

Purpose statements and relevance of Part 4 to the IMs

In the invitation to comment on our proposed approach, we asked stakeholders:

Q3 What are your views on our proposed interpretation of 'end-users of telecommunications services' in s 162 and s 166(2)(b)?

What key purpose statements will guide our IM decision making?

- The purpose of Part 6 of the Telecommunications Act 2001 (Part 6) (Telecommunications Act) is expressed in s 162, which is focused on promoting the long-term benefit of end-users in markets for fibre fixed line access services (FFLAS) by promoting outcomes consistent with those produced in workably competitive markets.
- We are also required by s 166(2)(b) to promote workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services, to the extent we consider it relevant.
- The purpose of input methodologies (IMs) set out in s 174 is to “promote certainty for regulated fibre service providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, under this Part.”

What is the relevance of Part 4 of the Commerce Act to Part 6?

Parliament made a deliberate decision to base the regulatory model in Part 6 on the existing model in Part 4 of the Commerce Act 1986 (Part 4) (Commerce Act). Certain key sections in Part 6 therefore correspond with key sections of Part 4. However, we must always take the specific characteristics of the telecommunications market and the structure and language of Part 6 into account when we make our decisions and cannot simply import the approach we have adopted under Part 4.

What are the key similarities between Part 4 of the Commerce Act and Part 6 of the Telecommunications Act?

- The Part 6 purpose statement (s 162) is adopted from the Part 4 purpose statement (s 52A). They both direct us to promote outcomes produced in workably competitive markets.
- Part 6 introduces the same two key regulatory tools as Part 4 using substantially similar language: information disclosure regulation (ID) and price-quality regulation (PQ).
- The regulatory tools in Part 4 and Part 6 are both supported by input methodologies (IMs) which provide a framework for the development and operation of ID and PQ.
- The purpose statements of the IMs in Part 4 and Part 6 both aim to increase certainty for market participants.

What are the key differences between Part 4 of the Commerce Act and Part 6 of the Telecommunications Act?

- Part 6 contains an additional ‘purpose’ provision in s 166(2)(b) which is based on s 18 of the Telecommunications Act. It provides that when we make a recommendation, determination or decision we must, in addition to giving effect to the s 162 purpose, also give effect “to the extent that [we] consider it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.” (This is discussed in more detail in the topic paper “Statutory purposes in Part 6”).
- Part 4 is focused on the long-term benefit of ‘consumers’, which means persons who consume or acquire regulated services. Part 6, on the other hand, is concerned with the interests of the ‘end-user’—the person who ultimately receives the regulated service or services that are dependent on the provision of the regulated service.