

# Commission 111 Contact Code Review

## Draft Decisions and Reasons

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## Associated documents

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## Glossary

Act	Telecommunications Act 2001
Commission	Commerce Commission
Provider	A provider of a retail landline service
DPA	Disabled Persons Assembly
LFC	Local Fibre Company
RSP	A provider of retail telecommunications services
TCF	Telecommunications Forum
TUANZ	Tech Users Association of New Zealand
WISPANZ	Wireless Internet Service Providers Association of NZ

## Contents

<b>ASSOCIATED DOCUMENTS .....</b>	<b>2</b>
<b>GLOSSARY .....</b>	<b>3</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>6</b>
<b>CHAPTER 1 – INTRODUCTION .....</b>	<b>7</b>
<b>PURPOSE OF THIS DOCUMENT .....</b>	<b>7</b>
<b>STRUCTURE OF THIS DOCUMENT .....</b>	<b>7</b>
<b>PROCESS FOR OUR REVIEW .....</b>	<b>8</b>
<b>INFORMATION FOR INTERESTED PARTIES ON MAKING A SUBMISSION .....</b>	<b>8</b>
<b>CHAPTER 2 – CONTEXT FOR THE CODE REVIEW .....</b>	<b>10</b>
<b>RESPONSES TO OUR REQUEST FOR VIEWS .....</b>	<b>11</b>
<b>CHAPTER 3 – PROCESS AND TEST FOR AMENDING THE CODE .....</b>	<b>12</b>
<b>PROCESS FOR AMENDING AN APPROVED CODE .....</b>	<b>12</b>
<b>THE TEST FOR MAKING AMENDMENTS .....</b>	<b>12</b>
<b>CHAPTER 4 – PROPOSED AMENDMENTS TO THE CODE .....</b>	<b>14</b>
<b>PROPOSED AMENDMENTS TO APPLICATION: SECTION B OF THE CODE .....</b>	<b>15</b>
APPLICATION OF THE CODE TO BUSINESS LANDLINE SERVICES .....	15
<b>PROPOSED AMENDMENTS TO THE REQUIREMENT ON PROVIDERS TO INFORM ALL CONSUMERS ABOUT OPTIONS AVAILABLE FOR VULNERABLE CONSUMERS: SECTION E OF THE CODE .....</b>	<b>16</b>
CODE-RELATED INFORMATION ON PROVIDERS’ WEBSITES .....	17
<b>PROPOSED AMENDMENTS TO THE PROCESS FOR A CONSUMER TO DEMONSTRATE THEY ARE A VULNERABLE CONSUMER: SECTION F OF THE CODE .....</b>	<b>17</b>
APPLICATION FORM TEMPLATE AND REQUIREMENTS .....	18
<b>PROPOSED AMENDMENTS TO THE REQUIREMENT ON PROVIDERS TO PROVIDE VULNERABLE CONSUMERS WITH AN APPROPRIATE MEANS FOR CONTACTING 111: SECTION G OF THE CODE .....</b>	<b>19</b>
REPLACEMENT OF APPROPRIATE MEANS SUPPLIED TO VULNERABLE CONSUMERS .....	19
WHEN A MEANS CAN BE CONSIDERED APPROPRIATE .....	20
<b>PROPOSED AMENDMENTS TO THE CIRCUMSTANCES WHERE A CONSUMER MAY NO LONGER BE CONSIDERED VULNERABLE: SECTION H OF THE CODE .....</b>	<b>21</b>
VULNERABLE STATUS WHEN MOVING PREMISES .....	21
<b>PROPOSED AMENDMENTS TO THE REQUIREMENT ON PROVIDERS TO DISCLOSE INFORMATION: SECTION J OF THE CODE .....</b>	<b>22</b>
DISCLOSURE OF TIME TAKEN TO PROVIDE APPROPRIATE MEANS TO CONSUMERS .....	22
<b>CHAPTER 5 – MATTERS UNDER CONSIDERATION .....</b>	<b>25</b>
<b>RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES .....</b>	<b>25</b>
<b>CHAPTER 6 – NO PROPOSED AMENDMENTS TO EXISTING CODE REQUIREMENTS .....</b>	<b>27</b>
APPLICATION OF THE CODE TO MEDICAL ALARMS .....	28
CLEARER VULNERABLE CONSUMER ELIGIBILITY .....	29
EVIDENCE OF VULNERABILITY .....	31
IMPACT OF SATELLITE TECHNOLOGY .....	32
NETWORK RESILIENCY .....	33
PROVIDERS WITHDRAWING LANDLINE SERVICES .....	33
CONTRIBUTION OF LOCAL FIBRE COMPANIES TO CODE-RELATED COSTS .....	34
HIGH COMPLIANCE COSTS .....	35
MINIMUM PERIOD AND LIMITED MARKET OF APPROPRIATE MEANS .....	36
CLARIFICATION OF WHAT IS OUT OF SCOPE .....	37
LACK OF CONSUMER AWARENESS .....	38
INTERESTED PERSONS .....	40

OTHER COMMUNICATION CHANNELS.....	41
PROVIDERS IDENTIFY VULNERABLE CONSUMERS .....	42
USE OF TERM ‘VULNERABLE’ IS POTENTIALLY OFFENSIVE .....	43
PROVIDERS SHOULD INFORM CONSUMERS ABOUT THEIR RIGHT TO INDEPENDENT INFORMATION .....	43
ACCESSIBILITY OF CODE-RELATED INFORMATION .....	44
REVIEW OF DISCLOSURE REQUIREMENTS .....	45
<b>APPENDIX A: RELEVANT STATUTORY SECTIONS FOR THE CODE .....</b>	<b>46</b>
<b>APPENDIX B: SUMMARY OF SUBMISSIONS .....</b>	<b>50</b>

## Executive Summary

- X1 The Commerce Commission (**the Commission**) has reviewed the Commission 111 Contact Code (**the Code**) to assess the operation of the Code and identify any improvements to better meet the minimum requirements in the Telecommunications Act 2001 (**the Act**).
- X2 The Code sets out mandatory requirements on providers of a retail landline service to provide vulnerable consumers with appropriate means of contacting the 111 emergency services in the event of a power failure.<sup>1</sup>
- X3 In May 2023, we published a Request for Views paper<sup>2</sup> seeking stakeholder views on the operation of the Code to date, and any improvements to better meet the minimum requirements set out in the Act.
- X4 We would like to thank everyone who submitted on our Request for Views, particularly those who do not often engage with the Commission. We are grateful for the response and engagement in our review process.
- X5 After assessing the 18 submissions we received, alongside our ongoing monitoring work, we consider that the Code is meeting the minimum requirements in the Act, but there is scope for improvement in some areas.
- X6 Accordingly, we propose to amend the Code to:
- X6.1 Clarify the scope and obligations under the Code;
  - X6.2 Refine the ways that information about the Code is provided to consumers and improve consumer protection; and
  - X6.3 Improve the information that is disclosed to the Commission.
- X7 We have prepared a draft amended Code for consultation with interested persons alongside this Draft Decisions and Reasons paper. This paper provides our draft decisions and reasons for the Code amendments we propose, as well as responses to submissions.

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<sup>1</sup> The purpose of the Code is outlined in section 238 (1) of the Act.

<sup>2</sup> [https://comcom.govt.nz/\\_\\_data/assets/pdf\\_file/0018/316170/111-Contact-Code-Review-Request-for-Views.pdf](https://comcom.govt.nz/__data/assets/pdf_file/0018/316170/111-Contact-Code-Review-Request-for-Views.pdf).

## Chapter 1 – Introduction

### Purpose of this document

1. The Act allows the Commission to review the Code at any time and amend the Code if we consider that the Code no longer meets the requirements set out in the Act.<sup>3</sup> When considering whether the Code meets the requirements, we will consider the Code against the requirements in section 238(3) and the purpose in section 238(1) of the Act. Consideration will also be given to any improvements that could be made to assist the Code in better meeting its purpose or delivering on the requirements.<sup>4</sup>
2. After reviewing the Code and seeking views from stakeholders and interested persons, our draft decision is that while it continues to meet the requirements set out in the Act, certain amendments can be made to the Code to enable it to better meet its purpose under the Act.
3. A draft amended Code has been prepared to give effect to these changes and is published alongside this Draft Decisions and Reasons paper. The purpose of this Draft Decisions and Reasons paper is to give our draft decisions and reasons for the draft amended Code, and to invite submissions.

### Structure of this document

4. This Draft Decisions and Reasons Paper has the following sections:
  - 4.1 **Chapter 2 – Context for the Code review** explains the context for this review including the experience of stakeholders under the Code to date;
  - 4.2 **Chapter 3 – Process and test for amending Code** discusses the legal process and test for making amendments to the Code;
  - 4.3 **Chapter 4 – Proposed amendments to the Code** provides our reasoning for the content of the draft amended Code, including minimum requirements;
  - 4.4 **Chapter 5 – Matters under consideration** provides a description of the consideration we have given to Residential Care and Assisted Living Facilities, as well a request for submissions on this topic; and
  - 4.5 **Chapter 6 – No proposed amendments to existing Code requirements** provides our response and reasoning for topics raised by submissions that we do not consider require a Code change.

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<sup>3</sup> Section 239(5).

<sup>4</sup> Request for Views Paper, May 2023, paragraphs 13 to 15.

## Process for our review

5. We published a Request for Views paper on 18 May 2023, which sought views on the efficacy of the current Code and any improvements that could be made to better meet the purpose set out in the Act.
6. We received 18 submissions from 17 different parties: Spark, One NZ, 2degrees, NZ Police, Fire and Emergency, Anonymous, Business Technology Group, Sky, MyRepublic, Mercury, Whaikaha, Grey Power, Disabled Persons Assembly (**DPA**), Consumer NZ, New Zealand Telecommunications Forum (**TCF**), Wireless Internet Service Providers Association of New Zealand (**WISPANZ**) and Tech Users Association of New Zealand (**TUANZ**).
7. Following assessment of all views and evidence received through the consultation process, and also based on our compliance monitoring experience, we have prepared a draft amended Code for consultation with interested parties.

## Information for interested parties on making a submission

8. We invite submissions and feedback on the draft amended Code and this Decisions and Reasons paper. Submissions are due by 5pm on 1 March 2024.
9. Submissions should be provided as an electronic copy in an accessible form. Please email submissions to [telecommunications@comcom.govt.nz](mailto:telecommunications@comcom.govt.nz) with the subject line “Submission: 111 Contact Code Review”.
10. We intend to publish all public versions of submissions received on our website. Please provide a clearly labelled public version of your submission.
11. If you wish to provide commercially sensitive information in your submission, we request that you provide, as necessary, confidential and public versions of your submission.
12. When including commercially sensitive or confidential information in your submission, we offer the following guidance:
  - 12.1 please provide a clearly labelled confidential version and public version;
  - 12.2 please provide reasons alongside any information in the confidential version as to why it is commercially sensitive or confidential information; and
  - 12.3 the responsibility for ensuring confidential information is not included in a public version of a submission rests entirely with the party making the submission.
13. If we consider disclosure of information, for which confidentiality is claimed to be in the public interest, we will consult with the party that provided the information before any public disclosure of that information is made.



111 Contact Code Review – Draft Decisions and Reasons

14. After considering the submissions received, we will publish the amended Code and final Decisions and Reasons paper.

## Chapter 2 – Context for the Code Review

15. In November 2018, the Act was amended by the Telecommunications (New Regulatory Framework) Amendment Act 2018. The amendments to the Act required the Commission to 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.<sup>5</sup>
16. Section 9A of the Act was also amended to provide that the Commission must monitor compliance with the Code, and must make available reports, summaries, and information about compliance with the Code.<sup>6</sup>
17. We published the Code and our Decisions and Reasons paper on 17 November 2020. The Code came into force on 1 February 2021, and section G came into effect on 1 August 2021.<sup>7</sup>
18. Telecommunications technologies are currently transitioning from copper lines to modern technology such as fibre and wireless broadband. These modern services require mains power to operate, creating a risk that vulnerable consumers may be unable to contact emergency services during a power failure at their premises.
19. People who are more likely to need to contact the 111 emergency service, such as for health, safety or disability reasons, are at greater risk during a power failure when they switch to modern technologies. The Act defines a vulnerable consumer<sup>8</sup> as being a consumer of a specified telecommunications service who:
  - 19.1 is at particular risk of requiring the 111 emergency service (for example, due to a known medical condition); and
  - 19.2 does not have a means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure.
20. The purpose of the Code is to ensure that these vulnerable consumers have access to the 111 emergency service in the event of a power failure at their premises. By requiring the providers of a retail landline service to allow their customers to register as vulnerable, and to provide them with an appropriate means for contacting 111, these consumers will have access to 111 even in a power failure at no additional cost.

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<sup>5</sup> Section 238(1).

<sup>6</sup> Section 9A(1)(c)-(d) of the Act.

<sup>7</sup> Section G: Requirement on providers to provide vulnerable consumers with an appropriate means for contacting 111.

<sup>8</sup> Section 238(5).

21. Throughout 2022 we undertook compliance engagement work to promote compliance with the Code. On 30 November 2022<sup>9</sup> we commenced an industry-wide review of compliance with the Code.
22. On 18 May 2023 we commenced a review of the Code with our Request for Views paper as the Code had been in force for two years, and both feedback we received during our compliance work and our own observations, specifically for the 2022 disclosure year, showed that there was scope for improvement.
23. The Request for Views paper set out the process for our review and sought stakeholder views on the operation and efficacy of the Code to date, as well as views on potential improvements to better meet the minimum requirements.
24. The stakeholder views that we received in response to our Request for Views paper have helped us to identify where there are opportunities for the Code to better meet its purpose and fulfil the requirements set out in the Act.

### **Responses to our Request for Views**

25. We received a range of responses to our Request for Views. These responses are summarised in **Appendix B**. Overall comments on the efficacy of the Code are included at the start of the table.
26. Providers and industry groups largely submitted that the Code is meeting its purpose but that there are some amendments required to streamline the compliance process.
27. Consumer advocacy groups shared views that the Code does not meet its purpose as consumers are not sufficiently informed of the protections offered by the Code.
28. Based on our compliance monitoring and submissions, our view is that the Code is largely functioning as intended but further opportunity exists for clarification, refinement and raising awareness.
29. We share the concerns of consumer advocacy groups regarding the lack of awareness about the Code. Compliance monitoring has shown that some providers are not compliant with the information provision requirements under the Code and we are focusing our compliance enforcement in this area. While we are taking action to address these compliance concerns, we have also identified some areas where the Code could be amended to improve consumer awareness.
30. It is also our intention to update and improve the Code-related resources on our website to aid in consumer awareness and understanding, including industry engagement through TCF and assisting with provider compliance activities.

