ISSN 1178-2560
Project no. 13.07/16384

Public version

Final telecommunications development levy liability allocation determination for 1 July 2021 to 30 June 2022 [2022] NZCC 38

Under sections 87 and 88 of the Telecommunications Act 2001

The Commission:	Tristan Gilbertson
	Elisabeth Welson
	Dr John Small
	Nathan Strong
Date of final determination:	**8 December 2022**

Associated documents

Publication date	Title
30 June 2022	2021/22 TDL specified information document
30 June 2022	Specified information templates for 2021/22
26 October 2022	Draft telecommunications development levy liability allocation determination for 1 July 2021 to 30 June 2022

Glossary, defined terms and abbreviations

2018 Amendment Act	Telecommunications (New Regulatory Framework) Amendment Act 2018
Act	Telecommunications Act 2001
Commission	Commerce Commission
CPI	Consumer price index
Interconnected bodies corporate	A body corporate that was connected to a liable person via one of the criteria set out in s 79(1) that earned qualified revenue, even where such body corporate was not itself a liable person
LAD	Liability allocation determination
Liable person	A person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person
PTN	Public telecommunications network - a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication
QLP	Qualifying liable person - a liable person that traded in the 2020/21 financial year and, together with all bodies corporate connected via s 79, met the minimum telecommunications revenue threshold in that financial year
Qualified revenue	Revenue determined by the Commission that is used to assess the amount of the TDL that a liable person must pay
Specified information	Information requested by the instructions we issued on 30 June 2022
TDL	Telecommunications Development Levy
TDL year	The period from 1 July to 30 June for which a TDL liability allocation determination is being made
Telecommunication	The conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature
Telecommunications services	Any goods, services, equipment, and facilities that enable or facilitate telecommunication

CONTENTS

Executive summary

1. This is the final liability allocation determination (**LAD**) for the 2021/22 Telecommunications Development Levy (**TDL**) year of 1 July 2021 to 30 June 2022.

2. This final LAD is required by s 87 of the Telecommunications Act 2001 (the **Act**) and allocates the amount each qualifying liable person (**QLP**) is required to pay as their share of the 2021/22 TDL of $10,484,496.12.

3. The TDL is an annual levy which the Government uses to subsidise telecommunications capabilities in the public interest which are otherwise not expected to be available commercially, or which are unaffordable. The TDL has predominately been used to partially fund phase 2 of the Rural Broadband Initiative, the Mobile Blackspot Fund and backhaul infrastructure for the Chatham Islands.

4. As a result of changes in the market, there are three new QLPs for this year: Cello Group Limited, Feenix Communications Limited and Mercury NZ Limited.

5. Table 1 below sets out each QLP's qualified revenue and their allocation of the 2021/22 TDL, based on the formula in s 85(1)(b) of the Act.[1]

[1] The formula is set out in para 39 of this final LAD.

Table 1: Levy allocation

QLP†	Qualified revenue ($)*	% of industry qualified revenue	Amount of TDL to pay ($)
Spark group	$1,467,562,306	32.70%	$3,428,106.69
Vodafone New Zealand group	$1,129,039,000	25.15%	$2,637,343.66
Chorus group	$877,935,000	19.56%	$2,050,785.06
Two Degrees group^	$446,847,209	9.96%	$1,043,798.89
Orcon group^	$124,842,684	2.78%	$291,622.40
Tuatahi First Fibre Ltd**	$107,451,000	2.39%	$250,996.83
Enable Services Ltd**	$88,478,000	1.97%	$206,677.44
Sky Network Television Ltd	$42,732,000	0.95%	$99,818.49
Mercury NZ Ltd^^**	$42,473,236	0.95%	$99,214.04
Kordia Ltd**	$31,139,000	0.69%	$72,738.18
Vital group	$15,336,917	0.34%	$35,825.79
Vector Communications Ltd	$15,176,000	0.34%	$35,449.91
Lightwire Ltd	$14,609,101	0.33%	$34,125.68
Northpower Fibre Ltd**	$14,158,000	0.32%	$33,071.94
Cello Group Ltd	$10,808,000	0.24%	$25,246.61
Now New Zealand Ltd^^	$9,887,620	0.22%	$23,096.68
Devoli group	$9,660,464	0.22%	$22,566.06
Inspire Net group	$9,592,186	0.21%	$22,406.57
Voyager Internet Ltd	$9,279,160	0.21%	$21,675.37
Plan B group	$5,596,369	0.12%	$13,072.66
MyRepublic Ltd	$5,569,000	0.12%	$13,008.73
Feenix Communications Ltd	$5,194,669	0.12%	$12,134.33
Transpower New Zealand Ltd**	$2,600,000	0.06%	$6,073.39
Todd Corporation group	$2,414,775	0.05%	$5,640.72
Total Industry	**$4,488,381,695**	**100.00%**	**$10,484,496.12**

