

# **Expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus' second regulatory period (2025-2028)**

**Final reasons paper**

**Date of publication:** 21 November 2024

## Associated documents

Publication date	Reference	Title
13 October 2020	[2020] NZCC 21 ISSN 1178-2560	<a href="#">Fibre Input Methodologies Determination 2020</a>
29 November 2021	[2020] NZCC 21 ISSN 1178-2560	<a href="#">Fibre Input Methodologies Amendment Determination 2021</a>
28 June 2023	[2023] NZCC 13	<a href="#">Fibre Input Methodologies Amendment Determination 2023</a>
31 August 2023	ISBN 978-1-991085-31-3	<a href="#">Fibre price-quality regulation proposed process and approach for the 2025-2028 regulatory period</a>
6 March 2024	[2020] NZCC 21 ISBN 978-1-991085-76-4	<a href="#">Fibre Input Methodologies Determination</a>
1 May 2024	[2021] NZCC 4 ISBN: 978-1-991287-08-3	<a href="#">Fibre Information Disclosure Determination 2021</a>
25 March 2024	Not applicable	<a href="#">Re-issued Notice of Intention – Potential amendments to input methodologies for Fibre Fixed Line Access Services</a>
2 May 2024	Not applicable	<a href="#">Notice of Intention – Potential amendments to input methodologies for Fibre Fixed Line Access Services</a>
20 June 2024	Not applicable	<a href="#">Re-issued Notice of Intention – Potential amendments to input methodologies for Fibre Fixed Line Access Services - Expenditure</a>
20 June 2024	Not applicable	<a href="#">Re-issued Notice of Intention – Potential amendments to input methodologies for Fibre Fixed Line Access Services – Quality and Revenue</a>
17 July 2024	ISBN 978-1-991287-50-2	<a href="#">Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus' second regulatory period (2025-2028): Draft reasons paper</a>
21 November 2024	[2024] NZCC 29 ISSN 1178-2560	Fibre Input Methodologies (Crown Financing and Individual Capex Design Proposal) Amendment Determination 2024

Commerce Commission  
Wellington, New Zealand

## Contents

---

<b>Glossary .....</b>	<b>4</b>
<b>Chapter 1    Introduction.....</b>	<b>5</b>
<b>Chapter 2    Decision-making framework.....</b>	<b>9</b>
<b>Chapter 3    Amendments to Fibre IMs .....</b>	<b>12</b>
<b>Chapter 4    Amendment for definition of outage not adopted .....</b>	<b>19</b>

## Glossary

Acronyms	Definition
<b>Act</b>	Telecommunications Act 2001
<b>CIP</b>	Crown Infrastructure Partners
<b>FFLAS</b>	Fibre Fixed Line Access Services
<b>Framework</b>	Input Methodologies decision-making framework
<b>ICDP</b>	Individual capex design proposal
<b>ID</b>	Information disclosure
<b>Fibre IMs</b>	Fibre Input Methodologies
<b>LFC</b>	Local Fibre Company
<b>PQ</b>	Price-quality
<b>PQP1</b>	Chorus' first price-quality path (from 1 January 2022 to 31 December 2024)
<b>PQP2</b>	Chorus' second price-quality path (from 1 January 2025 to 31 December 2028)
<b>TAMRP</b>	Tax-adjusted market risk premium

## Chapter 1 Introduction

### Purpose of this paper

- 1.1 This paper provides our final decision on, and supporting reasons for, the expenditure, revenue and quality-related amendments to the Fibre Input Methodologies Determination 2020 [2020] NZCC 21 (Fibre IMs).
- 1.2 This final decision is made ahead of our determination of the price-quality (PQ) path for Chorus Limited's ('Chorus') second regulatory period between 2025 and 2028.
- 1.3 This final decision also outlines IM amendments that will apply for the purposes of information disclosure ('ID') regulation.
- 1.4 Our final decision on the application dates for the IM amendments explained in this paper is as follows:
  - 1.4.1 the amendments to Part 2 of the Fibre IMs apply from the commencement of disclosure year 2026; and
  - 1.4.2 the amendments to Part 3 of the Fibre IMs apply from 1 January 2025.
- 1.5 This paper forms part of a package of decision papers on PQ matters and amendments to the Fibre IMs, including:
  - 1.5.1 an IM amendment determination that gives effect to the amendments discussed in this paper;<sup>1</sup>
  - 1.5.2 expenditure-related PQ decisions and determinations;<sup>2</sup> and
  - 1.5.3 quality and revenue-related PQ decisions and determinations.<sup>3</sup>

### Structure of this paper

- 1.6 The chapters of this paper are as follows:
  - 1.6.1 Chapter 1 is an introduction to the scope and approach for this work and the amendments to the Fibre IMs;

---

<sup>1</sup> *Fibre Input Methodologies (Crown Financing and Individual Capex Design Proposal) Amendment Determination 2024 [2024] NZCC 29.*

<sup>2</sup> Commerce Commission "Chorus' expenditure allowance for the second regulatory period (2025-2028): Final decision – reasons paper" (22 August 2024).

<sup>3</sup> We will publish final quality and revenue decisions ahead of the statutory deadline in December 2024.

