

Commission 111 Contact Code: Decisions and Reasons Paper

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Associated documents

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11 March 2020	2020-au1101	New Zealand Gazette Notices “Notification of Commerce Commission’s Draft 111 Contact Code”
6 August 2020	n/a	Summary of consumer feedback on the draft Commission 111 Contact Code
17 November 2020	ISBN 978-1-869458-52-2	Commission 111 Contact Code
17 November 2020	2020-au5242	New Zealand Gazette Notices “Notification of Commerce Commission’s 111 Contact Code”

Glossary

CWC	Copper Withdrawal Code
EDB	Electricity Distribution Business
EVP	Emerging Views Paper
HFC	Hybrid fibre-coaxial cable
LFC	Local Fibre Companies
MBIE	Ministry of Business, Innovation and Employment
RSP	Retail Service Provider
RSQ	Retail Service Quality
SIM	Subscriber Identity Module card – commonly known as a SIM card
TCF	NZ Telecommunications Forum Inc.
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 Provider

TABLE OF CONTENTS

ASSOCIATED DOCUMENTS	2
GLOSSARY	3
EXECUTIVE SUMMARY	5
CHAPTER 1 – INTRODUCTION	8
PURPOSE OF REASONS PAPER	8
STRUCTURE OF REASONS PAPER.....	8
OUR PROCESS.....	9
CHAPTER 2 – CONTEXT FOR THE CODE	11
FIBRE AND OTHER TECHNOLOGIES DO NOT WORK IN A POWER FAILURE	11
TELECOMMUNICATIONS ACT AMENDED TO REQUIRE CODE	11
THE 111 EMERGENCY SERVICE.....	12
OUR WIDER ROLE IN THE TRANSITION AWAY FROM COPPER.....	12
OTHER WORK WE ARE DOING TO RAISE AWARENESS	13
REVIEW OF THE CODE	13
CHAPTER 3 – LEGAL FRAMEWORK	15
KEY PROVISIONS RELATING TO THE CODE	15
<i>Definition of vulnerable consumer</i>	16
OTHER RELEVANT PROVISIONS	21
<i>Process to make Code</i>	21
<i>Dispute resolution</i>	21
<i>Enforcement</i>	21
<i>Monitoring compliance</i>	22
PROPORTIONALITY	22
CHAPTER 4 – DECISIONS AND REASONS FOR THE CODE	23
OVERVIEW	23
WHEN THE CODE COMES INTO FORCE	24
<i>Position in draft Code</i>	24
<i>Submissions</i>	24
<i>Our decision and reasons</i>	25
TELECOMMUNICATIONS SERVICES TO WHICH THE CODE APPLIES	26
<i>Positions in draft Code</i>	26
<i>Submissions</i>	27
<i>Our decision and reasons</i>	27
REQUIREMENT TO INFORM ALL CONSUMERS ABOUT OPTIONS AVAILABLE TO VULNERABLE CONSUMERS.....	29
<i>Positions in draft Code</i>	29
<i>Submissions</i>	30
<i>Our decision and reasons</i>	32
PROCESS FOR A CONSUMER TO DEMONSTRATE THEY ARE A VULNERABLE CONSUMER.....	33
<i>Positions in draft Code</i>	33
<i>Submissions</i>	34
<i>Our decision and reasons</i>	36
REQUIREMENT TO SUPPLY VULNERABLE CONSUMERS WITH APPROPRIATE MEANS TO CONTACT 111	42
<i>Appropriate means to contact 111</i>	43
<i>No cost to the vulnerable consumer</i>	46
<i>Specifying a minimum period</i>	47
DISPUTE RESOLUTION	51
<i>Relationship with enforcement</i>	53
REQUIREMENT NOT TO DENY OR CEASE SPECIFIED TELECOMMUNICATIONS SERVICE	54
REQUIREMENT ON RSPS TO DISCLOSE INFORMATION AND KEEP RECORDS	54
APPENDIX A - RELEVANT STATUTORY PROVISIONS FOR THE CODE	57

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 the copper network. This service generally works during a power failure at a consumer's premises because the copper line running into a person's home (the "access line") is powered from a source outside the home.¹ This means consumers using this traditional voice service in most cases can contact the 111 emergency service, even in a power failure at their home.²
- 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 line technology used). Without back-up measures, consumers using these services will not be able to call 111 in a power failure.
- X3 In recognition of these developments, the Government passed legislation in November 2018 which requires the Commission to make a 111 Contact Code (Code). The intent of the Code is to inform people, enable them to prepare for the change in technology and ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.
- X4 We have heard from some consumers that they do not like the term "vulnerable consumer". For them, it carries some negative connotations. We considered whether we should use a different term, but in the end, we have decided to keep it. This is because we need to be consistent with the terminology used in the legislation underpinning the Code and there is benefit in being consistent with the electricity sector, which uses the same term.³
- X5 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. A consumer is at particular risk if they are

¹ 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.

² 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 mains power to work, but cordless phones often will.

³ The electricity sector has guidelines to assist "vulnerable customers". See <https://www.ea.govt.nz/operations/retail/retailers/retailer-obligations/medically-dependant-and-vulnerable-customers/>.

more likely than other consumers to require the 111 emergency service because of a specific circumstance applicable to that consumer.

- X6 Alongside this document, we have published the final Code. The key features of the Code are as follows:
- X6.1 The Code applies to retail landline services. Landline services are voice services provided over a fixed-line connection or fixed wireless access technologies. Landline services includes analogue and digital voice services;
 - X6.2 Retail Service Providers (RSPs) are required to provide information to consumers about the Code that newer voice technologies do not work in a power failure and the options available to vulnerable consumers. During consultation on the Code we heard from consumers that many New Zealanders are unaware that new home phone technologies may not allow them to call 111 in a power failure. The Code therefore requires RSPs to tell new customers and, their existing customers at least once every year, that their home phone may not work in a power cut and ways they can protect their household. Raising awareness of this issue through the Code will help to ensure that all consumers understand what they need to do to protect themselves in a power failure;
 - X6.3 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. The Code prescribes key components of that process. In particular, consumers will be able to demonstrate that they are at particular risk of requiring the 111 emergency service by including with their application the details of a nominated person (who, by virtue of their occupation, is competent to give an opinion on whether their consumer is at particular risk) or by providing sufficient evidence to show that they are at particular risk;
 - X6.4 RSPs must supply each vulnerable consumer with an appropriate means for contacting 111, which is available for use for at least eight 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 (eg, the consumer's physical, mental or technical capabilities). RSPs may also wish to offer back-up solutions on commercial terms to customers who are not vulnerable consumers;
 - X6.5 The Code also:
 - X6.5.1 provides that disputes between a consumer and an RSP about their rights and obligations under the Code may be referred to an

industry dispute resolution scheme, which is currently the Telecommunications Dispute Resolution Scheme (TDRS);

X6.5.2 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

X6.5.3 requires RSPs to keep records and disclose certain information to the Commission, to help us monitor compliance with the Code.

- X7 The Code comes into effect 1 February 2021, though providers will have until 1 August 2021 to ensure that their vulnerable consumers have an appropriate means to contact 111.
- X8 Overall, our view is that the 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.
- X9 Finally, we note that compliance with the Code is supported by an enforcement regime under the Telecommunications Act 2001 (Act). A person who fails, without reasonable excuse, to comply with the Code will be in breach of the Act. The High Court can order a person to pay a pecuniary penalty of up to \$300,000 for failing to comply with the Code. We are responsible for enforcing the Code, and we will be monitoring compliance with it.

Chapter 1 – Introduction

Purpose of Reasons Paper

1. In November 2018 the Act was amended by the Telecommunications (New Regulatory Framework) Amendment Act 2018. The amendments to the Act require the Commerce Commission (Commission) to make the Code by 1 January 2022.⁴
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.⁵
3. On 11 March 2020, we published our paper “Commission 111 Contact Code – Draft Decisions and Reasons Paper” (Draft Reasons Paper) and a “Draft Commission 111 Contact Code” (draft Code).⁶ We sought feedback from interested parties, with submissions received on 17 July 2020 and cross-submissions on 7 August 2020.
4. Having considered the submissions and cross-submissions, this final Decisions and Reasons Paper (Reasons Paper) sets out our decisions and reasons for the Code. The final Code has been published alongside this Reasons Paper.
5. We would like to thank all those who participated in developing the process, including telecommunications service providers, consumers and all other stakeholders. Submissions received were an essential part of our process and have helped us to make a Code that meets its purpose.
6. We are particularly grateful to the community, voluntary and consumer advocacy organisations who reached out to their members about the Code and encouraged their members to give feedback. We appreciate the personal insights and experiences shared with us by so many New Zealanders of what matters to them and why.

Structure of Reasons Paper

7. This Reasons Paper has the following sections:
 - 7.1 **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;
 - 7.2 **Chapter 3 – Legal framework** discusses the legal framework relevant to the Code;

⁴ Section 238(2) of the Act requires the Code to be made before the “implementation date”. The implementation date is date on which the fibre regulatory regime under Part 6 of the Act is implemented, and is 1 January 2022.

⁵ Section 238(1), Telecommunications Act 2001.

⁶ Copies of the Draft Reasons Paper and draft Code are accessible on the Commission’s website at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/commission-111-contact-code>

7.3 **Chapter 4 – Decisions and reasons** provides our decisions and reasoning for the content of the Code.

Our process

8. We summarise the process we have followed to make the Code in Table 1 below.

Table 1: Summary of process

Date	Key step
Late 2018/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. ⁷
12 September 2019	111 Contact Code – Emerging Views Paper (EVP) published. ⁸
14 October 2019	We received eight submissions and 32 responses via our online feedback form on the EVP. ⁹
November 2019	We met with the Wireless Internet Service Providers Association of New Zealand (WISPA NZ) to discuss the EVP and subsequently received late submissions from them and New Zealand Technology Group (a member of WISPA NZ). ¹⁰ 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. ¹¹
5 December 2019	Workshop with industry participants. ¹²
Feb-March 2020	Phone calls with emergency services organisations updating them on proposed launch date for consultation on the draft Code.
11 March 2020	Draft Reasons Paper and draft Code published.
2 April 2020	We extended the timeframes for submitting on the Draft Reasons Paper and draft Code because of the impact of Covid-19.
15 May 2020	Email sent to emergency service organisations with information for their stakeholders for newsletters and internet.

⁷ We engaged with Allied Emergency Services group which includes representatives from Police, Fire and Emergency, Wellington Free Ambulance and St Johns Ambulance.

⁸ 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.

⁹ 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>.

¹⁰ A copy of the late 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.

¹¹ Telecommunications Act 2001, s 239(1) and s239 (2).

¹² The workshop was attended by representatives from 2degrees, Chorus, Enable, MBIE, Northpower, Powerco, Spark, TCF, Trustpower, Ultrafast fibre, Vocus, Vodafone and WISPA NZ.

25 June 2020	Individual emails sent to emergency service organisations reminding them of consultation closure and promoting consultation through their channels.
17 July 2020	We received 28 submissions and 119 responses via our online consumer feedback form on the Draft Reasons Paper and draft Code. ¹³
7 August 2020	We received five cross-submissions on the Draft Reasons Paper and draft Code. ¹⁴

9. Vodafone requested that we hold a workshop for interested parties to discuss aspects of the draft Code.¹⁵ We decided not to hold a workshop, as we consider that the written submissions process gave interested parties sufficient opportunity to be heard and it provided us with enough information to make our decisions.

¹³ 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>.

¹⁴ 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>.