† Any reference to a group (eg, Spark group) is a reference to a group of bodies corporate that, for the purposes of the TDL, are treated as one person under s 79 of the Act. See Attachment A for a full list of bodies corporate that comprise each QLP group.

*A firm with telecommunications over the $10m minimum telecommunications revenue threshold for inclusion may have a reported qualified revenue of under $10m due to adjustments.

** Section 79 of the Act requires us to treat these Crown companies as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are shown separately.

^ Section 79 of the Act requires us to treat these two groups of companies (Two Degrees group and Orcon group) as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are shown separately.

^^ Section 79 of the Act requires us to treat these companies (Mercury NZ Limited and Now New Zealand Limited) as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are shown separately.

Note: UltraFast Fibre Limited changed its name to Tuatahi First Fibre Limited on 1 November 2021.

Introduction

6. The TDL is an annual levy which the Government uses to subsidise telecommunications capabilities in the public interest which are otherwise not expected to be available commercially, or which are unaffordable. The TDL has predominately been used to partially fund phase 2 of the Rural Broadband Initiative, the Mobile Blackspot Fund and backhaul infrastructure for the Chatham Islands.

7. Subpart 2 of Part 3 of the Act prescribes an annual procedure for the Commerce Commission (**Commission**) to determine the amount of the TDL payable by each QLP.

8. This document is the final LAD for the period 1 July 2021 to 30 June 2022. It sets our final allocation of the amount each QLP is required to pay of the 2021/22 TDL of $10,484,496.12.[2]

Structure of this document

9. This final LAD sets out:

   9.1 The legal framework for this LAD;

   9.2 Our methodology and reasoning, including:

      9.2.1 how we identified QLPs for the 2021/22 TDL process;

      9.2.2 the approach used to calculate qualified revenue;

      9.2.3 the compliance and assurance process; and

   9.3 Our final allocation of the TDL between the QLPs.

10. Attached to this final LAD is the list of 2021/22 TDL QLPs.

Our process

11. Our specified instructions were published on 30 June 2022.

12. All QLPs were required to provide specified information and an assurance report to the Commission by 21 September 2022.

13. We issued our draft LAD on 26 October 2022 and received no submissions.

Legal framework

Legislative background

14. The TDL was established under the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011.

2 See paras 37-38 for the calculation of this figure.

15. Later amendments to the Act have altered the TDL's process and scope. Most recently, the Telecommunications (New Regulatory Framework) Amendment Act 2018 (**2018 Amendment Act**) removed the exclusion of "broadcasting" from the definition of "telecommunication" in s 5 of the Act. The 2018 Amendment Act also introduced s 85A, which excludes free-to-air broadcast services revenue from qualified revenue.

Commission's role

16. Subpart 2 of Part 3 of the Act requires the Commission to make a TDL LAD on an annual basis. A TDL year is the financial year of 1 July to 30 June.[3]

17. The Act requires the Commission to prepare a draft LAD, invite submissions on the LAD and then publish a final LAD.[4]

18. We are required to make reasonable efforts to publish a draft LAD no later than 80 working days after the end of a TDL year, which is in mid-October each year.[5] A draft LAD must include: [6]

    18.1 the amount of each QLP's qualified revenue;

    18.2 the amount of TDL payable by each QLP;[7]

    18.3 the methodology applied by the Commission in preparing the determination; and

    18.4 the reasons for the determination.

19. The Act provides that the closing date for submissions on the draft LAD cannot be more than 20 working days after the date that we give public notice of the draft LAD.[8]

20. The final LAD has the same content requirements as the draft LAD and we are required to make reasonable efforts to publish the final LAD no later than 20 working days after the closing date for submissions on the draft LAD, which would usually be early-December.[9]

Liable person

21. A liable person is defined in s 5 of the Act as a person who provides a telecommunications service in New Zealand by means of operating some

---

3 "Financial year" is defined in s 5 of the Act as meaning "a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year". The "financial year" (for which the levy must be paid) is referred to as 'financial year A' in s 81.

