



TCF Submission
Commerce Commission 111 Contact Code
Emerging Views Paper
14 October 2019

Introduction

This submission is prepared by the NZ Telecommunications Forum (TCF) and is provided to the Commerce Commission (Commission) in response to its 111 Contact Code (the Code) Emerging Views Paper (the Paper). The submission represents the views of the TCF Vulnerable End User Working Party (the Working Party). The following TCF members were part of the Working Party; 2degrees, Chorus, Enable Networks, Spark, Trustpower, Ultrafast Fibre, Vocus Group, Vodafone.

The Commission is required to develop and publish a 111 Contact Code (the Code). The Code is for the “*purpose of ensuring that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure*”¹. The Code is intended to support particular consumers under specific circumstances.

The submission has been structured consistent with the order of the sections listed in the Commission’s Paper. Additional issues which the TCF wishes to raise with the Commission are included in the paper. Where any member of the Working Party has a nuanced or opposing view to the consensus, that view is noted in the body of the submission. However, it should be noted that in relation to the process for identifying a vulnerable consumer, the Retail Service Providers (RSPs) hold a different view to Chorus and the LFCs and that difference in view is set out below.

The TCF’s strong preference for any new Code or process starts from a position of capturing business as usual (BAU) processes, adjusted to achieve the desired outcome. This approach is particularly important where BAU processes are already in place across the industry.

Consumers are increasingly choosing naked services, that is, they choose not to have a primary voice service on their line. The TCF agrees with the Commission that these consumers are out of scope. Consumers who have chosen ‘naked’ connections usually have mobile services and can use one or more ‘over the top’ voice services (such as Skype, messenger and others) for voice calling. The TCF considers that ‘over the top’ voice services should also be out of scope.

Consumer choices in Customer Premises Equipment (CPE) are not something that RSP’s can, or should, control. Very few consumers today have a phone which is corded and plugged into a phone jack in the wall. Most are cordless and will not work in the event of a power failure, even if the copper line is powered. Where a residential fixed line is the only option for a vulnerable consumer, RSP’s should be responsible only for ensuring that a vulnerable consumer has a ‘powered access point’ in the home from which the consumer can make a 111 call, if the appropriate device is connected directly to the ‘access point’.

When a consumer has been identified as a vulnerable consumer, and the RSP has determined that the vulnerable consumer has a voice service which will not work in the event of a power failure in the home, it is then necessary to ensure the consumer has appropriate means to contact 111 emergency services if the power fails. The TCF agrees with the Commission that if the consumer (or a person on their behalf) has access to a mobile phone, no further action is required by the RSP.

The question of appropriate means will depend on a range of factors, including the mobile coverage in the area, and the practicality of providing battery back-up to the landline. Where mobile coverage is available, and the vulnerable consumer does not have access to a mobile phone, the RSP will provide a low-cost mobile device capable of making a 111 call. Where this is not a practical solution, then battery back-up is likely to be explored, with the intention of ensuring that power will be available to the residential fixed access line providing the voice service.

¹ Ss. 238(1) Telecommunications Act 2001

It should also be noted that the position of the TCF may alter, depending on the final decisions the Commission indicates that it wishes to take. To this extent, the TCF encourages a workshop with stakeholders before it issues a draft Code for public consultation.

In this document when we refer to:

- 'business as usual' (BAU) processes we mean the BAU processes which are in place at the time of writing;
- 'landline' means landline services capable of contacting 111 are provided. These are copper, fibre, HFC cable, and fixed wireless (cl.61 of the Commission's Paper).

Below the TCF has set out a summary of the RSP view and the Chorus and the LFC view which are further detailed throughout the submission on the relevant issues.

RSP view of the issues:

Customer care and outcomes are extremely important to RSPs, in particular for those who are the most vulnerable in our communities. The RSPs understand the intention of the Code is to support vulnerable consumers. Most RSPs currently have processes in place to identify vulnerable consumers with the intention of providing additional protection to these consumers. This process is applied when consumers are seeking new connections or migrating from one access technology to another. Consequently, the Commission's proposal to identify vulnerable consumers based solely on their access technology is not the preferred option for RSPs.

The requirement of ss. 238(3)(c)(i) requires that the 111 Contact Code "*...must .. prescribe a process ... for a consumer of those services ... to demonstrate that they ... are a vulnerable consumer*"; this language suggests that a consumer of residential fixed access services self-identify as being a vulnerable consumer, and demonstrate this, presumably to their RSP. Most RSPs currently record vulnerable consumers within their own systems to ensure this information is available for the purposes noted above. This also supports RSPs' disconnection policies. RSPs are proposing that the Code utilises the processes currently used by RSPs to identify and record vulnerable consumers.

The Commission's approach is based on the premise that every consumer should have the ability to contact 111 emergency services from their home. The approach requires that RSPs provide a solution to all consumers who don't have a mobile phone (or are outside mobile coverage) and who purchase a voice service via a fixed access line which requires power when the power to their premises fails. Under this proposal a solution is required for all consumers because they might have a need to contact 111 during a power failure. The access-technology approach is focussed on the landline to the premises, it does not place the vulnerable consumer at the centre and is not based on any assessment of the likelihood of such a need arising. Consequently, it ignores a key part of the statutory definition of a vulnerable consumer – that they have a "particular risk of requiring the 111 emergency service".

Mobile is now the primary means of contacting 111 emergency services, and copper access is a mix of PSTN, VOIP, and Baseband IP – some of which requires power in the home, and some which does not. The issue is whether the consumer is at *particular risk* of needing to contact 111 emergency services, and whether, based on their access technology, they will be able to do so during a power failure in the home.

