PSGR

Physicians & Scientists for Global Responsibility

January 14, 2026.

Submission

Consultation: Telecommunications and Other Matters Amendment Bill.

Submitted to the:

Committee Secretariat
Economic Development, Science and Innovation Committee
edsi@parliament.govt.nz

Address

PO Box 16164
Bethlehem
Tauranga 3147
New Zealand

Email

info@psgr.org.nz

Website

www.psgr.org.nz

Physicians and Scientists for Global Responsibility Charitable Trust New Zealand (PSGRNZ) works to educate the public on issues of science, medicine, technology (SMT). PSGRNZ work to encourage scientists and physicians to engage in debate on issues of SMT, particularly involving genetics and public and environmental health.

Telecommunications and Other Matters Amendment Bill.[1] [2] [3]

The proposing Minister for this Bill is Hon Paul Goldsmith, whose ministerial roles include the Minister of Justice, Minister for Media and Communications and Minister for Treaty of Waitangi Negotiations. The Regulatory Impact Statement (RIS) advises that 'The proposals relate to two key pieces of legislation underpinning the telecommunications regulatory regime: the Telecommunications Act 2001 and the Telecommunications (Interception Capability and Security) Act 2013 (TICSA)'. *Submission to the Select Committee deadline:* January 14, 2026.

PSGRNZ emphasise that we support increasing broadband/fibre rollout for the purposes of increasing access to the internet for consumers, and for small and medium sized businesses. PSGRNZ do not conflate this public good imperative with reasoning in an RIS which claims to be in the public interest, yet which has failed in policy development, to bring the public into consultation at an early stage.

PSGRNZ makes this submission on the basis of the supporting analysis set out in the Regulatory Impact Statement (RIS) provided by the Ministry of Business, Innovation and Employment (MBIE), which underpins the policy rationale for this Bill. Aside from the proposing and administering agency, MBIE, there is no indication that any other institution has provided commentary on the Regulatory Impact Statement or the Bill. If such material exists, it has not been made readily accessible on the Parliamentary page, including in the Reports docket, where supporting documents would ordinarily be expected for transparency. The absence of these materials increases the burden on the public to locate independent analysis and results in disproportionate reliance on the reasoning of the sponsoring agency alone

We note that MBIE is a government Ministry that is primarily established to promote economic development and support business and innovation. Unlike several other regulatory agencies, it is not governed by a single overarching statute that expressly requires it to act in the public interest across all of its functions.

PSGRNZ requests that the Select Committee recommend against the passage of this Bill and instead call for open public consultation on the discrete problem areas it seeks to address.

From a public-good, constitutional, and administrative-law perspective, this RIS policy problem definitions exhibits a familiar pattern: technologically driven policy concerns are reframed as regulatory deficits, without prior consultation with the public of New Zealand.

This Bill reflects a persistent decline in accountability and transparency mechanisms. The RIS acknowledges the lack of public input that could inform MBIE. All too often Bills are rushed into legislation, but the public are not invited to contribute and comment on the under-pinning policy that would inform the Bill in the first place.

---

[1] Telecommunications and Other Matters Amendment Bill. https://bills.parliament.nz/v/6/2a142c71-babb-45eb-38eb-08de1017e271?

[2] Telecommunications and Other Matters Amendment Bill. https://legislation.govt.nz/bill/government/2025/0210/latest/LMS1532034.html?

[3] 2026-01-14. Parliamentary Submission Page. https://www3.parliament.nz/en/pb/sc/make-a-submission/document/54SCEDSI_SCF_2A142C71-BABB-45EB-38EB-08DE1017E271/telecommunications-and-other-matters-amendment-bill?

1. PSGRNZ note our double-bind of not commenting on the contents of the Bill.

In the absence of sufficient time to analyse the Bill and consult relevant subject-matter experts, this Submission does not comment in detail on its substantive provisions. PSGRNZ acknowledges that this constraint, arising directly from the truncated timing of the Bill, creates a procedural double bind, in *which the Select Committee may be inclined to discount this submission on the basis that it does not engage directly with the Bill's detailed content.*

Notwithstanding the constraints noted above, we recognise that the Bill is founded on the accompanying Regulatory Impact Statement. Accordingly, our submission briefly examines the evidentiary basis and analytical reasoning presented in the RIS, in order to assess the robustness of the policy justification that has informed the introduction of the Telecommunications and Other Matters Amendment Bill for consideration by the Select Committee and members of Parliament.

