

Input methodologies review

Amendments to input methodologies for customised price-quality paths

Final reasons paper for Limb 1 of the CPP fast track

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Associated documents

Publication date	Reference	Title
9 October 2015	CPP fast track process update paper	IM review second process update paper for CPP fast track amendments
9 October 2015	Amended notice of intention	Amended notice of intention – Input methodologies review
7 September 2015	Draft decision for Limb 1 of CPP fast track	Input methodologies review – Proposed amendments to input methodologies for customised price-quality paths – Draft decision for Limb 1 of the CPP fast track
7 August 2015	CPP fast track process paper	Input methodologies review process paper – update on CPP fast track amendments
7 August 2015	Second amended notice of intention	Amended Notice of intention - Review of input methodologies
22 July 2015	Covering note – decision making frameworks	Covering note – Developing decision-making frameworks for the current input methodologies review and for considering changes to the input methodologies more generally – Discussion draft
3 July 2015	Process update on fast track amendments	Input methodologies review – process paper update on fast track amendments
3 July 2015	Amended notice of intention	Amended notice of intention – Input methodologies review
16 June 2015	Problem definition paper	Input methodologies review – Invitation to contribute to problem definition
10 June 2015	Cover letter	Cover letter for the Notice of Intention to commence a review of input methodologies
10 June 2015	Notice of intention	Notice of intention: Input methodologies review
27 February 2015	Open letter	Open letter on our proposed scope, timing and focus for the review of input methodologies

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1. Introduction

Purpose of this paper

1. This paper sets out the reasons for the final amendments to the input methodologies (IMs) for customised price-quality paths (CPPs) applying in respect of electricity distribution services and gas pipeline services.
2. The amendments have been made under the fast track process we commenced for considering the CPP IMs under section 52Y(1) of the Commerce Act 1986 (the Act). Our final decisions set out in this paper conclude the fast track process for CPPs. The main review of CPP IMs is scheduled for completion in December 2016.

Amendments are part of the IM review

3. On 21 July 2015 we decided to fast track consideration of certain issues relating to the IMs for CPPs.¹ The fast track process formed part of our review of IMs under s52Y(1) of the Act. Our Updated Notice of Intention issued on 7 August 2015 set out the scope and timing of the fast track process.²
4. On 9 October 2015 we published an Amended Notice of Intention, to explain that the issues considered under Limb 2 of the CPP fast track were no longer being progressed in the fast track and would instead be considered in the main IM review.³
5. The final decisions set out in this paper relate to Limb 1 only, and conclude the fast track process for the CPP IMs. The main review of CPP IMs will consider the remainder of issues relating to CPPs raised as part of the IM review.⁴

Amendments affect electricity distribution services and gas pipeline services

6. The amendments referred to in this paper apply to both electricity distribution services and gas pipeline services.

¹ Commerce Commission “Notification email regarding decision to fast track certain amendments to Input Methodologies” (21 July 2015).

² Commerce Commission “Updated notice of intention” (7 August 2015).

³ Commerce Commission “Amended notice of intention” (9 October 2015).

⁴ For example, see Topics 3 and 8 of the 16 June 2015 “Input methodologies review: Invitation to contribute to problem definition” paper and relevant submissions.

7. We have published alongside this paper an amendment determination which amends the following IM determinations:
 - 7.1 *Electricity Distribution Services Input Methodologies Determination 2012 [2012] NZCC 26* (EDB IMs);
 - 7.2 *Gas Distribution Services Input Methodologies Determination 2012 [2012] NZCC 27* (GDB IMs); and
 - 7.3 *Gas Transmission Services Input Methodologies Determination 2012 [2012] NZCC 28* (GTB IMs).
8. The amendments are as follows:
 - 8.1 Allowing modifications and exemptions to the process for preparing, and content of, CPP proposals to introduce more flexibility for suppliers (see Chapter 2);
 - 8.2 Providing for alternative methodologies with equivalent effect for the proposal and determination of a CPP to introduce more flexibility for suppliers (see Chapter 3); and
 - 8.3 Accepting CPP applications for consideration if they comply with the process and content IMs “in all material respects” (see Chapter 4).
9. We have decided not to amend the IMs to provide that the IMs which apply are those in place at the time a CPP proposal is received by the Commission, but before a CPP is determined (see Chapter 5). While this is our preferred interpretation we do not consider amending the IMs to this effect provides greater certainty as the question is ultimately one of legal interpretation of the Act.
10. All of the amendments will apply to both electricity distribution businesses and gas pipeline businesses from the date of the gazette and will apply to any CPP application made by a regulated supplier after that date.