4 Section 84 and 87 of the Act.

5 Section 84(2) of the Act.

6 Section 85 of the Act.

7 Calculated in accordance with the formula set out in s 85(1)(b) of the Act.

8 Section 84(1)(c) of the Act.

9 Section 88 and 87(2) of the Act.

component of a Public Telecommunications Network (**PTN**).[10] A PTN is a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication.[11]

Broadcasting transmission networks

22. The 2018 amendment to the Act to remove the "broadcasting" exclusion from the definition of "telecommunication" has had the effect of broadening the scope of who may be a liable person.

23. Prior to the amendment, broadcasting transmission networks were excluded from the scope of PTN because broadcasting was not within the definition of telecommunication. Similarly, a person who provided a broadcasting transmission service was not providing a "telecommunication service".

24. The amendment means that a person who provides a broadcasting transmission service in New Zealand by means of operating some component of a broadcasting transmission network is a liable person.

25. This interpretation was confirmed by the High Court in the TDL case stated judgment, *Commerce Commission v Kordia*.[12] The Court held that a broadcasting transmission network is a PTN. It found that the public uses a network for the purposes of telecommunication "if they have a device that receives the telecommunication conveyed and are able to avail themselves of the telecommunication received".[13] This is the case with broadcasting transmission networks, since the public uses a device to receive and avail themselves of a broadcast transmission.

Telecommunications service "in New Zealand"

26. To be a liable person a person must be providing a telecommunications service "in New Zealand".

27. In relation to satellite transmission to New Zealand end-users, the service provided "in New Zealand", is the service enabled by New Zealand-based uplink and downlink facilities. It does not include the revenue of satellite operators who facilitate the transmission of a New Zealand telecommunications service where that facilitation occurs outside of New Zealand, as without the New Zealand based component of the uplink and downlink facilities the satellite signal would be of no consequence.[14]

---

10 Our interpretation of a PTN in light of the *REANNZ v Commerce Commission* judgment can be found at paragraphs 19-24 of "Final 2019/20 TDL liability allocation determination" accessible at https://comcom.govt.nz/__data/assets/pdf_file/0025/229327/Final-2019-20-TDL-liability-allocation-determination-3-December-2020.pdf.

11 Section 5 of the Act.

12 *Commerce Commission v Kordia*, at [57]-[87].

13 *Commerce Commission v Kordia*, at [73].

14 *Commerce Commission v Kordia*, at [88]-[108].

Qualifying liable persons

28. Only liable persons who subpart 2 of Part 3 of the Act applies to are liable to pay the TDL. We refer to these liable persons as "qualifying liable persons" or QLPs.

29. A liable person meets the 2021/22 TDL QLP criteria if they:

    29.1 traded in the 2020/21 financial year;[15] and

    29.2 earned at least $10 million gross telecommunications services revenue in the 2020/21 financial year by means of its PTN or by means that rely primarily on the existence of its or any other PTN, including such revenue of any interconnected bodies corporate.[16]

Qualified revenue

30. Qualified revenue is defined in s 5 of the Act as the revenue a liable person receives during a financial year for supplying either or both:

    30.1 telecommunications services by means of its PTN; and/or

    30.2 telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

31. Section 85(2) of the Act allows the Commission to determine what revenue basis to use in calculation of qualified revenue.[17]

32. The 2018 amendments to the Act mean that, subject to the exclusion discussed below, qualified revenue includes revenue from supplying telecommunications services by means of a broadcasting transmission network, or by means that rely primarily on the existence of a broadcasting transmission network or any other broadcasting transmission network.

33. Section 85A(1)(a) of the Act specifically excludes from qualified revenue "any amount of revenue received in relation to a broadcasting service that is supplied to end-users free of charge (for example, revenue derived from a free-to-air radio or television service)"[18].

Requirements on qualifying liable persons

34. Section 82 of the Act required each QLP to provide the Commission with a copy of its financial statements for the 2020/21 financial year by 1 April 2022.[19]

---

15 Section 81(1)(a) of the Act.

16 Section 81(1)(b) and section 79 of the Act.

17 See paragraph 55 for details on the revenue basis used.

18 Broadcasting transmission services supplied to a free-to-air broadcaster, which the broadcaster then uses to broadcast its content to end-users free of charge, falls within the s 85A(1)(a)) exclusion. See *Commerce Commission v Kordia*, at [109]-[130].