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<sup>9</sup> Following the conclusion of the 2021/22 Code disclosure year. The Code includes information disclosure and record keeping requirements under section 238(4)(c) which we believe are necessary to achieve the purpose of the Code.

## Chapter 3 – Process and test for amending the Code

31. In this chapter we set out the legal process and test for making amendments to the Code. The provisions of the Act relating to the Code are included as **Appendix A** to this paper.

### Process for amending an approved Code

32. Section 239 of the Act sets out the process the Commission must follow to make or amend the Code. Among other things, it requires the Commission to consult on a draft Code, give public notice of the draft amendments to the Code and provides that the Commission may make the Code only if it is satisfied that the draft Code meets all the requirements set out in Part 7 of the Act.
33. We are consulting on this Draft Decisions and Reasons paper, which sets out our draft decisions and reasons for the draft amended Code, and to invite submissions. We are publishing a draft amended Code alongside this Draft Decisions and Reasons paper.
34. Interested persons are entitled to make submissions to the Commission within 30 working days after the date on which public notice of the draft amended Code is given, and the Commission must accept and consider any submissions received by this due date.<sup>10</sup>

### The test for making amendments

35. When considering whether the Code meets the requirements of the Act, we consider the approved Code against the minimum requirements set out in section 238(3), read in light of the purpose of the Code, which is to ensure 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.<sup>11</sup>
36. We do not consider that we are constrained by section 239(5) to only consider amendments where there is clear gap in the Code in meeting the minimum requirements in the sense that a requirement is not met at all.
37. We consider that we are permitted to make amendments to the Code where the amended Code would better meet the minimum requirements, including where a different way of doing something would better deliver on the requirements. We have therefore assessed whether the Code can be amended to better meet the minimum requirements, considering the purpose of the Code.
38. Our review includes an examination of evidence on the effectiveness and efficiency of the technical operational requirements in the Code, and whether these can be

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<sup>10</sup> Section 239(3).

<sup>11</sup> Section 238(1).

improved to better meet the purpose of the Code set out in section 238(1) and the minimum requirements set out in section 238(3).

39. In addition, we consider that section 238(4)(c) permits us to add new clauses to the Code where we consider this would better meet the purpose of the Code.<sup>12</sup>

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<sup>12</sup> Clause 238(4)(c) provides that the code may contain any other provisions that are necessary or desirable to achieve the purpose in subsection (1).

## Chapter 4 – Proposed amendments to the Code

40. In this chapter we set out our draft decisions and reasons for the draft amendments to the Code.
41. Below we provide a summary table of the proposed amendments. The reasons for the proposed amendments are set out in this chapter.

<b>ID</b>	<b>Subject of change</b>	<b>Reference in Draft amended Code</b>	<b>Draft decision</b>	<b>Reference in this paper</b>
<b>1</b>	Application of the Code to business landline services	Sections B, D	Clarifying that the Code applies to residential landline services and not business landline services.	Page 15-16 Para 44-48
<b>2</b>	Code-related information on providers' websites	Clause 7.4	Adding a requirement that Code information must be displayed on the website in such a manner that a consumer cannot purchase a retail landline service without seeing information about the Code.	Page 17 Para 51-55
<b>3</b>	Application form template and requirements	Section F2	Clarifying that the application form template is provided for guidance purposes and that providers can modify it, provided it otherwise meets Code requirements. The template will be removed from the Code and made available on the Commission's website to avoid the inference it is compulsory.	Page 18-19 Para 58-63
<b>4</b>	Replacement of appropriate means supplied to vulnerable consumers	Clause 29.3	Removing the requirement to replace appropriate means every 36 months and substituting it with the requirement to replace appropriate means when they no longer meet the minimum requirements.	Page 19-20 Para 67-69
<b>5</b>	When a means can be considered appropriate	Clauses 6.6 & 31	Clarifying that if the Code's requirements are met, the appropriate means supplied by the provider to the vulnerable consumer will be deemed to be appropriate, whether the vulnerable consumer accepts it or not.	Page 20 Para 70-75
<b>6</b>	Vulnerable status when moving premises	Clause 37	Clarifying that if a consumer moves premises, but remains with their provider, the provider may check the consumer's status and potentially require them to re-apply if something material has changed.	Page 21-22 Para 78-81

7	Disclosure of time taken to provide appropriate means to consumers	Clause 40.7	Replacing the requirement to disclose an overall average provisioning time with a requirement to report on how long each individual install took, for each vulnerable consumer (from the date each application was accepted). If the installs took longer than 10 working days, providers must briefly describe why.	Page 22-24 Para 84-91
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## Proposed amendments to Application: Section B of the Code

### *What the current Code requires*

42. The Act states that the Code must specify the telecommunications services to which it applies.<sup>13</sup>
43. As noted in the 2020 Decisions and Reasons Paper, the current Code applies to all retail landline services, irrespective of whether they are provided to residential or business consumers.<sup>14</sup>

### **Application of the Code to business landline services**

#### *Context and reasons*

44. In making the Code we considered that:<sup>15</sup>
  - 44.1 there were likely to be some small business consumers (e.g., farms, dairies) which have vulnerable consumers residing on the premises, and this subset of vulnerable consumers should be entitled to the protection of the Code; and
  - 44.2 the impact of including business consumers was unlikely to be significant, as most business consumers would have the means to contact 111 in a power failure (e.g., through an employee who has a mobile phone).
45. In submissions, 2degrees suggested that we should provide clarification that the Code applies to residential services only, as business consumers do not ordinarily reside at the premise where the retail landline service is supplied.<sup>16</sup> We agree that in most cases employers will not have people residing at their premises. Also, we would expect employers to take responsibility for their employees' health and safety and put adequate protections in place.
46. Having considered submissions, which suggest that the compliance impact of including business landline services within the scope of the Code has been more significant on the providers of these services than we had anticipated, we now agree

<sup>13</sup> Section 238(3)(a).

<sup>14</sup> Commerce Commission "Commission 111 Contact Code: Decisions and Reasons Paper" (17 November 2020) para 93.

<sup>15</sup> Commerce Commission "Commission 111 Contact Code: Decisions and Reasons Paper" (17 November 2020) para 93.

<sup>16</sup> 2degrees "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 1.

with Wireless Internet Service Providers Association (**WISPANZ**) that business landline services should be excluded.<sup>17</sup>

47. While we agree with NZ Police<sup>18</sup> that protection and resiliency is important in all areas, the Code is intended to provide resiliency in the home, where consumers may not have other protections available.

*Draft Decision*

48. Our draft decision is that the Code be amended so that:
- 48.1 business landline services are defined in the Code;
  - 48.2 the definitions of retail landline services (from retail landline services to residential landline services) and premises are amended; and
  - 48.3 Code requirements apply to only residential landline services, and the Code does not apply to business landline services.<sup>19</sup>

**Proposed amendments to the requirement on providers to inform all consumers about options available for vulnerable consumers: Section E of the Code**

*What the current Code requires*

49. The Act requires that the Code must require providers of specified telecommunications services to inform consumers about the options available for vulnerable consumers.<sup>20</sup>
50. Under the current Code:
- 50.1 a provider must provide information to consumers about the options available in a power failure at their premises. Clauses 6 and 7 specify what this information must contain and how it must be provided to consumers.
  - 50.2 The specified information must be made easily accessible to all consumers on the provider’s website at the point of sale in a manner that is consistent with the NZ Government Web Standards.
  - 50.3 All customers of a retail landline service must be directly provided with the information at least every 12 months and when a customer first makes contact with a provider or switches services.

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<sup>17</sup> WISPANZ “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 5.

<sup>18</sup> NZ Police “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 2.

<sup>19</sup> While we are proposing that the Code applies to residential landline services rather than retail landline services, we have used “retail landline services” throughout this paper to avoid confusion, as this is the wording in the current Code.

<sup>20</sup> Section 238(3)(b).



## **Code-related information on providers' websites**

### *Context and reasons*

51. Submissions from Whaikaha<sup>21</sup> and DPA<sup>22</sup> mentioned the need for information to be made more accessible, and Consumer NZ<sup>23</sup> and DPA<sup>24</sup> raised concern that consumers are not adequately informed about the Code.
52. Our work on assessing compliance with the Code has shown that some providers do not present information listed in clause 6 in a clear and accessible way. We are aware that this is a particular issue with some provider's websites and that it often requires a dedicated search to find the relevant information.
53. In order to ensure that information provided to consumers is provided in line with the Code requirements, and to better meet its purpose, our draft decision is that it should not be possible for a consumer to purchase a retail landline service without being made aware of the risk of loss of service during a power failure at their premises.

### *Draft Decision*

54. Our draft decision is that the Code be amended to:
  - 54.1 Explicitly require the information set out in clause 6 of the current Code to be provided in an easily discernible manner to all consumers such that these consumers are not able to purchase a retail landline service from the provider without seeing that information.
55. Also, the information listed in clause 6 of the current Code must be easily and clearly visible to all consumers on the relevant page of the provider's website in a manner that is prominent and consistent with the NZ Government Web Standards, in accordance with clauses 7.1 and 7.2 of the current Code.

## **Proposed amendments to the process for a consumer to demonstrate they are a vulnerable consumer: Section F of the Code**

### *What the current Code requires*

56. The Act sets out that the Code must prescribe a process (or processes) for consumers of telecommunications services to demonstrate that they (or a person on their behalf) are, or will become, vulnerable consumers.<sup>25</sup>
57. The current Code:
  - 57.1 sets out that a provider must make available a process for a consumer, or someone on their behalf, to apply to the provider to demonstrate that

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<sup>21</sup> Whaikaha "Submission on 111 Contact Code Review Request for Views" (16 June 2023) pages 1 & 2.

<sup>22</sup> DPA "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 5.

<sup>23</sup> Consumer NZ "Submission on 111 Contact Code Review Request for Views" (15 June 2023) pages 1 & 2.

<sup>24</sup> DPA "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 5.

<sup>25</sup> Section 238(3)(c).

consumer is (or will become) a vulnerable consumer. This process must comply with clauses 13-24 of the current Code.

- 57.2 supplies a template written application form. The Code currently sets out that a provider may choose to offer this form (or some adaption that provides the equivalent detail) for the purpose of clause 13.3 of the current Code.

### **Application form template and requirements**

#### *Context and reasons*

58. Grey Power<sup>26</sup>, Spark<sup>27</sup>, Whaikaha<sup>28</sup> and TCF<sup>29</sup> submitted that the template application form is not accessible for many consumers, and is too long and difficult to work with.
59. It has never been our intention to require providers to use the template. Rather, it is intended to be a helpful tool to assist providers in implementing a process for a consumer to register as a vulnerable consumer.
60. Accordingly, we plan to remove the template from the Code and add it to our website to:
- 60.1 avoid any inference that the form is a required document; and
  - 60.2 allow us to review the template at any time at our discretion.
61. Providers remain able to use the template, and to produce their own forms in a way that is accessible and best fits with their own processes and approach, to the extent that their forms meet the requirements set out in Section F2 of the current Code. It is the responsibility of the providers to ensure that their forms are fit for purpose.
62. The template is intended as a guide to support providers in meeting the requirements of the Code. Making it clear that there is flexibility around the design and presentation of the form should provide more opportunities for processes to be streamlined and clarified.

#### *Draft Decision*

63. Our draft decision is to:
- 63.1 no longer provide the template written application form as Attachment A of the Code. A template will instead be uploaded on the Commission's website for optional use by providers; and

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<sup>26</sup> Grey Power "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 3.

<sup>27</sup> Spark "Feedback on 111 Contact Code" (30 November 2022) para 41-45.

<sup>28</sup> Whaikaha "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 1.

<sup>29</sup> TCF "Submission on 111 Contact Code Review Request for Views" (19 June 2023) para 21-22.

- 63.2 amend the guidance note in Section F2 to state that a template can be found on our website.

## **Proposed amendments to the requirement on providers to provide vulnerable consumers with an appropriate means for contacting 111: Section G of the Code**

### *What the current Code requires*

64. The Act requires that the Code must require providers to supply vulnerable consumers, at no cost to the vulnerable consumer, with an appropriate means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure.<sup>30</sup>
65. The Code currently sets out that appropriate means is a means that is appropriate for the consumer’s specific circumstances, taking into account their physical, mental and technical capabilities.
66. The Code also currently sets out that any means supplied to a vulnerable consumer must be able to be operated at the vulnerable consumer’s premises for the minimum period in a power failure. The minimum operating period is currently a continuous 8-hour period. In order to be considered as meeting the minimum period, the means must be fitted with a battery health indicator which is appropriate to the needs of the vulnerable consumer and be replaced at least every 36 months from the date the last means was installed.

## **Replacement of appropriate means supplied to vulnerable consumers**

### *Context and reasons*

67. We agree with Spark<sup>31</sup> that the requirement to replace appropriate means at least once every 36 months is in some cases too often, and that replacing means that are still fit for purpose after 36 months is not a practical use of time or resources and incurs an unnecessary cost on providers, and unnecessary change for the vulnerable consumer.
68. The intention of this proposed amendment is not to suggest that appropriate means should be replaced less often. It is important to note that clause 33 of the current Code requires providers to monitor whether a means remains appropriate on at least an annual basis to ensure that the means it has provided to the vulnerable consumer remains appropriate and functional.

### *Draft Decision*

69. Our draft decision is to:

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<sup>30</sup> Section 238(3)(d).

<sup>31</sup> Spark “Submission on 111 Contact Code Review Request for Views” (16 June 2023) para 26.

- 69.1 remove the requirement in clause 29.3 of the current Code to replace means at least once every 36 months; and
- 69.2 instead require providers to replace the appropriate means when the device no longer meets the minimum requirements under the Code.