¹⁵ Vodafone New Zealand “Cross-submission on Draft 111 Contact Code” (17 July 2020) pg 3.

Chapter 2 – Context for the Code

10. 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 83% of New Zealanders currently have access to fibre-to-the-premises, and that number is expected to grow to 87% by the end of 2022.¹⁶¹⁷ As fibre networks grow, New Zealanders are transitioning away from copper-based voice and broadband services.

Fibre and other technologies do not work in a power failure

11. 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 that runs into a consumer’s premises 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 back-up or generator.
12. 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

13. 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:¹⁸

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

¹⁶ See Crown Infrastructure Partnerships “Quarterly Connectivity Update Q2: to 30 June 2020” (June 2020) pg 5.

¹⁷ 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/>

¹⁸ 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.

14. The Act requires the Commission to make the Code by 1 January 2022.¹⁹

The 111 emergency service

15. Calling 111 is the primary means to request emergency assistance from the Ambulance, Police and Fire and Emergency services. The 111 emergency service has received up to 200,000 phone calls a month, with over 75% of calls now originating from mobile phones.²⁰
16. 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.²¹
17. 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.²²
18. 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 (Ambulance, Police, or Fire and Emergency).

Our wider role in the transition away from copper

19. 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](#).
20. 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 withdraw certain copper services only if it has complied with the Copper Withdrawal Code (CWC) or the end-user receiving the copper service chooses to have the service disconnected (other than a temporary disconnection).²³

¹⁹ 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.

²⁰ See the MBIE "111 Quarterly Review: August – October 2017" (October 2017) pg 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/>

²¹ New Zealand Police webpage (2020). Available via the following link: <https://www.police.govt.nz/111-txt>.

²² We understand that the SIM does not need to be active in order to call 111.

²³ See ss 69AC(2) and 69AD(2), Telecommunications Act 2001.

21. The Commission is currently finalising the CWC in response to submissions received on the draft CWC and intends to publish it on 10 December 2020. 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.²⁴ Relevantly, another minimum requirement is that the Commission 111 Contact Code be in force.²⁵

Other work we are doing to raise awareness

22. Consumer feedback from the draft Code consultation raised the need for greater general awareness that telecommunications over fibre and fixed wireless technologies might not work in a power failure and how households can prepare for this so that they can contact 111 in a power failure. For consumers not eligible under the Code this could include purchase of a back-up battery or keeping a charged mobile phone with a SIM card with their household emergency kit. We are working on a communications and engagement plan to promote the Code and to raise awareness among consumers about how they can be prepared for an emergency in a power failure.
23. We also note the joint submission of New Zealand Police, St John New Zealand, Wellington Free Ambulance, and Fire and Emergency New Zealand. This submission, highlighted that there are broader risks in the transition from copper to fibre, such as the risk of telecommunications networks failure as a result of natural disaster.²⁶ We agree that this is an important issue, but the scope of the Code is limited to power failures at the consumer's premises.

Review of the Code

24. The Act allows us to amend or revoke the Code if we consider that the Code no longer meets all the requirements set out in Part 7 of the Act.²⁷
25. While our view is that the Code we have published alongside this Reasons Paper meets all the requirements, we intend to closely monitor its operation. The Code needs to be workable for vulnerable consumers and industry and it is important that its purpose is achieved at reasonable cost to the sector.²⁸
26. As part of our monitoring, we encourage telecommunications service providers, consumers and other stakeholders to contact us with feedback on the operation of the Code.

²⁴ Clause 1(3)(a)(i) of Schedule 2A of the Act.

²⁵ 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.

²⁶ New Zealand Police, St John New Zealand, Wellington Free Ambulance, and Fire and Emergency New Zealand, "Joint submission on the Commerce Commission's draft 111 contact code" (17 July 2020) pg 1.

²⁷ Section 239(5), Telecommunications Act 2001.

²⁸ As set out in s 238(1), Telecommunications Act 2001.

27. If our monitoring suggests that the Code is not meeting its purpose as expected, we may review and make amendments to the Code as needed, following the process required in the Act.²⁹

²⁹ Section 239(6) provides that the same procedure that applies to making a code in s 239(1)-(4) must be followed to make an amendment or a revocation, with any necessary modifications.

Chapter 3 – Legal Framework

28. In this chapter we set out the relevant legal framework from the Act by:
- 28.1 providing an overview of:
 - 28.1.1 the key provisions relating to the Code, including our view on the definition of ‘vulnerable consumer’ in the Act; and
 - 28.1.2 other relevant provisions; and
 - 28.2 responding to submissions that the Code, as a regulatory intervention, should be proportionate to the problem it seeks to address.
29. We have reproduced the provisions of the Act relating to the Code in Appendix A to this Reasons Paper.

Key provisions relating to the Code

30. 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

- 31. The draft Code was based on an approach which treats a consumer as vulnerable if the consumer:
 - 31.1 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);³⁰
 - 31.2 is at particular risk of requiring the 111 emergency service; and
 - 31.3 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.
- 32. Submissions generally did not address our approach to the definition of vulnerable consumer.³¹ We have therefore retained the draft Code approach in the final Code.
- 33. Below we discuss further the three limbs of the definition of vulnerable consumer.

Limb 1: Consumer of a specified telecommunications service

- 34. Our view is that a consumer of a specified telecommunications service includes:
 - 34.1 the person that contracts with the RSP for the specified telecommunications service; and
 - 34.2 any other person who ordinarily resides at the premises to which the specified telecommunications service is supplied.
- 35. The Code specifies that a consumer includes both of these categories of person.³² This will ensure that consumers who do not contract for a specified

³⁰ See definition of 'specified telecommunications service' in section 238(5), Telecommunications Act 2001.

³¹ Nova Energy submitted directly on our proposed approach, supporting it. Nova Energy "Submission to the Commerce Commission: Draft 111 contact code" (17 July 2020) para 3b.

³² See definition of 'consumer' in clause 4 of the Code.

telecommunications service, but who are otherwise vulnerable and are using the specified telecommunications service, will receive the protection of the Code.³³

36. In some circumstances, the obligations in the Code apply only in relation to the person who contracts for the service (referred to in the 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 else lives at the address.

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

37. As we discuss later in this Reasons Paper at paragraphs 107 to 140, the 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.
38. Our draft decision was not to further define the meaning of “at particular risk”.
39. Submissions which addressed this issue generally requested that we further define the term. For example:
- 39.1 New Zealand Technology Group submitted that “the Commission needs to consider and provide an updated, detailed definition of exactly what ‘particular risk’ means in contrast with the normal, everyday level of risk all persons experience at all times. We appreciate that the causes of such risk may be diverse with various different sources, so a set of general guidance needs to be created and shared”,³⁴ and
- 39.2 Spark said that “the group of people who are at ‘particular risk of requiring the 111 emergency service’ is open to interpretation and needs to be better defined in the Code”.³⁵
40. The New Zealand Telecommunications Forum (TCF) recommended the following definition:³⁶

³³ 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.

³⁴ NZ Technology Group “Response to Commission 111 contact code – Draft code – 11 March 2020” (22 May 2020) pg 2.

³⁵ Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) para 27.

³⁶ TCF “Submission on the Commerce Commission’s Draft 111 Contact Code and Draft Decisions and Reasons Paper” (July 2020) para 3.5.

“particular risk” refers to one or more of the below criteria for which a consumer may be considered a vulnerable consumer at greater risk of needing to call 111 than the general public:

- A medical condition (e.g. physical, mental health, disability); or
- Safety and/or security concerns (e.g. protection orders).

41. The submissions indicate a desire from stakeholders for additional clarity around the definition of “at particular risk”. We have therefore decided to further define the term and make changes to the process for a consumer to demonstrate they are a vulnerable consumer. In our view, these changes ensure that stakeholders, including consumers, can assess with greater certainty whether a consumer is at particular risk of requiring the 111 emergency service, while balancing the need for a clear, simple process for consumers to follow.
42. The Code now defines a consumer who is “at particular risk of requiring the 111 emergency service” as a consumer “who is more likely than other consumers to require the 111 emergency service because of a specific circumstance applicable to that consumer”.
43. The process we have prescribed for a consumer to demonstrate that they are a vulnerable consumer requires them to state which of three categories most closely relates to the specific circumstance that means the consumer is (or will become) at particular risk. The three categories are:
 - 43.1 Health (for example, the specific circumstance is a known medical condition);
 - 43.2 Safety (for example, the specific circumstance is family violence); or
 - 43.3 Disability (for example, the specific circumstance is sensory impairment, intellectual impairment, physical impairment).
44. The process for a consumer to demonstrate that they are a vulnerable consumer is discussed further in this Reasons Paper at paragraphs 107 to 140.
45. Our view is that the further definition of the term “at particular risk” and the changes to the process are consistent with Parliament’s intention for the Code and the requirements of s 238 of the Act. We note:
 - 45.1 the Act gives the example of someone who is at particular risk, ie, someone who has a “known medical condition”. This example indicates that a person must have a condition or circumstance that makes that person more likely to require the 111 emergency service. Furthermore, the categories of health, safety and disability are of a similar nature to the example given;
 - 45.2 the focus on health, safety and disability reflects the emergency services that are able to be requested through the 111 service;

- 45.3 the definition, and the process for demonstrating that a consumer is a vulnerable consumer, are consistent with the legislative history of the Act. In particular, the history shows that Parliament was predominantly concerned about health as a reason for someone to be at particular risk;³⁷ and
- 45.4 the definition does not narrow or limit Limb 2 of the statutory definition of vulnerable consumer.
46. Rural Women New Zealand submitted that the definition of “vulnerable consumer” should “impel the inclusion of New Zealanders living in rural areas”. It said that, “[d]ue to the remoteness and intermittent network, access to healthcare amenities are becoming difficult in rural areas, and it is pivotal for these individuals to be provided with equal services as any other citizen”.³⁸
47. Our view is that being located in a rural area is not, on its own, sufficient to be considered “at particular risk”. However, the definition of “at particular risk” that we have included in the final Code will mean that a rural consumer may be a vulnerable consumer, if they are more likely than other consumers to require the 111 emergency service because of a specific circumstance applicable to the consumer.

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

48. 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.
49. The draft Code provided that a consumer must be deemed to have a means to contact the 111 emergency service if:
- 49.1 the consumer’s premises receives a copper landline service. The term “copper landline service” was 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; or
- 49.2 the consumer has unrestricted access to a mobile phone and that consumer’s premises has adequate mobile phone coverage.
50. In the Draft Reasons Paper, we explained that:³⁹
- 50.1 consumers using fibre, HFC cable or fixed wireless technologies for their landline service may be regarded as not having the means to contact 111 in a

³⁷ See, for example, Minister Fa’afoi during the third reading of the Telecommunications (New regulatory framework) Amendment Bill: “So they [vulnerable consumers] will have a battery backup or, potentially, a mobile phone provided by the RSPs so that if there is an emergency, predominantly around health, they will have the ability to call a 111 service”.

³⁸ Rural Women New Zealand “Re: Draft Commission 111 Contact Code” (17 July 2020) para 7.

