

**Telecommunications Carriers' Forum  
Submission on the  
Telecommunications Amendment Bill**

**Public Version**

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## **A. Introduction**

1. This Submission is made by the Telecommunications Carriers' Forum ("Forum") in response to the Telecommunications Amendment Bill ("Bill").
2. The Forum welcomes the Bill and supports many of the proposed changes to the Telecommunications Act 2001 ("Act").
3. In developing codes the Forum has experienced problems with the Telecommunications Act 2001. These issues are primarily related to the lack of enforcement provisions under the Act and inability of the Forum to receive guidance from the Commerce Commission ("Commission") on codes under development by the Forum.
4. These issues caused delays with the development of the Number Portability Codes and the Radio Co-location Code. In the case of the Number Portability Code, these delays resulted in the Forum members submitting the Code to the Commission for a Determination rather than submitting the Code for approval.
5. It is pleasing to see that there are proposed amendments to the Bill which address both of the issues identified in paragraph 3 which the Forum has previously raised with the Commission.
6. However, several proposed changes in the Bill to the roles of the Commission and the Forum in the development of Telecommunications Access Codes are of some concern to the Forum.
7. The Forum comments on these, and other proposed amendments to the Act, below. For ease of reference, Appendix 1 provides an outline of the specific amendments proposed by the Forum.

## **B. Telecommunications Carriers' Forum**

8. When the Telecommunications Act 2001 ("the Act") was introduced, it recognised that it is the industry which has the required level of technical and operational expertise to develop telecommunications access codes, and as result, the Act envisaged an industry forum being established to develop these codes. Under the Act, Forum is defined as:

"the Telecommunications Industry Forum, which is a group that consists of 75% of all persons who are, for the time being, registered with the Commission for the purpose of voting on a draft code under clause 4 of Schedule 2"
9. The Forum was established in August 2002 as a direct result of the Act. The Forum's membership is open to all those that meet the requirements of the Commerce Commission for registration as an eligible person.
10. The Forum's purpose is to:
  - (a) facilitate co-operation amongst telecommunications carriers to encourage the efficient provision of:
    - regulated services, not inconsistent with the Telecommunications Act 2001 ("the Act"); and

- non-regulated telecommunications services;
- (b) operate or facilitate the operation of a telephone number portability service in New Zealand ("Service");
- (c) facilitate the operation of the Commerce Commission's Determination on the multi-party application for determination of 'local telephone number portability service' and 'cellular telephone number portability service' designated multinetwork services, including any amendments and subsidiary determinations ("Number Portability Final Determination"); and
- (d) facilitate the operation of telecommunications access codes approved by the Commerce Commission and non-regulated telecommunications codes approved by the Board, where those codes anticipate or require this;

in order to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand.

11. During its infancy, Forum members approached involvement in the Forum with some apprehension, as this was the first time the telecommunications industry had worked together to develop codes or work on areas of common interest. This apprehension was also reflected in the amount of funding initially agreed to support the Forum. In its first year of operation its approved budget was only \$40,000. Since then, this budget has increased ten-fold to over \$400,000. This represents a substantial investment by the industry in the Forum self-regulatory model.
12. The Forum has evolved considerably in the 4 years since it was established. A recent review of the effectiveness of the Forum indicates members agree that the Forum has successfully brought the industry together to debate issues. The Forum Board and working party members are constructively working together to understand each others' views and relationships between members are more workable and pragmatic than they were prior to the inception of the Forum. Members have indicated strong support for the Forum.
13. The Forum has:
  - a) completed codes on SMS spam, mobile content, customer transfer and two codes on number portability;
  - b) taken responsibility for co-ordinating the industry's implementation of local and mobile number portability which is planned to go live on 1 April 2007;
  - c) completed a report on ENUM;
  - d) made or coordinated submissions on issues such as the Land Transport Management Bill, Telecommunications (Interception Capability) Bill, Digital Technology and the Copyright Act and the Draft Report on the Telecommunications Relay Service; and

