

# Commission 111 contact code Draft decisions and reasons paper

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## Associated documents

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11 March 2020	2020-au1101	<a href="#">New Zealand Gazette Notices "Notification of Commerce Commission's Draft 111 Contact Code"</a>

Commerce Commission  
Wellington, New Zealand

## Glossary

CWC	Copper withdrawal code
EDB	Electricity Distribution Businesses
EVP	Emerging Views Paper
HFC	Hybrid fibre-coaxial cable
LFC	Local Fibre Companies
MBIE	Ministry of Business, Innovation and Employment
RSP	Retail Service Providers
RSQ	Retail Service Quality
SIM	Subscriber Identity Module card – commonly known as a SIM card
TCF	Telecommunications Forum
TDL	Telecommunications Development Levy
TDRS	Telecommunications Dispute Resolution Scheme
TUANZ	Telecommunications Users Association of New Zealand
VoIP	Voice over Internet Protocol
WISP	Wireless internet service providers

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## Executive Summary

- X1 In New Zealand, making a call to someone on a home phone has traditionally been done using an analogue voice service provided over copper access lines. This service generally works during a power failure at a consumer's premises because the copper access line is powered from a source outside the premises.<sup>1</sup> This means that consumers using this traditional voice service can contact the 111 emergency service, even in a power failure.<sup>2</sup>
- X2 However, New Zealand is transitioning away from this traditional voice service, especially with the significant growth of fibre networks in the recent decade. Increasing numbers of consumers are relying on landline voice services that use digital voice technology. Digital voice technologies can be provided over a range of access line technologies including copper, fibre, fixed wireless and hybrid fibre-coaxial cable (HFC cable). In contrast to the traditional voice service, these digital voice services do not continue to work in a power failure (regardless of the access technology used). Without backup measures, these consumers will not be able to call 111 in a power failure.
- X3 In recognition of these developments, the Government passed legislation in December 2018 which requires the Commission to make a 111 contact code (Code). The purpose of the Code is to ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.
- X4 In the context of the Code, vulnerable consumers are consumers who are at particular risk of requiring the 111 emergency services, and who do not have a means to contact 111 in a power failure. These could include, for example, persons with medical conditions, disabilities or safety issues.
- X5 The Commission has prepared a draft Code that it has published alongside this Draft Reasons Paper. We are interested in your views on both this Draft Reasons Paper and the draft Code.
- X6 A significant change from our Emerging Views Paper (EVP) that we published in September 2019 is our approach to the definition of vulnerable consumer. In the EVP our emerging view was that we would adopt a technology-based approach, under which we would assess potential consumer vulnerability based on whether a consumer has the means to contact 111 in a power failure. This Draft Reasons Paper is based on an approach which treats a vulnerable consumer as someone who is at

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<sup>1</sup> Copper access lines are typically powered by Chorus' local exchanges or distribution cabinets. Generally, these facilities have backup power so continue to work in a power failure.

<sup>2</sup> As long as the consumer's home phone itself does not need power at the consumer's premises to work. Corded phones do not need main power to work, but corded phones often will.

particular risk of requiring the 111 emergency services, as well as not having a means to contact 111 in a power failure.

X7 Other key features of the draft Code include:

- X7.1 The draft Code applies to retail landline services. Landline services are voice services provided over a fixed-line connection or fixed wireless technologies;
- X7.2 Retail Service Providers (RSPs) are required to provide certain information to consumers of retail landline services, such as information on the access technologies that may not work in a power failure and an overview of the draft Code. The draft Code sets out the circumstances in which RSPs must provide this information. These information requirements are a critical part of the Code, as they will help raise awareness across all consumers of what access technologies may not work in a power failure and the impact this has on the ability to contact the 111 emergency services;
- X7.3 RSPs must make available a process for consumers (or someone on their behalf) to apply to be accepted by the RSP as a vulnerable consumer. A key feature of this process is that a consumer must be accepted as being at particular risk of requiring the 111 emergency service if the consumer completes the mandated application form and has it certified by a person with standing in the community;
- X7.4 RSPs must supply every vulnerable consumer with an appropriate means for contacting 111, which can be operated for at least 12 hours. We have prescribed principles which RSPs must follow when deciding what appropriate means to supply a vulnerable consumer, including that the means must be appropriate for the specific circumstances of a vulnerable consumer (i.e. physical, mental or technical capabilities);
- X7.5 The draft Code also:
  - X7.5.1 provides that disputes between a consumer and an RSP about their rights and obligations under the Code can be referred to the Telecommunications Dispute Resolution Scheme (TDRS);
  - X7.5.2 prohibits RSPs from denying or ceasing to provide a retail landline service to a consumer on the basis that the RSP knows or suspects the consumer is (or may be) a vulnerable consumer; and
  - X7.5.3 requires RSPs to keep records and disclose certain information to the Commission, to help us monitor compliance with the Code.

X8 Overall, our current view is that the provisions in the draft Code will ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.



## Chapter 1 – Introduction

### Purpose of Draft Reasons Paper

1. In November 2018 the Telecommunications Act 2001 (Act) was amended by the Telecommunications (New Regulatory Framework) Amendment Act 2018. The amendments to the Act require the Commerce Commission (Commission) to create a 111 contact code (Code) by 1 January 2022.
2. The purpose of the Code is to ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.
3. The Act requires the Commission to consult on a draft Code. A draft Code has been published alongside this paper (Draft Reasons Paper). The purpose of this Draft Reasons Paper is to give our draft decisions and reasons on the draft Code, and to invite submissions.

### Structure of Draft Reasons Paper

4. This Draft Reasons Paper has the following sections:
  - 4.1 **Chapter 2 – Context for the Code** explains the context for the Code, including technological developments that have led to the requirement in the Act to create a Code;
  - 4.2 **Chapter 3 – Legal framework** discusses the legal framework relevant to the Code;
  - 4.3 **Chapter 4 – Draft decisions and reasons** provides our reasoning for the content of the draft Code.

### Process to date

5. Below we summarise the process we have followed to date:<sup>3</sup>
  - 5.1 In late 2018 and early 2019 we engaged with emergency services, Civil Defence and other parties such as the Electricity Authority to discuss our initial thinking and inform the development of the Code.<sup>4</sup>

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<sup>3</sup> Gazette Notices New Zealand “Process for making the Commerce Commission 111 Contact Code” is accessible via the following link: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/commission-111-contact-code#projecttab>

<sup>4</sup> We engaged with Emergency services the Allied Emergency Services group which includes representatives from Police, Fire and Emergency, Wellington Free Ambulance and St Johns Ambulance.

- 5.2 On 12 September 2019 we published our [111 Contact Code – Emerging Views Paper](#) (EVP).<sup>5</sup> The purpose of the EVP was to seek initial feedback on our proposed approach to establishing the Code.
- 5.2.1 In October 2019 we received eight submissions and 32 responses via our online feedback form on the EVP.<sup>6</sup>
- 5.2.2 In November 2019 we met with the Wireless Internet Service Providers Association of New Zealand (WISPA NZ) to discuss the EVP and subsequently received a late submission from it and from New Zealand Technology Group (a member of WISPA NZ).<sup>7</sup>
- 5.3 In November 2019 we consulted with the Director of Civil Defence Emergency Management. The Act requires us to consult with certain interested persons, including the Director of Civil Emergency Management.<sup>8</sup>
- 5.4 On 5 December 2019 we held a workshop with industry participants.<sup>9</sup>

### **Information for interested parties on making a submission**

6. We are seeking submissions on the draft Code and Draft Reasons Paper.
7. Please make your submission via the [Commission 111 contact code project page](#) by 5pm on Thursday, 23 April 2020. The project page will direct you to a form with instructions on how to upload your submission.
8. When including commercially sensitive or confidential information in your submission, we offer the following guidance:
- 8.1 Provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website;
- 8.2 Provide reasons alongside any information in the confidential version as to why it is commercially sensitive or confidential information; and
- 8.3 The responsibility for ensuring confidential information is not included in a public version of a submission rests entirely with the party making the submission.

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<sup>5</sup> A copy of this paper is accessible on the Commission's website via the following link: [https://comcom.govt.nz/data/assets/pdf\\_file/0027/173772/Commission-111-Contact-Code-Emerging-views-paper-12-September-2019.pdf](https://comcom.govt.nz/data/assets/pdf_file/0027/173772/Commission-111-Contact-Code-Emerging-views-paper-12-September-2019.pdf).

<sup>6</sup> Copies of these submissions are accessible via the 111 contact code project page on the Commission's website via the following link: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/commission-111-contact-code#projecttab>.

<sup>7</sup> A copy of this submission is accessible on the Commission's website via the following link: [https://comcom.govt.nz/data/assets/pdf\\_file/0016/210526/New-Zealand-Technology-Group-Hawkes-Bay-Limited-Submission-on-Commission-111-contact-code-Emerging-views-paper-1-December-2019.PDF](https://comcom.govt.nz/data/assets/pdf_file/0016/210526/New-Zealand-Technology-Group-Hawkes-Bay-Limited-Submission-on-Commission-111-contact-code-Emerging-views-paper-1-December-2019.PDF).

<sup>8</sup> Telecommunications Act 2001, s 239(2).

<sup>9</sup> The workshop was attended by representatives from 2degrees, Chorus, Enable, MBIE, Northpower, Powerco, Spark, TCF, Trustpower, Ultrafast fibre, Vocus, Vodafone and WISPA NZ.

9. If we consider information disclosed in the confidential version to be in the public interest, we will consult with the party that provided the information before any such disclosure is made.

**Next steps**

10. Table 1 below sets out the next steps in the development of the Code.

**Table 1 – Next steps**

Next step	Indicative date
<b>Draft Code and Draft Reasons Paper published</b>	11 March 2020
<b>Submissions on draft Code and Draft Reasons Paper due</b>	23 April 2020
<b>Workshop(s) [TBC]</b>	May 2020
<b>Cross-submissions on draft Code and Draft Reasons Paper due</b>	May 2020
<b>Final Code and Reasons Paper published Code comes into force</b>	Late June 2020

## Chapter 2 – Context for the Code

11. As part of the Government’s Ultra-fast Broadband initiative, fibre companies have been deploying fibre networks across New Zealand over the last decade. About 79% of New Zealanders currently have access to fibre-to-the-premises, and that number is expected to grow to 87% by the end of 2022.<sup>10</sup> As fibre networks grow, New Zealanders are transitioning away from their copper-based voice and broadband services.

### Fibre and other technologies do not work in a power failure

12. The traditional landline service over analogue copper voice technology does not require a power supply at the consumer’s premises to work. Instead, the copper line is powered by the nearest local exchange or street cabinet. However, landline services provided over digital voice technologies, including fibre and other new technologies, need a power supply at the consumer’s premises. In a power failure these technologies will not work unless there is an alternative power source such as a battery backup or generator.
13. With New Zealanders transitioning away from the traditional analogue copper voice services, more consumers will find themselves without access to a telecommunications service in a power failure. This is a particular problem if consumers require the 111 emergency service during a power failure but do not have the means to contact 111.

