Notice (received prior to the end of the notice period) – where the Final Notice is the last notice they receive.</p> <p>The current notification process can be confusing for consumers and create uncertainty because:</p> <ul style="list-style-type: none"> Consumers are urged to take action before the end of the notice period, which is the date stated in their three reminder notices, but the subsequent Confirmation/outcomes notice then contains a later date for actual switch-off. This risks undermining the consistent messages in the initial notices. We understand this also makes it harder for RSPs to effectively communicate with their affected customers about key dates. It would be much clearer if there is a single communicated date from which withdrawal can, and will, occur. Consumers often take action late in the notice period, which means their new connection order may still be in flight when it comes time to ‘confirm’ the outcome a month after the notice period has ended; by the time the notice is delivered it may no longer be relevant depending on further liaison between Chorus, the end-user and the RSP. <p>As the Copper Withdrawal Programme increases in volume, the notice requirements would benefit from a more streamlined approach that gives consumers (and RSPs) greater certainty and clarity around what is happening through a single, consistent message, rather than changing the message post-notice period or sending a notice that doesn't reflect developments from shortly after it was sent.</p>	<p>The proposed changes will improve certainty around the actual copper withdrawal date by allowing copper withdrawal to take place once the notice period has lapsed, which is achieved by removing the need for Confirmation Notices. This process change would also clarify the process for consumers by removing the number of notices and simplifying the likely outcome for consumers.</p> <p>Overall, these changes minimise the risk of consumer confusion, will help reduce cost and complexity for Chorus and RSPs by ensuring that there is a single date that is communicated to their end consumers.</p> <p>To help illustrate the proposed change, we have attached a slide that sets out the current process and our proposed process (see attached).</p>	<p>Defined Terms (notice period, proposed date of withdrawal of the copper service)</p> <p>Section F1 (Final Notice, clause 18)</p> <p>Section G4 (Continuation notice, clause 50)</p> <p>Section H1 (Confirmation Notice, clause 53-55)</p> <p>Section F4 (Notice to end-users, 27 – 29)</p>

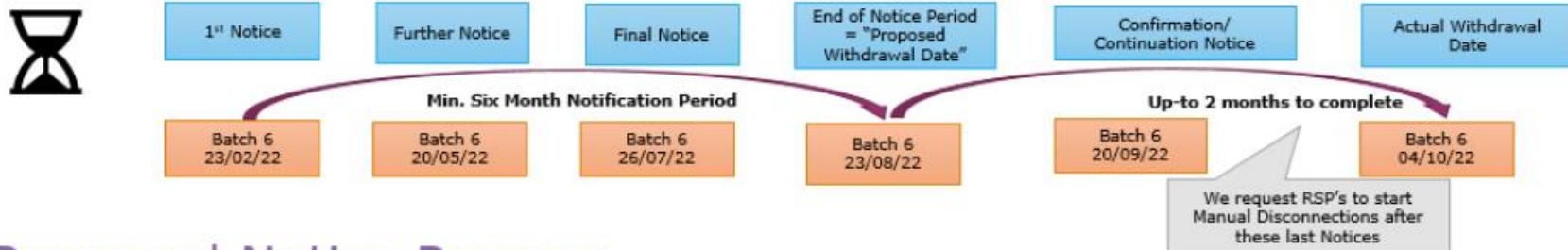
2	<p>Allow for alternative postal address e.g., a PO Box, community mailboxes, or a business' headquarters.</p> <p>Amend the Code so that (where relevant) Chorus can post notices to an alternative address.</p> <p>This would better cater for situations where consumers/occupants/business staff or managers do not reside at the premise where the copper is being withdrawn, or do not have a letter box at the premise where copper is being withdrawn.</p>	<p>The Code assumes that copper users</p> <ul style="list-style-type: none"> • have a letterbox • reside at the premise • are residential users. <p>The Code process operates smoothly where the above assumptions are met, but lacks flexibility where they aren't (most obviously, where a premises is unoccupied).</p> <p>The Code should be amended to provide flexibility for notices to be delivered in these circumstances. The following situations arise:</p> <ul style="list-style-type: none"> • NZ Post return undelivered Notices – when this occurs, we must follow up with a courier or maildrop, but even then they won't always be received by the occupant (if the premises is unoccupied or there is no letterbox) • Physical addresses may not be used as postal addresses - e.g., businesses and holiday homes. • Some communities use 'community mailboxes' – we understand there are currently 23 such communities around NZ. <p>Rather than wait for an 'undelivered' notice to return to us and be followed by a courier/maildrop, the Code should allow for notices to be sent to an alternative address, where known and as appropriate. This would also assist with clearer communication in situations where there is not a 1:1 ratio of copper services to a premises (for example, where there are multiple businesses' services at a single address, or where a single service runs to an address that has since been subdivided and it is unclear who is using the copper service). This proposal would not change the status quo starting point, where a notice must be delivered by post to the impacted premises. Instead, it provides a better approach for exceptions where posted notices to the impacted premises might not result in the appropriate person receiving a copper withdrawal notice.</p> <p>A better approach is to ensure the Code is fit to deal with a broader range of scenarios.</p>	<p>This proposal will give Chorus flexibility to use an alternative address – helping ensure consumers receive Notices.</p> <p>It will allow notices to be sent to the occupant's or other consumer's actual postal address (which reflects their preference), rather than solely the physical address.</p> <p>It would also avoid unnecessary waste from non-deliveries and returns.</p>	Section F4 (Notice to end-users, 27 – 29)
3	<p>Allow for flexibility with communication channels</p> <p>Amend the Code to allow for other means of delivering a notice to consumers/occupants, such as electronic delivery via email or other means, rather than solely relying on posted mail or mail drop services.</p> <p>Like the above proposal, this amendment would allow for flexibility to the status quo and would let consumers 'opt-in' to an alternative mode of contact– e.g., email rather than posted mail.</p>	<p>The Code requires notices to be delivered via either posted mail or mail drop. While this method may suit some consumers, we think a better approach is to ensure the Code is flexible and allow for alternative methods to recognise that some consumers may require assistance to respond to the notice – or where post is not preferred for other reasons.</p> <p>For example, consumers with accessibility issues or who rely on assistance from friends/family/services outside their household, may prefer an electronic notice. E.g., so they can use screen readers, online translation tools, and send/share the notice to others.</p> <p>Additionally, most service providers communicate with consumers via email at the consumer's preference. If consumers are willing to share their email with</p>	<p>This proposal will help ensure notices are accessible and can be readily acted upon by allowing alternative communication methods. It will better serve accessibility needs, which will help ensure consumers are not disadvantaged by the method in which notices are communicated. Further, it would let us respond to consumers' preferences around how they are notified about changes to their service.</p>	Section F4 (Notice to end-users, 27 – 29)

