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## **Bupa Villages and Aged Care New Zealand: Submission in response to the Commission 111 Contact Code Review - Draft Decisions and Reasons**

### **ABOUT BUPA**

1. Bupa is a global diverse health and care group, which has been committed to a purpose of longer, healthier, happier lives for more than 70 years. Bupa employs more than 3,500 people in New Zealand and we believe that we can make a real difference to the lives of New Zealanders through our values, purpose and the way that we deliver care.
2. Bupa operates 35 retirement villages and 39 care homes across New Zealand and is home to more than 5,000 residents throughout New Zealand. Bupa's retirement villages include independent living apartment and villa options. Bupa's care homes offer rest home and hospital care, with certain care homes offering dementia and psychogeriatric care.

### **INTRODUCTION**

3. The Commerce Commission ("**Commission**") has reviewed the Commission 111 Contact Code ("**Code**") to assess the operation of the Code and identify any improvements to better meet the minimum requirements in the Telecommunications Act 2001.
4. 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>1</sup> The Code seeks to achieve this purpose by requiring the providers of a retail landline service (or as proposed in the Code amendment, "residential landline service") to provide vulnerable consumers with an appropriate means for contacting 111-emergency services in the event of a power failure.
5. The focus of chapter 5 of the Commission's Draft Decisions and Reasons Paper ("**Paper**") is 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

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<sup>1</sup> Section 238(1) Telecommunications Act 2001.



psycho-geriatric units ("**Facilities**") are covered by the Code. The Commission has invited views on how the Code should apply to Facilities. As a provider of Facilities, Bupa's submission therefore focuses on providing feedback on Chapter 5 of the Paper.

## **EXECUTIVE SUMMARY**

6. The Commission refers to three Scenarios based on the billing relationship between the Facility and the resident. We submit that the Commission should instead give priority to the care relationship between resident and facility to determine whether it is appropriate for the Code to apply.
7. In particular:
  - (a) In defining 'Facilities', the Commission has included a broad range of living and care situations together. Independent living arrangements and retirement villages are defined together with aged care residential facilities, long stay hospitals and dementia units. We encourage the Commission to draw a distinction between "independent" residential consumers where it may be appropriate for the Code to apply and consumers in aged care residential Facilities where the Code should not apply.
  - (b) Aged care residential Facilities are governed by the Health and Disability Services (Safety) Act 2001, and related regulations such as the Health and Disability Services (Safety) Standards Notice 2021 and Nga Paerewa Health and Disability Services Standard (NZS 8134:2021). These regulations specify care levels to ensure the safety of residents 24 hours a day / 7 days a week. Further requirements under the Code on aged care residential Facilities are unnecessary for the safety of the residents and onerous for the Facilities.
  - (c) If the Code is nevertheless deemed to apply to aged care residential Facilities, amendments should be made to make clear that compliance is met through adherence to the existing requirements under the Health and Disability Services legislative framework, evidenced by certification as an aged care residential facility by the Ministry of Health.

## **DISCUSSION**

### **Application of the Code to aged care Facilities**

8. The proposed amended Code sets out mandatory requirements for providers of residential landline services to provide vulnerable consumers with appropriate means of contacting 111-emergency services in the event of a power failure.<sup>2</sup> The Draft Amendments propose amending the Code to exclude "business landline services" while expressly including "residential landline services".<sup>3</sup>

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<sup>2</sup> Telecommunications Act 2001, section 238 - Commission 111 contact code

<sup>3</sup> Chapter 4, Decisions and Reasons Paper



9. This new definition arguably captures landlines provided to residents at aged care residential Facilities. The Paper points to three Scenarios based on the billing relationship between the Facility and the resident purchasing retail landline services to determine whether the Code applies, and concludes that the party with the direct billing relationship with the consumer is subject to the Code.
10. Bupa's view is that this test does not adequately address the relevant scenarios. We submit that a more appropriate test for application of the Code would be the level of care provided in the Facility. Essentially, applying the Code serves no useful purpose for residents of aged care residential Facilities as there are already mechanisms in place to ensure the provision of emergency services if required.
11. Age-related residential care in New Zealand is provided at four levels: rest home, age-related hospital care, dementia care and psychogeriatric care. People who receive any of these levels of care cannot live independently and need daily care.
12. Facilities, as defined in Chapter 5 of the Paper, purports to also include assisted living facilities and independent living facilities (eg retirement villages with villas, apartments or serviced apartments) where residents may be living independently on a daily basis but may have access to domestic services such as cleaning or meals as desired. We do not supply landlines to these consumers, though they may choose to contract directly with a retail services provider (in which case, that provider would be subject to the Code).
13. People in dementia care and psychogeriatric care usually need very high levels of assistance with all daily tasks. These residents are unlikely to be able to effectively operate phones in their room – accordingly, we do not offer to supply landline services to these residents. There is a remaining subset of people in residential aged care (rest-home or hospital level) who are capable of engaging with communication technology and who may choose to be provided with a landline. The Commission appears to be suggesting that the Code should cover our provision of landline services to these residents. We submit that this would go beyond the proper scope of the Code.
14. Residents receiving any of the four levels of residential care in an aged care Facility have access to continuing care from the staff members of the Facility. Under the Health and Disability Services (Safety) Act 2001 and its secondary legislation, providers of health care services (which includes services at aged care facilities) are required to meet all relevant service standards under the Health and Disability (Services) Act.<sup>4</sup> Nga Paerewa Health and Disability Services Standard (NZS 8134:2021) requires that:

4.2 Te haumarū o ngā tāngata me te hunga mahi / Security of people and workforce

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<sup>4</sup> Health and Disability Services (Safety) Act 2001, s9 and s 53; Health and Disability Services (Safety) Standards Notice 2021 and Nga Paerewa Health and Disability Services Standard (NZS 8134:2021)



4.2.3 Health care and support workers shall receive appropriate information, training, and equipment to respond to identified emergency and security situations. This shall include fire safety and emergency procedures.

4.2.4 Service providers shall ensure health care and support workers are able to provide a level of first aid and emergency treatment appropriate for the degree of risk associated with the provision of the service.

4.2.5 An appropriate call system shall be available to summon assistance when required.

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4.2.7 Alternative essential energy and utility sources shall be available, in the event of the main supplies failing.

4.2.8 Service providers will explain emergency and security arrangements to all people using the services.

15. The operative details for meeting these standards may differ between Facilities but the responsibility for providing the service is constant. Emergency response must be provided by the service provider and energy source alternatives considered. Facilities are audited by the Ministry of Health and certified to ensure they meet the necessary standards to provide safe, appropriate care. Further regulation under the Code is unnecessary and inappropriate for the safety of residents. Put simply, residents do not need to rely on direct contact to 111 to respond to their emergency needs.
16. We note that, under the above legislation, the method of billing is of no relevance to the standard of care provided. Regardless of whether a resident has a landline or the billing relationship with the Facility, in the event of an emergency, residents would contact trained staff members through the call system available 24 hours a day. If required, staff members can then contact emergency services. If residents were to call 111 instead of onsite staff in case of emergency, it is likely that the emergency assistance would be slower for residents.
17. In our view, if the amended Code is seen to place an additional onus on aged care residential Facilities, the result could be the withdrawal of landline offerings to residents on the basis that there are alternatives available for residents capable of engaging with telecommunication technology (ie many of these residents already have cell phones). This would also avoid any confusion that would arise from Code mandated messaging to residents on the options available to directly contact 111 in an emergency. The clear message that we give residents at aged care Facilities is to call staff in case of emergency.
18. We seek clarification that this is not the intended outcome of the Code and suggest this could be achieved through explicit recognition that an aged care residential Facility will not be considered a "provider" of residential landline services and is therefore excluded from the Code. For example, the term "provider" in the Defined Terms of the Code may be amended as follows:



'Provider' means a supplier or suppliers of a residential landline service to a consumer but excludes certified aged care residential facilities that provide 24-hour care to residents and possess an appropriate means to contact emergency services on the resident's behalf.

19. Alternatively, residential landline service could be redefined to exclude aged care residential Facilities as follows:

means a landline service provided to a consumer at a premises, and excludes:

- (a) mobile services;
- (b) naked broadband services; and
- (c) applications that provide voice services over broadband services (such as Skype);
- (d) business landline services, and
- (e) services provided to residents in residential care in a certified aged care residential facility.

20. If amendment to the Code is not favoured, we suggest the Commission issues clear guidance to accompany the Code, stating that aged care residential Facilities are not subject to the requirements of the Code for the above reasons.

#### **Need for a reasonable transition period**

21. If, despite our submission, the Commission decides that aged care residential Facilities should be subject to the Code, there will need to be a reasonable transition period to implement any changes. The current proposal provides that the amendments will come into force 3 months following publication. We submit that the Commission would need to allow at least a 6 month transition period, to give Facilities sufficient time to seek to enact a smooth adaptation in respect of any new requirements for their residents. As highlighted above, a particular concern will be to ensure that residents do not receive confused or conflicting messages as to what they should do in the event they require emergency assistance.

1 March 2024