Submissions and cross-submissions received

11. Submissions were received on 25 September 2015 from:
 - 11.1 Electricity Networks Association (ENA) “Submission on proposed CPP IM amendments” (25 September 2015);
 - 11.2 Maui Development Limited (MDL) “Response to draft decision CPP fast track Limb 1” (25 September 2015);
 - 11.3 Orion “Submission on first limb of CPP IM” (25 September 2015);
 - 11.4 Powerco “Proposed amendments to input methodologies for CPP – draft decision for Limb 1 of the CPP fast track” (25 September 2015); and
 - 11.5 Wellington Electricity Lines Limited (WELL) “Input methodologies review – Limb 1 of CPP fast track” (25 September 2015).
12. Submitters expressed broad support for the proposed amendments, but offered a number of detailed comments on the proposed amendments with the aim of improving their implementation. We refer to points raised in the relevant chapters of this paper. In addition, two general issues raised by submitters are discussed at the end of this chapter.
13. One cross-submission was received on 2 October 2015 from:
 - 13.1 Major Electricity Users Group (MEUG) “Cross submission on first limb of CPP IM amendments” (2 October 2015).
14. This cross-submission raised concerns around the confidentiality of applications for modifications and exemptions. This issue is addressed in Chapter 2.

General issues from submissions

15. Submissions raised two general issues:
 - 15.1 A detailed review of CPP IMs is still needed; and
 - 15.2 The difference between “CPP application” and “CPP proposal needs to be clarified.”

Detailed review of CPP IMs is still needed

16. Submissions expressed the view that the fast track amendments are useful interim steps⁵ and urged the Commission to confirm and continue a detailed review of the CPP IMs as part of the main IM review.⁶

⁵ ENA “Submission on proposed CPP IM amendments” (25 September 2015) at 3.

⁶ Above n 4 at 3; MDL Response to draft decision CPP fast track Limb 1 (25 September 2015) at 2; Powerco “Proposed amendments to input methodologies for CPP – draft decision for Limb 1 of the CPP fast track”

17. The Limb 1 fast track amendments address targeted issues which will be re-integrated into the overall IM review process. The fast track amendments are intended to be enduring and are not intended to be transitional steps pending the main review process. Therefore, we are not intending to change these amendments again as part of the main review process.⁷ Furthermore, these Limb 1 amendments do not preclude a review of the CPP process and content IMs under the main IM review.

Difference between “CPP application” and “CPP proposal” does not need to be clarified

18. Orion submitted that a reference to a “CPP application” should be added to the definition of “CPP applicant” and a reference to a CPP “proposal.”⁸ However, in practice, the Commission will not distinguish between a supplier preparing a “CPP application” and a “CPP proposal” so the amendments are considered unnecessary.

(25 September 2015) at 2; WELL “Input methodologies review – Limb 1 of CPP fast track” (25 September 2015) at 3; and Orion “Submission on first limb of CPP IM” (25 September 2015) at 2.

⁷ However, we may need to make consequential amendments to IMs that have been subject to fast track amendments when we consider how they fit with any changes proposed in the overall IM review.

⁸ Orion “Submission on first limb of CPP IM” (25 September 2015) at 7.

2. Modification or exemption from CPP process or content requirements

Summary of amendment

19. We have amended the CPP IMs to allow for:
- 19.1 Modification or exemption of existing requirements relating to the process for preparing, and content of, CPP proposals. This includes requirements relating to consumer consultation, verification, audit and directors' certification;
 - 19.2 Approval of the modifications or exemptions by the Commission on a case-by-case basis in response to a request made by a supplier in advance of a CPP proposal being submitted to the Commission under s 53Q of the Act; and
 - 19.3 Specification of the criteria that must be met in order for modifications or exemptions to be considered, and the information required to be provided by an applicant to demonstrate that it meets the specified criteria.

Allowing modification or exemption of requirements for preparing, and content of, CPPs

20. This amendment provides for a more flexible approach to information requirements that is more closely aligned to a CPP applicant's business information practices and accounting practices. This flexibility is likely to reduce time and costs and make for a more cost-effective CPP process overall.
21. It would also be likely to reduce the actual or perceived barriers to a supplier making a CPP proposal, and encourage suppliers to make a CPP application where it provides greater long term benefits to consumers than a DPP.
22. On this basis we consider that providing for the modification or exemption of requirements relating to the process for preparing, and the content of, CPP proposals could significantly reduce costs and complexity of regulatory processes without compromising the promotion of the s 52A purpose.

Requirements that can be modified

23. Section 52T(1)(d) of the Act requires the Commission to set IMs for:
- matters relating to proposals by a regulated supplier for a customised price-quality path, including—
- (i) requirements that must be met by the regulated supplier, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of consultation and agreement with consumers ...
24. The IMs specify what information must be provided to the Commission to allow it to accept a CPP application, and then evaluate the CPP proposal and determine a CPP. The requirements also prescribe how aspects of the process for compiling the information that is submitted as part of a CPP application should be undertaken.

25. We consider that exemptions and modifications should be available to all requirements relating to the process for preparing, and content of, a CPP. This is because:
- 25.1 Interested persons have provided examples of where the process for preparing a CPP proposal could be modified, as well as the content of a CPP, in order to appropriately reduce costs;⁹
 - 25.2 It is not possible to foresee every instance in which a modification or exemption would be appropriate and it is therefore difficult to prescribe comprehensive rules which apply 'up front'; and
 - 25.3 The Commission is required to approve each request for a modification or exemption (see below), and this is a safeguard against inappropriate modifications or exemptions by a CPP applicant.
26. The CPP IM requirements relating to the process for preparing, and content of, CPP proposals which may be subject to modification or exemption are those contained in:
- 26.1 Subparts 1, 4 and 5 of Part 5, and related schedules, of the EDB IMs;
 - 26.2 Subparts 1, 5 and 6 of Part 5, and related schedules, of the GDB IMs; and
 - 26.3 Subparts 1, 5, and 6 of Part 5, and related schedules, of the GTB IMs.

