

Telecommunications Retail Service Quality Framework



CONTENTS

TELECOMMUNICATIONS RETAIL SERVICE QUALITY FRAMEWORK	1
PURPOSE OF THIS PAPER	3
INTRODUCTION	3
<i>Changes to Act</i>	3
<i>Framework.....</i>	4
<i>Next steps</i>	4
BACKGROUND	5
<i>Telecommunications Act.....</i>	5
<i>Fair Trading Act</i>	6
TELECOMMUNICATIONS (NEW REGULATORY FRAMEWORK) AMENDMENT ACT	7
THE REVIEW OF THE ACT	7
KEY CHANGES TO THE ACT THAT RELATE TO RETAIL SERVICE QUALITY	8
RETAIL SERVICE QUALITY FRAMEWORK	9
DATA	10
MONITOR	11
<i>Independent testing.....</i>	11
<i>Research and surveys.....</i>	12
<i>Telecommunications service provider data</i>	12
ASSESS	13
ENGAGE	14
TOOLS	15
<i>Educate and inform consumers</i>	15
<i>Guidelines and codes</i>	16
<i>Compliance and enforcement.....</i>	16
REVIEW	17
APPENDIX: AMENDMENTS TO THE ACT THAT RELATE TO RETAIL SERVICE QUALITY	18

Purpose of this paper

1. This Telecommunications Retail Service Quality Framework Paper (framework paper) is the introductory paper for the Commerce Commission’s (the Commission) retail service quality (RSQ) work following recent amendments to the Telecommunications Act 2001 (Act).
2. The purpose of this framework paper is to:
 - 2.1 provide a background of the legislation we are responsible for that governs New Zealand’s telecommunications markets;
 - 2.2 highlight the recent amendments to the Act that relate to RSQ;¹ and
 - 2.3 set out the approach that we will take to implement the new consumer provisions.

Introduction

Changes to Act

3. The Ministry of Business, Innovation and Employment (MBIE) recently conducted a review of the Act to establish a regulatory framework for fibre fixed line access services. As part of its review, it assessed telecommunications RSQ using information from a number of sources including the significant levels of complaints generated by the telecommunications industry. It concluded that more can be done to improve RSQ for telecommunications consumers.²
4. As a result, the Telecommunications (New Regulatory Framework) Amendment Act 2018 (the Amendment Act) has introduced a number of new consumer provisions aimed at improving RSQ through increased information and added consumer protections.
5. The new consumer provisions give specific direction to the Commission to monitor RSQ and make available information in a way that informs consumer choice. They also introduce the ability for the Commission to review industry RSQ codes, provide guidelines and create Commission RSQ codes. The new provisions also require us to review the Telecommunications Dispute Resolution (TDR) scheme at least once every three years.

¹ The changes to the Act that relate to retail service quality are a mix of provisions that impose obligations on the Commission (eg, must monitor RSQ and review industry dispute resolution schemes) and provisions that contain discretionary powers (eg, we can review industry RSQ codes and create Commission RSQ codes) – this paper will refer to these provisions as a whole as the “new consumer provisions”.

² Ministry of Business, Innovation and Employment, “Regulatory Impact Statement - Telecommunications Act Review: consumer matters” (30 March 2017).

Framework

6. With the introduction of a broad definition of RSQ, and the increased set of potential interventions (tools) available to us, we consider it appropriate to present a framework for how we plan to undertake our work to:³
 - 6.1 gain a better understanding of RSQ;
 - 6.2 prioritise what we will focus on; and
 - 6.3 determine the appropriate tools to use, if intervention appears warranted.
7. Our framework comprises six stages as demonstrated below. More detail is provided in the RSQ framework section of this paper.

The **Data** stage is the process of identifying information to improve our understanding of RSQ issues.

The **Monitor** stage is the process of collecting the information that we have identified from a range of sources.

The **Assess** stage is the process of analysing the data we collect and prioritising RSQ issues that we consider need further attention.

The **Engage** stage is the process of consulting with consumer and industry stakeholders about the RSQ issues that we prioritise, and what we need to understand further before considering any further action.

The **Tools** stage is the process of identifying and implementing the appropriate interventions, where necessary, using the new consumer provisions to improve specific areas of RSQ.

The **Review** stage is the process of measuring and assessing the effectiveness of any interventions that we may use, and whether the desired outcome was achieved or is on track. This stage of the framework will also ensure that we review what, if any, changes are needed to the information that we collect and/or publish.

Next steps

8. We are not seeking submissions on this framework paper, which presents our approach to how we will undertake our RSQ work. However, there will be regular opportunities for consultation on our RSQ work throughout the stages of our framework, specifically the Monitoring and Engage stages, which are discussed in in the RSQ framework section of this paper.

