

ISPANZ POSITION PAPER

111 CONTACT CODE

Section 238 of the Telecommunications Act 2001 (the Act) requires the Commerce Commission to “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”. Vulnerable consumers are defined as:

“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.”

On 12th September 2019 the Commerce Commission released an emerging views paper on the 111 contact code. The paper can be found here:

https://comcom.govt.nz/_data/assets/pdf_file/0027/173772/Commission-111-Contact-Code-Emerging-views-paper-12-September-2019.pdf

Submissions were requested by 11th October 2019, but an extension was granted until 14th October 2019.

At first glance this emerging views paper appeared to have little impact for ISPANZ members, however there are potential implications related to the Commerce Commission’s envisaged protections for ‘vulnerable consumers’.

ISPANZ considers that the Commerce Commission is not considering correctly the definition of a ‘vulnerable consumer’ in the Telecommunications Act 2001 (the Act).

ISPANZ Position

To be a ‘vulnerable consumer’ there are two tests to pass, and both must be passed to meet the definition. A consumer must both be “at particular risk of requiring the 111 emergency service (for example, due to a known medical condition)” **and** “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”.

Section 238(3) of the Act specifies those things that must be included in the Commerce Commission’s code. One of those things is to “prescribe a process (or processes) for a consumer of those services, or a person on their behalf, to demonstrate that they . . . are a vulnerable consumer; or . . . will become a vulnerable consumer”. This means that the code must specify how a consumer of ISPANZ members’ services should let ISPs know that they are, or will become, a ‘vulnerable consumer’.

Another requirement of Section 238(3) is that service providers “inform consumers about the options available for vulnerable consumers”. ISPANZ members must therefore ensure that all their customers are aware of those options.

The Act does not require service providers to make assumptions about who may or may not be a ‘vulnerable consumer’. Service providers will be informed by the consumer following the process to be specified in the code.

When they receive such notification it is up to ISPANZ members to verify that they have received a genuine notification. They must also then establish whether or not that consumer has “a means for contacting the 111 emergency service that can be operated for the minimum period in the event of a power failure”. ISPANZ members need only take further action if the notification is genuine and if the consumer cannot contact the 111 emergency service in the event of a power failure. ISPANZ recommends that its members keep clear records of all notifications received and of the actions that they then took, or the reasons for not taking action.

Applicable Telecommunications Services

Section 238(3)(a) of the Act requires that the code “specify which telecommunications services it applies to”. The purpose of section 238 was to provide protection for vulnerable consumers who were losing their copper landline connectivity, and thus the conventional means of contacting the 111 emergency service. It was not intended to expand access to the 111 emergency service by other means. Therefore, ISPANZ considers that the applicable telecommunications services should be those which replace copper landline connectivity and which include the provision of voice telephony. If a customer chooses a service that does not include voice telephony they have consciously chosen to not have access to the 111 emergency service by that means.

Customer Owned Equipment

Cordless phones have never provided access to the 111 emergency service in the event of a power failure. ISPANZ considers that consumers who have

chosen to only have a cordless phone should not be covered by the requirements of the code. Similarly, ISPANZ considers that other customer owned equipment, such as switches and other home networking equipment, about which the service provider may have no knowledge or responsibility, should not be covered by the code.

Wholesale Provider Owned Equipment

ISPANZ considers that, where a service relies on equipment owned and managed by a wholesale provider, then that provider should be responsible for any necessary alternative power sources needed to ensure that a ‘vulnerable consumer’ who does not have an alternative means of accessing the 111 emergency service can still call 111. An example would be a fibre ONT provided by Chorus.

ISPANZ members, as the service providers receiving notifications from ‘vulnerable consumers’, should be responsible for notifying wholesale providers of the need to maintain access to the 111 emergency service during power outages.

Summary

- Under the Act vulnerable consumers are **both** at particular risk of requiring the 111 emergency service **and** do not have a means for contacting the 111 emergency service that can be operated in the event of a power failure. There is no legal requirement for ISPANZ members to take any action unless both parts of this definition are met.

- The code must prescribe a process for vulnerable consumers to inform their service providers. ISPANZ members must ensure that they inform all their customers of that process.
- ISPANZ recommends that its members keep clear records of all notifications received and of the actions that they then took, or the reasons for not taking action.
- ISPANZ considers that the applicable telecommunications services should be those which replace copper landline connectivity and which include the provision of voice telephony.
- ISPANZ considers that consumers who own equipment that needs an alternative power source during a power cut should be responsible for providing that power source.
- ISPANZ considers that wholesale providers who own equipment that needs an alternative power source during a power cut should be responsible for providing that power source.
- ISPANZ members, as the service providers receiving notifications from ‘vulnerable consumers’, should be responsible for notifying wholesale providers of the need to maintain access to the 111 emergency service during power outages.

What’s Next?

The Commerce Commission’s timetable for finalising the code can be found here:

<https://comcom.govt.nz/regulated-industries/telecommunications/projects/commission-111-contact-code>

Key dates are:

28 February 2020 – Draft Code published

27 March 2020 – Submissions on draft Code due

30 April 2020 – Technical industry workshop (TBC)

30 April 2020 – Cross-submissions on draft Code due

30 June 2020 – Final Code published

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