The Act is clear that the definition is two parts, with the first part being conditional on whether the customer is at *particular risk of requiring* the 111 emergency services. 'Particular risk' implies a subset of the total population that has a higher risk and the example given in the Act is a known medical condition.

This risk of needing to access 111 emergency services will not change if the consumer changes technology, so the definition should be treated as a two-part test, rather than conflated in to one test based on technology.

If the policy intention had been to take a technology only approach, as proposed by the Commission, then the Act would not contain the first limb of the definition as this is made redundant by the interpretation of the second limb.

The RSPs preference is to require consumers to self-identify their vulnerability so that support is being provided to those genuinely in greater need - that support being broader than just the need to make a call to 111 emergency services. Having identified a vulnerable consumer, the RSP can work with them to identify their needs and ensure an appropriate solution is available, either a mobile device, or battery back-up to provide power to the access line.

The RSP will have no control over what the vulnerable consumer does with the solution they are provided. One benefit of self-identification by a vulnerable consumer is that they are demonstrably taking responsibility for their own wellbeing. This means that they are more likely to deploy the solution they are provided. That is, where they are provided a low-cost mobile device, they are more likely to connect the device to a power point and charge it, or if they have a battery back-up, or ensure they have a corded phone. Because they are taking responsibility for their own wellbeing, they are more likely to follow up with the RSP if the equipment requires maintenance or replacement. Providing a solution is one step in the process – the vulnerable consumer must also take action to ensure it will work when required. A consumer who self-identifies as vulnerable consumer is more likely to do this.

RSPs consider that the decision on which wholesale or retail services are within scope of the code must be based on their resilience during a power outage at the end-users premise. The point of failure during an outage must bear the full costs of the code. Where both services do not function during a power outage then the costs must be shared equitably. This view is detailed in page 16 and 17. RSPs consider that this is particularly important when the migration is driven by Chorus copper switch off and where the interpretation of vulnerable consumer is to be solely based on technology.

Chorus and the LFC view of the issues

Chorus and the LFC members agree with the RSPs on the following:

- Customer care and outcomes are extremely important;
- The Code applies to the ability to contact all emergency services, i.e. fire, ambulance and police services;
- The scope of the Code covers power failure at an end consumers premises, and not telecommunications network resilience;
- The Code does not apply where consumers use a cordless phone, own mobile phone or have chosen not to have a landline (i.e. naked broadband); and
- ‘Providers’ of the ‘appropriate means’ should be RSPs, as they hold the contractual relationship with the consumer.

The LFC members and Chorus disagree with the RSPs proposed definition of ‘vulnerable consumer’ for the purpose of the Code. They support the Commission’s interpretation of the Code’s intent - that is, to ensure vulnerable consumers can contact all 111 emergency services in the event of a power failure. Accordingly, the LFC members and Chorus consider the Commission’s proposal to adopt a technology-based approach, regardless of whether copper services have been withdrawn in a location or not, is the appropriate approach for defining a ‘vulnerable consumer’. A definition that relies on an assessment of particular personal circumstances fails to acknowledge that pre-determined conditions (such as medical conditions) is not a useful indicator of vulnerability in a power cut, and therefore would not meet the intention of the Code.

While including all consumers as ‘vulnerable’ widens the pool initially, this is considerably narrowed by the proposed definition exceptions (i.e. no landline, a preference for a cordless phone), where those with a mobile phone can be reasonably expected to use it during an emergency. The access technologies that require power at the end users’ residence are fixed wireless access, HFC and fibre. Based on coverage claims of mobile network operators and the fact that fibre and HFC are deployed primarily in urban areas the pool of those moving to access technologies that require power but who do not have mobile coverage is likely to be very small.

Chorus and the LFC members support the application of the TCF Vulnerable End User Code, but it is important not to confuse vulnerable consumers under that Code with consumers who might not generally be medically vulnerable, but who would become vulnerable if they cannot contact 111 in an emergency, due to a power failure (e.g. during a natural disaster). To this end, the Code addresses a wider consumer base of which some are likely to fall under the BAU process and (once ratified) the TCF Vulnerable End User Code.

Chorus and the LFC members agree that RSPs are best placed to determine who does not have a mobile phone or a landline and offer and inform consumers of alternatives where a mobile may not be the appropriate means. Chorus and the LFC members also believe that RSPs are best placed to educate consumers about their choices and ability to call 111 in the event of a power failure depending on the access technology they currently consume. This reflects the current market arrangements, placing the responsibility on the RSP who has the direct relationship with the consumer to ensure they understand the limitations of the service they purchase and their options.

Chorus and the LFC members note that any battery back-up would need to be suitable for the relevant powered equipment, which requires identifying the services and equipment at the customer premises. This is not an exercise Chorus or the LFC members are able to do, because they do not have the direct relationship with the consumer or the requisite visibility of the services they have purchased. Due to the suite of options in the market, there are likely to be different configurations at the customers' premises, which may mean different types of battery depending on whether the landline was connected to the consumer's modem or directly to the ONT. Accordingly, RSPs are the best placed to determine what would be suitable for their consumers.

When considering who bears the cost of a backup solution the Commission should ensure its approach incentivises the lowest overall costs for consumers while meeting the requirements of the Code. To this end, Chorus and LFCs consider RSPs should bear all costs associated to deliver an 'appropriate means' to 'vulnerable consumers', as it incentivises them to provide efficient solutions. We do not consider that RSPs will have the right incentives, or consumers will be best served, if the cost is not met by RSPs.

Chorus and the LFC member views are further captured in separate submissions and will continue to be expressed in separate submissions moving forward.

SECTION: Context for the Code

Issue: What services are included under the definition of 111 emergency services?