### Telecommunications Act amended to require Code

14. In response to these developments, the Government amended the Act in November 2018 to require that the Commission make a code for the purpose of ensuring that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure. At the time the Government introduced the amendment to the Act, the Minister for Broadcasting, Communications and Digital Media issued a media release saying:<sup>11</sup>

The [Code] means telecommunications retail service providers will have to provide 111 calling in a similar way the security of service is in place for electricity supply. Electricity companies already have safeguards to ensure the health and safety of these vulnerable customers in a power outage... New Zealanders have been migrating from copper-based landlines to alternative technologies such as mobile phones, cordless phones and fibre services for years. For most people, [the Code] won’t change anything. But for those

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<sup>10</sup> See the Crown Infrastructure Partnerships media release “NZ a top 10 connected nation with stage one of ultra-fast broadband roll-out completed” (November 2019). Available via the following link: <https://www.crowninfrastructure.govt.nz/2019/11/24/nz-a-top-10-connected-nation-with-stage-one-of-ultra-fast-broadband-roll-out-completed/>

<sup>11</sup> See the Beehive media release “New rules keep vulnerable people connected to emergency services” (October 2018). Available via the following link: <https://www.beehive.govt.nz/release/new-rules-keep-vulnerable-people-connected-emergency-services>

identified as vulnerable customers using fibre landlines, it provides a practical solution and peace of mind that in a power outage, they can still call for help.

15. The Act requires the Commission to make the Code by 1 January 2022.<sup>12</sup>

### **The 111 emergency service**

16. Calling 111 is the primary means to request emergency assistance from the Ambulance, Police and Fire and Emergency services. Currently, the 111 emergency service receives around 200,000 phone calls each month, with over 75% of calls now originating from mobile phones.<sup>13</sup>
17. The 111 emergency service supports voice calls from landlines, payphones and mobile phones. Deaf, hearing or speech impaired people can also register for the 111 emergency text service.<sup>14</sup>
18. Calls to the 111 service are free of charge from a payphone, landline and mobile phone and will go through even if the account or device has no credit. However, consumers cannot call 111 from a mobile phone that does not have a SIM installed.<sup>15</sup>
19. 111 calls are answered by an operator service, run by Spark New Zealand Limited (Spark), which assesses which service is needed and passes the call through to the appropriate emergency service (Police, Fire and Emergency or Ambulance).

### **Our wider role in the transition away from copper**

20. Other amendments to the Act were made which reflect the transition from copper to fibre and other technologies. Part 2AA of the Act provides for the deregulation of certain copper services in areas where fibre is available, while Part 6 of the Act introduces a new regulatory regime for fibre. Our work to develop the new Part 6 regulatory regime can be found [here](#).
21. The provisions in Part 2AA of the Act means that Chorus, which owns the copper network, will be able to stop supplying certain copper services in areas where fibre is available (it is the Commission's responsibility to identify these areas, and a map of the areas can be found on our website [here](#)). However, Chorus will be able to

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<sup>12</sup> Section 238(2) of the Act specifies that the Commission must make the Code before the 'implementation date'. The implementation date is the date on which the first regulatory period for the new fibre regulatory regime begins, which is 1 January 2022. The implementation date was originally 1 January 2020. However, under clause 9 of Schedule 1AA of the Act, the Minister deferred the implementation date to 1 January 2022.

<sup>13</sup> See the MBIE "111 Quarterly Review: August – October 2017" (October 2017) page 2. Available via the following link: <https://www.mbie.govt.nz/science-and-technology/it-communications-and-broadband/our-role-in-the-ict-sector/emergency-call-services/>

<sup>14</sup> New Zealand Police webpage (2020). Available via the following link: <https://www.police.govt.nz/111-txt>.

<sup>15</sup> We understand that the SIM does not need to be active in order to call 111.

withdraw certain copper services only if it has complied with the copper withdrawal code (CWC).<sup>16</sup>

22. The Commission is currently developing the CWC and intends to publish it at about the same time as the Code. Our work to develop the CWC can be found [here](#). The CWC will set out minimum consumer protection requirements for consumers of copper services that Chorus wishes to withdraw. A key requirement of the CWC will be that, before Chorus can withdraw a copper service, the consumer must be able to access a fibre service.<sup>17</sup> Relevantly, another minimum requirement is that the Code be in force.<sup>18</sup>

### **Other work we are doing to raise awareness**

23. We are concerned that many consumers are unaware that they may be unable to contact the 111 emergency service in a power failure. The Code is a major step towards addressing this issue. As we discuss later in this Draft Reasons Paper at paragraphs 86 to 92, the draft Code requires RSPs to provide information to their consumers about which landline services will not work in a power failure.
24. However, we think that more can be done in addition to the Code to ensure that consumers are aware of the telecommunications technologies that may not work in a power failure. We are working on an engagement plan to raise awareness among consumers about how they can contact 111 in a power failure and about the Code. For instance, we intend to work with support agencies to make sure they are aware of the issues around accessing the 111 emergency service in a power failure so that they can provide that information to their clients who are or may become vulnerable.

### **Vulnerable consumers in the electricity sector**

25. We understand that work relating to vulnerable consumers is also being carried out in the electricity sector.
26. The Electricity Price Review (the Review) recommended that the Government should set mandatory minimum standards that distributors, retailers and others must meet when providing electricity or electricity-related services to vulnerable and medically dependent consumers.<sup>19</sup> The Review considered the current voluntary arrangements do not provide vulnerable and medically dependent consumers with sufficient protection and should be replaced by a formal, consistent and enforceable set of standards. The Review noted formal protection will become even more important as innovation in business models and technology leads to the emergence of new providers that may not give high priority to voluntary standards.

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<sup>16</sup> Or the end-user receiving the copper service chooses to have the service disconnected (other than a temporary disconnection).

<sup>17</sup> Clause 1(3)(a)(i) of Schedule 2A of the Act.

<sup>18</sup> Clause 1(3)(g) of Schedule 2A of the Act states that a minimum requirement of the CWC is that a Commission 111 contact code must be in force.

<sup>19</sup> See the MBIE “Electricity Price Review” (May 2019). Available via the following link: <https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf>

27. In September 2019, the Government accepted the Review's recommendation and tasked officials with beginning this work. We understand that an initial phase is being progressed as a joint initiative with the Ministry of Business, Innovation and Employment (MBIE), the Electricity Authority and specialists in this area. The aim of this joint initiative is to review the existing voluntary arrangements and develop a fit for purpose set of minimum standards that address the Review's findings and are capable of being mandated and enforced.
28. MBIE has advised us that interested parties will have an opportunity to provide input into the Review.

## Chapter 3 – Legal Framework

29. In this chapter we set out the relevant legal framework from the Act by providing an overview of:
- 29.1 the key provisions relating to the Code, including our view on the definition of ‘vulnerable consumer’ in the Act; and
  - 29.2 other relevant provisions.
30. We have reproduced the provisions of the Act relating to the Code in Appendix A to this Draft Reasons Paper.

### Key provisions relating to the Code

31. Section 238, which is in Part 7 of the Act (Consumer matters), contains the key provisions relating to the Code. It provides:

**238 Commission 111 contact code**

- (1) The Commission must make a code for the purpose of ensuring that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.
- (2) The code must be made before the implementation date.
- (3) The code must—
  - (a) specify which telecommunications services it applies to; and
  - (b) require the providers of those services to inform consumers about the options available for vulnerable consumers; and
  - (c) prescribe a process (or processes) for a consumer of those services, or a person on their behalf, to demonstrate that they—
    - (i) are a vulnerable consumer; or
    - (ii) will become a vulnerable consumer; and
  - (d) require the providers of those services to supply vulnerable consumers, at no cost to the consumers, with an appropriate means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure; and
  - (e) specify the minimum period for the purposes of paragraph (d).
- (4) The code may do 1 or more of the following:
  - (a) specify classes of people that must be considered vulnerable consumers:
  - (b) specify appropriate means for vulnerable consumers, or persons on their behalf, to contact emergency services:
  - (c) contain any other provisions that are necessary or desirable to achieve the purpose in subsection (1).
- (5) In this section,—

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

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



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

- (a) is at particular risk of requiring the 111 emergency service (for example, due to a known medical condition); and
- (b) does not have a means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure.

### *Definition of vulnerable consumer*

- 32. The term ‘vulnerable consumer’ is defined in section 238(5). In the EVP, we explained that we would “assess potential consumer vulnerability based on the susceptibility to a power failure of the access technology at their premises (e.g. copper, fibre etc)”.<sup>20</sup> We referred to this as the technology-based approach.
- 33. Submissions on the technology-based approach were mixed. While some agreed with the approach, noting that all consumers have some level of dependency to contact a 111 emergency service at a particular time during a power failure,<sup>21</sup> RSPs and wireless internet service providers (WISPs) did not support the approach. RSPs’ views (which WISPA New Zealand supported<sup>22</sup>) were summarised in the New Zealand Telecommunications Forum’s (TCF) submission:<sup>23</sup>

The Act is clear that the definition is two parts, with the first part being conditional on whether the customer is at *particular risk of requiring* the 111 emergency services. ‘Particular risk’ implies a subset of the total population that has a higher risk and the example given in the Act is a known medical condition. This risk of needing to access 111 emergency services will not change if the consumer changes technology, so the definition should be treated as a two-part test, rather than conflated in to one test based on technology. If the policy intention had been to take a technology only approach, as proposed by the Commission, then the Act would not contain the first limb of the definition as this is made redundant by the interpretation of the second limb.

- 34. Having considered the submissions, we no longer propose to adopt the technology-based approach. The draft Code is based on an approach which treats a consumer as vulnerable if the consumer:
  - 34.1 is a consumer of a specified telecommunications service (a specified telecommunications service is a telecommunications service specified in the Code as a service to which the Code applies<sup>24</sup>);
  - 34.2 is at particular risk of requiring the 111 emergency service; and
  - 34.3 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.

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<sup>20</sup> See paragraph 53 of the EVP.

<sup>21</sup> TCF, “Submission on Commission 111 contact code – Emerging Views paper” (14 October 2019), p 9.

<sup>22</sup> WISPA NZ “Submission on Commission 111 contact code – Emerging Views paper” (14 October 2019), para 3.4.

<sup>23</sup> TCF, “Submission on Commission 111 contact code – Emerging Views paper” (14 October 2019), p 3.

<sup>24</sup> See definition of ‘specified telecommunications service’ in section 238(5) of the Act.

35. We have changed our approach because we now consider that the approach set out in the preceding paragraph aligns better with the language in the Act.
36. Below we discuss further the three limbs of the definition of vulnerable consumer.

