



**Spark**<sup>nz</sup>

# 111 Contact Code

Spark Submission

Public Version

Commerce Commission

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## SUMMARY

1. The aim of the 111 Contact Code is to ensure that vulnerable consumers are able to make a voice call to 111 in the event of a local power outage. The Code sets out the criteria for who qualifies as “vulnerable” and the obligations on their retail service provider (**RSP**) to provide a backup solution if they do not already have one.

*All stakeholders will benefit from a clear definition of a vulnerable consumer*

2. The various criteria and thresholds in the Code need to be tight and clear. It is essential that consumers and industry understand the group of customers that the Code applies to, and the solutions that may be available to them at no cost, if they qualify.
3. The group of consumers who qualify as vulnerable should be limited to those who have medical issues or a threat of harm (such as a court protection order). Accreditation should be limited to professionals who can make an expert judgment on whether an individual meets the criteria.

*A 12 month implementation period is needed for RSPs to source technical solutions and prepare establish registration systems*

4. Industry can only source solutions and put processes in place once the Code is finalised. Given the current economic climate and the challenge of sourcing equipment, we suggest a minimum of 12 months implementation lead time is needed for providers to source appropriate backup solutions at the necessary scale, particularly as there is likely to be a large demand for devices when they are first made available.

*Unless there are coverage issues in their home, a mobile phone suitable for use by a vulnerable consumer should be the acceptable, default solution for all customers*

5. The choice of solution provided at no cost to an individual should be decided by the RSP. An RSP may choose to provide a basic mobile handset to a customer providing they have adequate mobile coverage to make a voice call to 111 at their premise. The test for whether a mobile solution is suitable should be whether the device has at least the same level of usability as a copper connected DECT phone in the premise.
6. We expect that for the vast majority of qualifying customers, a simple mobile phone solution will be sufficient. Only those without adequate mobile coverage at their premise will need an alternative solution.

*Battery backup solutions are costly and cumbersome and should only be an option when the customer cannot use a mobile phone at home*

7. Physical battery backup devices are complex to install (especially when being retrofitted to a home setup), their typical form factors and weight make them cumbersome, and they are a very costly solution. They can be subject to considerable installation, maintenance and end of life issues and can create complexity when changing retail provider.

8. 12 hour battery backup is an unnecessary and disproportionate requirement and would require very large and expensive devices. We expect the size will put consumers off and lead to lower take-up. We suggest 2 hours would be a more appropriate requirement. We think it highly unlikely we would be able to find a UPS option with 12 hour backup which would be suitable for a vulnerable consumer.

*As a point of principle, network operators should be responsible for backing up their own equipment. This greatly simplifies installation and customer switching.*

9. RSPs should be responsible for backing up their own equipment (eg their RGWs) and Chorus/the LFCs should be responsible for backing up their ONT. Being responsible means providing the backup equipment, managing the equipment during its life cycle and covering all the costs associated with the device. Chorus and the LFCs have chosen not to provide battery backup as standard for all their ONTs. This was a commercial decision and has not caused a problem for the majority of customers, but it is inappropriate for RSPs to be asked to cover the cost to protect their equipment.
10. Spark uses the ATA on the Chorus ONT for its voice services so does not need to provide back up to its RGW to keep the voice services working. It makes little sense for RSPs to provide the backup in this situation as it is solely about backing up the access network device.
11. Taking this approach simplifies the process when a customer moves between fibre RSP and creates efficiencies as the battery solution stays the same, even if the customer changes retail provider.
12. As noted above, we expect the vast majority of vulnerable consumers can be served with a mobile device. Chorus and the LFCs should only be required to provide a battery backup when there are no other solutions for the customer.
13. Whichever solution an RSP chooses, we agree it only needs to provide a single connection into the premise. There is no need to provide multiple devices to enable connectivity in different parts of a premise, the outbuildings etc. This is consistent with the principle that the copper connection is the baseline which only provides a single connection in to the home with the ONT and RGW located next to each other, and the fact that the home network (eg the customer's DECT phones and home wiring) are outside the scope of the Code.

*Reporting and record keeping need to be practical and consistent with wider company obligations*

14. The reporting requirements in the Code need to recognise listed companies' disclosure obligations when setting time frames for providing information at the end of each financial year.
15. The requirements to keep records for 5 years is excessive, especially for such sensitive information and the fact that we are required to check in with the customer each year anyway. We suggest records need only be kept for 2 years. It is certainly not appropriate to retain data for the entire time the customer is with the retail provider plus an additional 5 years.

16. We have suggested some amendments to Appendix A to provide additional clarity.

## COMMENCEMENT DATE

17. Paragraph 1 says the Code comes into force on a specific date. We estimate it will take at least 12 months from the date of the finalisation of the Code to be ready to launch a solution for customers. If the Commission finalises the Code as planned in September 2020 we suggest a start date of October 2021 is reasonable.
18. We recognise there are links to the Copper Withdrawal Code and we support Chorus in removing copper. We do not think it appropriate that Chorus should wait until October 2021 to start its copper withdrawal, so we suggest a staggered implementation / transition period for the introduction of the 111 Contact Code.
19. For example, as RSPs we can commit to making customers aware that their service will not work in a power outage when they purchase a particular technology. However, we need at least 12 months from when the Code is finalised to put in place processes for people to register as vulnerable consumers and to have a technical solution available to them.
20. We discuss the issue of equipment procurement and availability later in our submission. For this we need forecasting of the number of customers who are likely to fit the criteria.
21. It will also take us up to 12 months to create processes for customers to register with us as a vulnerable customer. This includes ensuring that the data we receive is kept confidential and auditable, and our systems are updated so our customer service representatives can see the customer's vulnerable status and any key facts that they may need to know (for example we may record the customer is deaf or blind in our systems so we can better serve the customer when we talk to them or dispatch an engineer to the home). System changes like these require formal development and planned implementation.