- 1.6.2 Chapter 2 summarises the statutory context and key aspects of the decision-making framework we have applied in arriving at the specific Fibre IM amendments set out in this paper;<sup>4</sup>
- 1.6.3 Chapter 3 sets out the amendments to the Fibre IMs, and our reasons for the amendments in terms of the framework summarised in Chapter 2; and
- 1.6.4 Chapter 4 sets out an amendment we proposed in our draft decision but have decided not to adopt, and our reasons for it.

## Our role

- 1.7 The Commerce Commission ('Commission') regulates services provided over fibre networks in New Zealand. These networks are critical to social and economic life in New Zealand.
- 1.8 Since 1 January 2022, PQ and ID regulation has applied to providers of fibre fixed line access services ('FFLAS') that are regulated under Part 6 of the Telecommunications Act 2001 ('Act'):
  - 1.8.1 PQ regulation applies to certain fibre services provided by Chorus;<sup>5</sup> and
  - 1.8.2 ID regulation applies to all providers of fibre services regulated under Part 6: Chorus, Enable Networks, Northpower Fibre and Tuatahi First Fibre.<sup>6</sup>
- 1.9 PQ paths are intended to create incentives for Chorus to act in ways that are consistent with the long-term benefit of end-users, such as creating incentives to invest in its network, to innovate and improve efficiency, and to deliver services at a level that meets end-user demands.<sup>7</sup> The Commission sets PQ paths to limit the total revenue that Chorus can recover from providing regulated fibre services, and regulate the quality at which those services are provided.

---

<sup>4</sup> Commerce Commission "Fibre price-quality regulation: Proposed process and approach for the 2025-2028 regulatory period" (31 August 2023), at [B7]-[B25]; the decision-making framework substantially reflects the framework we applied for our most recent fibre IM amendments.

<sup>5</sup> Regulation 6 of the Telecommunications (Regulated Service Providers) Regulations 2019 ("the Regulations") provides that Chorus is subject to PQ regulation in respect of all fibre fixed line access services, except to the extent that a service is provided in a geographical area where a regulated fibre service provider (other than Chorus Limited) has installed a fibre network as part of the UFB initiative, available at: <https://legislation.govt.nz/regulation/public/2019/0275/latest/LMS185122.html>.

<sup>6</sup> Regulation 5 of the Regulations, available at: <https://legislation.govt.nz/regulation/public/2019/0275/latest/LMS185122.html>.

<sup>7</sup> See s 162 for the purpose of Part 6 under the Telecommunications Act 2001 ("the Act"), available at: <https://www.legislation.govt.nz/act/public/2001/0103/latest/whole.html#LMS131960>.

- 1.10 We also require providers of FFLAS in New Zealand to disclose information detailing their performance. This includes data on pricing, current and future expenditure, quality performance and financial statements.
- 1.11 This regime for fibre services works alongside our work to ensure fixed line (broadband) and mobile markets are competitive through regulation of wholesale telecommunication services and our monitoring of the retail telecommunications market.

## **Our process**

- 1.12 We are currently in the process of setting Chorus' second PQ path that runs from 1 January 2025 to 31 December 2028 ('PQP2').
- 1.13 Alongside our consideration of the PQ path for Chorus', we have been assessing discrete potential Fibre IM amendments in three tranches:
- 1.13.1 tranche 1a: related to the tax-adjusted market risk premium ('TAMRP') for the weighted average cost of capital;
  - 1.13.2 tranche 1b: relating to expenditure proposals; and
  - 1.13.3 tranche 2: relating to revenue and quality proposals.<sup>8</sup>
- 1.14 Our consideration of potential Fibre IM amendments is aligned to our decision-making framework, which states we should consider those potential amendments that:
- 1.14.1 are necessary to make in advance of the second PQ path for Chorus; and
  - 1.14.2 address discrete issues that are appropriate to resolve now, rather than waiting for the statutory IM review (that must be complete by October 2027).
- 1.15 We have followed the proposed approach and timeline as set out in the relevant notices of intention (or the relevant re-issued notices) that the Commission has published:<sup>9</sup>

---

<sup>8</sup> Note that we have combined tranche 1b and tranche 2.

<sup>9</sup> Commerce Commission "Notice of intention 14 February 2024 (amended and reissued on 20 June 2024): Potential amendments to Input Methodologies for Fibre Fixed Line Access Services" (20 June 2024); Commerce Commission "Notice of intention 2 May 2024 (amended and reissued on 20 June 2024): Potential amendment to Input Methodologies for Fibre Fixed Line Access Services" (20 June 2024).

- 1.15.1 a notice of intention published on 14 February 2024 (and re-issued on 25 March 2024 and 20 June 2024) to begin work on potential amendments to the Fibre IMs related to expenditure-related proposals; and
  - 1.15.2 a notice of intention published on 2 May 2024 (and re-issued on 20 June 2024) to begin work on potential amendments to the Fibre IMs related to quality and revenue-related proposals.
- 1.16 On 17 July, we published our draft decision on proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies, and invited submissions from stakeholders.<sup>10</sup>
- 1.17 We received two submissions on our draft decision by the due date of 13 August 2024.<sup>11</sup>
- 1.18 We received no cross submissions on our draft decision by the due date of 3 September 2024.