³⁹ Draft Reasons Paper at paras 47-49.

power failure, as these technologies (absent a battery back-up) will not work in the event of a power failure at the consumer's premises. However, 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 back-up purchased by the consumer;

- 50.2 consumers using copper for their landline service should 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). This should be the case irrespective of whether a consumer uses a corded or cordless phone (cordless phones may not work in a power failure), since consumers receiving a copper landline service are on an access technology that continues to work in a power failure.
51. We received two submissions addressing the circumstances in which a consumer should be considered to have the means to contact the 111 emergency service:
 - 51.1 Spark agreed that a consumer that has a mobile phone and mobile coverage should be regarded as having the means to contact 111;⁴⁰
 - 51.2 Wireless Nation submitted that any person who resides within mobile coverage should be excluded from the coverage of the Code as it "can be reasonably expected that such a person already has a mobile phone or can reasonably be expected to buy a \$20 mobile phone from The Warehouse and even without SIM card can still make 111 calls".⁴¹
52. We disagree with Wireless Nation's submission, which would mean that no consumers who live within mobile coverage would be vulnerable consumers. Limb 3 of the vulnerable consumer definition is that the consumer "does not have a means for contacting the 111 emergency service". It does not ask whether the consumer could access a means to contact 111 if the consumer purchased the means, such as a mobile phone. We also note that a SIM card is required to contact 111, although the SIM card does not need to be active.
53. Our final decision therefore is to retain our approach set out in the draft Code in the final Code, as most submissions either did not address the matter or supported our approach. However, for clarity, we have also provided in the Code that an RSP will be entitled to treat a vulnerable consumer as having a means to contact 111 if the consumer has an uninterruptible power supply to maintain a means to contact 111 in a power failure.
54. As noted in the Draft Reasons Paper, we are concerned about low consumer awareness of which technologies work in a power failure, including whether cordless

⁴⁰ Spark NZ "111 Contact Code - Spark Submission" (17 July 2020) para 26.

⁴¹ Wireless Nation "Commission 111 contact code" (10 July 2020) pg 1.

phones and medical alarms work.⁴² We understand that there may be some confusion about which of the voice services provided over copper (ie, digital and analogue) will work in a power failure. To increase consumer awareness, the Code requires RSPs to inform consumers about which landline services will not work in a power failure, as discussed below in paragraphs 95 to 106.

Other relevant provisions

Process to make Code

55. 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. We consulted on a draft Code when we published the draft Code and Draft Reasons Paper on 11 March 2020 and invited submissions and cross-submissions.⁴³

Dispute resolution

56. Section 240 of the Act provides that the dispute resolution scheme for the Code is an industry dispute resolution scheme, which is currently the TDRS.⁴⁴ Sections 241 to 245 of the Act set out key rules that apply to disputes between a consumer and a telecommunications service provider.
57. We discuss dispute resolution in the Code later in this Reasons Paper at paragraphs 190 to 200.

Enforcement

58. 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”.
59. 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 \$300,000), or accepting an undertaking.⁴⁵
60. We discuss the relationship between enforcement and dispute resolution later in this Reasons Paper at paragraphs 201 to 203.

⁴² Draft Reasons Paper at para 50.

⁴³ Gazette Notices New Zealand “Process for making the Commerce Commission 111 Contact Code” (17 February 2020) is available at the following link: <https://gazette.govt.nz/notice/id/2020-au651>

⁴⁴ 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.

⁴⁵ 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.

Monitoring compliance

61. Section 9A of the Act was amended by the Amendment Act to provide that the Commission must monitor compliance with the Code, and must make available reports, summaries, and information about compliance with the Code.⁴⁶
62. Our duties under section 9A are separate to our duty to make the Code. However, as we discuss later in this Reasons Paper at paragraphs 207 to 216, we have included some limited information disclosure and record keeping requirements in the Code under section 238(4)(c), as we consider these requirements are necessary to achieve the purpose of the Code. These requirements will help us to monitor compliance with the Code, which will make the Code more effective by incentivising compliance.

Proportionality

63. Some submissions on the draft Code raised concerns about the costs that the Code would impose on RSPs. A particular concern was that the provision to vulnerable consumers of appropriate means to contact 111 would be costly, particularly if a battery back-up is commonly required.⁴⁷ Spark suggested that higher-cost battery back-up “will increase incentives on RSPs not to serve vulnerable consumers as the costs far outweigh revenues”.⁴⁸
64. WISPA NZ submitted that the Code, as a regulatory intervention, should be proportionate to the problem it seeks to address. WISPA NZ stated that the Commission had provided no evidence of any attempt to quantify the costs of the Code.⁴⁹
65. Our decisions on the Code are made primarily to promote the purpose of the Code, ie, 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.⁵⁰
66. However, in making our decisions, we have been mindful of the potential costs that RSPs will bear in meeting their obligations under the Code. Where it is particularly relevant, we explain in this Reasons Paper how we have considered the potential cost impact of our decisions.

⁴⁶ Section 9A(1)(c)-(d) of the Act,

⁴⁷ See, for example, Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) paras 65-73; Vodafone New Zealand “Submission on Draft 111 Contact Code” (17 July 2020) pg 4,5.

⁴⁸ Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) para 71.

⁴⁹ WISPA NZ “111 Contact Code Submission to the Commerce Commission in response to the Draft Code” (13 June 2020) paras 2.1-2.4.

⁵⁰ Section 238(1) of the Act.

Chapter 4 – Decisions and reasons for the Code

Overview

67. The structure of the Code largely reflects the matters that must be included in the Code under section 238 of the Act. Accordingly, the Code:
- 67.1 **specifies when the Code comes into force.** Most provisions of the Code come into force on 1 February 2021. The requirements relating to the provision of appropriate means to vulnerable consumers come into force on 1 August 2021;
 - 67.2 **specifies the telecommunications services to which the Code applies.** As we explain later, our decision is that the Code applies to retail landline services;
 - 67.3 **requires RSPs to inform all consumers about the options available for vulnerable consumers.** This requirement is about ensuring consumers have the right information available to them, including the limitations of new technologies, what steps they can take to protect themselves in the event of power cut, and information which will help consumers to understand whether they might be vulnerable and what to do if they think they are;
 - 67.4 **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;
 - 67.5 **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
 - 67.6 **provides that disputes between a consumer and an RSP about their rights and obligations under the Code may be referred to an industry dispute resolution scheme (currently the TDRS).**
68. However, the Code also includes additional provisions that we consider are necessary to meet the purpose of the Code:
- 68.1 **the 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 become a vulnerable consumer.** This is to ensure that RSPs continue to serve vulnerable consumers; and
 - 68.2 **to help us monitor compliance with the Code, the 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 and been accepted as a vulnerable consumer.

69. The rest of this chapter discusses each of these features of the Code in more detail and gives our reasons for the approach we have taken.

When the Code comes into force

70. Section 238(2) of the Act requires that the Code must be made before the “implementation date”. The implementation date is 1 January 2022.
71. Our final decision is that:
- 71.1 the requirements relating to the provision of an appropriate means to vulnerable consumers (in Section G of the Code) come into force on 1 August 2021; and
 - 71.2 the rest of the Code comes into force on 1 February 2021.⁵¹
72. It is a requirement of the CWC that the Code be in force before Chorus may withdraw a copper service. As such, Chorus will be able to withdraw copper services under the CWC from 1 August 2021 onwards, when the Code as a whole is in force.

Position in draft Code

73. The draft Code did not specify a date by which it would come into force.
74. However, we indicated in the Draft Reasons Paper that the final Code would be published and come into force in late June 2020.

Submissions

75. We received submissions from RSPs and the TCF that the commencement dates of the Code should ensure that RSPs have sufficient time to prepare to meet their obligations under the Code. For example:
- 75.1 Spark submitted that “[i]ndustry can only source solutions and put processes in place once the Code is finalised. Given the current economic climate and the challenge of sourcing equipment, we suggest a minimum of 12 months implementation lead time is needed for providers to source appropriate back-up solutions at the necessary scale, particularly as there is likely to be a large demand for devices when they are first made available”,⁵²
 - 75.2 The TCF suggested that there be three phases relating to the publication and coming into force of the Code – a publication date, commencement date (when the Code comes into force), and a date on which compliance must be achieved. The TCF recommended that the first two dates (publication and

⁵¹ See clause 1 of the Code.

⁵² Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) para 4.

commencement) could be the same or close together, while the date for achieving compliance could be longer;⁵³

75.3 Vodafone supported the TCF's submission and suggested that the requirements relating to the process for registering vulnerable consumers and for providing an appropriate means come into force 12 months after the publication of the Code.⁵⁴

76. On the other hand, Disabled Persons Assembly noted that "[d]isabled people are... at greater risk during a power cut or emergency if they cannot access emergency services" and supported the implementation of the Code "as soon as possible".⁵⁵

77. Chorus's submission focussed on the interrelationship between the Code and the CWC, ie, that it is a minimum requirement of the CWC that the Code be in force before Chorus can withdraw a copper service. Chorus was concerned to ensure that the commencement of the Code was not delayed such that the ability of Chorus to withdraw copper services under the CWC was pushed out. It suggested that, if there were to be a period between the publication of the Code and it coming into force, it should be no longer than six months.⁵⁶

Our decision and reasons

78. Our final decision is that:

78.1 the requirements relating to the provision of an appropriate means to vulnerable consumers (in Section G of the Code) come into force on 1 August 2021; and

78.2 the rest of the Code comes into force on 1 February 2021.

79. We consider that this decision balances the importance of having the Code in force in order to provide protections to vulnerable consumers (and to enable Chorus to withdraw copper services in compliance with the CWC), and the need for RSPs to have sufficient time to prepare to meet their obligations under the Code.

80. RSPs will have almost nine months from the publication of the Code to comply with the requirements relating to the provision of appropriate means. This is a significant period and, in our view, it will enable RSPs to assess the scale of vulnerable consumers in their customer base and to source solutions for those consumers. It will also ensure that vulnerable consumers start receiving the substantive protections of the Code before 1 January 2022, which is the latest date by which the Code must be in force.

⁵³ TCF "Submission on the Commerce Commission's Draft 111 Contact Code and Draft Decisions and Reasons Paper" (July 2020) paras 1.5-1.6.

⁵⁴ Vodafone New Zealand "Submission on Draft 111 Contact Code" (17 July 2020) pg 2.

⁵⁵ Disabled Persons Assembly "111 Contact Code – DPA Submission" (July 2020) pg 3.

⁵⁶ Chorus "Chorus submission on Draft Commission 111 Contact Code and Draft Decisions and Reasons Paper" (17 July 2020) paras 4-7.

81. RSPs will have almost three months to comply with the rest of the obligations in the Code. We consider that this will be sufficient time for RSPs to update their systems to comply with the key obligations such as providing information to consumers and setting up a process for consumers to demonstrate that they are vulnerable. It will benefit consumers to have at an early stage information about the Code – including that some landline services do not work in a power failure – and the options available to them to address this.
82. Finally, we note our decision on when the Code comes into force means that Chorus will be able to withdraw a copper service by complying with the CWC no earlier than 1 August 2021 (which is when the Code as a whole will be regarded as being in force). However, it will be open to Chorus to commence the copper withdrawal process (including by giving notice to a consumer of the proposed withdrawal of a copper service) sooner than 1 August 2021. Chorus could then withdraw a copper service on or after 1 August 2021, assuming the other requirements of the CWC are met.

Telecommunications services to which the Code applies

83. Section 238(3)(a) requires that the Code specify the telecommunications services to which it applies.
84. Our final decision is that the Code applies to retail landline services.⁵⁷ Landline services are voice services provided over fixed-line or fixed wireless access technologies.⁵⁸ Landline services includes analogue and digital voice services. This is the same as our decision for the draft Code.
85. In the following sections, we summarise our positions on this issue in the draft Code and the submissions received in response, and then give our reasons for specifying the telecommunications services to which the Code applies.