#### Limb 1: Consumer of a specified telecommunications service

37. Our view is that a consumer of a specified telecommunications service includes:
  - 37.1 the person that contracts with the RSP for the specified telecommunications service; and
  - 37.2 any other person who ordinarily resides at the premises where the specified telecommunications service is supplied to.
38. The draft Code specifies that a consumer includes both of these categories of person. This will ensure that consumers who do not contract for a specified telecommunications service, but who are otherwise vulnerable and are using the specified telecommunications service, will receive the protection of the Code.<sup>25</sup>
39. In some circumstances, the obligations in the draft Code apply only in relation to the person who contracts for the service (referred to in the draft Code as a ‘customer’). Where we have done this, we have done so for reasons of workability. For example, where an RSP is required to provide information directly to a consumer, the obligation is to provide that information only to the customer. It would be unreasonable to expect the RSP to be able to provide such information to other persons who reside at the premises, given the RSP is unlikely to know who will live at the address.

#### Limb 2: At particular risk of requiring the 111 emergency service

40. As we discuss later in this Draft Reasons Paper at paragraphs 93 to 115, the draft Code sets out a process for consumers to demonstrate to their RSP that they are a vulnerable consumer. This will require the consumer to show that they are at particular risk of requiring the 111 emergency service.
41. We do not propose to further define in the draft Code the meaning of “at particular risk of requiring the 111 emergency service”.<sup>26</sup> However, the wording of the vulnerable consumer definition gives some guidance. We consider that the term “at

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<sup>25</sup> Section 232 of the Act provides that, for the purposes of Part 7 of the Act (which deals with the Code), ‘consumer’ means, in relation to a telecommunications service, the end-user of the service. Our view is that the end-user includes both a person who contracts for the telecommunications service and any other user of that service. In the context of landline voice services, any other user of the service will generally be a person that ordinarily resides at the premises where the specified telecommunications service is supplied to.

<sup>26</sup> However, as we explain later in this Draft Reasons Paper at footnote 59, guidance (including examples of consumers who may be at particular risk of requiring the 111 emergency service) will be provided in the template application form on the scope of ‘at particular risk’ to assist understanding of the concept.

particular risk” has a wide scope, although there are two statutory indications which colour its meaning:

- 41.1 first, the Act gives the example of someone who is at particular risk, ie, someone who has a “known medical condition”. Our current view is that this example suggests that a person must have a condition or circumstance that makes that person more likely to require the 111 emergency service; and
  - 41.2 second, the set of conditions or circumstances that make a person at particular risk must be wider than medical conditions. This is because the 111 emergency service includes the police and fire services, as well as the ambulance service.
42. The legislative history of the Code provisions also provides some guidance on the scope of consumers who may be regarded as at particular risk of requiring the 111 emergency service.
  43. In response to a question about the scope of the term “at particular risk” during the Committee of the Whole House debating the Telecommunications (New Regulatory Framework) Amendment Bill (Bill), the Minister for Broadcasting, Communications and Digital Media stated:<sup>27</sup>

Directly to the question that Melissa Lee posed, she can find the answer to her question about some guidance as to who a vulnerable consumer is on page 7 of the explanatory note of Supplementary Order Paper 118, where it is described as someone who "is at a particular risk of requiring the 111 emergency service (for example, due to a known medical condition); and does not have the means for contacting the 111 emergency service that can be operated for the specified minimum period in the event of a power failure."

I think the most obvious example of this might have been 10 or 15 or even 20 years ago when I think there was Mrs Muliaga in South Auckland, when her power was cut off and her ability to use some pretty critical equipment for her to keep her healthy, obviously, no longer was able to operate. Officials have told us that in an electricity sense, there are 20,000 vulnerable consumers who would put themselves in that group. That would obviously be different for those who might not have the ability to have a calling capability, if they only had a fibre connection at home and therefore in a power outage would have no phone.

44. There was more commentary during the third reading of the Bill that touched on the scope of consumers who may be regarded as at particular risk of requiring the 111 emergency service:<sup>28</sup>
  - 44.1 Minister Faafoi: “So they [vulnerable consumers] will have a battery backup or, potentially, a mobile phone provided by the RSPs so that if there is an

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<sup>27</sup> Telecommunications (New Regulatory Framework) Amendment Bill — In Committee—Part 1. Available via the following link: [https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb\\_20181030\\_20181030\\_32](https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20181030_20181030_32)

<sup>28</sup> Telecommunications (New Regulatory Framework) Bill, Third Reading.

emergency, predominantly around health, they will have the ability to call a 111 service”;

44.2 Hon Claire Curran: “Finally, the 111 service being available to consumers who are on fibre when power cuts happen and they don't have a mobile phone— particularly elderly people. I really want to acknowledge New Zealand First's Tracey Martin for the work she did on that to ensure that this Bill had provision for them. Protecting older people, vulnerable people...”; and

44.3 Hon Shane Jones: “So we developed protections in this Bill to ensure that emergency calling was not left to the whims of arbitrary decision makers in these organisations, and to ensure that communities in rural New Zealand and, in particular, communities of the elderly, aren't forgotten about”.

45. This legislative history indicates that Parliament had a particular concern for persons with medical conditions, the elderly and persons in rural or remote geographic locations. While this gives a useful indication of the types of consumers that Parliament considered may be at particular risk of requiring the emergency service, it is not an exhaustive list. The scope of consumers at particular risk is likely to be wider.

### Limb 3: Does not have a means for contacting the 111 emergency service

46. Where a consumer satisfies Limbs 1 and 2, if the consumer does not have a means to contact the 111 emergency service that can be operated for the minimum period in a power failure, that consumer will be a vulnerable consumer for the purposes of the Code.

47. As we noted in the EVP, consumers who rely on:

47.1 fibre, HFC cable or fixed wireless technologies for their landline service may be regarded as not having the means to contact 111 in a power failure, as these technologies (absent a battery backup) will not work in the event of a power failure at the consumer’s premises. An assessment will still need to be made as to whether the consumer has other means to contact 111 in a power failure, such as a mobile phone and mobile coverage at their premises or an existing battery backup purchased by the consumer;<sup>29</sup>

47.2 copper for their landline service will be regarded as having the means to contact 111 in a power failure, unless their copper landline service is provided using digital voice technologies (such as VoIP) which requires a power source at the consumer’s premises.<sup>30</sup>

48. We noted in the EVP that cordless phones may not work in a power failure, even if the consumer is receiving the traditional analogue voice service provided over

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<sup>29</sup> See paragraph 64 of the EVP.

<sup>30</sup> See paragraph 62 of the EVP.

copper. Our preliminary view was that consumers receiving an analogue voice service provided over copper should be regarded as having the means to contact 111 in a power failure, irrespective of whether they have a corded or cordless phone.<sup>31</sup> This is because consumers receiving this service are on an access technology that continues to work in a power failure. This position is also supported by the legislative history of the Code provisions, which shows that a key concern driving the inclusion of those provisions is the transition away from copper.<sup>32</sup>

49. Submissions generally agreed with our preliminary view,<sup>33</sup> and we retain this position in the draft Code where we have specified that a consumer will be regarded as having the means to contact 111 in a power failure if they are receiving a copper landline service. The term 'copper landline service' is defined as a landline service provided over a copper line using traditional analogue copper voice technology, but excludes any voice service that is provided using technologies (hardware or software) that rely on mains powered electricity at the premises.
50. However, we are concerned about low consumer awareness of which technologies work in a power failure, including whether cordless phones and medical alarms work. We understand that there may be some confusion about which of the voice services provided over copper (ie, digital and analogue) that will work in a power failure. To increase consumer awareness, the draft Code requires RSPs to inform consumers about which landline services will not work in a power failure, as discussed below in paragraphs 86 to 92.
51. Finally, we have also specified in the Code that, where a consumer has unrestricted access to a mobile phone and has adequate mobile coverage at their premises, the consumer will be regarded as having a means to contact 111 in a power failure. This will provide additional clarity to help the assessment of whether a consumer has the means to contact 111 in a power failure.

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<sup>31</sup> See paragraph 37 of the EVP.

<sup>32</sup> Minister Faafoi, Committee of Whole House: "For those who might be listening at home, as the roll-out of fibre extends out to New Zealand—I think we're at about 73 percent of New Zealand now has access to fibre—the old copper network that we relied on for our phones is becoming increasingly redundant, and in some cases that copper network might go. So, as Melissa Lee pointed out, phone lines that have relied on the copper network in the past and have worked even when there was a power outage—if they are taken away and the only ability that you have for your phone connection is your fibre connection and there is a power outage, in plain English, your phone will not work. In instances where people might be vulnerable consumers, ensuring that they have the ability to call 111 in emergencies is extremely important, which is why we saw fit to include this provision in this bill in Part 1, ensuring that vulnerable consumers are looked after."

<sup>33</sup> See Spark's "Submission on Commission 111 contact code – Emerging Views paper" para 40; TUANZ's "Submission on Commission 111 contact code – Emerging Views paper" p.2. and; TCF's "Submission on Commission 111 contact code – Emerging Views paper" p.7.

## Other relevant provisions

### *Process to make Code*<sup>34</sup>

52. Section 239 of the Act sets out the process the Commission must follow to make or amend the Code. Among other things, it requires the Commission to consult on a draft Code and provides that the Commission may make the Code only if it is satisfied that the draft Code meets all the requirements set out in Part 7 of the Act.

### *Dispute resolution*

53. Section 240 of the Act provides that the dispute resolution scheme for the Code is the TDRS established by the TCF.<sup>35</sup> Sections 241 to 245 of the Act set out key rules that apply to the disputes between a consumer and a telecommunications service provider.
54. We discuss dispute resolution in the Code later in this Draft Reasons Paper at paragraphs 154 to 154.

### *Enforcement*

55. The Code is an enforceable matter under Part 4A of the Act, with section 156A(1)(p) establishing a breach where a person “fails, without reasonable excuse, to comply with the Commission 111 contact code”.
56. Section 156B sets out the enforcement actions that the Commission may take in respect of a breach, including issuing a civil infringement notice, applying to the High Court for a pecuniary penalty (a maximum of \$300,00), or accepting an undertaking.<sup>36</sup>
57. We discuss the relationship between enforcement and dispute resolution later in this Draft Reasons Paper at paragraphs 162 to 164.

### *Monitoring compliance*

58. Section 9A of the Act was amended by the Amendment Act to provide that the Commission must monitor compliance with the Commission 111 contact code, and must make available reports, summaries, and information about compliance with the 111 code.<sup>37</sup>
59. Our duties under section 9A are separate to our duty to make the Code. However, as we discuss later in this Draft Reasons Paper at paragraphs 167 to 175, we have

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<sup>34</sup> Gazette Notices New Zealand “Process for making the Commerce Commission 111 Contact Code” is available at the following link: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/commission-111-contact-code#projecttab>

<sup>35</sup> Section 240 provides that the dispute resolution scheme is an industry dispute resolution scheme (ie, the TDRS) or a consumer complaints regime if Part 4B of the Act has come into force. As Part 4B has not come into force, the dispute resolution scheme is the TDRS.

<sup>36</sup> Under section 156CB of the Act, the Commission may take enforcement action against persons who breach an undertaking. On application, the High Court can, among other things, order a person to comply with the undertaking.