---

<sup>10</sup> Commerce Commission “Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus’ second regulatory period (2025-2028): Draft reasons paper” (17 July 2024).

<sup>11</sup> Tuatahi First Fibre “Submission on proposed Fibre IM amendments” (13 August 2024), available at: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0022/362083/Tuatahi-submission-on-proposed-Fibre-IM-amendments-13-August-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0022/362083/Tuatahi-submission-on-proposed-Fibre-IM-amendments-13-August-2024.pdf); Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), available at: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0021/362082/Chorus-submission-on-proposed-Fibre-IM-amendments-13-August-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0021/362082/Chorus-submission-on-proposed-Fibre-IM-amendments-13-August-2024.pdf).



## Chapter 2 Decision-making framework

### Purpose and structure

- 2.1 This chapter summarises the statutory context and key aspects of our decision-making framework for considering amendments to the Fibre IMs.<sup>12</sup>

### Background

- 2.2 Before the end of the current regulatory period, the Commission must make a determination under section 170 of the Act specifying how PQ regulation applies to Chorus during the following regulatory period.
- 2.3 A relevant input methodology relating to the supply of FFLAS must be applied by each relevant regulated fibre service provider in accordance with the relevant section 170 determination.<sup>13</sup>
- 2.4 Additionally, a relevant IM must be applied by the Commission in recommending, deciding or determining how regulation under Part 6 of the Act should apply to FFLAS, or the prices or quality standards applying to FFLAS.<sup>14</sup>
- 2.5 The Commission is currently setting the PQ path for the second regulatory period (PQP2) for Chorus.
- 2.6 We included the decision-making framework for the Fibre IMs in our *Proposed process and approach for the 2025-2028 regulatory period* paper.<sup>15</sup> We considered it may be necessary for us to consider amendments to the Fibre IMs as part of our process to set Chorus' price-quality path for the second regulatory period.
- 2.7 The next section describes the (limited) circumstances in which we consider IM amendments, and the framework we apply to such amendments.

---

<sup>12</sup> Commerce Commission "Fibre price-quality regulation: Proposed process and approach for the 2025-2028 regulatory period" (31 August 2023), at [B7]-[B25]; the decision-making framework substantially reflects the framework we applied for our most recent fibre IM amendments.

<sup>13</sup> Section 175 of the Act, available at:

<https://www.legislation.govt.nz/act/public/2001/0103/latest/whole.html#LMS131960>

<sup>14</sup> Section 175 of the Act, available at:

<https://www.legislation.govt.nz/act/public/2001/0103/latest/whole.html#LMS131960>

<sup>15</sup> Commerce Commission "Fibre price-quality regulation: Proposed process and approach for the 2025-2028 regulatory period" (31 August 2023).

## Summary of decision-making framework

### Statutory context

- 2.8 The purpose of the input methodologies under section 174 of the Act is to promote certainty for regulated fibre service providers, access seekers and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of fibre fixed line access services under Part 6 of the Act.<sup>16</sup>
- 2.9 We are cautious about making amendments to the Fibre IMs outside of the periodic statutory IM review process given the importance of certainty and predictability in the regime. However, as recognised in sections 181 and 182 of the Act, these rules, processes and requirements may change. We must follow the process under section 179 – including publishing a notice of intention with our proposed timeframes.<sup>17</sup>
- 2.10 We recognise that there may be a tension between making changes to improve the regime and promoting the purpose of sections 162 (the Part 6 purpose) and 166, and promoting certainty under section 174.
- 2.11 While we have regard to the section 174 purpose, and other indications of the importance of promoting certainty, ultimately, under section 166(2), we must make recommendations, determinations and decisions that we consider best give, or are likely to best give effect to:
- 2.11.1 the Part 6 purpose in section 162 of the Act,<sup>18</sup> as set out in section 166(2)(a); and
- 2.11.2 to the extent that we (or the Minister) consider it relevant, the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services, as set out in section 166(2)(b).

---

<sup>16</sup> See s 174 of the Act, available at:

<https://www.legislation.govt.nz/act/public/2001/0103/latest/whole.html#LMS131960>

<sup>17</sup> Commerce Commission “Notice of Intention: Potential amendment to input methodologies for Fibre Fixed Line Access Services” (18 January 2024).

<sup>18</sup> Section 162 provides that the purpose of Part 6 of the Act is to promote the long-term benefit of end-users in markets for FFLAS by promoting outcomes that are consistent with outcomes produced in workably competitive markets so that regulated fibre service providers:

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
- (b) have incentives to improve efficiency and supply FFLAS of a quality that reflects end-user demands; and
- (c) allow end-users to share benefits of efficiency gains in the supply of FFLAS, including through lower prices; and
- (d) are limited in their ability to extract excessive profits.