Positions in draft Code

86. The draft Code specified that it applied to “retail landline services”. The term “retail landline service” was defined as “a landline service provided to a consumer at a premises”, and excluded:
- 86.1 mobile services;
 - 86.2 naked broadband services (ie, a broadband service provided over a fixed-line or fixed wireless access technology that is provided without a voice service); and
 - 86.3 applications that provide voice services over broadband services (such as Skype).

⁵⁷ See clause 2 of the Code.

⁵⁸ See definition of ‘landline services’ in clause 4 of the Code.

Submissions

87. We received the following main submissions on our draft decision to specify that the Code applies to retail landline services:
- 87.1 Nova Energy supported our draft decision to exclude naked broadband services, mobile services and apps that provide voice services over broadband from the scope of “retail landline services” to which the Code applies;⁵⁹
- 87.2 The TCF agreed that the Code should apply to retail landline services, but submitted that it should be limited to residential retail landline services.⁶⁰ TCF contended that retail landline services to businesses (eg, a dairy) should not be included, as businesses are responsible for any vulnerable consumers residing at the premises being able to call 111. Spark made a similar submission.⁶¹

Our decision and reasons

88. We have decided to retain our draft decision. The Code applies to retail landline services because they are telecommunications 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:
- 88.1 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;
- 88.2 mobile services, as mobile phones continue to work in a power failure (assuming the battery is charged); and
- 88.3 apps that provide voice services over broadband (eg, Skype, WhatsApp), as we do not consider that the Code is intended to apply to these services.⁶²
89. The 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

⁵⁹ Nova Energy “Submission to the Commerce Commission: Draft 111 contact code” (17 July 2020) para 3a.

⁶⁰ TCF “Submission on the Commerce Commission’s Draft 111 Contact Code and Draft Decisions and Reasons Paper” (July 2020) paras 2.1, 2.2.

⁶¹ Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) para 37.

⁶² 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/>).

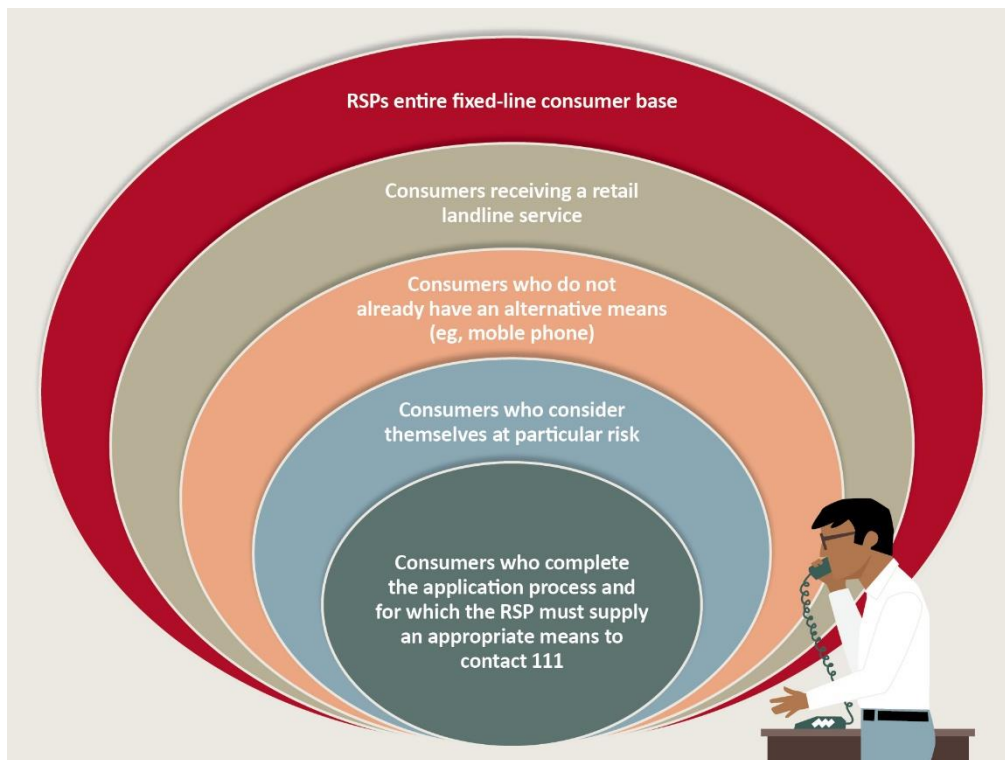
premises) and is affected by power failures, as is the case with traditional landline services over a fixed-line.

90. The Code applies to both analogue copper voice services and copper voice services over digital technologies. As mentioned at paragraph 54 above, we understand there may be some confusion for consumers on all copper voice services. Applying the 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.
91. We note, however, that the Code treats a consumer who is receiving a copper landline service as having a means for contacting 111 in a power failure, and so a consumer receiving this service will not qualify as a vulnerable consumer.⁶³
92. 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.
93. Finally, the Code applies to all retail landline services, irrespective of whether they are supplied to residential or business consumers. We therefore disagree with TCF and Spark, who submitted that retail landline services to business consumers should be excluded. We consider there are likely to be some small business consumers (eg, farms, dairies) which have vulnerable consumers residing on the premises, and this subset of vulnerable consumers should be entitled to the protection of the Code as others are. The impact of including business consumers is unlikely to be significant, as most business consumers will have the means to contact 111 in a power failure (eg, through an employee who has a mobile phone).
94. Figure 1 (on the next page) shows the subset of consumers that will be entitled to receive an appropriate means to contact 111, based on the Code applying to retail landline services.⁶⁴

⁶³ 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.

⁶⁴ Figure 1 is for illustrative purposes only. It does not accurately represent the actual proportions of consumers who are vulnerable consumers.

Figure 1: Subset of consumers entitled to receive appropriate means



Requirement to inform all consumers about options available to vulnerable consumers

95. The Code must require the providers of specified telecommunications services to inform all consumers about the options available for vulnerable consumers.⁶⁵
96. We have included several obligations in the 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.⁶⁶

Positions in draft Code

97. The draft Code prescribed certain information that RSPs must provide to consumers in certain situations.
98. In summary, the draft Code required RSPs to provide the following information to all consumers:
 - 98.1 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;

⁶⁵ Section 238(3)(b) of the Act.

⁶⁶ See clauses 5-8 of the Code.

- 98.2 an overview of the Code, including RSPs' obligation to supply appropriate means to vulnerable consumers to contact 111;
 - 98.3 information about how consumers can apply to the RSP to be a vulnerable consumer; and
 - 98.4 an overview of consumers' rights to take disputes relating to the Code to an industry dispute resolution scheme.
99. The draft Code required RSPs to provide the above information in the following situations:
- 99.1 on their website and through customer service representatives over the phone or in retail stores;
 - 99.2 to all customers of a retail landline service within one month of the Code coming into force and at least once a year thereafter;
 - 99.3 to all customers of a retail landline service when:
 - 99.3.1 the customer first contracts with the provider for the retail landline service;
 - 99.3.2 the customer switches between telecommunications technologies with the provider; and
 - 99.3.3 the customer switches between telecommunications services with the provider.
100. The draft Code also required RSPs to advise all 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.

Submissions

101. We received the following main submissions on the requirement to inform consumers:
- 101.1 Consumer feedback generally supported the requirement that RSPs provide information about which landline technologies will not work in a power failure, and what back-up options are available to consumers. Consumer feedback was that the information should be accessible, such as being available in different languages and through different channels such as over the phone;⁶⁷
 - 101.2 Grey Power NZ Federation (Grey Power) generally agreed with the provisions in the draft Code relating to the provision of information to consumers. Grey

⁶⁷ Commerce Commission "Summary of consumer feedback on the draft 111 Contact Code" (6 August 2020) pg 6.

Power agreed that the information should be available over the phone (with customer service representatives) and at retail stores, in addition to on RSPs' websites. This is because, according to Grey Power, approximately 50% of people 85 years old do not use digital technology;⁶⁸

101.3 The Association of Blind Citizens of New Zealand (Blind Citizens NZ) was concerned to ensure that consumers have adequate access to information, especially blind people and others in society who rely on assistive technologies and devices to independently access information. Blind Citizens NZ submitted that RSPs "must provide evidence of actual engagement with the customer in their preferred format, as opposed to generic announcements or communications".⁶⁹ Blind Citizens NZ emphasised the need for website material to be accessible, including by meeting the New Zealand Government Web Standards;⁷⁰

101.4 The TCF and Spark suggested that the level of information to be provided to consumers under the draft Code could be overwhelming. They both submitted that RSPs should be required only to inform consumers of the existence of the Code plus a summary of it. Full information could then be provided to consumers who ask for it.⁷¹ The TCF suggested a number of ways to reduce the occasions on which information is provided to consumers.⁷² For example, the TCF suggested that RSPs have the option of whether to provide the information in the circumstances listed in clause 8 of the draft Code, rather than it being mandatory;

101.5 The TCF submitted that clause 6.8.2 of the draft Code, which obliges RSPs to inform consumers that they can complain to the Commission about compliance with the Code, is a confusing message for consumers because it does not support the intention of the Act that disputes are referred to the TDRS;⁷³

101.6 Spark submitted that it should be able to communicate with its customers according to each customer's notification preference. For example, some customers have a stated preference for email.⁷⁴

⁶⁸ Grey Power "Submission to the Commerce Commission on the draft 111 contact code" (5 July 2020) paras 3.2,3.3.

⁶⁹ Association of Blind Citizens of New Zealand Inc "Submission in response to the Draft 111 Contact Code" (July 2020) para 4.3.

⁷⁰ <https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/>

⁷¹ TCF "Submission on the Commerce Commission's Draft 111 Contact Code and Draft Decisions and Reasons Paper" (July 2020) para 4.3; Spark NZ "111 Contact Code - Spark Submission" (17 July 2020) para 101.

⁷² TCF "Submission on the Commerce Commission's Draft 111 Contact Code and Draft Decisions and Reasons Paper" (July 2020) paras 4.4-4.8.

⁷³ TCF "Submission on the Commerce Commission's Draft 111 Contact Code and Draft Decisions and Reasons Paper" (July 2020) para 8.8.

⁷⁴ Spark NZ "111 Contact Code - Spark Submission" (17 July 2020) para 102.

Our decision and reasons

102. For the final Code, we have largely retained the provisions in the draft Code relating to the provision of information to all consumers, subject to the key changes detailed below.⁷⁵
- 102.1 In relation to the requirement to provide the information on the RSP's website, we have specified that this should be presented in a manner consistent with the Government Web Standards. This will ensure the information is accessible, particularly to those who may be vulnerable consumers.⁷⁶
- 102.2 In relation to the requirement to provide the information directly to each customer at least once per year, we have specified that such provision is to be via the customer's preferred method of contact or, if that is not known, in writing. This will help to ensure that the customer receives the information.
- 102.3 In relation to the requirement to provide the information when the customer switches between telecommunications technologies or services with the RSP, we have clarified that this includes any such change which means that the technology or service will not work in a power failure (eg, a change of the provision of a copper-based landline service from analogue to digital, such as VoIP).
- 102.4 We have retained the requirement that RSPs must inform consumers that they may complain to the Commission about compliance with the Code. However, the information must state that the industry dispute resolution scheme is the primary method of addressing disputes.
103. The set of information that RSPs must provide to all consumers remains broadly the same. 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:
- 103.1 whether their landline service will work in a power failure. This will help to address our concern, discussed at paragraph 54 of this Reasons Paper, that consumer awareness of which technologies work in a power failure is low;
- 103.2 what options are available to them if they consider they may be a vulnerable consumer; and
- 103.3 what to do if they have a dispute in relation to the Code.
104. The requirement on RSPs to provide the information in the situations outlined at clause 7 of the Code is intended to ensure that consumers do in fact receive the information. Consumers generally receive many communications from businesses

⁷⁵ These are the provisions in Part E of the Code.

