



**TCF Submission**  
**Commerce Commission Copper Withdrawal Code**  
**Framework Paper**  
**August 2019**

## Introduction

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This submission is provided to the Commerce Commission (Commission) in response to its Copper Withdrawal Code (CWC) Framework Paper. The submission represents the views of the TCF Copper Withdrawal Code Working Party (TCF CWC Working Party). The following TCF members were part of the TCF CWC Working Party; 2degrees, Chorus, Enable Networks, Northpower Fibre, Spark, Trustpower, Ultrafast Fibre, Vocus Group, Vodafone.

The submission has been structured consistent with the order of the sections listed in Appendix A to the Commission's Framework Paper. Additional issues which the TCF wishes to raise with the Commission are included in the paper. Where any member of the TCF CWC Working Party had a nuanced or opposing view to the TCF CWC Working Party, that view is noted.

It should be noted that the submission is prepared in the absence of any detailed information about the Commission's approach to determining Specified Fibre Areas (SFAs), and the impact of the 111 Contact Code. Both of these matters could have a significant impact on the views set out in the submission.

The TCF would welcome an opportunity to explain its position on the issues listed in the submission. The TCF would also encourage a workshop with the industry prior to the Commission issuing a draft CWC to ensure all relevant issues are well canvassed.

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.

## DEFINED TERMS

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**Term:** Copper Service

**Section/s of the Act:** Part 7, Schedule 2A, clauses 69AC

**Issue:**

Which copper services are included in the scope of the CWC.

**TCF Views:**

It is Chorus' view is that the CWC applies only to specified regulated copper services as defined in the Act.

The RSPs consider that the CWC should apply to the withdrawal of all copper services within an SFA i.e. regulated and non-regulated copper services. RSPs believe the number of affected end-users who currently consume commercial variants of regulated copper services is significant. From an end-user's perspective whether their service is provided over a 'regulated' or 'commercial variant' is an artificial distinction as it's all the same to them.

RSPs consider that the Chorus view is not consistent with the consumer protection intent behind the legislation which provides for a CWC. RSPs consider that if Chorus could withdraw copper services which fall outside the copper services defined in the Act, it would be possible for the end-user to find themselves without any fixed service.

Chorus has determined, for example, that baseband IP extend is a copper service that falls outside of the regulated variant. The Baseband IP extend service is provided over the same legacy copper line which has always been in place, but the additional capability enables an RSP to provide broadband plus IP voice over the line instead of purchasing a wholesale PSTN service from Spark. From an end-user perspective if, for example, Chorus could simply withdraw the copper broadband (provided by commercial UBA) and baseband IP service without following the CWC, then Chorus may be in a position to force an end-user onto fibre without the consumer protections intended by the legislation and the CWC.

In addition, Chorus has offered variants of key products such as VDSL, Baseband and others as commercial services historically, for example the regulated installation fee may have been amortised and offered by Chorus as a per month fee to encourage take-up. It should be noted that if Chorus' view is accepted this would result in a significant portion of key copper services and the customers using those services not being covered by the CWC. In RSP's view this is clearly not the policy intent.

## Section: DEFINED TERMS

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**Term:** Able to be Connected

**Section/s of the Act:** Part 7, Schedule 2A, clauses 1 (3)(a)(i) & (ii)

**Issue:** When is an end-user 'able' to be connected?

**TCF Views:**

The TCF CWC Working Party supports the interpretation of 'able to have a connection to the fibre service installed' as: *"Chorus (or the relevant LFC) can [physically] install a fibre connection at the end-users premises."* This interpretation means that the CWC process will apply to only premises that have been passed by Chorus (or a LFC's) communal fibre network. The LFC's agree with this interpretation.

The CWC should allow for an escalation process to be followed where Chorus' ability to connect the end-user is impacted by the legal rights of an affected third party property owner (e.g. the consent of a landlord of third party/neighbour) (refer to pages 11, 12 and 13). The LFCs will consider supporting an escalation process, subject to each LFC and Chorus agreeing terms relating to key risks and costs related to the CWC process in the LFC areas.

RSPs do not consider it appropriate that end-users are left without a connection due to a legal impediment that is outside of the end-user's control and therefore further processes must be considered by Chorus before copper withdrawal may occur i.e. an escalation process (refer to pages 11, 12 and 13).

RSPs note that where an end-user potentially has access to other technologies, they can voluntarily take one of these services and cease their copper service which removes the copper withdrawal process obligations on Chorus. Chorus should not be able to withdraw copper unless a customer, currently consuming a copper service, is *able to be* migrated to fibre (or they voluntarily take another access technology and cancel their copper service).

Vocus argues that if the Code were to allow Chorus to remove copper where other non-fibre technologies are available at the customer premises (noting that this is not a scenario where an end-user has opted to take a non-fibre service such as fixed wireless) it should only do so where these other technologies are available to all RSPs as a wholesale service, on terms equivalent to the terms provided to the wholesale service provider's own retail business. The remaining RSPs argue that the CWC should focus solely on the availability of fibre as this is the purpose of the SFA regime, and not use the CWC to regulate a service that is currently not included in regulation.

## Section: DEFINED TERMS

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**Term:** Reasonable timeframe to connect

**Section/s of the Act:** Part 7, Schedule 2A, clause 1(3)(a)(ii)(A)

**Issue:** The Act requires Chorus to install a fibre connection to the end-user within a 'reasonable timeframe'. The Act does not define 'reasonable time frame'.

