

# **Proposed Additional Amendments to Fibre Input Methodologies: draft decisions**

**Reasons paper**

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## Associated documents

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19 August 2021	ISBN: 978-1-869459-23-9	Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons paper – 19 August 2021.

Commerce Commission  
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# Chapter 1 Introduction

## Purpose of the paper

- 1.1 The purpose of this paper is to outline our draft decisions, and invite submissions, on a number of proposed additional amendments to the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21 (**fibre IMs**). The amendments proposed in this paper are predominantly being proposed in order to implement our proposed approach to determining Chorus Limited's (**Chorus**) initial price-quality regulatory asset base (**initial PQ RAB**) and transitional initial PQ RAB,<sup>1</sup> and are in addition to the fibre IMs amendments proposed in our 27 May 2021 draft decisions paper.<sup>2</sup> We have also proposed amendments in this paper to correct errors and improve the workability of certain provisions in the fibre IMs that are applicable for all regulated fibre service providers (**regulated providers**).

## Structure of the paper

- 1.2 This paper explains:
- 1.2.1 our framework for considering the scope of input methodology (**IM**) amendments, and the decision-making framework we have applied in proposing the specific IM amendments set out in this paper (Chapter 2); and
  - 1.2.2 the proposed additional IM amendments (Chapter 3).

## Materials published alongside this this paper

- 1.3 To give effect to the amendments discussed in this paper, we have also today published a draft IM amendment determination.<sup>3</sup>
- 1.4 The draft amendment determination includes changes as proposed in our 27 May 2021 draft decisions. These changes are marked as track changes in blue. The changes proposed as part of these draft decisions are marked as track changes in red.

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<sup>1</sup> The fibre IMs determination was most recently amended in November 2020 by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24 and was consolidated in July 2021.

<sup>2</sup> Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021).

<sup>3</sup> Commerce Commission [*Draft*] *Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021).

## Relationship of these amendments to others

- 1.5 The draft decisions in this paper are predominantly separate from the fibre IMs amendments proposed in our 27 May 2021 draft decisions.<sup>4</sup> Therefore, other than one discrete matter that relates to the implementation of our proposed approach to determining Chorus' initial PQ RAB and transitional initial PQ RAB,<sup>5</sup> we have not had regard to views received from interested persons on our 27 May 2021 draft decisions in making these decisions. We will have regard to any views received from interested persons as follows:
- 1.5.1 in respect of views received on our 27 May 2021 draft decisions on our proposed amendment to the Capital Expenditure fibre IM, we will have regard to those views when making our final decisions on those matters in September 2021;<sup>6</sup> and
- 1.5.2 in respect of views received on our 27 May 2021 draft decisions on all other matters and views received on matters in this paper, we will have regard to those views when making our final decisions on those matters in November 2021.

## Proposed process

- 1.6 Our proposed process to finalise the IM amendments proposed in this paper is outlined in the table below.

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<sup>4</sup> Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021).

<sup>5</sup> See the proposed amendments set out in paragraphs 3.59-3.65.

<sup>6</sup> Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), para 3.35-3.40. As explained in Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 7b, we will make final decisions on this matter in September 2021.

Process	Indicative time frame
<b>Draft decisions by the Commission</b>  Publication of draft decisions on potential fibre IMs amendments in respect of matters referred to in Chapter 3 of this paper	31 August 2021
<b>Submissions</b>  Submissions due from interested persons in respect of matters referred to in Chapter 3 of this paper	16 September 2021
<b>Cross-submissions</b>  Cross-submissions due from interested persons in respect of matters referred to in Chapter 3 of this paper	30 September 2021
<b>Final decisions by the Commission</b>  Publication of final decisions on potential fibre IMs amendments in respect of matters referred to in Chapter 3 of this paper	November 2021

## How you can provide your views

- 1.7 We encourage interested persons to consider these proposed IM amendments to the fibre IMs and provide views to help shape the IM amendment process going forward. In particular, we invite interested persons to indicate whether they agree or disagree with each proposed amendment, or to suggest alternative ways of giving effect to the intent of each proposed amendment, with supporting reasons. This in turn will assist us in determining the first PQ path for Chorus, the information disclosure (**ID**) requirements that will apply to Chorus and the other local fibre companies (**LFCs**), and Chorus' initial PQ RAB and transitional initial PQ RAB.
- 1.8 Submissions and cross-submissions can be made through the submission portal available on our website at: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/fibre-input-methodologies>.
- 1.9 The project page will direct you to a form with instructions on how to upload your submission. Your submission should be provided as an electronic file in an accessible form.
- 1.10 We invite submissions on the proposed amendments to the fibre IMs in this paper by **5pm** on 16 September 2021, and cross-submissions by **5pm** on 30 September 2021.

## Confidentiality

- 1.11 The protection of confidential information is something the Commission takes seriously. To continue to protect confidential submissions, we require you to upload your submission via the form on the project page. The process requires you to provide (if necessary) both a confidential and non-confidential/public version of your submission and to clearly identify the confidential and non-confidential/public versions.
- 1.12 When including commercially sensitive or confidential information in your submission, we offer the following guidance:
  - 1.12.1 Please provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.
  - 1.12.2 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
  - 1.12.3 Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult with the party that provided the information before any disclosure is made.

## Chapter 2 Framework for IM amendments

### Purpose of this chapter

- 2.1 As part of the process to make ID and PQ determinations, we noted it may be necessary for us to consider amendments to the IMs.<sup>7</sup> This chapter describes:
- 2.1.1 our framework for considering the scope of IM amendments;
  - 2.1.2 our views on IM amendments since beginning the PQ and ID decisions process; and
  - 2.1.3 the decision-making framework we have applied in proposing IM amendments.