19 QLPs from last year were not expected to provide their 2020/21 financial statements as this was already provided as part of their 2020/21 s 83 disclosures.

35. Section 83 of the Act required each QLP to provide the Commission, by 21 September 2022, with specified information for the 2021/22 financial year and either:[20]

    35.1 an assurance report on its specified information; or

    35.2 an alternative form of assurance specified by the Commission.[21]

36. QLPs are required under s 89 of the Act to pay the Crown the amount set out in our final LAD no later than 20 working days after the public notification of the final LAD.

Total levy

37. The total TDL levy amount is set out in Schedule 3B of the Act. For the 2021/22 TDL year, the Act provides that the levy be calculated according to the following formula:

$$\frac{a}{b} \times c$$

Where:

a	is the CPI index number for quarter two 2021
b	is the CPI index number for quarter two 2020
c	is the total TDL levy for the 2020/21 TDL

38. It follows that the total 2021/22 TDL levy is:

$$\frac{1082}{1047} \times \$10{,}145{,}348.84 = \$10{,}484{,}496.12$$

Levy allocation formula

39. Section 85(1)(b) of the Act prescribes that the amount of TDL payable by each QLP be calculating in accordance with the following formula:

$$\frac{a}{b} \times c$$

Where:

a	is the amount of the QLP’s qualified revenue
b	is the sum of all QLP’s qualified revenue
c	is the TDL levy specified for the relevant year in Schedule 3B[22]

---

20 The Commission specified the information required from QLPs in its 2021/22 specified information document, accessible at https://comcom.govt.nz/__data/assets/pdf_file/0030/286455/Specified-information-and-assurance-report-instructions-for-2021-22-Telecommunications-Development-Levy-30-June-2022.pdf

21 The Commission specified two alternative forms of assurance for the 2021/22 TDL year– alternative option A and B. These are set out in paras 68 to 71 of the 2021/22 specified information document.

22 For the 2021/22 TDL c is equal to $10,484,496. See paragraphs 37-38 for the calculation.

Methodology and reasons

Identifying QLPs for the 2021/22 TDL process

40. For the 2021/22 TDL process, we reviewed information provided by QLPs as part of their 2020/21 s 83 disclosures as well as information provided under s 82 of the Act by other liable persons.

41. Attachment A lists the firms that we have identified as being QLPs for the purposes of the 2021/22 TDL process.

42. This list differs from the 2020/21 LAD as it reflects changes in the New Zealand market. There are three new QLPs for this year's Determination:

    42.1.1 Cello Group Limited;

    42.1.2 Feenix Communications Limited; and

    42.1.3 Mercury NZ Limited.

43. Mercury NZ Limited became a QLP because of its acquisition of Trustpower Limited's gas, telecommunications, and retail electricity supply business on 1 May 2022. Trustpower Limited was renamed to Manawa Energy Limited and now no longer owns any telecommunications assets and therefore is not a QLP for the 2021/22 TDL year.[23]

44. Mercury NZ Limited also now forms a QLP group with Now New Zealand Limited as Mercury NZ Limited owns 48% of Now New Zealand Limited. Mercury NZ Limited is also a part of the Crown companies' group as the Crown owns 51% of the company.

45. Two Degrees group and Orcon group are now treated as one QLP group. This is because the merger of Two Degrees group and Orcon group was finalised on 1 June 2022.

46. Voyager Internet Limited is now an independent QLP and no longer forms a QLP group with HD Net Limited. This is because of a change in Voyager Internet Limited's operating model. HD Net Limited is no longer a QLP following this change.

Approach to calculating qualified revenue[24]

47. On 30 June 2022, we published our 2021/22 specified information document, which specified the financial information and assurance that QLPs must provide to us under s 83 of the Act. On the same day, QLPs were notified about these documents and sent an email containing a link to our website where the documents could be found.

---

[23] Section 81A(2) of the Act.

[24] The approach presented in this section was developed specifically for the LAD process and should not be taken as guidance for compliance with any other notice, determination or other requirements we might issue.

48. To reduce compliance costs on QLPs, we use an approach to calculate qualified revenue that:

    48.1 relies on information that is readily available across a wide range of firms;

    48.2 is applicable across a wide range of firms with varying products, business models, and reporting capabilities, rather than being designed to meet the business practices and concerns of any one firm; and

    48.3 where possible, relies on common auditable information that QLPs are likely to keep for other purposes (such as statutory reporting and billing).