### **TCF Agreed View**

The TCF CWC Working Party supports the alignment of this requirement in the Act to industry BAU processes which set out the timeframes for fibre installations. 'Reasonable Timeframe' is a term well understood by the industry and there are a number of existing agreements in place to support this, specifically in the UFB Wholesale Services Agreement (UFB WSA) and the TCF Fibre Installation Code.

## Section: DEFINED TERMS

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**Term:** Standard and non-standard installation

**Section/s of the Act:**

Part 7, Schedule 2A, clause 1(3)(a)(ii)(B):

The Act determines that the installation of a fibre connection is at no cost to the end-user whether the connection is standard or non-standard.

Standard and Non-Standard installations are referenced in Part 7, Schedule 2A, clause 1(5) and defined in s.155ZU of the Act.

**Issue:**

There is a variation in the definition of 'standard' and 'non-standard' installation between the UFB Wholesale Services Agreement (UFB WSA) and the Act.

**TCF Views:**

The TCF CWC Working Party supports that the CWC should allow for Chorus (or the relevant LFC) align to the definition of standard and non-standard installations as defined in their UFB WSA so that the process and end-user outcomes are consistent.

The CWC should be clear that a standard or non-standard fibre connection should be provided at 'no cost', and the choice of installation method should be guided by Chorus (or the relevant LFC) in-line with its current processes today, and the TCF Fibre Installation Code.

The RSPs note that in relation to different installation options and cost contributions, there is a difference between the current situation where the end-user can choose not to have fibre connection installed and the situation under the CWC where a notice is issued. In this latter case, the end-user has to agree to a fibre installation. If the end-user ultimately chooses not to have a fibre connection installed because of the type of installation method, then they are effectively refusing to take the fibre service and the process for reluctant end-users should be followed.

As an example, where an end-user currently has an aerial copper connection the fibre installation will also be aerial; it will be like-for-like. If the end-user wishes to have the connection trenched, they would be asked to pay the additional cost of the trenching. However, minor differences in options would be unlikely to attract a cost contribution.

The LFCs note that there may also be commercial considerations when the withdrawal is occurring within an LFC fibre network area and these will need to be discussed and agreed between Chorus and the relevant LFC.

The LFCs will comply with the process in their respective UFB WSAs and the TCF Fibre Installation Code (if the LFC is a signatory to that Code) when it comes to delivering Standard and Non-Standard fibre installations. Because the LFCs have no control over the timing of Chorus electing to withdraw copper, one of the CWC related issues to be resolved between Chorus and the LFCs is how to deal with additional costs to be incurred by the LFC because an installation is non-standard, or if the end-user requires the LFC to use an alternative install method than the method proposed by the LFCs; and one outcome to be considered is Chorus bearing such costs.

## Section: DEFINED TERMS

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**Term:** Service Functionality

**Section/s of the Act:** Part 7, Schedule 2A, clause 1(3)(c):

*'The functionality provided by the services that are to be withdrawn must, apart from legacy services, be available to the end-user over a fibre service;'*

**Issue:**

A clear definition of Service Functionality should be described in the CWC to ensure there is no ambiguity.

**TCF Views:**

The TCF CWC Working Party supports the view that 'service functionality' refers to what the telecommunications service supplied to the end-user premises provides at a broad level, rather than a detailed technical level. Functionality should not be defined to imply that a service must achieve the same thing as copper connections in the same way. Fibre and copper networks have different technical capabilities and properties. The policy intent, and the rationale for the UFB programme, is to replace legacy copper networks with future-proof fibre networks. Any requirement that they provide identical technical functionality would be contrary to this intent, and technically infeasible e.g. line powering is not available over a fibre service and the fibre service CPE requires local powering.

The RSPs expect that the fibre service given under the CWC should be the same as the standard mass market fibre services available as currently required consistent with geographic neutrality. RSPs consider that copper withdrawal potentially gives fibre companies the incentive to increase prices or to only offer higher priced fibre products to end-users forced to migrate. While non-discrimination rules for fibre provider may address some of these concerns, there should be explicit protections for end users to protect them against this risk. For example, the fibre service (including commercially provided services) that is available as part of a copper migration should be the same as for end-users who are not being force migrated. That is, an end-user facing copper withdrawal should not be forced to take a more restricted set of fibre input services, or be subject to higher priced fibre input prices than are available to / for end-users of that fibre company, in other areas of its network. Additionally, the functionality of the fibre service shall not be downgraded (e.g. limited to lower speeds) to match the functionality provided by the copper service. The fibre service given as part of a copper migration should be any of the standard mass market fibre services available at that time.

Chorus notes that in the Act it is a minimum requirement for the CWC that the anchor service (or commercial equivalent) must be available at the end-user's premises.

## Section: DEFINED TERMS

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**Term:** Legacy Services

**Section/s of the Act:** Part 7, Schedule 2A, clause 1(3)(c):

*'The functionality provided by the services that are to be withdrawn must, apart from legacy services, be available to the end-user over a fibre service;'. Part 7, Schedule 2A, clause 1(5), definition of "legacy service": "the services (if any) specified in the copper withdrawal code as legacy services."*

**Issue:**

The CWC should provide for a definition of legacy services.

**TCF Agreed View:**

The TCF CWC Working Party recommends that legacy services are defined in the CWC and proposes that the Commission should list what it considers to be a legacy service so that it's clear to end-users what services will no longer be supported on the fibre network, e.g. line powered equipment or equipment like fax machines, copper modems, pay phones, legacy security and monitoring alarms.