³ The definition of RSQ introduced in the Act is shown in paragraph 29.

9. In early 2019 we will publish a Retail Service Quality Monitoring – Process and Issues paper, which will be an important part of the Monitoring stage of our framework. The paper will outline how we plan to engage with consumer and industry stakeholders to set up routine collection of RSQ data from telecommunications service providers that we intend to present to inform consumer choice. The paper will also provide our initial thinking on metrics that we consider could be good indicators of RSQ.

Background

10. This section provides an overview of New Zealand’s telecommunications industry and the legislation we are responsible for that governs it, including new changes to way we regulate telecommunications service providers.
11. New Zealand’s telecommunications industry comprises network operators, such as Chorus and Local Fibre Companies (LFCs), mobile companies, and retail service providers (RSPs) who use network inputs and sell telecommunications services to consumers.
12. RSQ is the quality of service that RSPs and mobile companies provide to their customers, including the billing of those services and the customer service that they provide. However, some areas of RSQ that they deliver, such as the installation and network performance of services, are impacted by the network operators. In this framework paper we refer to these companies as a whole as telecommunications service providers.
13. The Telecommunications Act 2001 (the Act) provides the underlying economic regulatory settings for communications markets in New Zealand, while the Fair Trading Act 1986 (FTA) provides protection against false and misleading conduct.

Telecommunications Act

14. The Act requires us to perform two primary functions focused on promoting competition and transparency in telecommunications markets for the benefit of consumers. The first is to regulate certain wholesale fixed line and mobile services by setting the price and/or access terms for those services. Our second primary function under the Act is to monitor and report on competition, performance and developments in telecommunications markets.
15. A large proportion of our work to date has been focused on regulating broadband services on Chorus' copper network - the network that has traditionally provided broadband and telephone landlines to the majority of households in New Zealand. We are responsible for setting the wholesale prices Chorus can charge retail service providers to access its copper network, cabinet software and electronics.
16. Recent amendments to the Act provide for regulation of the ultra-fast broadband (UFB) fibre networks, as the use of copper services declines. Under the new regulatory regime, we intend to regulate Chorus in a broadly similar manner to how we regulate electricity line and gas pipeline businesses. This involves setting the

maximum revenue Chorus will be allowed to earn from its UFB network and the quality of service it must deliver. Chorus and the LFCs will also be subject to information disclosure regulation, which means they must publish prescribed information on their revenue, service performance and service quality each year.

17. Along with broadband, we also regulate certain voice (mobile and landline) services. These include number portability (ensuring consumers can keep their phone number when they switch providers), the termination rates mobile providers charge each other, and allowing retailers access to Spark's voice services.
18. We monitor the industry by conducting inquiries, reviews and studies. By monitoring the market and publishing reports on its performance, we are able to compare how the services available to New Zealanders measure up against international standards in terms of cost and quality.
19. The Telecommunications (New Regulatory Framework) Amendment Act section outlines recent changes to the Act that relate to the improvement of RSQ.

Fair Trading Act

20. Under the FTA, we can investigate and can take enforcement action against telecommunications providers for engaging in misleading conduct, giving false information, and for making misleading and/or unsubstantiated representations. The Commission receives enquiries from the public about matters related to our role in enforcing competition and consumer laws. As a subset of enquiries, we also receive complaints about individuals or businesses that may not be acting in accordance with these laws. More information about how we investigate false or misleading conduct can be found in our Investigation Guidelines.⁴
21. Although the FTA covers all industries, we receive a significant amount of complaints relating to telecommunications services. Some of the conduct we have investigated in the last year in telecommunications markets has included:
 - 21.1 false, misleading and/or unsubstantiated representations being made in advertising about the availability and/or quality of services;
 - 21.2 failure to disclose important conditions of promotional offers resulting in false or misleading representations being made about price; and
 - 21.3 billing system failures resulting in false or misleading representations being made about the price and quality of services, and consumers' contractual rights.
22. In March 2015 the FTA was amended to include new provisions that prohibit unfair contract terms in standard form consumer contracts (the UCT provisions). Generally, a term is unfair if it creates a significant imbalance in the rights and obligations between a consumer and a business, if it would cause the consumer detriment if the business relied on it and the term is not reasonably necessary to protect the business

⁴ Commerce Commission, "Competition and Consumer Investigation Guidelines" (December 2015).

needs. Terms that are unclear or hidden are more likely to be unfair than terms that are upfront and written in plain language.