### **When a means can be considered appropriate**

#### *Context and reasons*

- 70. We agree with Spark<sup>32</sup> and TCF<sup>33</sup> that the current requirements introduce unnecessary compliance uncertainty for providers where a solution is compliant with the Code but is still rejected by the vulnerable consumer.
- 71. WISPANZ gave battery back-up devices as an example of a solution that some vulnerable consumers dislike because of their size or LED displays, even though they meet the requirements of the Code and are the only option outside mobile coverage areas.
- 72. We agree that providers should not be penalised by a consumer’s refusal to accept a solution that complies with the Code and propose to clarify the Code accordingly.
- 73. This draft decision should alleviate the concern that providers are unable to meet their obligations if a consumer is unwilling to accept a solution provided it otherwise complies with the Code requirements.

#### *Draft Decision*

- 74. Our draft decision is to:
  - 74.1 clarify in the Code that if its requirements are met, the appropriate means supplied by the provider to the vulnerable consumer is deemed appropriate, whether the vulnerable consumer accepts it or not; and
  - 74.2 amend the Code to require providers to make vulnerable consumers aware of the implications of rejecting the appropriate means.
- 75. However, in making this clarification, we note that providers must comply with clause 26 of the current Code in discharging their obligations. They must supply the vulnerable consumer with a means that is appropriate for their specific circumstances, taking into account in particular the consumer’s physical, mental and technical capabilities.

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<sup>32</sup> Spark “Feedback on 111 Contact Code” (30 November 2022) para 12.

<sup>33</sup> TCF “Submission on 111 Contact Code Review Request for Views” (19 June 2023) para 7.

## **Proposed amendments to the circumstances where a consumer may no longer be considered vulnerable: Section H of the Code**

### *What the current Code requires*

76. The current Code sets out that a provider may consider a consumer to no longer be vulnerable in any of the following circumstances:
- 76.1 where the consumer (or someone on their behalf) requests that they no longer be regarded as a vulnerable consumer;
  - 76.2 where the consumer no longer resides at the premises where the retail landline service was supplied when the consumer submitted their application to be a vulnerable consumer to the provider;
  - 76.3 where the consumer obtains (by a manner other than through their provider under this Code) a means for contacting the 111 emergency service at their premises that can be operated for the minimum period in the event of a power failure; or
  - 76.4 a provider has asked for the consumer’s application to be resubmitted in accordance with clause 24 and the application has not been resubmitted.
77. The current Code sets out that a consumer has the responsibility to inform their provider if they are no longer vulnerable (or will no longer become so).

### **Vulnerable status when moving premises**

#### *Context and reasons*

78. This proposed amendment is intended to minimise disruption and risk for the vulnerable consumer, while still allowing the provider to confirm their vulnerable status and determine whether the means provided still meets the requirements of the Code.
79. We agree with Consumer NZ<sup>34</sup> that the requirement in clause 35.2 of the current Code is not fit for purpose, as it can put a vulnerable consumer who moves premises at risk of being without protection if they lose their vulnerable status.
80. For example, the vulnerable consumer may have been provided with a mobile phone and shift premises from an area with mobile coverage to one that does not have mobile coverage, requiring a different means such as a battery back-up.

#### *Draft Decision*

81. Our draft decision is to amend the Code to:

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<sup>34</sup> Consumer NZ “Submission on 111 Contact Code Review Request for Views” (15 June 2023) page 3.

- 81.1 remove clause 35.2 of the current Code, so that if a vulnerable consumer moves premises and remains with the same provider, that consumer does not necessarily automatically lose their vulnerable status; and
- 81.2 add a new clause stating that the provider may check the consumer's status when they move premises, and may require them to re-apply if something material has changed in relation to the vulnerable consumer's circumstances.

## **Proposed amendments to the requirement on providers to disclose information: Section J of the Code**

### *What the current Code requires*

- 82. The current Code requires that no later than 30 November of each disclosure year, a provider must disclose to the Commission specified information in respect of the preceding disclosure year.<sup>35</sup> These requirements help to meet the purpose of the Code, as they assist us to monitor compliance with the Code.
- 83. The specified information that suppliers are currently required to disclose is:
  - 83.1 a description and supporting evidence of the process that a provider has implemented for the purposes of satisfying the consumer's information related requirements (under clauses 6 and 7 of the current Code),<sup>36</sup> and the vulnerable consumer application related requirements (under clauses 13-24 of the current Code);<sup>37</sup>
  - 83.2 metrics around customer numbers and the number of vulnerable consumer applications (both accepted and declined) and appropriate means supplied;<sup>38</sup> and
  - 83.3 the average number of working days from the point at which a consumer's application is submitted to the point at which the vulnerable consumer is provided with appropriate means.<sup>39</sup>

## **Disclosure of time taken to provide appropriate means to consumers**

### *Context and reasons*

- 84. Spark<sup>40</sup> submitted that the requirement to provide an average number of working days taken to provide means does not provide meaningful information, and that the average should not be used to draw conclusions about how efficient the provider's processes are. Spark further stated that the working day numbers differ depending

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<sup>35</sup> Section J of the current Code.

<sup>36</sup> Clause 38.1 the current Code.

<sup>37</sup> Clause 38.2 of the current Code.

<sup>38</sup> Clauses 38.3-38.6 of the current Code.

<sup>39</sup> Clauses 38.7 of the current Code.

<sup>40</sup> Spark "Feedback on 111 Contact Code" (30 November 2022) para 35.

on whether they are calculated from the date that a consumer’s application is received, or from the date a consumer’s application is accepted.

85. In response to Spark’s submission, we note that clause 27.1 of the current Code specifies that the ‘reasonably practicable’ requirement should be calculated ‘following the acceptance of the consumer’s application’ – i.e., providers must supply a means to a vulnerable consumer ‘as soon as reasonably practicable’ after the consumer becomes vulnerable. We have amended the disclosure requirements to make it easier to assess compliance with this clause.
86. We also note that clause 18 of the current Code sets out that a consumer’s application must either be accepted or declined within 10 working days of providers receiving a complete application. Providers can accept the application and not provide the means until the consumer becomes vulnerable.
87. Nevertheless, we accept Spark’s point about the limitations of overall average provisioning times. In particular, requiring the number of working days to be presented as an average across all vulnerable consumers does not allow us to identify unreasonably long provisioning times. One outlier may also distort the average, which would then not be representative of the efforts the provider had made to supply the device as soon as reasonably practicable. We therefore propose to replace this with a new requirement to disclose individual provisioning times for each new vulnerable consumer. This will enable the Commission to monitor general timeframes and, more importantly, understand why providers took longer than 10 working days to provide means from the date that the consumer’s application was accepted.
88. Providers will not necessarily be considered non-compliant if they take more time to provide the means, as non-compliance is determined by whether the means was supplied as soon as reasonably practicable.<sup>41</sup> The reasoning disclosed by providers will assist us in determining where further consideration may be required.
89. We are focusing this proposed reporting requirement on where we consider there is high risk for vulnerable consumers, which is between the point they become vulnerable and when they are provided with means.
90. Additionally, we consider that requiring providers to report on the provisioning timing for each individual vulnerable consumer who signed up in the last disclosure year will enable us to more effectively assess compliance with clause 27.1 and will not be unduly burdensome on the provider, as these records are already required to calculate and disclose the average number of working days.

### *Draft Decision*

91. Our draft decision is to amend clause 38.7 of the Code to:

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<sup>41</sup> Clause 27.1 of the current Code.

## 111 Contact Code Review – Draft Decisions and Reasons

- 91.1 no longer require providers to disclose the average number of working days from the date the consumer's application is submitted to the point that the vulnerable consumer is provided with appropriate means to contact the 111 emergency service; and
- 91.2 require providers to disclose the provisioning timing to provide appropriate means to contact the 111 emergency service for each new vulnerable consumer (i.e., from the date that their application was accepted) in the applicable disclosure year, with brief reasons for any provisioning that took longer than 10 working days.



## Chapter 5 – Matters under consideration

### Residential Care and Assisted Living Facilities

92. Outside of submissions on our Request for Views paper, we have been made aware of concerns around how providers of residential care or assisted living facilities, including but not limited to retirement premises, rest and nursing homes, long-stay hospitals, dementia units and psycho-geriatric units (**Facilities**) are covered by the Code.
93. Some Facilities and similar business models provide retail landline services to their residents. We considered the following scenarios regarding the relationship the Facility may have with its residents and the retail service provider (to whom the Code applies) and how it may differ according to the scenario:
  - 93.1 Scenario A: The Facility purchases retail landline services, then on-sells these services to their residents. The resident is directly and separately invoiced by the Facility for the retail landline services.
  - 93.2 Scenario B: The Facility purchases services, and includes a phone in the resident's room that is not separately paid for by the resident, but is bundled with other living costs as one bill. The resident does not see any invoices related to their telecommunications services specifically.
  - 93.3 Scenario C: The Facility does not offer retail landline services, and residents instead purchase these services directly from a retail service provider.
94. It is the Commission's preliminary view that the party who holds the direct billing relationship with the consumer is subject to the Code and must comply with all Code requirements, including:
  - 94.1 to inform consumers about the Code and provide any vulnerable consumers with an appropriate means for contacting the 111 emergency service; and
  - 94.2 in assessing vulnerability, consider clause 21 of the current Code, which allows a provider to consider that a consumer has an appropriate means of contacting the 111 emergency service if the consumer has access to an uninterruptable power supply able to maintain a means that can contact 111. If there is more than one vulnerable consumer at a premises, the means provided must be appropriate for the needs of each vulnerable consumer at that premises.<sup>42</sup>
95. While we currently do not consider that our existing views on this point require a Code amendment, we would like to invite submissions on the views that we have set

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<sup>42</sup> Clause 32 of the current Code.

out. We are open to submissions on the three scenarios we have outlined, along with any other relevant factors that we should take into account.

## Chapter 6 – No proposed amendments to existing Code requirements

96. We have received a number of comments in submissions that we do not currently consider require a change to the Code. We have grouped these comments by theme along with our responses below.
97. We have been tasked by Parliament to create a Code that meets the requirements and the purpose set out in section 238 of the Act. As we must exercise our powers within this framework, to the extent that submissions touch on issues which do not fall within the purpose or requirements set out in the Act, we are not in a position to implement these.
98. This chapter covers the following themes:
  - 98.1 Application of the Code to medical alarms;
  - 98.2 Clearer vulnerable consumer eligibility;
  - 98.3 Evidence of vulnerability;
  - 98.4 Impact of satellite technology;
  - 98.5 Network resiliency;
  - 98.6 Providers withdrawing landline services;
  - 98.7 Contribution of Local Fibre Companies to Code-related costs;
  - 98.8 High compliance costs;
  - 98.9 Minimum period and limited market of appropriate means;
  - 98.10 Clarification of what is out of scope;
  - 98.11 Lack of consumer awareness;
  - 98.12 Interested persons;
  - 98.13 Other communications channels;
  - 98.14 Providers identify vulnerable consumers;
  - 98.15 Use of term ‘vulnerable’ is potentially offensive;
  - 98.16 Providers should inform consumers about their right to independent information;
  - 98.17 Accessibility of Code-related information; and

98.18 Review disclosure requirements.

**Application of the Code to medical alarms**

*Relevant background*

99. Section 238(3)(d) of the Act requires that the Code must require providers to supply vulnerable consumers, at no cost to the consumers, with an appropriate means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure.
100. The current Code does not specify particular solutions that are appropriate means. Rather, providers have some flexibility to choose the means they supply to a vulnerable consumer, subject to meeting key principles.<sup>43</sup>

*Comments from submissions*

101. Several submissions<sup>44</sup> raised that the role of medical alarms should be considered under the Code, and that they could be considered an appropriate means.

*Response*

102. We agree with TCF that consumers who have an appropriate medical alarm (i.e., the medical alarm meets the requirements under the Code) are already adequately protected, and do not require an additional means under the Code.
103. If a consumer has a medical alarm which can be used as “a means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure”, then that consumer does not meet the definition of vulnerable consumer under the Act or Code. The Act and Code state that to be considered vulnerable, a consumer must not have a means of contacting the 111 emergency service in the event of a power failure.<sup>45, 46</sup>
104. Equally, it is open to providers to supply a new medical alarm or upgrade an existing medical alarm to satisfy their obligations under the Code, provided the solution satisfies the minimum requirements under the Code. This includes the requirement that the consumer will incur no costs (after any applicable government funding for the medical alarm).

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<sup>43</sup> Commerce Commission “Commission 111 Contact Code: Decisions and Reasons Paper” (17 November 2020) paras 147 and 149.

<sup>44</sup> 2degrees “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 1. Spark “Feedback on 111 Contact Code” (30 November 2022) para 13-21. TCF “Submission on 111 Contact Code Review Request for Views” (19 June 2023) para 11-14. One NZ “Submission on 111 Contact Code Review Request for Views” (16 June 2023) para 7-10.

<sup>45</sup> Vulnerable consumer is defined in section 238(5) of the Act and contained in Clause 9 of the current Code.

<sup>46</sup> By extension, if an existing vulnerable consumer who has been provided with a means for contacting the 111 emergency service obtains a medical alarm that meets the requirements under the Act, then they may lose their vulnerable consumer status for the purpose of the Code.

105. Accordingly, we consider that a medical alarm that can be operated for the minimum period in the event of a power failure<sup>47</sup> can be an appropriate means for contacting the 111 emergency service in the event of a power failure at the vulnerable consumer's premises.<sup>48</sup> However, there may be medical alarms that do not meet minimum requirements under the Code, which is why we do not consider that a blanket statement including all medical alarms as appropriate means is consistent with the purpose of the Code.

### **Clearer vulnerable consumer eligibility**

#### *Relevant background*

106. The Act requires the Commission to 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.<sup>49</sup>

107. The current Code provides the following in relation to the definition of vulnerable consumers:

9. A vulnerable consumer means a consumer of a retail landline service, who:

9.1 is at particular risk of requiring the 111 emergency service; and

9.2 does not have a means for contacting the 111 emergency service that can be operated for the minimum period, in the event of a power failure.

10. For the purposes of clause 9.1, a consumer who is "at particular risk of requiring the 111 emergency service" means a consumer who is more likely than other consumers to require the 111 emergency service because of a specific circumstance applicable to that consumer.

108. The process we have prescribed for a consumer to demonstrate that they are a vulnerable consumer requires them to state which of three categories most closely relates to the specific circumstance that means the consumer is (or will become) at particular risk. The three categories are:

108.1 Health (for example, the specific circumstance is a known medical condition);

108.2 Safety (for example, the specific circumstance is family violence); or

108.3 Disability (for example, the specific circumstance is sensory impairment, intellectual impairment, physical impairment).<sup>50</sup>

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<sup>47</sup> Section 238(3)(d).