## SCHEME PROMOTION

22. We expect the Commerce Commission will want to publicise the scheme when it becomes operational. This needs to be done in consultation with industry as it will generate calls to our helpdesk and requests for further information. Ultimately it will also drive demand for the solutions available to vulnerable end users which as an industry we will need to source and provide.
23. It will be important to be very clear in any messaging about who would be considered a vulnerable consumer, making it very clear that anyone with an existing mobile phone would not be eligible. Without care it will be easy to set wrong expectation for customers or create a bow wave leading to poor customer experience.
24. At the same time however, we recognise that it is important that vulnerable consumers, and people who care for them, can take advantage of the support offered

under the Code. It is a matter of working together as an industry to set appropriate expectations, especially in the early stages of rollout.

## WHO SHOULD QUALIFY?

25. The definition of the vulnerable consumer in the Telecommunications Act is a consumer of a specified telecommunications service who –
  - is at particular risk of requiring the 111 emergency service (for example, due to a known medical condition); and
  - 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.
26. Taking the second half of the definition first, we agree with the Commission that anyone who already has access to a mobile phone that they can use to make 111 calls at home does not meet the definition of a vulnerable consumer and will be outside the protections in the Code. Their RSPs may still offer them a solution on a commercial basis if they choose.
27. The group of people who are at “particular risk of requiring the 111 emergency service” is open to interpretation and needs to be better defined in the Code.
28. The Code needs to be crisp and clear on when a consumer should be considered vulnerable. At present the draft Code leaves it to the discretion of the person of standing in the community and they are only guided by the four scenarios in Appendix A. This is not a robust approach and likely to be subject to considerable variations in interpretation. For example, a pilot, a veterinary surgeon, a medical doctor, an accountant and a marriage celebrant are likely to have very different views on the threshold for whether someone is at particular risk of requiring the 111 emergency service.
29. Instead the Code should be clear about what groups of people fall within the definition. We suggest the following categories which are consistent with the categories which apply today for the TCF Disconnection Code:
  - a. People with medical issues which mean they (or people they live with) are more likely to need to call 111; and
  - b. People who are subject to the risk of violence and have a police Protection Order in place.
30. If any other categories are to be included the Commission needs to explicitly explain why people in that category are at particular (ie significantly heightened) risk of requiring 111 emergency service, compared to other consumers.
31. Appendix A includes four scenarios to help the person making the declaration on behalf of the customer. We suggest these scenarios should be revised to reflect the groups of customers identified above and the thresholds for inclusion.

32. Scenario one and three are examples of medical issues which mean the customer has a particular risk of needing to call 111. This can be independently confirmed by a general practitioner.
33. Scenario four is an issue of personal safety and the customer would be eligible for a solution if they can show they have a relevant Protection Order. In the absence of a Protection Order, the person making the declaration must take a view on whether the threat is valid, which is open to interpretation. The process could be improved if a social worker were able to confirm the customer has personal safety risk.
34. Scenario two is an example of the type of customer we consider would NOT be eligible for a solution. Tane lives on a remote farm and has a risky occupation but these factors alone should not mean his household is more likely to need access to 111. It is unclear why he would meet the criteria and how it would benefit him if he did as the connection would be in the main premise.
35. We also question whether this example is useful as the remote location means the customer is most likely to be connected using a copper connection (because fibre and wireless broadband options will be unavailable) and so will not be eligible for a backup solution anyway.
36. The Code requires a solution to be available at no cost to customers who are classed as vulnerable consumers. However, it should be remembered that there is nothing stopping customers who do not meet the criteria from sourcing their own solution such as a mobile phone, a battery backup solution or even a generator if they live remotely and are subject to frequent power outages.

#### BUSINESSES SHOULD NOT QUALIFY

37. We disagree with the Commerce Commission's change in position to include all retail landline services, irrespective of whether they are supplied to residential or business consumers. If a business has a voice line that it is sharing with a vulnerable consumer who lives at the same premise then the onus should be on the business, not the RSP, to make sure the vulnerable consumer has an appropriate backup solution in place, or purchase a retail line for the vulnerable consumer.

#### ACCREDITATION PROCESS

38. We agree with the Commission that the process for a consumer to demonstrate they are a vulnerable consumer should be easily accessible for consumers and should not be unreasonably difficult for a consumer to fulfil.
39. Part of that is ensuring the criteria for who qualifies is crisp and clear to both vulnerable consumers and RSPs. While there will always be borderline cases, it should generally be clear who qualifies. The application process should reflect the criteria.
40. Accreditation should be limited to those professionals who can make an expert judgement on whether an individual meets the criteria of a vulnerable consumer. As

noted earlier, we consider the Act intended vulnerable consumers to be broadly those with medical issues or who are subject to the risk of personal harm at the premise. The list of people who can confirm a vulnerable consumer's status should be limited to those who can verify either of these for the individual concerned. We therefore suggest the list is limited to medical professionals, social services, justices of the peace and the police only.