49. Our 2021/22 specified information document provided a formula setting out how each QLP should calculate its qualified revenue. A summary of this formula is set out in Table 2 below.

Table 2: Calculating qualified revenue

Step		Disclosed items	Value	Value	Formula
a		Operating revenue as per the relevant statutory financial statements		$a	
b		Non-telecommunications services revenue (if any)	$b		
c		Other non-telecommunications services revenue	$c		
d	less	Total non-telecommunications service revenue		$d	d = b + c
e	plus	Timing adjustment (if required)		$e	
f		**Gross telecommunications services revenue**		**$f**	f = a - d + e
g	less	Total payments made to other QLPs		$g	
h	less	Total payments to non-QLPs for services initially provided by a QLP		$h	
i	less	Free-to-air broadcasting services revenue		$i	
j	less	Total cost of non-telecommunications good and services included in gross telecommunications services revenue		$j	
k		**Qualified revenue**		**$k**	k = f - g - h - i - j

Gross telecommunications services revenue

50. In their s 83 disclosures, QLPs started with their operating revenue figure and made deductions for non-telecommunications services revenue to calculate their gross telecommunications services revenue.

51. Our specified information document provided guidance to QLPs on how different revenue streams should be treated in their disclosures. This included listing the liability status of common revenue streams for telecommunications companies.[25]

[25] See Attachment A of the 2021/22 specified information document.

Timing adjustments

52. As with previous years, QLPs were required to provide specified information for the 1 July to 30 June financial year.

53. For those QLPs who have year-ends other than 30 June we allowed them to make a timing adjustment to adjust their gross telecommunications revenue to reflect the 1 July 2021 to 30 June 2022 TDL year.

54. To provide assurance on the accuracy of the timing adjustment, QLPs who sought to rely on the alternative assurance option were required to provide director certification.[26]

Net revenue approach

55. A core part of our approach to calculating qualified revenue is the use of a net revenue method. We have used this method since the TDL was established in 2011. Earlier LADs provide detailed explanations for our choice of the net revenue method, but in short, we chose this method as it captures revenue earned by both wholesalers and retail service providers and it avoids double taxation.[27]

56. In practice, our use of the net revenue method means that we allow QLPs to make the following deductions from their qualified revenue:

    56.1 total payments to other QLPs; and

    56.2 total payments to non-QLPs for services initially provided by a QLP.

57. Both these deductions are limited to payments made for telecommunications services used in the supply of telecommunications services to the QLP’s customers.

58. The paragraph 56.2 deduction is rare and is only used to deal with situations where a non-QLP is acting as an intermediary between a liable upstream provider and a liable downstream provider of telecommunications services.

Section 85A(1)(a)

59. Section 85A of the Act provides certain exclusions from qualified revenue for revenue received in relation to broadcasting services. Subsection (1)(a) excludes any amount of revenue received in relation to a broadcasting service that is supplied to end-users free of charge.

---

26 QLPs relying on the default assurance option (ie, an assurance report on their specified information) were not required to provide directors certification as the timing adjustment would have been included in the assurance report audit.

27 For example, see our final 2011/12 TDL LAD at https://comcom.govt.nz/__data/assets/pdf_file/0025/61657/Telecommunications-Development-Levy-liability-allocation-final-determination-2011-12-27-June-2013.pdf

Bundles

60. If telecommunications goods and services and non-telecommunications goods and services are sold by a QLP in a bundle,[28] the qualified revenue calculation needs to account for this to ensure that telecommunications revenue is appropriately identified.

61. As with previous years our TDL methodology allows for QLPs to account for bundles by either using a:

    61.1 *separate revenue approach* - identifying and excluding the revenue attributable to the non-telecommunication services; or

    61.2 *deduction approach* – subtracting the cost of the non-telecommunication services.[29]

62. The deduction approach can only be used in situations where a QLP cannot use the separate revenue approach. In practice both approaches are used by QLPs but the adoption of NZ IFRS 15[30] has seen more QLPs move towards the separate revenue approach. This year three QLPs used the deduction approach to account for bundles.

63. Our 2021/22 specified information document provided guidance to QLPs on the use of the deduction approach.[31]

64. Attachment B of our 2021/22 specified information document prescribed a revenue apportionment methodology for broadcasting subscription and advertising revenue.[32] This methodology allows broadcasters to identify the 'non-telecommunications' element of these revenue streams and deduct them through the separate revenue approach.