<sup>37</sup> Section 9A(1)(c)-(d),

included some limited information disclosure requirements in the Code under section 238(4)(c), as we consider these requirements are necessary to achieve the purpose of the Code. These information disclosure requirements will help us to monitor compliance with the Code, which will make the Code more effective by incentivising compliance.

## Chapter 4 – Draft decisions and reasons for the draft Code

### Overview

60. The structure of the draft Code largely reflects the matters that must be included in the Code under section 238 of the Act. Accordingly, the draft Code:
- 60.1 **specifies the telecommunications services that the Code applies to.** As we explain later, our draft decision is that the Code applies to retail landline services;
  - 60.2 **requires RSPs to inform consumers about the options available for vulnerable consumers.** This requirement is about ensuring consumers have the right information available to them, including information which will help consumers to understand whether they might be vulnerable and what to do if they think they are;
  - 60.3 **sets out a process for a consumer (or a person on their behalf) to demonstrate that they are, or will become, a vulnerable consumer.** This process will provide certainty to consumers and RSPs about what consumers need to do to apply to be a vulnerable consumer, including what supporting information they need to provide;
  - 60.4 **requires RSPs to supply vulnerable consumers, at no cost to the consumers, with an appropriate means to contact the 111 emergency service.** This includes specifying the minimum period for which the appropriate means of contacting the 111 emergency service must be able to be operated for; and
  - 60.5 **provides that disputes between a consumer and an RSP about their rights and obligations under the Code can be referred to the TDRS.**
61. However, the draft Code also includes additional provisions that we consider are necessary to meet the purpose of the Code:
- 61.1 **the draft Code prohibits RSPs from denying or ceasing to provide a retail landline service to a consumer on the basis that the consumer is or may be a vulnerable consumer.** This is to ensure that RSPs continue to serve vulnerable consumers; and
  - 61.2 **to help us monitor compliance with the Code, the draft Code includes a requirement for RSPs to provide us with certain information and a record keeping obligation.** RSPs will be required to disclose information such as the number of consumers who have applied to be vulnerable consumers and the number of applications that have been accepted.
62. The rest of this chapter discusses each of these features of the draft Code in more detail and gives our reasons for the approach we have taken.



## Telecommunications services that the Code applies to

63. The draft Code specifies that it applies to retail landline services. Landline services are voice services provided over fixed-line or fixed wireless access technologies.
64. In the following sections, we summarise our positions on this issue in the EVP and the submissions received in response, and then give our reasons for the telecommunications services we have specified that the draft Code applies to.

### *Positions in EVP*

65. In the EVP, we indicated that the draft Code would apply to access technologies over which landline services capable of contacting 111 are provided and that are unlikely to work in a power failure. These are fibre, HFC cable, and fixed wireless.<sup>38</sup> We also indicated that VoIP provided over copper would be covered by the Code as this technology does not work in a power failure.<sup>39</sup>
66. We also proposed that the draft Code apply only to residential services. This would likely cover some small or home-office based businesses, but not larger businesses.<sup>40</sup>

### *Submissions*

67. Submissions generally supported the Commission's positions. For example, Spark submitted that the "Code should apply to all landline services which will stop working in the event of a local power outage. Mostly this will be fibre, fixed wireless and HFC cable".<sup>41</sup> The local fibre companies (Enable Networks, Northpower Fibre, Ultrafast Fibre) (LFCs) agreed with the Commission that "the 111 Code should apply to all residential consumer voice services that will fail in a power failure and therefore are not capable of connecting to the 111-emergency service".<sup>42</sup>
68. However, the Telecommunications Users Association of New Zealand (TUANZ) indicated that the scope of the telecommunications services we should specify should be wider. It suggested the Code "apply to all services that users are able to utilise to make a 111 call".<sup>43</sup>
69. The TCF supported the position that the draft Code apply only to residential services, acknowledging that this may include small businesses/home offices.<sup>44</sup>

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<sup>38</sup> See paragraphs 61-65 of the EVP.

<sup>39</sup> In the context of the Code, where we refer to VOIP we are referring to services delivered directly at the home or business using an item of customer premises equipment that is reliant on premises power, and not VOIP that may be used in any other part of the telecommunications network, including at cabinets or exchanges or any other network infrastructure. For example, a Copper service such as the Baseband IP wholesale service is not a VOIP service for this discussion as it uses VOIP at the cabinet but provides an analogue signal into the home or business.

<sup>40</sup> See paragraph 52 of the EVP.

<sup>41</sup> See Spark's "Submission on Commission 111 contact code – Emerging Views paper" para 65.

<sup>42</sup> See LFC's "Submission on Commission 111 contact code – Emerging Views paper" para 5.

<sup>43</sup> See TUANZ's "Submission on Commission 111 contact code – Emerging Views paper" para 7.

<sup>44</sup> See TCF's "Submission on Commission 111 contact code – Emerging Views paper" page 15.

### *Reasons for approach*

70. We have specified that the draft Code applies to retail landline services because they are telecommunication services that consumers use to contact the 111 emergency service and which are potentially affected by a power failure at the consumer's premises. The scope of specified telecommunications services excludes:
- 70.1 broadband services, as broadband is not used to contact the 111 emergency service. As a consumer must be receiving a specified telecommunications service to be a vulnerable consumer, a consumer who receives only a broadband service (sometimes referred to as 'naked broadband') will not be a vulnerable consumer;<sup>45</sup>
  - 70.2 mobile services, as mobile phones continue to work in a power failure (assuming the battery is charged); and
  - 70.3 apps that provide voice services over broadband (eg, Skype), as we do not consider that the Code is intended to apply to these services.<sup>46</sup>
71. We do not agree with TUANZ's submission that the Code should apply to all services that users are able to utilise to make a 111 call. The problem that the Code is seeking to address is the loss of the ability to contact the 111 emergency service in a power failure. If a method of calling the 111 emergency service will continue to work in a power failure (such as mobile services), it is unnecessary for the Code to apply to those services.
72. The draft Code provides that landline services are voice services provided over fixed-line (eg. copper, fibre, HFC cable) or fixed wireless access technologies. Fixed wireless has been included because the service is provided at a fixed location (ie, the consumer's premises) and is affected by power failures, as is the case with traditional landline services over fixed-line.
73. The draft Code applies to both analogue copper voice services and copper voice services over digital technologies. As mentioned at paragraph 50 above, we understand there may be some confusion for consumers on all copper voice services. Applying the draft Code to both analogue and digital voice services over copper means that RSPs will be required to provide information to all customers, which should help to address that confusion.

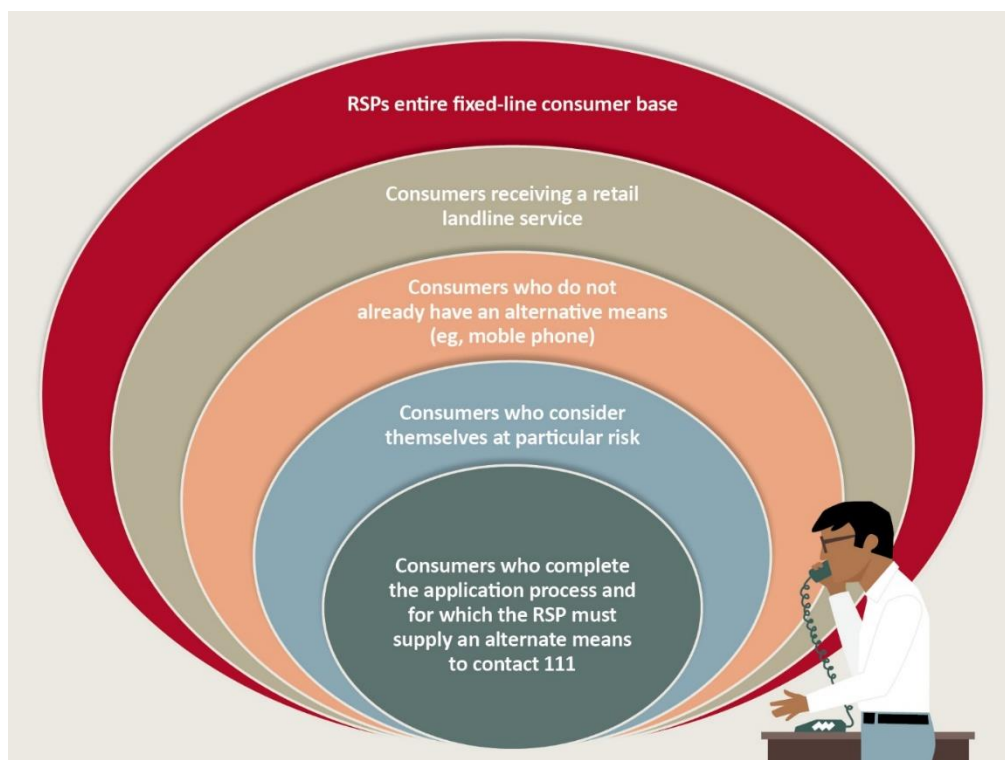
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<sup>45</sup> In the Emerging Views Paper, our preliminary view was that consumers receiving naked broadband would not be covered by the Code: see EVP at para 39. Submissions generally supported this view: see for example Spark sub at para 40; TUANZ at page 2; TCF at page 8.

<sup>46</sup> Our understanding is that if these applications are used as desktop applications, they cannot be used to call 111 emergency services. The functionality is provided for mobile apps, but mobile services are not within the scope of retail landline services (for example, see Skype's webpage on emergency services: <https://www.skype.com/en/legal/emergency-calling/>)

74. We note however that the draft Code lists copper landline services<sup>47</sup> as an appropriate means for contacting the 111 emergency services in a power failure, so consumers on this technology will not qualify as vulnerable consumers.
75. We have made it explicit that the specified telecommunications services are *retail* services. This is because the obligations in the Code apply to the providers of the specified telecommunications services, and specifying that the services are retail services provides clarity that it is RSPs who have obligations under the Code.
76. Finally, the draft Code applies to all retail landline services, irrespective of whether they are supplied to residential or business consumers. This is a change in position from the EVP. The change is unlikely to significantly increase the potential number of vulnerable consumers, as most business consumers will have the means to contact 111 in a power failure (eg, through an employee who has a mobile phone). However, there are likely to be some small business consumers (eg, farms, dairies) which have vulnerable consumers residing on the premises, and by including all landline services the protection of the Code will extend to them.
77. The diagram below shows the subset of consumers that will be entitled to receive an appropriate means to contact 111, based on the draft Code applying to retail landline services.

**Figure 1: Subset of consumers entitled to receive appropriate means**



<sup>47</sup> The code defines copper landline service as a landline service provided over a copper line using traditional analogue copper voice technology but excludes any voice service that is provided using technologies (hardware or software) that rely on mains-powered electricity at the premises.

## **Requirement to inform consumers about options available to vulnerable consumers**

78. The draft Code must require the providers of specified telecommunications services to inform consumers about the options available for vulnerable consumers.<sup>48</sup>
79. We have included several obligations in the draft Code on RSPs to provide information to consumers. These obligations, which we outline in greater detail below, set out the situations in which RSPs need to provide information and prescribe (at a high level) the content of the information to be provided.