⁷⁶ See clause 7.1 of the Code.

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.

105. We have not accepted the TCF and Spark's submissions that RSPs be required only to provide a summary of the Code, and to give further information to consumers if they request it. Nor have we accepted the TCF's submission that RSPs should have discretion over the circumstances in which to provide the information. Our view is that the information the Code requires to be communicated is important information, as it relates to access to emergency services. The obligations that the Code imposes on RSPs are necessary to ensure that consumers will, in fact, receive the information, and that the information is sufficient for consumers to understand their options and what action they may need to take.
106. In prescribing these requirements in the 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

107. The 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.⁷⁷
108. Below we set out our positions in the draft Code, the submissions we received on the draft Code, and our final decisions on the process for a consumer to demonstrate they are a vulnerable consumer.

Positions in draft Code

109. The key features in the draft Code of the process for a consumer to demonstrate they are a vulnerable consumer were as follows:
 - 109.1 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;
 - 109.2 An RSP must accept an application from a consumer if the consumer:
 - 109.2.1 is a consumer of a specified telecommunications service;
 - 109.2.2 is at particular risk of requiring the 111 emergency service; and
 - 109.2.3 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.

⁷⁷ Section 238(3)(c) of the Act.

109.3 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 was defined in the draft Code as either:

109.3.1a completed application form which is certified by a person with standing in the community (eg, registered professional, religious or community leader);⁷⁸ or

109.3.2a copy of a completed Notice of Potential Medically Dependent Consumer Status form (including the certification from the DHB/private hospital/GP).⁷⁹

110. The draft Code also provided that an RSP is permitted to regard a consumer as no longer being a vulnerable consumer in certain situations, in order to reflect that the circumstances of a vulnerable consumer may change over time. This included a provision which permitted an RSP to request a vulnerable consumer to have their “at particular risk” status re-certified once every 12 months. If no re-certification was provided, the RSP could treat the consumer as no longer being vulnerable.
111. Section 238(4)(a) provides that the Code may specify classes of people that must be considered vulnerable consumers. The draft Code did not specify any such classes of people.

Submissions

112. Consumer feedback on our draft decisions emphasised the need for a process which was not unduly onerous for consumers. Some felt that the requirement for someone to certify that the consumer is at particular risk would be a barrier. Others were concerned that the process could be difficult for especially vulnerable consumers who might struggle to access information or help.⁸⁰
113. Consumer NZ was concerned that the Code “places the onus on consumers to identify themselves as vulnerable and make an application to their provider with supporting evidence” and noted that vulnerable consumers may not identify themselves as such nor be in the best position to make an application. Consumer NZ suggested that RSPs should be required to take steps to identify potentially vulnerable consumers.⁸¹

⁷⁸ The draft Code 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.

⁷⁹ 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/>.

⁸⁰ Commerce Commission “Summary of consumer feedback on the draft 111 Contact Code” (6 August 2020) pg 6.

⁸¹ Consumer NZ “Submission on draft 111 Contact Code and draft Copper Withdrawal Code” (14 July 2020) pg 1.

114. Blind Citizens NZ submitted that the process should not require certification. It said that the requirement for certification “encroaches on the person’s right to self-identify their status as being at greater risk of needing to call 111, and takes the matter out of their hands”. Blind Citizens NZ was also concerned that RSPs would not make the process accessible to blind people, and this might mean their “independence is stripped away because they must then ask someone else (sighted family, friend, unknown professional / stranger), to complete the form on their behalf”.⁸²
115. RSPs generally agreed that they are not in the best position to assess whether a person is at particular risk of requiring the 111 emergency service. Spark said an approach that required RSPs to make such a judgement “is likely to result in errors and require the customer to share particularly personal information with their provider”.⁸³ The TCF submitted that “[t]he industry agrees that it is not best placed to determine whether a person is at particular risk, and there is value in the Commission’s approach of allowing persons of standing to assist with that process”.⁸⁴
116. Several submissions addressed the matter of who should be able to certify whether someone is at particular risk:
- 116.1 RSPs generally considered that the list of “persons of standing” was too broad. For example, Vodafone submitted that “the Code should only allow qualified medical personal to attest whether a vulnerable customer requires a specific means to contact emergency service”;⁸⁵
- 116.2 The TCF submitted that the “list of persons of standing should be reduced to those who would be expected to have knowledge of the circumstances which give rise to the particular risk the consumer faces”;⁸⁶
- 116.3 Some consumers wanted a broader list of who should be able to certify, including family members. However, other consumers were concerned that the list of persons of standing included categories of people that were not qualified to assess vulnerability.⁸⁷
117. New Zealand Technology Group submitted that “RSPs must have the ability to review a consumer’s vulnerability claim and provide contrary evidence where such evidence

⁸² Association of Blind Citizens of New Zealand Inc “Submission in response to the Draft 111 Contact Code” (July 2020) paras 5.4-5.6.

⁸³ Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) para 41.

⁸⁴ TCF “Submission on the Commerce Commission’s Draft 111 Contact Code and Draft Decisions and Reasons Paper” (July 2020) para 3.9.

⁸⁵ Vodafone New Zealand “Submission on Draft 111 Contact Code” (17 July 2020) pg 6.

⁸⁶ TCF “Submission on the Commerce Commission’s Draft 111 Contact Code and Draft Decisions and Reasons Paper” (July 2020) para 3.9.

⁸⁷ Commerce Commission “Summary of consumer feedback on the draft 111 Contact Code” (6 August 2020) pg 6.

has been collected, and have the discretion to disqualify consumers from vulnerable status”.⁸⁸

118. Consumer feedback was strongly against the requirement that vulnerable consumers have their status re-certified every 12 months (if the RSP requested it). They generally considered that a vulnerable consumer should hold that status until they opt out.⁸⁹ On the other hand, Vodafone supported the requirement, as it considered that it would “ensure that resources are being directed to where they will deliver the most benefit”.⁹⁰

Our decision and reasons

119. We set out below the key features of the process for a consumer to demonstrate that they are vulnerable in the final Code (see also Figure 2).

⁸⁸ NZ Technology Group “Response to Commission 111 contact code – Draft code – 11 March 2020” (22 May 2020) pg 2.

⁸⁹ Commerce Commission “Summary of consumer feedback on the draft 111 Contact Code” (6 August 2020) pg 6.

⁹⁰ Vodafone New Zealand “Cross-submission on Draft 111 Contact Code” (17 July 2020) pg 4.

Figure 2: Process for a consumer to demonstrate they are a vulnerable consumer

Process for a consumer to demonstrate they are a vulnerable consumer



Who is the process for?

To be eligible under the Code, the consumer must:

- 1 Be a consumer of a retail landline service **AND** 2 Not have a means to contact 111 in a power failure. eg. access to a mobile phone or a suitable medical alarm **AND** 3 Be at particular risk of requiring the 111 emergency service



The process to demonstrate vulnerability

RSP must make a process available for a consumer (or someone on their behalf) to apply to demonstrate they are (or will become) a vulnerable consumer



The application must include:

- The consumer's details
- The category that most closely relates to specific circumstance that applies to the consumer:
 - Health, • Safety, or • Disability
- Whether the circumstance applying to the consumer is permanent or temporary
- A declaration that the consumer is at particular risk of requiring the 111 emergency service and does not have a means to contact 111 in a power failure



The consumer must then provide either:



The details of a nominated person who the provider can contact to verify the consumer is (or will become) at particular risk

OR



Sufficient evidence to support that the consumer is (or will become) at particular risk of requiring the 111 emergency service

Once the application has been submitted

Once the RSP has received a complete application, the RSP has 10 working days to accept or decline the application



If the application is **accepted**

The RSP must:

- 1 Confirm to the consumer that they are now a vulnerable consumer of the RSP
- 2 Advise that the next step in the process is to provide the consumer with an appropriate means to contact 111
- 3 Provide an overview of the dispute resolution process available under the Code



If the application is **declined**

The RSP must:

- 1 State the grounds for declining the application
- 2 Advise that, if the consumer disagrees with the RSP's decision to decline the application, they may refer a dispute to the industry dispute resolution scheme



If circumstances change, the vulnerable consumer has a responsibility to inform their RSP if they think they may no longer be a vulnerable consumer.

Key features of the process

120. First, the Code requires each RSP to make available a process for a consumer, or someone on their behalf, to apply to the provider to demonstrate that a consumer is (or will become) a vulnerable consumer. The Code specifies some general requirements for the process, such that it must be accessible to consumers and that the process is not unreasonably difficult for a consumer to fulfil.⁹¹
121. Second, the Code provides that an application by a consumer (or someone on their behalf) to a provider must be treated as complete by the provider if it contains certain information as prescribed in the Code. The key information requirements are as follows:
 - 121.1 the consumer's details;
 - 121.2 which of the following categories most closely relates to the specific circumstance of the consumer that means that consumer is (or will become) at particular risk of requiring the 111 emergency service: health, safety or disability. The application must also include:
 - 121.2.1 whether the specific circumstance of the consumer is temporary or permanent; and
 - 121.2.2 if the specific circumstance of the consumer is temporary, the estimated period of time the specific circumstance will apply to the consumer;
 - 121.3 either:
 - 121.3.1 the details of a nominated person (including name, contact details and occupation) the provider may contact to verify that the consumer is (or will become) at particular risk of requiring the 111 emergency service. A nominated person is someone who, by virtue of their occupation, is competent to give an opinion on whether the consumer is at particular risk of requiring the 111 emergency service. The consumer (or the person applying on behalf of the consumer) must give authorisation to the RSP to contact and discuss with the nominated person whether the consumer is at particular risk; or
 - 121.3.2 sufficient evidence to support that the consumer is (or will become) at particular risk of requiring the 111 emergency service. The Code gives examples of evidence that may be sufficient (such as a letter from a health practitioner); and
 - 121.4 certain declarations by the consumer (or the person applying on behalf of the consumer), including that the consumer who is the subject of the application:

⁹¹ See clauses 11-24 of the Code.

121.4.1 is (or will become) at particular risk of requiring the 111 emergency service; and

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

122. Third, the Code sets out how RSPs must treat a complete application once it has been received. The key features of this process are as follows:

122.1 Once an RSP has received a complete application, the RSP must decide whether to accept or decline the application, and communicate that decision to the consumer, within ten working days;

122.2 An RSP may decline an application only on one or more of the following grounds:

122.2.1 the consumer is not a consumer of a retail landline service;

122.2.2 if the consumer's application chooses the option of providing details of a nominated person:

(a) the nominated person is not competent to give an opinion on whether the consumer is at particular risk of requiring the 111 emergency service;

(b) the nominated person considers that the consumer is not (or will not become) at particular risk of requiring the 111 emergency service; or

(c) the RSP has not been able to contact the nominated person despite all reasonable efforts to do so;

122.2.3 If the consumer's application chooses the option of providing evidence, the evidence is insufficient to show that the consumer is (or will become) at particular risk of requiring the 111 emergency service. However, the RSP may decline on this ground only if it has made reasonable efforts to assist the consumer to remedy the insufficiency of the evidence;

122.2.4 The consumer has a means to contact the 111 emergency service that can be operated for the minimum period in the event of a power failure.