### Framework for considering the scope of IM amendments

#### Statutory context

- 2.2 The purpose of IMs, set out in s 174 of the Telecommunications Act 2001 (**the Act**), is to promote certainty for regulated 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 (**FFLAS**) under Part 6. To that end, IMs, as far as is reasonably practicable, are required to set out relevant matters in sufficient detail so that each affected regulated provider is reasonably able to estimate the material effects of the methodology on the provider: s 176(2)(a). In that way, IMs constrain our evaluative judgements in subsequent regulatory decisions and increase predictability.<sup>8</sup>
- 2.3 However, some uncertainty remains inevitable.<sup>9</sup> As the Court of Appeal observed (in relation to a judicial review against decisions made in the IMs under Part 4 of the Commerce Act 1986 in 2012) "certainty is a relative rather than an absolute value",<sup>10</sup> and "there is a continuum between complete certainty at one end and complete flexibility at the other".<sup>11</sup>

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<sup>7</sup> Commerce Commission "Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period" (15 September 2020), paragraph A1.

<sup>8</sup> *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph 213.

<sup>9</sup> *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph 214.

<sup>10</sup> *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph 34.

<sup>11</sup> *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph 60.



- 2.4 The s 174 purpose is thus primarily promoted by having the rules, processes and requirements set upfront prior to being applied by regulated providers or ourselves. However, as recognised in sections 181 and 182, these rules, processes and requirements may change. Where the promotion of s 162 or (where we consider it relevant) the promotion of s 166(2)(b) requires amendment to an IM, s 174 does not constrain this. This is because under s 166(2), we must make recommendations, determinations and decisions that we consider best give, or are likely to best give, effect:
- 2.4.1 to the purpose of s 162, as set out in s 166(2)(a); and
  - 2.4.2 to the extent that we consider it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services (**promotion of workable competition**), as set out in s 166(2)(b).
- 2.5 Section 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6 and other purpose statements within Part 6 are likely to be conceptually subordinate.<sup>12</sup>
- 2.6 When making our decisions we must only give effect to these subordinate purposes to the extent that doing so does not detract from our overriding obligation to promote the purposes set out in s 166(2). Giving effect to the s 162 purpose may, however, require recognition of the role that predictability plays in providing regulated providers with incentives to invest in accordance with s 162(a).

### **Powers to amend IMs**

- 2.7 We may amend the IMs at any time, under s 181 of the Act. This extends to the publication of IMs that deal with new matters (s 178(2)). Where an amendment is material, we must follow the process in s 179 that we were required to follow when first setting the IMs.
- 2.8 In deciding whether to exercise our power to consult on amendments to the IMs, we must make the decision that we consider best gives effect to or is likely to best give effect to the s 162 purpose and the promotion of workable competition (where relevant), in addition to the s 174 purpose of the IMs discussed above. Consideration of promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunication services is unique to fibre (s 166(2)(b)) and could affect a decision to consider new IMs.

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<sup>12</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 1986, is “conceptually subordinate” to the purpose of Part 4 of the Commerce Act 1986 as set out in s 52A. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, paragraph 165.

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

- 2.9 All IMs must be reviewed at least once every seven years, as mandated by s 182. This process is key to delivering on the s 174 certainty purpose of IMs, while at the same time allowing the regime to mature and to evolve in response to changing circumstances.
- 2.10 Given the certainty purpose of the IMs and the scheme set out in the Act to promote this purpose, we must carefully assess what amendments are appropriate to consider outside the IM review cycle. Additionally, the predictability the IMs provide are key to promote the s 162 purpose (as required under s 166(2)(a)), and in particular incentives to invest.
- 2.11 On the other hand, it is important that the IMs are fit-for purpose going into a PQ reset, especially as under s 204(1) IM amendments (other than in limited circumstances) made after the PQ path is determined (including any made under s 182) will not affect the PQ path until the next reset.<sup>13</sup>

### *Types of amendments outside the IM review*

- 2.12 In past PQ path resets under Part 4 of the Commerce Act 1986 (Part 4), the need to balance these competing considerations has led us to focus on two sorts of amendments outside the IM review:
- 2.12.1 those that support incremental improvements to PQ paths; and
- 2.12.2 those that enhance certainty about – or correct technical errors in – the existing IMs.
- 2.13 Conversely, it will not generally be appropriate to consider 'fundamental' changes outside the IM review cycle. Fundamental IMs are generally those that define the fundamental building blocks used to set PQ paths (listed in s 176(1)(a)), and that are central to defining the balance of risk and benefits between regulated providers and end-users.
- 2.14 This distinction is not absolute: we can and have reconsidered fundamental building blocks in relative isolation in the past. However, there needs to be an especially compelling and urgent rationale for doing so.<sup>14</sup>

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<sup>13</sup> Under s 204(2) a PQ path must be reopened by us with a new PQ path made by amending the PQ determination if: an IM changes as a result of an appeal under s 183; and that changed IM would have resulted in a materially different PQ path being set had the changed IM applied at the time the PQ path was set.

<sup>14</sup> A previous example of this was the re-consideration of the Part 4 WACC percentile decision in 2014. The compelling reason for this was criticism by the High Court of this decision in the IM merits appeal process, and the urgency was due to the upcoming default price-quality path (**DPP2**) and individual price-quality (**IPP2**) resets for electricity distribution businesses and Transpower New Zealand Limited.