### *Positions in Emerging Views Paper*

80. The EVP did not expressly address the requirement to inform consumers about options available to vulnerable consumers. However, as we note below, the requirement was considered at the Code workshop in December 2019.

### *Submissions*

81. Some submissions addressed the types of information that RSPs should provide to consumers. Spark submitted that there “may be an obligation for RSPs to explain to customers taking naked services [ie, broadband only] that they should consider other means to access 111 emergency services”.<sup>49</sup> It also suggested that RSPs may need to remind consumers that cordless phones do not work in a power failure.<sup>50</sup>
82. Chorus submitted that “[r]etailer and consumer engagement should ensure that consumers are made aware at the outset about technology options available and that their service relies on power to function”.<sup>51</sup> It submitted that consumers should be informed that their ability to call emergency services may be affected by underlying technology. Chorus and the LFCs considered that RSPs are best placed to educate consumers about their choices and ability to call 111 in the event of a power failure depending on the access technology they currently consume.<sup>52</sup>
83. At the workshop for the Code, the requirement to inform consumers about the options available to vulnerable consumers was discussed.
84. Workshop participants generally supported the requirement to inform consumers of the issue of some access technologies not working in a power failure. Differing views were expressed on the level of information that the Code should require suppliers to provide to consumers, including to what extent a voluntary education programme should be relied on. Options discussed included informing consumers about the power failure issue in product disclosures at the point of sale, and making information more prominent on websites and other communications material, including consumer bills.

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<sup>48</sup> Section 238(3)(b).

<sup>49</sup> See Spark’s “Submission on Commission 111 contact code – Emerging Views paper” para 60.

<sup>50</sup> See Spark’s “Submission on Commission 111 contact code – Emerging Views paper” para 64

<sup>51</sup> See Chorus’ “Submission on Commission 111 contact code – Emerging Views paper” para 7.5

<sup>52</sup> See TCF’s “Submission on Commission 111 contact code – Emerging Views paper” p.5.

85. Workshop attendees generally agreed that the Code should be clear on minimum requirements but expressed the view that the Code should avoid being too prescriptive in its approach to allow RSPs to adapt existing information or processes.

*Reasons for approach*

86. The draft Code specifies that RSPs must provide certain information to consumers in four situations.
87. Table 2 sets out, at a high level, the information that the RSPs must provide. The information is set out in more detail in the draft Code.

**Table 2: Information that RSPs must provide**

<b>1</b>	Information about which landline services may not work in a power failure and the impact this may have on a consumer’s ability to contact the 111 emergency service. As part of this, RSPs must inform consumers that cordless phones and medical alarms may not work in a power failure if they do not have an inbuilt battery.
<b>2</b>	An overview of the Code, including: <ul style="list-style-type: none"> <li>• RSPs’ obligation to supply appropriate means to contact 111 to vulnerable consumers; and</li> <li>• the requirement not to deny or cease supply of a specified telecommunications service on the basis that a consumer is or may be a vulnerable consumer (this requirement is discussed later in this Draft Reasons Paper).</li> </ul>
<b>3</b>	Information about how consumers can apply to the RSP to be a vulnerable consumer. As part of this, RSPs must make the application form at Appendix A to the draft Code reasonably available to consumers.
<b>4</b>	An overview of consumers’ rights to take disputes relating to the Code to the TDRS. RSPs must also advise consumers that they have the right to complain to the Commission if they are concerned that an RSP is not complying with the Code.

88. We consider that provision of this information is necessary to meet the purpose of the Code. The information that RSPs must provide should enable consumers to understand:
- 88.1 whether their landline service will work in a power failure. This will help to address our concern, discussed at paragraphs 23 to 24 of this Draft Reasons Paper, that consumer awareness of which technologies work in a power failure is low;
- 88.2 what options are available to them if they consider they may be a vulnerable consumer; and
- 88.3 what to do if they have a dispute in relation to the Code.
89. RSPs must provide the information outlined in Table 2 in the four situations below:
- 89.1 on an easily accessible page on their website at all times;

- 89.2 to all customers when they first contract with the RSP for the supply of a specified telecommunications service;
  - 89.3 to all of the RSP's existing customers of a specified telecommunications service within one month of the Code coming into force and at least once a year thereafter; and
  - 89.4 to all of the RSP's existing customers of a specified telecommunications service when they switch to a new retail landline service provided by the RSP.
  - 89.5 When the customer switches between telecommunications technologies with the provider
  - 89.6 When the customer switches between telecommunications services with the provider
90. The draft Code also requires RSPs to advise customers when they first contract with the RSP for the supply of a naked broadband service that they should consider other means to call 111.
91. The requirement on an RSP to provide the information in the situations outlined in paragraphs 78 above is intended to ensure that consumers do in fact receive the information. Consumers generally receive many communications from businesses which can make it difficult for consumers to receive important messages. Providing the information in these situations should ensure consumers receive the information, without overwhelming consumers or overburdening RSPs
92. In prescribing these requirements in the draft Code, we have sought to ensure that consumers have the right information available to them at the right times, while giving RSPs some flexibility (within the boundaries of the Code requirements) as to how they present the information and not imposing undue costs on RSPs.

**Process for a consumer to demonstrate they are a vulnerable consumer**

93. The draft Code must prescribe a process for a consumer of a specified telecommunications service, or a person on their behalf, to demonstrate that they are, or will become, a vulnerable consumer.<sup>53</sup>
94. Our draft decision is for the Code to specify key obligations that RSPs must follow which relate to the process for a consumer to demonstrate that they are a vulnerable consumer. These obligations are set out in greater detail below.
95. The draft Code may specify classes of people that must be considered vulnerable consumers for the purposes of the Code.<sup>54</sup> Our draft decision is that the Code will not specify any classes of people that must be considered vulnerable consumers.

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<sup>53</sup> Section 238(3)(c).

<sup>54</sup> Section 238(4)(a).

### *Positions in Emerging Views Paper*

96. The EVP was grounded in the technology-based approach to the definition of vulnerable consumer. The focus of the EVP was therefore on whether a consumer had the means to contact 111 in a power failure, and did not set out a process for a consumer to demonstrate that they are a vulnerable consumer.<sup>55</sup>

### *Submissions*

97. We received submissions from RSPs on the requirement to prescribe a process. The TCF submission – which summarised RSPs’ views – proposed an approach based on consumers self-identifying as vulnerable consumers.<sup>56</sup> This would involve:
- 97.1 RSPs giving consumers the opportunity to self-identify as vulnerable consumers when on-boarding new consumers or migrating them to another product;
  - 97.2 RSPs would then assess whether the consumer is at particular risk of requiring the 111 emergency service and does not have the means to contact 111 in a power failure; and
  - 97.3 if a consumer was accepted as a vulnerable consumer, the RSP would record that status in its systems and provide the consumer with appropriate means to contact 111 in a power failure.
98. In relation to the assessment of whether a consumer is at particular risk of requiring the 111 emergency service, TCF submitted that RSPs could apply the following assessment:<sup>57</sup>
- A person at particular risk of requiring the 111 emergency services is a customer or a prospective customer, who has demonstrated to the satisfaction of their RSP that for reasons of, health, disability or safety they, or a member of their household, are dependent on a telecommunications service for their wellbeing and therefore has a particular risk that requires the ability to contact 111 emergency services in the event of a power failure.
99. TCF noted that “it would be helpful if the Code includes guidance on what information must be accepted as demonstrating that a customer is at a particular risk”.<sup>58</sup> However, RSPs also supported the position that, if they wish to, they should be able to accept evidence of a lower standard as demonstrating ‘particular risk’.
100. Spark appeared to favour a model under which “RSPs would have an obligation to have a process in place allowing people to self-certify. They would also need to bring the scheme to the attention of new customers and customers moving to new technologies”.<sup>59</sup> Trustpower supported a similar approach, with RSPs taking a

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<sup>55</sup> See paragraph 81 and figure 1.1 of the EVP.

<sup>56</sup> See TCF’s “Submission on Commission 111 contact code – Emerging Views paper” p.10.

<sup>57</sup> See TCF’s “Submission on Commission 111 contact code – Emerging Views paper” p.9.

<sup>58</sup> See TCF’s “Submission on Commission 111 contact code – Emerging Views paper” p.10.

<sup>59</sup> See Spark’s “Submission on Commission 111 contact code – Emerging Views paper” para 23.

proactive role to inform consumers about whether their landline service will work in a power failure.<sup>60</sup>

101. The process for a consumer to demonstrate they are a vulnerable consumer was discussed at the Code workshop in December 2019. Key messages from industry participants in that workshop included:
  - 101.1 most participants favoured the Code setting minimum requirements for the process. This would provide RSPs with some flexibility and enable them to adjust existing processes or systems to meet the Code's requirements; and
  - 101.2 some participants suggested that consumers could be required to submit an application form that is signed by a medical professional or similar person who can certify that the consumer is at particular risk.

#### *Reasons for approach*

102. The draft Code includes the following key obligations:
  - 102.1 An RSP must make available a process for consumers (or someone on their behalf) to apply to be accepted by the RSP as a vulnerable consumer. The draft Code specifies some requirements for the process, such that it must be accessible to consumers, the process is not unreasonably difficult for a consumer to fulfil and that RSPs must make reasonable efforts to progress the application in a timely manner;
  - 102.2 An RSP must accept an application from a consumer if the consumer:
    - 102.2.1 is a consumer of a specified telecommunications service;
    - 102.2.2 is at particular risk of requiring the 111 emergency service; and
    - 102.2.3 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.
103. The draft Code specifies that a consumer will be deemed to be at particular risk of requiring the 111 emergency service if the consumer provides certain information with their application. This information is defined in the draft Code as either:
  - 103.1 a completed application form (a template form is provided as an appendix to the draft Code) which is certified by a person with standing in the community (eg, registered professional, religious or community leader).<sup>61</sup> The person of

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<sup>60</sup> See Trustpower's "Submission on Commission 111 contact code – Emerging Views paper" para 4.1.3.