41. The wider list of 'people of standing in the community' would be appropriate if the purpose of accreditation were only to witness the applicant's signature. Our concern with this approach is that there needs to be independent verification of a vulnerable consumer's status to ensure that their application is genuine – the prospect of a free phone or battery backup solution is likely to act as a strong incentive for some people to register, and there is a risk that not all applications will be genuine. RSPs do not want to be in the position where they must make their own judgement on whether someone qualifies as vulnerable. That approach is likely to result in errors and require the customer to share particularly personal information with their provider.
42. It is a far more robust process if the accrediting person knows the customer and can confirm they meet the requirement, or in the case of a court protection order, confirm the order is valid. To support this approach the form should include a clear statement that the customer meets the definition of a vulnerable consumer.
43. We expect a process to register customers will take 9-12 months to set up and we should not be registering customers until technical solutions are ready to be deployed. Given the nature of the customers involved, it would not be appropriate to ask people to register months in advance of a mobile or battery backup device being available. This would be a bad customer experience and would likely drive more contact with our help desk as customers chase us for their free solution.

#### A VULNERABLE CONSUMER IS ONE WHO DOES NOT HAVE AN EXISTING SOLUTION

44. When a consumer has their application form signed off by an accredited person, they will have an expectation that they qualify and so will receive additional support from their RSP. To avoid this, the application form needs to cover more than just the 'at particular risk' criteria.
45. As the Commission notes in its discussion paper there are actually three limbs to the definition of a vulnerable consumer:
  - Limb 1: Consumer of a specified telecommunications service
  - Limb 2: At particular risk of requiring the 111 emergency service
  - Limb 3: Does not have a means for contacting the 111 emergency service during a power outage
46. The draft application form focusses on Limb 2, but should also include Limb 3. For Limb 3, the consumer will need to declare they have no appropriate means to contact

111 emergency service in the event of a power failure, and the accrediting person will simply confirm the consumer has made this statement.

47. It might be that the RSP can verify that the consumer has a mobile device if they are also a customer of the RSP for mobile services. However, the customer may have their mobile with another provider, or the RSP may not offer mobile services, so this should be confirmed as part of the accreditation process.
48. We therefore consider it is essential that Limb 3 of the definition is included as part of the application form, and the accredited person should not sign a form where the customer already has an appropriate means to make a voice call to 111 in the event of a power outage.
49. The application form needs an additional declaration such as 'I confirm that \_\_\_ does not have a means (eg access to a mobile phone) which they can use to contact the 111 emergency service in the event of a power failure.'
50. The application form should also give clear examples of what would constitute an appropriate means and therefore the customer will not be eligible for an additional solution. These would include when a consumer has a copper landline service, a mobile phone which they can use at home, or has an existing battery backup solution.
51. We have proposed some drafting suggestions to Appendix A at the end of this submission.

## TECHNICAL SOLUTIONS

52. It is important that all parties are clear on the minimum requirements for technical solutions that apply to providers and what this means for a vulnerable consumer. This is to avoid misunderstanding and setting inappropriate expectations.
53. For example, consumers need to understand that they cannot demand a free battery backup device if their provider has offered them a mobile solution, unless there are exceptional circumstances
54. As a point of principle, RSPs should not be required to provide a solution which goes beyond what was provided by a copper service either in terms of capability or usability. For example, a mobile phone should be an appropriate solution if the device were as easy to use as a DECT handset in the home.
55. Similarly, the solution should only provide protection to a single connection point in the premise (the equivalent of the copper termination point). If connections are required in other parts of the premise, such as a sleepout, garage, other buildings, then it should be the customer's responsibility to extend their home network. This is consistent with customers being responsible for their own devices in their home (eg DECT handsets).
56. This is supported by Section G2 which clearly states that the provider need only provide one means for contacting the 111 emergency service *per premises*, and that



multiple vulnerable consumers can share the same device at the premise (provided the solution is suitable for all of the vulnerable consumers at the premise).

57. The code should make it clear that the discretion for the type of solution lies with the RSP. The RSP should be able to offer the customer any solution which meets the requirements and the customer is either able to accept it or explain why it is not appropriate for their situation.

## MOBILE FIRST STRATEGY

58. If the customer is in a mobile coverage area and the RSP offers to provide them with a phone which has a similar level of usability as a standard fixed phone line then this should always be deemed appropriate, unless there are valid technical or operational reasons why the customer cannot use it.
59. The customer should not be able to reject the solution because they do not like the phone provided, have unfounded concerns about the health impacts of mobile devices or simply that they would prefer a battery backup device.
60. Even dexterity issues should be treated cautiously – if the customer could previously use a standard phone on their copper network they should be able to use a mobile phone, as long as the mobile device provided has a similar level of usability.
61. A mobile device may even offer more benefits to a vulnerable customer than their existing landline phone – it may only require one button to be held to call 111, it may have handsfree functionality, a clear screen, extra loud audio, Bluetooth compatible for hearing aids and a recharging cradle.
62. If an appropriate specified mobile device is available, then the only consistent reason why a mobile devices should not be sufficient is if the customer has poor mobile coverage at home, meaning they are at risk of not being able to make a 111 voice call in the case of an emergency.
63. We expect RSPs will have other options available to consumers for a fee for those who do not want the solution provided that was offered at no cost.
64. Paragraph 15.3 requires that the device should be able to be operated for the minimum period in the event of a power failure. We suggest this needs to be qualified by adding the words 'If used as directed'.