*Status of the regulatory processes and rules IMs*

- 2.15 The regulatory processes and rules (**RPR**) matters listed under s 176(1)(c) of the Act are not generally ‘fundamental’ in the sense discussed above. Further, they are closely connected to the operation of the PQ regime, so may need to be amended to support incremental improvements. This is consistent with the approach we have taken under Part 4.
- 2.16 On the other hand, the RPR IMs are intended to provide process certainty for providers and end-users (consistent with promoting s 174), so a process to amend them should only be entered into where the benefits in terms of s 166(2) outweigh any detrimental impact on this certainty.

*Status of the quality and capex IMs*

- 2.17 We consider that the quality dimensions and capex IMs are not ‘fundamental’ in the sense described above and should be treated in a similar way to the RPR IMs.
- 2.18 An exception to this could be the clauses of the capex IM which deal with the process for Chorus preparing an expenditure proposal for a regulatory period, as Chorus will be complying with its obligations under these clauses during the reset process.

*Consideration of introducing new IMs*

- 2.19 We consider that no special criteria need apply to the introduction of new IMs outside the IM review process, but that applying the general framework outlined above would in most cases mean such amendments are not appropriate outside an IM review.
- 2.20 As noted above, one of the points of difference of the Fibre regime is the explicit power to introduce IMs that deal with new matters.<sup>15</sup> As such, we have not considered the framework for doing so under Part 4.
- 2.21 While the Act does not give explicit requirements about when we should (or must) add a new IM, we would only add new IMs if we thought that there was a gap in the mandatory IMs that meant that as a package they did not:
- 2.21.1 best give, or are likely to best give effect to s 166(2)(a) and s 166(2)(b) (where relevant); or
  - 2.21.2 promote sufficient certainty to achieve the purpose of IMs in s 174.

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<sup>15</sup> Telecommunications Act 2001, section 178(2).

### *Introducing new IMs outside of the IM review*

- 2.22 As with amendments to existing IMs, we do not consider there is a firm rule against introducing new IMs outside the IM review. However, applying the criteria above, we would be unlikely to do so.
- 2.23 Firstly, it is difficult to foresee a situation where we would need to introduce an entirely new IM to implement an incremental improvement to PQ paths or ID requirements, or to correct for errors. Based on Part 4 experience, these kinds of changes have been accommodated with amendments to existing IMs (principally the RPR IMs).
- 2.24 Secondly, extending the IMs to cover an entirely new topic would in most cases be a fundamental change; one that needed to be considered in light of the scheme of the IMs as a whole, rather than in relative isolation. Furthermore, making such a significant change outside the predictable seven-year cycle may reduce the certainty purpose of IMs.

### **Views since beginning the PQ and ID process**

- 2.25 Before beginning this IM amendments process, we noted in our proposed process and approach paper there will be several contextual factors that will influence the scope of amendments we may consider as part of the PQ and ID setting process.<sup>16</sup> Because of these factors it was likely that the set of IM amendments that meet our criteria will be larger prior to the first regulatory period, which starts on 1 January 2022 and ends on 31 December 2024, (**PQP1**) than in future resets (and compared to recent Part 4 resets).

### *Error correction*

- 2.26 While our initial IM setting process was designed to ensure the IMs were as error free as possible, it was anticipated that through the process of making the PQ path and ID requirements we may identify errors in the IMs. As the fibre IMs are new, there was a greater chance of this being necessary prior to the first reset (as was the case with the IM amendments ahead of the second default price-quality path reset for electricity distribution businesses).

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<sup>16</sup> Commerce Commission “Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period” (15 September 2020), paragraph A27.

### *Implementing PQ and ID approaches*

- 2.27 Since beginning the process of setting the PQ and ID requirements it has become apparent that a small number of relatively minor IM amendments are necessary to implement draft decisions that we have made for our first fibre PQ path and ID determinations that best gives effect to s 166(2), the s 186 purpose of ID, or to the s 192 purpose of PQ.
- 2.28 We consulted on our proposed approach for amending fibre IMs as part of our proposed process and approach paper, and the approach was supported by Chorus in its submission.<sup>17</sup> We also sought submissions on our proposed approach for making fibre IMs amendments in our 27 May 2021 draft IM amendments reasons paper.<sup>18</sup> We note that we have already received a number of submissions on our proposed approach for making fibre IMs amendments as set out in our 27 May 2021 draft IM amendments reasons paper.<sup>19</sup> We will have regard to any views received from interested persons on our proposed approach for making fibre IMs amendments as follows:
- 2.28.1 in respect of views received on our 27 May 2021 draft decisions that are relevant to our proposed amendment to the Capital Expenditure fibre IM, we will have regard to those views when making our final decisions on those matters in September 2021; and
- 2.28.2 in respect of views received on our 27 May 2021 draft decisions that are relevant to all other matters in those draft decisions and views received on relevant matters in this paper, we will have regard to those views when making our final decisions on those matters in November 2021.

## **Decision-making framework we have applied**

### *Statutory compliance*

- 2.29 The IM amendments proposed in this paper are in accordance with s 181 of the Act.

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<sup>17</sup> Commerce Commission “Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period” (15 September 2020), paragraphs 23-24.

<sup>18</sup> Commerce Commission “Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” (27 May 2021).

<sup>19</sup> For example, Chorus “Amendments to the Input Methodologies for Fibre: August 2021 amendments” (24 June 2021), para 1-8.