Requirements that cannot be changed through modifications or exemptions

27. Modifications or exemptions are not available for:
- 27.1 Evaluation criteria used by the Commission to assess a CPP proposal;
 - 27.2 IMs that apply to the determination of the CPP, such as the IMs for maximum allowable revenues, building blocks allowable revenues, WACC, cost allocation, valuation of assets, or treatment of taxation;
 - 27.3 Rules for the reconsideration of a CPP; and
 - 27.4 Pricing methodologies (applying to gas pipeline services only).

Process for approving modifications and exemptions

28. We consider that the best process is for the Commission to approve modifications or exemptions on a case-by-case basis in response to a request made by a supplier. This will provide flexibility for suppliers, while retaining oversight of the appropriateness of the modifications and exemptions by the Commission.

⁹ See, for example, Powerco "Submission on scope of CPP fast track amendments for the IM review" (23 June 2015).

29. The request must be made in advance of a CPP proposal being submitted to the Commission under s 53Q of the Act. An approval is binding on the Commission in the sense that a CPP application for which an applicant has elected to apply approved modifications or exemptions will be accepted as being compliant in that respect under s 53S(1) of the Act.
30. This approach means that a prospective applicant will be able to obtain certainty as to the applicable CPP requirements prior to undertaking consumer consultation, verification or audit. It is also intended to lead to a 'no surprises' situation for the Commission on receipt of the CPP application. In addition, assessing the request for a modification or exemption in advance will remove the need for us to consider the request within the limited (40 working day) period we have upon the receipt of a CPP proposal to determine whether it complies with requirements.¹⁰
31. The criteria for approving the request for modifications or exemptions, and the information required to be supplied by the applicant, is set out in the IMs. This should reduce the effort required on the Commission's part to consider approving or declining a request, as well as enhancing certainty for suppliers.
32. The amendment allows for the views of interested persons or expert advisors to be sought by the Commission prior to its decision on the modifications or exemptions being approved. We consider that it will be appropriate for the Commission to make a decision on what modifications or exemptions are permitted without consultation in most cases because:
 - 32.1 The CPP application is designed primarily to meet the Commission's needs in evaluating the proposal. Therefore much of the information contained in the CPP application is technical in nature and requests for modifications or exemptions are expected to relate largely to technical matters.
 - 32.2 There are a number of opportunities for interested persons to give their views on the proposal (including any modifications or exemptions) before the Commission determines a CPP.
33. However, there may be some instances where we consider that the nature or extent of the proposed modifications or exemptions is such that our decision would benefit from the views of interested persons or from expert advisors.

¹⁰ Commerce Act 1986, s 53S(1).

34. When receiving a CPP application we will assess whether it complies with the requirements for the process for, and content of, CPP proposals as required by s 53S(1), including whether the approved modification or exemptions (including all pre-conditions specified by the Commission in the approval) have been complied with. However, an approval for modification or exemptions will not prevent the Commission from exercising its information gathering powers to:

34.1 Remedy deficiencies in the CPP proposal (including deficiencies from not meeting the modified requirements) pursuant to s 53S(2) of the Act; or

34.2 Obtain any other relevant information as part of the assessment of the CPP proposal carried out under s 53T of the Act where it considers that further information is necessary or desirable.¹¹

Criteria for approving and information required to be provided by a supplier

Criteria for approving

35. The Commission will approve the modifications or exemptions in advance of the CPP proposal being submitted. This will provide certainty of treatment for suppliers.

36. The IMs provide that approval may be granted if, in the Commission's opinion, the applicant has demonstrated that the modifications or exemptions will not detract, to an extent that is more than minor, from:

36.1 The Commission's evaluation of the CPP proposal and determination of a CPP; and

36.2 The ability of interested persons to consider and provide their views on the CPP proposal.

37. When applying this test in practice, the Commission will take into account the likely impact of the modifications or exemptions requested on the time, costs, and quality of the Commission's evaluation of the CPP proposal and consultations with interested persons.

38. Modifications or exemptions will not be approved where they are so extensive that a CPP application is effectively reduced to a set of stand-alone issues or a "single issue" CPP, or the core requirements such as engaging a verifier or auditor, or undertaking consumer consultation or obtaining directors' certification, are substantially altered or removed.

¹¹ For example, if the Commission considers that the modification or exemption of any of the information requirements poses an impediment to the evaluation of the CPP proposal it may use its information gathering powers to obtain further information.

Information required to be provided by a supplier

39. In order to demonstrate that the criteria have been met the following information must be supplied in writing by the applicant at the time of application:
 - 39.1 Applicant's name and contact details;
 - 39.2 Brief description of the key features of the intended CPP proposal;
 - 39.3 When the applicant intends to submit the CPP proposal;
 - 39.4 A list of the specific modifications or exemptions sought;
 - 39.5 An explanation of why each modification or exemption will not detract, to an extent that is more than minor, from the CPP proposal in the ways described in paragraph 2.20;
 - 39.6 Evidence to support the explanation; and
 - 39.7 Identification of any information that is commercially sensitive.

