



**TCF Submission to
National Emergency Management Agency
on the
Civil Defence Emergency Management Act 2002
Consultation Document
12 July 2021**

A. Introduction

1. Thank you for the opportunity to comment on the Critical Infrastructure Consultation Document (the Document), issued by the National Emergency Management Agency (NEMA) on the nine proposed amendments to the Civil Defence Management Act 2020 that relate to Critical Infrastructure (Lifelines Utilities).
2. This submission is provided by the New Zealand Telecommunications Forum (TCF), on behalf of its members and the Telecommunications Emergency Forum (TEF), which the TCF co-ordinates.
3. The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand telecommunications customers. The forum facilitates the development of consensus-based, self-regulatory codes, that set standards and specifications for the way members follow procedures internally, and for the way industry interconnects on industry-wide issues. The TCF

enables the industry to work together and to discuss issues and topics collaboratively, to reach acceptable solutions that can be developed and implemented successfully.

4. The TCF administers the TEF, which was established by the telecommunications sector to:
 - i. Ensure effective management of emergencies that impact national and regional telecommunications;
 - ii. Mitigate threats to national telecommunications;
 - iii. Keep government agencies informed of the developing situation; and
 - iv. Keep members informed of the developing situation and support appropriately.

5. Telecommunications infrastructure makes a significant contribution to people's wellbeing and the economy. New Zealand ranked 12th in the world for overall digital connectivity in the Global Connectivity Index for 2020¹, up from 13th a year earlier. 155,000 more homes and businesses were connected to the UFB fibre network in 2020 – up 9%. 84% of New Zealanders can now access UFB, with 64% connected². Meanwhile, competition across industry has led to mobile coverage being delivered to 98.5% of where people live and work, soon to grow to 99.8%. Every year providers invest approximately \$1.6b³ in new infrastructure and services, and Statistics NZ estimates the telecommunications and information media services sector contributes approximately \$7b annually⁴ to the economy.

B. Regulatory Framework Review (Trifecta) Programme

6. The TCF supports the establishment of a Regulatory Framework Review Programme referred to as the Trifecta, and the improvements to the emergency management system that the Programme aims to achieve, as set out below⁵:
 - i. Improving the clarity of roles and responsibilities across the emergency management system;
 - ii. Maximising the opportunity of legislative and regulatory change to update and improve the CDEM Act and National CDEM Plan, so they are fit for purpose;
 - iii. Providing advice on regulatory, legislative and policy solutions to ensure that the emergency management system is responsive, inclusive and effective and recognises the role of Māori as Treaty partners; and
 - iv. Improving locally led emergency management.

¹ <https://www.huawei.com/minisite/gci/en/index.html>

² Crown Infrastructure Partners Quarterly Broadband updates: <https://www.crowninfrastructure.govt.nz/about/publications/>

³ https://comcom.govt.nz/_data/assets/pdf_file/0030/247377/2020-Annual-Telecommunications-Monitoring-Report-Revised-version-16-March-2021.pdf see pg23

⁴ <https://www.stats.govt.nz/tools/which-industries-contributed-to-new-zealands-gdp> 2019 data

⁵ [Regulatory Framework Review \("Trifecta"\) Programme » National Emergency Management Agency \(civildefence.govt.nz\)](#)

7. Telecommunications infrastructure provides an underlying foundation for supporting other infrastructure and digital access. It is a key enabler of the digitisation and efficient use of other infrastructure. This is acknowledged by the Infrastructure Commission which states that ‘increasing reliance on communications makes telecommunications infrastructure more critical’⁶.
8. It is important that Telecommunications is considered by government in a long-term strategy so that the telecommunications sector can continue to support New Zealand’s emergency management system.
9. The TCF supports regulatory, legislative and policy solutions that will enable a responsive emergency management system that recognises the importance of different infrastructure providers and emergency groups working together. There are infrastructure interdependences with telecommunications services, and policy must also give effect to Te Tiriti o Waitangi. For example, ensuring lead infrastructure sectors establish efficient processes for balancing sensitive cultural and environmental protections against other outcomes, and an aligned technology agnostic view of critical infrastructure.
10. The telecommunications sector has made significant investments into its infrastructure and has a good track record of resilience and responding to emergency and social events, including supporting consumers of telecommunications services across both public and private sectors during Covid-19 lockdowns and recent response to the Canterbury flood event in June 2021.