- 2.30 In accordance with section s 179(1) of the Act, we published an amended notice of intention relevant to the proposed IM amendments set out in this paper on 19 August 2021.<sup>20</sup>

*IM amendment decision making framework*

- 2.31 We are using a decision-making framework that we have developed over time to support our decision making under Part 4 of the Commerce Act 1986.<sup>21</sup> This has been consulted on and used as part of prior processes and helps provide consistency and transparency in our decisions. This approach is relevant to the IM amendment process under Part 6 of the Act also.
- 2.32 Consistent with the decision-making framework in previous Part 4 IM amendments, we have considered each proposed IM amendment by asking the questions:
- 2.32.1 does it best give (or is it likely to best give) effect to the Part 6 purpose in s 162 of the Act, and workable competition (where relevant) as referred to in s 166(2)(b), more effectively than the current IM;
  - 2.32.2 does it promote the IM purpose in s 174 of the Act more effectively (without detrimentally affecting our obligation under s 166(2)); or
  - 2.32.3 does it significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting our obligation under s 166(2)).
- 2.33 We refer to the outcomes specified in the paragraph above as the ‘IM amendments framework outcomes’ in this paper.

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<sup>20</sup> Commerce Commission “Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021).

<sup>21</sup> Commerce Commission “Proposed amendments to input methodologies for electricity distributors and Transpower New Zealand Limited – Reasons paper (29 May 2019) paragraph 1.10.

## Chapter 3 Proposed amendments

### Purpose of this chapter

- 3.1 This chapter sets out the proposed IM amendments that are necessary to give effect to our proposed approach to determining Chorus' initial PQ RAB and transitional initial PQ RAB.<sup>22</sup> These proposed additional changes were identified as potential IM amendments in our amended notice of intention published on 19 August 2021 (**Amended August NOI**),<sup>23</sup> and are in addition to the proposed fibre IMs amendments identified in our notice of intention published on 29 April 2021.<sup>24</sup> We have also proposed amendments in this paper to correct errors and improve the workability of certain provisions in the fibre IMs that are applicable for all regulated providers.
- 3.2 For each of our proposed additional changes, we explain:
- 3.2.1 our current requirement; and
  - 3.2.2 our proposed amendment, and how the proposed amendment is likely to promote an IM amendments framework outcome.

### Summary of proposed additional IM amendments

- 3.3 We released draft decisions on matters relating to Chorus' initial PQ RAB on 19 August 2021 (**draft initial PQ RAB paper**).<sup>25</sup>
- 3.4 In order to implement this proposed approach to determining Chorus' initial PQ RAB and to correct errors and improve the workability of certain provisions in the fibre IMs for all regulated providers, we are proposing to make the following amendments to the IMs for ID and PQ paths (in addition to a number of the IM amendments proposed in our draft 27 May 2021 draft decisions paper<sup>26</sup>), to:

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<sup>22</sup> Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021).

<sup>23</sup> Commerce Commission "Amended notice of intention (amending the Notice of Intention dated 29 April 2021 – Proposed amendments to the Input Methodologies for Fibre – potential August 2021 amendments)" (19 August 2021).

<sup>24</sup> Commerce Commission "Notice of intention for potential amendments to IMs for Fibre in August 2021" (29 April 2021).

<sup>25</sup> Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions; Reasons paper (19 August 2021).

<sup>26</sup> Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021).

- 3.4.1 provide for alternative methodologies with equivalent effect or substantially the same effect which may be applied in determining the financial losses;
- 3.4.2 correct for the effect of tax losses;
- 3.4.3 correct errors in the present value benefit of Crown financing formulae, as used to determine the financial losses;
- 3.4.4 clarify other allocator types that may be applied by the Commission in determining the financial losses;
- 3.4.5 correct errors in formulae for “UFB cost allocation adjustment cash flow”, as used to determine the financial losses;
- 3.4.6 correct errors in formulae for ‘revenue date compounding factor’, as used to determine the financial losses;
- 3.4.7 correct errors in Cost Allocation fibre IM provisions that specify requirements for operating costs and asst values that are not directly attributable to regulated FFLAS and UFB FFLAS;
- 3.4.8 improve the workability of Asset Valuation fibre IM requirements in respect of the cost allocation process used to determine the “opening RAB value” of fibre assets at implementation date in Chorus’ transitional initial PQ RAB;
- 3.4.9 clarify how certain Asset Valuation fibre IMs for ID are used to determine asset valuation inputs for Chorus’ maximum revenues for PQP1;
- 3.4.10 clarify the treatment of negative, positive or nil values for the calculation of price-quality path forecast values for the financial loss asset; and
- 3.4.11 correct an error in clause 3.2.1(4) of the Cost Allocation fibre IM for price-quality paths.

**Proposed amendment to provide for alternative methodologies with equivalent effect or substantially the same effect**

*Current IM requirement*

- 3.5 There is currently no provision in the fibre IMs for a LFC to propose or apply (and the Commission to apply in our determination of the financial loss asset) an alternative methodology with equivalent effect or substantially the same effect.



*Proposed amendment and reasons*

- 3.6 Chorus has advised in its submissions and in response to s 221 information requests that in several instances, it is unable to comply with the Asset Valuation, Cost Allocation and Taxation fibre IMs in Schedule B of the fibre IMs. Chorus advises this is due to limitations in Chorus' information, the way in which it has recorded information in its accounting systems, and the design of its initial asset valuation model.
- 3.7 Instances in which Chorus is unable to comply with the fibre IMs, and so could propose or apply an alternative methodology under the proposed amendments, are described in detail in Chapter 6 of the draft initial PQ RAB paper.<sup>27</sup>
- 3.8 As a general solution to these issues, we propose adding a new section within Schedule B of the fibre IMs that allows us to apply alternative methodologies in our determination of the financial loss asset (both as part of an initial RAB and as part of Chorus' transitional initial PQ RAB) as proposed (or applied) by regulated providers, where we are satisfied that the result of the alternative methodology proposed or applied by the regulated provider:
- 3.8.1 produces either an equivalent effect or substantially the same effect as the relevant methodology for asset valuation, cost allocation and taxation in Schedule B of the fibre IMs; and
  - 3.8.2 relative to the methodology in the fibre IMs that would otherwise apply, does not detract from the purpose of Part 6 of the Act, and (where relevant) the promotion of workable competition.<sup>28</sup>
- 3.9 We note that this approach is similar to provisions in the Part 4 IMs for customised price-quality paths.<sup>29</sup>
- 3.10 The proposed amendments are specified in the new clause B1.1.14 in Section 6 of Schedule B of the draft IM amendment determination.