Approval of request

40. The request for modifications or exemptions will be considered by the Commission as soon as reasonably practicable, and the outcome will be notified in writing to the applicant. If the Commission imposes any conditions or requirements in relation to the approval these will be included in the written approval.
41. Any approval that a CPP applicant intends to rely on in making a CPP application must be identified in that CPP application when it is submitted. A CPP applicant may choose not to rely on a modification or exemption that has been approved by the Commission if the applicant instead chooses to comply with the existing requirements.
42. If approval is not given then the existing process and content requirements for CPP proposals in the IMs will apply.

Implementation matters

43. The amendments are given effect in each of the EDB IMs, GDB IMs, and GTB IMs through new clauses 5.1.6 to 5.1.8.

Issues raised in submissions

44. Submissions were broadly supportive of the introduction of modifications and exemptions to the IMs relating to the process for preparing and content of a CPP proposal. The following matters were raised as possible improvements to the proposed IM amendments:
- 44.1 Adopt a cost-benefit test for modifications and exemptions;
 - 44.2 Specify a fixed time frame for approving modifications and exemptions;
 - 44.3 Confirm that approvals are binding on the Commission and irrevocable;
 - 44.4 Extend modifications or exemptions to other parts of the IMs;
 - 44.5 Information requirements for a request should be altered; and
 - 44.6 Other minor matters and drafting changes.

Change the test for modifications and exemptions

45. Submissions suggested that the test for approving a modification or exemption in clause 5.1.6 is too wide and imprecise¹² and that the test should be altered to a cost-benefit type assessment.¹³
46. ENA and WELL's concern was that small or minor detractions from the Commission's evaluation of the CPP proposal and determination of a CPP and the ability of interested persons to consider and provide their views on the CPP proposal, would be sufficient to rule out modifications or exemptions.¹⁴
47. Submitters concerns are addressed by ensuring that adverse effects will not be a factor in the Commission's consideration of approval if those effects are only minor. To ensure this, the words "to an extent that is more than minor, from" have been added to clause 5.1.6(2) after the words "will not detract".

¹² Powerco "Proposed amendments to input methodologies for CPP – draft decision for Limb 1 of the CPP fast track" (25 September 2015) at 3.

¹³ Above n 4 at 4; above n 7 at 3; and WELL "Input methodologies review – Limb 1 of CPP fast track" (25 September 2015) at 1.

¹⁴ Above n 4 at 4; and WELL "Input methodologies review – Limb 1 of CPP fast track" (25 September 2015) at 1.

48. The Commission has not included a cost-benefit type test as suggested by submitters for the following reasons.
- 48.1 This is a process-related matter for which a cost-benefit analysis seems disproportionately complex.
- 48.2 Quantifying changes in cost for all relevant parties (leading to an assessment of the net long term benefit for consumers) is difficult, especially the quantification of consumers' costs, or in respect of attributes such as detrimental effects on the time taken for, or quality of, consultation or decision-making. A cost-benefit test may therefore prove unworkable in practice because it seeks to arrive at an outcome that is too precise.
49. The issue identified by submitters can be satisfactorily addressed by the amendment outlined in paragraph 47.
50. We also consider that it is not appropriate to specify, as requested by Powerco, the exact ways in which a modification or exemption might potentially detract from our evaluation of the CPP proposal, or from consultations with interested persons.¹⁵ It simply is not possible to know, in advance, how such detraction may occur.

Specify a fixed time frame for approving modifications and exemptions

51. Submitters have asked for formal time frames to be specified for considering a request for modifications or exemptions,¹⁶ and for seeking the views of interested persons.¹⁷
52. In respect of consultation we are unlikely to know how long consultation may take, until we are able to assess the nature of the request for modification or exemption so implementing binding time frames would also not be appropriate in this respect.
53. We instead encourage intending CPP applicants to discuss their proposals with us prior to submitting them, so we can provide an indicative time frame at that stage.

Confirm that approvals are binding on the Commission and irrevocable

54. Submissions from ENA, Orion and Powerco asked for more certainty with the explicit inclusion that approvals of exemptions or modifications are binding on the Commission.¹⁸

¹⁵ Above n 11 at 3.

¹⁶ Above n 4 at 5; above n 7 at 9; above n 11 at 3; and WELL "Input methodologies review – Limb 1 of CPP fast track" (25 September 2015) at 1.

¹⁷ Above n 11 at 3.

¹⁸ Above n 4 at 5; above n 7 at 4-5; and above n 11 at 3.

55. We confirm that approval of a modification or exemption will be effective for the purpose of assessing compliance of a CPP application with the relevant process and content requirements under s53S of the Act. The Commission, however, always has the ability to request further information in order to assist its evaluation of the CPP proposal after the CPP application has been accepted as complete, including information which was not included in the CPP application as a consequence of an approved modification or exemption.