<sup>48</sup> Section 238(1).

<sup>49</sup> Section 238(1).

<sup>50</sup> Commerce Commission "Commission 111 Contact Code: Decisions and Reasons Paper" (17 November 2020) para 43.

*Comments from submissions*

109. Spark<sup>51</sup> mentioned that the current eligibility criteria for potential applicants is quite high level, and applicants would benefit from more guidance on the specific medical, health and safety aspects that qualify a consumer as vulnerable.
110. Grey Power<sup>52</sup> suggested that the Code seems to only cover on-going health conditions, and DPA<sup>53</sup> submitted that the Code should clarify that demonstrating vulnerability should not be too cumbersome or intrusive, and that there are other ways than a doctor's certificate to demonstrate need.
111. DPA<sup>54</sup> also submitted that a doctor's certificate is often not the best way to determine whether a consumer requires additional support, and this is often better demonstrated by friends, family, community workers and disability organisations.

*Response*

112. We do not believe that changes to the definition of vulnerable consumer and/or changes to the process for a consumer to demonstrate that they are a vulnerable consumer would better meet the minimum requirements set out in the Act.
113. Our intention continues to be that the definition of vulnerable consumers should be interpreted broadly (backed up by the ability of any consumer whose application has been refused to appeal that refusal through Telecommunication Disputes Resolution Scheme (**TDRS**)).
114. The categories of health, safety and disability noted in the process consumers need to follow to demonstrate that they are a vulnerable consumer are intended to capture a wide range of vulnerable consumers. Adding more details to these categories could unintentionally exclude vulnerable consumers who require protection under the Code.
115. We believe that the Code already provides appropriate guidance. The current Code sets out the examples of health, safety and disability under clause 14.3. The Code also specifies that it applies to any consumer who is, or who may become, vulnerable.<sup>55</sup>
116. Also, in our current view, the application process is adequately robust so that providers are given the information required to determine vulnerability.
117. In this regard, the Code currently sets out that an application by a consumer (or someone on their behalf) to a provider must include either:

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<sup>51</sup> Spark "Submission on 111 Contact Code Review Request for Views" (16 June 2023) para 30-32.

<sup>52</sup> Grey Power "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 3.

<sup>53</sup> DPA "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 7.

<sup>54</sup> DPA "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 5 & 6.

<sup>55</sup> Clause 37 of the current Code.

- 117.1 the details of a nominated person (including name, contact details and occupation) the provider may contact to verify that the consumer is (or will become) at particular risk of requiring the 111 emergency service; or
- 117.2 sufficient evidence to support that the consumer is (or will become) at particular risk of requiring the 111 emergency service.<sup>56</sup>
- 118. The nominated person must be competent, by virtue of their occupation, to give an opinion on whether the consumer is at particular risk of requiring the 111 emergency service. The examples in the Code are not intended as an exhaustive list.<sup>57</sup>
- 119. The Code also currently provides examples of evidence that may be sufficient to support that the consumer is (or will become) at particular risk of requiring the 111 emergency service.<sup>58</sup>

### **Evidence of vulnerability**

#### *Relevant background*

- 120. The Code provides that an application by a consumer (or someone on their behalf) to a provider must be treated as complete by the provider if it contains certain information as prescribed in the Code. The key information requirements include either:
  - 120.1 the details of a nominated person (including name, contact details and occupation) the provider may contact to verify that the consumer is (or will become) at particular risk of requiring the 111 emergency service; or
  - 120.2 sufficient evidence to support that the consumer is (or will become) at particular risk of requiring the 111 emergency service.
- 121. The Code currently gives examples of evidence that may be sufficient, such as a letter from a health practitioner, without prescribing the content of such evidence.
- 122. Clause 19 of the current Code states the grounds on which a provider is permitted to decline a consumer's application. The provider can decline an application under clause 19.2.2 of the current Code if the nominated person considers that the consumer is not (or will not become) at particular risk of requiring the 111 emergency service.

#### *Comments from submissions*

- 123. One NZ suggested that the Code be amended to clarify that the letter from a health practitioner must state that the consumer who has applied for vulnerable status is at

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<sup>56</sup> Clause 14.8 of the current Code.

<sup>57</sup> Clause 15 of the current Code.

<sup>58</sup> Clause 16 of the current Code.

particular risk of needing to contact the 111 emergency service and therefore should qualify as vulnerable.<sup>59</sup>

124. TCF submitted that, in some cases, the health practitioner has shared the consumer's entire medical history rather than confirming eligibility for the scheme, and that the Code should specify that the health practitioner's letter must specifically state that the consumer qualifies for additional support.<sup>60</sup>

#### *Response*

125. We agree that it could be helpful for providers to specifically know the nominated person's views on whether the consumer is (or will become) at particular risk of requiring the 111 emergency service.
126. However, in our view, this does not require an amendment to the Code. Providers can include this request in their application forms.
127. We emphasise that, while the opinion of a nominated person is an input to this decision, it is the provider who must determine whether a consumer is vulnerable based on the Code requirements and the information provided. Responsibility for making this determination cannot be delegated to a third party.

### **Impact of satellite technology**

#### *Relevant background*

128. The Code sets out that providers must supply vulnerable consumers, at no cost to them, with an appropriate means of contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure at the vulnerable consumer's premises.

#### *Comments from submissions*

129. Business Technology Group raised that the future of satellite coverage could negate the need for the 111 Code, as there would be widely available methods for contacting 111 at a reasonable cost.<sup>61</sup>
130. An anonymous submitter suggested that the Code would require a review once the rollout of satellite communications was further progressed.<sup>62</sup>

#### *Response*

131. We agree with submitters that satellite technology is driving innovation and change but do not consider this has reached the point where amendments to the Code are warranted.

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<sup>59</sup> One NZ "Submission on 111 Contact Code Review Request for Views" (16 June 2023) para 16.

<sup>60</sup> TCF "Submission on 111 Contact Code Review Request for Views" (19 June 2023) para 22.

<sup>61</sup> BTG "Submission on 111 Contact Code Review Request for Views" (5 June 2023) page 1.

<sup>62</sup> Anonymous "Submission on 111 Contact Code Review Request for Views" (19 May 2023) page 1 & 2.



132. In particular, landline services that are delivered over satellite technology still require a power source to operate, giving rise to continuity of power issues the Code is designed to address.
133. We retain the ability to review the Code at any time should we consider that technological or other changes warrant it.

### **Network resiliency**

#### *Relevant background*

134. The scope of the Code is limited to power failures at the vulnerable consumer's premises.

#### *Comments from submissions*

135. Business Technology Group raised in their submission that consideration should be given to a whole network approach rather than just the end-user premises.<sup>63</sup>
136. An anonymous submitter also stated that the focus of the Code going forward should be on resiliency and ensuring that there is redundancy planned to allow for communications and power in the case of a disaster.<sup>64</sup>

#### *Response*

137. While we do agree that network resiliency is an important matter, it is out of scope of this Code, which is limited to power failures at the consumer's premises.
138. The Code is focused on resilience in the home, for a specific category of consumers, and is calibrated around ordinary power outages, rather than extended or widespread power failures.

### **Providers withdrawing landline services**

#### *Relevant background*

139. The intent of the Code is to inform people, enable them to prepare for the change in technology and ensure 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, at no cost to the vulnerable consumers.

#### *Comments from submissions*

140. WISPANZ<sup>65</sup> and Business Technology Group<sup>66</sup> both observed that some providers either do not enter the voice service market or withdraw from landline service provision to avoid the requirements under the Code, for cost related reasons. This has resulted in reducing the options available for end-users, particularly for rural communities where options are already limited.

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<sup>63</sup> BTG "Submission on 111 Contact Code Review Request for Views" (5 June 2023) page 1.

<sup>64</sup> Anonymous "Submission on 111 Contact Code Review Request for Views" (19 May 2023) page 1.

<sup>65</sup> WISPANZ "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 5.

<sup>66</sup> BTG "Submission on 111 Contact Code Review Request for Views" (5 June 2023) page 1 & 2.

*Response*

141. We will continue to monitor the number of providers who withdraw their services citing reasons related to obligations under the Code, and will inform policy makers in the event this becomes a policy issue.

**Contribution of Local Fibre Companies to Code-related costs**

*Relevant background*

142. The Code sets out that the obligation to supply the appropriate means to consumers lies with the providers of the specified telecommunications services.

*Comments from submissions*

143. Spark<sup>67</sup> and One NZ<sup>68</sup> raised that Local Fibre Companies (**LFCs**) should be required to share the cost burden of providing appropriate means to vulnerable consumers, as their decision to retire the copper network is the reason the Code is required.
144. Spark<sup>69</sup> suggested that, at a minimum, LFCs should be required to pay for optical network terminal relocations where these are required to correctly install a battery back-up device.

*Response*

145. As noted in our 2020 Decisions and Reasons paper:<sup>70</sup>

145.1 under s 238(3)(d) of the Act, the obligation to supply the appropriate means lies with the “providers” of the specified telecommunications services, which are the providers who have the relationship with their customers;

145.2 our view is that making different parties (i.e., network operator or providers) responsible for covering the cost of different parts of the solution provided to vulnerable consumers would introduce complexity, potentially give rise to disputes, and could result in consumer confusion over who is ultimately responsible for the provision of the appropriate means.

146. In reviewing the Code, we have remained conscious of not imposing costs beyond what we consider is necessary to achieve the purpose of the Code, and have reflected this in our proposed amendments.
147. We remain of the view that the Code-related costs apply specifically to suppliers of retail landline services and that the current drafting of the Code reflects the intention of the Act.

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<sup>67</sup> Spark “Submission on 111 Contact Code Review Request for Views” (16 June 2023) para 27-29.

<sup>68</sup> One NZ “Submission on 111 Contact Code Review Request for Views” (16 June 2023) para 14.

<sup>69</sup> Spark “Feedback on 111 Contact Code” (30 November 2022) para 33.

<sup>70</sup> Commerce Commission “Commission 111 Contact Code: Decisions and Reasons Paper” (17 November 2020) paras 164-166.

## High compliance costs

### *Relevant background*

148. In setting out the Code requirements:<sup>71</sup>

- 148.1 our decisions were made primarily to promote the purpose of the Code, i.e., to ensure 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;
- 148.2 we were mindful of the potential costs that providers would bear in meeting their obligations under the Code; and
- 148.3 we considered that an approach where providers have some flexibility to choose the means they supply to a vulnerable consumer, subject to meeting key principles, better meets the purpose of the Code than an approach that specifies particular means that are appropriate.

### *Comments from submissions*

- 149. Submissions from Spark<sup>72</sup>, TCF<sup>73</sup> and WISPANZ<sup>74</sup> outlined the high costs associated with compliance, particularly in supplying battery back-ups. These submissions also mentioned an alleged disproportionate impact on both Spark and any smaller providers who choose to continue to provide retail landline services and would therefore experience the brunt of the costs.
- 150. Spark, TCF and WISPANZ, along with One NZ<sup>75</sup>, also suggested that a longer-term funding model should be considered. WISPANZ in particular raised concern that the Commission would have privatised an activity that would otherwise be undertaken by the Government. One NZ suggested that the Ministry of Social Development's scheme for monitored medical alarms could be extended to cover mobile phones and battery back-up devices.

### *Response*

- 151. The Government has passed legislation which required the Commission to make the Code and requires retail service providers to meet the costs of it. Organising a funding scheme is outside the scope of the Act. However, in making and reviewing the Code, we were mindful of the potential costs that providers would bear in meeting their obligations under the Code and we have sought to balance consumer protection and cost requirements as far as possible.
- 152. The intent of the Code is to provide protections to consumers, and while we understand that providing these protections can be costly, we believe that the

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<sup>71</sup> Commerce Commission "Commission 111 Contact Code: Decisions and Reasons Paper" (17 November 2020) paras 65-66 and 150.

<sup>72</sup> Spark "Feedback on 111 Contact Code" (30 November 2022) para 24, 30.

<sup>73</sup> TCF "Submission on 111 Contact Code Review Request for Views" (19 June 2023) para 16-17.

<sup>74</sup> WISPANZ "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 5.

<sup>75</sup> One NZ "Submission on 111 Contact Code Review Request for Views" (16 June 2023) para 14-15.

primary focus must be on the benefits to consumers, in particular vulnerable consumers.

153. The majority of suppliers' cost concerns appear to be associated with the price of battery back-up devices, as devices which meet the minimum requirements under the Code can be expensive. However, we do not specify particular solutions that are appropriate means. Providers have some flexibility to choose the means they supply to a vulnerable consumer, subject to meeting key principles.<sup>76</sup> Through our assessment of annual disclosures, we have seen that the majority of vulnerable consumers are provided with a mobile phone as appropriate means.<sup>77</sup> Battery back-ups are supplied in relatively lower numbers, making up 8% of appropriate means in 2021 and 15% in 2022.
154. Providers may continue to seek out new, lower cost options that meet the Code's requirements, and new technologies may provide new options for providers to meet their obligations in the future.

### **Minimum period and limited market of appropriate means**

#### *Relevant background*

155. The Code currently sets out that providers must supply a vulnerable consumer, at no cost to them, with an appropriate means of contacting the 111 emergency service that can be operated for the continuous eight-hour period in the event of a power failure at the vulnerable consumer's premises.

#### *Comments from submissions*

156. Spark<sup>78</sup>, 2degrees<sup>79</sup>, WISPANZ<sup>80</sup>, TCF<sup>81</sup> and One NZ<sup>82</sup> have all commented that the current continuous 8-hour minimum period requirement mean that battery back-up devices are large, expensive, and difficult to source.
157. WISPANZ stated that there is only one available option for a battery back-up device that meets the minimum requirements, and that it has limited distribution options. This results in providers needing to supply vulnerable consumers with expensive bespoke devices.
158. These submissions suggested that the minimum period should be reduced. Spark, TCF and One NZ believe that a minimum period of 4 hours would allow providers to source cheaper and more widely available devices.

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<sup>76</sup> See, for example, Minister Fa'afoi during the third reading of the Telecommunications (New regulatory framework) Amendment Bill: "So they [vulnerable consumers] will have a battery backup or, potentially, a mobile phone provided by the RSPs so that if there is an emergency, predominantly around health, they will have the ability to call a 111 service".

