

Covering note: Developing decision-making frameworks for the current input methodologies review and for considering changes to the input methodologies more generally – DISCUSSION DRAFT – 22 July 2015

Introduction and context for the discussion draft frameworks

Purpose of this document

1. This covering note introduces and attaches two draft frameworks for discussion:
 - 1.1 Attachment A: Decision-making framework to guide the current IM review – discussion draft (**draft framework for the IM review**). This attachment explains our initial thinking on developing a framework for reviewing and changing the input methodologies (IMs) in the context of the current IM review; and
 - 1.2 Attachment B: Decision-making framework for considering changes to the IMs more generally – discussion draft (**draft framework for IM changes**). This attachment steps back and considers how the IM review and any resulting changes fit into the wider context of different avenues for making changes to the IMs, including beyond the current review.
2. In sharing our initial thinking on those matters, we hope to inform your submissions on the decision-making framework for the IM review, and any submissions on the framework for considering changes to the IMs more broadly.

Overview of this document

3. In this covering note we:
 - 3.1 Explain the context for putting forward our initial thinking on decision-making frameworks for the review, and for considering changes to the IMs more generally;
 - 3.2 Discuss three factors that are relevant to both the draft framework for the review, and the draft framework for IM changes:
 - 3.2.1 Our focus on only making changes to the IMs that promote the 52A purpose more effectively; promote the 52R purpose more effectively; or significantly reduce compliance costs, other regulatory costs or complexity;
 - 3.2.2 Our preliminary view that there is no specific statutory threshold for changing the IMs; and

- 3.2.3 Our preliminary view that we cannot create IMs on new matters either as part of the IM review, or more generally;
 - 3.3 Note the next steps regarding the draft frameworks, which include a presentation from us at the IM review forum and your submissions. We also pose some further questions for you to consider in making your submissions.
- 4. Attachment A provides a draft framework for the current review, which presents our initial thinking on the two major conceptual stages in the current IM review process:
 - 4.1 **Review stage:** How, in conducting the IM review, we will decide which IMs we should consider changing and why; and
 - 4.2 **Change stage:** How we will decide whether to make a proposed change to an IM (ie, replace or amend) as a result of the review stage.
- 5. Attachment B provides a draft framework for considering IM changes more generally. Rather than being limited to the current review, this draft framework considers over a longer time horizon (extending beyond the current review):
 - 5.1 When we might make different types of changes to the IMs (and in doing so suggests different categories of IM changes); and
 - 5.2 What factors we might take into account in deciding whether to make a change under each of those categories.

Document map

- 6. We have included Figure 1 below to help map how the elements of this document relate to each other. Figure 1 is a simplified version of Figure B1 of Attachment B, which sets out in table form the draft framework for IM changes, with:
 - 6.1 An orange box showing the area of Attachment B that we expand on in more detail in Attachment A (the draft framework for the IM review). Attachment A elaborates on how the factors presented in the orange box apply to both the review and change conceptual stages of the current IM review; and
 - 6.2 A purple box showing the area of Attachment B that we discuss in the covering note.

Figure 1: Schematic showing the coverage of Attachment B, highlighting the areas that Attachment A and the covering note expand on in more detail

Attachment B: draft framework for IM changes more generally	
Changes considered under section 52Y	Changes considered under the 3 proposed section 52X categories
What types of changes fall into this category?	What types of changes fall into each of these categories?
When considering a change under this category, what are the factors we would consider? <div style="border: 1px dashed black; padding: 5px; margin: 5px 0;"> <i>Attachment A expands on the application of these factors in the context of the current review</i> </div>	When considering a change under each of these categories, what are the factors we would consider?
Other factors influencing our decision to consider changes under this category (ie, no IMs on new matters, no specific statutory threshold)	Other factors influencing our decision to consider changes under these categories (ie, no IMs on new matters, no specific statutory threshold)
<div style="border: 1px dashed black; padding: 5px; margin: 0 auto; width: fit-content;"> <i>The covering note discusses these factors (amongst other things)</i> </div>	
Process for changes under this category	Process for changes under these categories

Our focus at this stage is developing the decision-making framework for the IM review

7. The reason for developing and sharing our thinking on the matters covered in this document at this time is to inform the current IM review. As such:
 - 7.1 Attachment A, being the decision-making framework for this review, is of most immediate application and is therefore our primary focus at this stage; and
 - 7.2 Attachment B is largely provided to help contextualise the current review within the bigger picture of different avenues for making changes to the IMs, including beyond the current review.

Why have we developed these draft frameworks

8. A number of submitters on our open letter of 27 February 2015 requested that we develop a decision-making framework for the IM review.¹ Some submitters suggested that it would be useful to also consider where the IM review fits in within the wider context of different avenues through which we can make changes to the IMs.²
9. As noted in the problem definition paper, we see merit in establishing a decision-making framework for the IM review, and a framework for making IM changes more generally.³ This document provides our initial thinking on those frameworks.
10. We intend to present an overview of the two draft frameworks at the IM review forum later this month in order to further explain how we developed them and how we propose they might work.