## BATTERY BACKUP IS COMPLEX, CUMBERSOME AND COSTLY

65. On the face of it, battery backup sounds like an ideal solution – it allows the customer to keep their current set up and they can simply benefit from continued operational during a power outage. However, battery backup solutions are complex, are difficult to install and manage, and are a costly solution. There are considerable installation, maintenance and end of life issues which need to be considered. For these reasons we believe a battery backup solution should be the last resort solution which only

needs to be offered where a mobile phone is not an acceptable solution for a customer in their particular circumstances.

66. Spark initially offered a battery backup as part of its fixed wireless broadband product so we have some experience in this area. Unfortunately, these batteries were subject to a product recall, despite our best effort to provide a good solution for customers<sup>1</sup>.
67. We created a solution for our wireless customers which minimised the complexity of the installation by, as far as possible, having everything in position alongside the wireless modem when it was initially delivered to the customer. The customer still needed to plug in some cables to enable the battery backup, but we were able to minimise the complexity by effectively pre-installing it with our wireless device. This approach is not possible where the customer needs to retrofit a battery backup to their existing setup.
68. A significant benefit of a fixed wireless product is its simplicity for installation: it does not require the physical installation of a new access network in to the home, it does not require a tech to visit the home, the customer can be up and running within minutes of opening the box simply by plugging it in and switching it on, the customer can choose the optimum location for the device within the home and easily move it to different locations in the home over time if they restyle their house. Providing a battery backup as part of our initial solution retained these benefits.
69. It's worth comparing the ease of installation with the challenges we faced as part of the product recall. Our recall required people to disconnect their battery and return it to us<sup>2</sup>. Despite our considerable efforts, and the ongoing safety risk (albeit it minimal) we achieved a very high recall rate but even this was considerably less than 100% We expect for some people the complexity in uninstalling and returning the battery backup device was too great.
70. Our fear is that a significant proportion of battery backup devices may be sent out and remain unconnected at homes for similar reasons. People may like the idea of a free battery backup but when they realise the complexities, many will simply find it too tricky to install, especially compared to a mobile handset solution which just needs to be taken out of its box and left plugged in.
71. Further, there are a number of issues with battery backup devices which make them costly to support. We fear this will increase incentives on RSPs not to serve vulnerable consumers as the costs far outweigh revenues. Issues include:

*Product Lifecycle*

- a. Batteries have a limited life span and will eventually need replacing once they have deteriorated. This requires the device to be switched off, packaged and returned, and a new device sent out.

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<sup>1</sup> [https://www.sparknz.co.nz/news/Spark\\_recall\\_power\\_backup\\_packs.html](https://www.sparknz.co.nz/news/Spark_recall_power_backup_packs.html)

<sup>2</sup> <https://www.spark.co.nz/help/landline/troubleshoot/wireless-landline-power-backup-recall/>

- b. Devices will need recycling and/or disposal at their end of life which adds to the total cost particularly for dangerous goods such as the batteries themselves.
- c. This limited lifespan effectively means the entire lifecycle cost of the battery needs to be repeated every couple of years, making these customers highly unprofitable to serve.

#### *Size and Weight*

- d. The higher the capacity of a battery backup solution, the larger it will be. Even basic devices can be quite large and heavy, and are not visually appealing. Aesthetic issues can put people off adding an additional box to their home setup when they may already have their ONT and RGW (the RSP's router/modem) visible in their house.

#### *Off The Shelf UPS products*

- e. UPS devices are available from many high street retailers, but these are aimed at technically savvy customers who want to protect computer and network hardware, and who are less concerned about aesthetic issues. While these devices can keep devices operating during short periods of power outage, they are often more focussed on giving time for connected devices to be powered down in a managed way, rather than long term operation during a power outage.
- f. UPS devices which allow customers to plug in a standard mains power plugs may look simple but create complexities such as their power sockets being too close together to connect to power supply units. The risk with devices which have standard power sockets is that customers plug additional equipment in to them which can overload the device or cause it to malfunction.
- g. We are likely to prefer a product which directly connects to the devices via a DC connection. These solutions can be more compact but require the selection of the correct connection cable as this can vary by protected device. This can be managed by the equipment provider who will know the model of ONT and/or RGW provided to the customer.

#### *Product Testing*

- h. Before we could recommend or supply a battery backup device to customers it would need to be thoroughly tested in a range of typical customers scenarios. We would need to do physical testing of the device to understand things like whether the device gets hot (or overheats, especially if placed in view of direct sunlight in the house), presence of audible and visual alarms etc
- i. We would also need to do extensive usability testing to understand how easy it is for a customer (especially a vulnerable customer) to setup the device at home. This is key to avoiding customers contacting our help centre, not plugging in their devices properly or simply not bothering to install it as they consider it 'too difficult'.

#### *Product Availability*

- j. When we find a device which meets our requirements we will then need to consider product logistics such as supply chain issues and wholesale delivery. Availability of devices will be key whoever supplies them.
- k. There is typically a lead time of around 6 months for device orders, especially as devices will need to be shipped by sea due to aviation rules around transporting batteries. COVID-19 may also impact manufacturer lead times and delivery.

#### *Device Management*

- l. Remote management functionality would increase the cost of the battery solution significantly and would require it to be connected to the home network (eg by wifi) which would add additional set up and operational complexity. We would recommend against this approach and instead the customer must take responsibility for monitoring status lights on the device so they know when it needs replacing. RSPs can send out reminders for customer to check their device.