123. Fourth, when the RSP communicates its decision to accept or decline the application, it must inform the consumer of certain things:

123.1 If the application is accepted, the RSP must:

123.1.1 confirm to the consumer that they are now a vulnerable consumer of the RSP;

123.1.2 advise that the next step in the process is to provide the consumer with an appropriate means to contact the 111 emergency service in the event of a power failure; and

123.1.3 provide an overview of the dispute resolution process available under the Code;

123.2 If the application is declined, the RSP must;

123.2.1 state the ground(s) for declining the application, and give sufficient additional detail to enable the consumer to understand why the application has been declined on that ground;

123.2.2 advise the consumer that, if the consumer disputes the RSP's decision to decline the application, they may refer a dispute to an industry dispute resolution scheme.

Changes from the draft Code

124. The process outlined above is different to the process set out in the draft Code. We set out the key differences below and explain why we have made the changes.
125. First, the way in which a consumer demonstrates that they are at particular risk of requiring the 111 emergency services has changed. In the draft Code, a consumer was required to complete an application form and have a person of standing in the community certify that the consumer is at particular risk. The consumer was not required to state a reason for being at particular risk.
126. The final Code requires the consumer to state which category – health, safety or disability – most closely relates to the specific circumstance of the consumer that means that consumer is (or will become) at particular risk.
127. Instead of having a person of standing in the community certify, a consumer must provide either the details of a nominated person or evidence to support that they are at particular risk. We made this change because it is likely to be a lower-cost option for consumers to meet than having a person certify, which may involve a charge to the consumer. Having the option of providing evidence also gives consumers an additional way to show that they are a vulnerable consumer. These changes respond to submissions from consumers that were concerned that the requirement for certification would act as a barrier. Finally, RSPs generally submitted that they did not wish to make the judgement of who is at particular risk, and this process retains that feature.
128. Second, the nominated person must be someone who, by virtue of their occupation, is competent to give an opinion on whether the consumer is at particular risk of requiring the 111 emergency service. This is different to the draft Code, which had a broad definition of persons of standing in the community that could certify that a consumer is at particular risk. This change responds to submissions that the person certifying should have requisite knowledge of the circumstances which give rise to the particular risk the consumer faces.

129. Third, the draft Code provided that a consumer was deemed to be at particular risk if they met the requirements of submitting an application and had a person of standing certify that they are at particular risk. This deeming provision has been removed from the Code, which instead circumscribes the grounds on which an RSP can decline an application. We consider that RSPs should have some ability to decline an application, but that this must be limited to legitimate grounds. Consumers will retain the right to take a dispute to an industry dispute resolution scheme if they disagree with the RSP's decision.
130. Fourth, to ensure that RSPs make the decision to accept or decline in timely manner, we have specified that the decision must be made, and communicated to the consumer, within ten working days of receiving a complete application. As discussed above, the Code requires RSPs to treat an application as complete if it contains the information prescribed in the Code. The Code requires RSPs to provide a written application form for a consumer to use that requests the prescribed information.
131. Fifth, the Code provides that a consumer's application can be provided to a provider in any reasonable manner or form (eg, by phone call, by email, in large print). This responds to consumer concerns that the application process should be accessible, including to those consumers who may have difficulty applying in writing.
132. We consider that these changes will ensure that the barriers to a consumer demonstrating that they are a vulnerable consumer are appropriately low, while ensuring that there are sufficient checks and balances in the process.
133. Finally, we have not placed an obligation on RSPs to take steps to identify vulnerable consumers, as suggested by Consumer NZ. We consider that RSPs are unlikely to have access to the necessary information about consumers to accurately identify potentially vulnerable consumers. However, the Code requires RSPs to provide key information to consumers at different contact points, and this should ensure that consumers are aware of the Code and the protections it offers to vulnerable consumers.

Change in circumstances

134. As we set out above, consumers were strongly concerned about the ability under the draft Code for RSPs to request every 12 months that a consumer have their "at particular risk" status re-certified. An RSP could remove a consumer from their register of vulnerable consumers if the consumer did not submit the re-certification.
135. In response to these submissions, we have made changes to the Code which narrow the scope of this re-certification process. A consumer's application must now state whether the specific circumstance that makes the consumer at particular risk applies to the consumer on a temporary basis and, if so, the estimated period the specific circumstance will apply to the consumer. An RSP may request the consumer to re-submit their application at the expiry of the estimated time that the specific circumstance applies to the consumer. If the consumer does not re-submit their application, the RSP will be entitled to regard the consumer as no longer being a vulnerable consumer.

136. The Code also sets out the following other circumstances in which an RSP is permitted to regard a consumer as no longer being a vulnerable consumer:
- 136.1 where a consumer (or someone on their behalf) requests that they no longer be regarded as a vulnerable consumer;
 - 136.2 where a consumer no longer resides at the premises to which the retail landline service was supplied when the consumer submitted their application to be a vulnerable consumer to the provider;
 - 136.3 where a consumer obtains (by a manner other than their provider under this Code) a means for contacting the 111 emergency service at their premises that can be operated for the minimum period in the event of a power failure.
137. Finally, under the Code, vulnerable consumers have a responsibility to inform their RSP if they think they are no longer a vulnerable consumer.
138. Overall, we consider that these provisions will ensure that, where a consumer's circumstances change such that they are no longer vulnerable, there are pathways under the Code for RSPs to no longer consider the consumer to be a vulnerable consumer.

Classes of people that must be considered vulnerable consumers

139. Submissions did not generally address our draft decision not to specify classes of people that must be considered vulnerable consumers. We have therefore retained our decision in the final Code.
140. The provisions in the 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

141. 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:
- 141.1 first, the provider must supply *appropriate means to contact the 111 emergency service*;
 - 141.2 second, the appropriate means must be provided *at no cost to the consumer*; and
 - 141.3 third, the means to contact 111 supplied *must be able to be operated for the minimum period in the event of a power failure*.
142. In the sections that follow we consider each of these components.

Appropriate means to contact 111

143. Section 238(4)(b) provides that we may specify appropriate means for vulnerable consumers, or persons on their behalf, to contact emergency services. Our decision is that we will not specify particular solutions that are appropriate means.
144. Rather, the 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 147.
145. The Code also:
 - 145.1 provides that an RSP is required to provide only one means per premises for contacting the 111 emergency services;⁹² and
 - 145.2 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 draft Code

146. The draft Code did not specify particular solutions that are appropriate means.
147. However, the draft Code prescribed the following principles which RSPs must follow when deciding what appropriate means to contact 111 they will provide to a vulnerable consumer:
 - 147.1 the means supplied must be appropriate for the specific circumstances of a vulnerable consumer (eg, the consumer's physical, mental or technical capabilities);
 - 147.2 the RSP must supply the means as soon as reasonably practicable following acceptance of the consumer's application to be a vulnerable consumer;
 - 147.3 the means must be able to be operated at the consumer's premises for the minimum period in the event of a power failure;
 - 147.4 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
 - 147.5 the RSP must supply clear instructions and guidance on how to operate the means and who to contact if there are any issues.

Submissions

148. We received the following main submissions on the subject of appropriate means to contact 111:

⁹² See clauses 31-32 of the Code.

- 148.1 Consumer feedback generally agreed that the means to contact 111 supplied by the RSP should match the consumer’s needs. There was some concern that many consumers would be given a mobile phone that they might struggle to use or a solution that would be difficult to maintain. Consumers generally wanted RSPs to explain to the consumer how to use the means provided and the maintenance required;⁹³
- 148.2 Spark and Vodafone both submitted that they would take a “mobile first” approach to supplying an appropriate means.⁹⁴ This was allied to concerns that the provision of battery back-up is costly. Spark submitted that battery back-up should be a “last resort solution”, citing a number of issues that it said makes battery back-up “complex, cumbersome and costly”.⁹⁵ Spark also submitted that the Code should make clear that the discretion for the type of solution provided should lie with the RSP;⁹⁶
- 148.3 Chorus submitted that RSPs should not be required to provide a back-up service that is easier to use than a landline phone (being the ordinary method of calling 111). Chorus also considered that battery back-up should be a “last resort”, “because there are greater challenges in terms of safety, installation and maintaining the solution given the unavoidable degradation of battery-life over time”;⁹⁷
- 148.4 The TCF submitted that an appropriate means should be provided at reasonable cost to the provider, should not be required to go beyond what the customer currently receives, should be selected by the provider, and should be the most efficient solution that is suitable.⁹⁸ It also stated that a consumer should not be able to choose a different solution than that offered by the providers, “just out of preference”.

Our decision and reasons

149. Our decision is to retain the approach in the draft Code, as summarised above in paragraphs 146 to 147.⁹⁹
150. We consider that an approach where RSPs have some flexibility to choose the means they supply to a vulnerable consumer, subject to meeting key principles, better meets the purpose of the Code than an approach that specifies particular means that are appropriate. This is because the statutory requirement is to provide *appropriate* means, and what is appropriate will depend on the circumstances of each vulnerable consumer.

⁹³ Commerce Commission “Summary of consumer feedback on the draft 111 Contact Code” (6 August 2020) pg 6.

⁹⁴ Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) paras 58-64; Vodafone New Zealand “Submission on Draft 111 Contact Code” (17 July 2020) pg 6.

⁹⁵ Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) paras 65-73.

⁹⁶ Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) para 57.

⁹⁷ Chorus “Chorus submission on Draft Commission 111 Contact Code and Draft decisions and reasons paper” (17 July 2020) paras 13-14.

⁹⁸ TCF “Submission on the Commerce Commission’s Draft 111 Contact Code and Draft Decisions and Reasons Paper” (July 2020) paras 6.1-6.4.

⁹⁹ See clauses 25-29 of the Code.

151. A principles-based approach will enable RSPs to provide the most efficient and low-cost solution that meets the particular needs of a vulnerable consumer. It will also encourage RSPs to innovate to develop and source lower-cost, effective solutions.
152. There will be situations where a certain means will be appropriate for one vulnerable consumer, but not another. For example, for many 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 standard mobile phone (for instance, an elderly person because of technical difficulties), supplying a standard mobile phone will not meet the appropriate means requirement. Similarly, if mobile coverage at the vulnerable consumer's premises is patchy, a standard mobile phone is unlikely to be an appropriate means. On the other hand, where a person has dexterity issues, for example, a specialised mobile phone with larger buttons may be appropriate. As we note below in paragraph 192 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 an industry dispute resolution scheme.
153. In most cases, we anticipate that the provision of either a mobile phone or a battery back-up will likely meet the requirement to provide appropriate means. These are the means that were contemplated by Parliament when introducing the Code provisions.¹⁰⁰ However, RSPs may supply other means, as long as they meet the principles that are set out in the Code.
154. Some RSPs indicated that they intended to follow a "mobile first" strategy and suggested that a battery back-up would be a "last resort". To be clear, the obligations in the Code require the RSP to provide a means that is appropriate for the specific circumstances of a vulnerable consumer, taking into account in particular the consumer's physical, mental and technical capabilities. The circumstances of a vulnerable consumer must be assessed on a case-by-case basis. Forcing all consumers into a one-size-fits-all solution may risk breaching the Code.
155. Finally, the draft Code also:
- 155.1 provided that an RSP is required to provide only one means per premises for contacting the 111 emergency services;
- 155.2 required 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.
156. Rural Women supported the requirement that RSPs should be required to contact its vulnerable consumers at least once a year to ensure the means provided remains appropriate and functional.¹⁰¹ Otherwise, we did not receive any objections in submissions to the above provisions, and therefore have decided to retain the provisions in the Code.