Extend modifications or exemptions to other parts of the IMs

56. MDL requested that the scope of modifications and exemptions be extended to include pricing methodologies (Subpart 4 of Part 5¹⁹) and taxation (Subpart 3 of Part 5).²⁰ WELL submitted that the scope of modifications and exemptions be extended to include the form of control and the incremental rolling incentive scheme provisions.²¹ These provisions, however, do not relate to the process for or content of making a CPP application, and modification or exemptions for these provisions are therefore not appropriate.

Information requirements for a request should be altered

57. We acknowledge the submission made by MDL which states that suitable “evidence” could be difficult to produce to support some requests for modifications or exemptions. To address this concern we have amended clause 5.1.7 by inserting a new clause (3) to allow the CPP application to provide a certified statement from a member of the CPP applicant’s senior management attesting to the facts forming the basis of the request to support an application.
58. MEUG and Powerco both made submissions about the confidentiality aspects of a request for modification or exemption made under clause 5.1.7. Powerco suggested that the submissions should be treated as confidential because the information provided may not be fully developed.²² On the other hand MEUG recommended that the Commission publish submissions and subsequent correspondence as soon as possible after receiving them.²³

¹⁹ The reference to Subpart 4 of Part 5 of GTB IMs and GDB IMs was wrongly included in the draft determination for gas pipeline businesses. This has been removed from the final determination. A reference to Subpart 6 of Part 5 of GTB IMs and GDB IMs was wrongly excluded from the draft determination for gas pipeline businesses. This has been included in the final determination.

²⁰ MDL Response to draft decision CPP fast track Limb 1 (25 September 2015) at 1.

²¹ WELL “Input methodologies review – Limb 1 of CPP fast track” (25 September 2015) at 1-2.

²² Above n 11 at 2.

²³ MEUG “Cross submission on first limb of CPP IM amendments” (2 October 2015) at 1-2.

59. After considering these submissions, the Commission confirms that it intends to publish requests for modifications or exemptions and associated correspondence on its website as soon as practicable after receiving them, unless it is appropriate to keep any commercially sensitive aspects of the application or correspondence confidential. Any material that is not published upon receipt will usually be made publicly available once the eventual CPP application is received.

Other minor matters and drafting changes

60. A number of minor matters and drafting changes were identified in submissions. These are set out below.
61. MDL was concerned that reference to “the relevant locations within the CPP application” in cl. 5.1.8(d) was unclear and implied that a CPP application has a specified form.²⁴
- 61.1 The Commission agrees with MDL that the wording in the draft determination is unclear and does incorrectly create the impression that a CPP application is singular document where in practice that is not necessarily the case. The final determination has been changed to address this concern.
- 61.2 After the word “locations” in cl. 5.1.8(d) the words “within the document or documents compromising” have been added.
62. Orion asks that the Commission, when it approves a modification or exemption, clearly articulate how it will interpret that modification or exemption.²⁵
- 62.1 The Commission believes that Orion’s concern can be satisfactorily addressed by providing guidance on interpretation at the time the approval is given, or in discussions with the intending CPP applicant before or after the approval is given.
63. Powerco identified a clause reference error in cl. 5.1.7(2)(b).^{26,27}
- 63.1 The Commission agrees with Powerco. The reference to “subclause (3)” in cl. 5.1.7(2)(b) has been changed to “clause 5.1.6(2).”

²⁴ Above n 19 at 1.

²⁵ Above n 7 at 3.

²⁶ Above n 11 at 3.

²⁷ Powerco identified a second clause error in 5.1.7(3) however this clause has been omitted.

3. Alternative methodologies with equivalent effect

Summary of amendment

64. We have amended the CPP IMs to provide for:
- 64.1 Alternative methodologies with equivalent effect (AMWEEs) to be made available to CPP applicants in addition to the existing methodologies for determining a CPP, provided the alternative methodologies produce an equivalent effect to the existing IMs. Alternative methodologies can relate to:
 - 64.1.1 Cost allocation and asset valuation;
 - 64.1.2 Treatment of taxation; or
 - 64.1.3 Estimate of the term credit spread differential allowance.
 - 64.2 Consideration of the alternative methodologies applied by a CPP applicant by the Commission during the period that the CPP proposal is assessed and a determination is made under sections 53T and 53V of the Act.
 - 64.3 Specification of the criteria that must be met in order for alternative methodologies to be applied, and the information required to be provided by an applicant to demonstrate that it meets the specified criteria.

Alternative methodologies with equivalent effect

65. Section 52T(1) of the Act specifies how a CPP proposal that complies with the requirements relating to the process for, and content of, a CPP proposal should be evaluated and determined by the Commission. Amongst other things, these IMs specify the ‘building blocks’ that must be determined in order to calculate allowable revenues for a CPP applicant over the period of the CPP.
66. We consider that providing for alternative methodologies with an equivalent effect to a number of the existing methodologies provides a more flexible approach to determining a CPP. Doing so should allow the use of information that is more closely aligned to a CPP applicant’s business information practices and accounting practices.²⁸
67. Allowing for the application of AMWEEs could significantly reduce the time and costs involved in proposing and determining a CPP, making for a more cost-effective CPP process overall. Additionally, the availability of AMWEEs could reduce actual or perceived barriers to a supplier making a CPP application by diminishing the complexity of regulatory processes without compromising the promotion of the s 52A purpose.