RSPs and Chorus will make available information on legacy services to end-users (via website, informers, and notices).

The TCF proposes to work with the Commission to develop a list for the Code.



## Section: DEFINED TERMS

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**Term:** End-User

**Section/s of the Act:** s69AC, s69AD and s69AC(2)(b))

**Issue:**

The CWC applies only to end-users who are actively or temporarily consuming a copper service (e.g. if end-user is already on a UFB fibre services or a fixed wireless service, or solely relying on mobile services, the CWC will not apply).

**TCF Views:**

The TCF CWC Working Party supports the view that if an end-user is not consuming a copper service the CWC does not apply:

1. The application of the CWC is through sections 69AC (Withdrawal of copper fixed line access services) and 69AD (withdrawal of certain designated access services).
2. Those sections outline in what circumstances Chorus can stop supplying services over copper, and apply to services being supplied to an end-user in an area declared to be a SFA.
3. If a person is not an end-user of a copper service where an SFA is declared:
  - a. these CWC sections do not apply, and
  - b. there is no copper service to be withdrawn, and
  - c. these people also don't meet the definition of end-user for the purposes of these CWC sections:
    - i. an 'end-user' is defined as 'a person who is the ultimate recipient of that service' – i.e. the service being referred to, in this case, copper services, and
    - ii. the purpose of Part 2AA (which 69AC and 69AD are in) is to 'provide protections for end-users of copper fixed line access services.'
4. Alternatively, if the end-user was consuming a copper service at the time the SFA was declared there are two ways in which Chorus can stop supplying the copper service to the end-user. First, through complying with the CWC requirements, or second the end-user choosing to disconnect their copper service (section 69AC(2)(b)).
5. Where an end-user chooses to disconnect their copper services under section 69AC(3)(b) there is no obligation under the CWC on Chorus, or a LFC, to resupply or replace that copper service with a fibre service.
6. The end-user has the right to order a fibre service from a fibre RSP at any time.

RSPs note there should be additional provisions to the definition of "end-user" if there is no active copper service at the relevant premises. Simply looking at active end-users on a particular date will cause customer issues. This should be qualified by including a time period (e.g. not an active copper service at the relevant premises for the previous 3 months) to avoid scenarios such as house sales (and the house is temporarily unoccupied), tenancy changes on flats during the notice period or an end-user disconnected in error by an RSP or Chorus.

Chorus considers that the end-user is the *person* who is being supplied a copper service, not a premises. In a scenario where a house sale takes place, a new owner wanting to have an internet service would have access to a fibre connection at that address if it was in a SFA. Similarly for tenants who move into a vacant premises.

The LFCs note that where a premises already has an existing fibre lead-in (whether or not they are currently receiving a fibre service) but the end-user is receiving a copper service, then that end-user should be considered as already connected to fibre. In this situation, the CWC will only require the fibre network operator to notify the end-user that they have UFB fibre available at their premises and they can migrate their copper services to UFB fibre if they so require.

## Section: COMMENCEMENT

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### **Issue:**

What are the conditions and effective date of commencement to the CWC.

### **TCF Views:**

Ideally, the CWC should take effect from the time that it is approved by the Commission and published. That is, Chorus should be able to employ the CWC from the time it is approved and published. The CWC process will only take 'effect' when Chorus issues a Notice to end-users consuming a copper service; this position is supported by Chorus.

Alternatively, RSPs note it is difficult to make a definitive comment about a commencement date until the final CWC is available and when a SFA can be declared (and the process). The need for a commencement date will depend on the extent to which the CWC's processes vary from current industry best practice and 'business as usual', or requires system changes such as providing RSPs greater visibility of progression through the CWC process. The greater the variance, the more change to processes and systems will be required by the industry, and the longer the lead time will be. Other considerations such as compliance requirements and reporting may also impact the lead-in time to commencement date.

## Section: PURPOSE / KEY PRINCIPLES

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**Principle:** Connection to a fibre service installed within a reasonable time frame

**Section/s of the Act:** Part 7, Schedule 2A, clause 1(3)(a)(ii)(B)

**Issue:**

What is a reasonable timeframe to install a fibre connection?

### **TCF Agreed View**

The TCF CWC Working Party supports the key principle that where Chorus has issued a withdrawal notice and an end-user has placed a fibre order by the date specified in the Chorus notice, Chorus will not withdraw that end-user's copper service until Chorus (or the relevant LFC), has completed the fibre installation -, even if the time to connect moves beyond the copper service withdrawal date stated in the Chorus notice (e.g. where the delay to the installation is due to Chorus, the LFC or a third party issue (e.g. property access consent or approval for the fibre install scope of work) rather than the end-user).

Where there is an escalation process underway, Chorus will not withdraw the end-user's copper services until that process has concluded.

Chorus will work collaboratively with the relevant LFC on timeframes, escalations and communication, to ensure that LFC orders are able to be completed within the reasonable timeframe.

## Section: Minimum Requirements

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**Requirement:** Legal impediment to installation – Landlord declined permission to allow tenant to have a fibre connection installed at the premises.

**Section of the Act:** Part 7, Schedule 2A clause 1(3)(a)(i) & (ii); Residential Tenancies Act 1986 (RTA), sections 42(1), 42(2), 45(2), and 66(J):

- Tenant shall not be able to make changes of or to a premises without consent of landlord or in accordance to the tenancy agreement, which shall not be withheld unreasonably by the landlord;
- Landlord cannot interfere with supply of telephone services; and Landlords must not interfere with the supply of telecommunication services to the premises.