Section/s of the Act:

Not defined.

Emerging Views Paper:

cl. 12 – The Commission considers that Ambulance, Police, Fire and Emergency are included in the definition of 111 emergency services, but does not included providers of monitored alarms (medical or security)

TCF Views:

Agree, with the Commission’s view.

SECTION: Outside the scope of the Code

Issue: What is the definition of ‘power failure’?

Section/s of the Act:

Part 7. ss. 238 (1) The Commission must make a code for the purpose of ensuring that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a *power failure*.

Emerging Views Paper:

cl. 30 and 31: The Code is restricted to failures that mean the power goes off at a consumer’s premises, and that the scope of the Code does not cover power failures to telephone exchanges or similar telecommunication infrastructure. Nor does it relate to situations where the power is not available to the premises due to consumer choice or action such as not being connected to the grid or being turned off for construction purposes.

TCF Views:

Agree, with the Commission’s view.

SECTION: Outside the scope of the Code

Issue: Should the scope of the Code cover network resiliency?

Section/s of the Act:

Part 7. ss. 238(4) (c) that enables the Code and ‘any other provisions that are necessary or desirable to achieve the purpose of the Code.

Emerging Views Paper:

cl. 32 the Commission argues that they do not consider resilience of telecommunications networks outside of the consumers premises to be the legislative intent of the Code and therefore should not be included.

TCF Views:

Agree, with the Commission’s view.

SECTION: Outside the scope of the Code

Issue: How should the Code consider consumer choice?

Section/s of the Act:

Part 7. ss. 238(4) (c) that enables the Code and 'any other provisions that are necessary or desirable to achieve the purpose of the Code'.

Emerging Views Paper:

cl. 36 & 37: The Commission considers that the Code is not intended to address situations where consumers make choices which potentially compromise their access to the 111 service in the event of a power failure.

cl. 39 & 40: The Commission considers that the scope of the Code does not include vulnerable consumers who have chosen not to take a landline.

TCF Views:

The TCF supports the Commission's view that the Code is not intended to address consumer choices that may potentially compromise their access to call 111 emergency services in the event of a power failure. RSPs cannot be responsible for scenarios where, after being informed of the possible consequences of their decision, consumers make choices that may affect their ability to contact 111 emergency services, for example when a consumer has been given reasonable access to take up a voice service on a fibre or copper network and the consumer chooses not to utilise a corded phone or fails to install a battery back-up device or any alternative provided to them.

SECTION: Outside the scope of the Code

Issue: Should the ICAP service provision be out of scope of the Code?

Section/s of the Act:

N/A

Emerging Views Paper:

cl. 41-44: The Commission has included an avoidance of doubt clause which excludes ICAP service provisions from the scope of the Code.

TCF Views:

Agree, with the Commission's view.

SECTION: Outside the scope of the Code

Issue: Are there any other areas that should be considered outside the scope of the Code not identified by the Commission?

Section/s of the Act:

Part 7. ss. 238 (3)

Emerging Views Paper:

Q2. Are there any other areas that should be considered outside the scope of the Code?

TCF Views:

The TCF supports that the following are out of scope of the Code:

1. A consumer who chooses to consume only a naked broadband service, mobile service or relies on non-compliant OTT products (e.g. Skype, WhatsApp) for their voice calling.
2. A consumer of a telecommunications fixed-line services delivered over traditional copper PSTN and Baseband IP analogue voice services because the consumer can make a call to a 111 emergency service in the event of a power failure via a non-powered corded telephone.
3. A consumer who may already have installed adequate power back up at their premises i.e. generator equipment or battery back-up device.
4. Telecommunications network resiliency.
5. Notification of power outages to vulnerable consumers. (Discussed below on page 21)

SECTION: Requirements of the Code

Issue: Who should be considered a vulnerable consumer?

Section/s of the Act:

Part 7. ss. 238 (51) The Act defines a Vulnerable Consumer as a consumer who *“is at particular risk of requiring the 111-emergency service (for example, due to a known medical condition), and who does not have a means for contacting the 111 emergency services that can be operated for the minimum period in the event of a power failure.”*

Emerging Views Paper:

The Commission’s Paper sets out two proposals to the assessment of consumer vulnerability:

1. that all consumers are potentially vulnerable without access to 111 emergency services in the event of a power failure and assessment is based on the access technology available at the consumer’s premises; or
2. RSPs must identify in advance those consumers who are at particular risk of calling 111 emergency services and then consider whether they have appropriate means to make a 111 call in the event of a power failure.

RSP View:

RSPs do not agree with the Commission’s position that all consumers are intended to be covered by the Code. This approach was not the policy intent of the Act and would result in significant cost to the industry. Section 238 (1) of the Act states that the Commission must make a code for the purpose of ensuring that vulnerable consumers have reasonable access to an appropriate means for contacting emergency services. If the purpose of the Code was to cover all consumers, the Act would have used different language, for example by specifying ‘all consumers’ or simply ‘consumers’. The Act provides a two-part test for the definition of a Vulnerable Consumer, part one being that the consumer has a ‘particular risk’ of requiring 111 emergency services and part two, which is an assessment of their access technology to determine whether the vulnerable consumer has the means for contacting 111 emergency services in the event of a power failure. The Act also provides for the Code to specify classes of people that must be considered vulnerable. Such a provision is at odds with a Code that is intended to cover all consumers.

The wording of the Act, and, the definition of a vulnerable consumer, refers to consumers who are “at particular risk of requiring 111 emergency services”. This indicates that the Code is concerned with consumers who, because of their personal circumstances have a higher level of risk than the general population. RSPs therefore prefer a condition-based approach to assessing whether consumers are vulnerable for the purposes of the Code.