#### *Logistics Of Sending Battery Devices To Customers*

- m. Getting the battery backup solution to customers can be a challenge too. New Zealand Post will not accept batteries being sent by post, and other couriers have similar restrictions.
- n. Where batteries are allowed to be sent, they are subject to tight rules around how they must be packaged. This creates challenges sending devices out to customer as well as getting them to return them if there are faults or when they need to be replaced.
- o. Battery backups can also be physically heavy making delivery and collection a challenge for vulnerable consumers.

#### *Product Returns And End Of Life Replacement*

- p. We mentioned our experience with our fixed wireless modem battery recall. We expect we will have similar challenges with switching out battery backup units at the end of their life.
- q. For our fixed wireless access battery recall we allowed customers to drop off the units at our Spark stores. However, Spark does not have stores in all areas, and many RSPs have no physical presence. The challenge of returning and replacing batteries should not be under-estimated

#### *Switching Provider*

- r. The issue is the same when a customer switches between retail providers. The new retail provider may have no relationship with the equipment provider and may not be able to support the battery backup device, especially as it may not have been set up properly in the first place. Also, given their cost, the original RSP may want to recover their battery backup device.

### *Installation Challenges*

- s. The location of the ONT and/or router can create challenges. Fibre installations in home are unique and we see large variations in setups. There may not be physical space next to an ONT, or it might be mounted on a wall or in an equipment cabinet with no additional space, or an existing device may be in the way of the mains plug on the wall making installation difficult.
- t. Battery backup solutions are complex to install. For the solution to be effective it needs to be correctly plugged in to the device(s) it needs to protect. This can be more complex than it sounds, especially for people who are nervous about making changes to what they see as complex equipment, especially as they will have been informed the fibre optic cables connected to the ONT are delicate.
- u. At the very least installation of a battery backup solution requires the customer to plug the device's input power to a mains power outlet, and then connect the device's output power to the ONT and/or router being backed up.
- v. In our experience, the most compact and cost-effective devices have DC outputs meaning a selection of different cables are needed to ensure the customer has the right one to connect to their ONT and/or router. Our understanding is that different generations of Chorus ONTs have different connector types for their DC input. This can be managed by the equipment provider as they will know the type of ONT etc in the customer's premise.

### *Consequential Damage To Connected Equipment*

- w. It is not clear whether Chorus/the LFC will be happy with the customer changing the power supply connector and supply. Chorus/the LFC may have legitimate issues about the quality of battery backup products powering their ONT. The installation may cause physical damage to the ONT. It may also cause electrical damage to connected devices if it is not rated correctly, or malfunctions.
  - x. We need to understand whether a customer installing the battery backup solution would void any warranties on network equipment or service level agreements). This is one reason why we believe the access network provider should be responsible for providing the battery backup solution. It greatly simplifies many (but not all) of the complexities of battery backup solutions.
72. It is clear that battery backup is not a cheap or easy solution for RSPs to provide and it is unlikely to be an easy solution for vulnerable consumers to install. The risk of promoting battery backup is that it creates a strong disincentive on RSPs to avoid selling to customers who may be considered vulnerable, either by how they do their marketing, or by their product portfolio design.
73. Prioritising mobile as the default option for vulnerable consumers, with battery backup only required where there are technical reasons why mobile will not work in the home, will likely mitigate this risk.

## SOURCING OF DEVICES

74. A significant cost for the RSP will be sourcing suitable devices for consumers. This applies to both battery backup and mobile devices.
75. We support a centralised industry approach to the procurement of these devices. There will be a limited number of vulnerable consumers in New Zealand and a centralised approach brings consistency as well as allow scale benefits when purchasing.
76. It is also worth noting we have no reasonable estimate of the number of customers who will meet the definition of a vulnerable consumer, especially if it is loosely defined and open to interpretation. We will only know this when the process goes live.
77. A centralised industry body can take extra steps to prove devices are fit for purpose for their intended audience by engaging with third party experts. There would then be an assumption that the device meets the requirements in the Code.
78. Typical lead time for getting devices to New Zealand are 6-9 months. For the first order there will be additional time needed to select a vendor, approve the design etc, meaning that the first deliveries would be expected to be a year away.
79. These timelines could be quicker if off-the-shelf devices could be used, such as an existing entry level mobile phone or a battery backup solution which is already available in New Zealand. However, even these will require a lead time as stock is ramped up to meet demand. COVID-19 has already created challenges include the time to source equipment and get it shipped to New Zealand.
80. An extension of this centralised model could be that the devices are made available from high street retailers. The RSP would provide a voucher which the customer can take to the retailer to purchase their device and receive installation advice directly from the store.
81. As noted earlier, we are aware of battery backup devices being available from high street retailers, but these devices would need to be thoroughly tested for use in this application, including whether they will continue to operate safely to the required specification over the expected product life span.

## 12 HOUR BATTERY LIFE

82. Spark supports the Commission stating a minimum backup period requirement for solutions. The challenge is setting the period and understanding its impact on different devices.
83. We support the TCF's submission on the lack of firm evidence to justify a 12 hour minimum operate time, particularly as vulnerable users will generally be given priority repair during electricity outages by their electricity company.