### Issue:

There could be a small percentage of end-users (tenants) who will want a fibre connection and have access to a fibre service, but their Landlord declines, refuses or fails to provide permission for consent. It is not clear whether the landlord has the right to impede the supply of the 'telephone service', refer to Residential Tenancies Act (RTA).

### TCF Views:

The TCF CWC Working Party supports that an escalation process is described in the CWC to deal with this scenario (refer to page 15). The desired outcome is that Chorus is required to comply with the escalation process and complete all reasonable steps to resolve the issue before it is able to withdraw the copper service. The LFCs will need to know the escalation process and related obligations before committing to using that process.

If an end-user opts to move to a new non-fibre technology at any point in the process then the CWC will no longer apply.

Independent mediation between landlord and tenant via the Tenancy Tribunal is outside the scope of the CWC and it must not be a requirement of the CWC for Chorus (or the relevant LFC) to support funding of/or wait for the outcome of any Tenancy Tribunal process because that is a private dispute between the tenant and their landlord.

It is Chorus' view that where Chorus has undertaken an escalation process and has exhausted all reasonable efforts to resolve impediments to installing a fibre connection, failure to resolve these issues does not prevent Chorus from withdrawing supply of a copper service (however it would ultimately be at Chorus' discretion to do so).

The end-user must be able to dispute whether reasonable efforts have been made by means of an independent dispute resolution service. As a matter of principle however, RSP's are concerned about end-users in such scenarios being left without a service in circumstances which are out of their control. Therefore, Chorus should not be able to stop the supply of the copper service unless the end-user is able to have the fibre connection installed, or they voluntarily move to another technology and subsequently cancel their copper service.

The CWC should support Chorus and the LFCs using their BAU fibre installation process to gain consent from the landlord where a fibre service has been requested by the affected end-user. Where consent cannot be gained, Chorus (or the relevant LFC) would be required to use reasonable endeavours to continue to work with the end-user and landlord to gain the required consent to deploy fibre.

LFCs are of the view that by having Chorus involved in the copper withdrawal process (and potentially the fibre installation) on the LFC network may result in a poor customer experience and potentially impact the LFC performance reporting, and this must be taken into consideration.

## Section: Minimum Requirements

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**Requirement:** Legal impediment to installation – Third party property access

**Section/s of the Act:** Schedule 2A, clauses 1(3)(a)(i) and (ii); Part 4, Subpart 3 (statutory rights of access for category 1 and category 2 installations)

**Issue:**

There could be a small percentage of end-users who will have access to a fibre service but their installation is dependent on fibre infrastructure being installed across private property that is either owned, or which grants an interest and certain rights to, a third party and that third party either refuses or has failed to grant consent for the installation of a fibre connection to progress (and the land access provisions in the Act do not provide a solution). In these situations, without the relevant third party consent/s, Chorus (or the LFC) will not install a fibre connection to the end-user's premises.

**TCF Views:**

The TCF CWC Working Party supports that existing BAU consent processes must be completed with the outcome being visible to the RSPs as it is today, further escalation steps would then be enacted where appropriate.

It is Chorus' view that where it has undertaken an escalation process (refer to page 15), and exhausted all reasonable efforts to resolve impediments to installing a fibre connection, failure to resolve these issues does not prevent Chorus from withdrawing a copper service (however it would ultimately be at Chorus' discretion to do so). This would likely be a key lever to resolve these third-party disputes (where the alternative may be losing services).

However, the end-user must be able to test whether reasonable efforts have been made by means of an independent dispute resolution service.

As a matter of principle however, RSP's are concerned about end-users in such scenarios being left without a service in these types of circumstances which are out of their control. Therefore, Chorus should not be able to stop the supply of the copper service unless the end-user is able to have the fibre connection installed, or voluntarily moves to another technology and subsequently cancels their copper service.

The CWC should support the LFCs using their BAU fibre installation process to gain consent from landowner where LFC fibre is installed. Where consent cannot be gained, Chorus and the LFCs will use reasonable endeavours required to continue to work with the end-user and landowner to gain the appropriate consent.

## Section: Minimum Requirements

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**Requirement:** Legal impediment to installation – Reluctant end-user.

**Section/s of the Act:** N/A

**Issue:** An end-user may refuse to place an order and wishes to remain on copper

### **TCF Agreed View**

The TCF CWC Working Party supports a CWC process to allow for Chorus to withdraw copper services where an end-user is able to be connected to fibre but is either disengaged or refuses to place an order for fibre after the appropriate notices are issued and the escalation process has failed. This is likely to affect a small number of end-users. Chorus will be required to demonstrate that the CWC process has been complied with and appropriate escalation process completed if the end-user raises a dispute.

## Section: Minimum Requirements - ESCALATION PROCESS

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### The Act:

N/A

### Issue:

There is no escalation process described in the Act which Chorus must comply with before copper services are withdrawn. The CWC should ensure all reasonable efforts have been made to assist end-users who have particular issues to work through before their fibre services are able to be connected, or they are a reluctant end-user, landlord/s and/or third party (ies).