<sup>77</sup> 76% of vulnerable consumers were provided with a mobile in 2021, and 79% in 2022.

<sup>78</sup> Spark "Feedback on 111 Contact Code" (30 November 2022) para 34.

<sup>79</sup> 2degrees "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 2.

<sup>80</sup> WISPANZ "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 5.

<sup>81</sup> TCF "Submission on 111 Contact Code Review Request for Views" (19 June 2023) para 8-10.

<sup>82</sup> One NZ "Submission on 111 Contact Code Review Request for Views" (16 June 2023) para 13.

159. TCF, One NZ, 2degrees and Spark suggested that reducing the minimum period would result in a larger pool of available devices for providers, and that smaller, lighter batteries would be more suitable for installing in a vulnerable consumer's home and may better meet their needs.

*Response*

160. Although we understand the concern that the market for suitable battery back-ups (which are often considered as a solution in situations where mobile phones are not appropriate) is limited, our primary goal, in line with the purpose of the Act, is to ensure that vulnerable consumers are adequately protected.
161. We consider that the reasoning that we provided in our original Decisions and Reasons paper<sup>83</sup> was robust. Our analysis showed that 92% percent of outages are resolved within eight hours, and that there would be diminishing benefits of extending beyond eight hours. By contrast, at four hours, some 30% of outages are not resolved, leaving a considerable number of vulnerable consumers at risk if we were to reduce the battery back-up time to four hours. We have no reason to believe that there have been changes in outage restoration practices that would disturb this conclusion. Without strong evidence that something material has changed in the ways that power outages are resolved, we do not believe the minimum period should be amended.
162. Additionally, we remain concerned that anything less than a continuous 8-hour minimum period would potentially introduce risk to vulnerable consumers whose power may fail during sleeping hours or at a time when they are unable to take timely necessary action.

**Clarification of what is out of scope**

*Relevant background*

163. The purpose of the Code is to ensure 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.<sup>84</sup>

*Comments from submissions*

164. 2degrees submitted that the Commission should clarify that the Code is not intended to address customers who are not at particular risk of needing to call 111 emergency services.<sup>85</sup> TCF's submission also recommended that it be clarified that consumers wanting to access the scheme for personal resilience and who are not at particular risk of needing to contact 111 emergency services are out scope.<sup>86</sup>

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<sup>83</sup> Commerce Commission "Commission 111 Contact Code: Decisions and Reasons Paper" (17 November 2020) para 175-180.

<sup>84</sup> Commerce Commission "Commission 111 Contact Code: Decisions and Reasons Paper" (17 November 2020) para 2.

<sup>85</sup> 2degrees "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 1.

<sup>86</sup> TCF "Submission on 111 Contact Code Review Request for Views" (19 June 2023) para 5.

165. Spark suggested that the Code should be clearer on what issues are not covered by the Code. The word “safety” has been interpreted by customers to include situations where someone lives on their own or do not have mobile coverage, which Spark do not believe is the intention of the Code.<sup>87</sup>

*Response*

166. We believe that the Code and the 2020 Decisions and Reasons paper that accompanies it (e.g., the definition on a vulnerable consumer, and the application requirements in the Code, and the introduction to the paper) already clearly set out its purpose.
167. We set out the minimum requirements for vulnerable consumer protection under the Code, and we do not believe it would be appropriate to limit the options of what providers can offer to their consumers. In order to be eligible for protection under the Code, a consumer must still complete an application to register as vulnerable. In our view, this should prevent any out of scope consumers from accessing the Code’s protections.
168. In any event, we note that providers are able to deal with the issues they have identified in their own communications with consumers about the Code, so that any misunderstanding or confusion is dealt with up-front. Providers are also able to communicate other options available with regards to resiliency to their consumers at their own discretion.
169. We do consider that there is scope to improve consumer awareness and understanding and we discuss this below. This issue is important for both the Commission and industry to work on.

**Lack of consumer awareness**

*Relevant background*

170. Section 238(3)(b) of the Act sets out that the Code must require the providers of specified telecommunications services to inform all consumers about the options available for vulnerable consumers. The Code sets out the information providers need to make available to consumers, which is necessary to meet the purpose of the Code.

*Comments from submissions*

171. Submissions from DPA, an anonymous submitter and Consumer NZ<sup>88</sup> mentioned that there is a lack of awareness of the Code and risk of loss of service in a power failure among consumers.

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<sup>87</sup> Spark “Submission on 111 Contact Code Review Request for Views” (16 June 2023) para 32.

<sup>88</sup> DPA “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 4 & 5.  
Anonymous “Submission on 111 Contact Code Review Request for Views” (19 May 2023) page 1.  
Consumer NZ “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 1 & 2.

172. Consumer NZ and DPA do not believe that consumers are aware of the risk of loss of service during a mains power outage, and an anonymous submitter specified that many consumers are not aware that a working cell phone in reception is considered an appropriate means for contacting 111 emergency services.
173. Grey Power called out that the low number of vulnerable consumers is not in line with the number of elderly people who experience health vulnerability, and therefore they consider the solutions provided have not been effective.<sup>89</sup>

*Response*

174. Creating consumer awareness is a key requirement on providers under the Code. For instance, the Code requires providers to tell both new and existing customers of a retail landline service, at least once every 12 months, that their home phone may not work in a power failure at their premises and ways they can protect their household.<sup>90</sup>
175. Since the Code came into force, we have undertaken compliance engagement work to promote compliance with the Code. Following annual disclosures being provided to the Commission by 30 November 2022 we conducted an industry-wide review of compliance with the Code.<sup>91</sup> Our compliance monitoring has shown that some providers are not compliant with the consumer information provision requirements under the Code. This non-compliance will inevitably impact consumer awareness. We are taking action to address these compliance concerns. This work is ongoing, and we consider that it requires a collective effort to ensure awareness and understanding of rights.
176. We noted in our 2020 Decisions and Reasons paper that we were working on a communications and engagement plan to promote the Code and to raise awareness among consumers about how they can be prepared for an emergency in a power failure.<sup>92</sup> This resulted in a factsheet which can be found on our website.<sup>93</sup>
177. It is our intention to continue to provide further information and resources on our website and through our various engagements with consumer advocacy groups and industry, outside of this review to provide consumers and providers with additional clarity.
178. We agree that the numbers of vulnerable consumers under the Code might seem low if compared with all consumers that might experience health vulnerabilities in New Zealand. However, the Code applies to consumers of a retail landline service

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<sup>89</sup> Grey Power "Submission on 111 Contact Code Review Request for Views" (16 June 2023) page 2.

<sup>90</sup> Clauses 6.2 and 7.3 of the current Code.

<sup>91</sup> Following the conclusion of the 2021/22 Code disclosure year. The Code includes information disclosure and record keeping requirements under section 238(4)(c) which we believe are necessary to achieve the purpose of the Code.

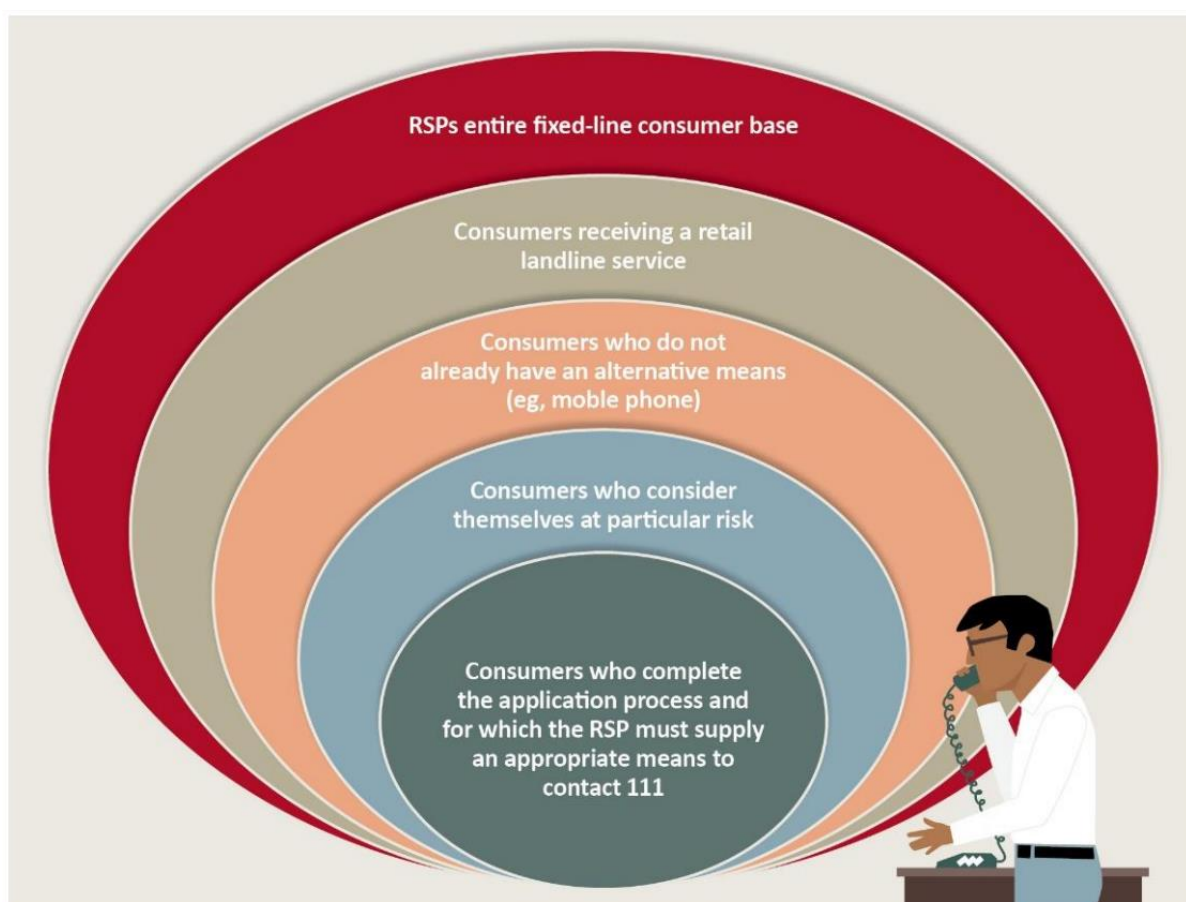
<sup>92</sup> Commerce Commission "Commission 111 Contact Code: Decisions and Reasons Paper" (17 November 2020) para 22.

<sup>93</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0024/256425/Telecommunications-Forum-TCF-Home-phone-technology-and-calling-111-Code-factsheet-June-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0024/256425/Telecommunications-Forum-TCF-Home-phone-technology-and-calling-111-Code-factsheet-June-2021.pdf).

without appropriate means to contact 111 in a power failure (such as mobile phones). It is not intended to cover all consumers who experience health vulnerabilities; only those who lack appropriate means.

179. In practice, the widespread availability and uptake of mobile services across all sections of society, including consumers experiencing vulnerabilities, acts to reduce the number of vulnerable consumers qualifying under the Code. The application of the Code to residential landline services, which are used by a decreasing number of consumers, also assists in reducing the numbers of eligible consumers.
180. The diagram below indicates the criteria a consumer must meet to be considered vulnerable under the Code.

Figure 1: Subset of consumers entitled to receive appropriate means



## Interested persons

### *Relevant background*

181. Section 239 of the Act sets out the process the Commission must follow to make or amend the Code. Among other things, it requires the Commission to consult with “interested persons”. The Act sets out that interested persons include (i) the New Zealand Police, (ii) Fire and Emergency New Zealand, (iii) the Director of Civil Defence Emergency Management, and (iv) every provider of an initial call answering point for the 111 emergency service.



*Comments from submissions*

182. NZ Police requested that the list of “Interested Persons” under the Act be expanded to include Ambulance Service Providers, Hato Hone St John and Wellington Free Ambulance.<sup>94</sup>

*Response*

183. The Commission does not have the power to amend the definition of “interested persons” in the Act. However, we do value the Ambulance Service Providers’ views in the context of the Code. Therefore, we will continue to ensure that these parties are included in our communications and work with them to ensure they have the opportunity to engage for the purposes of this review and other work around the Code. We reached out to these parties in our Request for Views, and will be proactive in our engagement with these parties on these draft amendments.

**Other communication channels**

*Relevant background*

184. The Act requires us to “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”.<sup>95</sup>

*Comments from submissions*

185. NZ Police would like to see the Code be extended to cover other communications channels, such as text and messaging. They suggested that consideration be given to requiring providers to allow for emergency communications, such as 111 text messaging, to be available at no cost to the consumer.<sup>96</sup>
186. Fire and Emergency also submitted that around 85% of emergency calls are made by mobile phones.<sup>97</sup>

*Response*

187. Calling 111 is the primary means to request emergency assistance from the ambulance, police and fire and emergency services. While we do agree that access to emergency services more generally (e.g., via text) is important, the intention of the Code is to protect vulnerable consumers during the transition of voice services away from copper technologies. The Code only applies to retail landline services, and states that a mobile phone is considered an appropriate means to contact the 111 emergency service.<sup>98</sup> This means that consumers with access to text, and therefore a mobile phone, would not be considered vulnerable. We note that the text option for

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<sup>94</sup> NZ Police “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 1.

<sup>95</sup> Section 238(1).

<sup>96</sup> NZ Police “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 1 & 2.

<sup>97</sup> FENZ “Submission on 111 Contact Code Review Request for Views” (21 June 2023) page 2.

<sup>98</sup> Clause 21.2 of the current Code.

contacting 111 is currently limited to people that are deaf, hearing or speech impaired.<sup>99</sup>

188. Landline services run on copper lines are usually still functional in a power failure because they are powered from their nearest node (exchange or cabinet). Modern technologies such as fibre and wireless broadband cease to function without access to mains power. The Code is intended to protect consumers who are vulnerable and may have not have the access they are accustomed to in a power failure due to the transition away from copper services.