Nature of the draft frameworks

11. When considering whether to make a change to the IMs, we must consider the purpose of Part 4 of the Act⁴ (s 52A) and the purpose of IMs (s 52R).⁵ We must also follow the process and publishing requirements prescribed by the Act. Changes to the IMs, like the initial IMs, are subject to merits appeals where the Court considers whether there is a materially better alternative than the IM we have determined in light of s 52A, s 52R, or both.

¹ For example, see: ENA “Response to the Commerce Commission’s open letter” (31 March 2015), p. 6-7; Unison “Unison response to open letter on scope, timing, focus of review of input methodologies” (31 March 2015), para 8(b); NZ Airports “Proposed scope, timing and focus for the review of input methodologies, and further work on the cost of capital input methodology for airports” (20 March 2015), p. 4-6; Transpower “Input methodologies: scoping the statutory review” (31 March 2015), p. 3-4.

² Transpower “Input methodologies: scoping the statutory review” (31 March 2015), p. 3-4.

³ Commerce Commission “Input methodologies review: Invitation to contribute to problem definition” (16 June 2015), para 39.

⁴ All statutory references in this document are to the Commerce Act 1986.

⁵ For more on the purpose of Part 4 (s 52A), see: Commerce Commission “Input methodologies (electricity distribution and gas pipeline services): Reasons paper” (22 December 2010), section 2.4. For more on the relationship between the s 52A and s 52R purposes, see: *Wellington International Airport Ltd and others v Commerce Commission* [2013] NZHC 3289 at [165].

12. Within those bounds however, we must exercise judgement about when we change IMs under s 52X and s 52Y,⁶ and how we evaluate whether the change might better promote the 52A and 52R purposes.⁷ It is in these areas where we must exercise judgement that the draft frameworks would guide our decision-making if confirmed.
13. Neither of the draft frameworks presented is mechanistic. We do not consider that the factors influencing our decisions can be reduced to a series of 'if-then' statements. Rather, they are conceptual frameworks to guide our decision-making. Because we cannot foresee all situations and potential changes that might arise, we consider that the frameworks need to be sufficiently general to provide guidance in as many situations as possible.
14. The draft frameworks reflect only our initial thinking on the matters covered. They are deliberately intended to be drafts to promote discussion.
15. If there is something specific that you would like us to provide further guidance on in either draft framework when continuing to develop our thinking on these matters, please let us know. We are particularly interested in specific suggestions about how the usefulness of the draft frameworks could be improved, and why the proposed improvements would be useful. In suggesting additions or changes to the draft frameworks, please also identify the problem that your suggestions are intended to address.

Factors relevant to both draft frameworks

High-level factors relevant when considering a change to the IMs

16. Central to both frameworks is a focus on only changing the current IMs where this appears likely to:
 - 16.1 Promote the Part 4 purpose in s 52A more effectively;
 - 16.2 Promote the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose); or
 - 16.3 Significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting the promotion of the s 52A purpose).
17. We propose to apply these factors when considering a change under either s 52X or s 52Y. They also form the high-level objectives for the current IM review, and should inform both the review and change stages of the review.

⁶ Albeit that we must review each IM within 7 years of publication (see s 52Y).

⁷ We can make changes to the IMs either under s 52X, or under s 52Y as a result of a s 52Y review. Our preference (to achieve a coherent review) is not to make amendments under s 52X to IMs that are within the scope of the current s 52Y review. As such, some changes that might otherwise be considered under s 52X might come within the review. See Commerce Commission "Cover letter for the Notice of Intention to commence a review of input methodologies" (10 June 2015), para 15.

Our preliminary view is that there is no specific statutory threshold for changing the IMs

18. In the problem definition paper, we noted our preliminary view is that there is no specific statutory threshold for changing the IMs under s 52Y.⁸
19. Because we are now touching on our approach to considering IM changes under s 52X, we wish to clarify that it is also our preliminary view that there is no specific statutory threshold for changing the IMs under s 52X.
20. In Attachment A, we discuss that, while we do not consider there to be a specific statutory threshold for making changes to the IMs, we are able to provide some guidance on how we will exercise our judgement in deciding whether to make a change to the IMs in the context of the IM review.⁹
21. We have not yet turned our attention to s 52X in the same level of detail, as our focus is currently on the framework for the IM review.
22. If you disagree with our preliminary view that there is no specific statutory threshold for making changes under either s 52Y or s 52X, please let us know in your submissions on the problem definition paper.

Our preliminary view is that we cannot create IMs on new matters

23. In the problem definition paper, we noted our preliminary view that we cannot create an IM on a matter not covered by a published IM under 52Y.¹⁰
24. Because we are now touching on our approach to considering IM changes under s 52X, we wish to clarify that it is also our preliminary view that we cannot create IMs on new matters under s 52X or any other power.¹¹
25. Our preliminary view on these points reflects:
 - 25.1 The position that we have taken previously that, after setting the initial IMs, we do not have the power to set IMs on new matters.¹² Section 52U gave us the power to set the IMs in 2010. We do not have the power under the Act to set any further IMs on new matters after 2010 in respect of the services currently regulated under Part 4;¹³ and
 - 25.2 An additional factor relevant to the IM review context, that s 52Y contemplates a review of existing, published IMs.¹⁴

⁸ See the problem definition paper, para 42.