2. Human Rights Relevant Concerns

a) Privacy & Surveillance Risks

The Bill explicitly expands the extra-territorial reach of the telecommunications regulatory regime to capture overseas providers servicing New Zealand users. This includes extending obligations under the Telecommunications (Interception Capability and Security) Act 2013. Extended interception requirements may conflict with the right to privacy and freedom of expression guaranteed under the NZ Bill of Rights Act (BORA), especially if encryption protections are weakened.

b) No Published Bill of Rights Act (BORA) Analysis

The formal Ministry of Justice / Crown Law BORA advice registry shows no identified rights issues for this Bill as of December 2025, which is unusual given the extra-territorial and enforcement elements. The absence of a published rights analysis on privacy, free expression, or other rights limits transparency promotes distrust in the capacity of future legislation to protect human rights.

c) Expansion of Enforcement Powers Without Safeguards

The Bill inserts a new enforcement regime allowing the Secretary to revoke or restrict licences for non-compliance with certain telecommunications and interception provisions. These powers could affect providers' ability to operate, indirectly impacting users' access to communication services. Without clear procedural safeguards, independent review, and due process protections, licence revocation may risk arbitrary interference with property and economic rights.

d) Extra-Territorial Obligations Without Clear Limits

While the Bill extends obligations to overseas entities, it does not explicitly define limits or procedural safeguards about how compliance will interact with foreign legal frameworks or individual rights protections. Broad extra-territorial application may produce conflicting obligations (e.g., privacy law in other jurisdictions), undermining legal certainty and fair process — rights protected under administrative law and BORA interpretation.

e) Lack of Clear Protections for Encryption & Digital Security

Enhanced capabilities for lawful interception even of encrypted communications could undermine end-to-end encryption and thereby compromise privacy and communications security for journalists, whistleblowers, and ordinary users. Weakening encryption or mandating access for interception carries risk of a chilling effect on freedom of expression and association (BORA s14), which is legally relevant even if the Bill does not directly address these rights.

3. A Wash Up: First Reading passed in urgency with 12 other Bills before recess.

Why the rush? PSGRNZ note that the first reading of this Bill was rushed through in a compressed legislative programme. RNZ reported that 'Thirteen bills get urgency treatment in penultimate sitting block of 2025' – 'all with varying levels of contention'. RNZ noted Sir Geoffrey Palmers' suggestion (to the Standing Orders Committee) that urgency be limited to extraordinary circumstances, such as national emergencies.

4. Holiday season timing of the Submission to Select Committee.

All too often consultation opens on a Bill during the Christmas/New Year holiday period. It is well established that this is a time where people are not focussed on new government legislation.

5. Public Silence: The Absence of Commentary by Public-Good focussed institutions.

Consultation on Bills is repeatedly initiated during the Christmas–New Year period, despite it being well recognised that public engagement with new government legislation is substantially diminished at that time.

6. Public Silence: PSGRNZ note the lack of coverage in MSM.

The lack of substantive media reporting has further diminished public understanding of the Bill. The Fourth Estate has not informed the public of the Bill's potential risks or benefits, and we note that the Bill has received no meaningful media coverage, other than brief RNZ reporting on November 19, 2025 that the first reading and referral to select committee of this Bill had occurred in the week prior. Other mainstream outlets such as Newsroom, NewstalkZB and the New Zealand Herald have not reported on this Bill at all.

7. PSGRNZ express concern: A vague problem definition, and a lack of official certainty that the in the Regulatory Impact Assessment that it will solve the problem.