23. We review standard form contracts for compliance with the UCT provisions and provide guidance on the effect of these laws, particularly the types of terms that may be unfair and the steps a business can take to remedy any potential unfairness. We can also apply to the court to have a term declared unfair, which means that subsequent use of that term is in breach of the FTA.
24. Parliament has determined that more should be done to improve RSQ for telecommunications consumers and has introduced new consumer provisions in the Act. The next section provides background on the review of the Act and outlines the key changes that relate to the improvement of RSQ.

Telecommunications (New Regulatory Framework) Amendment Act

25. In addition to the changes to the Act summarised in paragraph 16, several new provisions have been added which require us to focus on telecommunications RSQ through improved information and added consumer protections. This section details those changes and then we present our framework for how we plan to implement them.

The review of the Act

26. In March 2017, as part of the review of the Act, a Regulatory Impact Statement announced four policy objectives for consumer service quality in the telecommunications sector:⁵
 - 26.1 consumers should be able to make informed choices about retail telecommunications services;
 - 26.2 consumers should be able to expect service quality at competitive standards, as well as competitive prices;
 - 26.3 that if problems arise, there should be efficient and responsive complaint and dispute resolution procedures; and
 - 26.4 the level of regulatory intervention for consumer service quality issues should be proportionate to the problem it seeks to address.

⁵ Ministry of Business, Innovation and Employment, “Regulatory Impact Statement - Telecommunications Act Review: consumer matters” (30 March 2017), paragraph 51.

27. Underpinning these objectives were concerns with the level of complaints generated by the telecommunications sector, which pointed to the current regulatory settings requiring intervention. It was suggested that the current regulatory settings:⁶

have delivered insufficient information to support effective consumer choice in a rapidly changing environment;

are over-reliant on industry self-regulation;

leave room for improved consumer responsiveness by retailers; and

are modest in their attempts to safeguard consumer interests, compared to other similar overseas jurisdictions (for example the UK and Australia).

28. A range of interventions to address these issues were considered, and the following changes were proposed:⁷

a. the Commission's monitoring powers should be modified to:

i. specifically require reporting on retail service quality for telecommunications consumers

ii. make such information readily accessible to consumers

b. in order to improve the quality of service for telecommunications services at the retail level, government should progress a legislative amendment to the Act to enable the Commission to establish regulated codes for customer service quality, if satisfactory voluntary codes do not emerge

c. there should be a periodic review by the Commission of whether the trigger for implementing Part 4B of the Act has been met, and to make an assessment as to whether current improvements by the TDRS warrant introduction of Part 4B of the Act, or some alternative provision of the service by another provider, through an alternative regulatory arrangement.

Key changes to the Act that relate to retail service quality

29. Section 5 of the Act now includes a definition of telecommunications RSQ:⁸

retail service quality, in relation to a telecommunications service, means the quality of retail service provided to an end-user of the service, including in relation to the following:

- (a) customer service and fault service levels
- (b) installation issues
- (c) contract issues
- (d) product disclosure

⁶ Ministry of Business, Innovation and Employment, "Cabinet paper - Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile Regulation and Consumer Protection" (June 2017), paragraph 8.

⁷ Ministry of Business, Innovation and Employment, "Regulatory Impact Statement - Telecommunications Act Review: consumer matters" (30 March 2017), paragraph 126.

⁸ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 5 (Interpretation).

- (e) billing
 - (f) the switching process and related information
 - (g) service performance, speed, and availability
30. Section 9A of the Act sets out the Commission’s telecommunications monitoring and information dissemination functions. Section 9A now includes a specific direction to monitor RSQ and make available information that informs consumer choice.⁹
 31. Alongside this direction, section 10A of the Act introduces powers for the Commission to require service providers to supply information for the purposes of monitoring RSQ. It allows the Commission to specify methodologies for collecting information; and require service providers to prepare and produce forecasts, forward plans, and historical information.
 32. The new Part 7 of the Act allows the Commission to issue guidelines on matters relating to RSQ; to undertake formal reviews of industry RSQ codes and provide recommendations; and to make a Commission RSQ code if we believe it would be more effective at improving RSQ than an industry code.¹⁰
 33. The Act also now requires us to regularly review the TDR to ensure that consumers have access to independent, fair and effective complaint redress.
 34. The new Part 6 of the Act introduces a regulation framework for fibre services. There are obvious interactions between the wholesale quality dimensions of fibre and RSQ, for example service faults and installation issues. Part 6 specifies that incentives will be placed on fibre wholesale providers to improve specified quality dimensions that will be responsive to end-users.¹¹ It is, therefore, an important mechanism for improving areas of RSQ, which are heavily determined by Chorus and LFCs.
 35. The Appendix of this paper presents the relevant amendments to the Act that relate to RSQ in more detail.