C. Comments on the nine proposed amendments

11. S.1 Terminology:

12. The TCF supports that the term ‘Lifelines Utilities’ is replaced with ‘Critical Infrastructure’ with the following considerations:
 - i. ensuring that this is a terminology change only and does not immediately require any operational change;
 - ii. there is no change to the underlying definition; and
 - iii. the new terminology does not conflict with any other legislation, which we understand it does not.

13. S.2 Lead Agency:

14. It is being proposed that the Lead Agency for Telecommunications is the Ministry for Business, Innovation and Employment (MBIE). Whilst this is the natural fit for

⁶ ‘Infrastructure for a Better Future: Consultation Document’, pg. 34 - Infrastructure Commission

Telecommunications there are some considerations regarding the role and responsibility of a Lead Agency that need to be thought through:

- i. The Lead Agency must have adequate and dedicated resource/s to support the Critical Infrastructure entities. MBIE has been allocated three large key sectors. Further consultation is required between MBIE and the other key sectors to ensure resource is not only available but they have the relevant expertise.
- ii. The Lead Agency must ensure good communication between other Lead Agencies and between its own sector responsibilities. MBIE must be able to demonstrate that it will implement a communications plan and be able to stay informed with other Lead Agencies, allow the efficient flow of communication from its various sectors and Lead Agencies. For example, the Telecommunications sector supply chain relies heavily on Transport during an event and it would be necessary to have Realtime information shared on the status of a particular road, railway, port etc. from the Ministry of Transport.
- iii. It is not clear from the consultation document if the current model of managing communication through NEMA during a particular event will continue or if a new model will be established. Clarity is required on the scope and the roles and responsibilities of the Lead Agencies, including how they will interact with sector groups like the TEF.

15. S.3 Schedule 1:

16. The TCF supports a change in the way Lifeline Utilities are added or removed from the Schedule and agree an Order in Council process is inflexible and cumbersome. However, further information and consideration is required on the criteria (and how that will be applied, timeframes, process and impact of the exercise of this authority (including each alternative option being proposed)).
17. If the definition of 'Critical Infrastructure' is the definition proposed in section 5 of the Document, it will be important to consider more widely the criteria of the definition. Understanding the broader obligations, roles and responsibilities that a Critical Infrastructure provider must adhere to will determine whether option one or two is appropriate. For example, some of the criteria being proposed may place reasonable obligations on providers of Critical Infrastructure and a more robust process to determine Critical Infrastructure entities maybe prudent to ensure the relevant obligations can be meet based 'on the application of specified criteria'. Whereas, if the Minister is only required to consult with NEMA under option two, parties within the supply chain may find themselves unwittingly caught by the obligations and be unprepared.

18. S.4 Definition:

19. The TCF agrees the definition of Lifeline Utilities should be updated to be more fit for purpose, to encompass services that are essential and align to international best practice.
20. For Telecommunications providers of Critical Infrastructure, it is essential that their services and supply chains are included. We interpret 'supply chain' as those partners who telecommunications providers depend on for service continuity. For example, during Covid-19 lockdowns it was not clear that Telecommunication provider's partners such as transport, service companies and contractors were included in essential workers for Critical Infrastructure. It is important that during an event every part of the Telecommunication provider supply chain is included so that a response can be made quickly and seamlessly.

21. S.5 Critical Infrastructure Criteria:

22. The TCF supports the proposed Critical Infrastructure criteria and consider it in-line with our comments in the previous section regarding the definition. However, because of how the Critical Infrastructure criteria has been phrased, clarification is sought as to whether all three of the following criteria are required to be met. The TCF proposed the following amendments to the wording:

*The loss, damage, disruption or immobilisation of such infrastructure may severely prejudice **one of the following:***

- i. the functioning or stability of the nation; **or***
- ii. the public interest with regards to safety and the maintenance of law and order, **and or***
- iii. national security.*

23. The TCF is also concerned that the following criteria will exclude most entities unless they are collectively impacted, and recommend the following changes:

*The infrastructure must ~~be of~~ **contribute to** significant economic, public, social and strategic importance;*

24. S.6 Service levels during and after emergency:

25. The TCF agrees in principle that Critical Infrastructure must be able to function and recovery quickly to support the wellbeing of affected communities. However, we do not support the proposed introduction of minimum service levels.
26. Firstly, introducing the concept of minimum services levels will not achieve the goal to 'provide assurance of performance during and after and emergency event'. This is asking a level of commitment from Critical Infrastructure providers of Telecommunication services that they would not realistically be able to meet; and risks conflicting with the

mandatory regulatory requirements (and the investment that has been made) to build the existing telecommunications networks. This is because there is no one event that is the same and responses differ depending on the level of disruption and damage. Within each organisation business continuity planning and emergency response risk assessment are part of BAU business. Ongoing investment into infrastructure and assets remain at acceptable levels to ensure resilience. This activity will be reported to, and monitored by, the Commerce Commission under the FFLAS regulatory regime from 1 January 2022 (previously Crown Infrastructure Partners (acting on behalf of the Crown) performed this monitoring function).