84. Put simply, the longer the battery life, the bigger and more costly the device. This has implications for the RSP and the customer. If the device is more costly then RSPs will be stricter with their criteria for when they can be provided (within the bounds of the Code) or not promote their services to these customers. Importantly though, vulnerable consumers will be more likely to remain unprotected if they are put off by the thought of installing a big battery backup device in their home.
85. The Commission proposes a 12 hour minimum battery life. Taking into account a battery's degradation over time, and the expected 18-24 month life cycle of a battery, the actual initial rating of the battery would have to be significantly greater than this. This would be a major challenge cost wise as well as being the size and weight of a car battery. Even mobile phones would struggle to meet a 12 hour requirement consistently over their life span.
86. From a purely practical and pragmatic point of view, we suggest the Commission adopt a 2 hour minimum battery backup requirement. It balances the trade-offs of protecting consumers with a practical solution and is consistent with obligations in the UK and Australia. This would allow a much smaller and lighter device in the home.
87. If a customer has a particular need for longer battery backup, perhaps due to where they live, then they can source this at their own expense. Indeed, many rural properties already have backup solutions, such as a diesel generator, which they use during power outages.

#### CHORUS NEEDS TO COVER THE COST OF BACKING UP THE ONT

88. The issue of protection for vulnerable consumers has arisen because only the copper network continues to operate during a power outage. This was a design decision by Chorus and the LFCs (in conjunction with government) not to install battery backup by default for customers. It seems unfair that RSPs are now required to pay for, and manage, this functionality.
89. Spark uses the Chorus ATA for its voice services so does not need to provide back up to its RGW to keep the voice services working. Voice-only customers are connected directly to the Chorus ONT. It makes little sense for RSPs to provide the backup in this situation as it is solely about backing up the access network.
90. As noted earlier there are significant practical and operational issues with installing battery backup devices on home fibre connections and many of these can be mitigated by making the access network responsible for providing the battery solution and managing it during its life cycle.
91. Requiring the access network to install battery backup, where it is required, also helps customers switching between RSPs on the same technology as they do not need to reconfigure their setup.
92. Our view is that mobile devices should be the primary way that industry meets its requirements under the Code, and so the access network should only be responsible

for providing a battery backup solution where a mobile device is not an appropriate solution for that customer (eg lack of mobile coverage). We think this would be proportionate way of addressing the issue.

93. The Commission argues that it is for RSPs to reach commercial arrangement with the access networks over charging. Unfortunately, commercial agreement is unlikely based on conversations so far. Access network are effectively local monopolies who control the bottleneck of their own network access. Our experience has been that it is very difficult to commercially negotiate this type of product unless the access networks already wants to do it. For this reason we need access networks to be mandated to provide a battery backup solution, where this is the only option for customers.

#### AUTHORITY TO ACT ON THE CUSTOMER'S BEHALF

94. As you will appreciate, under the Privacy Act Retail providers have obligations to keep their customer's information safe and secure. Further, our customers expect that we will only share information about their account with them or authorised account authorities (people that our customer have explicitly advised us are authorised to act on their behalf). As such we take steps to verify the customer's identity when they contact us about their account. Where a customer needs someone else to help them manage their account, with the explicit consent of the customer we can add that person as an additional authority on their account.
95. Paragraph 6.7 is quite vague in that it says that 'someone they may know' may contact the provider to discuss 'any of the information provided'. We suggest this paragraph is clarified to make it clear that this only applies to the general information about how the scheme operates, and the Commission is not expecting that anyone can ask us for information provided by a vulnerable consumer as part of their application form, or about the customer's account more generally. This would put us in breach of our data protection obligations, and it would go against the expectations of our customers
96. We have proposed some changes to the wording in Appendix A to make this clearer. We note that any requirement to create different consent requirements for different customers and issues would create system complexities and operational risks. It would also make it more difficult for us to uphold existing consent processes

#### DISCONNECTIONS AND CREDIT ISSUES

97. We agree with paragraph 22 which states that an RSP should not be able to deny or withdraw supply of a retail landline service on the basis that the provider knows or suspects the consumer is (or may become) a vulnerable consumer.
98. However, we would like to see confirmation in the Code that RSPs can follow their existing disconnection policies where these are independent of the customer's status. For example, we still need to be able to temporarily suspend or disconnect a customer who continually refuses to pay their bills or commits fraud against Spark.



## PROCESS

99. The obligations in paragraph 19 and 20 on RSPs to contact a customer at least once a year to ensure that the means it has provided to the vulnerable consumer remains appropriate and functional, and to enquire whether their circumstances have changes, are vague. We assume this is to give RSPs the ability to implement a process as they see appropriate. It would be useful for the Code to define the timeframes for a consumer to respond before the RSP can remove them from their list of vulnerable consumers.
100. For example, an RSP may require its vulnerable consumers to reapply every 12 months under paragraph 12.4 as part of their annual contact. Can the RSP remove the vulnerable status from the consumer if the customer does not reply to their communication of 20.2 and 20.3 within a set period of time? It is also unclear when the 12 months period starts from. We assume it is from when the technical solution has been provided.

## COMMUNICATION

101. Customers receive information on a wide range of topics and there is a risk that if we send excessive information we end up confusing them. We suggest paragraph 5 should just be informing customers that a scheme is available, who it applies to and what the customer needs to do find out more. This is more efficient, especially when communicating with our entire customer base, most of whom will not meet the vulnerable consumer definition. The various information required under paragraph 6 would be better collated in a brochure and website for those who need it. It does not need to be sent in full to every customer.
102. When Spark needs to proactively communicate with its customers we will do this according to each customer's notification preference. Eg we will send it electronically for people who have registered to receive communications from Spark in this way. The Code should allow RSPs to respect their customer's preference.
103. The draft should make clear that an 'easily discernible manner' includes information posted on our website for people with online access
104. Information needs to be clear on who meets the definition of a vulnerable consumer, and in particular that anyone with an existing means to make a voice call to 111 during a power outage (eg anyone who has a mobile phone they can use at home, or has a copper line) is NOT eligible. It is important to set people's expectations as early as possible rather than them going through the application process and only finding out later they were not eligible due to their existing mobile phone or copper line.
105. Paragraph 6.5 needs to be clear that the customer can still be disconnected for other issues according to the provider's standard processes eg for not paying their bills, fraudulent use etc.