### TCF Views:

The TCF CWC Working Party supports that the CWC requires that Chorus takes all reasonable efforts to resolve any impediments which prevent a fibre connection being installed, before Chorus can withdraw copper services from an end-user in a Chorus UFB area. While this process will not provide any additional rights of access to third party property by Chorus, it is intended to ensure that particular provisions are met after which the CWC will allow Chorus to withdraw copper service to that affected end-user. The LFCs will need to know the escalation process and related obligations before committing to using that process.

The escalation process will incorporate existing processes and will pause the CWC process whilst Chorus (or the relevant LFC) make reasonable efforts to resolve matters (e.g. under the relevant network operator's existing consent process):

- A multi-lateral approach (end-user, landlord, Chorus, LFC and RSP);
- Multiple notices issued to the relevant party; and
- A focus on things within Chorus' control (e.g. providing notices, information, installation costs, etc.).

The escalation process would not include facilitating or mediating disputes between third parties (neighbour to neighbour or tenant to landlord) – as there are other existing mechanisms for this (e.g. Tenancy Tribunal). However, any escalation process should be transparent and provide RSPs (and the relevant LFC) with oversight of what is being communicated to an end-user and what action is taking place.

With regard to the situation of end-users who are legally prevented from having fibre installed to replace their copper connection, it is Chorus' view that the real threat of copper withdrawal is a key lever to help resolve some of the landlord or third party permission issues that may arise. Chorus is seeking the ability to withdraw service; however this would still ultimately be at Chorus' discretion.

It is the RSPs view that Chorus should follow the escalation process but should not be able to remove copper unless the end-user is able to connect to fibre, or has taken an alternative technology and voluntarily disconnected their copper service. If this approach is a concern then legislation may be required in order to give tenants the right to receive fibre services and address the outstanding issues with third party land access so that one person cannot legally prevent another from receiving a fibre service.

## **Section: Minimum Requirements**

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**Requirement:** 111 Contact Code obligations

**Section/s of the Act:** Schedule 2A, clause 1(3)(g)

**Issue:**

The 111 Contact Code must be in force before Chorus can stop the supply of copper services under sections 69AC and 69AD. Should the CWC require Chorus to allow time for other parties to meet their obligations under the 111 Contact Code within a specified fibre area where notice of copper services withdrawal has been issued.

**TCF Views:**

Until the requirements of the Commission's 111 Contact Code are defined in more detail, including the obligations which will apply to RSPs and/or Chorus/LFCs, we are unable to provide comment on this point in this submission.



## Section: Minimum Requirements

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**Requirement:** Reasonable Notice Period (also included in 'defined terms' section.)

**Section/s of the Act:** Schedule 2A, clause 1(3)(b) provides that reasonable notice of withdrawal of copper services must be given by Chorus to the:

1. End-user
2. Access Seeker (RSPs); and
3. Relevant fibre service provider (LFC).

**Issue:**

The Act does not define the 'reasonable notice' period of the proposed withdrawal of the copper service.

**TCF Views:**

The TCF CWC Working Party proposes that the CWC needs to strike a balance between dealing with scale and complexity of a copper withdrawal project whilst ensuring that fibre connections are installed in a reasonable timeframe.

It is important that the notice period to RSPs and LFCs is determined by the scale, complexity and number of each copper withdrawal concurrent withdrawals notified by Chorus and be supported by Chorus (or the relevant LFC's) existing lead-in times for fibre installations, which must be taken into consideration.

The RSPs are required to provide 6 month forecasting to LFCs for anticipated fibre installations. This is essential to ensure that LFCs are able to efficiently manage demand for fibre installations, and that they have adequate resources available. The RSPs are not able to do this unless they have longer term forecasting of Chorus' copper withdrawal programme. In the absence of this forecasting both the RSPs and LFCs feel that they will not be able to support Chorus on its withdrawal programme.

When a fibre order is placed by the end-user Chorus won't stop the supply of copper services until the fibre is installed.

The LFCs have submitted that the copper withdrawal notices must include a list of all of the affected premises and the SFA 'Effective Date' confirming when copper services will be withdrawn. This information will allow the LFC to properly assess which properties can be readily connected with fibre services and those properties that will require third party consents, and confirm the additional resources required to support the increase volume of fibre orders.

The CWC should allow for Chorus to work with RSPs and LFCs to develop appropriate processes for notifying locations and numbers of withdrawal notices as it crystallises its own plans, which are partly dependant on the final or near final version of the CWC, as well as a number of factors, including how voluntary migration progresses, RSP activity, and other commercial considerations.

The notice to RSPs will also apply in the situation where Chorus has fibre connections in an LFC UFB area.

The TCF CWC Working Party supports a minimum 6 month copper withdrawal notice period to end-users, with RSPs and LFCs, before being delivered to the affected end-users (any subsequent adjustment of the notice must be delivered to the relevant RSP and LFC immediately). For example, Chorus will issue a notice to RSPs (and the relevant LFC) at a minimum one month prior to the notice issued to the end-user. Where a withdrawal is of a reasonable scale, such as the intention to close a whole exchange, Chorus is proposing that it will provide RSPs (and the relevant LFC) an additional 3 months' notice (e.g. 9 months total) before the end-user notice is issued.

Whilst RSP's support a minimum of 6 months it may well be that a longer notice periods will be required to strike a balance between dealing with scale and complexity of a withdrawal project. Before a reasonable notice period can be agreed for an SFA RSP's will need Chorus to provide: -

- The size of the individual SFA's in terms of consumers impacted
- The number of SFA's that will be undergoing withdrawal concurrently
- A detailed plan of the schedule for withdrawal of cabinets and exchanges within the individual SFA's & the consumers impacted by each component

As such RSP's would expect Chorus to provide detailed long-term forecasting and a withdrawal roadmap as part of its business as usual operational and business processes.