A condition-based approach would require RSPs to first assess whether a consumer is at a particular risk². The RSP would then consider whether the consumer has a means for contacting 111 emergency services that can be operated for a minimum period in the event of a power failure. This would be done through a process of self-certification with the RSP at the time of on-boarding or switching products. Taking the Commission's approach would render the first part of the definition irrelevant which cannot have been the intention when the legislation was drafted.

For the purposes of step one (assessing particular risk), RSPs could apply the following assessment:

A person at particular risk of requiring the 111 emergency services is a customer or a prospective customer, who has demonstrated to the satisfaction of their RSP that for reasons of, health, disability or safety they, or a member of their household, are dependent on a Telecommunications Service for their wellbeing and therefore has a particular risk that requires the ability to contact 111 emergency services in the event of a power failure.

The vulnerable consumer would then be provided with reasonable access to an appropriate means to contact 111 emergency services.

Chorus and LFC View:

Alternatively, Chorus and LFC members support the Commission's interpretation of the Code's intent - that is, that all consumers have some level of dependency to contact a 111 emergency service at a particular time during a power failure. Accordingly, they consider the Commission's proposal to adopt a technology-based approach is the appropriate assessment for defining a 'vulnerable consumer'. A definition that relies on an assessment of personal circumstances fails to acknowledge that pre-determined conditions (such as medical conditions) is not a useful indicator of vulnerability in a power cut, and therefore would not meet the intention of the Code. A consumer would become vulnerable if they cannot contact 111 in an emergency, due to a power failure (e.g. during a natural disaster). To this end, the 111 Code addresses a wider consumer base of which some are likely to fall under the condition definition, supported by RSPs, and who would already be captured under their BAU registration process.

While including all consumers as 'vulnerable' widens the pool, the LFCs and Chorus believe that this is considerably narrowed by the proposed exceptions described as out of scope of the Code by the Commission (i.e., copper landline connection or consumer choices such as a preference for a mobile phone, cordless phone or no landline).

² Trustpower will submit separately on this point.

SECTION: Requirements of the Code

Issue: How should vulnerability be assessed?

Section/s of the Act:

Part 7. ss. 238 (1)

Emerging Views Paper:

The Commission sets out two approaches to assess vulnerability by either access technology or by condition, with a preference set out in more detail for the access technology option.

RSP View:

RSPs support the condition-based approach for the following reasons:

- Covers the most vulnerable consumers in communities and therefore those most likely to contact 111 emergency services;
- The consumer who self-identifies is more likely to deploy a solution and care for it in terms of maintenance and replacement because they are invested in ensuring their resilience;
- The process for notifying and certifying vulnerability is already established by many RSPs to ensure that those consumers who have a reliance on telecommunications services are identified in the most appropriate way.

RSPs support the following approach to assessing vulnerability³:

- When on-boarding new customers or migrating customers from one product to another, RSPs will give customers the opportunity to self-identify as a vulnerable consumer by taking them through the self-certification process.
- The RSPs note that it would be helpful if the Code includes guidance on what information *must* be accepted as demonstrating that a customer is at a particular risk. For example, the Code may specify that any consumer who submits a statement from the police, courts or a doctor stating that the consumer is at a particular risk, must be accepted as having a 'particular risk' for the purposes of the Code. In all other cases, the assessment set out above on page 8 and 9, can be used. However, RSPs also support the position that, if they wish to, they should be able to accept evidence of a *lower standard* as demonstrating 'particular risk'. For example, some RSPs may decide that they do not need to see court orders or GP letters to establish that a customer is at a particular risk. Rather the RSP may be willing to accept the customer's own statement regarding their personal circumstances as evidence of a particular risk for the purposes of the Code.
- Regardless of how the RSP confirms to their satisfaction that the customer has a particular risk, the RSP would then assess the consumer's access technology.
- The RSP would then go on to determine the most appropriate means for that vulnerable consumer to ensure they are able to contact 111 emergency services.

Finally, the consumer's status as a vulnerable consumer, and the solution provided to them, would then be recorded in the RSP's system.

³ Trustpower will submit separately regarding the guidance on information in the Code.

- This process addresses the Commission’s concern noted in cl. 83 that a centralised databased would be required to allow RSPs to reference consumer information. If the current BAU process is accepted, then it would be the responsibility of the consumer to self-identify their vulnerability. If consumers switch providers, they would follow a similar process with their new provider.
- In cl.84 the Commission observes that the access technology approach would utilise existing data for the purposes of assessment. This is not the case for all RSPs because non-MNO RSPs will not have visibility of mobile network coverage, a key test for this approach. As with the condition-based approach, the RSP will have to rely on information declared to them by the consumer before assessing determining their vulnerability.

Chorus and LFCs view:

LFCs and Chorus support the access-technology approach for the following reasons:

- Recognises that all consumers may have a need to contact 111 emergency services in the event of a power failure regardless of pre-existing circumstances, and therefore the Code captures those consumers;
- Requires information to be shared between the consumer and the RSP and recorded by the RSP. This reflects the current market arrangements, placing the responsibility on the provider who has the relationship with the end consumer to ensure consumers understand the limitations of the service they purchase.
- There would be no requirement for consumers to self-identify or provide evidence of their condition.

SECTION: Requirements of the Code

Issue: Are medical alarms a means of contacting 111 emergency services?

Section/s of the Act:

Part 7. ss. 238 (4) (b)

Emerging Views Paper:

The Commission raises a question about whether a medical alarm is a means of “contacting” 111 emergency services.