### **Providers identify vulnerable consumers**

#### *Relevant background*

189. The Code sets out a process for a consumer (or a person on their behalf) to demonstrate (as required by the Act)<sup>100</sup> that they are or will become vulnerable:
- 189.1 First, each provider must make available a process for a consumer, or someone on their behalf, to apply to the provider to demonstrate that a consumer is (or will become) a vulnerable consumer;
  - 189.2 Second, an application by a consumer (or someone on their behalf) to a provider must be treated as complete by the provider if it contains certain information as prescribed in the Code;
  - 189.3 Third, once providers have received a complete application, they must decide whether to accept or decline the application, and communicate that decision to the consumer; and
  - 189.4 Fourth, the provider must communicate its decision to accept or decline the application following certain requirements.

#### *Comments from submissions*

190. Consumer NZ submitted that the Code would be improved by requiring providers to take steps to identify potentially vulnerable consumers, including setting out criteria to assist providers in this endeavour.<sup>101</sup>

#### *Response*

191. We continue to consider that requiring providers to seek out vulnerable consumers is not contemplated or required by the Act and risks disproportionately increasing the Code-related costs.
192. The Code already requires providers to provide key information to consumers at different contact points, and this should ensure that consumers are aware of the Code and the protections it offers to vulnerable consumers. We are amending the Code to clarify the obligations on providers in this space, and along with our related

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<sup>99</sup> <https://www.police.govt.nz/111-txt>.

<sup>100</sup> Section 238(3)(c).

<sup>101</sup> Consumer NZ “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 2.

compliance work, we do not consider that any additional requirements are currently necessary.

193. Also, providers are unlikely to have access to the necessary information about consumers to proactively and accurately identify potentially vulnerable consumers.

### **Use of term ‘vulnerable’ is potentially offensive**

#### *Relevant background*

194. In the context of the Code, vulnerable consumers are consumers who are at particular risk of requiring the 111 emergency services, and who do not have a means to contact 111 in a power failure.

#### *Comments from submissions*

195. Submissions from DPA and Whaikaha raised concerns around the use of the word “vulnerable”.<sup>102</sup>
196. DPA commented that this language does not feel appropriate to define or identify disabled people, and Whaikaha stated that the disabled people do not like to see themselves described as vulnerable.

#### *Response*

197. The term 'vulnerable' is defined in the Act, and the Commission must stay consistent with the legislation underpinning the Code.
198. It is not the Commission’s intention to suggest that those with disabilities are inherently vulnerable, nor is it the intent of the Code to capture all disabled people. The term ‘vulnerable’ is intended to refer to those people (including potentially some disabled people, but also others) who are at particular risk of needing to contact the 111 emergency service.

### **Providers should inform consumers about their right to independent information**

#### *Relevant background*

199. Under the Code, providers are required to provide consumers with information about what to do if the consumer has a complaint about the Code, including information about the consumer’s right to access an industry dispute resolution scheme.<sup>103</sup>

#### *Comments from submissions*

200. Consumer NZ submitted that providers should be required to inform consumers where they can access independent information about telecommunications services and consumer rights.<sup>104</sup>

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<sup>102</sup> DPA “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 4.  
Whaikaha “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 1.

<sup>103</sup> Clause 6.8 of the Code.

<sup>104</sup> Consumer NZ “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 2 & 3.

*Response*

201. We agree that independent information is important for consumers and, note that the Code includes a requirement on providers to supply information about the industry dispute resolution scheme,<sup>105</sup> currently the TDRS, as “an independent body for the prompt, unbiased resolution of disputes”.<sup>106</sup>
202. We believe that we have a role to play in consumer education and published the Code on our website, which is where other information about telecommunications services and consumer rights can also be accessed.
203. Messaging around consumer rights, beyond those attaching to the Code, is outside the scope of this review.
204. Having said this, we will continue to consider whether we can include messaging around consumer rights in other areas of our work and will look to create more awareness in this space as part of our compliance activities.

**Accessibility of Code-related information**

*Relevant background*

205. As noted above, we make the Code and relevant related materials available to consumers on our website.

*Comments from submissions*

206. DPA and Whaikaha suggested that information about the Code should be made accessible and available in alternative formats such as New Zealand Sign Language or Easy Read.<sup>107</sup>

*Response*

207. Providers are already required to ensure information is easily accessible and complies with the NZ Government Web Standards.<sup>108</sup> The application form must also be easily accessible for consumers, bearing in mind the needs of vulnerable consumers, and not unreasonably difficult for a consumer to fulfil.<sup>109</sup>
208. To make information about the Code available in a range of accessible formats would result in a high compliance burden, particularly on smaller providers, so we do not consider that this should be a requirement under the Code. We consider that larger providers may already have processes in place to make information on their websites accessible, and encourage these providers to apply this to information about the Code.

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<sup>105</sup> Clause 6.8 of the current Code.

<sup>106</sup> See the TDRS website, accessible via the following link: <https://www.tdr.org.nz/about-tdr>.

<sup>107</sup> DPA “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 5.  
Whaikaha “Submission on 111 Contact Code Review Request for Views” (16 June 2023) page 1 & 2.

<sup>108</sup> Clause 7.1 of the current Code.

<sup>109</sup> Clause 13 of the current Code.

209. In addition, we intend to provide more user-friendly resources on our website in a separate piece of work to the Code review. We also plan to publish an editable version of the application form template so this can be modified as needed, including to be made more accessible.

### **Review of disclosure requirements**

#### *Relevant background*

210. The Code includes a requirement on providers to disclose some limited information to the Commission no later than 30 November of each year.<sup>110</sup>

#### *Comments from submissions*

211. TCF suggested that the Commission should review the disclosure requirements to ensure that they provide meaningful data and are not unduly burdensome on providers.<sup>111</sup>

#### *Response*

212. We have given consideration to the disclosure requirements, and updated the working days requirement as per paragraph 91 above.
213. Otherwise, we consider that the information disclosure requirements remain necessary and proportionate to meet the purpose of the Code while not imposing undue costs on providers. The information we collect is used to assess compliance with the different areas of the Code, and having collected this data for two years now, we are satisfied that the requested information is useful in determining which providers are adequately protecting consumers and which need further investigation.

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<sup>110</sup> Clause 38 of the current Code.

<sup>111</sup> TCF “Submission on 111 Contact Code Review Request for Views” (19 June 2023) para 20.

## Appendix A: Relevant Statutory sections for the Code

### 9A Functions of the Commission in relation to sector monitoring and information dissemination

(1) In addition to the other functions conferred on the Commission by this Act, the Commission—

- (a) must monitor competition in telecommunications markets and the performance and development of telecommunications markets; and
- (b) may conduct inquiries, reviews, and studies (including international benchmarking) into any matter relating to the telecommunications industry or the long-term benefit of end-users of telecommunications services within New Zealand; and
- (c) must monitor compliance with the Commission 111 contact code; and
- (d) must make available reports, summaries, and information about the things referred to in paragraphs (a) to (c); and
- (e) must monitor retail service quality in relation to telecommunications services; and
- (f) must make available reports, summaries, and information about retail service quality in a way that informs consumer choice.

(2) The functions in subsection (1)(d) and (f) do not require the Commission to release all documents that the Commission produces or acquires under this section or [section 10A](#).

### 238 Commission 111 contact code

(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.

(2) The code must be made before the implementation date.

(3) The code must—

- (a) specify which telecommunications services it applies to; and
- (b) require the providers of those services to inform consumers about the options available for vulnerable consumers; and
- (c) prescribe a process (or processes) for a consumer of those services, or a person on their behalf, to demonstrate that they—

(i) are a vulnerable consumer; or

(ii) will become a vulnerable consumer; and

(d) require the providers of those services to supply vulnerable consumers, at no cost to the consumers, with an appropriate means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure; and

(e) specify the minimum period for the purposes of paragraph (d).

(4) The code may do 1 or more of the following:

(a) specify classes of people that must be considered vulnerable consumers:

(b) specify appropriate means for vulnerable consumers, or persons on their behalf, to contact emergency services:

(c) contain any other provisions that are necessary or desirable to achieve the purpose in subsection (1).

(5) In this section,—

**minimum period** means the minimum period specified under subsection (3)(e)

**specified telecommunications service** means a telecommunications service specified in the Commission 111 contact code as a service to which the code applies

**vulnerable consumer** means a consumer of a specified telecommunications service who—

(a) is at particular risk of requiring the 111 emergency service (for example, due to a known medical condition); and

(b) does not have a means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure.

(6) A Commission 111 contact code, and any amendment to or revocation of the code, is secondary legislation (see [Part 3](#) of the Legislation Act 2019 for publication requirements).

### 239 Process for making or amending Commission code

(1) In order to make a Commission code, the Commission must—

(a) give public notice of the process that will be followed to make the code; and

(b) consult with interested persons; and

(c) give public notice of a draft code.

(2) If the code is a Commission 111 contact code, **interested persons** includes the following:

(a) the New Zealand Police:

(b) Fire and Emergency New Zealand:

(c) the Director of Civil Defence Emergency Management:

(d) every provider of an initial call answering point for the 111 emergency service.

(3) A person is entitled to make submissions to the Commission not later than 30 working days after the date on which public notice of the draft code is given.

(4) The Commission may make the code only if the Commission is satisfied that the draft code meets all the requirements set out in this Part.

(5) The Commission may amend or revoke a code if the Commission considers that the code no longer meets all the requirements set out in this Part.

(6) The same procedure that applies to making a code in subsections (1) to (4) must be followed to make an amendment or a revocation, with any necessary modifications.

(7) *[Repealed]*

## 240 Dispute resolution scheme

(1) The dispute resolution scheme for all Commission codes is—

(a) an industry dispute resolution scheme; or

(b) if Part 4B comes into force in accordance with section 156S, a consumer complaints system—

(i) that is appointed under that Part; and

(ii) that the Minister declares under this section to be the dispute resolution scheme for Commission codes.

(2) A scheme provider for an industry dispute resolution scheme must, on request by the Minister or the Commission, provide information on matters relating to any information or reports relevant to the administration of a Commission code.

(3) [Sections 241 to 245](#) apply unless Part 4B comes into force.



**241 Disputes may be referred to industry dispute resolution scheme**

(1) A dispute between a consumer and a telecommunications service provider about their rights and obligations under a Commission code may be referred to an industry dispute resolution scheme by any of the parties to the dispute.

(2) Disputes that may, depending on the relevant Commission code, be referred to an industry dispute resolution scheme include disputes about the following:

(a) installation times:

(b) how consumer complaints are handled:

(c) other matters provided for in the code or by the industry dispute resolution scheme.

## Appendix B: Summary of submissions

This table provides a summary of submissions and proposals aligned to the requirements in the Code.

Submitter	Quotes	Reference in paper (para number)
<b>Overall feedback on efficacy of Code</b>		
Code is currently meeting its purpose		
2degrees	In general we consider that the scope of the Code meets the requirements of the Act	26
Mercury	Mercury, in general, considers that the present Code requirements and solutions enable vulnerable consumers, or their representatives, to have reasonable access to the means to contact the 111 emergency service in the event of a power failure.	26
Spark	<p>We think the balance of the Code is about right at present and do not consider the scope should be extended.</p> <p>In our experience the 111 Contact Code appears to be working well.</p> <p>We observe an increase in applications shortly after we send our annual reminders about the scheme. We also get applications throughout the year that are prompted by people signing up to new plans.</p>	26
WISPANZ	The code requirements have given vulnerable consumers the ability to have some assurance that they will be able to contact 111 during a mains outage, should they choose to engage with the code’s processes.	26

111 Contact Code Review – Draft Decisions and Reasons

TCF	The TCF considers that the current scope of the Code meets the requirements defined in the Act by addressing a specific need.	26
One NZ	The feedback that we have received is mostly positive, with customers happy with the additional support provided to them.	26
Code is not currently meeting its purpose		
DPA	Whilst we are pleased that the Code is being reviewed, we would argue that there is a limited awareness of the Code and the alternative contact rights included in it. Furthermore, we believe that some telecommunication providers are making it too difficult and intrusive for people to seek the alternative means of contact by asking for doctor's certificates: there are others who may be much better placed than doctors to provide proof of need.	27
Consumer NZ	In our view, not all landline consumers are aware of the risk of loss of service during a power outage.  The processes for being identified as a vulnerable consumer are not adequate.	27
Grey Power	Grey Power does not believe that the solutions provided have been effective. -- If the solutions are effective we would have expected a much larger number of people to be registered.	27
<b>Submissions related to changes we are proposing</b>		
Application of the Code to business landline services		
2degrees	As previously discussed with the Commission, the Code currently requires regularly contacting our business customers who do not ordinarily reside at the premise where the	45

111 Contact Code Review – Draft Decisions and Reasons

	retail landline service is supplied. We would support clarification on this point, which may include clarification that the Code should apply to consumers of residential services.	
WISPANZ	<p>It is very clear to us that business customers should be exempt from the code, regardless of the RSP selling them the service. We believe the responsibility lies with the business itself to make emergency calling available for vulnerable consumers in their premises, as part of their Health and Safety obligations.</p> <p>We believe it is reasonable for RSPs to inform their business customers of the need for continuous mains power to operate their internet and telephone services, but it should fall to the business provide any backup power required. The backup power requirements of a business can be technically complex and expensive to provide and maintain. It is not reasonable to expect the provider of a telephone connection to provide backup power for an entire business and it is hard to know exactly where the line should be drawn with the provision of a solution.</p> <p>We ask whether a business’s router, data switches, wireless access points and various other devices potentially required to provide service to a vulnerable consumer within a business fall within the code? RSPs can’t opt out from providing service so we urge the commission to consider the potential implications of not excluding businesses from the code.</p>	46
NZ Police	Police support the need for RSPs who provide services to business customers only to be subject to the Code and required to comply with the Code because emergencies can occur in any location and people, including vulnerable employees or business owners, should be able to contact emergency services to request help no matter where they are.	47
Code-related information on providers’ websites		

111 Contact Code Review – Draft Decisions and Reasons

Whaikaha	<p>Whaikaha suggests that accessible and alternative formats need to be made mandatory within the code.</p> <p>In developing this response we looked into other sites [] No alternative formats could be located.</p>	51
DPA	<p>DPA strongly recommends that all information pertaining to the Code is made available in alternative formats, in order that disabled people can have the information about their rights.</p> <p>Responses from our members indicate that few of them knew about the Code and the duty of the telecommunications providers to give them a means of contacting the emergency services during a power outage.</p> <p>Most of the responses we received said that people didn't know about the Code or the duty to provide other means of contacting the emergency services during a power outage</p>	51
Consumer NZ	<p>In our view, not all landline consumers are aware of the risk of loss of service during a power outage.</p>	51
Application form template and requirements		
Grey Power	<p>Grey Power believes the processes for demonstrating vulnerability are not easily accessible for a number of their members because the copy Grey Power has of the document to register as a vulnerable person runs to 7 pages and the requirement to have the document signed off by their general practitioner or a J.P. etc., means that some of our members are unable to complete these because of their medical conditions and the cost.</p>	58

