New Zealand Law Society
Te Kāhui Ture o Aotearoa

Telecommunications and Other Related Matters Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

9 December 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**the Law Society**) welcomes the opportunity to comment on the Telecommunications and Other Related Amendments Bill (the **Bill**), an omnibus bill which proposes amendments to three Acts:

a) Telecommunications Act 2001.

b) Telecommunications (Interception Capability and Security) Act 2013.

c) Radiocommunications Act 1989.

1.2 This submission has been prepared with input from the Law Society's Public Law Committee. It focuses on several of the proposed amendments to the Radiocommunications Act 1989 (**the Act**), and provides drafting recommendations.

1.3 The Law Society does not wish to be heard on this submission.

2 Proposed sections 65C and 65D

Use of the term "non-compliant service provider"

2.1 Proposed new section 65D defines "non-compliant service provider" by reference to proposed section 65C, which in turn states that new Part 7A of the Act applies to a "non-compliant service provider" that the Secretary "considers, on reasonable grounds" has:

a) been served with an enforcement notice under section 90 of the Telecommunications (Interception Capability and Security) Act 2013 in respect of any serious non-compliance; or

b) breached a provision of the Telecommunications Act 2001 that is listed in Schedule 4 of that Act.

2.2 This implies that "non-compliant service provider" is an independent term that exists separately from the Secretary's consideration of whether section 65C(a)(i) or (ii) is met. This is circular and unclear. Use of the term "non-compliant service provider" presumes that non-compliance has been established. It is not assisted by the definition of "non-compliance" in section 65D, which is defined as "the alleged non-compliance referred to in section 65C(a), thereby indicating that the "non-compliance" is that referred to in section 65C, and not independent of sections 65C(a)(i) and (ii).

2.3 In the Law Society's view, it is confusing and inaccurate to use the term "non-compliance" throughout the Bill when what is meant is alleged non-compliance in accordance with s 65C(a). Terms like "identified service provider" or "alleged non-compliant service provider" could be used instead.

Structure of section 65C

2.4 Section 65C includes both the definitions outlined above and provides for when Part 7A will apply. It would be helpful to separate out section 65C(a) and instead relate this to the definition of "non-compliant service provider" (or amended terms, as we suggest above) in the interpretation section.

2.5 If this is done, it would be preferable to move the interpretation section (proposed section 65D) to below proposed section 65A. With s 65C(a) in an interpretation section – either the generic interpretation section below or a standalone section – section 65C could then provide along the lines of "This Part applies if the [identified/alleged non-compliant] service provider has any of the following interests in a licence to which this part applies…".

"Reasonable grounds" to consider an enforcement notice has been served

2.6 Whether an enforcement notice under section 90 of the Telecommunications (Interception Capability and Security) Act 2013 has been served on a service provider would appear to be a fact that can be readily confirmed by the Secretary. It is not clear why section 65C(a)(i) is presently drafted to rely instead on the Secretary having "reasonable grounds" to "consider" that such a notice has been served.

2.7 We recommend that the drafting of section 65(a) is amended to refer instead to where:

a) the service provider has been served with an enforcement notice under section 90 of the Telecommunications (Interception Capability and Security) Act 2013 in respect of any serious non-compliance; or

b) the Secretary considers, on reasonable grounds, that a service provider has breached a provision of the Telecommunications Act 2001 listed in Schedule 4 of that Act.

2.8 More generally, we presume the proposed 'considers on reasonable grounds' test reflects the policy underlying this aspect of the Bill – overseas providers and the practical challenges of enforcement. We recommend (as discussed below) that these provisions are explicitly limited to overseas providers.

3 Proposed section 65E

3.1 The present drafting of proposed section 65E does not provide for prerequisites that must be met before the surveillance agency, or the Commerce Commission may request the Secretary to exercise their powers under new Part 7A. Rather, they must make an "assurance" that other avenues have been "explored".