- 2.12 Section 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6 of the Act. The other purpose statements within Part 6 are relevant matters, but they should be applied consistently with section 166(2).<sup>19</sup>

### **Amendments outside the IM review cycle**

- 2.13 All Fibre IMs must be reviewed at least once every seven years, as required by section 182 of the Act.
- 2.14 Given the certainty purpose of the Fibre IMs under section 174, we must carefully assess what amendments are appropriate to consider outside of the Fibre IM review cycle. Additionally, the predictability that the Fibre IMs provide are key to promoting the section 162 purpose (as required under section 166(2)(a)) and, in particular, the incentives to invest.
- 2.15 It will not generally be appropriate to consider changes to ‘fundamental IMs’ outside of the periodic Fibre IM review cycle, which takes place every seven years. Fundamental IMs are generally those that define the fundamental building blocks used to set PQ paths under section 176(1)(a) and that are central to defining the balance of risk and benefits between regulated providers and end-users.
- 2.16 This distinction is not absolute. We can, and have, reconsidered fundamental IMs outside of the IM review. However, there needs to be an especially compelling and urgent rationale for doing so.

### **Other considerations**

- 2.17 Section 186 of the Act provides the purpose of ID regulation. That is, to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 is being met.<sup>20</sup>
- 2.18 In reaching our final decisions as explained in this paper, we have taken into account, where relevant, the purpose of ID regulation and the requirements in the Fibre ID Determination (ID Determination).<sup>21</sup>

---

<sup>19</sup> We note that the High Court in *Wellington International Airport Ltd & Ors v Commerce Commission* considered that the purpose of IMs, set out in s 52R of the Commerce Act, is “conceptually subordinate” to the purpose of Part 4 as set out in s 52A. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, at [165].

<sup>20</sup> Section 186 of the Act, available at: <https://www.legislation.govt.nz/act/public/2001/0103/latest/whole.html#LMS131960>.

<sup>21</sup> Commerce Commission “Fibre Information Disclosure Determination 2021” (1 May 2024).

## **Chapter 3 Amendments to Fibre IMs**

### **Purpose and structure**

- 3.1 This chapter sets out our final decision on, and supporting reasons for, amendments related to expenditure, revenue and quality in the Fibre IMs.
- 3.2 For each of these amendments, we provide:
  - 3.2.1 our final decision;
  - 3.2.2 previous IM requirements;
  - 3.2.3 stakeholder views; and
  - 3.2.4 reasons for our final decisions.
- 3.3 We explain why we have decided not to adopt our proposed draft amendment on the definition of “outage” in Chapter 4.

### **Final decision**

- 3.4 Our final decision is to amend the Fibre IMs as follows:
  - 3.4.1 to extend the timeframe under clause 3.7.24 of the Fibre IMs to assess an individual capex design proposal from ‘within one month’ to ‘within two months’ of the Commission receiving the proposal; and
  - 3.4.2 to amend clauses 2.4.10, 2.4.11 and 3.5.11 to calculate the benefits of Crown financing daily and then sum the daily benefits to arrive at the annual benefit, rather than calculating the benefit annually based on the Crown finance balance on the first day of the disclosure year for ID or on the first day of the regulatory year for PQ.

### **Amendment to extend the timeframe for approving an individual capex design proposal**

#### **Final decision**

- 3.5 Our final decision is to amend the Fibre IMs as follows:
  - 3.5.1 to extend the timeframe in clause 3.7.24(1) of the Fibre IMs to assess an individual capex design proposal from ‘within one month’ to ‘within two months’ of the Commission receiving the proposal.

- 3.6 This is a change from our draft decision, which was to extend the timeframe to assess an individual capex design proposal to three months.<sup>22</sup>

#### **Previous IM requirement**

- 3.7 Clause 3.7.24(1) of the previous Fibre IMs set out that, within one month of the Commission receiving the individual capex design proposal (ICDP) from Chorus, the Commission must either:

- 3.7.1 approve the ICDP;
- 3.7.2 approve the ICDP with conditions; or
- 3.7.3 decline the ICDP.<sup>23</sup>

#### **Stakeholder views**

- 3.8 We received one submission on this proposed amendment.
- 3.9 Chorus did not support our proposed draft amendment. It considered that an amendment should not be made simply to ease an administrative burden for the Commission.<sup>24</sup> Chorus submitted that although it acknowledged the one month timeframe is challenging for the Commission, the proposed change would impede efficient outcomes for end-users as it would further disincentivise Individual Capex Proposal (ICP) applications and therefore disincentivise investment opportunities.<sup>25</sup>
- 3.10 Chorus submitted that the time taken for approving an ICP is already too long.<sup>26</sup> If Chorus applies for additional ‘Fibre frontier’ investments through an ICP, by the time the ICP is approved the competing networks may have already built in its proposed areas as Chorus’ plan will be revealed to the public during consultation.<sup>27</sup>
- 3.11 Chorus was not convinced that extending the timeframe for assessing an ICDP would accelerate the evaluation phase for assessing the subsequent ICP.<sup>28</sup>
- 3.12 Chorus submitted that it could help accelerate the ICDP process by providing a draft design proposal, as it did for the 2022 incentive capex ICDP.<sup>29</sup>

---

<sup>22</sup> Commerce Commission “Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus’ second regulatory period (2025-2028): Draft reasons paper” (17 July 2024), at [3.4]-[3.16].