Compliance and assurance

65. QLPs were required to provide an assurance report or an audit report by an independent qualified auditor on their specified information. These reports provide us with a reasonable level of confidence as to the processes used to prepare information and the reliability of the information. The auditor is expected to identify and correct deficiencies in processes and information and provide assurance of its reliability.

---

28 Bundling refers to a situation where two or more goods are sold together. Most cases that we deal with in the TDL are mixed bundles, which is where components of the bundle are available on a standalone basis and available in a bundle.

29 Under this approach the value of non-telecommunications goods and services sold in a bundle with telecommunications services should be deducted based on their input cost.

30 New Zealand Equivalent to International Financial Reporting Standard 15 Revenue from Contracts with Customers.

31 See paras 43-45 of the 2021/22 specified information document.

32 See Attachment B: Treatment of broadcasting related revenue streams of the 2021/22 specified information document.

66. Overall, the level of completeness and timeliness of disclosures this year was similar to past years. However, not all QLPs provided us with their audit or assurance reports by the due date.

67. We reviewed all information received from QLPs under s 83 for compliance with our specified information instructions. This included checking the disclosures for completeness, the reasonableness of information provided, and the consistency of how different QLPs addressed comparable issues.

68. Our review identified several issues, which we have raised with the relevant QLPs. These issues were technical in nature, relating to the specifics of the individual QLPs, and therefore did not require consultation. In these cases, the QLP provided us with a satisfactory explanation or additional information when requested.

69. All QLPs are responsible for ensuring that they comply with s 83. The Act makes it a breach to fail, without reasonable excuse, to comply with s 83 of the Act.

70. Where we identify a likely breach of s 83, we must consider the appropriate enforcement response. Any failure to immediately rectify identified non-compliance may increase the seriousness of the breach, and will be taken into account in determining the appropriate enforcement response.

71. The Commission uses enforcement criteria to assist in deciding whether to take enforcement action in response to a statutory contravention and to assist it in deciding what enforcement action to take.[33,34] The Commission's enforcement criteria are:

    71.1 extent of detriment;

    71.2 seriousness of conduct; and

    71.3 public interest.

72. Our enforcement options include:

    72.1 issuing a compliance advice letter;

    72.2 issuing a warning letter;

    72.3 serving a civil infringement notice under s 156D of the Act, incorporating a penalty of $2,000;

    72.4 agreeing an out of court settlement; or

---

33 The Commission's enforcement criteria are set out at https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria

34 The Commission must also take into account the matters listed in section 156C when making an enforcement decision.

72.5 applying to the High Court for an order requiring payment of a pecuniary penalty (of up to $300,000) to the Crown under s 156L of the Act.[35]

[35] Section 156L(3)(c) of the Act empowers the High Court to impose a penalty of up to $300,000 for a breach of s 156A(1)(k).

Allocation of levy

73. The proportion of the TDL required to be paid by each QLP is determined by its share of the total qualified revenue earned by all QLPs for the TDL period.

74. In accordance with s 88(a) and (b) of the Act, Table 3 shows the qualified revenue amounts that we have determined, and the amount of the TDL payable by each liable person.

Table 3: Levy allocation

QLP†	Qualified revenue ($)*	% of industry qualified revenue	Amount of TDL to pay ($)
Spark group	$1,467,562,306	32.70%	$3,428,106.69
Vodafone New Zealand group	$1,129,039,000	25.15%	$2,637,343.66
Chorus group	$877,935,000	19.56%	$2,050,785.06
Two Degrees group^	$446,847,209	9.96%	$1,043,798.89
Orcon group^	$124,842,684	2.78%	$291,622.40
Tuatahi First Fibre Ltd**	$107,451,000	2.39%	$250,996.83
Enable Services Ltd**	$88,478,000	1.97%	$206,677.44
Sky Network Television Ltd	$42,732,000	0.95%	$99,818.49
Mercury NZ Ltd^^**	$42,473,236	0.95%	$99,214.04
Kordia Ltd**	$31,139,000	0.69%	$72,738.18
Vital group	$15,336,917	0.34%	$35,825.79
Vector Communications Ltd	$15,176,000	0.34%	$35,449.91
Lightwire Ltd	$14,609,101	0.33%	$34,125.68
Northpower Fibre Ltd**	$14,158,000	0.32%	$33,071.94
Cello Group Ltd	$10,808,000	0.24%	$25,246.61
Now New Zealand Ltd^^	$9,887,620	0.22%	$23,096.68
Devoli group	$9,660,464	0.22%	$22,566.06
Inspire Net group	$9,592,186	0.21%	$22,406.57
Voyager Internet Ltd	$9,279,160	0.21%	$21,675.37
Plan B group	$5,596,369	0.12%	$13,072.66
MyRepublic Ltd	$5,569,000	0.12%	$13,008.73
Feenix Communications Ltd	$5,194,669	0.12%	$12,134.33
Transpower New Zealand Ltd**	$2,600,000	0.06%	$6,073.39
Todd Corporation group	$2,414,775	0.05%	$5,640.72
Total Industry	**$4,488,381,695**	**100.00%**	**$10,484,496.12**