		<p>Chorus and would prefer us to notify them that way, Chorus should be able to email subsequent notices. Put another way, a consumer could “opt-in” to receiving correspondence.</p> <p>Amending the Code to allow for an alternative to post will ensure it is flexible to cater for a broad range of consumer scenarios and in turn, help ensure accessibility for all consumers who are going through copper withdrawal.</p>		
4	<p>Add a “pause” mechanism to the process so that a notice period duration may change in response to unexpected events</p> <p>Amend the Code to allow the copper withdrawal process to be “paused”, which would effectively extend the notice period for impacted consumers and allow them more time to transition off copper.</p>	<p>The Code currently assumes a fixed notice period timeframe. To help ensure the Code can respond to unexpected events (e.g. localised weather event or a lockdown) in a manner that is consistent with good consumer outcomes, we propose adding a mechanism that would allow Chorus to pause - and then extend - the copper withdrawal process. I.e., by extending the notice period.</p> <p>An extension would help consumers during uncertain and stressful times by providing additional time before they need to transition off copper services.</p> <p>In response to the 2020 COVID-19 lockdown Chorus and the Commission agreed to implement a “pause” to help alleviate any challenges and stress for consumers and their households.</p> <p>This meant that the duration of the lockdown was added to the notice period for certain Copper Withdrawal impacted consumers at the time – they were sent notices when the notice period was paused, and again before it was lifted.</p>	<p>This proposal will allow Chorus to give consumers (and RSPs) a longer timeframe to manage their transition off copper. Consumers and RSPs will be formally updated accordingly.</p>	<p>New section</p>