¹⁰⁰ Minister Faafoi, 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."

¹⁰¹ Rural Women New Zealand "Re: Draft Commission 111 Contact Code" (17 July 2020) para 10.

No cost to the vulnerable consumer

157. 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.
158. The Code includes the requirement to provide the appropriate means at no cost to the consumer. The 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 draft Code

159. The draft Code:
- 159.1 included the requirement to provide the appropriate means at no cost to the consumer; and
 - 159.2 provided additional clarity about the scope of the no cost requirement, by specifying that a vulnerable consumer must not bear any costs relating to the supply of an appropriate means for contacting 111.

Submissions

160. Submissions were largely focussed on who should bear the cost for the provision of the appropriate means:
- 160.1 RSPs generally took the position that, while they should be responsible for providing back-up for their own equipment (such as residential gateway equipment), the network operator (such as a local fibre company) should bear the cost of backing up their equipment, such as an optical network terminal (ONT);¹⁰²
 - 160.2 Local fibre companies, including Chorus, supported the obligation in the draft Code on RSPs to provide the appropriate means, and therefore the practical implication that RSPs would bear the cost.¹⁰³
161. Nova Energy considered that the Code should have further clarity around the no cost requirement. For example, it suggested that the Code should state that the RSP is not required to cover the cost of electricity to charge a mobile phone that has been provided to a consumer.¹⁰⁴

Our decision and reasons

162. We have decided to retain the provisions in the draft Code for the final Code.¹⁰⁵

¹⁰² See, for example, Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) para 9.

¹⁰³ See, for example, Enable Networks Limited, Northpower Fibre Limited, Northpower Lfc2 Limited and Ultrafast Fibre Limited “Submission in the draft 111 Contact Code” (17 July 2020) para 2.1.

¹⁰⁴ Nova Energy “Submission to the Commerce Commission: Draft 111 contact code” (17 July 2020) paras 13, 14.

¹⁰⁵ See clause 30, 33-34 of the Code.

163. Except for Nova Energy, we did not receive any significant submissions on the requirement that the appropriate means must be provided at no cost, and the decision to provide additional clarity around the requirement. In response to Nova Energy, we consider that the provisions clarifying the no cost requirement are sufficiently clear and do not indicate that incidental costs such as the cost of electricity to charge a mobile phone are captured in the requirement.
164. In response to the submissions which were focussed on who should bear the costs of providing the appropriate means, we note that, under s 238(3)(d), 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.¹⁰⁶
165. Our view is that making different parties (ie, network operator or RSP) responsible for covering the cost of different parts of the solution provided to vulnerable consumers would introduce complexity, potentially give rise to disputes, and could result in customer confusion over who is ultimately responsible for the provision of the appropriate means.
166. We note the concerns of industry stakeholders about the costs of meeting the obligations in the Code. In formulating the approach for the 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 principles they must following in making that decision) will help RSPs to manage costs and incentivise them to seek out efficient solutions.

Specifying a minimum period

167. Under section 238(3)(c), we must specify the minimum period for which an appropriate means for contacting the 111 emergency service must be able to be operated.
168. Our final decision is that the minimum period be set at a period of eight continuous hours.
169. We have also set out in the Code how the minimum period requirement can be met where the means provided is reliant on the performance of a battery at the premises.

Positions in draft Code

170. The draft Code specified a minimum period of 12 continuous hours.

¹⁰⁶ We note that this is also consistent with the legislative history of the statutory provisions. For example, in the third reading of the Telecommunications (New Regulatory Framework) Bill, the Hon Kris Fa’aoi said: “It will also establish a specific Commerce Commission code that requires retail service providers (RSPs) to identify vulnerable consumers, based on criteria specified in the Supplementary Order Paper (SOP) introduced in the committee of the whole House stage relating, for example, to health conditions. It will also provide options such as battery backup or alternative emergency calling providers for these consumer... *the third criteria around retail service providers is to meet the expense of providing these options to vulnerable consumers*” [emphasis added].

Submissions

171. Submissions generally considered that the 12 hour period is too long:

171.1 The TCF submitted that the 12 hour period “is well beyond what could be considered reasonable. Researching the products on the market currently, and taking into consideration the types of power outages experienced in New Zealand, the TCF supports a minimum period set at two hours”. The TCF noted that power back-up for mobile phone towers or cabinets is no more than eight hours. The TCF also recommended that we carry out further analysis of power outages, and said that data the Commission used did not appear to be weighted against the number of customers;¹⁰⁷

171.2 Spark submitted that a two hour period would be consistent with the obligations in the United Kingdom and Australia;¹⁰⁸

171.3 Vodafone suggested that a battery back-up that could last for 12 hours would cost “thousands of dollars each”;¹⁰⁹

171.4 NZ Technology Group submitted that “the technology to provide continuous power for [12 hours] in a number of different scenarios may be scarce, prohibitively expensive and/or simply not practical”.¹¹⁰

172. However, two submissions indicated concerns that 12 hours may not be long enough:

172.1 Grey Power said that 12 hours may be suitable for urban areas, but noted that power outages can last much longer than that (eg, following the Christchurch earthquakes; in rural areas);¹¹¹

172.2 Sabre IT noted that power outages can last for days, rather than hours.¹¹²

173. Constant Vigil (a New Zealand supplier of battery back-up systems for fibre connections) submitted that one of its products “could achieve the 12 hour outage support requirement assuming batteries are new and charge rates/temperature are controlled to ensure best longevity”.¹¹³ However, Constant Vigil also noted that the battery is “the weakest piece of any back-up product”, with batteries degrading significantly over a two to three year period.

¹⁰⁷ TCF “Submission on the Commerce Commission’s Draft 111 Contact Code and Draft Decisions and Reasons Paper” (July 2020) paras 3.11-3.13

¹⁰⁸ Spark NZ “111 Contact Code - Spark Submission” (17 July 2020) para 86.

¹⁰⁹ Vodafone New Zealand “Submission on Draft 111 Contact Code” (17 July 2020) pg 4.

¹¹⁰ NZ technology Group “Response to Commission 111 contact code – Draft code – 11 March 2020” (22 May 2020) pg 1.

¹¹¹ Grey Power “Submission to the Commerce Commission on the draft 111 contact code” (5 July 2020) para 3.7

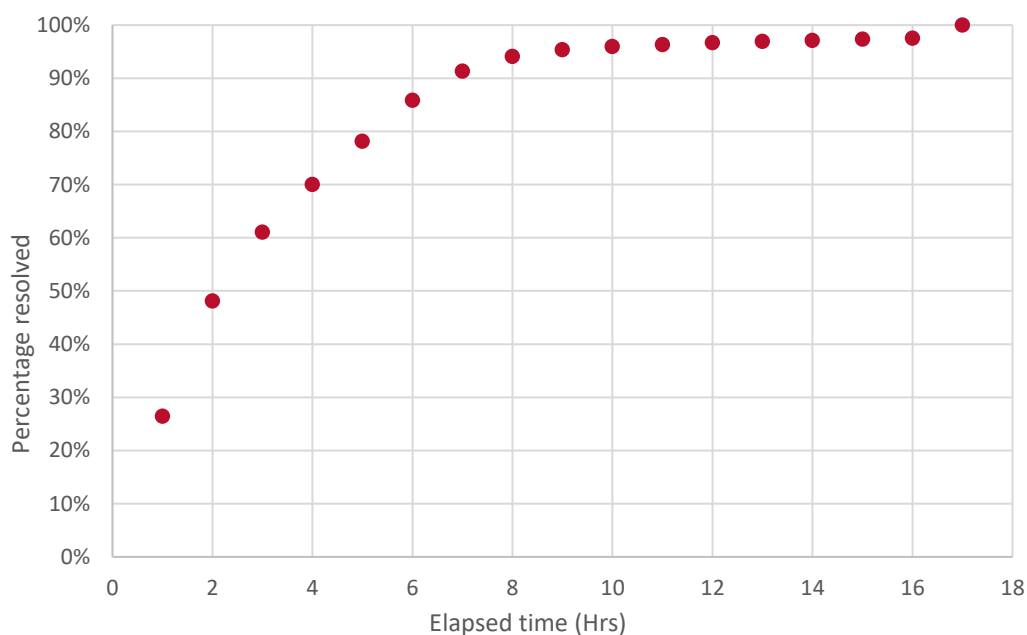
¹¹² Sabre IT “111 Contact Code Submission” (15 July 2020) observation 4 pg 3.

¹¹³ Constant Vigil “Submission on draft Commission 111 Contact Code”(15 July 2015) pg 2.

Our decision and reasons

174. Our final decision is to specify a minimum period of eight continuous hours. This is a change from our draft decision, which was for a period of 12 continuous hours.¹¹⁴
175. This means that the device supplied to the vulnerable consumer must be available to use to contact the 111 emergency service for an eight-hour period. It does not mean, however, that the device must be able to be actively used for eight hours.¹¹⁵
176. Our decision is based on balancing the interests of vulnerable consumers in having a means of contacting 111 that is available during power failures against the cost to RSPs of providing the means.
177. We have carried out further analysis of unplanned electricity outages in New Zealand.¹¹⁶ The results of that analysis – which is set out in Figure 3 below – show that, between zero and eight hours, the number of outages resolved increases significantly. At eight hours, most outages are resolved. This suggests that a means to contact 111 that can be operated for a minimum of eight hours would be sufficient to cover most power outages. Beyond eight hours, relatively few further outages are resolved, and the time taken to resolve those outages is lengthy.

Figure 3: Time taken to restoration of power



Source: Commerce Commission 2019¹¹⁷

¹¹⁴ See clause 4 of the Code.

¹¹⁵ Unifone submitted that a “minimum period of twelve continuous hours of emergency power is too long”: However, as we note above, the requirement is that the device supplied to the vulnerable consumer must be available to use to contact the 111 emergency service for an eight hour period. Unifone NZ Ltd “Submission on Draft Commission 111 contact code” (15 July 2020) para 2.2.

¹¹⁶ Based on electricity outage data over an 11-year period for 17 Electricity Distribution Businesses (EDBs) subject to information disclosure.