<sup>23</sup> Commerce Commission “Fibre Input Methodologies Determination 2020” (6 March 2024).

<sup>24</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [19].

<sup>25</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [20].

<sup>26</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [21].

<sup>27</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [22].

<sup>28</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [23].

<sup>29</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [24].

- 3.13 Chorus also submitted that if the Commission insists on extending the timeframe to three months, then it would be better to remove the design proposal requirements from the IMs altogether.<sup>30</sup> Otherwise, Chorus submitted, a three-month timeframe for an ICDP should match the maximum overall timeframe for making a decision on an ICP (which Chorus suggested should be five months).<sup>31</sup>
- 3.14 Chorus also submitted that we should allow amendments to be made to conditions, to avoid unachievable conditions being set on ICDP approvals.<sup>32</sup>

### Analysis

- 3.15 As set out in our draft decision, we proposed to extend the timeframe for assessing an ICDP from one month to three months as we considered that the current timeframe was very challenging for the Commission to be able to make robust decisions. This would be exacerbated if we need to assess multiple ICDPs in parallel.
- 3.16 We acknowledge Chorus' concerns about the current time taken for approving an ICP for incentive capex, however, we consider that:
- 3.16.1 the current one month timeframe is challenging for us to always ensure that the key parameters (clause 3.7.23(2)(a)), appropriate information requirements (clause 3.7.23(2)(b)), and the assurance requirements (clause 3.7.23(c)) are set as part of the assessment of an ICDP; and
  - 3.16.2 the ICDP assessment timeframe needs to be suitable and achievable for a range of different potential ICDPs. In its submission Chorus mentioned the possibility of progressing the 'Fibre Frontier' project via an ICP application. Given the potential materiality and substantiality of an ICDP like the 'Fibre Frontier' project, a longer timeframe would give us appropriate time to assess such design proposals.
- 3.17 While we understand Chorus' concerns, we still consider that it is necessary to extend the current timeframe beyond one month. We consider that it is important to set an appropriate timeframe to ensure that we have enough time to make robust decisions while ensuring not to disincentivise Chorus from applying for ICPs (and so not to disincentivise investment). We therefore consider that a two-month timeframe will strike the right balance and enable these requirements to be better met.

---

<sup>30</sup> Chorus "Chorus submission on amendments to the fibre input methodologies" (13 August 2024), at [25].

<sup>31</sup> Chorus "Chorus submission on amendments to the fibre input methodologies" (13 August 2024), at [25].

<sup>32</sup> Chorus "Chorus submission on amendments to the fibre input methodologies" (13 August 2024), at [26].

- 3.18 Taking into account Chorus' views, we consider that a middle ground of extending the timeframe to two months is better than our proposed draft amendment of three months because:
- 3.18.1 it addresses Chorus' concerns that the time taken for deciding an overall ICP would be too long if we adopted the three-month timeframe in our draft decision; and
  - 3.18.2 it ensures that the Commission has enough flexibility and time to assess ICDPs if the proposals are substantial, complex, and/or frequent.
- 3.19 We reiterate that the two-month timeframe is the maximum timeframe we will take to assess an ICDP, rather than the time we expect to take. Further, we expect that the time taken to consider an ICDP will be related to the complexity of the ICDP, and the number of concurrent ICPs and ICDPs. We will endeavour to be as responsive as possible in our assessment of ICDPs.
- 3.20 We welcome Chorus' suggestion of providing a draft design proposal in advance of formally submitting an ICDP to help us manage potential timeframe challenges. However, we consider that we cannot rely solely on a voluntary process to help meet the IM requirements.
- 3.21 We disagree with Chorus that this amendment is purely to ease an administrative burden for the Commission:
- 3.21.1 as set out in our 2020 Fibre IM final reasons paper, the Fibre capex IM specifies a staged application process to allow a timely approval of expenditure. The first stage is to seek approval of the key parameters, information required, and the assurance that is to be included in the final proposal.<sup>33</sup> It is important for us to consider the above elements in an appropriate timeframe to ensure they are appropriate (and therefore ensure the following stages run smoothly); and
  - 3.21.2 we consider that extending the timeframe to two months also allows us more time to properly consider and assess whether an ICDP is likely to deliver the benefits of the individual capex regime for the long-term benefit of end-users.

---

<sup>33</sup> Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 Oct 2020), at [7.444.3].

- 3.22 We acknowledge Chorus' concerns that its investment plan may be revealed to the public during the consultation. We consider that Chorus could submit a confidential version of the ICDP (then both a confidential and public version of the ICP if the ICDP was approved) to mitigate the risk of disclosing any commercially sensitive information to the public.
- 3.23 Chorus submitted that it was not convinced that extending the timeframe for ICDPs would accelerate the broader ICP process. We consider that taking the time to get things right at the ICDP stage will reduce the amount of time we take to assess an ICP later in the evaluation phase.
- 3.24 We note that in order to make a timely decision on an ICDP assessment, we would expect Chorus to provide quality information in its ICDP that fully addresses the matters listed at clause 3.7.23(2) of the Fibre IMs.
- 3.25 For the reasons given above, we consider that this amendment would provide the certainty and predictability necessary to facilitate investment and thereby better promote the purpose of the Fibre IMs and the regime under section 162 of the Act.
- 3.26 In addition, we consider that Chorus' suggestion of removing the requirements of the ICDP process and allowing amendments to conditions set is out of scope of this decision. These points, if Chorus still wishes to pursue them, would be best considered with the broader individual capex regime during the IM review.
- 3.27 Our final decision is to amend the ICDP assessment timeframe from one month to two months for the reasons set out above.