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<sup>27</sup> Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraph 6.78 onwards.

<sup>28</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause B1.1.14 of Schedule B of Attachment B.

<sup>29</sup> See, for example, Commerce Commission, "Electricity Distribution Services Input Methodologies Determination 2012", as amended, clause 5.3.26.

### *IM amendment scope framework*

- 3.11 We consider making this amendment is consistent with our IM amendments framework outcomes. The amendment proposes no changes to the fundamental settings of the IMs, as any alternative methodology would need to produce an equivalent or substantially the same effect to the methodology that would otherwise apply. Further we consider this proposed amendment is necessary to implement our approach to ID and PQ regulation in a way that does not create an unrealistic regulatory burden (or in some cases, requirements where compliance costs may be very high).

### *Application of s 166(2)*

- 3.12 These amendments would enable better promotion of the purpose of Part 6 and workable competition in telecommunications markets (where relevant). The original IMs in Schedule B of the fibre IMs were determined on the basis that, as a package, they best give (or are likely to best give) effect to the Part 6 purpose in s 162 and (where relevant), the promotion of workable competition as referred to in s 166(2)(b). However, if these IMs are unable to be implemented, they cannot achieve this purpose. For this reason, including the ability to apply an alternative methodology that still achieves an equivalent or a substantially similar effect best gives effect to the Part 6 purpose in s 162, and (where relevant) the promotion of workable competition as referred to in s 166(2)(b), more effectively than the underlying IM that would otherwise apply.

### *Application of s 174*

- 3.13 We consider these amendments do not have a detrimental effect on s 174. Because the outcome when applying an alternative methodology must have an equivalent or substantially the same effect, LFCs can still reasonably estimate the material effects of a methodology on it (consistent with s 176). Because we propose to retain the ability to apply an alternative methodology, certainty for end-users and access seekers is also maintained, as we will be able to ensure that the alternative does (as far as it is possible to know) have an equivalent or substantially the same effect and does not detract from the promotion of certainty.

### *Compliance costs and complexity*

- 3.14 Finally, we consider this proposed amendment reduces the compliance costs and complexity of the IMs, without detrimental effect to ss 166(2) and s 174. Where the original methodologies are unduly burdensome to apply, the cost to an LFC and us may outweigh any benefit from doing so. Allowing the application of alternatives avoids this situation.

*Proposed application of the alternative methodologies provision*

- 3.15 As described in detail in Chapter 6 of the draft initial PQ RAB paper,<sup>30</sup> we propose applying alternative methodologies with an equivalent or substantially equivalent effect to certain parts of Chorus' calculation of the financial loss asset (**FLA**) in its transitional and initial PQ RAB, namely:
- 3.15.1 capital contributions that are not matched to individual assets;<sup>31</sup>
  - 3.15.2 use of net book value (**NBV**) adjustments;<sup>32</sup>
  - 3.15.3 value of a commissioned asset (**VCA**) not recorded as a separate asset;<sup>33</sup>  
and
  - 3.15.4 present value benefit of Crown financing drawdown formula.<sup>34</sup>
- 3.16 Applying an alternative methodology with an equivalent or substantially equivalent effect is also proposed for the immaterial difference in the calculation of the "UFB cost allocation adjustment cash flow" for financial loss year 2022, discussed in paragraph 3.52. This is to be applied in conjunction with the "UFB cost allocation adjustment cash flow" IM amendment proposed in paragraph 3.47.
- 3.17 We have proposed limiting the application of this provision to the methodologies for asset valuation, cost allocation and taxation in Schedule B of the IMs, as used for the determination of the FLA (both as part of an initial RAB and as part of Chorus transitional initial PQ RAB). We do not consider it appropriate to allow for alternative methodologies to apply on an on-going basis in the future for other aspects of PQ and ID regulation. To do so would risk reducing certainty, contrary to the purpose of fibre IMs in s 174.
- 3.18 However, unlike the enduring aspects of PQ and ID, the final determination of the "initial RAB value" of the FLA for each regulated provider:
- 3.18.1 is a one-off process; and

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<sup>30</sup> Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraph 6.78 onwards.

<sup>31</sup> Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraphs 6.77-6.92.

<sup>32</sup> Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraphs 6.93-6.101.

<sup>33</sup> Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraphs 6.102-6.111.

<sup>34</sup> Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraphs 6.112-6.116.

3.18.2 in many cases relates to historical information, that was collected prior to the requirements of the fibre IMs being in place.

### **Proposed amendment to correct for the effect of tax losses**

#### *Current IM requirements*

- 3.19 Clauses B1.1.10(1)-(4) and B1.1.11(2) of Schedule B of the fibre IMs currently specify the use of a post-tax WACC in determining the initial RAB value of the FLA.<sup>35</sup>
- 3.20 Clause 2.3.3(3)(a) of the fibre IMs currently states that opening tax losses for disclosure year 2022 are UFB closing tax losses as of 31 December 2021.<sup>36</sup>

#### *Proposed amendment and reasons*

- 3.21 In our fibre input methodologies: Financial loss asset final decision – reasons paper, we explained that in using a post-tax weighted average cost of capital (**WACC**) to discount pre-implementation date cash flows, in the event of substantial tax losses, we would make a correction to account for the difference in the time value of money of these losses and would consider implementing an adjustment to true up these amounts, for example through an IM amendment.<sup>37</sup>
- 3.22 As part of our determination of the initial RAB value of the FLA for Chorus, we have assessed the quantum of Chorus’ tax losses. As our assessment of the tax losses currently indicates that these losses are substantial,<sup>38</sup> we propose the following amendments to the fibre IMs to account for the difference in the time value of money of these losses:
- 3.22.1 amendments to clause B1.1.10(1)-(4) and B1.1.11(2) of Schedule B of the fibre IMs to specify the use of a vanilla WACC, rather than a post-tax WACC in the determination of the initial RAB value of the FLA;<sup>39</sup>

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<sup>35</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses B1.1.10(1)-(4) and B1.1.11(2) of Schedule B.