RSP's also note that a review of what is a reasonable notice period should be undertaken after the first SFA withdrawals occur as a forced withdrawal on this scale has not been undertaken in the past and there will inevitably be significant learnings.

It is important to ensure that RSPs, LFCs and Chorus have adequate resources and enough time to resolve any unanticipated issues which arise to ensure a smooth experience for end-users. The notice would also provide guidance to the end-user that they may need to address other matters before the switch off date e.g. that their alarm/s will continue to operate over fibre service.

## Minimum Requirements

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**Requirement:** End-User Communication

**Section/s of the Act:** Schedule 2A, clauses (3)(b), 3(d) and 3(e)

**Issue:**

Certain information must be provided: (a) Notice by Chorus to the end-user, RSP and LFC; and (b) Other information to the end-user by Chorus and/or the LFC or RSP.

What are the roles and responsibilities between Chorus, LFCs and RSPs?

**TCF Views:**

The TCF CWC Working Party supports affected end-users being provided with the information as described in the Act, including the availability of fibre services in that area. It also agrees that Chorus has requirements to provide specific information (including notice of the withdrawal), however intention is that RSPs will have received advance notice of this activity and they will also be able to communicate with their customers if they wish.

In addition to those matters specified in the CWC, information will be provided to end-users regarding the installation of a fibre connection (e.g. how to order fibre, booking appointments and the installation process) throughout the withdrawal process via existing fibre installation processes. Chorus (or the relevant LFC) would use their BAU processes for receiving orders and installing fibre and RSPs, who own the customer relationship, will play a key part in communicating products services to the end-user.

The purpose of any wider copper withdrawal-specific communications outside the CWC framework would be managing customer experience and expectations during the process as well alongside enabling Chorus to undertake copper withdrawal.

It is the TCF CWC Working Party's expectation that Chorus, RSPs, and LFCs would work together as needed on communication matters to ensure that end-users are well supported to make the transition from copper to fibre, and this may include developing more formal communications plans/protocols closer to a withdrawal process, where learnings from the copper migration trial, for example, could be incorporated.

A collaborative approach to communicating the impact of a copper withdrawal between Chorus, RSPs and where required LFCs, is key to a successful migration of services.

RSPs note that for their customers:

1. The CWC should permit an option to co-author the notice between the RSP and Chorus with both brands appearing on the letterhead. This will help avoid confusion by providing a single message, and the appropriate contact details for the RSP to assist customers in switching to a new service.
2. If an RSP chooses not to have a co-authored notice, Chorus must advise the RSP of the timing and content of the notice with sufficient advanced warning for them to prepare additional communication, and that such notices can include text such as *"Your RSP will be in contact with you soon to explain your options"*. This is intended to allow RSPs to follow up directly with their customers.
3. They may provide additional information to their customers on how to contact them with issues and the services they are purchasing (on the basis that Chorus will not necessarily know that information).

Chorus, as the copper infrastructure provider, proposes that the copper withdrawal notice sent to the end-user is the first communication they receive about any specific plan to withdraw their copper services because Chorus has specific requirements under the Act about the nature of information to be provided. This would provide end-users

with clear context for any subsequent correspondence from their RSP and ensure all end-users receive a consistent initial message about how the process and CWC protections for end-users work.

To ensure end-users are aware of their rights under the CWC, any references by RSPs to Chorus' copper withdrawal plans must inform end-users that their service can be withdrawn only where they are able to get a fibre connection, and that that connection will be provided to them at no cost.

## Section: Minimum Requirements

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**Requirement:** No Cost to End User

**Section/s of the Act:** Schedule 2A, clause 1(3)(a)(ii)(B)

**Issue:**

**4a.** Schedule 2A, clause 1(3)(a)(ii)(B) - The Act states that the *'no cost to end-users'*, relates only to installation of the fibre connection.

**4b.** Definition of End-user in the Act: Section. 5: *'a person who is the ultimate recipient of that service or of another service whose provision is dependent on that service.'*

**TCF Views:**

The TCF CWC Working Party supports the requirement that the installation of a fibre connection is provided by Chorus at no cost to the end-user. However, beyond the actual installation of the fibre connection there are other considerations such as:

- **Definition of fibre connection:** Allowance for RSPs to charge end-users for particular items relating to the fibre service that is being connected, services on the fibre connection or customer premises equipment associated with it (e.g. charge for modem, premises wiring, home Wi-Fi set up services etc.). This is in-line with current (RSP) BAU practices. Any costs must be clearly communicated to the end-user prior to installation and in-line with current existing cost charging.
- **Position for communal infrastructure:** Developers, retirement village owners/management companies, and body corporates' campuses, developments, or buildings often require communal infrastructure, including private/building cabling separate to any individual connection to end-users. Chorus has the right to recover some of these communal infrastructure costs. These entities are not 'end-users' for the purposes of the CWC and therefore these parties fall out of scope of the 'no cost' provision. However, the ultimate individual connection to the end-user within these environments will be provided at no cost. The 'no cost' does not apply to those communal/development costs in these scenarios. Chorus (or the relevant LFC) has no control over what a body corporate may charge the end-user.