## **Amendment to the timing of annual benefit of Crown financing**

### **Final decision**

- 3.28 Our final decision is to amend the Fibre IMs as follows:
- 3.28.1 for those regulated providers subject to PQ and ID, amend the Fibre IMs to calculate the benefit of Crown financing as the sum of the amount for each day of the regulatory year or disclosure year; and
- 3.28.2 for those regulated providers subject to ID only, amend the Fibre IMs to calculate the annual benefit of Crown financing as the sum of the amount for each day of the disclosure year.
- 3.29 This is unchanged from our draft decision.

### **Previous IM requirements**

- 3.30 The previous Fibre IMs required the annual benefit of Crown financing to be calculated as at the first day of the disclosure year or regulatory year, as follows:



- 3.30.1 in respect of regulated fibre service providers subject to both ID and PQ regulation in regulations made under section 226 of the Act, ‘annual benefit of Crown financing building block’ for a disclosure year is calculated in accordance with the formula set out in clause 2.4.10;<sup>34</sup>
- 3.30.2 in respect of regulated providers subject only to ID regulation in regulations made under section 226 of the Act, the ‘annual benefit of Crown financing building block’ for a disclosure year is calculated in accordance with the formula under clause 2.4.11;<sup>35</sup> and
- 3.30.3 for the purposes of specifying a PQ path, the ‘annual benefit of Crown financing building block’ for a regulatory year in a regulatory period is determined in accordance with the formula under clause 3.5.11.<sup>36</sup>

### Stakeholder views

- 3.31 We received one submission from Chorus on our proposed draft amendment to the timing of the annual benefit of Crown financing.<sup>37</sup>
- 3.32 Chorus supported the amendment of the Fibre IMs relating to Crown financing,<sup>38</sup> submitting that the proposed change would better reflect its financing costs.<sup>39</sup>

### Analysis

- 3.33 As set out in our draft reasons paper, section 171(2) of the Act provides that the Commission must ensure that the maximum revenues, or the maximum price or prices, reflect, in respect of any Crown financing, the actual financing costs incurred by the provider (or a related party) in the regulatory period to which the determination applies.
- 3.34 The previous Fibre IMs calculated the Crown financing benefits based on the Crown finance balance on the first day of the disclosure year for ID or on the first day of the regulatory year for PQ. This might overstate the Crown financing benefit with respect to repayments in 2025, 2030, 2033, and 2036 if Chorus is due to repay debt owed to the Crown in the middle of those years, as those repayments would not be reflected until the start of the following regulatory year.

---

<sup>34</sup> Commerce Commission “Fibre Input Methodologies Determination 2020” (6 March 2024), clause 2.4.10.

<sup>35</sup> Commerce Commission “Fibre Input Methodologies Determination 2020” (6 March 2024), clause 2.4.11.

<sup>36</sup> Commerce Commission “Fibre Input Methodologies Determination 2020” (6 March 2024), clause 3.5.11.

<sup>37</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024).

<sup>38</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [17].

<sup>39</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [17].

- 3.35 We therefore consider that by amending the Fibre IMs, we are able to more accurately take account of the impact of regulated providers' repayments during the regulatory or disclosure year rather than only measuring it at the start of each year.
- 3.36 As set out in our draft reasons paper, we consider that these amendments will better reflect the actual benefits of Crown financing, which will better promote the decision-making framework in the following ways:
- 3.36.1 For PQ purposes, the proposed amendment to the Fibre IMs will ensure alignment with section 171(2) of the Act and will better promote the long-term benefit of end-users in accordance with the purpose of section 162. That is, the maximum allowable revenue we set for Chorus under PQ regulation should reflect the concessional nature of the actual financing costs incurred by Chorus in respect of Crown financing. This is consistent with providing the expectation of normal returns, in line with section 162(a) and (d).
- 3.36.2 For ID purposes, the proposed amendment to the Fibre IMs will better promote the section 186 purpose of ID regulation by ensuring that sufficient information is readily available to interested persons to assess whether the section 162 purpose of Part 6 is being promoted. It is important that the regulated providers' disclosed information appropriately reflects the actual financing costs incurred by the providers in respect of Crown financing.<sup>40</sup>
- 3.37 Based on the above, and the support we received on our proposed amendment, our final decision is to confirm our draft decision to calculating the annual benefit of Crown financing on a daily basis.

---

<sup>40</sup> Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), at [3.178]-[3.179].

## Chapter 4    **Amendment for definition of outage not adopted**

### **Purpose**

- 4.1        The purpose of this chapter is to explain why we have not amended the definition of “outage” as proposed in our draft reasons paper. We therefore set out:
- 4.1.1     our final decision;
  - 4.1.2     scope of following work;
  - 4.1.3     current requirement;
  - 4.1.4     our draft decision;
  - 4.1.5     stakeholder views; and
  - 4.1.6     the reasons for our final decision.