<sup>36</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 2.3.3(3)(a).

<sup>37</sup> Commerce Commission “Fibre input methodologies: Financial loss asset final decision – reasons paper (3 November 2020), para 3.402.

<sup>38</sup> Commerce Commission “Chorus’ initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper” (19 August 2021), para 6.25.

<sup>39</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clauses B1.1.10(1)-(4) and B1.1.11(2) of Schedule B of Attachment B.

- 3.22.2 amendments to clauses B1.1.2(5) and B1.1.2(6) of Schedule B of the fibre IMs to remove the tax term “(1-Tc)” from the relevant formula used to calculate the finance rate used for the avoided cost of crown financing,<sup>40</sup> and
- 3.22.3 amendments to clause 2.3.3(3) of the Taxation fibre IM to insert for disclosure year 2022 the opening carry-forward value of tax losses at the implementation date arising from applying a method that sums the annual values of notional deductible interest associated with financing privately commissioned assets in calculating the UFB tax costs cashflow over the pre-implementation period.<sup>41</sup>
- 3.23 When there are tax losses, it is more accurate to use an alternative to the post-tax WACC and model notional deductible interest in the tax cashflows. The inclusion of notional deductible interest in the tax cashflows allows for the correct recognition of the timing of the utilisation of losses and changes the closing value of tax losses that is carried forward.
- 3.24 We consider that an accurate and straightforward way of correcting the underestimate of the initial RAB value of the FLA is to use a vanilla WACC in order to model the notional deductible interest in the tax cashflows. The correction involves two proposed amendments to the IMs:
- 3.24.1 changing the compounding factor in the IM from a post-tax WACC to a vanilla WACC (clause B1.1.10(1)-(4) of Schedule B of the fibre IMs)); and
- 3.24.2 changing the formulas used to calculate the finance rate used for the avoided cost of Crown financing so that the cost of debt terms are not adjusted for tax (clause B1.1.2(5) and B1.1.2(6) of Schedule B of the fibre IMs)).
- 3.25 The additional changes to the IMs that would be required to specify the methodology for the correct cumulative calculation of the tax losses are complex and, rather than propose those changes, we consider it much simpler to just specify the value of the tax losses for each regulated provider arising from the application of the vanilla WACC as the “opening tax losses” for disclosure year 2022.

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<sup>40</sup> [Draft] *Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clauses B1.1.2(5)-(6) of Schedule B of Attachment B.

<sup>41</sup> [Draft] *Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 2.3.3(3)(a) of Attachment B.

- 3.26 We propose determining the “opening tax losses” value for disclosure year 2022 for Chorus at the same time as our final decisions on matters relating to Chorus’ PQ RAB expected in mid-2022. We propose determining the “opening tax losses” value for disclosure year 2022 for the other LFCs at the same time as our final decisions on matters relating to those LFC’s initial ID RABs in 2022.
- 3.27 Making these changes to the fibre IMs will result in a more accurate calculation of the effect of tax losses, and therefore, is likely to best give effect to the Part 6 purpose in s 162 more effectively than the current IM. Application of the current IM would result in an undervaluation of the losses incurred. This would be inconsistent with s 177(2), and may have a detrimental impact on future incentives to invest (contrary to the outcome specified in s 162(a)).

### **Proposed amendment to correct errors in formulae for the present value benefit of Crown financing**

#### *Current IM requirement*

- 3.28 Clause B1.1.2(5) of Schedule B of the fibre IMs expresses the calculation for the present value benefit of Crown financing as follows:<sup>42</sup>

$((A \times B) + (C \times D)) \times$  **benefit of Crown financing compounding factor** for the **financial loss year** in question

where-

A is the amount determined in accordance with the following formula:

$(\text{proportion of 'B' that is senior debt} \times \text{cost of debt for that financial loss year } (1 - T_c)) + (\text{proportion of 'B' that is subordinated debt} \times (\text{cost of debt for that financial loss year} + 0.41\%)(1 - T_c));$

B is the **net drawdowns** in the **financial loss year** that is debt (whether senior or subordinated);

C is the amount determined in accordance with the following formula:

$(0.75 \times \text{cost of equity for that financial loss year}) + (0.25 \times \text{cost of debt for that financial loss year});$

D is the **net drawdowns** in the **financial loss year** that is equity;

'benefit of Crown financing compounding factor' is the amount determined in accordance with the following formula:

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<sup>42</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.2(5) of Schedule B.

$$\frac{(((1 + \textit{financial loss year WACC})^Y) - 1)}{\textit{financial loss year WACC}}$$

where Y is the amount determined in accordance with the following formula:

$$\frac{\text{the number of days between the day that is the mid – point of the **financial loss year** and the **implementation date**}}{365.25}$$