TCF Views:

The TCF does not support medical alarms as being viewed as “... *an appropriate means to contact the 111 emergency service ...*”.

The TCF has noted that it agrees with the Commission’s view that 111 emergency services include Police, Ambulance and Fire and Emergency. None of the emergency services monitor medical or security alarms. Alarm monitoring services are provided by commercial entities which might, dependent on the nature of the issue, be monitored and enable contact to 111 emergency services on behalf of the consumer, but the alarms themselves, are not a means of contacting 111 emergency services.

Many alarms are connected to a mobile network rather than being monitored via fixed line services. If an alarm is connected to a fixed line service, the consumer is more likely to have battery back-up already installed in the device to ensure that the monitoring service continues in the event of a power failure.

SECTION: Requirements of the Code

Issue: Should consumers with cordless walkabout phones be considered vulnerable?

Section/s of the Act:

Part 7. ss. 238 (4) (b)

Emerging Views Paper:

cl. 36 & 37: The Commission considers that the Code is not intended to address situations where consumers make choices which potentially compromise their access to the 111 service in the event of a power failure.

TCF View:

The TCF agrees with the Commission's view regarding consumer choice.

The RSP will provide information to the vulnerable consumer about particular equipment that they will require such as corded phones to make 111 emergency calls, for example over their copper fixed line network, however if a vulnerable consumer chooses not to utilise a legacy corded phone in this scenario then that would be at their own risk.

SECTION: Requirements of the Code

Issue: Should the Code specify a class of people that must be considered vulnerable consumers?

Section/s of the Act:

Part 7. ss. 238 (4) (a)

Emerging Views Paper:

The Commission's approach suggests that all consumers should be able to contact 111 emergency services from their premises, and that therefore conclude that all consumers have a level of risk. The Commission does not set out specific classes of vulnerable consumers.

Chorus and LFC View:

Chorus and the LFCs support the Commission's view that all consumers have a level of risk and are therefore included in the assessment of vulnerability based on the access technology to the consumer's premises.

RSP View:

The condition-based approach and self-certification process recommended by the RSPs does not require the Code to specify classes of people that must be considered vulnerable consumers. As set out above, when RSPs are onboarding new customers or migrating customers from one product to another, the customer will have the opportunity to self-identify as a vulnerable consumer. Through that process it would be up to the RSP to determine whether or not the consumer is a vulnerable consumer for the purposes of the Code.

If the Commission were to specify "a class of people that must be considered vulnerable consumers" we consider that any such class of people can be no wider than permitted by the definition of "vulnerable consumer" in the Act.

In other words, consumers are only vulnerable consumers if they are both at particular risk of requiring 111 services (S238 (5)(a)) AND do not have alternative means to contact emergency services for the minimum period during a power failure (s238(5)(b)). It would not be open to the Commission to, for example, specify a class of

consumers who are at particular risk of requiring emergency services without making further enquiry to conclude that all (or at least the vast majority of) members of that class also do not have the requisite alternative means for contacting Emergency Services.

Specifying a class under s 238(4)(a) seems to create a presumption that every consumer within that class is a vulnerable consumer. We therefore consider that the Commission should exercise caution if it is to exercise this power by first satisfying itself that all (or at least the vast majority) of the members of the class meet all of the requirements of the definition. We do not consider that the Commission has power to specify a class of consumer that satisfies only some of the requirements of the vulnerable consumer definition. Nor does the Commission have the power to specify a class of consumers where only a small number of the class are likely to satisfy the requirements of the definition.

SECTION: Requirements of the Code

Issue: What is the process the Code should prescribe for a consumer to demonstrate that they are vulnerable?

Section/s of the Act:

Part 7. ss. 238 (3) (c)

Emerging Views Paper:

Figure 1.1 The Commission's approach suggests that it is the responsibility of the RSP to assess vulnerability and appropriate means using a technology-based approach.

Chorus and LFC View: Chorus and the LFCs agree with the Commission's interpretation of the intent of the Code, and therefore agree with defining a consumer's vulnerability based on their susceptibility to a power failure of the technology at their premises.

RSP Views:

The consumer is best placed to self-identify that they have a particular risk of requiring 111 services. Once the RSP has established that the consumer is at a particular risk, the RSP would then assess whether the customer is a Vulnerable Consumer for the purposes of the Code by assessing their access technology to determine whether or not they have a means for contacting the 111 emergency services that can be operated for a minimum period in the event of a power failure.

RSPs recommends that RSPs follow their existing BAU process, that is, when a consumer is on-boarding or is migrating to a different service or plan, the RSP would identify whether the person is possibly a vulnerable consumer. In brief, they would use the following process:

- Record the details of the consumer and the circumstances (both 'particular risk' and access technology) which give rise to the likelihood of being a vulnerable consumer;
- Advise the consumer whether they require independent verification (e.g. doctor's certificate, information from a health care provider, or a copy of a protection order). Alternatively, the RSP may accept the consumers statement regarding their particular risk without requiring any further evidence; and
- May require a declaration from the consumer that they have mobile phone access, or that a person on their behalf has a mobile phone.

It will be up to the RSP to determine whether the consumer meets the test of being a vulnerable consumer based on the information provided by the consumer. RSPs will need to ensure the process is in their best practice operational docs.

Some RSPs currently record details of consumers that self-identify as being vulnerable. In this case they will also need to record what they provide the consumer as being ‘appropriate means’ depending on the vulnerable consumer’s requirements. Recording this information is an important process and the RSPs do not consider this to be a significant burden because they have a similar obligation under their disconnection policies.