Retail service quality framework

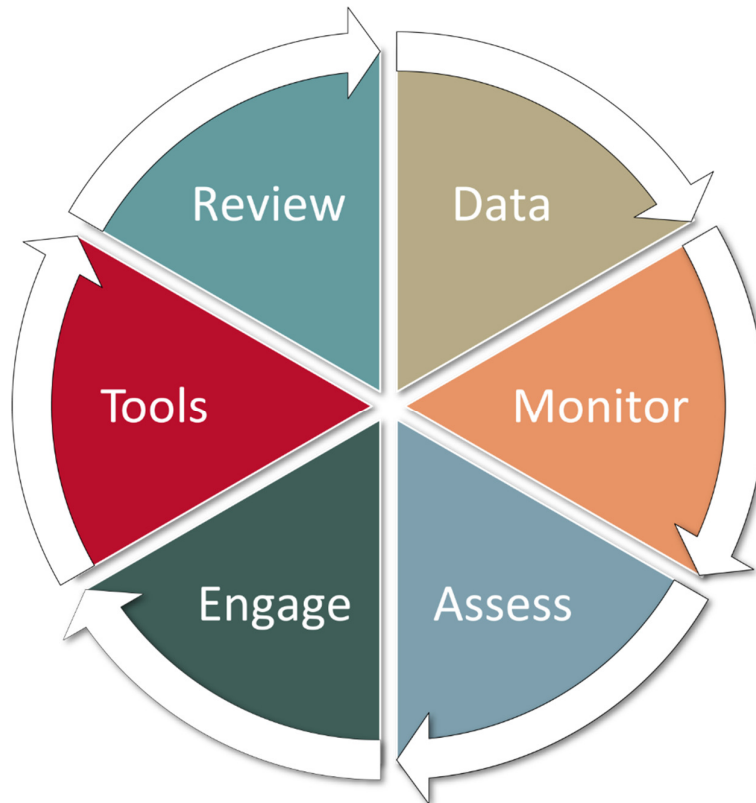
36. The changes to the Act provide a broad definition of RSQ and introduce new consumer provisions (eg, the ability to make guidelines and RSQ codes). We consider that it is appropriate to present a framework for how we will undertake our work to gain a better understanding of RSQ, prioritise what we will focus on, and select the appropriate tools to use, if intervention appears warranted. This section outlines the framework we will use.
37. As shown in Figure 1 below, our framework comprises six stages: Data, Monitor, Assess, Engage, Tools, and Review.

⁹ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 9A(1) (e) and (f).

¹⁰ Telecommunications (New Regulatory Framework) Amendment Act 2018, Part 7.

¹¹ Commerce Commission, “New regulatory framework for fibre – Invitation to comments on our proposed approach” (9 November 2018) outlines the role of quality dimensions for fibre regulation.

Figure 1: Telecommunications RSQ framework



Data

The **Data** stage is the process of identifying information to improve our understanding of RSQ issues.

38. It is important that we identify sources of data that will improve our ability to understand and analyse RSQ and what is important for consumers, and we establish processes for collecting that data. As a starting point, we will look to improve our data under all the areas of RSQ that are listed in the definition of RSQ in section 5 of the Act.¹²
39. Our current monitoring of telecommunications markets under the Act, including our Annual Monitoring Reports, provides insight into the competition, performance and development of telecommunications markets.¹³ We conduct an annual questionnaire of telecommunications providers, which includes information on connection numbers, usage and revenue, but does not currently have a focus on the areas of RSQ as defined in the amended Act.

¹² The definition of RSQ is set out at paragraph 29.

¹³ Commerce Commission, "Annual monitoring reports", found at: <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/annual-telecommunications-market-monitoring-report>.

40. We also monitor telecommunications service providers' compliance with industry obligations such as industry codes and deeds, and their compliance with the FTA. This can also involve consideration of issues being discussed in the media, or regular reviews of trader websites to keep abreast of developments in the market. This information will continue to be useful in identifying and analysing potential RSQ issues.
41. We receive enquiries and complaints from consumers that alert us to potential RSQ issues, with the volume of complaints and complaint themes helping to identify where the biggest issues might be occurring. However, there a number of limitations with this data.
- 41.1 Complaints data on its own cannot paint a complete picture of RSQ or compliance with the law. The fact that a complaint has been received does not necessarily mean that a trader has done anything wrong or any harm has been caused to any consumer or competitor.
- 41.2 The complaints data only reflects what consumers have chosen to report to the Commission or to other organisations that have in turn provided information to the Commission. Some complaints on the same matter are likely to have reached other complaint bodies instead of the Commission.
- 41.3 Larger traders are likely to generate more complaints as a function of their scale.
- 41.4 Complaint volumes for a trader can be about a single matter or multiple matters. Some matters that attract a high level of publicity can generate a large volume of complaints.