²⁸ In many cases it is likely that the alternative methodologies proposed would align with the modification or exemptions approved to the process for, and content of, an applicant’s CPP proposal. See Chapter 2.

Application of alternative methodologies

68. Where AMWEEs are provided for in the IMs, a CPP applicant may apply alternative methodologies in its CPP application.
69. The Commission will also consider whether to apply these alternative methodologies in making the CPP determination after we have determined that the CPP proposal complies with the requirements for the process of, and content of, a CPP application.
70. This will allow us to assess the alternative methodologies in the context of the proposal as a whole and to make a determination no later than the date upon which the CPP as a whole is determined.
71. Because the alternative methodologies are considered during the same period as the overall CPP, we will be able to obtain the views of interested persons on the alternative methodologies during the consultation process.
72. We note that considering and applying AMWEEs is similar to the intent of s 53V(2)(c) of the Act which relates to the Commission's ability to vary an input methodology that would otherwise apply, with the agreement of the CPP applicant. However, the differences are that:
 - 72.1 The alternative methodology can be applied by a supplier as part of a CPP application without it being necessary to submit both a proposal with, and a proposal without, the alternative methodology.²⁹
 - 72.2 The alternative methodology is limited in that it must have an equivalent effect to specified parts of the IMs. There is no such restriction on a s 53V(2)(c) variation.

²⁹ Applications under s 53V(2)(c) of the Act to vary an IM that would otherwise apply to the CPP proposal may be submitted alongside the CPP proposal, although suppliers who wish to propose a variation must submit not only an IM-compliant proposal, but also a version of the proposal as it would appear as if an amended IM applied to it: see Commerce Commission "Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper" (22 December 2010), para K1.23.

Requirements that qualify for alternative methodologies

73. AMWEEs are available for the following matters contained in the EDB IMs, GDB IMs, and GTB IMs:
 - 73.1 Cost allocation and asset valuation (Section 2 of Subpart 3 of Part 5);³⁰
 - 73.2 Treatment of taxation (Section 3 of Subpart 3 of Part 5);
 - 73.3 Estimate of the term credit spread differential allowance (Section 4 of Subpart 3 of Part 5); or
 - 73.4 Pricing methodologies applying to gas pipeline services only (Subpart 4 of Part 5).
74. These methodologies contribute to the core ‘building blocks’ which are combined to form allowable revenues for the relevant CPP regulatory period for a CPP applicant.
75. In addition, AMWEEs are available for the pricing methodologies contained in Subpart 4 of Part 5 of the GDB and GTB IMs.

Requirements that do not qualify for alternative methodologies

76. We have excluded the IM for determining the cost of capital (other than for estimating the term credit spread differential allowance) as that methodology essentially consists of the publication of a WACC by the Commission prior to a CPP being proposed. An applicant therefore cannot propose an alternative methodology in respect of WACC in its proposal.
77. In addition, alternative methodologies will not be available for the following matters:
 - 77.1 Calculating maximum allowable revenues;
 - 77.2 Calculating building blocks allowable revenues;
 - 77.3 Cost of capital (other than estimating the term credit spread differential allowance);
 - 77.4 Specification of price or amalgamations;
 - 77.5 Requirements for the process for, and content of CPP proposals;³¹
 - 77.6 Evaluation criteria used by the Commission to assess a CPP proposal; and

³⁰ An example of an alternative methodology with equivalent effect for asset valuation is that of treating forecast commissioned assets in groups, rather than as individual assets. The treatment of forecast capital contributions could then be simplified by netting them off against forecast total values for the asset groups, rather than against forecast values of individual assets as currently required by clause 5.3.11 of the EDB IMs, GDB IMs and GTB IMs. Provided that the grouping of assets was appropriately selected, the effect of applying the alternative methodology would be expected to be equivalent to the existing IMs in terms of the CPP produced.

³¹ See Chapter 2.

77.7 Rules for the reconsideration of a CPP.

Criteria and required information for applying alternative methodologies

Criteria for applying

78. Alternative methodologies will be considered by the Commission, and may be applied to the determination of a CPP, where, in the Commission's opinion, the alternative methodology:
- 78.1 Produces an equivalent effect to the existing IMs within the relevant CPP regulatory period to that which would otherwise have applied; and
 - 78.2 Will not detract from the promotion of the s 52A purpose.
79. An alternative methodology that satisfies the criteria in paragraph 68 constitutes a 'relevant' input methodology in accordance with s 53Q(2)(d) of the Act. The Commission may therefore choose to apply the alternative methodology in determining 'any customised price-quality path that the Commission considers appropriate' in accordance with s 53V(1) of the Act.

Information required to be provided by a supplier

80. In order to demonstrate that the criteria have been met the following information must be supplied in writing as part of the CPP application by the applicant.
- 80.1 A list and description of the alternative methodologies applied.
 - 80.2 An indication, at the relevant places within the CPP application, where the alternative methodologies have been applied.
 - 80.3 The reasons why each alternative methodology has been applied.
 - 80.4 Evidence, or a certification by a member of the CPP applicant's senior management as to the grounds for holding a reasonable belief that each alternative methodology:
 - 80.4.1 Has an equivalent effect within the relevant CPP regulatory period to the methodology that would otherwise apply; and
 - 80.4.2 Does not detract from the s 52A purpose.