> ***Problem Definition*** *Telecommunications markets are continuing to evolve with new technologies, business models, and competitive dynamics. While our telecommunications regime is generally serving New Zealanders well, specific issues within the regime have been identified as requiring attention. We consider that if these specific issues are not addressed, we run the risk of our regulatory regime no longer being fit for purpose and becoming less effective in delivering good outcomes for New Zealanders.*
>
> *17. The rise of new technologies, business models and competitive dynamics creates challenges for our current regulatory settings. We need to ensure the regulatory regime is fit for purpose and can respond to the changing nature of the telecommunications landscape.*

The RIS acknowledges that:

> '*We have a medium level of confidence in the quality of evidence available to inform this regulatory impact statement.'*
>
> *'One constraint on our understanding of the impact of the options is the lack of submissions from individual consumers or property owners. Of the 28 submissions we received on the discussion document, most were from telecommunications providers or industry associations. This may have impacted our consideration of some of the options in this regulatory impact statement. Feedback from property owners and consumers would have been particularly beneficial in relation to policy problem 2 (about the rights to access shared property) given the impact on property rights.'*

8. The policy problems and the Bill itself are too broad in scope to justify expedited consideration.

Policy problem 1: Consumer access to dispute resolution

Dispute resolution processes can result in overly onerous obligations for the individual/consumer or for small and medium sized businesses. Why are existing legal tools inadequate? What are the main problems under dispute, who do they concern (large, medium or small business, or individuals)? The RIS treats rising complaint numbers and gaps in scheme coverage as justification for legislative change, but does not establish a clear causal link between the statutory framework and the identified harms.

We are concerned that an industry-recognised dispute resolution scheme may not necessarily produce better consumer outcomes. There is no assessment of whether existing schemes (notably the TDR) are resolving disputes effectively, equitably, or in a timely manner, nor whether alternative mechanisms (general consumer law, contractual remedies, or sector-agnostic schemes) are failing.

The RIS frames industry-established dispute resolution schemes as inherently impartial and protective, without interrogating governance risks. From a public-interest perspective, schemes 'set up by the industry' raise well-recognised concerns about regulatory capture, incentive alignment, and informal influence, none of which are addressed.

Policy problem 2: Accessing shared property for fibre installations

This RIS characterises disagreement and delay in accessing shared property as a legislative failure, when it more accurately reflects the presence of genuine competing property rights. The issue is not fibre uptake per se, but who determines when private rights may be overridden and by what process. Extending or expanding statutory access rights risks shifting decision-making power toward telecommunications providers, normalising intrusions that were intended to be exceptional and time-limited.

From a public-interest and administrative-law perspective, interference with property rights should remain proportionate, contestable, and independently adjudicated, rather than enabled through broader legislative permissions exercised by commercial entities. Provider feedback about inconvenience or borderline cases does not, of itself, justify expanded statutory powers. These matters are inherently contextual and better addressed through strengthened, independent dispute-resolution or tribunal mechanisms.

This is therefore a governance and adjudication issue, not a legislative gap.

Policy problem 3: Application of regulatory regime on providers based offshore

The complexities of this section alone give rise to multiple public-interest concerns. Without adequate demonstration of necessity, proportionality, or democratic accountability, which include human rights issues, the underlying justification for any new Bill is not established. Competition neutrality and administrative convenience appear elevated above public-interest safeguards, while extra-territorial reach, consumer harm, and sovereignty implications are insufficiently examined. The result is a justification for legislation that is structurally weak, constitutionally thin, and insufficiently grounded in evidence for any subsequent legislation.

1. Problem framing privileges regulatory symmetry over public interest

The RIS defines the 'policy problem' primarily as a regulatory gap between onshore and offshore providers, with the dominant concern being competitive neutrality and levy liability. This framing implicitly treats regulatory consistency and market competition as proxies for the public interest. From a public-law perspective, this is a category error: regulatory symmetry is not itself a constitutional objective. The proper inquiry should be whether existing regulatory tools are necessary and proportionate to protect legitimate public interests (such as consumer protection, security, and access), rather than whether all providers can be made subject to identical obligations regardless of jurisdiction, technology, or risk profile.

2. Absence of proportionality and risk-based analysis

The RIS assumes that offshore provision per se creates a regulatory deficit, yet it does not demonstrate:

- what specific harms have occurred,
- whether existing legal mechanisms are insufficient to address them, or
- whether the same level of regulatory burden is justified across very different business models and technologies.

In administrative-law terms, this raises concerns about proportionality and rational connection. Regulation is proposed not on the basis of demonstrated harm or regulatory failure, but on speculative future risk and administrative convenience. This risks breaching well-established principles that coercive state power should be evidence-based, targeted, and the least intrusive means available.