*Proposed amendment and reasons*

- 3.29 In its initial asset value (IAV) model documentation, Chorus identified an error in this formula. In a financial loss year in which there is non-zero senior debt drawdown but no net debt drawdown (e.g. senior debt up, subordinate debt down by an equal amount, or vice versa) the formula gives an incorrect result because the proportion calculation (A × B) can be undefined (B=0).
- 3.30 Chorus has implemented the (A × B) + (C × D) term by term, as follows:
- = (senior debt drawdown × annual cost of senior debt) + (subordinate debt drawdown × annual cost of subordinate debt) × (1-TaxRate) + (debt-like equity drawdown × annual cost of debt-like equity) + (other equity drawdown × annual cost of other equity)
- 3.31 Chorus’ method gives the mathematically correct result for all financial loss years, including financial loss years in which there is a non-zero senior debt drawdown but no net debt drawdown.
- 3.32 While we consider that Chorus’ proposed formula is economically equivalent to the method in cl B1.1.2(5) of Schedule B of the fibre IMs, we propose amending clause B1.1.2(5) of Schedule B of the fibre IMs to replace the formulae with an equivalent of that proposed by Chorus at paragraph 3.30 above, but also removing the tax term “(1-Tc)” in accordance with the tax losses adjustment proposed in paragraph 3.24.2, in order to correct the error.<sup>43</sup>
- 3.33 Correcting this error in the IMs is therefore consistent with s 166(2) of the Act, because the initial PQ RAB value has a material, ongoing effect on Chorus’ incentives to invest and end-user prices of FFLAS.

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<sup>43</sup> [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause B1.1.2(5) of Schedule B of Attachment B.

- 3.34 The original IM was determined because we considered it best promoted the purpose of Part 6 in s 162, and as necessary to meet the requirement under s 177(3)(b) that the determination of [the financial loss asset] by us must “in respect of any Crown financing provided...refer to the actual financing costs incurred by the provider”. The presence of the error described above prevents the IM from achieving this purpose. As such, correcting for this error is necessary to achieve the original intent of the IM.

### **Proposed amendment to clarify that other allocator types may be applied by the Commission in determining the financial losses**

#### *Current IM requirement*

- 3.35 When determining the initial RAB value of the FLA, Schedule B of the fibre IMs specifies the “default” allocator types that can be used for the allocation of operating costs and asset values that are not directly attributable to UFB FFLAS.<sup>44</sup>
- 3.36 Clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of the fibre IMs currently provide that the allocator types available to be applied include “any other allocator type as approved by the Commission”.

#### *Proposed amendment and reasons*

- 3.37 The original drafting intent was for us to be able to substitute our own allocator types when determining the initial RAB value of the FLA, rather than only being able to approve allocator types proposed by regulated providers.<sup>45</sup> To clarify our original drafting intent, we propose amending clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of the fibre IMs to read “any other allocator type as determined by the Commission”.<sup>46</sup>
- 3.38 Under the proposed amendments, we will be able to substitute an alternative allocator type of our own where we consider it appropriate to do so, provided:
- 3.38.1 there is a circumstance or ratio that is, among other things, “objectively justifiable and demonstrably reasonable”;<sup>47</sup> and
- 3.38.2 the decision to do so is consistent with s 166(2).

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<sup>44</sup> The list of default allocator types is set out in clauses B1.1.6(1)(c)(i)-(ix) (in respect of the allocation of operating costs) and B1.1.6(2)(d)(i)-(ix) (in respect of the allocation of asset values) of Schedule B of the fibre IMs.

<sup>45</sup> Commerce Commission “Fibre input methodologies: Financial loss asset final decision – reasons paper (3 November 2020), para 3.239.3, 3.333, 3.343 and 3.346.

<sup>46</sup> [Draft] *Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of Attachment B.

<sup>47</sup> Refer to the definitions in the fibre IMs of “causal relationship”, “proxy asset allocator” and “proxy cost allocator”, which set out the requirement of “objectively justifiable and demonstrably reasonable”.



- 3.39 We consider that this clarification in the IMs, which is consistent with our original policy intent, better promotes the s 174 purpose of IM than the current provisions, as it provides more certainty about the application of other allocator types.

### **Proposed amendment to correct errors in formulae for “UFB cost allocation adjustment cash flow”**

#### *Current IM requirement*

- 3.40 “UFB cost allocation adjustment cash flow” is defined in clause B1.1.2(4) of Schedule B of the fibre IMs as follows:<sup>48</sup>

- (a) ‘UFB cost allocation adjustment cash flow’ means the sum of all amounts for **UFB assets** with a **UFB closing asset value** for a **financial loss year** calculated in accordance with the following formula-

$$\text{UFB unallocated closing asset value} \times (\text{closing cost allocator value} - \text{opening cost allocator value})$$

where-

‘closing cost allocator value’ is calculated in accordance with the following formula-

$$\text{UFB closing asset value} \div \text{UFB unallocated closing asset value}; \text{ and}$$

‘opening cost allocator value’ is calculated in accordance with the following formula-

$$\text{UFB opening asset value} \div \text{UFB unallocated opening asset value};$$

#### *Proposed amendment and reasons*

- 3.41 We expected the effect of the “UFB cost allocation adjustment cash flow” on the “UFB costs cash flows” to be the increase in cost allocation that happens between the start of a financial loss year and the end of a financial loss year.
- 3.42 However, the current formula for the opening cost allocator value produces an incorrect calculation of the “UFB cost allocation adjustment cash flow” because it does not account for assets that are commissioned throughout a financial loss year or depreciation that occurs throughout the financial loss year.

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<sup>48</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.2(4)(a) of Schedule B.