106. Paragraph 7.1 relates to customers without voice plans who would be outside the scope of the vulnerable end users Code. If they are to be included in the Code we agree they should be informed about their need to make alternative arrangements to access 111 more generally (even when the power is working) but there is no need to provide them with all the information in paragraph 6.1.

## REPLACEMENT DEVICES

107. The Code should be clear on a customer's obligations if the home solution is lost or stolen. We need guidance on whether the customer or the RSP is responsible if the customer takes their mobile device out of the house and loses it for example. Our assumption is that ordinarily the responsibility for a replacement will lie with the customer.

## REPORTING TO COMCOM

108. Paragraph 23 requires RSPs to provide certain information to the Commission not later than 1 month after the end of each financial year. Some of the information which is required to be disclosed is market sensitive information (eg 23.4) which are subject to market disclosure rules.
109. To avoid companies breaching NZ market listing rules we request that paragraph 23 is amended so that listed companies can provide their information to the Commission not later than 1 month after the external reporting of their annual results.
110. Alternatively, we would support an approach where the numerical reporting as part of the Code is included in the Commerce Commission's annual questionnaire. This will provide consistency across our reported numbers and is subject to an existing information gathering process.

## RECORD KEEPING

111. The requirements to keep records for 5 years is excessive, especially for sensitive consumer information, and the fact that we are required to check in with the customer each year. We suggest records need only be kept for 2 years on an ongoing basis. It is certainly not appropriate to retain data for the entire time the customer is with the retail provider plus an additional 5 years.

# APPENDIX A – DRAFT APPLICATION FORM TO BE CONSIDERED A VULNERABLE CONSUMER

Suggested changes marked in red

## [Draft] 111 Contact Code customer application form

This application form should be completed by customers (ie the account holder), or someone who lives at a customer's house, if they want their telecommunications provider to consider them to be covered by the 111 contact code. The form can also be completed by someone else, on behalf of the customer or the person who lives at the customer's house. The Code does not apply to services connected using copper.

[Provider logo  
(optional)]

The 111 contact code ensures that people who are more likely to need to contact 111, and who have a home phone line that doesn't work in a power failure (with no other means of contacting 111, such as a mobile phone, at their house), are provided with a means to contact the 111 emergency service.

### How to complete the form

1. Fill in Part A of the form.
2. Get a person of standing in the community to fill out Part B of the form.
3. Return the completed form to [insert provider's contact details].

### Part A: Personal details

#### 1. Are you the customer (account holder)?

Yes (Go to Q2)

No (Go to Q3) Note: Providers are required by the Privacy Act to protect their customer's privacy. You must be added as an authority to the customer's account if you want to discuss details of your application with the Provider.

#### 2. Are you making this application for yourself, or on behalf of someone else?

I am applying to be covered by the 111 contact code  
(fill out 4a and 4d)

I am applying on behalf of someone else (fill out 4a, 4c  
and 4d).

#### 3. Since you are not the customer, are you making this application for yourself,

or on behalf of someone else?

- I am applying to be covered by the 111 contact code (fill out 4a, 4b and 4d)
- I am applying on behalf of someone else (fill out 4a, 4b, 4c and 4d).

**4a. Details of customer (account holder)**

<b>Details of customer</b>	
First name(s):	Preferred first name (if different):
Surname or family name:	
Salutation Title: <input type="checkbox"/> Mr <input type="checkbox"/> Ms <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Dr <input type="checkbox"/> Other, please specify	
<b>What is the customer/household account number (or equivalent) with the provider?</b>	
<b>What is the address receiving phone service?</b>	
Flat Street name	
Suburb	
City	
Postcode	

**4b. Please only fill out this section if you are not the customer (account holder)**

<b>Details of person making the application</b>	
First name(s):	Preferred first name (if different):
Surname or family name:	
Salutation Title: <input type="checkbox"/> Mr <input type="checkbox"/> Ms <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Dr <input type="checkbox"/> Other, please specify	

**4c. Please only fill out this section if you are applying on behalf of someone else**

**Details of person who wants to be covered by the 111 contact code**

First name(s):

Preferred first name (if different):

Surname or family name:

Salutation Title:  Mr  Ms  Mrs  Miss  Dr  Other, please specify

**4d. Contact details (person who will receive correspondence about this application)**

Providers are required by the Privacy Act to protect their customer's privacy and will only discuss details of your application with the account holder or someone authorised on their behalf.

You must be added as an authority to the customer's account if you want to discuss details of your application with the Provider.

If you wish to be added as an authority on the account, you must provide you details below and ensure the account holder signs the final section of this form.

