

Relevant statutory references

Relevant extracts from the Telecommunications Act 2001

Section 5: Interpretation

broadcasting has the same meaning as in section 2(1) of the Broadcasting Act 1989

liable person means a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person

PTN or public telecommunications network –

- (a) means a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication:
- (b) includes –
 - (i) a PSTN:
 - (ii) a PDN

qualified revenue means the revenue (as determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to the liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

- (a) telecommunications services by means of its PTN:
- (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN

telecommunication means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not

telecommunications service means any goods, services, equipment, and facilities that enable or facilitate telecommunication

Section 79: When 2 or more bodies corporate must be treated as 1 person

- (1) For the purposes of this Part, any 2 or more bodies corporate must be treated as 1 person if—
 - (a) one of them is a body corporate of which the others are subsidiaries; or
 - (b) all of them are subsidiaries of the same body corporate; or
 - (c) all of them are associates of each other; or
 - (d) one of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or
 - (e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.
- (2) For the purposes of subsection (1)(c), a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.
- (3) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of subsection (2) just because—

- (a) those bodies corporate are in competition in the same market; or
 - (b) 1 of them supplies goods or services to the other.
- (4) 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.

Section 80: Interpretation

In this subpart, unless the context otherwise requires,—

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

financial statements—

- (a) except if section 79 applies, has the same meaning as in section 8 of the Financial Reporting Act 1993; and
- (b) if section 79 applies, means a consolidated statement of financial performance of the 2 or more bodies corporate required by that section to be treated as 1 person, prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993

minimum telecommunications revenue means \$10 million, or such other amount, as may be prescribed by regulations made under section 101(1)(a), of gross revenue (as may be determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to a liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

- (a) telecommunications services by means of its PTN;
- (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

Section 81: Subpart does not apply to certain liable persons

- (1) This subpart does not apply to a liable person in respect of a financial year (financial year A) if —
 - (a) the liable person was not trading in the financial year preceding year A; or
 - (b) the liable person's telecommunications revenue for the year preceding financial year A was less than the minimum telecommunications revenue.

Section 82: Liable persons must produce information on qualified revenue

Not later than 60 working days before the end of each financial year (financial year A), each liable person must provide to the Commission a copy of—

- (a) its financial statements for the financial year preceding financial year A; and
- (b) any further information specified by the Commission for the purpose of enabling it to verify the qualified revenue of that person for the financial year preceding financial year A.

Section 83: Liable persons must produce information for purposes of liability allocation determination

- (1) Not later than 60 working days after the end of each financial year, each liable person must provide to the Commission—
 - (a) all prescribed information or, if there is no prescribed information, information specified by the Commission, for the purpose of enabling the Commission to make its determination in accordance with section 88(a); and
 - (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.

Section 85A: Certain revenue from broadcasting services

- (1) For the purposes of this subpart, the amount of a liable person's qualified revenue must exclude the following amounts (as determined in accordance with any specifications set by the Commission):
 - (a) any amount of revenue that is received by a liable person in relation to a broadcasting service that is supplied to end-users free of charge (for example, revenue derived from a free-to-air radio or television service):
 - (b) any amount of revenue that is received before 1 July 2020 by a liable person in relation to any other broadcasting service.
- (2) The specifications set by the Commission may (without limitation) provide for the apportionment of any amount of revenue if the amount is received in connection with a service referred to in subsection (1) and 1 or more other services.

Relevant extracts from the Broadcasting Act 1989

Section 2(1): Interpretation

broadcasting means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus but does not include any such transmission of programmes —

- (a) made on the demand of a particular person for reception only by that person; or
- (b) made solely for performance or display in a public place