The LFCs consider that they would not be expected to carry out a fibre installation at no cost if Chorus decides to stop the supply of copper services in a LFC area. The Act does not require, and the CWC process cannot be used to mandate, the LFCs to complete fibre installations at no cost. If the LFC charging model changes in the future, they must be allowed to consistently apply that model and not be forced into large-scale costs as a result of Chorus' decision to withdraw copper from the LFC area. The only viable solution is to allow the LFCs to use all reasonable endeavours to work with Chorus and agree a solution to support the transition of copper services to the LFC fibre network in a SFA where copper is to be withdrawn, subject to the relevant costs and risks being addressed and resolved with Chorus.

RSPs consider that no cost to the end-user provision under the CWC should apply irrespective of whether it is in a Chorus and LFC area.

## Section: Minimum Requirements

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**Requirement:** Chorus must interact with LFCs when copper services are being withdrawn within the LFC fibre network area.

**Section/s of the Act:** Schedule 2A, clause 1(3)(b)

**Issue:**

Should the CWC include a requirement for Chorus to interact with LFCs when withdrawing copper services within a LFC network area other than provide notice of withdrawal?

**TCF Views:**

The TCF CWC Working Party agrees that it will be necessary for Chorus to interact in an appropriate manner with LFCs when it plans to serve a notice in a LFC network area. The CWC should allow for a process that is in partnership between Chorus and the LFC (where appropriate), it is the responsibility of Chorus to issue the notice because, if Chorus and the LFC can agree the process (including costs and any other relevant matters) it will be the LFC's responsibility to connect the fibre service requested by an effected end-user via that LFC's then-current fibre installation process. This may mean commercial arrangements are established between Chorus and each LFC to address any cost and/or risk implications and the LFC would also need to participate as required in any escalation process. In addition the LFCs support that the CWC include an obligation on Chorus to provide copper withdrawal forecasting.

## Section: DISPUTE RESOLUTION

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**Section/s of the Act:** Disputes between persons/parties relating to a breach of the CWC (sections 156MC and 156MD)

**Issue:**

How and what type of disputes can be raised under the CWC, who can raise a complaint and what is the process?

**TCF Views:**

The TCF CWC Working Party supports that end-user disputes about the application of and compliance with the CWC will ideally be resolved between the end-user, RSP and Chorus through the escalation process (as described on page 15). In some cases it might be appropriate that the end-user deals directly with Chorus rather than via their RSP.

The TCF CWC Working Party supports there should be a low-cost, accessible disputes resolution service available to end-users to deal with unresolved disputes and/or make enquiries about the rights of the end-user to an independent dispute resolution service under the CWC.

The RSPs have suggested that an end-user should have the option to lay a complaint against Chorus through the TDRS (not in a limited capacity as Chorus suggest) in the situation where the end-user has received or been engaged in communications directly with Chorus, which the end-user's RSP may have no control over. As such this will require Chorus to be a formal member of TDRS and be the primary party to the complaint (not the RSP as it is out of their control although they should assist). As such they could be awarded against, like any other party, and would pay their share of the costs of the scheme. The TDRS will remain an option for an end-user who has a complaint about their RSP during the copper withdrawal process.

Chorus agrees that there should be an independent dispute resolution scheme for complaints relating to the CWC, and are in discussions with the TCF around joining the TDRS in a limited capacity so that Chorus can be added as a party to a complaint where the TDRS determines that the complaint relates partly or wholly to Chorus' actions under the CWC, or where a complaint is made directly relating to Chorus' obligations under the CWC.

The LFCs have tentatively indicated their conditional support to further consider the option of becoming members of the TDRS in a limited capacity to assist with a dispute resolution relating to the withdrawal of copper, but only where the complaint relates to the fibre installation services performed by the LFC. The LFCs will not be subject or involved in any complaint relating to the copper withdrawal process used by Chorus or the end-user's complaint about their RSP.

## Section: CODE AMENDMENT PROCESS

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**Section/s of the Act:** Schedule 2A, clauses 4 and 2(1)(b)

**Issue:**

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

**TCF Views:**

The TCF CWC Working Party supports a provision to be added to the CWC to allow for the TCF to make a recommendation to the Commission to prepare an amendment to the CWC under clause 4. It is possible that after the CWC has been employed, it becomes apparent that changes are required to the CWC, and a process needs to exist to allow for this. Amendments to operational aspects of the CWC may be required (such as notice periods) where it is clear that changes are necessary for the purposes of ensuring the CWC will be effective.

Chorus supports a review of the CWC in specific circumstances (e.g. when a particular requirement is not working), but would not support a full Commission review. Chorus does not support the RSP proposal below to review the code after a “copper withdrawal project” or any automatic review. Rather there should be provisions for parties to the CWC to seek an amendment if necessary. The LFCs support this position.

The RSPs propose that a CWC review should be undertaken by the TCF following the completion of a copper withdrawal project to ensure the process is fit for purpose and requirements such as notice periods can be refined if necessary. This will allow the TCF to make recommendations about appropriate amendments or highlight issues with the CWC.

The TCF CWC Working Party has noted that this submission is being prepared at a time that some important aspects, such as the Commission’s approach to SFA and the 111 Contact Code, remain unclear.



## **Section: COMPLIANCE / ENFORCEMENT / ASSURANCE**

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

**Issue:**

What compliance and enforcement should apply to the CWC?