**\*Please provide contact details for how we can contact you to discuss the application.**

**If you are applying on behalf of someone else, please only provide your contact details in this section.**

**Name:**

Telephone:

Mobile:

Email address:

Postal address:

City/Town:

Postcode:

**Relationship to the person who wants to be covered by the 111 contact code:**

**What is the preferred method of contact (please tick a box)?**

Home phone

Mobile

Mail

Email

## PART B: General information and declaration

This declaration must be completed by a person ~~of standing in the community~~ **who can validate your application.**

### B1 General information

~~Who is a person of standing in the community~~ **can validate my application?**

The following persons are able to independently validate this application:

~~A 'person of standing in the community' means a professional person or a person of standing in the community, and includes any of the following persons:~~

- lawyers (with a current practising certificate);
- justices of the peace;
- serving police officers;
- medical doctors;
  
- mental health workers, including psychologists; and
- registered social workers;
  
- ~~• chartered accountants;~~
- ~~• university lecturers and professors who know you outside of university or in the capacity of an employer;~~
- ~~• elders or pastors from a church, temple, mosque or synagogue;~~
- ~~• serving members of the armed forces;~~
- ~~• senior government officials;~~
- ~~• members of Parliament; and~~
- ~~currently registered:~~
  - ~~authorised financial advisers;~~
  - ~~marriage celebrants;~~
  - ~~pilots;~~
  - ~~dentists;~~
  - ~~medical doctors~~
  - ~~engineers;~~
  - ~~nurses;~~
  - ~~teachers;~~
  - ~~legal executives;~~
  - ~~physiotherapists;~~
  - ~~mental health workers, including psychologists;~~
  - ~~veterinary surgeons;~~
  - ~~social workers; and~~
  - ~~occupational therapists;~~

**What does 'at particular risk of requiring the 111 emergency service' mean?**

The applicant must demonstrate they are at particular risk of needing to contact 111 (eg a known medical condition), disability or safety reasons) and who have a home phone line that doesn't work in a power failure (with no other means of contacting 111, such as a mobile phone, at their house).

~~There is no set definition for this. It is for the person of standing in the community to assess whether, in their own opinion, they consider the consumer is at particular risk of requiring the 111 emergency service. An example of who may be considered 'at particular risk of requiring the 111 emergency service', is a consumer who needs to contact the 111 emergency service for health (eg, a known medical condition), disability or safety reasons.~~

The following scenarios illustrate some situations where a person may be considered 'at particular risk' under the 111 contact code.

#### Scenario one

Mary and Joe are pensioners living together. These days Joe is unsteady on his feet. He has fallen over a couple of times recently. Mary is active but spends most of her time at home looking after Joe. Mary is worried that the next time Joe falls he might seriously injure himself. **This application form is needed to independently validate that Joe's condition means he is vulnerable and at particular risk of needing to contact 111 and has no other means of accessing 111 in a power outage (eg a mobile phone).**

#### Scenario two

Tane is a farmer in the rural Far North. The farm is remote. Tane is usually on his own. He drives a quad bike to get around and sometimes uses heavy machinery. **Since Tane has no increased risk of needing to contact 111 at his premise he would not be considered vulnerable under the 111 Contact Code. Tane should look at providing his own backup plan if he considers his job puts him at increased risk.**

#### Scenario three

Fatima has type 2 diabetes and is in the early stages of dementia. Fatima needs to take medication every day to manage her conditions. **This application form is needed to independently validate that Fatima's condition means she is vulnerable and at particular risk of needing to contact 111 and has no other means of accessing 111 in a power outage (eg a mobile phone).**

#### Scenario four

Jennifer's father has moved back into the family home. He's been verbally and physically abusive to family members in the past and Jennifer is worried that it might happen again. **This application form is needed to independently validate that Jennifer's father creates a risk that means she is at particular risk of needing to contact 111 and has no other means of accessing 111 in a power outage (eg a mobile phone).**

#### What is the 111 emergency service?

The 111 emergency service includes **voice calls** the ambulance service, police service and fire and emergency service.

#### What is the 111 contact code?

The purpose of the 111 contact code is to ensure that consumers who are at particular risk of requiring the 111 emergency service, and do not have a means for contacting the 111 emergency service, have reasonable access (or persons on their behalf do) to an appropriate means (eg, a mobile phone) to contact the 111 emergency service in the event of a power failure. The 111 contact code is administered by the Commerce Commission. More information on the 111 contact code, and a copy of the 111 contact code, is available on the Commerce Commission's website here: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/commission-111-contact-code>.

#### Who should I contact if I have any questions about the declaration?

Please contact us at *[insert provider's contact details]* if you have any questions about the declaration, or the 111 contact code more generally.

Alternatively, you can contact the Commerce Commission at [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz), or phone the Commission's Enquiries team on 0800 943 600.

## B2. Declaration (REQUIRED)

I

*(Insert full name)*

of

*(Insert contact address)*

acknowledge and declare that:

~~• I am a person of standing in the community, authorised to independently validate this application~~

• My occupation is

• I consider that

*(Insert full name of person)*

- Has confirmed they have no existing alternative means of accessing 111 emergency services in a power outage (eg a mobile phone); and
- Is, in my opinion, at particular risk of requiring the 111 emergency service for medical or personal safety reasons;

• Reason for their particular risk:

Signed:

Date (DD/MM/YYYY):

### **B3. ACCOUNT HOLDER DECLARATION (REQUIRED)**

- I acknowledge and declare the information given on this form is correct
- I acknowledge this information will be stored by my provider for [ x time] and may be shared with relevant third parties for the purpose of providing and managing your service.

Signed:

Date (DD/MM/YYYY):

#### **NEW AUTHORITY TO THE ACCOUNT (where relevant)**

- I acknowledge that the person detailed in section 4d will be added as an authority on my account, and will be able to access my account history and make changes to my account and services.



Signed:

Date (DD/MM/YYYY):