- e) representatives on the Digital Strategy Advisory Group, Telecommunications Relay Service Advisory Panel and the joint InternetNZ/TCF Steering Group on Anti-spam.
14. The Radiocommunication Co-location Code and master services agreement being developed by the Forum is expected to be issued for referendum this month. Other current work streams include:
    - a) the development of a customer complaints scheme for the industry. The Forum is working closely with TUANZ, the Consumers Institute, InternetNZ and ISPANZ to develop the code and a disputes resolution scheme.
    - b) an information reporting working party. The Forum recently established an Information Reporting Working Party to investigate co-ordinating responses to multi-carrier information requests from organisations such as OECD and Statistics New Zealand.
  15. The Forum Board has recently approved a project proposal for work on a non-regulated code on co-siting, which will commence once the Forum's work on the regulated co-location code is complete. The Forum is also working with InternetNZ to agree the project proposal for the next stage of work on ENUM.
  16. In July this year the industry indicated their support for the Forum by agreeing that the Forum was best placed to undertake two of the workstreams relating to LLU. The Forum is expecting to be asked to approve these project proposals this month and this work will clearly be a key focus of the Forum over the coming months.
  17. Finally, in recognition of the need for the Forum to have independent resource with the necessary skills and industry expertise to drive the various work streams and deliver the required quality of output within reasonable timeframes, the Forum undertook a review of its resources, and in May this year appointed two new providers: Organisers New Zealand Limited are now providing the Forum Administration services and Synergy International are providing project management services for the number portability project. These appointments are already paying dividends in terms of improved progress across the range of matters which the Forum is working on.

### **C. Forum Submission**

18. Sections D to J of this Submission set out the Forum's response to specific amendments proposed in the Bill which relate to or impact on the Forum.
19. Appendix 1 sets out the specific drafting changes to the Bill proposed by the Forum.

## D. Registered Undertakings

20. The Forum supports the change to the definition of Telecommunications Access Code to include services supplied under Registered Undertakings and the associated amendments which clarify what Telecommunication Access Codes may provide for.

## E. Code Development

### Preparation of Codes by the Commission

21. The Forum has the following comments in relation to the provision that allows the Commission to develop codes of it's own initiative<sup>1</sup>:
  - (a) The Forum does not support the granting of power to the Commission to develop access codes as the Commission does not have the requisite expertise and experience to perform this work.
  - (b) There are other options available to the Commission to allow it to set non-price terms should it deem it necessary to do so.
  - (c) If this clause is seeking to address a concern about the timeframes within which the Forum prepares codes this may be dealt with by alternative drafting, which is provided below.

We explore these points further below.

### *The Commission is not best placed to develop Codes*

22. When the Act was introduced it identified the Forum as best placed to develop Telecommunications Access Codes as the industry has the necessary technical and operational expertise to develop those codes. The Act recognised this by providing for those Codes to be developed by the Forum of its own initiative or where requested by the Commission. The Commission's role was limited to approval of those codes by examining whether the codes were consistent with the s.18 purpose of the Act.

### *There are other options available to the Commission*

23. The Act and the Bill provide a number of alternative regulatory mechanisms that may be used by the Commission and industry to establish non-price terms. Those mechanisms are:
  - (a) Determinations under section 27 of the Act;
  - (b) Standard Terms Determinations;
  - (c) Registered Undertakings; and

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<sup>1</sup> Schedule 2, Clause 1

- (d) Telecommunication Access Codes.
24. In the Forum's view, the first three of these options are sufficient to provide the Commission with the necessary flexibility to decide what the most appropriate method is for it to establish non-price terms for a particular service.
25. The Commission does not need, and nor as outlined above, is it well positioned, to develop Telecommunications Access Codes. Telecommunications Access Codes currently exist as an alternative self-regulatory mechanism to Commission-regulated avenues. Removing this distinction has the potential to undermine the existing incentives on industry participants to continue to engage in the development of a mature self-regulatory regime. In addition, the Bill provides the Commission with the ability to initiate the Standard Terms process for matters that it considers would benefit end users. Accordingly the Forum does not support the inclusion of Schedule 2, clause 1A.