⁹ See Attachment A, paras 20–31.

¹⁰ See the problem definition paper, paras 44–48.

¹¹ Except in the context of a Part 4 inquiry, as per s 52U(3).

¹² See Commerce Commission “Clarification on SPA IM” (letter to the ENA) (20 July 2012), para 3, available at: www.comcom.govt.nz/dmsdocument/6011.

¹³ In the event of a Part 4 inquiry into whether to recommend regulation of goods or services that are currently not subject to regulation under Part 4, we are required to set IMs if we are satisfied that the competition and market power tests are met (see s 52U(3)).

¹⁴ See the problem definition paper, paras 44–48.

26. As noted in the problem definition paper, it can be unclear as to what would constitute the creation of an IM on a matter not covered by an existing published IM as opposed to change to improve an existing IM.¹⁵
27. If you disagree with our preliminary view that we cannot create IMs on new matters, please let us know in your submissions on the problem definition paper. In doing so, it would be helpful if you could provide examples of any areas where you think a change to an IM is required that might cross over into creating an IM on a new matter. This can be a difficult point to discuss in the abstract, given that it can be unclear as to what would constitute the creation of an IM on a new matter.

Next steps

We intend to present on the draft frameworks the forum

28. We intend to present an overview of the draft frameworks at the forum. This will provide an opportunity for us to further explain why and how we developed them, and how they might be used. It will also provide an opportunity for us to get some initial feedback from stakeholders on whether a framework for making IM changes more generally is something we should continue to develop at this time.
29. The draft frameworks and our presentation at the forum should then inform your written submissions.

Submissions

30. In the problem definition paper, we invited your views on a decision-making framework for the review, and for making IM changes more generally.¹⁶ We also specifically invited your views on particular points relating to the framework:
 - 30.1 Where correcting any drafting errors and ambiguity in the IMs fits into a framework for making change to the IMs.
 - 30.2 Our preliminary view that there is no specific statutory threshold for making changes to the IMs as part of the review.
 - 30.3 Our preliminary view that we cannot create an IM on a matter not covered by an existing published IM for a particular type of regulated service as part of the review.
31. We have already received one submission on our problem definition paper that is relevant to framework matters.¹⁷ Rather than responding to that submission at this stage, we intend to wait until all submissions on framework matters have been received and considered.

¹⁵ See the problem definition paper, para 45.

¹⁶ Ibid, para 40.

¹⁷ Transpower “Input methodologies: threshold for changing IMs and the creation of new IMs” (25 June 2015).

32. Submissions on any framework matters, including those specific points listed above, are due by 5pm on Friday 21 August 2015. As noted in the problem definition paper,¹⁸ please address your submissions to:

Keston Ruxton
Manager, Market Assessment and Dairy
Regulation Branch
im.review@comcom.govt.nz

Additional questions for stakeholders

33. We are particularly interested in hearing your views on the following questions in your submissions on framework matters:
- 33.1 Do you support us developing a decision-making framework for the review (Attachment A), and for making changes to the IMs more generally (Attachment B), at this time?
- 33.2 Do you agree with our preliminary views on whether we can create IMs on new matters and whether there is a statutory threshold for changing the IMs in the context of both s 52Y and s 52X?
- 33.3 Should 'Category 3' of s 52X amendments (which concerns workability, effectiveness and predictability), as presented in Attachment B, be split into separate categories for 'workability and effectiveness' and 'predictability'?
- 33.4 Is there something else specific that you would like us to provide further guidance on in developing our thinking on these matters?¹⁹

¹⁸ Problem definition paper, paras 89, 92.

¹⁹ See para 15 above.

Attachment A: Decision-making framework to guide the current IM review – DISCUSSION DRAFT – 22 July 2015

Introduction and overview

Purpose of this draft framework

1. The purpose of this draft framework for the IM review is to:
 - 1.1 Present a discussion draft of a decision-making framework that could guide the IM review; and
 - 1.2 By presenting our initial thinking, inform your submissions on the framework for the review.

This is a draft framework for the current IM review

2. This is a draft framework for the current IM review. It presents our initial thinking on what we see as the two major conceptual stages in the current review process:²⁰
 - 2.1 **Review stage:** How, in conducting the IM review, we will decide which IMs we should consider changing and why. (This broadly equates to the question in box 2 of Figure A1 below: which IMs should we consider changing and why?); and
 - 2.2 **Change stage:** How we will decide whether to make a proposed change to an IM as a result of the review stage. (This broadly equates to how the question in box 4 in Figure A1 below: should we change the IMs and, if so, how?)

²⁰ These are conceptual stages rather than mechanical stages. As such, there could potentially be feedback loops between the review and change stages.

Figure A1: Conceptual steps in the IM review²¹



Overview of this framework

We must review the existing IMs

- Section 52Y specifies that this is a review of the existing published IMs. As such, we consider that the starting point when reviewing the IMs, and considering which IMs we should further explore whether to change, is the existing IMs.
- Our view is therefore that the existing IMs are the starting point against which the benefits of proposed changes must be measured.²² We consider this is implicit in s 52R given its direction that the purpose of IMs is to promote certainty for suppliers

²¹ Adapted from Figure 1 in the problem definition paper.