### **Final decision**

- 4.2        Our final decision is not to amend the definition of ‘outage’ in the Fibre IMs.
- 4.3        This is a change from our draft decision.<sup>41</sup>

### **Scope of following work**

- 4.4        We have decided not to amend the definition of ‘outage’ in the Fibre IMs, however:
- 4.4.1     on 17 October 2024 we issued a consultation paper<sup>42</sup> on whether to amend the PQ determination requirements to specify that the ‘net unplanned downtime’ will consider downtime reported by end-users only (under the broader term “outage”); and
  - 4.4.2     during the next material amendment of the Fibre ID determination, we will consider whether to change outage-related reporting requirements to address issues such as differentiation between end-user reported outages and other types of reporting. Such changes to ID would allow interested persons to more accurately assess the actual availability of service that end-users receive (to determine whether it meets expectations).

---

<sup>41</sup> Commerce Commission “Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus’ second regulatory period (2025-2028): Draft reasons paper” (17 July 2024), at [3.3.2].

<sup>42</sup> Commerce Commission “Fibre PQP2 Change to definition of net reported downtime: Consultation Paper” (17 October 2024).

## Current requirement

- 4.5 The Fibre IMs definition of ‘outage’ is as follows:<sup>43</sup>
- 4.5.1 (a) for the purpose of Part 2, a cessation in the supply of ID FFLAS; and
  - 4.5.2 (b) for the purpose of Part 3, a cessation in the supply of PQ FFLAS.
- 4.6 Quality dimensions of ‘availability’ and ‘faults’ rely on the definition of outage for both the ID and PQ parts of the Fibre IMs.<sup>44</sup>
- 4.7 The Fibre IMs’ definition of ‘outage’ feeds into wider quality-related IM definitions of ‘planned downtime’, ‘planned outage’ and ‘unplanned outage’.<sup>45</sup>

## Draft decision

- 4.8 Our draft decision was to amend the definition of ‘outage’ in clause 1.1.4 of the Fibre IMs to enable a regulated provider to better identify when an outage occurs by enabling an outage to be recognised by the earlier of:
- 4.8.1 when it is identified by the regulated provider; or
  - 4.8.2 when the regulated provider has received a fault notification in respect of the outage (and the elements of that notification are prescribed).

## Stakeholder views

- 4.9 We received two submissions on our proposed amendment to the definition of outage.
- 4.10 Tuatahi First Fibre supported our proposed amendment for the following reasons:<sup>46</sup>
- 4.10.1 the proposed replacement definitions of outage and outage notification are consistent with the exemption that was granted for disclosure year 2024; and
  - 4.10.2 the proposed amendment adequately deals with the practical challenges of system limitations.

---

<sup>43</sup> Commerce Commission “Fibre Input Methodologies Determination 2020” (6 March 2024), clause 1.1.4.

<sup>44</sup> Commerce Commission “Fibre Input Methodologies Determination 2020” (6 March 2024), clause 2.4.1(1)(a)(iii) and clause 3.6.1(1)(a)(iii).

<sup>45</sup> Commerce Commission “Fibre Input Methodologies Determination 2020” (6 March 2024), clause 1.1.4.

<sup>46</sup> Tuatahi First Fibre “Submission on proposed Fibre IM amendments” (13 August 2024), at 1.

- 4.11 However, Tuatahi submitted that a clear threshold for what a reportable outage identified by the regulated provider is, is needed.<sup>47</sup> Common industry practice would be for a self-identified fault to be reportable when it is identified as a major fault.<sup>48</sup> Tuatahi requested that clear threshold guidance be given relating to self-identified faults, either in a footnote to the definition, or in the supporting reasons paper.<sup>49</sup>
- 4.12 Chorus did not support our proposed amendment to the definition of outage for the following reasons:<sup>50</sup>
- 4.12.1 It would have a material effect on the calculation of outage on the Chorus network;
  - 4.12.2 the proposed definition was vague, with no precise meaning of “identified”;
  - 4.12.3 it would put Chorus at risk of breaching compliance and quality standards in PQP2 without changing the underlying quality of service; and
  - 4.12.4 it would prevent the Commission from understanding how quality performance is changing over time.
- 4.13 Chorus recommended that:<sup>51</sup>
- 4.13.1 the IM amendment should be put on hold until we work through the implementation details with industry; and
  - 4.13.2 the Commission should develop two separate outage measures that will be reported through ID; one for reported outages, and the other for combined outages including self-identified outages.
- 4.14 Chorus submitted that the proposed amendment may involve regulated providers measuring outages in different ways, and that a change in the way outages are measured would break the time series of previous measures and make it difficult to assess.<sup>52</sup>

---

<sup>47</sup> Tuatahi First Fibre “Submission on proposed Fibre IM amendments” (13 August 2024), at 1.

<sup>48</sup> Tuatahi First Fibre “Submission on proposed Fibre IM amendments” (13 August 2024), at 1.

<sup>49</sup> Tuatahi First Fibre “Submission on proposed Fibre IM amendments” (13 August 2024), at 1-2.