*Alternative proposal if timing is the issue*

26. If the Bill is seeking to address a concern over how long Codes take to develop we propose including drafting in the Bill that specifically deals with this.
27. The Forum proposes that rather than the Commission being able to develop codes, Schedule 2 of the Act be amended to enable the Commission to propose timeframes by which the Forum is requested to prepare the codes initiated by the Commission. If the Commission is not satisfied with the Forum's progress it could instigate a Standard Terms Determination.

Other amendments relating to the Commission's role in the development of Codes

28. The Bill proposes a number of other amendments in relation to the Commission's role in the development of Codes. Under the Bill, the Commission:
- (a) can issue guidelines "to the Forum on any matters relating to telecommunications access codes, including advice on what matters are appropriately dealt with by those codes"<sup>2</sup>.
  - (b) has the discretion to approve Codes where those Codes have 100% support of the eligible persons who voted on the Code<sup>3</sup>.
  - (c) must refuse to approve a draft code if it satisfied that the draft code deals with a matter that is more appropriately dealt with in a:
    - (i) determination under section 27; or

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<sup>2</sup> Schedule 2, Clause 1(2)

<sup>3</sup> The Bill proposes clause 9 of Schedule 2 be deleted.

- (ii) standard terms determination under section 30M; or
- (iii) designated multinetwork service determination under section 39.”<sup>4</sup>

29. The Forum supports the Commission being able to issue guidelines where the Forum has sought those guidelines from the Commission.
30. The Forum does not support the deletion of clause 9 of Schedule 2 which provides that where a Code that meets all statutory requirements has 100% support of eligible persons, the Commission must approve it. The time and resources to develop a code are considerable, and in the Forum’s view, where a code has the support of 100% of eligible persons the Commission should be required to approve that code unless it fails to meet the requirements of the Act. Similarly, if the Forum has developed a code and met the required thresholds for approval, in the Forum’s view the Commission should not refuse to approve it just because it thinks that the draft code deals with a matter that is more appropriately dealt with through the alternatives mechanisms outlined above. The Forum and the industry will have spent considerable time and resources to get the Code to a stage where it could be approved by the Commission, and any of the alternatives outlined in that clause will result in considerable delays in having an agreed industry solution implemented.
31. The Forum supports the Commission being able to develop these alternatives and have them replace an approved code once those alternatives are in place, but it does not support the industry having its solution delayed while the Commission puts other measures in place.
32. These proposed changes will create increased uncertainty in the industry as to the role of self-regulation. If the Commission will in every case have the power of veto over any Code, this risks reducing industry participants’ willingness to commit the significant time and capital resources necessary to prepare these codes.
33. Given the very positive development of the Forum and its role in the industry to date, this would be a disappointing outcome.

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<sup>4</sup> Schedule Clause 10A

## F. Voting on Codes

### Proposed amendments to the definition and criteria of Eligible Persons

34. The Bill proposes amendments to the definition and criteria of Eligible Persons. The Forum foresees issues with these amendments in terms of the Code development process. We propose alternative drafting that would enable new entrants to participate more fully in code development and give new entrants the right to vote on codes.

35. The Bill proposes the definition of *Eligible Person* be amended to:

"eligible person" means a person who is - entitled to register with the Commission as an eligible person under clause 4(4) of Schedule 2; ~~and - a member of the Forum.~~

and that clause 4(4) of Schedule 2 which sets out the criteria for *Eligible Persons* be amended to:

"the following persons are entitled to register with the Commission as eligible persons:

- (a) a person who provides a telecommunications service by means of some component of a PSTN or PDN that is operated by that person;
- (b) an access seeker or access provider of---
  - (i) a designated service or specified service; or
  - (ii) a service supplied under a registered undertaking;
- (c) any other person whom the Commission determines has a material interest in a draft code."

36. These provisions determine who is entitled to vote on Telecommunications Access Codes under the Bill.

### *Impact of proposed changes on code development process*

37. The development of codes, involves:

- a) agreeing the scope of the Code;
- b) agreeing all of the detailed content in the Code covering the business rules, processes and procedures;
- c) undertaking public consultation on the draft Code with eligible persons and other interested parties;
- d) amending the Code in response to that consultation; and
- e) issuing the Code for referendum to eligible persons.