27. Secondly, the TCF believes that best efforts in an emergency correctly defines the type of response needed. Prioritisation of services, communities and services occurs in real time of an event, decisions are being made to implement the best practical solutions as fast as possible. Being tied to a set of service levels and reporting against these during an event is not possible and may drive unintended consequences in how priorities are decided.
28. If the Government is looking for assurance around the investment in resiliency, then there are better tools to consider. The TCF recommends that further consultation is required on the proposal to describe and maintain minimum service levels before, during and after an emergency and that 'best efforts' obligations could remain but be developed to meet the Government's intention.
29. **S.7 Emergency response and recovery plans (Supporting Plans):**
30. The TCF generally supports the idea that each Critical Infrastructure lead agency must develop a sector specific response plan. The TCF would recommend that for Telecommunications this is developed in consultation with its members and the TEF. This will ensure a response plan is consistent (and does not conflict) with existing regulatory and operational practices (e.g., 111 Contact Code; vulnerable end users; Reference Offer terms; retailer contracts with residential and business customers). Some of these existing processes are currently being reviewed and updated, and are actively monitored by TCF members as part of continuous improvement.
31. Further consultation is required however on what obligations are inferred under objective 16 of the National Disaster Resiliency Strategy relating to the upgrade of infrastructure systems and how this is practicably implemented.
32. **S.8 Reporting, monitoring and evaluation:**
33. Whilst the objectives to ensure adequate reporting, monitoring and evaluation is sensible the scope of this work is unclear. Further consultation is required to ensure that any reporting and auditing process are appropriate and fit for purpose.

34. S.9 Emergency sharing requirements before, during and after emergencies:

35. The Telecommunications sector has an already established forum which is able to proactively share information between its members, NEMA and MBIE. However, organisations should not be asked to provide information that they perceive is commercially sensitive or confidential and any request for sharing must relate to the specific event or be able to be provided within the commercial or regulatory boundaries of the organisation.
36. The TEF was established to efficiently share and request information from multiple agencies and across sectors in the event of an emergency. One of the reasons to establish the TEF was to coordinate report requests from multiple agencies and national and regional lifelines. The TEF can assess a situation quickly, share information and request information from NEMA and MBIE using a centralised contact list. The TEF also takes the pressure off individual organisations receiving multiple requests for information from seventeen different CDEM groups. The TEF also carries out a debrief post event to ensure any learnings can be folded into its processes and protocols.
37. The TEF has also established an organisational wide sector list with primary and secondary contacts. Representatives have an understanding of their obligations to report internally and flag any issues reported back quickly. The TEF has also established a bunker support group based in Wellington to ensure that one or two representatives are ‘in the room’ and assist with technical information fed in and out on the telecommunications network and infrastructure.

D. Summary

38. The TCF appreciates being able to participate in this initial consultation and highlights to NEMA that further consultation is required. Understanding the wider framework and the scope of the model will be important. Whilst there are positive proposed changes which will ideally drive better efficiencies, other recommendations like introducing minimum service levels will not necessarily result in the intended outcomes.
39. Further consultation will be required regarding the roles and responsibilities of the Lead Agencies and how these will interact between each other and with NEMA and the seventeen different CDEM groups.
40. More information and consideration is required on the criteria and definition of Critical Infrastructure (and how that will be applied, timeframes, process and impact of the exercise of this authority (including each alternative option being proposed). There are multiple organisations considering definition and strategy of Critical Infrastructure and no clarity on how the pieces of the puzzle are fitting together for the Telecommunications sector, it all adds up to additional obligations and reporting requirements. Further

consideration of this is required to ensure it does not become burdensome but rather co-ordinated.

41. The TCF is available to discuss further any of the views set out in this submission and answer any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Clare Dobson', with a long horizontal flourish extending to the right.

Clare Dobson
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New Zealand Telecommunications Forum (TCF)