RSPs may support a centralised register in the future if the number of vulnerable consumers being registered or affected under the Code is large enough to warrant a national register. This would also be dependent on it being cost effective. There is always the possibility of a centralised register being accessed by multiple interests i.e. electricity sector, however privacy of consumer information, costs and accessibility would be key factors to consider. In the meantime, utilising existing BAU process for capturing vulnerable consumers would enable the RSPs to meet the obligations in the Code within an achievable timeframe.

SECTION: Requirements of the Code

Issue: Who should be able to act on behalf of a vulnerable consumer?

Section/s of the Act:

Part 7. ss 238 (1) The Commission must make a code for the purpose of ensuring that vulnerable consumers, *or persons on their behalf*, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.

Emerging Views Paper:

Not covered by the Commission.

Chorus and LFC View:

RSPs are best placed to determine this issue.

RSP View:

RSPs interpret the Act as meaning a parent, guardian or primary carer who is resident or present at the vulnerable consumer’s premises can act on behalf of that vulnerable consumer to make a 111 emergency call during a power failure event.

SECTION: Requirements of the Code

Issue: What happens when a vulnerable consumer who has been provided with an appropriate means switches provider or technology?

Section/s of the Act:

Not specified

Emerging Views Paper:

Not specified

Chorus and LFC View:

RSPs are best placed to determine this issue.

RSP View:

An issue arises when a vulnerable consumer switches provider and has already been provided with a solution by their previous RSP. In this case;

- The Losing RSP may want the right to request that any device or equipment provided is returned; and
- If the vulnerable consumer keeps the solution provided by the Losing RSP, the vulnerable consumer should be required to declare that solution to their new RSP.

Ultimately, it will be a decision for the RSP as to whether they wish to recover the solution they provided to the customer.

The situation becomes more challenging when the a vulnerable consumer who has been provided with battery back-up moves to a new house and the battery back-up is either not able to be taken to their new premises or is not needed in their new premises (for example, if the consumer moved into mobile phone coverage). In those circumstances, the RSP will want the opportunity to recover the equipment, which may be in a rented property or the property has been sold.

RSPs support that under the condition-based approach, if a vulnerable consumer changes access technology, it will be the responsibility of the RSP to ensure that the vulnerable consumer has an appropriate means to contact 111 emergency services.

SECTION: Requirements of the Code

Issue: What telecommunication services should the Code apply to?

Section/s of the Act:

Part 7. Ss 238 (3) the code must –

- (a) specify which telecommunications services it applies to;

Emerging Views Paper:

The Commission proposes that the services which apply under the Code will be residential fixed-line voice services over VOIP, HFC, Fibre and fixed wireless. The Code will also apply to residential consumer services and include small office/business services.

Larger commercial business services will be excluded, as will copper fixed-line voice services if they can be used in a power cut (includes Baseband IP)

TCF View:

The TCF supports the Commission's recommendations and set out that the Code applies to:

1. Telecommunications fixed-line VoIP voice services delivered over copper, fibre or HFC networks and fixed wireless.
2. Residential consumer services, acknowledging that this may include SOHO but excludes business.

RSP View:

RSPs further note that if the retail service is dependent on a wholesale service which would not function in the event of a power outage, then that wholesale service should also be considered within scope of the Code. For

example, the fibre fixed line access service provided by Chorus and the LFCs requires power at the consumer's premise to operate, and therefore must be within scope.

SECTION: Requirements of the Code

Issue: Who are the providers that clause (3) (b) applies to?

Section/s of the Act:

Part 7. Ss 238 (3) the code must –

- (b) Require providers of those services to inform consumers about options available for vulnerable consumers;

Emerging Views Paper:

The Commission takes the view that RSPs have the relationship with consumers and therefore are responsible for informing vulnerable consumers of their options.

TCF View:

The TCF agrees that it is the RSPs responsibility to inform their vulnerable consumers about options available to them under the Code.

RSP View:

RSPs support the TCF view and note that information about options for Vulnerable Consumers should be available either online or in written material that is easily accessible by consumers. RSPs may include a question in call-centre wording to allow for the customer to self-identify (new customers and existing customers changing services).

It should be noted that in some cases there will not be a range of options available to the vulnerable consumer and that what can be provided as an appropriate means is dependent on the vulnerable consumer's situation.

An RSP cannot force a vulnerable consumer to change access technology due to their circumstance under the Code, to allow the RSP to meet their obligations.

SECTION: Requirements of the Code

Issue: Who are the providers that clause (3) (d) applies to?

Section/s of the Act:

Part 7. ss 238 (3) the code must –

- (d) require the providers of those services to supply vulnerable consumers, at no cost to the consumer, with the appropriate means....

Emerging Views Paper:

Cl. 66 & 67: The Commission proposes that 'provider' means Retail Service Provider.

TCF View:

The Commission's Paper states under cl.67 that the RSP is 'likely to be best placed to inform vulnerable consumers about the option is available to them, it does not clearly cover who should bear the costs of supplying vulnerable consumers with appropriate means for contacting 111 emergency services. The TCF notes that the cost could be significant depending on the classification of vulnerable consumer and the nature of the solutions required. There is a range of options available for allocating the cost of supplying the "appropriate means".

The TCF has a mix of view from their members on who should cover the costs of supplying, and in certain circumstances installing, battery back-up equipment. The various options that have been discussed by the working party are set out below:

Options discussed:

1. As RSPs provide the retail voice services to consumer, therefore the RSP is responsible for providing the solution at no cost to the vulnerable consumer;
2. The access network provider of the certain equipment should cover the cost of the equipment and assist with installation if the solution requires UPS/battery back-up, excluding those who will rely on other means such as mobile services.
3. TDL could cover the cost of battery back-up, this would require RSPs to register the equipment in a centralised database.
4. Where Chorus has made a commercial decision to withdraw copper services, Chorus could be requested to fund battery backups as part of the fibre installation to vulnerable consumers who require this solution.
5. An allowance or subsidy could be provided through MSD, similar to that provided for medical alarms.