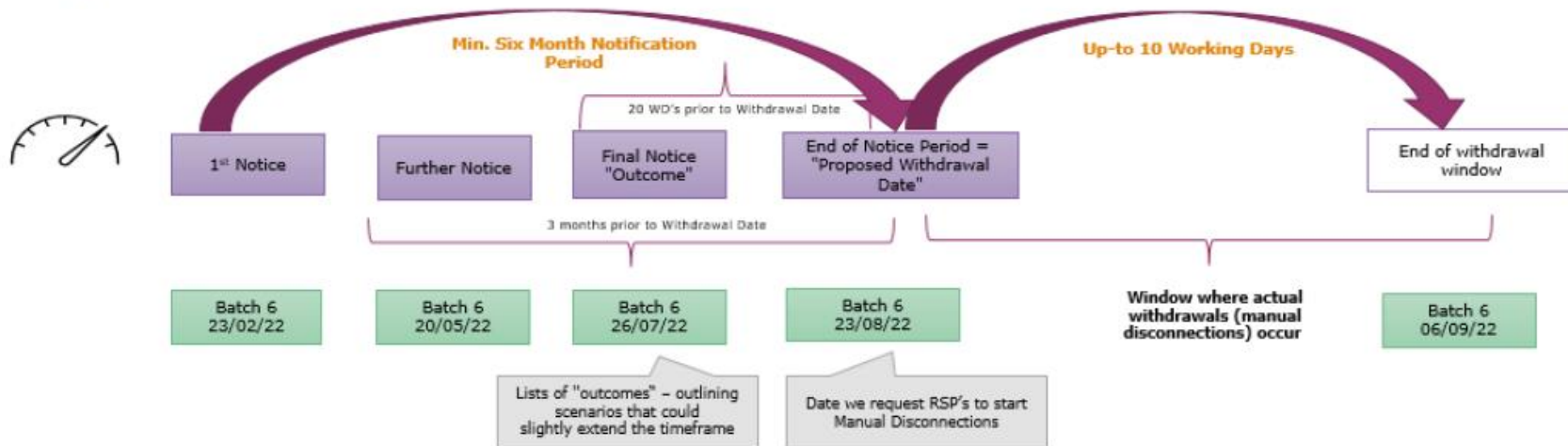
5	<p>Remove ability for third parties to prevent copper withdrawal</p> <p>Amend clauses 38 and 43 so that where a third party acts or omits to act in a way that prevents a fibre install, Chorus is not prevented from withdrawing copper services.</p> <p>A more reasonable approach is to allow the exception in clause 43 to be met (i.e., for Chorus to be able to proceed with withdrawal) where:</p> <ul style="list-style-type: none"> • Chorus has indicated steps available to the consumer to progress a situation where a third party's actions or inactions could prevent a fibre installation (as is in the Code today), • Chorus has given the consumer reasonable time to resolve the third-party issue, and • An alternative service is available, and the consumer is reminded of that. 	<p>The minimum requirement in Schedule 2A of the Telecommunications Act is that end-users subject to copper withdrawal are able to access fibre and be able to have a fibre connection installed at no cost. "Access to fibre" is determined via the Commission's Specified Fibre Areas Declaration, meaning copper withdrawal can only occur if the address of that copper service falls within that Declaration.</p> <p>The current Code requirements go too far in requiring Chorus to retain copper in situations where newer technologies are available (for example, fixed wireless or satellite). This is because under the Code, a third-party issue can block withdrawal even where the two minimum requirements are met. This means that Chorus cannot withdraw copper where a third-party issue remains unresolved, where the consumer wanting fibre has taken reasonable steps available to them to resolve the issue. The Code should be clarified so that copper withdrawal is not prevented where consumers in these situations can access fibre or an alternative service. In most of these areas, alternative technologies are also available.</p> <p>For clarity, our view is that consumers need a reasonable timeframe to address and resolve disputes. Chorus has incentives to help ensure consumers are aware of available channels to resolve disputes and help where possible and practicable (such as accommodating alternative designs where reasonably practicable to do so). However, where a third-party issue remains ongoing after a reasonable timeframe has lapsed Chorus should not be required to keep the copper service running.</p> <p>Additionally, RSPs have stopped selling copper for various reasons and not just due to copper or PSTN withdrawal. As a result, there is a significant decline in copper services as the availability of other technologies increases.</p> <p>Requiring copper services to remain because of disputes that are outside of Chorus' control is not sustainable. Facilitating the withdrawal of copper not only supports the broader industry transition to newer technologies but promotes our longer-term emissions reduction plan through reducing our energy use and emissions profile.</p>	<p>This change recognises that consumers have other alternative services available - not just fibre, which is reflected in the Code requirement that Chorus' notices cannot 'promote fibre'.</p>	<p>Section G1 (Requirement for connection to a fibre service to be installed, clause 38; Fibre installs impeded by a third party, clause 43)</p>
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Chorus' proposed change (see proposal 1, row 1 above)

Current Notice Process



Proposed Notice Process



CHORUS

Appendix 2: Summary of Requirements and Questions

Requirement 1: End-users understand Chorus' process for withdrawal of the copper service, and how this will affect them.

Requirement 2: End-users have access to information about fibre services available.

Requirement 3: End-users have reasonable time to prepare for a proposed withdrawal of their copper service.

Requirement 4: End-users have a connection to a fibre service installed (if they wish to move to a fibre service), and the fibre service provides similar functionality to the copper service.

Paragraph	Question ID	Question	Response
32	1	In your experience do end-users understand Chorus' process for withdrawal of copper services and how it will affect them? Please provide any evidence you have which supports your views.	
33	2	In your experience are end-users receiving information from Chorus that enables them to understand the fibre service options available to them? What are the reasons for your view?	
34	3	Do you believe end-users are being given a reasonable amount of time to prepare for a proposed withdrawal of their copper service by Chorus? Why do you hold this view?	

35	4	In your experience, are end-users able to have a fibre service (providing similar functionality) installed within a reasonable timeframe?	
39	5	Do you have any changes you would suggest making to the Code to improve its effectiveness and outcomes for end-users?	
40	6	To what extent are the roles of Chorus and RSPs not sufficiently clear to end-users and how can this be improved?	
n/a	7	In reference to Appendix 1 , what impact would Chorus' proposed changes have on the minimum requirements of the Code being met?	