<sup>61</sup> The template application form includes guidance on the scope of 'at particular risk of requiring the 111 emergency service', including examples of consumers who may be at particular risk. This guidance is provided to help consumers (and persons giving the certification) understand whether they may fall within the scope of the term.



standing in the community must certify that the applicant is a consumer who is at particular risk of requiring the 111 emergency service; or

- 103.2 a copy of a completed Notice of Potential Medically Dependent Consumer Status form (including the certification from the DHB/private hospital/GP). The form is an appendix to the Electricity Authority's Guidelines on arrangements to assist medically dependent consumers.<sup>62</sup>
104. We have included this provision in the draft Code because we consider it is important to provide certainty to consumers and RSPs about when a consumer is to be accepted as being at particular risk. Without this certainty, there is a risk that the term 'at particular risk' will be applied inconsistently between RSPs.
105. The provision means that RSPs will have no discretion whether to accept a consumer as being at particular risk, subject to the consumer providing the required information. Our current view is that the requirement for a person of standing in the community to certify that the consumer is at particular risk provides a sufficient and independent check to ensure that a consumer is, in fact, a consumer at particular risk. A benefit for RSPs of this approach is an RSP's staff will not be required to make difficult assessments of whether a consumer is at particular risk. Similarly, a completed copy of a Notice of Potential Medically Dependent Consumer Status form provides an independent check to ensure that the consumer is at particular risk of requiring the 111 emergency service;
106. We also consider that the provision strikes the right balance in terms of not being too onerous on consumers.
107. The process obligations above serve as minimum requirements to ensure that a consumer is able to apply to be a vulnerable consumer, and that the process is straightforward and fair to the consumer. An RSP will be permitted to adopt a process which is more favourable to the consumer – for example, by waiving the requirement for a person of standing in the community to certify the consumer's application form.
108. The draft Code does not prescribe any processes for how a consumer will be assessed as being a consumer of a specified telecommunications service 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. RSPs are well-placed to assess these matters, although RSPs will need to communicate with an applicant to understand whether they do 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.
109. Our expectation is an RSP will, where possible, seek to assess these matters before a consumer gathers the required information to show the consumer is at particular risk of requiring the 111 emergency service. We think it is preferable to save

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<sup>62</sup> See the Electricity Authority webpage "Medically dependent and vulnerable customers" (2020). Available via the following link: <https://www.ea.govt.nz/operations/retail/retailers/retailer-obligations/medically-dependant-and-vulnerable-customers/>

consumers from having to go to the effort of collecting and providing the information to the RSP if they have already been assessed as having the means to contact 111 in a power failure (and are, therefore, not a vulnerable consumer).

110. The draft Code also has provisions to reflect that the circumstances of any vulnerable consumer may change over time, including that they may no longer be at particular risk of requiring the 111 emergency service. These provisions provide that an RSP is permitted to regard a consumer as no longer being a vulnerable consumer in the following situations:
  - 110.1 where a consumer, or someone on the consumers behalf, requests that they no longer be regarded as a vulnerable consumer;
  - 110.2 after 12 months from the last certification, an RSP may require a vulnerable consumer to have their application re-certified by a person of standing in the community. If the consumer does not have their application re-certified, the RSP will be permitted to treat the consumer as no longer being a vulnerable consumer; and
  - 110.3 after a vulnerable consumer no longer lives at the premises where the retail landline service is being supplied to, an RSP may require the consumer to re-apply to be accepted as a vulnerable consumer. If the consumer does not re-apply, the RSP will be permitted to treat the consumer as no longer being a vulnerable consumer.
111. The vulnerable consumer has a responsibility to inform their RSP if they think they are no longer a vulnerable consumer, and this responsibility is reflected in the draft Code.
112. Finally, our current view is that we will not specify classes of vulnerable consumers. This is because the provisions in the draft Code mean that the process for a consumer to demonstrate that they are a vulnerable consumer will be accessible to consumers, and the barriers to demonstrating they are vulnerable are relatively low. This should ensure that the purpose of the Code is met by ensuring that vulnerable consumers can reasonably obtain appropriate means to contact 111 in a power failure.

#### **Requirement to supply vulnerable consumers with appropriate means to contact 111**

113. There are three key components to the requirement under section 238(3)(d) for providers to supply vulnerable consumers with appropriate means to contact the 111 emergency service:
  - 113.1 first, the provider must supply *appropriate means to contact the 111 emergency service*;
  - 113.2 second, the appropriate means must be provided *at no cost to the consumer*; and

113.3 third, the means to contact 111 supplied *must be able to be operated for the minimum period in the event of a power failure.*

114. In the sections that follow we consider each of these components.

*Appropriate means to contact 111*

115. Section 238(4)(b) provides that we may specify appropriate means for vulnerable consumers, or persons on their behalf, to contact emergency services. Our draft decision is that we will not specify particular solutions that are appropriate means.

116. Rather, the draft Code prescribes principles which RSPs must follow when deciding what means to contact 111 they will provide to a vulnerable consumer. These principles are set out below at paragraph 124.

117. The draft Code also:

117.1 provides that an RSP is required to provide only one means per premises for contacting the 111 emergency services; and

117.2 requires RSPs to contact each of its vulnerable consumers at least once a year to ensure that the means it has provided to the vulnerable consumer remains appropriate, including that it is still functional.

Positions in Emerging Views Paper

118. In the EVP, we discussed the types of means to contact 111 that might be considered appropriate.<sup>63</sup> These included:

118.1 a mobile phone. We indicated that this is likely to be an appropriate means in many circumstances, provided the vulnerable consumer has mobile coverage; and

118.2 non-mobile alternatives such as a battery backup which powers the consumer's premises equipment. A battery backup would mean that a consumer would be able to contact 111 over their fibre, HFC or fixed wireless landline service in a power failure.

119. We noted that "the Code could provide flexibility by allowing the service providers to decide on what alternatives they offer, providing that all options were guaranteed to operate for the minimum period... The Code could also allow for vulnerable consumers to choose the most appropriate means that a service provider should supply them with from a range of options".<sup>64</sup>

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<sup>63</sup> See paragraphs 68 to 80 of the EVP.

<sup>64</sup> See paragraph 78 of the EVP.

## Submissions

120. A range of views were expressed in submissions about what would be an appropriate means to contact 111.
121. Submissions from RSPs, Chorus and the LFCs generally supported the provision of a mobile phone meeting the appropriate means requirement.<sup>65</sup> The companies also supported the provision of a battery backup where a vulnerable consumer does not have mobile coverage.<sup>66</sup> Chorus and the LFCs favoured giving RSPs some flexibility in the choice of appropriate means, so long as it could be operated for the minimum period.<sup>67</sup>
122. Submissions from individual consumers expressed concern about intermittent or insufficient mobile coverage and stressed the need for the solutions to be fit for purpose for consumers, including being simple to install and use by less technically savvy people and those who have other difficulties (limited dexterity, sight, hearing etc).<sup>68</sup> Greypower noted a large proportion of elderly people do not use digital technology and therefore a battery backup may be more appropriate for them.<sup>69</sup> A few additional suggestions for possible solutions to provide appropriate means were also identified, including satellite phones or GPS emergency beacons.
123. TUANZ submitted that a vulnerable consumer's normal means of communication should be able to be used in a power failure, and suggested that a battery backup would ensure this.<sup>70</sup>
124. At the workshop, we proposed four principles that could guide decisions around appropriate means:<sup>71</sup> These principles were that the means:
- 124.1 are intended to operate in the same general location (ie home, premises etc) as the specified telecommunications service currently being provided that will not work in a power failure;
  - 124.2 should cater for any specific circumstances that might affect the consumer's ability to easily use the device. Examples of these might include dexterity issues, vision or hearing difficulties and technical capability;
  - 124.3 should be supported by the provider for the life of the service. An example would be if the solution provided requires installation then the responsibility for the installation of the equipment and any replacement of the equipment when it reaches end of life would sit with the provider; and

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<sup>65</sup> See TCF's "Submission on Commission 111 contact code – Emerging Views paper" p.19.

<sup>66</sup> See TCF's "Submission on Commission 111 contact code – Emerging Views paper" p.19.

<sup>67</sup> See TCF's "Submission on Commission 111 contact code – Emerging Views paper" p.19.

<sup>68</sup> Collated feedback form.

<sup>69</sup> See Greypower's "Submission on Commission 111 contact code – Emerging Views paper" p.2.

<sup>70</sup> See TUANZ's "Submission on Commission 111 contact code – Emerging Views paper" p.4.

<sup>71</sup> We also proposed that the appropriate means must operate for the minimum period. This aspect is addressed later in this Draft Reasons Paper.

- 124.4 should be provided with clear instructions and guidance on how to operate the appropriate means they are provided.
125. Views on catering for specific consumer circumstances caused significant debate. Some participants agreed with the approach, while others expressed the view that the provider should be able to decide what an appropriate means is for the consumer.

#### Reasons for approach

126. Our draft decision is that we will not specify particular solutions that are appropriate means under section 238(4)(b) in the draft Code. However, the draft Code prescribes the following principles which RSPs must follow when deciding what appropriate means to contact 111 they will provide to a vulnerable consumer:
- 126.1 the means supplied must be appropriate for the specific circumstances of a vulnerable consumer (i.e. physical, mental or technical capabilities or others);
- 126.2 the RSP must supply the means as soon as reasonably practicable following acceptance of the consumer's application to be a vulnerable consumer;
- 126.3 the means supplied must be able to be operated at the premises where that vulnerable consumer receives the retail landline service;
- 126.4 the means supplied should be supported by the RSP for the duration of the contract for the retail landline service (unless the vulnerable consumer ceases to be a vulnerable consumer), including ensuring the means is regularly and appropriately maintained; and
- 126.5 the RSP must supply clear instructions and guidance on how to operate the means and who to contact if there are any issues.
127. Our current thinking is that it better meets the purpose of the Code if RSPs have the flexibility to choose which means to supply vulnerable consumers, subject to following the principles we have outlined above. This is because the statutory requirement is to provide *appropriate* means, and what is appropriate will depend on the circumstances of each vulnerable consumer.
128. There will be situations where a certain means will be appropriate for one vulnerable consumer, but not another. For example, for some vulnerable consumers, a mobile phone is likely to be an appropriate means to contact 111. However, if a vulnerable consumer is unable to use a mobile phone (for instance, an elderly person because of technical difficulties in using a mobile phone), supplying a mobile phone will not meet the appropriate means requirement. Similarly, if mobile coverage at the vulnerable consumer's premises is patchy, a mobile phone is unlikely to be an appropriate means. As we note below in paragraph 154, if a consumer is not satisfied that an RSP has met its obligation to provide an appropriate means, the consumer can refer a dispute to the TDRS.

129. In most cases, we anticipate that the provision of either a mobile phone or a battery backup will likely meet the requirement to provide appropriate means. These are the means that were contemplated by Parliament when introducing the Code provisions.<sup>72</sup> However, RSPs may supply other means, as long as the means meet the principles that are set out in the draft Code.
130. Finally, the draft Code:
- 130.1 provides that an RSP is required to provide only one means per premises for contacting the 111 emergency services. This is to provide clarity that, where there is more than one vulnerable consumer living at a premises, an RSP does not need to supply a means for each of the vulnerable consumers;
- 130.2 requires RSPs to contact each of its vulnerable consumers at least once a year to ensure that the means it has provided to the vulnerable consumer remains appropriate and functional. This requirement recognises that the conditions or circumstances of a vulnerable consumer may change over time, and ensures that the means supplied remains appropriate for the particular circumstances of the vulnerable consumer.