3. Conflation of jurisdictional uncertainty with justification for expansion of power.

The RIS repeatedly notes uncertainty about the extra-territorial reach of the Telecommunications Act and contrasts it with TICSA's broader scope. However, legal uncertainty is treated not as a signal to clarify limits, but as a justification for expanding statutory reach. From a constitutional perspective, this reverses the burden of justification. The fact that Parliament did not previously confer extra-territorial powers, particularly in a context touching on interception, security, and levies, should be understood as a deliberate constraint, not an omission to be remedied without careful scrutiny.

4. Insufficient consideration of sovereignty and comity.

In New Zealand constitutional and administrative law, comity reflects a presumption of restraint in asserting extra-territorial regulatory authority, requiring explicit parliamentary authorisation and careful consideration of sovereignty, enforceability, and potential conflict with foreign legal systems. Comity operates as a background constitutional presumption, not a discretionary courtesy.

Extra-territorial regulation raises classic public-law issues of sovereignty, international comity, and enforceability. The RIS acknowledges that providers, infrastructure, and transmissions may be located outside New Zealand, but does not meaningfully engage with:

- conflicts of law,
- overlapping regulatory claims by other states,
- enforceability challenges, or
- the risk of reciprocal regulatory overreach affecting New Zealand entities overseas.

From a constitutional standpoint, extending domestic regulatory obligations beyond the territory of the state is a serious step that requires explicit parliamentary justification, not merely a statement that technology has evolved.

Why comity matters in regulatory and administrative law:

- In legislative and regulatory contexts, comity requires decision-makers to ask:
- Is Parliament explicitly authorising extra-territorial regulation?
- Is the regulatory objective sufficiently compelling to justify cross-border reach?
- Are there conflicting or overlapping foreign regulatory regimes?
- Is enforcement realistic and legitimate, or merely symbolic?
- Does the proposal risk reciprocal overreach against domestic actors abroad?

Absent clear statutory authority, courts will generally presume that legislation is intended to operate territorially, in accordance with comity.

5. Consumer protection is asserted, not evidenced

The RIS claims that consumers may be left without protections if offshore providers are not captured. However, it does not:

- identify actual consumer harms,
- assess the effectiveness of existing consumer law (e.g. Fair Trading Act, contract law),
- examine whether sector-specific regulation is the appropriate vehicle.

This weakens the legitimacy of the proposed intervention. In public-interest regulation, consumer protection must be demonstrated, not assumed, particularly when the remedy involves expanding surveillance-adjacent obligations and levies.

6. Future-proofing as an open-ended delegation

The argument that regulation must be 'flexible enough to address business models that were not anticipated' is presented as self-justifying. From an administrative-law perspective, this risks open-ended delegation and erosion of parliamentary control. Future-proofing is not a constitutional principle; it is a policy aspiration that must be balanced against legal certainty, democratic accountability, and the rule of law.

7. Lack of alternatives analysis

The RIS does not seriously explore non-legislative or more limited options, such as:

- contractual or licensing conditions,
- targeted consumer-protection measures,
- cooperative international arrangements,
- technology-specific regulation rather than blanket provider capture.

This omission undermines the RIS's compliance with good regulatory practice and suggests outcome-driven justification rather than neutral policy analysis.

Policy problem 4: Setting the amount of the Telecommunications Development levy

The RIS does not demonstrate adequate analytical rigour in its treatment of the Telecommunications Development Levy (TDL). It assumes that the existing levy framework broadly functions but may lack flexibility, yet it provides no substantive analysis of the current levy's performance, distributional effects, or options for stratification beyond a mechanical increase through primary legislation.

In particular, the RIS fails to examine how the levy burden is currently apportioned across liable persons and whether this allocation aligns with public-interest objectives, market structure, or differential ability to pay. Whether alternative stratification mechanisms (e.g., risk-based, revenue-tiered, service-profiled levies) might better align incentives and capacity without expanding regulatory burden on smaller providers.

The section also overlooks the risk of regulatory capture inherent in levy-funded regimes: where the very institutions that contribute to the levy may gain disproportionate informal influence on policy and regulatory decision-making. Without safeguards or transparent governance mechanisms, this dynamic can undermine both accountability and the public interest by privileging incumbent commercial providers over consumer or community interests.