38. The process involves considerable co-ordination and agreed protocols to be applied to ensure each stage is successfully completed. The proposed amendments to the definition and criteria of Eligible Person create considerable uncertainty for the Forum in the code development process. This is likely to result in significant delays in the development of codes for the following reasons:
- (a) the current wording in the Act requires a person to be *registered* with the Commission in order to vote on a Code. All parties, and the Forum, therefore know at the commencement of any access code development work who should be consulted on that work, and who will be entitled to vote on it. However under the Bill an *Eligible Person* is a party who is *entitled* to register. Since there is no definitive list of who is entitled to register, it is unclear who will be entitled to be consulted and to vote on a code;
  - (b) the Forum requires certainty as to its process. It needs to know who the potential parties are to the Code so that it does not waste time and resources developing codes that do not meet the needs of those parties and as a result, is unlikely to be approved;
  - (c) there is no criteria contained in the Bill as to what constitutes a person who has "*a material interest in a draft code*". In the Forum's view, the parties who can vote on codes should be parties who are currently providing or are genuinely intending to provide telecommunications services in New Zealand.
39. The Forum is concerned that the criteria for eligible persons proposed in the Bill is open to interpretation since the number of organisations who have "material interest" in a draft Code could include government departments and organisations representing end users.
40. The Forum acknowledges that these organisations have an interest in draft codes. Their views are ascertained through the public consultation process undertaken during code development and their interests are also taken into account as part of the criteria the Commission must apply when considering whether or not to approve a draft code under the Act. However, the focus of the Forum is industry self-regulation and therefore voting should be restricted to providers of telecommunications services.

*Alternative drafting proposed by the Forum*

41. Accordingly, the Forum submits that the criteria for eligible persons should be amended as follows:

“The following persons are entitled to register with the Commission as eligible persons:

- (a) a person who provides a telecommunications service by means of some component of a PSTN or PDN that is operated by that person:
- (b) an access seeker or access provider of---
  - (i) a designated service or specified service; or
  - (ii) a service supplied under a registered undertaking:
- (c) any other person whom the Commission determines is intending to meet the criteria set in (a) and (b) in the near future and whom the Commission determines has a material interest in a draft code.”

42. The Forum’s proposed amendments to the criteria for *eligible persons* addresses any concern about new entrants having a right to actively participate in the process, and at the same time makes it clear that it is the industry’s role to develop Telecommunication Access Codes.
43. Under the current Act, only existing telecommunications access seekers and access providers can vote on codes. The amendment to the criteria proposed by the Forum would enable near entrants to participate more fully in code development and it would also give them the right to vote on codes.
44. In relation to the definition of the term “eligible person”, the Forum considers that all eligible persons must be required to register with the Commission as currently required in order to vote on a draft code.
45. The Forum is required to take all practical steps to invite eligible persons to vote in the referendum for a draft code<sup>5</sup>. To do this, the Forum needs to know who those eligible persons are. This is straightforward under the Act as the eligible persons are registered with the Commission (and are also Forum members).
46. However, under the Bill the Forum would have to guess which parties would have “entitlement to register” with the Commission and may subsequently find after the referendum is completed that parties who were later determined to have “entitlement to register” were not invited to vote on the code. Conversely parties who should not have been entitled to vote may have been given the opportunity to do so, possibly affecting the outcome of the vote.
47. Retaining the current definition of eligible person in the Act and making the changes proposed by the Forum addresses these issues.