¹¹⁷ Electricity outage data over an 11-year period for 17 Electricity Distribution Businesses (EDBs) subject to information disclosure. Available at <https://comcom.govt.nz/regulated-industries/electricity-lines/projects/2020-2025-default-price-quality-path?target=documents&root=91370>

178. This analysis suggests that an eight-hour minimum period would be sufficient to ensure that vulnerable consumers have reasonable access to a means to contact 111 in a power failure.
179. We also conducted analysis to investigate the impact of weighting unplanned electricity outage events by the number of premises affected. The results of this analysis generally showed that weighting outage events resulted in shorter outage durations. For example, our analysis showed the 95th percentile outage experienced by a customer was 6 hours while the 95th percentile outage event was 13 hours long.
180. However, for the purposes of protecting vulnerable consumers under the Code we consider that unweighted outages (as used in Figure 3 above) are more appropriate than using outage durations weighted by number of premises affected. This is because we are seeking to ensure that vulnerable consumers across the country are protected appropriately. Weighted figures would skew the results towards shorter durations as (typically) urban areas will have shorter outages that affect many more people than areas that may have fewer people but may have longer outages. This would introduce a bias against vulnerable consumers living in more remote areas, who are likely to experience longer outages.
181. We note submitters' concerns about the costs of providing a battery back-up. We have assessed whether reasonable cost solutions are likely to be available to RSPs that are able to operate for a minimum of eight continuous hours. Our view is that there are.
182. We have considered typical battery performance characteristics, the likely in use loads for typical New Zealand RSP installations, and researched whether New Zealand and overseas suppliers can meet the requirements at a reasonable cost.
183. Constant Vigil, a New Zealand based company, offers products that can reasonably meet an eight-hour minimum period, and have a cost of around \$200 retail, depending on the required setup and battery requirements for the particular consumer.¹¹⁸ We have observed such devices are commonly used in similar installations in Australia and the United States.
184. While on an individual basis, these solutions are not inexpensive, we consider that the relatively low numbers of battery back-ups that are likely to be needed and the ability of RSPs to recover costs over their customer bases means the costs are reasonable in order to provide protection to vulnerable consumers.
185. Therefore, given the availability of reasonable cost solutions, and the need to ensure vulnerable consumers have reasonable access to a means to contact 111 in a power failure, we do not consider that a minimum period of less than 8 hours is justified.
186. We note Unifone's submission that many of its rural customers are supplied with a broadband service (which also provides a digital voice service, ie, VoIP) that relies on one or more intermediate repeaters to relay the broadband signal. Unifone was concerned that it would need to ensure that each of those repeaters would require a

¹¹⁸ Constant Vigil website (Nov 2020) - <https://www.constantvigil.com/battery-backup-products>

12 hour power back-up to comply with the Code.¹¹⁹ To clarify, the Code is concerned with a power failure at the consumer's premises, and not with power failures in telecommunications networks. As such, the requirement in the Code is that the means supplied to the vulnerable consumer be able to be operated at the consumer's premises for the minimum period.¹²⁰

187. Finally, we have not specified different minimum periods in relation to urban and rural customers, as the data available to us on power outages is not broken down into urban and rural categories.

How the minimum period requirement can be met where the means provided is reliant on a battery at the premises

188. A device that relies on a battery is likely to be provided to some vulnerable consumers by RSPs as an appropriate means to contact the 111 emergency service. However, as submissions noted, the battery-life of these devices tends to decrease over time.¹²¹ In light of this, we have set out in the Code how devices that rely on a battery at the premises can meet the requirement for the appropriate means to be able to be operated for the minimum period. The Code specifies that if the means that is supplied to a vulnerable consumer relies on the performance of a battery at the premises, the means must:

188.1 be able to operate for the minimum period when equipped with a new fully-charged battery;

188.2 be fitted with a battery health indicator, such as an alarm or visual indicator appropriate to the needs of the vulnerable consumer, to indicate when the battery needs to be recharged or replaced with a new battery; and

188.3 be replaced at least once every 36 months from the date the last means was installed. This will ensure that the battery retains sufficient life to power a device for a period close to the minimum period.¹²²

189. For clarity, we consider that a device that relies on a battery includes mobile phones and similar devices. Replacement can be either the device as a whole, or the battery that powers the device, so long as the replacement means the device will meet the requirements in the Code.

Dispute resolution

190. As we noted earlier in this Reasons Paper, section 240 of the Act provides that an industry dispute resolution scheme is the dispute resolution scheme for the Code.

¹¹⁹ Unifone NZ Ltd "Submission on Draft Commission 111 contact code" (15 July 2020) para 2.2.2.

¹²⁰ See clauses 27.3; 28-29 of the Code.

¹²¹ See, for example, Spark NZ "111 Contact Code - Spark Submission" (17 July 2020) para 71.

¹²² The submission of Constant Vigil notes that "[t]ypically lead-acid and lithium batteries can be expected to remain useful for 2-3 years". See Constant Vigil "Submission on draft Commission 111 Contact Code" (15 July 2015) pg 2.

The Code includes a provision to this effect. The current industry dispute resolution scheme is the TDRS.¹²³

191. The TDRS describes itself as “an independent body for the prompt, unbiased resolution of disputes”.¹²⁴ The TDRS has rules that govern disputes, and under section 245 of the Act all members of the TDRS and each party to a dispute must comply with those rules.¹²⁵
192. 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 an industry dispute resolution scheme by any of the parties to the dispute.
193. 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 Code provides that it is the customer that 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.
194. We have specified that it is the customer that refers the dispute because the determinations of an industry dispute resolution scheme are binding on the parties to the dispute, and those determinations could have an effect on the service that the customer has contracted for with the RSP.¹²⁶ 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. To avoid doubt, the Code also provides that a telecommunications service provider may refer a dispute to an industry dispute resolution scheme.
195. Section 241(2) provides that disputes that may be referred to the industry dispute resolution scheme include disputes about (among other things) “other matters provided for in the [Code]”. We have specified in the Code a number of disputes that can be referred to the industry dispute resolution scheme. However, this is not intended to be an exhaustive list of disputes that can be referred.
196. The draft Code included a provision that provided that a dispute may be referred to an industry dispute resolution scheme at any time after the dispute arises. The TCF submitted that this provision is inconsistent with the existing TDRS rules, which require that a customer must complain first to the provider. The TCF said that changes to the TDRS rules should not be forced through the Code, particularly as there is a mechanism in the Act to review the operation of the TDRS.¹²⁷

¹²³ The term “industry dispute resolution scheme” is defined in s 232 of the Act. Under that definition, the current scheme is the TDRS.

¹²⁴ See the TDRS website, accessible via the following link: <https://www.tdr.org.nz/about-tdr>.

¹²⁵ 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>.

¹²⁶ See sections 242-243 of the Act.

¹²⁷ TCF “Submission on the Commerce Commission’s Draft 111 Contact Code and Draft Decisions and Reasons Paper” (July 2020) paras 8.3-8.4.

197. We have decided to retain the provision that a dispute may be referred to an industry dispute resolution scheme at any time after the dispute arises. This decision is consistent with the Act, as s 241(1) creates a statutory right to refer a dispute to an industry dispute resolution scheme. The effect of the provision in the Code is to make clear that, as soon as a dispute has arisen, it may be referred to an industry dispute resolution scheme. Any provision of the Code or a TDRS rule which limited the statutory right by requiring a delay between the dispute arising and its referral would be inconsistent with the Act.
198. To provide further clarity, the Code provides that a dispute will have arisen where:
- 198.1 one party (either the customer or the provider) has communicated to the other party a disagreement in relation to the rights and obligations of one those parties under the Code; and
- 198.2 that disagreement is not resolved within five working days.¹²⁸
199. Providing for a five working day period following the communication of a disagreement gives RSPs a limited window within which to resolve the disagreement. We consider that this period balances the need for efficient dispute resolution for Code related disputes, while providing appropriate incentives for RSPs to resolve disagreements.
200. Finally, sections 242 to 245 of the Act deal with issues such as the enforceability of determinations by the industry dispute resolution scheme and appeals of those determinations and will apply to disputes under the Code. In particular, determinations by the industry dispute resolution scheme are binding on all parties to the dispute, although in certain circumstances a determination can be appealed to the District Court.¹²⁹ To avoid doubt, the Code provides that these sections of the Act (as well as s 241) apply to disputes under the Code.

Relationship with enforcement

201. As we noted earlier in this 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”.
202. The right of consumers and telecommunications service providers to refer Code disputes to the industry dispute resolution scheme 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.
203. 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

¹²⁸ See clauses 41-45 in the Code.

¹²⁹ Sections 242-243 of the Act.

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

204. The draft Code included a provision that prohibits RSPs from refusing 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.
205. We received one submission on this requirement. Spark submitted that the final Code should clarify that customers can still be disconnected for other issues according to the provider's standard processes (eg, for not paying their bills, fraudulent use).¹³⁰ We decided not to clarify this in the Code, as we consider that the scope of the prohibition in the existing provision is sufficiently clear.
206. We have otherwise retained the provision that prohibits RSPs from refusing 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. Our 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 have reasonable access to an appropriate means to contact 111 in a power failure would be undermined.¹³¹

Requirement on RSPs to disclose information and keep records

207. The draft Code included requirements on RSPs to disclose certain information and also to keep records. Our view was that these requirements would help to meet the purpose of the Code, as they would assist us to monitor compliance with the Code.
208. We received a submission from NZ Technology Group on our draft decision to require RSPs to disclose certain information in relation to the Code to the Commission. NZ Technology Group considered that it is unreasonable for the Commission to require RSPs to disclose its number of customers on a retail landline service.¹³²
209. In response to NZ Technology Group's submission, we think it is important for us to receive information on each RSP's retail landline customer base as it will help us to monitor compliance with the Code. For example, it will enable us to compare the proportion of each RSP's retail landline service customer base that are vulnerable consumers. We have therefore retained this information requirement.
210. We have also largely retained the approach to the disclosure of information that was set out in the draft Code. The Code includes a requirement on RSPs to disclose some

¹³⁰ Spark NZ "111 Contact Code - Spark Submission" (17 July 2020) para 105.

¹³¹ See clause 37 of the Code.

¹³² NZ Technology Group "Response to Commission 111 contact code – Draft code – 11 March 2020" (22 May 2020) pg 6.

limited information to the Commission each year no later than 30 November of each year. The information that RSPs must disclose are:

- 210.1 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 7, and supporting evidence. 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;
 - 210.2 a description of the process the provider has implemented for the purposes of satisfying the requirements in clause 11, and supporting evidence;
 - 210.3 the total number of vulnerable consumers the provider has (as at the last day of the disclosure year);
 - 210.4 the number of customers (ie customers of a retail landline service) the provider has (as at the last day of the disclosure year);
 - 210.5 the number of consumer applications declined by the RSP, broken down by what ground(s) the application was declined. This is additional to the requirements in the draft Code. We included this requirement as we consider it will help us monitor compliance with the Code;
 - 210.6 the number of appropriate means of contacting the 111 emergency service the provider has supplied, broken down by type of means (eg, the number of mobile phones supplied, the number of battery-backups); and
 - 210.7 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.¹³³
211. The Commission may specify a template for the information to be disclosed in.
 212. 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.
 213. The Code also includes a record keeping requirement on RSPs. RSPs will be required to record the following types of information:
 - 213.1 any communication between the RSP and a consumer to satisfy certain of the requirements to provide information to a consumer (these requirements are identified in the Code), and 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. This information

¹³³ See clause 38 of the Code.

must be retained for a period of five years following the termination of the contract between the consumer and RSP;

- 213.2 any consumer application declined by the RSP, and what ground (or grounds) the application was declined on. This information must be retained for a period of five years or more since the point in time when the consumer's application was declined; and
- 213.3 any consumer that ceases to be a vulnerable consumer. This information must be retained for a period of five years or more since the point in time when the consumer ceased to be a vulnerable consumer.¹³⁴
214. 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.
215. Spark submitted that the requirement to keep records for five years "is excessive, especially for sensitive consumer information".¹³⁵ It said that it is "certainly not appropriate to retain data for the entire time the customer is with the retail provider plus an additional five years". However, we consider that the period for which RSPs must retain the records is appropriate. The Commission is able to take proceedings for pecuniary penalties for breaches of the Code for a period of three years after the matter giving rise to the breach was discovered or ought reasonably to have been discovered.¹³⁶ Setting a five year period (since termination of the contract or from the date that the application was declined) affords a two year period to discover a breach and a subsequent three years to investigate and, if necessary, file proceedings.
216. Overall, the information disclosure and record keeping requirements in the 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, which will increase the effectiveness of the Code.

¹³⁴ See clauses 39-40 of the Code.

¹³⁵ Spark NZ "111 Contact Code - Spark Submission" (17 July 2020) para 111.

¹³⁶ Section 156L(5) Telecommunications Act 2001.

Appendix A - Relevant statutory provisions 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.