Implementation matters

81. The amendments are given effect through:
- 81.1 New clauses 5.3.33 and 5.4.34 in the EDB IMs;
 - 81.2 New clauses 5.3.33 and 5.5.33 for the GDB IMs; and
 - 81.3 New clauses 5.3.29 and 5.5.30 for the GTB IMs.

Issues raised in submissions

82. Submissions were broadly supportive of the introduction of AMWEEs into the CPP IMs. There were a number of points where submitters suggested that improvements could be made to the proposed amendments. These are detailed in the following paragraphs.

- 82.1 Adopt a ‘materially equivalent effect’ test;
- 82.2 AMWEE approvals should be available prior to submitting a CPP;
- 82.3 AMWEEs must be applied by the Commission;
- 82.4 Information requirements – evidence of equivalent effect; and
- 82.5 Apply AMWEEs to pricing methodologies.

Adopt a ‘materially equivalent effect’ test

83. ENA, Powerco and WELL submitted that the applicable test for applying AMWEEs should be extended to include those with a “materially” equivalent effect.³² We consider that retaining the proposed test of “equivalent” effect is more in keeping with the intention of the provision. In our view, the existing mechanism for IM variations under s 53V of the Act is more suitable for alternative methodologies which might have effects that diverge from outcomes under the existing IMs.

AMWEE approvals should be available prior to submitting a CPP

84. ENA, Orion, Powerco and WELL suggested that a pre-approval process for AMWEEs should be introduced, whereby alternative methodologies can be considered and approved by the Commission prior to receiving the relevant CPP application.³³
85. The Commission disagrees because the availability of alternative methodologies is not predicated on approval by the Commission. Where an alternative methodology produces an equivalent effect within the CPP regulatory period to the IM that would otherwise apply, and it does not detract from the promotion of the purposes of Part 4 of the Act, a supplier can apply the alternative methodology in its CPP application.
86. Where a supplier provides adequate information demonstrating the equivalence of any alternative methodology and indicating why and where it is applied, it will be unlikely that the Commission will form a different view about the availability of the alternative methodology. If, however, a difference of view became apparent at the time that the Commission was undertaking its preliminary assessment of the CPP proposal, the Commission would deal with it in the same manner that we would any other situation where we consider that a CPP proposal did not apply or adopt all relevant IMs.

³² Above n 4 at 5; above n 11 at 3-4; and above n 20 at 2.

³³ Above n 4 at 5; above n 7 at 5; above n 11 at 4; and above n 20 at 2.

AMWEEs must be applied by the Commission

87. Orion suggested that alternative methodologies that meet the criteria and are applied by CPP applicants should be treated as binding on the Commission.³⁴ ENA suggested that an alternative methodology applied by an applicant should be applied by the Commission unless there has been a material change in circumstances.³⁵
88. We consider that alternative methodologies achieve their purpose of lowering barriers to CPP applicants preparing and presenting a CPP proposal where:
- 88.1 They allow an applicant to utilise information more closely aligned with their existing business systems or accounting practices in a CPP application; and
- 88.2 Produce an equivalent effect to the original IMs.
89. A CPP application that uses a valid methodology will be considered compliant with the methodologies relating to the process for, and content of, CPP proposals when the Commission undertakes a s 53S assessment of the application. To achieve this purpose it is not necessary for an AMWEE to be binding on the Commission in subsequently determining a CPP, and the Commission may choose to apply the original IMs.

Information requirements – evidence of equivalent effect

90. MDL and Powerco submitted that providing “evidence” that demonstrates that the relevant criteria have been met can be problematic, particularly if this would require the applicant to demonstrate that there is no difference between the outcomes of the existing and modified requirements by applying each of them.³⁶
91. Our intention was to ensure that sufficient assurance could be gained from the CPP applicant that the relevant criteria are met. We have added the ability for the CPP applicant’s senior management to provide a certification as to the grounds for holding a reasonable belief that the criteria are satisfied, as an alternative to “evidence”.

Apply AMWEEs to pricing methodologies

92. MDL invited us to consider whether AMWEEs should also apply to pricing methodologies.³⁷

³⁴ Above n 7 at 5.

³⁵ Above n 4 at 10.

³⁶ Above n 19 at 2; and above n 11 at 3.

³⁷ Above n 19 at 2.

93. While it is difficult to think of a situation where an AMWEE might apply to a pricing methodology, because the pricing methodologies contained in Subpart 4 of Part 5 of the GDB IMs and GTB IMs are substantive IMs, they should, in the absence of any specific reason to exclude them, also be available for AMWEEs.
94. Subparagraph “(d) pricing methodologies in Subpart 4” has been added to:
 - 94.1 Subclause 5.3.33(1) of Gas Distribution Services Input Methodologies Determination 2012 [2012] NZCC 27; and
 - 94.2 Subclause 5.3.29(1) of the Gas Transmission Services Input Methodologies Determination 2012 [2012] NZCC 28.