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<sup>5</sup> Schedule 2, clause 4(2)

### Forum Membership

48. In addition to the changes to the definition of eligible person discussed above, the amendments in the Bill also propose that an eligible person would no longer be required to be a member of the Forum in order to vote on codes. The Forum submits the definition of eligible person in the Act should not change.
49. As outlined in paragraph 8 of this Submission, under the Act, Forum:

“means the Telecommunications Industry Forum, which is a group that consists of 75% of all persons who are, for the timing, registered with the Commission for the purpose of voting on a draft code under clause 4 of Schedule 2”.
50. There is an inconsistency between the approach used to define the Forum under the Act (which was not changed in the Bill) which requires eligible persons to be registered with the Commission, and removal of the requirement under the Bill for eligible parties to actually register. Even if this was remedied, the likelihood is that no Forum will exist as envisaged by the Act, since under the Bill, there is no incentive for eligible persons to be a member of the Forum.
51. The development of Telecommunications Access Codes by the Forum requires significant input from the industry in terms of time and resource. The Forum believes it is appropriate for an eligible person to be required to be a member of the Forum as parties who have a genuine interest in a code should be willing to contribute the necessary time and resource and contribute to the costs incurred to develop robust codes. Those who are genuinely interested in participating in the development of codes will join the Forum and provide constructive input into that process.
52. If the criteria for *eligible persons* is amended as proposed by the Forum, the Forum’s membership would be extended to include potential new entrants who the Commission have determined are likely to become telecommunications providers in New Zealand in the near future.
53. Requiring eligible persons to be members of the Forum not only creates certainty as to Forum membership and the code development process, but it also:
  - (a) requires those parties who benefit from codes to share in the cost of their development, even if their share of the costs is only nominal. The Forum’s annual membership fee for parties who pay less than 2% of the Telecommunications Service Obligation is capped at \$5,000. Although this is a nominal fee, it means all parties entitled to vote on Telecommunications Access Codes are contributing to the costs;
  - (b) creates the correct incentives for parties who meet the criteria for eligible persons to participate in the code development process; and
  - (c) avoids any doubt as to who is entitled to be consulted on Telecommunications Access Codes and to vote on those codes.

### Voting Thresholds

54. Schedule 2, clause 5 of the Act sets out the thresholds required for referenda on codes before those codes can be submitted to the Commission for approval. The Act currently requires codes to be supported by 75% of all eligible persons.
55. In the past, meeting this threshold has required the Forum to encourage eligible persons to vote on a code, even though those parties may have had no interest in that code.
56. The Bill proposes amending this clause of the Act to reduce the threshold from a specified percentage of eligible persons, to a specified percentage *of those eligible persons who voted on the draft Code*. The Forum supports this amendment to include “eligible persons who voted on the draft code on the basis that if parties have an interest in a code, they will vote on it.
57. The Forum does not consider the suggested change to clause 5 of Schedule 2 of reducing the threshold from 75% to 66% is required. The Forum proposes that retaining the current definition of eligible persons, amending the criteria for eligible persons as outlined in paragraph 35 of this Submission and including requiring “eligible persons *who voted on the code*” in clause 5 of Schedule 2 is sufficient.
58. To date the Forum has not experienced any difficulties with the 75% threshold, and in fact considers it puts a useful discipline on the industry to deliver access codes that meet the requirements of a significant majority of participants.

## **G. Amendment and Revocation of Codes**

### Amendment of Draft Codes by the Commission

59. The Bill proposes to amend Schedule 2, Clause 10 of the Act to allow the Commission to amend draft codes where that code no longer meets the requirement of the Act. The Forum supports this amendment, but recommends this clause be further amended to enable the Commission to request the Forum to amend the draft code.
60. The Commission should also be required to consult with the Forum on any amendment the Commission is proposing to make to draft codes.

### Revocation of Approved Codes

61. For the reasons set out in the section on Voting Thresholds, the Forum proposes the same amendments be made to Schedule 2, clause 12(2) and (3) of the Act as the Forum has proposed for Schedule 2, clause 5.

## **H. Enforcement**

62. The Forum welcomes the enforcement provisions proposed to be included in Part 4A of the Act that relate to access codes.

63. The Forum recommends that these amendments be backdated to include all codes approved by the Commission prior to other amendments under the Act coming into effect. Without this, those Codes will remain unenforceable.