#### *No cost to the vulnerable consumer*

131. Section 238(3)(d) requires that providers of the specified telecommunications services supply vulnerable consumers, *at no cost to the consumers*, with an appropriate means for contacting 111.
132. The draft Code includes the requirement to provide the appropriate means at no cost to the consumer. The draft Code also clarifies the scope of the no-cost requirement, including that the vulnerable consumer will not be charged for the costs associated with assessment and provision of the means (installation, device costs), ongoing support (maintenance, replacement) and recovery or disposal of the means.

#### Positions in Emerging Views Paper

133. The EVP did not expressly address the no-cost requirement.

#### Submissions

134. Submissions focussed on the issue of which telecommunications companies should bear the cost of providing the appropriate means, rather than the scope of the no-cost requirement. RSPs submitted that costs should be borne by the supplier of the service that stops working in a power failure. For example, if the wholesale service continued to operate in a power failure (eg, a copper wholesale service), but the retail service did not (eg, VoIP), the RSP would bear the cost of supplying the

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<sup>72</sup> Minister Fafofi, Committee of Whole House: "So that 111 service will be provided by the telcos. It will be via either a battery backup or a mobile phone at this stage. There could be other creative ways that the telcos could do that in the future."

appropriate means.<sup>73</sup> Chorus and the LFCs submitted that RSPs should bear the costs in all situations.<sup>74</sup>

135. At the workshop, significant concerns were raised about costs for the industry, and that additional costs could make some consumers uneconomic to serve. In its late submission on the EVP WISPA New Zealand said that WISPs would be unfairly burdened by the Code, given their predominantly rural customer base which often does not have mobile coverage.<sup>75</sup> WISPA New Zealand submitted that access to the 111 emergency service is essentially a welfare issue, and considered that the supply of means to contact 111 should be funded by the Telecommunications Development Levy (TDL).<sup>76</sup>

#### Reasons for approach

136. Our current view is that the draft Code should provide additional clarity about the scope of the no-cost requirement. The draft Code therefore specifies that a vulnerable consumer must not bear any costs relating to the supply of an appropriate means for contacting 111, including that the vulnerable consumer will not be charged for the costs associated with:
- 136.1 assessment and provision of the means (installation; device costs);
  - 136.2 ongoing support (maintenance; replacement in the event the device fails to work); and
  - 136.3 recovery or disposal of the means.
137. This will help to provide certainty for RSPs and consumers about the scope of the no-cost requirement, and should reduce the number of disputes about the requirement.
138. The draft Code does not have any provisions about who bears the costs of providing the appropriate means, as we do not consider the draft Code is intended to address matters of cost recovery. Rather, the draft Code imposes obligations that providers must meet. In particular, the obligation to supply the appropriate means lies with the providers of the specified telecommunications services, which are the RSPs who have the relationship with their customers. While it is up to the industry whether they wish to make commercial arrangements to allocate costs, the obligations in the draft Code must be met by RSPs.
139. We note the concerns of industry stakeholders about the costs of meeting the obligations in the draft Code. In formulating the approach for the draft Code, we have been conscious not to impose costs beyond what we consider is necessary to achieve the purpose of the Code. We consider that giving RSPs some flexibility to decide what are appropriate means for vulnerable consumers (subject to the

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<sup>73</sup> See TCF's "Submission on Commission 111 contact code – Emerging Views paper" p.17.

<sup>74</sup> See TCF's "Submission on Commission 111 contact code – Emerging Views paper" p.17.

<sup>75</sup> See WISPA NZ's "Submission on Commission 111 contact code – Emerging Views paper" para 6.

<sup>76</sup> See WISPA NZ's "Submission on Commission 111 contact code – Emerging Views paper" para 10.

principles they must following in making that decision) will help RSPs to manage costs and incentivise them to seek out efficient solutions.

140. In response to WISPA New Zealand’s suggestion that the supply of means to contact 111 be funded from the TDL, it is outside our powers to prescribe what the TDL should be used for. Our role in relation to the TDL is limited to determining each company’s contribution to the TDL.

#### *Specifying a minimum period*

141. Under section 238(3)(c), we must specify the minimum period that an appropriate means for contacting the 111 emergency service must be able to be operated for.
142. Our current view is that the minimum period be set at a period of 12 continuous hours for the draft Code.

#### Positions in Emerging Views Paper

143. In our EVP, we noted the following options for determining a minimum period:
- 143.1 matching the minimum period to the period which network infrastructure continues to operate in a power failure; or
  - 143.2 basing it on the average length of a power failure in New Zealand, or the duration of power outages during significant national events, such as the Christchurch earthquake.
144. We noted Ofcom’s (the UK telecommunications regulator) 2018 guidelines that a battery backup of a minimum of one hour should always be provided, and that the United States Federal Communications Commission considered that an eight hour period with a potential upgrade to 24 hours was appropriate.<sup>77</sup>

#### Submissions

145. Submissions raised a range of views on the minimum period.
146. RSPs tended to favour a shorter minimum period, submitting that one hour would be appropriate.<sup>78</sup>
147. Feedback from individual consumers on the minimum periods ranged from 10 minutes to “as long as the power is out”, although the majority suggested periods of

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<sup>77</sup> Ofcom ‘Protecting access to emergency organisations when there is a power cut at the customer’s premises, (10 October 2018), Annex 1. FCC Report and Order: ‘Ensuring continuity of 911 communications’ FCC 15-98 (7 August 2015), para 13.

<sup>78</sup> See TCF’s “Submission on Commission 111 contact code – Emerging Views paper” p. 20.



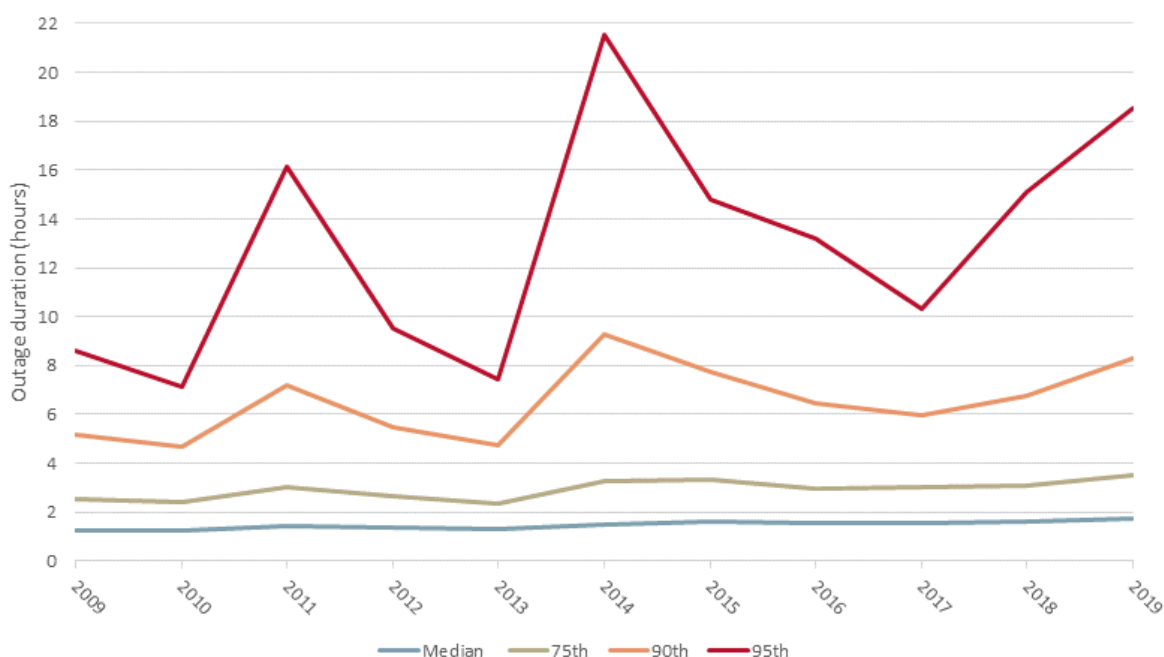
between six and 24 hours. Several consumers suggested rural or more remote locations may require a longer minimum period.<sup>79</sup>

148. TUANZ suggested that it should be based on an analysis of outage experience in New Zealand and that the Commission should consider a different measure for urban and rural.<sup>80</sup> Greypower also supported the approach of analysing power outages in New Zealand to determine the minimum period.<sup>81</sup>

Reasons for approach

149. Our draft decision is to specify a minimum period of 12 continuous hours.
150. Our draft decision is based on an analysis of the duration of unplanned electricity outages in New Zealand. We assessed electricity outage data over an 11 year period for 17 Electricity Distribution Businesses (EDBs) subject to information disclosure.
151. Figure 1 shows unplanned electricity outage durations across the 11 years by percentile.

**Figure 2: Unplanned electricity outage duration 2009-2019**



152. We consider that the minimum period should cover a large majority of the power outages that consumers experience. Power outages vary considerably depending on location, and restoration is often staged and unpredictable for consumers. We have therefore specified the minimum period based on the average 95<sup>th</sup> percentile outage

<sup>79</sup> Commerce Commission “Collated Feedback form – Commission 111 contact code Emerging views paper”, 14 October 2019.

<sup>80</sup> See TUANZ’s “Submission on Commission 111 contact code – Emerging Views paper” p. 7.

<sup>81</sup> See Greypower’s “Submission on Commission 111 contact code – Emerging Views paper” p. 3.

duration, which is 12 continuous hours. Setting the minimum period based on a lower percentile – and therefore for a shorter period – would risk situations where the appropriate means no longer operates but a power failure continues, leaving a vulnerable consumer without the means to contact 111.

153. We have not specified different minimum periods in relation to urban and rural customers. This is because the data on power outages is not broken down into urban and rural categories, and it is therefore not clear whether rural locations have longer power outages. However, the choice of the 95<sup>th</sup> percentile outage duration should ensure that rural vulnerable consumers have the means to call 111 for the length of most power outages.

### **Dispute resolution**

154. As we noted earlier in this Draft Reasons Paper, section 240 of the Act provides that the TDRS is the dispute resolution scheme for the Code. The draft Code includes a provision to this effect.
155. The TDRS describes itself as “an independent body for the prompt, unbiased resolution of disputes”.<sup>82</sup> The TDRS has rules that govern disputes,<sup>83</sup> and under section 245 of the Act all members of the TDRS and each party to a dispute must comply with those rules.
156. Under section 241 of the Act, a dispute between a consumer and a telecommunications service provider about their rights and obligations under the Code may be referred to the TDRS by any of the parties to the dispute.
157. While ‘consumer’ ordinarily includes the customer (ie, the person contracting for the retail landline service) and a person who ordinarily resides at the premises where the retail landline service is supplied to, the draft Code provides that only a customer may refer a dispute. If a dispute concerns a consumer who is not the customer (ie they are a person who ordinarily resides at the customer’s premises), the customer may refer a dispute on behalf of the consumer.
158. We have limited the ability to refer disputes to the customer<sup>84</sup> because the determinations of the TDRS are binding on the parties to the dispute,<sup>85</sup> and those determinations could have an effect on the service that the customer has contracted for with the RSP. In any event, it is likely that the interests of the customer and the consumer (who is not the customer) will be aligned on issues relating to disputes.
159. Section 241(2) provides that disputes that may be referred to the TDRS include disputes about (among other things) “other matters provided for in the [Code]”. We have specified in the draft Code that disputes that can be referred to the TDRS include those concerning a consumer’s application to be a vulnerable consumer and

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<sup>82</sup> See the TDRS website, accessible via the following link: <https://www.tdr.org.nz/about-tdr>.