Monitor

The **Monitor** stage is the process of collecting the information that we have identified from a range of sources.

42. Once we have identified the RSQ data that we need in the Data stage, we will use a number of different methods to collect that data, including surveys or requests for information from telecommunications service providers. We will look to test the information that we collect in the Engage stage, if we decide that further attention is needed for a specific RSQ area.

Independent testing

43. One way of collecting information to inform us about potential RSQ issues is by funding independent testing. Between 2012 and 2017 we contracted TrueNet to conduct testing to measure the quality of broadband services being provided in New Zealand.
44. We recently launched our Measuring Broadband New Zealand (MBNZ) programme in partnership with SamKnows – a world leader in broadband performance testing. The MBNZ programme will provide us with useful information which will help identify

potential issues with service performance, speed and availability, which are defined areas of RSQ. It will also enable us to provide consumers with independent information on broadband performance across different providers, plans and technologies, to help them choose the best broadband for their household.¹⁴

Research and surveys

45. We also see value in sourcing data from independent telecommunications research databases that provide coverage for New Zealand. Using these sources will ensure that data is in a standardised format and is comparable with other countries. We understand that a number of New Zealand telecommunications service providers already provide data to companies that offer these databases, so it could reduce the potential compliance costs of data requests.
46. Surveys are also an important way to collect useful indicators of RSQ from consumers' perspective. A number of existing surveys already provide us with valuable insights into the RSQ issues that consumers face, for example MBIE's National Consumer Survey, and Consumer New Zealand's telecommunications survey.¹⁵
47. Research reports and consumer surveys conducted overseas, such as the Australian Communications Consumer Action Network's (ACCAN) "Can you hear me?" report, which analyses the customer service of Australian telecommunications service providers, and Ofcom's "Choosing the best broadband, mobile and landline provider", which shows the quality of service experienced by UK customers, also provide a useful comparison of the RSQ experienced in other countries.¹⁶
48. We intend to conduct our own consumer survey in 2019, which will combine repeatable questions that will provide useful information that could be published to inform consumer choice, as well as specific questions that will aid our understanding of key issues that we identify.

Telecommunications service provider data

49. Data from telecommunications service providers will also help to shine a light on RSQ because providers have regular interactions with their customers in all of the defined areas of RSQ. The Act now recognises the importance of this information by providing us with the power to require the supply of information from any provider

¹⁴ Commerce Commission, "Measuring New Zealand's broadband performance", found at: <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/monitoring-new-zealands-broadband>.

¹⁵ Ministry of Business, Innovation and Employment, "National Consumer Survey 2016: Summary findings" (April 2017), and Consumer New Zealand, "Telco survey: Mobile and internet service providers" (31 Jan 2018), found at: <https://www.consumer.org.nz/articles/telco-providers>.

¹⁶ ACCAN, "Can you hear me? Ranking the customer service of Australia's phone and internet companies" (23 July 2018); and Ofcom, "Choosing the best broadband, mobile and landline provider: Comparing service quality 2017" (3 May 2018).

of telecommunications services for the purposes of carrying out our functions of monitoring and reporting on RSQ.¹⁷

50. Initial discussions with providers have highlighted the challenges that we may face when looking for existing indicators of RSQ to monitor. Providers collect RSQ information to varying degrees and in different formats; even the definition of what constitutes a customer complaint and when it is recorded appears to differ between providers.
51. As we engage with the industry, we will need to agree on a standardisation of useful indicators and allow appropriate timeframes for providers to potentially change their systems in order to report on those indicators. We also appreciate that this may incur increased compliance costs, so we will need to factor costs into our decisions of whether to require the provision of certain indicators.
52. In early 2019 we will publish a Retail Service Quality Monitoring – Process and Issues paper, which will outline how we plan to engage with consumer and industry stakeholders to set up the collection of RSQ data from telecommunications service providers. The paper will also provide our initial thinking on metrics that we consider could be good indicators of RSQ.
53. We intend to use our monitoring information to inform the next stages of our framework. This includes assessing and prioritising the RSQ issues that we should focus on, engaging with industry and consumers, and then selecting the appropriate tools to improve RSQ, if intervention appears warranted.
54. We will also look to establish some “routine” RSQ indicators that we can publish regularly, for the purpose of informing consumers. Section 9A (1)(d) of the Act requires us to “make available reports, summaries, and information about retail service quality in a way that informs consumer choice”, and some indicators of RSQ that we collect will be published without going through all the stages of our framework.¹⁸

Assess

The **Assess** stage is the process of analysing the data we collect and prioritising RSQ issues that we consider need further attention.