111 Contact Code Review – Draft Decisions and Reasons

<p>Spark</p>	<p>Feedback from customers is that the form is very long and wordy. One suggestion is to create a simpler form with clear reference to the section in guidance notes to declutter the main form.</p> <p>The area of the form which relates to the nominated person causes the most confusion and is often filled incorrectly, requiring us to go back to the customer to update the form.</p> <p>We have seen some customers confused about who will contact their doctor. If the customer contacts their doctor proactively then often the doctor will charge a fee. The form should make it clear that a customer’s retailer may reach out to the customer’s doctor on their behalf.</p> <p>The application form in the Code would benefit from a review, and we suggest the Commission gathers feedback from consumers and RSPs, and tests any proposed changes with typical end-users.</p>	<p>58</p>
<p>Whaikaha</p>	<p>The Vulnerable Consumers application form on the Spark website appears burdensome to complete and is not available in accessible (ie. document is a PDF that cannot be read by screen readers) or alternative formats (eg. such as NZSL or Easy Read). The document is 11 pages long and not written in an ‘everyday language’ style.</p> <p>The form also requires 3rd party validation which can be cumbersome and potentially intrusive for some consumers and their family/whanau.</p> <p>Whaikaha notes this does not align with F-13.1 and 13.2 of the 111 Contact Code: <i>13. The process made available must: 13.1 be easily accessible for consumers, bearing in mind the needs of vulnerable consumers; 13.2 not be unreasonably difficult for a consumer to fulfil.</i> The process is not easily accessible for consumers, bearing in mind the needs of vulnerable or marginalised (disabled people don’t like to see themselves described as “vulnerable”) consumers and is lengthy and difficult to complete.</p>	<p>58</p>

TCF	<p>The TCF recommends reviewing the vulnerable consumer application form that is set out in the Code. Our members have provided the following feedback as part of this process, any proposed changes should be tested with consumers:</p> <ul style="list-style-type: none"> <li>a. Feedback from consumers is that the form is very long and wordy; one suggestion is to simplify the form with clear reference to the sections in guidance notes to declutter the main form.</li> <li>b. The area of the form which relates to the nominated person causes confusion and is often filled incorrectly, requiring RSPs to go back to the customer to update the form.</li> <li>c. The form should clarify that an existing medical alarm that allows the customer to contact 111 means the consumer is not eligible for additional support under this Code.</li> </ul> <p>It would also be helpful for the Code to include a list of indicative medical conditions that would qualify as vulnerabilities for the purposes of this Code. Additional clarity would help make the application process for vulnerable consumers smoother and potentially quicker, while also relieving some of the pressure on our members’ staff when assessing applications. We propose that the Commission engages with industry and other relevant parties on what additional clarity could be provided to the application form in the Code.</p>	58
Replacement of appropriate means supplied to consumers		
Spark	<p>We suggest the requirement to replace a device every 3 years is unnecessary in many cases, as the devices we deploy are expected to last longer than 3 years. Replacing devices unnecessarily increases waste, causes additional disruption and stress to vulnerable consumers, and increase costs. Providers should have discretion on whether to replace a</p>	67

111 Contact Code Review – Draft Decisions and Reasons

	device after 3 years if it is still functioning and is reasonably expected to continue to function as required for another 12 months.	
When a means can be considered appropriate		
Spark	We think it would be useful to clarify in the Code that whether a device is suitable for an individual is limited is assessed against usability and not the visual or physical characteristics of the device offered. For example, if a retailer provides a battery device, but the customer refuses to take it because it is too big; or if a customer is offered a mobile phone but they reject it because it's not the latest smart phone, the retailer should be considered to have met their obligations under the Code.	70
TCF	The Code should clarify that Retail Service Providers (RSPs) are only obligated to provide a solution that meets the requirements of the Code. If the vulnerable consumer does not accept the device due to their own preference, but the device would otherwise have been suitable for them, then they are essentially opting out of the scheme and the RSP has met its compliance obligations.	70
WISPANZ	We do believe that the installation of additional units, which are often relatively large devices with LED displays and other indicators and controls, often leads to a sense of unease amongst some vulnerable consumers. This is despite best efforts to explain the operation of these devices and their necessity for continuity of service.	71
Vulnerable status when moving premises		
Consumer NZ	We query whether clause 35.2 will adequately protect vulnerable consumers who move house but remain a vulnerable customer of the retailer. Vulnerable consumers should not be forced to go through the process again and lose their status, simply because they move house.	79



Disclosure of time taken to provide appropriate means to consumers		
Spark	<p>We question the benefit of the measure in 38.7 which measures the average number of working days from the point at which a consumer’s application is submitted to when the vulnerable consumer is provided with appropriate means to contact the 111 emergency service.</p> <p>For our internal calculations, we start the clock when the customer submits an application form which includes all the necessary information. Sometimes this may require multiple conversations with the customer to explain what is needed.</p> <p>There can be many reasons why there is a delay between the completed application form being received and a device being dispatched for a vulnerable consumer.</p> <p>We are happy to continue to provide the information requested, but in our view it shouldn’t be used to draw conclusions about the efficiency of a retailer’s process.</p>	84
<b>Submissions we consider do not result in a Code amendment</b>		
Application of the Code to medical alarms		
2degrees	It may also be appropriate for the Commission to recognise the role of monitored medical alarms, which already allow consumers assistance during a power outage, for example by specifying these as an ‘alternative means’ (which is already available to those consumers).	101
Spark	<p>The Commission should consider how to incorporate medical alarms into the 111 Contact Code framework, specifically medical alarms as “appropriate means” under the Code.</p> <p>We suggest the 111 Contact Code is updated to recognise the use of medical alarms as an option for vulnerable consumers by clarifying that:</p>	101

111 Contact Code Review – Draft Decisions and Reasons

	<p>a. Customers with existing monitored medical alarms that work during a power outage, and which allow them to contact 111 emergency services or other emergency support related to their vulnerability, would not be eligible for a device under the 111 Contact Code.</p> <p>b. If a customer installs a monitored medical alarm (whether privately purchased or via MSD funding) they would not be a Vulnerable Consumer under the 111 Contact Code.</p> <p>We also recommend the Commission talks to the MSD-approved medical alarm suppliers to understand what options are available to customers, and how the telecommunications industry can help increase awareness of government-funded options.</p>	
TCF	<p>The TCF would encourage the Commission to consider the role of monitored medical alarms and recognise that these services provide a valuable and often preferable solution to many vulnerable consumers who need support during an emergency. We consider that a consumer who has an existing monitored medical alarm, which allows them to get assistance during a power outage, is already adequately protected and that additional support for their landline service is unnecessary.</p> <p>The TCF recommends that the Code is amended to specify that if a consumer has an existing monitored medical alarm, they already have an ‘alternative means’ and therefore are not eligible for additional support under the Code, in the same way that consumers who have an existing battery back-up device or a mobile phone are already out of scope. The Act allows the Commission to specify appropriate means under cl. 238(4)(b) which they could do by clarifying in the Code that:</p> <p>a. Consumers with an existing monitored medical alarm that works during a power outage for the minimum set period (i.e., continuous eight hours under the current Code) and enables them to contact 111 emergency services or other emergency</p>	101, 102

	<p>support related to their vulnerability, would be considered to already have an ‘alternative means’ and would not be eligible for a device under the Code.</p> <p>b. If an existing vulnerable consumer installs a monitored medical alarm (whether privately purchased or via MSD funding) that enables them to get urgent support during a power outage, they would not be considered a vulnerable consumer for the purposes of the Code.</p> <p>RSPs should not be required to provide medical alarms to vulnerable consumers because there is already a well-established competitive market for monitored medical alarms supported through government funding. RSPs should therefore not be required to provide medical alarms to vulnerable consumers. The TCF recommends that the Commission engages with MSD-approved medical alarm suppliers to understand what options are available to consumers, the code that governs this service, and how the telecommunications industry can help increase awareness of government-funded options through their existing customer relationships.</p>	
<p>One NZ</p>	<p>We regularly receive applications from our customers wishing to register as a vulnerable customer but not wanting the mobile phone or the battery back-up to be provided to them. Anecdotal evidence shows that our customers who already have a monitored medical alarm don't feel like they need an additional alternative means to contact 111 emergency services in a power outage, as their medical alarm meets this purpose - the reason for their application with us is to simply register their vulnerability status.</p> <p>We propose that the Code is amended to include existent medical alarms as a means for contacting emergency services, provided that the medical alarm i) can operate for the minimum period in the event of a power failure; and ii) can be used by vulnerable consumers to contact 111 emergency services or other emergency support related to their vulnerability.</p>	<p>101</p>

111 Contact Code Review – Draft Decisions and Reasons

	As there already exists an established framework for consumers to get medical alarms (either by purchasing them privately or through government funding to enable purchase), RSPs should not be required to provide medical alarms to their customers.	
Clearer vulnerable consumer eligibility		
Grey Power	And if a person is not registered which seems to only cover on-going health conditions what happens in a power cut when some-one has an accident but no 111 access?	110
DPA	<p>The Code make it clear that ‘demonstrating vulnerability’ shouldn’t be too cumbersome or intrusive and that there are ways other than a doctor’s certificate to demonstrate need.</p> <p>The responses we got from our members would suggest that there is an issue in regards to what is deemed to be ‘proof of vulnerability’. One respondent said that they provided a link to a website with information about their child’s impairment (and actually featuring their own child) and was told that they’d still have to provide a doctor’s certificate. We would argue that this isn’t something a doctor can necessarily provide the best information on: community workers, family and friends and disability organisations are much better placed to demonstrate this need.</p>	110, 111
Spark	<p>We note that at least one retailer provides an indicative list of eligible health, disability and safety criteria on this application form. This provides a very specific guide to the sorts of issues which would, or would not qualify a customer to be considered vulnerable.</p> <p>Currently the definition in the Code is quite high level and more guidance on the specific medical, health and safety aspects would be useful. We support the Commerce Commission creating a similar list to assist potential applicants. This would help GPs to review whether their patient meets the requirement.</p>	109
Evidence of vulnerability		

111 Contact Code Review – Draft Decisions and Reasons

TCF	A letter from a health practitioner is listed in the Code as evidence of a consumer’s vulnerability. Some members have experienced cases where the health practitioner shares the consumer’s full medical history, leaving the RSP’s staff having to work out whether the consumer should qualify for the alternative means to be provided to them. It would be helpful for the Code to clarify that a health practitioner’s letter needs to explicitly state that the consumer relies on their landline service for contacting 111 emergency services and therefore qualifies for additional support under the Code.	124
One NZ	Under the Code, consumers are required to provide 'sufficient evidence to support that the consumer is (or will become) at particular risk of requiring the 111 emergency services' and this can be provided by a health practitioner in cases that relate to health or disability. 'A letter from a health practitioner' is listed as a sufficient form of evidence. One challenge that we have faced is health practitioners sharing their patient's medical history without explicitly stating that the consumer should qualify for the provision of alternative means due to their medical condition. This leaves our customer care teams having to go through the customer's medical records in an attempt to determine whether the customer should indeed qualify for support under the Code. It is not appropriate or feasible for our staff to be playing this role. The Code should be amended to clarify that a letter from a health practitioner must state that the consumer who has filed an application is of an increased need to contact 111 emergency services due to their medical condition or disability and should therefore qualify for the alternative means under the Code.	123
Impact of satellite technology		
Business Technology Group	If the txt / calling anywhere via Satellite that is currently being advertised comes into reality this year or next year, it will fundamentally change how people contact 111. While the time lines could be a bit ambitious it is very likely to be a reality this decade.	129

111 Contact Code Review – Draft Decisions and Reasons

	At the point it is widely available to end users at a reasonable cost, it is likely this code should again be reviewed and many sections may become redundant. The entire code may no longer be needed.	
Anonymous	Further rollout with satellite communications with ONE and 2degrees will change how the code should be laid out due. There will need to be a relook at what a vulnerable consumer is, and alternate solutions that are cost-effective that utilises up-and-coming technology.	130
Network resiliency		
Business Technology Group	Consideration should be given to a whole of network approach rather than just the end user premises. Some core network/transport nodes for some network providers also have similar limitations. Cyclone Gabrielle presented a number of large outages (outside the Hawkes Bay / Gisborne areas) due to loss of power including a large part of Northland. It may be worth considering how these components impact the ability for users to contact 111 and if the code needs to be expanded to include these in some form.	135
Anonymous	Focusing on resiliency and backup plans with all telcos. In case of a disaster, there needs to be a plan to allow for all consumers to be able to not only contact 111 but their families. Having a plan set in a place where all local RSP's and major RSPs can communicate and work together to ensure the nation is looked after and able to take a proactive collaborative approach. 111 is no use in case of a disaster (cyclone Gabrielle for example), but ensuring that there is redundancy planned to allow for communications and power to either stay online or have a minimal impact should be the focus going forward.	136
Providers withdrawing landline services		
Business Technology Group	The code has resulted in some service providers deciding if they want to offer retail landline services and in what areas In some cases they will offer retail landline services only in mobile coverage areas so they can meet the requirement under 21.2	140

111 Contact Code Review – Draft Decisions and Reasons

	For areas outside mobile coverage the requirements under section 21.3 is too high and to ensure they don't risk breaching the code and to avoid discrimination have stopped offering the service to all users. This ends up offering end users less options and choices.	
WISPANZ	We are aware that some of our members intend either not to enter VOIP reseller relationships, or to withdraw from the relationships they have because of the fear of the cost of providing services to Vulnerable consumers. Our members are primarily rural focused ISPs and in recent years larger telcos have been actively exiting the rural voice market with considerable consumer confusion arising from them doing so. Many of the legacy PSTN customers fall into the potential vulnerable consumer category and most of our members work very hard to help these customers find their way to new services. Introducing costs like the provision of power supplies makes the business case for providing VOIP very weak for a small ISP and the rural community is poorer for it.	140
Contribution of Local Fibre Companies to Code-related costs		
Spark	<p>LFCs should also carry some of the cost burden for supporting these customers as they made the business decision to not offer battery solutions as standard for all customers. We understand this decision, but ultimately this has passed the full burden of supporting vulnerable consumers on to landline retailers.</p> <p>At the very least, LFCs should be explicitly required to pay for ONT relocations where these are required for vulnerable consumers.</p> <p>Chorus benefits from copper withdrawal through a reduction in its operation costs. To align with the principle of cost causation it seems reasonable that Chorus should cover the cost of meeting the Code's requirements in respect of Vulnerable Consumers it is displacing from the copper network.</p>	143, 144
One NZ	We note that as copper and PSTN withdrawal continues to accelerate, an increasing number of consumers will be moved to fixed voice services that rely on power to operate,	143