²² In our WACC percentile amendment decision last year, we noted that an exception to the current IMs being the starting point is if the current IM has been substantially undermined such that it has no evidential basis (Commerce Commission "Amendment to the WACC percentile for price-quality regulation for electricity lines services and gas pipeline services: Reasons paper" (30 October 2014), para 2.11.1). In that decision, we noted that ordinarily the starting point would be the current IM (at para 2.14).

and consumers in relation to the rules, requirements and processes applying regulation under Part 4 of the Act.²³

We propose to only make changes that promote the high-level objectives for the review

5. We propose only changing the current IMs where this appears likely to:²⁴
 - 5.1 Promote the Part 4 purpose in s 52A more effectively;
 - 5.2 Promote the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose); or
 - 5.3 Significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting the promotion of the s 52A purpose).
6. These high-level objectives drive this draft framework for the IM review, and are relevant to both the review and change stages. We now move from these high-level objectives towards the questions that we might ask ourselves in conducting the review and considering whether to change the IMs as a result.

Review stage: Which IMs should we consider changing and why?

The key questions we intend to ask ourselves in reviewing the IMs

7. In short, in considering whether to change each existing IM, this framework asks: is the IM trying to achieve the right thing in the right way? That is, the questions are focused on identifying whether there is a problem with the existing IM.
8. This could be expanded to a series of more specific questions to be asked of each IM, including:
 - 8.1 Is the policy intent behind the IM still relevant and appropriate?
 - 8.2 Is the current IM achieving that intent?
 - 8.3 Could the current IM achieve the policy intent better?
 - 8.4 Could the current IM achieve the policy intent as effectively, but in a way that better promotes s 52R or reduces complexity or compliance costs?
 - 8.5 Do changes to other IMs require any consequential changes to the IM in question for internal consistency or effectiveness reasons?
9. These questions, including the sub-questions which we elaborate on below, are not exhaustive and there is no set order for considering them. Nor is there any set weighting ascribed to each question; not all questions will be relevant to all IMs. The questions are intended to provide some practical tools, or lenses, that we can use to examine an IM.

²³ Further, the majority of IMs have been reviewed by the Court under merits appeal.

²⁴ These factors, being the factors that we will take into account in considering whether to make a change to the IMs under s 52Y, are also set out in Figure B1 (in Attachment B) under the Category 1 column.

Is the policy intent behind the IM still relevant and appropriate?

10. Is the policy intent still consistent with the 52A purpose?
11. In answering this question, examples of the factors we might take into account are:
 - 11.1 What was the IM attempting to achieve, either on its own or as part of the IMs as a package?
 - 11.2 Is the objective of the IM still valid and consistent with 52A, in light of the type of regulation where the IM is applied?
 - 11.3 Has the relevance of the policy intent been questioned (either by stakeholders, the Court or the Commission)?
 - 11.4 Have external circumstances changed in a way that disrupts the assumptions underlying the original policy decision and therefore would cause a need for a change to the policy behind the IM? For example:
 - 11.4.1 Has the industry changed?
 - 11.4.2 Has relevant economic theory or practice developed?
 - 11.4.3 Have other external circumstances changed?
 - 11.5 Is the IM still required or could the policy intent be achieved without the IM?
 - 11.6 Is there other evidence that suggests that the original policy is no longer promoting 52A?

Is the current IM achieving that intent?

12. Is the IM, either alone or in combination with other IMs, achieving the policy intent behind the IM?
13. In answering this question, examples of the factors we might take into account are:
 - 13.1 Have external circumstances changed in a way that means the current IM might no longer be achieving the policy intent behind it?
 - 13.2 Has anything changed in the matters incorporated in the IMs by reference (such as accounting or valuation standards) that means the current IM is no longer achieving its purpose?
 - 13.3 Has the effectiveness of the IM in achieving its policy intent been questioned (either by stakeholders, the Court or the Commission)?
 - 13.4 Is there other evidence that suggests that the IM is no longer achieving its policy intent or has had unintended consequences?

Could the current IM be improved to achieve the policy intent better?

14. Could the IM be changed to more effectively achieve the policy intent behind the IM?
15. In answering this question, examples of the factors we might take into account are:
 - 15.1 Have any potential changes been identified (either by stakeholders, the Court or the Commission) that might:
 - 15.1.1 Improve the effectiveness of the IM in achieving its policy intent? or
 - 15.1.2 Reduce any unintended consequences of the IM?
 - 15.2 Have external circumstances changed in a way that means the current IM might no longer be the most effective way of achieving the policy intent behind it?
 - 15.3 Is there other evidence that suggests that a change might improve the effectiveness of the IM in achieving its policy intent?
 - 15.4 As a cross-check, could the policy intent be better achieved without changes to the IM but instead through changes to other aspects of the regulatory regime (including through guidance material)?

Could the current IM be improved so that it achieves the policy intent as effectively, but in a way that better promotes s 52R or reduces complexity or compliance costs?