55. As we will be collecting a greater amount of information, and because the definition of RSQ is broad, we will need to prioritise the areas that we wish to understand in more detail and areas that we consider we can improve using the new consumer provisions in the Act. Some areas of RSQ may not need to be prioritised if we consider that publishing information for consumer choice is the only intervention needed.

¹⁷ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 10A.

¹⁸ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 9A (1)(d).

56. We intend to adopt a similar approach to the prioritisation of RSQ issues to the way that we prioritise the FTA issues that progress to investigation.¹⁹ We will prioritise potential RSQ issues based on a number of criteria including:
- 56.1 the potential benefit to consumers of our intervention;
 - 56.2 the scale of complaints and the extent of the issue;
 - 56.3 whether the issue is a one-off or ongoing; and
 - 56.4 how difficult the issue might be for consumers to understand.
57. This prioritisation approach may lead to specific RSQ focus areas that we will look to understand in more detail to identify the potential causes of the issues by consulting with consumer and industry stakeholders.
58. As announced in our 2018 Priorities, the areas of RSQ that we are currently focusing on are billing, contract terms, marketing and switching issues. To decide on these areas, we used the prioritisation approach described above.²⁰ However, this was largely based on our complaint information, the limitations of which are described in paragraph 41.

Engage

The **Engage** stage is the process of consulting with consumer and industry stakeholders about the RSQ issues that we prioritise, and what we need to understand further before considering any further action.

59. This consultation process will likely take a deeper dive into any specific areas we have identified and prioritised in the Assess stage. We may also consult on whether some form of intervention (Tools stage) is warranted – and if so, what the desired outcome looks like.
60. The timeframes for consultation will depend on the specific issues that we identify, the potential harm to consumers, and our level of understanding of the potential causes of the issues. We may conduct workshops, for example, to keep engagement with stakeholders relatively informal and timely. However, we may consider that some areas of RSQ that we prioritise require a more extensive study in order to fully understand the issues and decide on the appropriate action.

¹⁹ The screening and prioritisation of FTA issues that we investigate is not affected by this framework, which focusses specifically on how we may use the new consumer provisions in the Act to address RSQ issues. More information about how we investigate false or misleading conduct can be found in our Competition and Consumer Investigation Guidelines and our Enforcement Response Guidelines, which provide a useful summary of how we investigate and make decisions, and can be found at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/competition-and-consumer-investigation-guidelines>.

²⁰ Commerce Commission, “Priorities 2018/19” (8 August 2018).

61. As a result of our engagement, we may conclude that no intervention is warranted. If this is the case, it may be that we look to update or improve the information that we collect, so that we can monitor the development of certain issues.
62. In 2019, we will look to further understand these focus areas outlined in paragraph 58 and why they generate more complaints than other areas. Through this engagement process, we hope to identify the causes of RSQ issues within the focus areas, before moving to the Tools stage of our framework.

Tools

The **Tools** stage is the process of identifying and implementing the appropriate interventions, where necessary, using the new consumer provisions, to improve specific areas of RSQ.

63. There are a number of additional tools available to us to address areas of RSQ that we consider should be improved for the benefit of consumers. We have grouped the tools into the following options for intervention. We may choose to implement a range of these tools concurrently to address specific RSQ issues that we have identified.

Educate and inform consumers

64. We may determine that the best option to resolve a specific RSQ issue is by shining a light on it to improve transparency and to better inform consumers. As noted in paragraph 54, we may choose to publish information in a way that informs consumer choice, even if we have not prioritised it for further assessment in our framework.
65. By highlighting the differences in RSQ between technologies and providers, consumers will be better equipped to choose the right options for them, which should improve retail competition and, in turn, improve RSQ to meet consumer demand.
66. We already produce some educational information for consumers, under our existing section 9A obligations, and we will likely continue to do so. At the end of 2017, acknowledging the difficulties consumers can have comprehending the complex world of telecommunications, we released a series of Beginner's Guide to Broadband fact sheets.²¹
 - 66.1 *How do I choose my broadband?* provides information on what to consider when choosing a broadband technology, plan and provider. It encourages consumers to think about what they use the internet for, as well as the performance differences between technologies, and where to find out what technologies are available.

²¹ Commerce Commission, "Beginner's Guide to Broadband", found at: <https://comcom.govt.nz/consumers/dealing-with-typical-situations/household-contracts-and-bills/phone-and-broadband>.