† Any reference to a group (eg, Spark group) is a reference to a group of bodies corporate that, for the purposes of the TDL, are treated as one person under s 79 of the Act. See Attachment A for a full list of bodies corporate that comprise each QLP group.

*A firm with telecommunications over the $10m minimum telecommunications revenue threshold for inclusion may have a reported qualified revenue of under $10m due to adjustments.

** Section 79 of the Act requires us to treat these Crown companies as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are shown separately.

^ Section 79 of the Act requires us to treat these two groups of companies (Two Degrees group and Orcon group) as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are shown separately.

^^ Section 79 of the Act requires us to treat these companies (Mercury NZ Limited and Now New Zealand Limited) as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are shown separately.

Note: UltraFast Fibre Limited changed its name to Tuatahi First Fibre Limited on 1 November 2021.

Attachment A: List of 2021/22 TDL QLPs

75. Tables 1 and 2 below list the companies (or groups of companies) that, based on the information before us, we consider are liable for the 2021/22 TDL, i.e., are QLPs. However, it is the responsibility of businesses involved in providing telecommunications services to determine whether they are QLPs and therefore must comply with the requirements under subpart 2 of Part 3 of the Act.

Listing the QLPs

76. The Commission has identified two categories of QLPs:

    76.1 *QLP groups* – groups of connected bodies corporate that are treated as a single QLP by virtue of s 79 of the Act (identified in Table 1); and

    76.2 *Independent QLPs* – companies without connected bodies corporate (identified in Table 2).

Table 1: QLPs that include interconnected bodies corporate under s 79 of the Act

QLP Group
Chorus group: • Chorus Ltd; and • Chorus New Zealand Ltd.
Crown companies group: • Kordia Ltd; • Transpower New Zealand Ltd; • Northpower Fibre Ltd; • Enable Networks Ltd; • Enable Services Ltd; and • Tuatahi First Fibre Ltd.
Devoli group: • Devoli Ltd; • Layer 2 Co Ltd; and • Mynx Internet Ltd.
Inspire Net group: • Inspire Net Ltd; and • Inspired Networks Ltd.
Mercury NZ group: • Mercury NZ Ltd[36]; and • Now New Zealand Ltd.
Plan B group: • Plan B Ltd; • Internet Company of New Zealand Ltd; and • Solarix Holdings Ltd.

[36] Mercury NZ Ltd is also a part of the Crown companies' group.

Spark group: • Spark New Zealand Ltd; • Spark New Zealand Trading Ltd; and • Digital Island Ltd.
Todd Corporation group: • Nova Energy Ltd; • Total Consumer Services Ltd (MegaTEL); and • Todd Digital Ltd.
Two Degrees Orcon group: *Two Degrees group disclosure:* • Two Degrees Mobile Ltd; • Two Degrees Networks Ltd; and • Two Degrees New Zealand Ltd. *Orcon group disclosure:* • Vocus (New Zealand) Ltd; • Vocus Group NZ Ltd; • M2 NZ Ltd; • CallPlus Ltd; • CallPlus Services Ltd; • 2Talk Ltd; • Flip Services Ltd; • Orcon Ltd; and • NZ Fibre Communications Ltd (Stuff Fibre).
Vital group: • Vital Ltd; and • Vital Data Ltd.
Vodafone New Zealand group: • Vodafone New Zealand Ltd; and • Bay City Communications Ltd.

Table 2: Independent QLPs

Independent QLP
• **Cello Group Ltd.**
• **Feenix Communications Ltd.**
• **Lightwire Ltd.**
• **MyRepublic Ltd.**
• **Sky Network Television Ltd.**
• **Vector Communications Ltd.**
• **Voyager Internet Ltd.**