16. Could the IM be changed to more effectively promote the 52R purpose, or reduce complexity or compliance costs, without reducing the effectiveness of the IM in meeting the policy intent behind it?
17. In answering this question, examples of the factors we might take into account are:
 - 17.1 Have any potential changes been identified (either by stakeholders, the Court or the Commission) that would better promote s 52R or reduce unnecessary complexity or compliance costs?
 - 17.2 Is there other evidence that suggests that the IM could be changed to more effectively promote the 52R purpose, or reduce complexity or compliance costs, without reducing the effectiveness of the IM in meeting the policy intent behind it?

Do changes to other IMs require any consequential changes to the IM in question?

18. Do changes to other IMs require any consequential changes to the IM in question for internal consistency or effectiveness reasons?

19. In answering this question, examples of the factors we might take into account are:
- 19.1 Where a change is made to a price-quality IM, should a corresponding change be considered to the equivalent IM for information disclosure to maintain alignment between information disclosure and price-quality regulation?
 - 19.2 Where a change is made to an IM for one sector, should a corresponding change be considered to the equivalent IM for other sectors to maintain cross-sector consistency?
 - 19.3 Where a change is made to one IM, does it create a need to consider changing another IM in order to (mechanically or substantively) accommodate the change?

Change stage: Should we change the IMs and, if so, how?

Once we have decided which IMs to consider changing, how do we decide whether and how to change them?

20. After we have reviewed the IMs and decided which IMs to consider changing, we would turn our minds to whether and how to change them. This would usually involve considering proposed changes to the IMs as well as the status quo and solutions that might lie outside of the IMs. In doing so, we propose to again apply the factors set out at paragraph 5 of this attachment – ie, would the proposed change:
- 20.1 Promote the Part 4 purpose in s 52A more effectively;
 - 20.2 Promote the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose); or
 - 20.3 Significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting the promotion of the s 52A purpose).
21. At this stage we may also consider whether there are any solutions to the problem that the proposed IM change is intended to address that do not involve changes to the IMs. For instance, we may consider whether there solutions involving changes to other aspects of the regulatory regime (for example, through changes to information disclosure requirements or through guidance material).
22. We go on to expand on how we would apply the above factors in deciding whether to make a proposed change to an IM.

No specific statutory threshold – but we intend to only make changes that promote the high-level objectives for the review

23. As noted in the covering note, our preliminary view is that there is no specific statutory threshold for changing an IM as a result of the IM review.²⁵ We must exercise judgement in deciding whether to change an IM as a result of the review, with sections 52A and 52R of the Act providing touchstones.
24. While there is no specific statutory threshold for whether to make a change to an IM as a result of the review, we propose to make *only those changes* that would promote the factors set out in paragraph 5 of this attachment.

An exercise in judgement, involving weighing up the pros and cons of change

25. Deciding whether or not to make a change to the IMs requires us to exercise judgement, taking into account both the pros and the cons of making the change. In order for a change to more effectively promote the 52A purpose, it is necessary that the positive impact on the long-term benefits to consumers (pros) resulting from the change outweigh any negative impact the change has on the long-term benefit of consumers (cons).
26. Considering the pros and cons of a change is a qualitative exercise, though some quantitative analysis might be informative in situations where doing so is practicable and meaningful. Therefore, while the Act does not require a formal cost-benefit assessment of proposed changes to the IMs, a qualitative assessment of the costs, as well as the benefits, of a proposed change to the IMs may be relevant to our decision.

Considering minor changes as a package

27. When considering some minor changes, the pros of making a particular change in isolation might not outweigh the cons. However, when bundled together with other small changes, the pros of the package of changes might outweigh the cons of the package of changes. This might occur, for example, where a number of minor changes are proposed for one IM. The first change might have a relatively high ‘cost’ associated with it, but the marginal cost of the additional changes to the same IM might then be lower, while the benefits continue to accumulate.

The type of regulation that the IM affects is also relevant

28. In considering whether the pros of making a change to the IMs outweigh the cons, the role of the IM in question in light of the type of regulation it affects, is also a relevant factor.

²⁵ As discussed in the problem definition paper (at para 42), no specific threshold or standard of proof is referred to in s 52Y or the s 52V process that the IM review will follow. The s 52Z(4) ‘materially better’ standard that applies in IM appeals does not apply in respect of changes to IMs as a result of the s 52Y review. That threshold is specifically for the IM appeals regime.