- 66.2 *How can I improve my broadband?* provides tips on what consumers can do to improve their broadband performance themselves, including optimising Wi-Fi router placement.
- 66.3 *How is my broadband performing?* provides information to help consumers spot potential issues, and when they should discuss them with their broadband provider.
- 66.4 *How do I resolve an issue with my broadband provider?* Provides information on the appropriate channels to use when trying to resolve an issue, for example the Telecommunications Dispute Resolution (TDR) scheme.
67. We have recently converted these fact sheets into three videos presented by former Fair Go presenter, Gordon Harcourt, and will be promoting them to consumers over the next few months.²²

Guidelines and codes

68. If we consider that more action is needed than just shining a light on the RSQ issues we identify, we may issue guidelines to the industry on what we think should be dealt with by an industry RSQ code. If an industry code exists, we may review the code and provide recommendations for improving the code.
69. If we consider that a Commission RSQ code would better achieve the purpose of improving RSQ, then we can create a Commission RSQ code. This code would then apply to the services and providers that we specify, and would be subject to the compliance and enforcement provisions set out in sections 240 to 245 of the Act.²³
70. The Telecommunications Forum (TCF) regularly reviews its own industry RSQ codes. In addition to our ability to formally review industry RSQ codes, we hope to have an increased involvement in the TCF's review process to gain a better understanding of what the codes are trying to achieve, how effective they are, and any changes that the industry proposes.

Compliance and enforcement

71. In addition to the work we are undertaking to improve RSQ as part of the Act, we also continue to enforce the FTA as it relates to telecommunications. As discussed above, we will continue to review our current information (complaints, referrals from other agencies, the media, and our own intelligence-gathering) to identify, prioritise and investigate false or misleading conduct. The framework presented in this paper does not affect that existing process.
72. However, once we have established more information as part of the Data and Monitoring stages of our framework, we will be better placed to identify harmful

²² Commerce Commission, "Beginner's Guide to Broadband", found at: <https://comcom.govt.nz/consumers/dealing-with-typical-situations/household-contracts-and-bills/phone-and-broadband>.

²³ Telecommunications (New Regulatory Framework) Amendment Act 2018, sections 240-245.

conduct. To ensure that we meet our objective of protecting consumers, we anticipate our RSQ data being used, where appropriate, to highlight issues that could progress to investigation, so that we can form a view on whether a breach of the law has occurred.

73. Our enforcement response guidelines highlight options available to us. How we select the appropriate enforcement response will depend on the harm, conduct and public interest of the issue.²⁴
74. Should we choose to create a Commission RSQ code, it will also be important to establish appropriate mechanisms for the compliance with those codes. Sections 240-245 of the Act detail the enforcement options available if providers fail to meet the binding obligations of a Commission RSQ code, including referral to the dispute resolution scheme and appeals to the District Court.
75. As we note below in paragraph 87, we are required to review the TDR at least once every three years. If, through our engagement, we identify that the cause of a particular RSQ issue is the way that complaints are being recorded or addressed, then we may also choose to conduct a review of the TDR scheme in response to that issue.

Review

The **Review** stage is the process of measuring and assessing the effectiveness of any interventions that we may use, and whether the desired outcome was achieved or is on track. This stage of the framework will also ensure that we review what, if any, changes are needed to the information that we collect and/or publish.

²⁴ Commerce Commission, "Enforcement response guidelines" (October 2013).

Appendix: Amendments to the Act that relate to retail service quality

76. Section 5 of the Act now includes a definition of RSQ of telecommunications services:²⁵

retail service quality, in relation to a telecommunications service, means the quality of retail service provided to an end-user of the service, including in relation to the following:

- (a) customer service and fault service levels
- (b) installation issues
- (c) contract issues
- (d) product disclosure
- (e) billing
- (f) the switching process and related information
- (g) service performance, speed, and availability

77. Section 5 of the Act also includes a definition of RSQ codes:²⁶

retail service quality code means a code of conduct relating to retail service quality that applies to the provision of 1 or more types of telecommunications service.

78. Section 9A of the Act defines the Commission's functions and powers in relation to monitoring and information dissemination. The existing clauses required us to monitor certain matters and make information available about those matters and gave us the power to conduct inquiries, reviews and studies on certain matters. Sections 9A(1)(a), (b) and (d) state as follows:²⁷

(a) must monitor competition in telecommunications markets and the performance and development of telecommunications markets; and

(b) may conduct inquiries, reviews, and studies (including international benchmarking) into any matter relating to the telecommunications industry or the long-term benefit of end-users of telecommunications services within New Zealand; and

...