RSP View:

RSPs consider that all suppliers of all in scope services must share the costs. As covered above, if a wholesale service does not operate in the event of a power outage it must be within scope. This means there are three scenarios:

1. The wholesale service continues to operate during a power outage, but the retail service does not, such as VOIP services delivered over a standard UBA connection. In this case the full costs of the code are met by the RSP
2. The wholesale services do not continue to operate during a power outage, but the retail service does continue to operate, such as voice access over the ATA port on a fibre fixed line access service. In this case the full costs of the code must be met by the wholesaler.
3. Neither the wholesale service nor the retail service continues to operate in the event of a power outage. In this case the costs of the code must be met separately by the wholesale and retail provider for each of their network elements. The two parties may choose to work together on a commercial basis to save costs e.g. it may be possible to use a single battery backup solution to protect both the wholesaler's ONT and the retailers RGW.

In all cases it must be the RSP (as the manager of the customer relationship) that determines the appropriate technology for contacting emergency services in the event of a power outage.

Chorus and LFC view:

When considering who bears the cost of a backup solution the Commission should ensure its approach incentivises the lowest overall costs for consumers while meeting the requirements of the Code. To this end, Chorus and LFCs consider RSPs should bear all costs associated to deliver an 'appropriate means' to 'vulnerable consumers', as it incentivises them to provide efficient solutions. We do not consider that RSPs will have the right incentives, or consumers will be best served, if the cost is not met by RSPs.

SECTION: Requirements of the Code

Issue: What is the definition of reasonable access?

Section/s of the Act:

Part 7. ss.238 (1) The Commission must make a code for the purpose of ensuring that vulnerable consumers, or persons on their behalf, have *reasonable access*....

Emerging Views Paper:

The Commission does not define reasonable access, although it notes that a consumer who has a copper fixed line [which will work during a power failure] has ‘reasonable access’ to a means to contact 111 emergency services, even though they have made a choice to use a cordless phone (which will not work during a power failure).

RSP View:

RSPs interpret ‘reasonable access’ to be ‘easily available or permanently installed’ and a means to contact each emergency service and identify the location of the person needing assistance.

The criteria of reasonable access could be met by a non-SIM mobile phone. Where a mobile phone is not an appropriate solution, battery back-up to the fixed line (or fixed wireless) will be provided.

Reasonable access test is met if the fixed line is powered by the battery back-up, or the non-SIM mobile phone is available to the vulnerable consumer. The provider of the solution cannot be responsible for ensuring that the mobile phone has been charged by the consumer, or the consumer has a corded phone available. The vulnerable consumer must take some responsibility for their own well-being and safety.

Chorus and LFC View:

RSPs are best placed to determine this issue. Chorus and the LFCs submit that the reasonable access test is met if the consumer has taken steps to ensure their fixed line or wireless voice service is supported by access to the ‘appropriate means’ made available to the vulnerable consumer by their RSP.

SECTION: Requirements of the Code

Issue: What are appropriate means for vulnerable consumers to contact emergency services?

Section/s of the Act:

Part 7. ss 238 (3) the code must –

(d) require the providers of those services to supply vulnerable consumers, at no cost to the consumer, with the appropriate means....

Emerging Views Paper:

Cl. 70 - 74: The Commission proposes that mobile voice and/or text connection is an appropriate means.

Cl. 75 – 81: The Commission proposes that for those vulnerable consumers who cannot either use, no access or limited mobile coverage will require an alternative means such as batter backup that powers the CPE in the event of a power failure.

TCF Views:

The TCF supports the Commission's view that mobile connection is an appropriate means and preferred solution. Where a vulnerable consumer does not own a mobile phone device a non-SIM mobile phone could be provided as an appropriate means or a battery back-up where appropriate.

RSP View:

Under the Commission's proposal of identifying vulnerable consumers by their access technology, it could be difficult for some RSPs to identify whether a vulnerable consumer has access to mobile services. The consumer would be required to identify whether they had a mobile phone through a self-identification process.

Where mobile services are limited then the RSP supports that either in-built phone battery back-up or battery back-up to the line connection is an appropriate means available to vulnerable consumers. RSPs consider that the battery back-up should be to the line. The choice that the consumer makes about the nature of the phone (cordless or corded) remains with the consumer.

RSPs note that there are some issues with battery back-up:

- The battery back-up powers the line to which the device is connected. How the voice service is connected dictates where and how battery back-up is installed and is not a one solution fits all.
- Battery back-up may require the consumer to have a corded plugged-in phone.
- Battery back-up solutions are complex and can be expensive:
 - o The Network Operator may charge the RSP if the RSP is required to order specific equipment from the Network Operator to ensure that the "appropriate means" is compatible with the Network Operator's network equipment;
 - o A supply of different battery back-up equipment will be required;
 - o Installation issues such as reliance on the consumer to install the equipment or additional cost of a technician installing the equipment at the premises;
 - o The physical location of battery back-up for ONT/RGWs is unique to the installation of the ONT/RGW and not standardised for all scenarios.
 - o The solution may require multiple devices to be backed up.
- The battery back-up solution has additional factors to consider such as the battery lifecycle, number and location of devices, practicalities of providing power to the back-up.

Consumers will have to take responsibility to notify RSPs when their battery has worn out and they need a new one. RSPs would propose that at this time the vulnerable consumer would need to re-certify that they remain vulnerable. Depending on the number of vulnerable consumers identified, it may be economic for an IOT device to be developed or identified which allows a 111 voice call but has no other function.