111 Contact Code Review – Draft Decisions and Reasons

	<p>such as voice over fibre and fixed wireless. Chorus has recently announced that they plan to retire their entire copper network in the next 10 years, meaning all consumers in New Zealand will need to adopt new landline technologies. In light of this, it would be appropriate for the costs of providing qualifying vulnerable consumers with alternative means to contact 111 emergency services to be shared with Chorus, the party driving copper withdrawal. In cases where a vulnerable consumer's fixed voice service runs over fibre that is owned by Chorus, they should cover the costs for providing alternative means to the customer. RSPs would continue to cover the costs for providing alternative means to customers whose fixed voice services run over their network (e.g. fixed wireless).</p>	
High compliance costs		
Spark	<p>The cost of the appropriate means is not insignificant, especially the battery backup devices.</p> <p>The industry needs a better funding model in the medium to long term, and we invite the Commission to consider how this could be achieved to ensure the cost burden of supporting these important customers does not fall on a small number of operators.</p> <p>The cost of providing suitable devices and supporting these customers with tech visits etc is significant.</p>	149, 150
WISPANZ	<p>[Low number of vulnerable consumers] also comes as a relief given the high cost and complexity of providing a solution relative to the slim margins from the phone service itself as a retail product.</p> <p>WISPA members still struggle with the determination by the commission that the entire responsibility to make adequate arrangements for continuity of 111 service to vulnerable consumers should fall rather expensively into RSP's laps.</p>	149, 150



111 Contact Code Review – Draft Decisions and Reasons

	<p>We believe that the commission needs to consider that several other groups within the community receive either totally free of charge or heavily subsidised telecommunication services. As an example, many school pupils receive free of charge internet services, a process initiated by government during the COVID lockdowns.</p> <p>The provision of standby services to consumers has proven to be an expensive matter for our members with no means of recovering any costs at all. The days of expensive phone services with healthy margins are well behind us. VOIP services are an adjunct service, not a core service for our members. The standard monthly rental is often less than \$20.00 but the cost of providing the mains power backup, including installation and maintenance easily exceeds \$1000.00.</p> <p>We propose that the commission investigate establishing a source of funding for the supply of the backup power systems. If RSPs could at least have some form of cost recovery for this activity it would alleviate the concern held widely by our members that the commission has privatised an activity the government would otherwise undertake.</p>	
TCF	<p>Mobile devices are suitable for most vulnerable consumers. In areas where there is no mobile signal or in the circumstances where a vulnerable consumer cannot use a mobile phone for dexterity or other issues, a battery backup device is installed. The cost to deliver these solutions are not insignificant, especially when the battery back-up must last for a minimum of eight continuous hours.</p> <p>The TCF recognises that providing landline services to consumers remains an important service, but we are concerned about the possible inequity that could result in the sector between RSPs who continue to provide landline services and those who don't. Consideration needs to be given to a longer-term viable funding model, possible through existing arrangements established by MSD for monitored medical alarms, to ensure vulnerable consumers continue to be supported.</p>	149, 150

111 Contact Code Review – Draft Decisions and Reasons

One NZ	<p>Consideration also needs to be given to whether the Government should play a role in supporting vulnerable consumers who have an increased need to contact 111 emergency services in a power outage to ensure long-term viability of the scheme, potentially as an extension to the existing Ministry of Social Development (MSD) scheme for monitored medical alarms to mobile phones and/or battery back-up devices. This is particularly relevant as the number of qualifying vulnerable consumers under the Code increases as the copper network is retired.</p> <p>The Commission should explore alternative funding mechanisms for the provision of alternative means to contact 111 emergency services to ensure long-term viability of the scheme. The future costs of the providing and installing devices should be shared by Chorus who are driving copper withdrawal, particularly as the scale of costs of the current scheme will increase markedly as Chorus elects to expand the areas in which copper will be withdrawn and pursues its ambition to entirely close this network in the future.</p>	150
Minimum period and limited market of appropriate means		
2degrees	<p>We note that the market for procuring backup-battery devices, which meet the Commission’s current requirements, remains very limited. Other - including smaller batteries that may better meet a Vulnerable Consumer’s needs - may not meet Commission specifications. The Commission should consider these constraints when considering battery back-up specifications for consumers. Reducing the timeframe for the battery-backup would increase the options available to both RSPs and consumers.</p>	156, 159
Spark	<p>The Minimum Period of 8 hours of battery life means any backup battery is big and expensive. Reducing the requirement to 4 hours would allow the use of the Ecoflow River Power Station which has been shown in testing to last 4 hours. This device is half the price of the Ecoflow River Pro, and is significantly smaller and lighter which will help with placement in the home.</p>	156, 160

111 Contact Code Review – Draft Decisions and Reasons

WISPANZ	<p>The source of the mains backup equipment is extremely limited, as has repeatedly been advised to the commission. The sole off the shelf device suitable for the purpose available in New Zealand has very limited distribution options. There is a New Zealand built option which shows promise but is such a niche product that the manufacturer does not have it in their current product line leaving our members to devise their own power solutions with the attendant costs bespoke devices attract.</p>	156, 157, 159
TCF	<p>Requiring the battery life for a battery backup device to meet the minimum period of eight hours means the battery backup device is big and expensive. The TCF extensively investigated options on behalf of the industry when the Code was introduced and found no device at that time which could meet the eight-hour requirement. The industry had to seek a solution from an overseas supplier which subsequently had supply chain issues and pulled the model from the market. This left RSPs with even less choice in the market place and potentially impacted their ability to provide a suitable device to their vulnerable consumers.</p> <p>Subsequently, solutions have been found but there remains a very limited market for RSPs procuring devices to meet the Commission’s requirements. Reducing the battery backup requirement to four hours would likely increase the pool of suppliers that RSPs could procure battery devices, including physically smaller and lighter batteries which would be more suitable for installing in a vulnerable consumer’s home.</p>	156, 158, 159
One NZ	<p>As the Commission will recall, industry faced significant challenges procuring a battery device that met the Commission's requirements when the Code first came into place. At the time, there were no devices in the world that could meet the set requirements. While solutions have been found, the supply of such battery devices remains extremely limited. This raises a risk that if any of the current suppliers decided to withdraw their product from market, as was the case with the initial supplier that RSPs relied on, industry would face challenges procuring a new suitable device. Reducing the battery requirement to a continuous four-hour period under the Code would help mitigate this risk as the pool of suppliers that offer such products is much broader, as well as enabling RSPs to provide</p>	156, 158, 159

111 Contact Code Review – Draft Decisions and Reasons

	consumers with devices that are more suitable for being installed in their homes (i.e. smaller and lighter batteries). This change would maintain the Code in line with the Act, as it provides the Commission with the discretion to specify the minimum period.	
Clarification of what is out of scope		
2degrees	We think it would be useful for the Commission to clarify that the Act/Code is not intended to address customers, who are not at particular risk of needing to call 111 emergency services, wanting to access the scheme for individual resilience during an emergency.	164
Spark	The Commission should also be clear on what issues are not covered by the Code. For example, customers are often confused by the words 'safety' and interpret this more generally to include situations where someone lives on their own, or a home doesn't have mobile coverage. We do not believe this was the intent of the 111 Contact Code.	165
TCF	It would be useful for the Commission to clarify in the Code that consumers wanting to access the scheme for their individual resilience during an emergency and who are not at particular risk of needing to call 111 emergency services for health, safety, or disability reasons, is not the intention of the Act or the Code.	164
Lack of consumer awareness		
Consumer NZ	In our view, not all landline consumers are aware of the risk of loss of service during a power outage. However, we are unsure if this is because they are not being made aware of the risk of loss of service, or simply because they do not understand the information provided to them.	171, 172
Grey Power	Grey Power does not believe that the solutions provided have been effective because only 573 people are registered as vulnerable but 'Twenty-four percent (167,900) of older	173

111 Contact Code Review – Draft Decisions and Reasons

	people experience health vulnerability.’ If the solutions are effective we would have expected a much larger number of people to be registered.	
Anonymous	There needs to be more education about what indicates a consumer being vulnerable. A lot of consumers are not aware that a working cell phone in reception is a sufficient backup form to contact 111.	171
DPA	<p>Responses from our members indicate that few of them knew about the Code and the duty of the telecommunications providers to give them a means of contacting the emergency services during a power outage. We recommend that telecommunications providers are mandated and monitored to provide all consumers with this information in order to meet this requirement.</p> <p>Most of the responses we received said that people didn’t know about the Code or the duty to provide other means of contacting the emergency services during a power outage. We believe that the Commerce Commission needs to put much greater pressure on telecommunications providers to inform consumers of the Code and the alternative means of contacting the emergency services.</p>	171, 172
Interested persons		
NZ Police	Police suggest that the Ambulance Service providers, Hato Hone St John and Wellington Free Ambulance, are explicitly listed as one of the ‘interested persons’ per foot note 7 for paragraph 19.2.	182
Other communications channels		
NZ Police	The Emergency calling number relates only to 111 landline voice calls on the NZ Telecommunications network and excludes mobile, international calls, satellite, text, and data mechanisms for contacting emergency services during an emergency.	185

	<p>Landline phone calls now account for only 15% of 111 calls to Police, this places further importance on the need for a code for mobile and text channels of communication.</p> <p>In general, the NZ Emergency Service Organisations (ESOs) (NZ Police, FENZ, ST Johns, Wellington Free Ambulance etc) and the Spark 111 service do not take anything other than voice calls to 111. Some years ago, NZ Police set up and currently operate a limited 111 SMS text service for the deaf and speech impaired community on behalf of all ESOs.</p> <p>Recently Apple launched their SOS satellite emergency service available to only customers with Apple handsets and One NZ and 2 Degrees have announced they intend to improve access to their networks through satellite and messaging to 111. While' this improves access it understandably comes at a cost which could further isolate some members of the community.</p> <p>In future it would be helpful if the Emergency Calling Code could be extended to cover other communications channels (such as text and messaging) that vulnerable consumers may increasingly become reliant on when needing to request help from the emergency services.</p> <p>Within this context Police would like to see consideration given to an appropriate legislative mechanism to be put in place to require commercial providers of communications channels to allow for communications, such as 111 text messaging, to be available at no cost to consumers (private or business) and able to be used regardless of whether there is any credit available on the device (specifically cellular and other mobile devices). This would help to ensure that where communications channel which may be able to be used during a power outage (due to holding a charge) could be used by all consumers, particularly the most vulnerable in our community, to contact Emergency Services if they need help during an emergency event.</p>	
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111 Contact Code Review – Draft Decisions and Reasons

Fire & Emergency	Fire and Emergency 111 calls originate approximately 85% of the time from mobile phones. This means access to Fire and Emergency varies between cell sites and is at risk during power outages caused by weather events.	186
Providers identify vulnerable consumers		
Consumer NZ	<p>The processes for being identified as a vulnerable consumer are not adequate. As stated in our previous submission on the draft code, the onus is on the consumer to identify themselves as vulnerable and apply to their provider. This is problematic because some consumers may not consider themselves vulnerable or be able to follow the processes.</p> <p>[A customer] contacted 2degrees noting that she is elderly, lives alone and worried that she would be unable to ring help in an emergency or receive instructions. She said 2degrees was unhelpful and diverted her to JustAnswer, an online question-and-answer service. In our view, 2degrees should have identified this consumer as potentially vulnerable and considered whether she required further assistance.</p> <p>We think the Code could be improved by requiring retailers to take steps to identify potentially vulnerable consumers to ensure they can easily access emergency services. The Code could set out objective criteria to assist retailers in identifying customers who may be vulnerable.</p>	190
Use of the term 'vulnerable' is potentially offensive		
Whaikaha	Disabled people don't like to see themselves described as "vulnerable"	195, 196
DPA	Whilst we understand that the language of 'vulnerable consumers' is taken from the legislation and used in the Code, DPA does not feel that this language is appropriate or acceptable to define / identify disabled people. We are not inherently 'vulnerable', we are made 'vulnerable' by specific situations. Perpetuating the myth of our inherent	195, 196

111 Contact Code Review – Draft Decisions and Reasons

	vulnerability through the use of such language is outdated and does not align with the principles and rights in the UNCRPD.	
Providers should inform consumers about their right to independent information		
Consumer NZ	Currently, clause 6 of the Code does not create an obligation on the provider to inform the consumer about their right to access independent information. As stated in our previous submission we think retailers should be required to inform customers where they can access independent information about telecommunications services and consumer rights	200
Accessibility of Code-related information		
Whaikaha	<p>Whaikaha suggests that accessible and alternative formats need to be made mandatory within the code. Whaikaha has not considered other telco websites of practices in preparing this response. Broadly speaking, the withdrawal of the copper network appears to have been well signalled and communicated to the wider community, however Whaikaha is not able to comment on how this has specifically been received by the disability community. It is noted that the information on the removal of the copper network is also not presented in alternative formats.</p> <p>The information on the removal of the copper network is also not presented in alternative formats.</p>	206
DPA	<p>DPA strongly recommends that all information pertaining to the Code is made available in alternative formats, in order that disabled people can have the information about their rights.</p> <p>All information pertaining to the 111 Contact code be made available in alternative formats including: New Zealand Sign Language, Braille, Easy Read, audio and large print.</p>	206
Review of disclosure requirements		



111 Contact Code Review – Draft Decisions and Reasons

TCF	The Commission may want to take this opportunity to review the disclosure and reporting requirements to ensure they continue to deliver meaningful data and do not place an unnecessary burden on RSPs. The TCF would be happy to work with the Commission in reviewing the annual reporting requirements.	211
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