29. As noted in the initial IMs reasons paper, the IMs that we have set for price-quality regulation have a different focus from those that we set for information disclosure regulation:²⁶
- 29.1 The IMs we have determined for price-quality regulation cover:
- 29.1.1 Matters particularly relevant to setting maximum allowable revenues (ie, set under s 52T(1)(a));
- 29.1.2 Regulatory processes and rules relating to the specification and definition of prices (ie, the ‘form of control’), the reconsideration of price-quality paths (ie, ‘re-openers’), the incremental rolling incentive scheme (IRIS), and supplier amalgamations (ie, set under s 52T(1)(c)); and
- 29.1.3 Matters relating to customised price-quality path (CPP) proposals (ie, set under s 52T(1)(d)).²⁷
- 29.2 The IMs we have determined for information disclosure regulation cover matters particularly relevant to assessing profitability (ie, set under s 52T(1)(a)), which is a key aspect of ensuring that sufficient information is available to interested persons to assess whether the purpose of Part 4 is being met (s 53A).
30. As such, when considering whether to change a given IM, we are interested in the significance of that IM in the context of the type of regulation to which it applies. For instance:
- 30.1 For an information disclosure IM, we might ask: how significant is the role of the IM in assessing the profitability of regulated suppliers?
- 30.2 For a price-quality IM, we might ask: how significant is the role of the IM in setting the revenue of regulated suppliers?
31. The more significant the IM is to the type of regulation in light of those questions, the more even a small change to an IM set under s 52T(1)(a) might have a significant impact on the promotion of either the s 52A or s 52R purposes.²⁸ Therefore, the type of regulation affected by the IM is a key consideration when we are weighing up the pros and cons of changing an IM.

²⁶ See for example: Commerce Commission “Input methodologies (electricity distribution and gas pipeline services): Reasons paper” (22 December 2010), paras 2.8.1–2.8.2.

²⁷ We have also set IMs relating to pricing methodologies for gas pipeline businesses which only potentially apply under a customised price-quality path (under s 52T(1)(b)).

²⁸ Table X1 of the initial IM reasons paper presented the Commission’s view on the key relevance of the various IMs to the regulatory objectives in s 52A at the time the IMs were first set: Commerce Commission “Input methodologies (electricity distribution and gas pipeline services): Reasons paper” (22 December 2010), page iv.

32. In the case of IMs relating to specific rules and processes, or to CPP proposals, small changes to an IM might have a significant impact on the promotion of the s 52R purpose, or on complexity and compliance costs.

Attachment B: Framework for considering changes to the IMs more generally – DISCUSSION DRAFT – 22 July 2015

Introduction and context for the discussion draft framework

Purpose of this draft framework

1. The purpose of this draft framework for IM changes is to:
 - 1.1 Step back and consider how the IM review and any resulting changes fit into the wider context of the different avenues for making changes to the IMs, including beyond the current review.
 - 1.2 By presenting our initial thinking, inform your submissions on the framework for the review.

Structure of this attachment

2. At the end of this attachment is Figure B1, which sets out in table form the draft framework for IM changes.²⁹
3. The first part of this attachment supports the draft framework by explaining:
 - 3.1 Why we have developed this draft framework; and
 - 3.2 How we developed this draft framework and how it works.

This draft framework provides context for the current IM review

4. The reason for developing and discussing a framework for considering IM changes at this time is to inform the IM review. This draft framework supports the draft framework for the current IM review (Attachment A) by providing the longer term context for the current review.
5. In developing this draft framework we have considered the types of changes that might sit best within an IM review process (ie, under s 52Y), as well as how we make changes under s 52X. Stepping back and considering all of the avenues for considering changes to the IMs helps to put the current IM review into the wider context extending beyond the review.

²⁹ In the event of a Part 4 inquiry, we are required to determine and apply IMs for the goods or services that are the subject of the inquiry once we are satisfied that the competition and market power tests are met (see s 52U(3)). This would not constitute an IM change, and so is not covered by this draft framework.

How we developed the draft framework for IM changes and how it works

Categorising IM changes

6. Our draft framework presents four categories of IM changes:³⁰
 - 6.1 Category 1: changes resulting from a section 52Y review;
 - 6.2 Category 2: pre-price-setting changes;
 - 6.3 Category 3: material changes to improve workability, effectiveness or predictability; and
 - 6.4 Category 4: non-material workability changes.
7. In developing these categories, we started with the two provisions under which we can make changes to the IMs under the Act:
 - 7.1 Section 52Y – which allows for changes (ie, replacements or amendments) to the IMs as a result of a review; and
 - 7.2 Section 52X – which allows for changes (ie, amendments) to the IMs outside of a review.
8. Within the scope of 52X (ie, changes outside of a review), we identified that there are different types of changes we might make.
9. First of all, s 52X distinguishes between material and non-material changes. If a change is non-material, we are not required to follow the consultation process set out in s 52V of the Act. We therefore have proposed Category 4, which concerns these non-material changes.
10. Then, within material s 52X changes, we have identified two different types of changes, Category 2 and Category 3, each with a different focus and timing. This distinction is not made in the Act. Rather, it is through our experience over the past five years that we have realised that material changes under 52X could generally be categorised in one of two ways:
 - 10.1 Changes made to the context of an upcoming price-setting event for the next pricing cycle. These are most likely to affect the IMs for default or individual price-quality paths³¹ or the IMs for airports. We have labelled these as Category 2.

³⁰ Note that under s 53ZB and s 53ZC(2)(b), price-quality paths may not be reopened within a regulatory period on the grounds of a change in input methodology, except as provided in s 53ZB.

³¹ Plus any consequential changes to information disclosure to maintain alignment with price-quality regulation.