<sup>50</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [3].

<sup>51</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [4.1]-[4.2].

<sup>52</sup> Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [8]-[8.2].

- 4.15 Chorus also submitted that to date, its downtime reporting has been based on customer-reported faults and this is consistent with that used when reporting downtime data to Crown Infrastructure Partners ('CIP').<sup>53</sup> Therefore, including both self-identified and customer-reported outages is a material change to the current definition and requires significant changes to systems and processes.<sup>54</sup>

## Analysis

- 4.16 As set out in our draft decision, we proposed to amend the IM definition of outage because we considered the current definition may cause practical issues for regulated providers as:

- 4.16.1 they do not always know when the cessation in supply occurs;
- 4.16.2 current monitoring systems do not always allow for instantaneous reporting of impactful outages; and
- 4.16.3 their systems sometimes notify providers multiple times of non-impactful outages that could constitute an outage under the current definition.

- 4.17 We therefore proposed to amend the definition of outage to enhance the workability of the Fibre IMs and the regime generally.

- 4.18 We note that Chorus' submission was inconsistent with the Commission's understanding of how Chorus manages and reports on self-identified outages. We therefore issued a section 221 information gathering notice on 6 September requiring Chorus to clarify how it interprets the definition of outage for both PQ and ID, and to provide further details on the outage data it had provided to date under previous section 221 requests used for setting the downtime levels of the quality standards.

- 4.19 We received Chorus' response on 20 September. Chorus clarified that:<sup>55</sup>

- 4.19.1 it has generally applied different reporting approaches between what was provided to calculate the availability standard for PQP2,<sup>56</sup> and PQ and ID. For other previous section 221 notices it has decided significant network events at its discretion. For assessing compliance with the PQP1 quality standard and in reporting for ID, Chorus only included end-user reported outages; and

---

<sup>53</sup> Chorus "Chorus submission on amendments to the fibre input methodologies" (13 August 2024), at [11].

<sup>54</sup> Chorus "Chorus submission on amendments to the fibre input methodologies" (13 August 2024), at [12].

<sup>55</sup> Chorus "Response to section 221 Notice – Interpretation and implementation of the IM outage definition" (20 September 2024).

<sup>56</sup> Commerce Commission "Fibre PQ availability standard analysis" (15 August 2024).

- 4.19.2 it has network surveillance capability, but this is not currently reported in PQ and ID.
- 4.20 Given the differing stakeholder views from two of the regulated providers on a workable definition of outage, and the complexity of developing and testing a workable change to the definition for all ID-regulated providers, we consider that it is not appropriate to amend the definition of outage in the Fibre IMs at this time.
- 4.21 The Commission is cautious about making amendments to the Fibre IMs outside the periodic statutory IM review process given the importance of certainty and predictability in the regime. We normally focus on two types of amendments outside the statutory IM review cycle: one is supporting incremental improvements to the PQ paths; and the other is enhancing certainty about, or correcting technical errors in, the existing IMs. We proposed to amend the definition of outage to enhance the workability of the Fibre IMs, however, we do not think it will have this effect now, for the following reasons:
- 4.21.1 it is not straightforward to determine a workable solution during this amendment process. Further engagement with all regulated providers is required to understand the extent to which self-identified (self-reported) outages are considered for regulatory reporting purposes; and
- 4.21.2 amending the definition of outage may also increase compliance costs, regulatory costs, and complexity compared to retaining the existing IMs.
- 4.22 Given the reasons above, we consider that addressing this issue by amending the PQ determination is a better interim solution, as discussed below in paragraphs 4.25-4.25.2.
- 4.23 Our final decision is to leave the definition of outage as it is in the current Fibre IMs, but we will consider whether to amend it in the next IM review. We intend to run an ID amendments process in advance of the IM review and will consider how best to provide consistent outage and fault reporting for interested persons for ID purposes only (based on further engagement with the regulated providers and consultation with wider stakeholders). We will assess any flow-on amendments to the relevant IMs as part of the IM review.
- 4.24 We consider our final decision reflects the requirements of Part 6 purpose in section 162 of the Act and the IM purpose in section 174 of the Act.
- 4.25 While we have decided not to make amendments to the IM definition of outage at this stage, we still consider the current definition has practical issues. We are considering alternative ways to resolve the issue identified:

- 4.25.1 we are considering whether to amend certain definitions in the PQ determination for the purpose of setting PQP2 availability standards, such that outages only capture end-user reported outages. This proposal is detailed in our consultation paper published on 17 October 2024;<sup>57</sup>
- 4.25.2 we consider that we could continue to provide conditional exemptions<sup>58</sup> to the LFCs from outage-related ID requirements (i.e., requirements that rely on the definition of ‘outage’) if appropriate, while we consider and implement a permanent change to the ID determination during the next material amendment process.

---

<sup>57</sup> Commerce Commission “Fibre PQP2 Change to definition of net reported downtime: Consultation Paper” (17 October 2024).

<sup>58</sup> Commerce Commission “Notice of conditional exemption applying to ID-only regulated fibre providers in relation to reporting on quality (availability) under the Fibre information Disclosure Determination 2021” (2 August 2024).