4. Assessing a CPP proposal that is complete in all material respects

Summary of amendment

95. We have amended the CPP IMs to clarify that the Commission can accept a CPP proposal as compliant with the IMs relating to the process for preparing, and content of, CPP proposals, if the CPP proposal complies with those requirements “in all material respects”.

Accepting a CPP proposal if it is compliant in all material respects

96. We consider that amending the IM requirements to state that a CPP proposal must contain the information prescribed in the IMs “in all material respects” will:
- 96.1 Clarify the requirements in accordance with the purpose of the IMs as set out in s 52R of the Act;
 - 96.2 Reduce the time and costs involved with the assessment of whether a CPP proposal complies with the information requirements; and
 - 96.3 Encourage suppliers to make a CPP by reducing the actual or perceived barriers for a supplier to make a CPP, and simultaneously provide greater long term benefit to consumers.
97. Provided the CPP proposal complies with the IMs in all material respects then the Commission’s evaluation of the CPP proposal and determination of a CPP, or the ability of interested persons to consider and provide their view on the CPP proposal, should not be detrimentally affected.³⁸
98. On this basis the proposed amendment would promote certainty and reduce costs and complexity of regulatory processes while continuing to promote the s 52A purpose.

Implementation matters

99. The amendment is given effect in the EDB IMs through amendments to clauses 5.1.1 and 5.4.1, and in the GDB IMs and GTB IMs through amendments to clauses 5.1.1 and 5.5.1.

³⁸ We note that the Commission will still be able to exercise its information gathering powers to obtain information it considers relevant as part of the assessment of the CPP proposal carried out under s 53T of the Act.

Issues raised in submissions

100. Submissions were supportive of the introduction of the lower threshold completeness assessment—ie “complete in all material respects”—into the CPP IMs. However, submitters raised one issue which is detailed below.

Complete in all material respects

101. Submitters requested that guidance³⁹ and specific examples⁴⁰ of how a CPP applicant can demonstrate completeness “in all material respects” should be provided.
102. The purpose of this amendment is to enable the Commission to proceed with the evaluation of the CPP proposal where the proposal is substantially complete in that all information material to the Commission’s evaluation and the determination has been provided and any absent information does not impede interested parties’ ability to provide their views.
103. Where a CPP applicant is aware that some requirements are not met and they could have requested a modification or exemption for those shortcomings then the CPP applicant would be expected to draw these to the Commission’s attention prior to the application and seek a modification or exemption.

³⁹ Above n 7 at 6.

⁴⁰ Above n 11 at 4.

5. Clarifying which input methodologies apply, and when

Summary of decision

104. We have decided not to amend the IMs to record our preferred interpretation that amendments to input methodologies do not apply to existing CPP proposals that have already been received by the Commission.
105. We clarify that:
- 105.1 When making a CPP determination the Commission will apply the IMs that were in force at the time a CPP proposal is submitted;
- 105.2 Any amendments to IMs that are made after we receive a CPP application but before we make the CPP determination would not apply to the determination;
- 105.3 It may be beneficial to consider varying the IMs pursuant to s 53V(2)(c) of the Act to reflect IM amendments made after receiving an application; but both the applicant and the Commission would have to agree to any variation.

Issues raised in submissions

Time of application of amended IMs

106. ENA, MDL, Powerco and WELL supported the clarification of the Commission's view that the IMs which apply are those in place at the time of the CPP proposal.⁴¹ However, submitters suggested that clarifying this in an IM would:
- 106.1 Provide more certainty for all participants;⁴²
- 106.2 Improve clarity of the IMs as a stand-alone document;⁴³ and
- 106.3 Better promote s52R of the Act.⁴⁴
107. Furthermore, WELL suggested that a minimum lead in period before change to the CPP would ensure that suppliers had sufficient time to revise and possibly re-audit, re-certify and re-verify or seek additional consumer consultation.⁴⁵
108. We recognise the importance of certainty and clarity regarding which IMs apply when a supplier submits a CPP proposal. However, as noted in our draft reasons paper we are of the view that recording our preferred interpretation in an IM provides no greater certainty as the question is ultimately one of legal interpretation of the Act.

⁴¹ Above n 4 at 3; above n 19 at 2; above n 11 at 4; and above n 20 at 2.

⁴² Above n 4 at 3; and above n 11 at 4.

⁴³ Above n 19 at 2.

⁴⁴ Above n 20 at 2.

⁴⁵ Ibid at 2.

109. We further consider that the clear indication of our position in the reasons paper and the ability to manage the issue by agreement with the CPP applicant through variations to the IMs pursuant to s 53V(2)(c) of the Act should provide sufficient certainty for suppliers.
110. We disagree with WELL that there should be provision for a 'lead in' period for IM amendments to become effective for the purposes of CPP proposals not yet received. In the case of a 'lead in' period the most significant reason for our preferred interpretation, namely that a supplier may not withdraw a CPP proposal once it is submitted, is absent.
111. We encourage intending CPP applicants to engage with the Commission prior to submitting a CPP proposal if they have concerns about submitting a CPP proposal shortly before amendments are made to the IMs.