3.2 The Law Society considers it preferable to instead draft section 65E so as to specify that surveillance agencies and the Commerce Commission may not make such a request unless they have "explored other enforcement mechanisms for addressing non-compliance" and "identified practical difficulties that mean enforcement under this Part is preferable". This would amend the nature of the statutory obligation to require those steps to have been taken, rather than provide an "assurance" they have been done.

3.3 When making the request to the Secretary, the agency should then be required to include the information presently set out at section 65E(1)(a) or (2)(a), as well as information about the other enforcement mechanisms have been considered and the practical difficulties have been identified.

"Practical difficulties"

3.4 The phrase employed in sections 65E(1)(b) and (2)(b), "practical difficulties that mean enforcement under this Part is preferable" is vague, and greater clarity is required to reduce the risk of misuse. As drafted, it could encompass situations where licence revocation is simply more convenient than court proceedings.

3.5 The Regulatory Impact Statement notes that enforcing obligations on offshore providers is difficult in New Zealand courts, and this is why the spectrum license revocation is proposed. Specifically, it refers to current enforcement pathways being "impractical" if "an offshore provider does not have a presence in New Zealand and refuses to acknowledge its obligations under New Zealand law."[1] It is expected that the revocation mechanism will be used only if existing mechanisms have been exhausted or are not feasible.[2] However, the Bill as drafted does not limit the use of the revocation power in that way, and the power of revocation is not limited to offshore providers.

3.6 This could be addressed by expressly providing for a list of practical difficulties, with a "catch-all" provision that would then be interpreted by reference to the list of identified difficulties. Alternatively, but less preferably, it could be addressed by specifying what is not considered a practical difficulty, such as convenience, an agency's workload, etc.

3.7 The Bill should also be amended to explicitly provide that new Part 7A applies only to overseas providers. As noted, the stated policy intent behind these amendments is to address the difficulties of enforcement on overseas providers. To limit the potential for misuse and/or unintended consequences, this limitation ought to be explicitly stated.

4 Proposed section 65F

4.1 Proposed section 65F grants the Secretary a substantial discretionary power to revoke or restrict licences for non-compliance. While section 65G sets out considerations the Secretary "must consider," there is no overarching test or threshold that the Secretary must be satisfied of before revoking the licence. Further, to satisfy those mandatory considerations, the Secretary may rely solely on summary information provided by the surveillance agency or the Commerce Commission.

4.2 It would be preferable for section 65F to set a standard or test that must be applied, rather than relying on a broad discretion. If the policy intent is to retain a wide discretion, this could be maintained, but still improved, by the inclusion of terms such as: "*If the Secretary considers it necessary to do so"* or if the Secretary considers it "*desirable*". A reason could also be included, so that the Secretary may revoke or restrict a licence if they consider it necessary to do so, "*in order to…*".

4.3 This suggestion is made not with the intent of altering the practical effect of the Bill or the proposed revocation mechanism. Rather, requiring that a decision to revoke or restrict a licence is made for a particular purpose is likely to encourage more reasoned

1 Page 57.
2 Page 58.

decisions and is consistent with the principle that a discretionary power should be exercised consistent with statutory purpose.[3]

Notification of revocation of licence

4.4 The Bill does not expressly require the Secretary to give notice to affected parties or provide an opportunity for affected parties to be heard before exercising powers under section 65F. As noted above, section 65G(2) permits the Secretary to rely "solely on summary information provided by the surveillance agency or the Commerce Commission." The information on which the Secretary relies may not have been seen by the affected parties. It may not be accurate or fairly balanced. As a general matter of principle, it is undesirable that a decision maker would be empowered to exercise a statutory power under such circumstances.

4.5 Ideally, there would be a requirement to provide the licensee with written notice of the revocation and an opportunity to respond before revocation takes effect. However, we acknowledge this may be inconsistent with the policy intent of the Bill, and with Regulation 15B of the Radiocommunications Regulations 2001, which enables revocation by written notice in certain circumstances, without an opportunity for the licensee to respond. We therefore recommend adopting that approach, and including a requirement to provide written notice of revocation.

Jesse Savage
Vice President

3 *Unison Networks Limited v Commerce Commission* [2007] NZSC 74.