(d) must make available reports, summaries, and information about the things referred to in paragraphs (a) to (c).

²⁵ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 5 (Interpretation).

²⁶ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 5 (Interpretation).

²⁷ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 9A.

79. Section 9A now provides additional clauses, which require us to monitor RSQ and make information about RSQ available:²⁸

(d) must monitor retail service quality in relation to telecommunications services; and

(e) must make available reports, summaries, and information about retail service quality in a way that better informs consumer choice.

80. Section 10A provides the Commission with the power to require the provision of information to support our functions of monitoring and reporting on RSQ under section 9A:²⁹

For the purpose of carrying out its functions under section 9A(1)(e) and (f), the Commission may, in addition to exercising any of its other powers under this Act, by notice in writing, require any provider of telecommunications services to –

(a) prepare and produce forecasts, forward plans, historical information, or other information; and

(b) apply any methodology or format specified by the Commission in the preparation of forecasts, forward plans, historical information or other information.

81. A new Part 7 of the Act provides the Commission with the ability to review industry RSQ codes, as well as create regulated Commission RSQ codes in certain circumstances. An RSQ code's purpose is defined in section 233 as:³⁰

The purpose of a retail service quality code is to improve retail service quality to reflect the demands of end-users of telecommunications services.

82. Section 234 enables the Commission to issue guidelines for RSQ matters:³¹

The Commission may issue guidelines to the telecommunications industry on any matter relating to retail service quality codes, including advice on what matters are appropriately dealt with by retail service quality codes.

83. Section 235 enables the Commission, at any time, to review an industry RSQ code. After each review we must:^{32,33}

(a) advise the Forum, the dispute resolution provider for the code (if any), and the Minister of any recommendations for improving the code and of any recommendations for creating a new code; and

(b) advise the Minister of whether any previous recommendations have been implemented; and

(c) advise the Minister of whether, in the Commission's opinion,—

²⁸ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 9A,

²⁹ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 10A.

³⁰ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 233.

³¹ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 234.

³² Telecommunications (New Regulatory Framework) Amendment Act 2018, section 235.

³³ "Forum" means the Telecommunications Industry Forum, as defined in section 5 of the Act.

- (i) the code fails to achieve the purpose set out in section 233; or
 - (ii) a Commission RSQ code would better achieve the purpose set out in section 233.
84. If no industry code exists, or if in the Commission’s opinion, the code either fails to meet the purpose of a RSQ code or a Commission code would better meet that purpose, then section 236 permits to Commission to create a RSQ code. Under section 237(1) a Commission RSQ code must:³⁴
- (a) specify which telecommunications services it applies to; and
 - (b) specify which telecommunications service providers it applies to; and
 - (c) promote the purpose set out in section 233.
85. While an industry RSQ code generally only applies to signatories to the particular code, Commission RSQ codes may, under section 237(2):
- (a) impose binding obligations on telecommunications service providers that provide retail telecommunications services covered by the code; and
 - (b) contain any other provisions that are necessary or desirable.
86. Sections 240 to 245 outline the dispute resolution requirements of Commission RSQ codes.³⁵ The existing industry code dispute resolution scheme will be the scheme for all Commission RSQ codes unless a new consumer complaints system is introduced by the Minister if Part 4B of the Act comes into force.³⁶
87. Section 246 requires the Commission to review industry dispute resolution schemes (such as the existing industry dispute resolution scheme) at least every three years. As part of a review, we must consider:³⁷
- (a) the purpose of the scheme;
 - (b) the scheme provider;
 - (c) the dispute resolution provider for the scheme;
 - (d) the effectiveness of the scheme in resolving complaints by consumers against service providers;
 - (e) the adequacy of the scheme rules;
 - (f) whether the scheme rules comply with the following principles;
 - (i) accessibility;
 - (ii) independence;

³⁴ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 237.

³⁵ Telecommunications (New Regulatory Framework) Amendment Act 2018, sections 240-245.

³⁶ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 240.

³⁷ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 246.

(iii) fairness;

(iv) accountability;

(v) efficiency;

(vi) effectiveness;

(g) whether any recommendations for improving the scheme made under subsection (4) have been implemented;

(h) the purpose of the dispute resolution provider for the scheme;

(i) the procedures that are used for receiving, investigating, and resolving complaints;

(j) how promptly complaints are dealt with.

88. Under section 246(4), the Commission must provide a report to the dispute resolution provider of the scheme that contains recommendations for improving the scheme.³⁸

³⁸ Telecommunications (New Regulatory Framework) Amendment Act 2018, section 240.