- 10.2 Changes made as required to address a workability concerns, or improve the effectiveness of the IMs for information disclosure for energy businesses or the IMs for CPPs, or to promote predictability as far in advance of a price-path reset as possible. We have labelled these as Category 3.
11. There is an additional category of IM changes – those directed by the Court under s 52Z(3)(b). However, we have not included these in the draft framework because they are not changes made at our discretion.

The draft framework provides guidance on two key questions for each category

12. For each category, the draft framework addresses two key questions:
- 12.1 How does a potential change get into this category? (ie, What types of changes fall within this category? How is this category defined? What are the characteristics of changes that fall within this category?)
- 12.2 Once a change is being considered in this category, what are the factors we will take into account in considering whether to make the change? (ie, what are our decision-making criteria for making changes of this type?)
13. For a proposed change to the IMs, the draft framework therefore provides guidance on:
- 13.1 The category that the proposed change falls into and therefore when and under what process it should be considered.
- 13.2 The factors we will take into account when deciding whether to make the proposed change.
14. In answering the first question about how to categorise a particular proposed change, we suggest there are broadly two factors to consider:
- 14.1 The nature of the change. This concerns the characteristics of the change proposed – for example, the extent to which it is fundamental, has cross-sector implications, affects price-quality or information disclosure regulation, whether it is aimed at implementing an initiative via a price reset.
- 14.2 The time at which the change is proposed. This concerns timing factors, such as where we are in the 7-year review cycle and where are we in the price-setting cycle.

15. In answering the second question about what factors we would take into account in deciding whether to make a proposed change, the draft framework considers:
- 15.1 Whether the change is likely to:³²
 - 15.1.1 Promote the Part 4 purpose in s 52A more effectively;
 - 15.1.2 Promote the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose); or
 - 15.1.3 Significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting the promotion of the s 52A purpose).
 - 15.2 Whether there are any alternative solutions to the problem that the proposed IM change is intended to address that do not involve changes to the IMs.

³² With the exception of Category 4, which is focused on changes that simplify or correct the way the IM is articulated, without materially changing the meaning.

Figure B1: Framework for considering changes to the input methodologies more generally – DISCUSSION DRAFT – 22 July 2015