**TCF Agreed 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 CWC.

## Further Considerations

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### Interdependency with declared specified fibre area

**Section/s of the Act:** Sections 69AB, 69AC and 69AD (deregulation of copper services); 69AB (fibre is available); and Schedule 2A, clause 1(3)(a)(i) (the end-user in relation to the service must be able to: (i) access a fibre service; and (ii) have a connection to the fibre service installed”).

#### Issue:

What is the role of regulation on copper services once an SFA is declared?

#### TCF Views:

The TCF CWC Working Party agrees that ‘*access to a fibre service*’ should be defined in the CWC as premises passed by a fibre network, and the end-user’s premises is able to be connected.

RSPs consider that this should be incorporated into the definition of a SFA – i.e. Chorus and LFCs commit that any customer within the SFA is able to receive a fibre service if they request it (ignoring issues caused by third parties such as landlord permission and/or third party land access issues).

RSPs consider that the regulatory interpretation of the Act could impact all end-users who have fibre ‘available’ within a SFA and the CWC may need to have additional measures to protect end-users (e.g. copper regulation continues until copper services are withdrawn completely from the SFA). This would allow for an appropriate consumer protection on price and quality and provide certainty during the migration period, avoid confusion and to ensure a smooth withdrawal of copper services. At a minimum, the RSPs consider that the CWC should include a provision that once a notice under the CWC has been issued to a copper service end-user, Chorus may not alter its price or quality service levels for that copper service.

RSPs think that Chorus and LFCs should be open to providing an undertaking that they will offer a fibre input service to every address within a SFA, even if there is no fibre at a particular location at the time the area is first declared an SFA. There is a statutory mechanism in s156CA (1) which provides for an undertaking of this sort. To ensure that subdivisions and new build areas within an SFA will get fibre, and in addition this would ensure a consistent approach between UFB and non-UFB fibre areas.

The LFCs take the view that copper regulation should fall away only after the SFA has been declared and the existing copper services have either been migrated to fibre (i.e. Chorus fibre in Chorus areas, or LFC fibre in LFC areas); or the CWC escalation process has been followed and the end-user has either moved to a different technology (e.g. fixed wireless) or some other outcome; but in any case, Chorus is no longer obligated to continue to provide a copper service to that end-user.

Chorus’ view is that with the declaration of SFAs the regulatory provisions on its copper network will fall away. Given the delay to the implementation of the CWC, Chorus has agreed to continue to provide copper services under the regulated terms until June 2020 when the CWC should be completed and in force. Chorus does not consider that any additional commitments are needed beyond those already in place.

## Non-Code Considerations

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### Operations Manual / Schedule

**Section/s of the Act:** N/A

**Issue:**

There are requirements which should sit outside of the CWC which are focussed on more operational matters. It is proposed that a CWC Operations Manual should be created to apply alongside the CWC.

**TCF Views:**

The TCF CWC Working Party has proposed that a CWC Operations Manual is developed to allow for certain copper withdrawal operational processes and requirements to be documented in support of the CWC. The CWC should describe only those matters which are set out in the Act, whereas a CWC Operations Manual could describe those operational elements that the industry may need to agree to deliver the requirements of the CWC.

The TCF CWC Working Party also notes the Commission's proposal that a CWC Operations Manual should form an accompanying Schedule to the CWC. The TCF disagrees with this approach as a Schedule to the CWC because it would require as substantive change process as the CWC. The purpose of an industry developed CWC Operations Manual is to allow for flexibility and timeliness to evolve operational processes as the copper withdrawal process develops. The TCF CWC Working Party does not believe that this dynamic change process would be achieved if the CWC Operations Manual was a Schedule to the CWC.

If operational matters were to be included in a Schedule to the Code, RSPs would support this if there was a process defined to make changes to a CWC Schedule as needed outside the Code amendment process, by agreement between the relevant parties (RSPs, LFCs and Chorus) – and, in the event that agreement cannot be reached by the relevant parties relating to a change to the CWC Operations Manual, then the CWC could have a process for escalation to the Commission.

## Non-Code Considerations

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### Product Stewardship

**Section/s of the Act:** N/A

**Issue:**

Should the industry consider product stewardship on copper equipment and infrastructure removal as part of the CWC?

**TCF Views:**

The TCF CWC Working Party does not believe that product stewardship requirements should be detailed in the CWC, but does note that network operators have a responsibility to ensure appropriate product stewardship on any network equipment is in place as part of their existing processes to ensure safe removal, upgrading and recycling occurs. RSPs seek a statement from Chorus on their policy for removing visible (and non-visible) copper cabling (e.g. overhead lines, pedestals/cabinets, equipment stuck on the outsides of houses, unused telephone poles, etc.), relating to the copper network, including a process for reinstatements within the private property boundary if required.

## Non-Code Considerations

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### Across industry and stakeholder communication

**Section/s of the Act:** N/A

**Issue:**

To ensure that a smooth and customer focussed process for the withdrawal of copper services occurs, it will be important that all stakeholders have an agreed underlying communication strategy and messaging to avoid consumer confusion and negative reaction.

**TCF Agreed View**

The TCF CWC Working Party agrees that wider community engagement and communication on copper withdrawal is required and is mindful of the application of Commerce Act and Fair Trading Act obligations. The TCF CWC Working Party supports an across stakeholder approach to developing some key messages to minimise consumer confusion and negative reaction. The TCF CWC Working Party proposes to engage with the Commission to help facilitate this discussion across key stakeholders. The CWC will define the specific requirements to communicate to consumers who receive a notice of copper withdrawal.