<sup>83</sup> See the TDRS webpage on the TDRS scheme, accessible via the following link: <https://www.tdr.org.nz/scheme-information/about-the-scheme/the-code-and-terms-of-reference>.

<sup>84</sup> To avoid doubt, a telecommunication service provider may also refer a dispute to the TDRS.

<sup>85</sup> See sections 242-243 of the Act.

the provision of an appropriate means of contacting 111. However, this is not intended to be an exhaustive list of disputes that can be referred.

160. The draft Code also provides that a consumer may refer a dispute to the TDRS at any time after a dispute between the consumer and a telecommunications service provider arises. This is to make clear that a consumer does not need to exhaust the telecommunications service provider's own dispute resolution processes before they can refer the dispute.
161. Sections 242 to 245 of the Act deal with issues such as the enforceability of determinations by the TDRS and appeals of those determinations, and will apply to disputes under the Code. In particular, determinations by the TDRS are binding on all parties to the dispute, although in certain circumstances a determination can be appealed to the District Court.<sup>86</sup>

#### *Relationship with enforcement*

162. As we noted earlier in this Draft Reasons Paper, the Code is an enforceable matter under Part 4A of the Act, with section 156A(1)(p) establishing a breach where a person "fails, without reasonable excuse, to comply with the Commission 111 contact code".
163. The right of consumers and telecommunications service providers to refer Code disputes to the TDRS does not preclude the Commission from enforcing against breaches of the Code. There may be instances where, for example, a dispute involves a potential breach of the Code. In these circumstances, the Commission retains the power to take enforcement action.
164. Under section 156C of the Act, the Commission must take certain factors into account when deciding what enforcement action to take. These include, for example, the seriousness of the alleged breach and whether or not the person alleged to have committed the breach has previously committed a breach of that kind or has engaged in any similar conduct.

#### **Requirement not to deny or cease specified telecommunications service**

165. The draft Code includes a provision that prohibits RSPs from denying to supply a specified telecommunication service to, or withdrawing the supply of a specified telecommunications service from, a consumer on the basis that the consumer is or may be a vulnerable consumer.
166. We have included this provision in the draft Code because our current view is that it is necessary to include this provision to achieve the purpose of the Code, in accordance with section 238(4)(c) of the Act. Without the provision, we consider RSPs may face an incentive to avoid serving vulnerable consumers to avoid the cost of supplying appropriate means to those consumers. If RSPs avoided serving vulnerable consumers, the purpose of the Code to ensure that vulnerable consumers

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<sup>86</sup> Sections 242-243.

have reasonable access to an appropriate means to contact 111 in a power failure would be undermined.

#### **Requirement on RSPs to disclose information and keep records**

167. The draft Code includes a requirement on RSPs to disclose some limited information to the Commission each year no later than 1 month after the end of each financial year. The information requirements that RSPs must disclose are:
  - 167.1 a description of the process the provider has implemented for the purposes of satisfying the requirement to provide the information listed in clause 6 in the ways required by clause 8, and supporting evidence;
  - 167.2 a description of the process the provider has implemented for the purposes of satisfying the requirements in clause 12, and supporting evidence;
  - 167.3 the number of vulnerable consumers the provider has (as at the date of disclosure);
  - 167.4 the number of customers (ie customers of a retail landline service) the provider has (as at the date of disclosure);
  - 167.5 the number of persons who have successfully demonstrated that they are (or will become) a vulnerable consumer, and what appropriate means of contacting the 111 emergency service the premises where the vulnerable consumer resides has been (or will be) supplied with; and
  - 167.6 the average number of working days from the point at which a consumer's application is submitted to the point at which the vulnerable consumer is provided with appropriate means to contact the 111 emergency service.
168. The Commission may specify a template for the information to be disclosed in.
169. We consider that the information disclosure requirements are proportionate, in that they help to meet the purpose of the Code while not imposing undue costs on RSPs. The information that RSPs must disclose should be relatively easy for RSPs to collect and retain.
170. Examples of supporting evidence depend on the contact points with the consumer and could include website screenshots, templates of phone scripts, emails, letters and any template of documentation or script used in retail stores.
171. The draft Code also includes a record keeping requirement on RSPs. RSPs will be required to record the following types of information:
  - 171.1 any communication between the RSP and a consumer to satisfy the requirement to inform consumers about the options available to vulnerable consumers;
  - 171.2 any communication between the RSP and a consumer to satisfy the requirement for RSPs to contact each vulnerable consumer at least once a

year to ensure that the means supplied to the vulnerable consumer remains appropriate and functional (see the discussion in paragraph 130.2 above); and

- 171.3 any communications with a person who did not demonstrate to the RSP that they are a vulnerable consumer.
172. The draft Code provides that RSPs may stop recording the information in the following circumstances:
- 172.1 if the contract between the customer (ie the customer at the premises where the retail landline service is supplied to) and the RSP is terminated and a period of five years or more has passed since the termination of the contract; or
- 172.2 if the consumer did not demonstrate to the RSP that they were a vulnerable consumer and a period of five years or more since that point in time has passed.
173. The purpose of the record keeping obligation is to ensure that RSPs retain information that, should we require disclosure of the information, will help us to monitor compliance with the Code. Requiring record keeping, rather than information disclosure, for this type of information is a proportionate means to help us to monitor compliance. We may request the information that RSPs record, either through a voluntary request or, if necessary or desirable, through a compulsory request.
174. While we acknowledge that it is good business practice to keep electronic records of this type of information, we think a requirement in the Code helps to ensure that this is happening consistently across RSPs.
175. Overall, the information disclosure and record keeping requirements in the draft Code are important to meet the purpose of the Code, as the provisions will help the Commission to monitor compliance with the Code. We consider the provisions will provide an incentive for RSPs to comply with the Code, which will increase the effectiveness of the Code.

### **Review of the Code**

176. The draft Code includes a provision for amendment to the Code, which reflects the provisions in the Act relating to amendment of the Code.
177. We may review the Code in the future to evaluate if the Code is achieving its purpose.

## Appendix A - Relevant Statutory sections for the Code

### 238 Commission 111 contact code

- (1) The Commission must make a code for the purpose of ensuring that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.
- (2) The code must be made before the implementation date.
- (3) The code must—
  - (a) specify which telecommunications services it applies to; and
  - (b) require the providers of those services to inform consumers about the options available for vulnerable consumers; and
  - (c) prescribe a process (or processes) for a consumer of those services, or a person on their behalf, to demonstrate that they—
    - (i) are a vulnerable consumer; or
    - (ii) will become a vulnerable consumer; and
  - (d) require the providers of those services to supply vulnerable consumers, at no cost to the consumers, with an appropriate means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure; and
  - (e) specify the minimum period for the purposes of paragraph (d).
- (4) The code may do 1 or more of the following:
  - (a) specify classes of people that must be considered vulnerable consumers:
  - (b) specify appropriate means for vulnerable consumers, or persons on their behalf, to contact emergency services:
  - (c) contain any other provisions that are necessary or desirable to achieve the purpose in subsection (1).
- (5) In this section,—

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

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

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

  - (a) is at particular risk of requiring the 111 emergency service (for example, due to a known medical condition); and
  - (b) does not have a means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure.

### 239 Process for making or amending Commission code

- (1) In order to make a Commission code, the Commission must—
  - (a) give public notice of the process that will be followed to make the code; and
  - (b) consult with interested persons; and
  - (c) give public notice of a draft code.

- (2) If the code is a Commission 111 contact code, interested persons includes the following:
  - (a) the New Zealand Police:
  - (b) Fire and Emergency New Zealand:
  - (c) the Director of Civil Defence Emergency Management:
  - (d) every provider of an initial call answering point for the 111 emergency service.
- (3) A person is entitled to make submissions to the Commission not later than 30 working days after the date on which public notice of the draft code is given.
- (4) The Commission may make the code only if the Commission is satisfied that the draft code meets all the requirements set out in this Part.
- (5) The Commission may amend or revoke a code if the Commission considers that the code no longer meets all the requirements set out in this Part.
- (6) The same procedure that applies to making a code in subsections (1) to (4) must be followed to make an amendment or a revocation, with any necessary modifications.
- (7) The Commission must give public notice of every code that is made and every amendment or revocation of those codes.

## **240 Dispute resolution scheme**

- (1) The dispute resolution scheme for all Commission codes is—
  - (a) an industry dispute resolution scheme; or
  - (b) if Part 4B comes into force in accordance with section 156S, a consumer complaints system—
    - (i) that is appointed under that Part; and
    - (ii) that the Minister declares under this section to be the dispute resolution scheme for Commission codes.
- (2) A scheme provider for an industry dispute resolution scheme must, on request by the Minister or the Commission, provide information on matters relating to any information or reports relevant to the administration of a Commission code.
- (3) Sections 241 to 245 apply unless Part 4B comes into force.

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

- (1) In addition to the other functions conferred on the Commission by this Act, the Commission—
  - (a) must monitor competition in telecommunications markets and the performance and development of telecommunications markets; and
  - (b) may conduct inquiries, reviews, and studies (including international benchmarking) into any matter relating to the telecommunications industry or the long-term benefit of end-users of telecommunications services within New Zealand; and
  - (c) must monitor compliance with the Commission 111 contact code; and
  - (d) must make available reports, summaries, and information about the things referred to in paragraphs (a) to (c); and

- (e) must monitor retail service quality in relation to telecommunications services; and
  - (f) must make available reports, summaries, and information about retail service quality in a way that informs consumer choice.
- (2) The functions in subsection (1)(d) and (f) do not require the Commission to release all documents that the Commission produces or acquires under this section or section 10A.

### **156CA Commission may accept undertakings**

- (1) The Commission may accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the enforcement of a Commission RSQ code or the copper withdrawal code.
- (2) The person may withdraw or vary the undertaking with the consent of the Commission.

### **156CB Enforcement of undertakings**

- (1) If the Commission considers that a person who has given an undertaking under section 156CA has, without reasonable excuse, breached a term of that undertaking, the Commission may apply to the High Court for an order under subsection (2).
- (2) The High Court may make any of the following orders if it is satisfied that the person has, without reasonable excuse, breached a term of the undertaking:
- (a) an order directing the person to comply with the term:
  - (b) an order directing the person to pay to the Crown—
    - (i) an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach; or
    - (ii) any pecuniary penalty that the court determines to be appropriate (up to the maximum amount specified in section 156L(3)(c));
  - (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach:
  - (d) an order for any consequential relief that the court thinks appropriate.
- (3) Section 156L(4) to (7) applies with any necessary modifications in respect of proceedings under this section.