RSPs are also firmly of the view that Chorus and the LFCs should bear all costs associated to deliver an 'appropriate means' to 'vulnerable consumers' where this involves battery backup for an ONT. Chorus and the LFCs should not profit from the installation of battery backup on the fibre network.

Chorus and LFC View:

Chorus and the LFC members support the use of a basic-mobile phone, for vulnerable consumers who are able to use one, as the first-line back-up option. This is likely to be the most efficient, least-cost option suitable for the majority of vulnerable consumers. They also agree with the Commission that a back-up battery is a potential option and are in agreement with the Commission that the Code should remain flexible by allowing providers to decide what alternatives they offer.

When considering who bears the cost of a backup solution the Commission should ensure its approach incentivises the lowest overall costs for consumers while meeting the requirements of the Code. To this end, Chorus and the LFCs consider RSPs should bear all costs associated to deliver an 'appropriate means' to 'vulnerable consumers', as

it incentivises them to provide efficient solutions. Chorus and the LFCs do not consider that RSPs will have the right incentives, or consumers will be best served, if the cost is not met by RSPs.

SECTION: Requirements of the Code

Issue: What other appropriate means, technologies or solutions for contacting 111 are there available to vulnerable consumers?

Section/s of the Act:

Not specified.

Emerging Views Paper:

Not specified.

TCF View:

The TCF agrees with the Commission that the Code should remain flexible by allowing RSPs to decide what alternatives they offer. The Code should not restrict future IOT developments that may come available for the specific use of contact 111 emergency services.

RSP View:

RSPs support the TCF view and in addition note, vulnerable consumers should be able to have the choice to opt out and not receive the specified appropriate means as defined under the Code and utilise alternative technologies to contact 111 emergency services, (e.g. the vulnerable consumer may have arrangements with their medical or security alarm monitoring service). In these cases, the Code should allow the consumer to rely on these alternatives and opt out of receiving a solution that they decided they don't want or will never use. In which case, RSP would not be obligated to provide any other appropriate means unless by later agreed by the RSP and vulnerable consumer.

SECTION: Requirements of the Code

Issue: What is the minimum period during which a service for contacting emergency services must operate in the event of a power failure?

Section/s of the Act:

Part 7. ss.238 (3)(d) & (e)

Emerging Views Paper:

The Commission noted a range of examples.

RSP View: RSPs recommend that the appropriate minimum period that a service must operate for contacting emergency services is one hour. This is based on the UK model⁴, noting that solutions provided by RSPs will generally last longer than an hour.

LFC View: RSPs are best placed to determine this issue.

⁴ OFCOM "guidelines on the use of battery backup to protect lifeline services delivered using fibre optic technologies" (2011).

SECTION: Dispute Resolution

Issue: How would disputes be raised under the Code?

Section/s of the Act:

Part 7. ss. 240

Emerging Views Paper:

Not specified

TCF View:

The Act provides that the dispute scheme for all Commission Codes is the industry scheme (ss. 240). The 111 Contact Code is a Commission Code (ss. 5), consequently the appropriate body for dispute resolution is the TDRS.

Section: Code Amendment Process

Issue:

What will be the Code review process? Can a party other than the Commission propose a review of the Code?

Section/s of the Act:

Part 7. ss. 238 (2)

The Code must be made before the implementation date.

Implementation date is 2020.

Part 7. Ss. 239

Sets out the process for making or amending the Code

Emerging Views Paper:

The Commission notes the Act sets out the process for making and amending the Code.

TCF View:

The TCF believes that the Code should allow for proposals from the TCF to the Commission for them to consider amendments to the Code. The Code will require changes to industry processes and the relationship it has with consumers. Despite best efforts, it is possible that the Code will contain provisions that prove not to be workable. In these cases, the TCF may wish to highlight these to the Commission and seek changes.

SECTION: Implementation

Issue:

When should the Code be implemented?

Section/s of the Act:

Part 7. ss. 238 (2)

The Code must be made before the implementation date.

Implementation date is 2022.

Emerging Views Paper:

Under appendix A: The Commission notes the link to the copper withdrawal requirements; therefore, the implementation of the Code could be argued to be from the time it is published.

TCF View:

The TCF believes that the Code should be forward looking and apply (i.e. be in force) from the time the Code is approved. The TCF has proposed that vulnerable consumers will be identified when consumers migrate from one access technology to another.

Some RSPs may elect to apply the Code to consumers they have already identified as vulnerable. However, retrospective application of the Code will be a commercial decision and should not be a requirement of the Code.

Chorus and the LFCs support the Commission's objective to have the 111 Code in force by June 2020 (in alignment with its timing for the CWC).

SECTION: Compliance / Enforcement / Assurance

Section/s of the Act: Sections 248 (Purpose of the disputed scheme provider is to monitor and enforce Commission Codes).

Issue:

What compliance and enforcement should apply to the Code?

Emerging Views Paper:

Appendix A: The Commission notes that it has the responsibility for monitoring compliance with the Code and reporting on compliance.

TCF View:

The Act already anticipates that the industry dispute resolution scheme (TDRS) should apply to all Commission Codes. This means that the TDRS will be required to monitor and enforce compliance with the Code. The Act is contradictory in that it requires two different agencies to enforce and monitor compliance with the Code.

Further Considerations

Issue:

Should RSPs or Network Operators be required to notify vulnerable consumers of a power outage?

TCF View:

There should be no obligation to communicate with Vulnerable Consumers on an individual level regarding planned and unplanned telecommunications or power outages and should be out of scope of the Code.