## **I. Regulation Making Powers**

### Customer Complaints Scheme

64. The Forum understands the need for a telecommunications customer complaints scheme, and is in the process of developing such a scheme. The Forum is fully committed to developing a robust comprehensive complaint scheme which has the buy-in of both industry and consumer representatives and which will mean the Minister should not need to invoke any of the regulation making powers referred to in the proposed clauses 55(cd)-(ch).
65. However, under the current Act any scheme developed by the industry would be voluntary. The Forum considers that the new regulatory making powers included in the Bill could be augmented or amended to include:
- (a) the ability for industry approved customer complaints schemes to be registered as approved schemes by the Minister;
  - (b) for the ability to require telecommunications providers to be a member of an approved scheme;
  - (c) targeted enforcement provisions to apply in relation to participation in such approved schemes.

### Emergency Services

66. The Forum notes the regulation-making powers included in the Act relating to emergency call services. If requested, the Forum could develop industry codes relating to emergency call services which would be voluntary in nature, but which could become regulated codes if necessary.

## **J. Information Monitoring and Reporting**

67. The Forum notes the new provisions relating to information monitoring and reporting.
68. The Forum has recently established an Information Reporting Working Party to investigate coordinating responses to multi-carrier information requests from organisation's such as OECD and Statistics New Zealand. If it is of value to the Commission, the Forum would be willing to have this Working Party perform additional responsibilities relating to the collation and gathering of industry information.

Proposed Changes to the Telecommunications Amendment Bill

	Section of the Telecommunications Act 2001 (once amended)	Clause	Amendment Proposed in the Bill	Amendment Proposed by the Forum
1.	Part 1	Section 5 Definition:  Eligible Person	<p><b>Definition - Eligible Person</b> The Bill proposes to amend the definition of eligible person as follows:</p> <p>"eligible person" means a person who is – <u>entitled to</u> registered with the Commission as an eligible person under clause 4(4) of Schedule 2; <del>and</del> <del>— a member of the Forum.</del></p>	No change required to the Act.
2.	Schedule 2	Clause 4(4)	<p><b>Criteria to be an Eligible Person</b> Under the Bill, the following persons would be entitled to register with the Commission as eligible persons:</p> <p>"(a) a person who provides a telecommunications service by means of some component of a PSTN or PDN that is operated by that person:</p> <p>(b) an access seeker or access provider of---</p> <p>(i) a designated service or specified service; or</p> <p>(ii) a service supplied under a registered undertaking;</p> <p>(c) any other person whom the Commission determines has a material interest in a draft code."</p>	<p>The Forum proposes the following persons are entitled to register with the Commission as eligible persons:</p> <p>"(a) a person who provides a telecommunications service by means of some component of a PSTN or PDN that is operated by that person:</p> <p>(b) an access seeker or access provider of---</p> <p>(i) a designated service or specified service; or</p> <p>(ii) a service supplied under a registered undertaking;</p> <p><u>(c) any other person whom the Commission determines is intending to meet the criteria set out in (a) and (b) in the near future and whom the Commission determines has a material interest in a draft code."</u></p>

	Section of the Telecommunications Act 2001 (once amended)	Clause	Amendment Proposed in the Bill	Amendment Proposed by the Forum
3.	Schedule 2	Clause 1A and 6	<p><b>Commission can prepare codes</b></p> <p>Under the Bill:</p> <p>“The Commerce Commission may, on its own initiative, prepare 1 or more telecommunication access codes”.</p>	<p>The Forum proposes that Schedule 2 clause 1A be deleted, and clause 6 of this Schedule remain as presently drafted under the Act.</p>
4.	Schedule 2	Clause 1 (2)	<p><b>Guidelines Issued by the Commission</b></p> <p>Under the Bill:</p> <p>“The Commission may issue guidelines to the Forum on any matters relating to telecommunications access codes, including advice on what matters are appropriately dealt with by those codes.”</p>	<p>The Forum proposes this new provision be amended as follows:</p> <p>“<u>Where requested by the Forum</u>, the Commission may issue guidelines to the Forum on any matters relating to telecommunications access codes, including advice on what matters are appropriately dealt with by those codes.”</p>
5.	Schedule 2	Clause 5	<p><b>Referendum Voting Thresholds</b></p> <p>Under the Bill:</p> <p>“The Forum may submit to the Commission a draft Code, along with a statement:</p> <p>(d) that either the draft code:</p> <p>(i) has the support of all eligible persons who voted on the draft code; or</p> <p>(ii) is supported by at least 66% of eligible persons who voted on the draft code; and”</p>	<p>The Forum proposes this provision be amended as follows:</p> <p>The Forum may submit to the Commission a draft Code, along with a statement:</p> <p>(d) that either the draft code:</p> <p>(i) has the support of all eligible persons who voted on the draft code; or</p> <p>(ii) is supported by at least 75% of eligible persons who voted on the draft code; and”</p>
6.	Schedule 2	Old clause 9 deleted	Under the Bill, the clause 9 of schedule 2 would be deleted.	The Forum proposes that clause 9 of Schedule 2 of the Act remain as presently drafted.
7.	Schedule 2	Clause 10A	Under the Bill, the Commission must refuse to approve a draft code if it satisfied that the draft code deals with a matter that is more appropriately dealt with in---	The Forum proposes that clause 10A be amended to: the Commission <u>may</u> refuse to approve draft code if it satisfied that the draft code deals with a matter that is more appropriately dealt with in---