Change made under section	SECTION 52Y	SECTION 52X		
Category	CATEGORY 1: CHANGES RESULTING FROM A SECTION 52Y REVIEW	CATEGORY 2: PRE-PRICE-SETTING CHANGES	CATEGORY 3: MATERIAL CHANGES TO IMPROVE WORKABILITY, EFFECTIVENESS OR PREDICTABILITY	CATEGORY 4: NON-MATERIAL WORKABILITY CHANGES
Objective	Following a review of the IMs under s 52Y, to make changes to more effectively promote the long-term benefit of consumers, consistent with s 52A.	To make material changes to the price-quality IMs to implement incremental changes or innovations in sequence with a price-quality path reset for energy businesses, plus consequential changes to the IMs for energy ID. Also to make changes to the IMs for airports ID ahead of airport price-setting events.	To make one-off, material changes to the IMs to address a workability or effectiveness concern with the IMs for ID or CPPs, or to improve predictability about price-quality IMs ahead of the next price-quality reset.	To make non-material changes to the IMs to correct errors or unworkability.
What types of changes fall into this category?	<ul style="list-style-type: none"> Nature of the change <ul style="list-style-type: none"> Fundamental changes to the package of IMs would generally sit best under s 52Y Changes that have clear cross-sector relevance or affect multiple IMs (particularly where to consider under another category would cause a cross-sector consistency issue) Changes as a consequence of other changes under the same s 52Y process Less fundamental changes (including minor changes) potentially also made under s 52Y where a s 52Y review of the relevant IMs is underway and time permits after accounting for any more fundamental changes. (Relates to timing factors discussed below). Timing <ul style="list-style-type: none"> Where are we in the 7 year IM review cycle? If we are close to a 7 year review, some changes that might otherwise be considered under s 52X might be more efficiently be considered under s 52Y <ul style="list-style-type: none"> Eg, amendments to simplify requirements for CPP proposals. Our preference (to achieve a coherent review) is not to make changes under s 52X to IMs that are within the scope of a current s 52Y review. As such, some changes that might otherwise be considered under s 52X might come within a review. 	<ul style="list-style-type: none"> Nature of the change <ul style="list-style-type: none"> Changes made to allow implementation of changes/innovations from one regulatory control period to the next <ul style="list-style-type: none"> Eg, introduction of S-factor, D-factor prior to the 2015 EDB DPP reset. Also includes changes to the IMs for information disclosure for energy businesses made to bring the ID IMs into line with the price-quality IMs. Changes that do not have clear cross-sector relevance For implementing incremental changes or innovations in the IMs for airports ID prior to price-setting events. Timing <ul style="list-style-type: none"> Prior to a price-quality path reset for energy businesses or airport price setting event – in this respect the timing of these changes will be dictated by the regulatory cycle. Where the change is needed for the next regulatory control period, rather than the current. 	<ul style="list-style-type: none"> Nature of the change <ul style="list-style-type: none"> Material changes to address a workability concern with, or improve the effectiveness of, the IMs for information disclosure <ul style="list-style-type: none"> Eg, the changes we made in June 2012 to the treatment of asset valuations in related party transaction provisions. Material changes to promote predictability in advance of a price-path reset. Ie, where an IM relevant to the next price-quality reset is best clarified as soon as possible, in order to improve predictability ahead of the reset. <ul style="list-style-type: none"> Eg, 2014 WACC percentile amendment, in light of the uncertainty created by the High Court’s concerns with the original percentile. Changes to the IMs for CPPs made in advance of a CPP application to improve effectiveness or workability of the requirements. Changes to the IMs for ID to significantly reduce complexity or compliance costs without detrimentally affecting the promotion of the purpose of ID (s 53A). Timing <ul style="list-style-type: none"> Where there is immediate value in the change. For ID changes, consider whether making the change at this time would create a mis-alignment issue with price-quality such that the price-path is set on one basis and performance reported under ID on a different basis. 	<ul style="list-style-type: none"> Nature of the change <ul style="list-style-type: none"> Non-material changes made to tidy up minor issues with the IMs, such as errors or unworkability. Where the policy intent of an IM is evident, but the way the IM is drafted does not give effect to that intent. Timing <ul style="list-style-type: none"> Changes that cannot wait for the next s 52Y review or price-setting event.
When considering a change in this category, what are the factors we would consider?	<ul style="list-style-type: none"> Focus on only changing those aspects of the current IMs that would: <ul style="list-style-type: none"> Promote the s 52A purpose more effectively; Promote the purpose of IMs in section 52R more effectively, without detrimentally affecting the promotion of the s 52A purpose; and Significantly reduce compliance costs, other regulatory costs or complexity, again without detrimentally affecting the promotion of the s 52A purpose. There is no set order for consideration of these factors, except that the second two are subordinate to the first. Are there alternative solutions that do not require changes to the IMs? 	<ul style="list-style-type: none"> Focus on changes made to allow implementation of an initiative or change for a price-quality path reset that: <ul style="list-style-type: none"> Promote the s 52A purpose more effectively; Promote the purpose of IMs in section 52R more effectively, without detrimentally affecting the promotion of the s 52A purpose; and Significantly reduce compliance costs, other regulatory costs or complexity, again without detrimentally affecting the promotion of the s 52A purpose. There is no set order for consideration of these factors, except that the second two are subordinate to the first. Are there alternative solutions that do not require changes to the IMs? 	<ul style="list-style-type: none"> Focus on changes that should be implemented immediately in order to: <ul style="list-style-type: none"> Promote the s 52A purpose more effectively; Promote the purpose of IMs in section 52R more effectively, without detrimentally affecting the promotion of the s 52A purpose; and Significantly reduce compliance costs, other regulatory costs or complexity, again without detrimentally affecting the promotion of the s 52A purpose. There is no set order for consideration of these factors, except that the second two are subordinate to the first. Are there alternative solutions that do not require changes to the IMs? 	<ul style="list-style-type: none"> Focus on changes that simplify or correct the way the IM is articulated, without materially changing the meaning. Are there alternative solutions that do not require changes to the IMs?
Other factors influencing our decision to consider changes	<ul style="list-style-type: none"> Our preliminary view is that we cannot create an IM on a matter not covered by a published IM. Our preliminary view is that there is no specific statutory threshold for changing the IMs as a result of a s 52Y review. 	<ul style="list-style-type: none"> Our preliminary view is that we cannot create an IM on a matter not covered by a published IM. Our preliminary view is that there is no specific statutory threshold for changing IMs under s 52X. 	<ul style="list-style-type: none"> Our preliminary view is that we cannot create an IM on a matter not covered by a published IM. Our preliminary view is that there is no specific statutory threshold for changing IMs under s 52X. 	<ul style="list-style-type: none"> Our preliminary view is that we cannot create an IM on a matter not covered by a published IM. Our preliminary view is that there is no specific statutory threshold for changing IMs under s 52X.
Process	<ul style="list-style-type: none"> Must follow process and consultation requirements in ss 52Y, 52V and 52W. Must review each IM under s 52Y within 7 years of making it. The timing of a review under s 52Y might be influenced by how close we are to a price-setting event. 	<ul style="list-style-type: none"> Must follow process and consultation requirements in ss 52V and 52W. Would likely occur alongside the consultation on a price-quality path reset. Consequential changes to the IMs for ID may follow price-quality path resets to maintain alignment between price-quality and ID. Changes to the IMs for airports will likely occur prior to price-setting events. 	<ul style="list-style-type: none"> Must follow process and consultation requirements in ss 52V and 52W. One-off – as required. Will tend to occur outside of the price-quality path reset process. 	<ul style="list-style-type: none"> Must follow publication requirements in s 52W. We would likely notify such changes in advance of making them to give interested parties the opportunity to indicate whether they consider the change to be non-material. Changes of this type might be bundled and made together for efficiency reasons.

Note: This figure presents a discussion draft of a potential framework for considering changes to the IMs. It is intended as an example of the type of guidance we could provide on the factors we consider in deciding when and whether to make changes to the IMs. The context for this document is the IM review. Accordingly, the primary purpose for this document is to inform our decision-making on whether to consider and make a given change to the IMs as a result of the IM review. It should be read together with the covering note.