	Section of the Telecommunications Act 2001 (once amended)	Clause	Amendment Proposed in the Bill	Amendment Proposed by the Forum
			<p>"(a) a determination under section 27; or</p> <p>"(b) a standard terms determination under section 30M; or</p> <p>"(c) a designated multinet network service determination under section 39.</p>	<p>"(a) a determination under section 27; or</p> <p>(b) a standard terms determination under section 30M; or</p> <p>(c) a designated multinet network service determination under section 39."</p>
8.	Schedule 2	Clause 10B	<p><b>Amendment of draft code by Commission</b></p> <p>If the Commission considers that, because of a change in circumstances, a draft code submitted to it no longer meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require), the Commission may prepare a specific amendment to the draft code to ensure that it meets all of those requirements.</p>	<p>If the Commission considers that, because of a change in circumstances, a draft code submitted to it no longer meets all the requirements set out in clause 2 or clause 3 or clause 3A (as the case may require), the Commission may prepare or <u>request the Forum to prepare</u> a specific amendment to the draft code to ensure that it meets all of those requirements.</p>
9.	Schedule 2	Clause 12 (2) and (3)	<p><b>Revocation of Approved Codes</b></p> <p>Under the Bill:</p> <p>The Commission must revoke an approved code where:</p> <p>(a) requested to do so by at least 66% of eligible persons who voted on the approved code; and"</p>	<p>The Forum proposes this new provision be amended as follows:</p> <p>The Commission must revoke an approved code where:</p> <p>(a) requested to do so by at least <u>75%</u> of eligible persons who voted on the approved code; and"</p>
10.	Part 4A		<p><b>Enforcement</b></p> <p>The new enforcement provisions under the Bill enable the Commission to:</p> <p>(i) serve a civil infringement notice;</p> <p>(ii) apply to the High Court for an order requiring the person to pay a pecuniary penalty to the Crown.</p>	<p>The Forum proposes that a further amendment be made so that these new provision's apply retrospectively to codes approved by the Commission prior to the amendments being passed.</p>

	Section of the Telecommunications Act 2001 (once amended)	Clause	Amendment Proposed in the Bill	Amendment Proposed by the Forum
11.	Part 5	Clause 157	<p><b>Regulating Making Powers and the Customer Complaints Scheme</b></p> <p>The explanatory statement to the Bill says the reserve powers proposed for the Minister for developing and establishing a telecommunications consumer complaints resolution system would only be invoked as a backstop where reasonable attempts by the industry to voluntarily develop and establish a satisfactory scheme have failed. Clause 157 (1) (cd) to (ch) of the Bill set out the framework for the scheme.</p>	<p>The Forum proposes that a further amendment be made to include:</p> <ul style="list-style-type: none"> <li>a) the ability for industry approved customer complaints schemes to be registered as approved by the Minister;</li> <li>b) a requirement for telecommunications providers to belong to an approved scheme; and</li> <li>c) targeted enforcement provisions to apply in relation to participation in such approved schemes.</li> </ul>