- 3.43 The error is in the expression of the opening cost allocator value. The expression of the closing cost allocator value (UFB closing asset value ÷ UFB unallocated closing asset value), while correct, must be revised to apply at an asset class level in line with the proposed amendment for the opening cost allocator value described in paragraph 3.47 below.
- 3.44 In its IAV model Chorus did not use the fibre IMs formula for the opening cost allocator value and instead has calculated the “UFB cost allocation adjustment cash flow” as the difference between the opening RAB for the subsequent financial period, and the closing RAB for the current financial period. In this calculation, Chorus uses an opening cost allocator value, but does not use a closing cost allocator value.
- 3.45 The method proposed by Chorus is consistent with the formula we intended to apply for all financial loss years except for the last (ie, 1 July 2021 – 31 December 2021, defined in the IMs as “financial loss year 2022”. In the last financial loss year, Chorus’ method results in a zero value of the “UFB cost allocation adjustment cash flow” because the opening cost allocator value is outside of the pre-implementation period (ie, it is for the period 1 January 2022 to 31 December 2022).
- 3.46 The formula for the “opening cost allocator value” that would take into account the commissioned assets and depreciation is as follows:

*(sum of UFB opening asset values for that asset class + sum of value of commissioned assets – depreciation) ÷ sum of UFB unallocated closing asset values for that asset class*

- 3.47 The existing formula in the IMs is expressed at an individual asset level. Because additional expenditure on an asset with a UFB opening asset value is treated as relating to a separate asset under B1.1.3(4)(b) of Schedule B of the fibre IMs, the formula in paragraph 3.46 cannot be implemented at an individual asset level but must be applied at an aggregate level. For this reason, we propose to specify both the closing cost allocator value and the opening cost allocator value as follows in respect of an asset class as defined in Schedule A of the IMs:

‘closing cost allocator value’ is calculated in accordance with the following formula-

*sum of UFB closing asset values for that asset class ÷ sum of UFB unallocated closing asset values for that asset class;*

‘opening cost allocator value’ is calculated in accordance with the following formula-

*(sum of UFB opening asset values for that asset class + sum of value of commissioned assets – depreciation) ÷ sum of UFB unallocated closing asset values for that asset class; and*

**‘sum of value of commissioned assets’ means the sum of value of commissioned asset for each UFB asset for that asset class with a UFB FFLAS commissioning date in the financial loss year in question after applying clause B1.1.6(2) of Schedule B to allocate each value of commissioned asset for that asset class to the provision of UFB FFLAS;**

- 3.48 As indicated above, if regulated providers were to apply this formula it would result in the same values of the “UFB cost allocation adjustment cash flow” in all financial loss years, except for financial loss year 2022. However, there would be an immaterial change in the initial RAB value of the FLA, as can be seen from the following example.
- 3.49 If the “UFB cost allocation adjustment cash flow” for financial loss year 2022 was \$10 million, which is half of the amount in the previous full financial loss year, rather than zero, the initial RAB value of the FLA would change from \$1,446.340 million to \$1,446.457 million. The reason for the small change is that the cash flow is a mid-year value which would be compounded to the implementation date. However, the UFB asset base closing value is a negative adjustment in the discounted cash flow calculation and is not compounded.
- 3.50 We propose amending clause B1.1.2(4)(a) of Schedule B of the fibre IMs to express the “UFB cost allocation adjustment cash flow” value, applied to an asset class as in paragraph 3.46 above.<sup>49</sup>
- 3.51 We consider that Chorus’ proposed calculation of the “UFB cost allocation adjustment cash flow” is economically equivalent to our proposed amendment. The immaterial difference arising in the financial loss year 2022, described in paragraph 3.48-3.49 is addressed by the equivalent alternative methodology change proposed in paragraph 3.8 above.
- 3.52 Given the proposed amendment has an immaterial effect, we consider that it does not detract from the s 166(2) purpose, compared to the current approach.
- 3.53 We determined the original IM because it best promoted the purpose of Part 6 in s 162. The presence of the error described above prevents the IM from achieving this purpose. As such, correcting for this error is necessary to achieve the original intent of the IM.

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<sup>49</sup> [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clauses B1.1.2(4)(a) of Schedule B of Attachment B.

## Proposed amendment to correct errors in formulae for ‘revenue date compounding factor’

### *Current IM requirement*

3.54 Clause B1.1.2(7)(b) of Schedule B of the fibre IMs currently states that ‘days to implementation date’ means:<sup>50</sup>

- (b) for the purposes of determining a ‘revenue date compounding factor’, the number of days between:
  - (i) the 20<sup>th</sup> day of the month following the month in which the day that is the mid-point of the **financial loss year** falls; and
  - (ii) the **implementation date**;

### *Proposed amendment and reasons*

3.55 The current formula does not reflect our original drafting expectation as it currently results in the wrong number of days being used in the interval between the “revenue date” and the date to which values are being compounded.

3.56 We therefore propose an amendment that would replace clause B1.1.2(7)(b) of Schedule B of the fibre IMs with the following:

- (b) for the purposes of determining a ‘revenue date compounding factor’:
  - (i) for **financial loss year** 2012, is 3543;
  - (ii) for **financial loss year** 2013, is 3254;
  - (iii) for **financial loss year** 2014, is 2889;
  - (iv) for **financial loss year** 2015, is 2524;
  - (v) for **financial loss year** 2016, is 2159;
  - (vi) for **financial loss year** 2017, is 1793;
  - (vii) for **financial loss year** 2018, is 1428;
  - (viii) for **financial loss year** 2019, is 1063;
  - (ix) for **financial loss year** 2020, is 698;
  - (x) for **financial loss year** 2021, is 332; and

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<sup>50</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.2(7)(b) of Schedule B.

(xi) for **financial loss year** 2022, is 58; and

- 3.57 This change would align with the standard approach taken by the Commission whereby the revenue date compounding factor assumes that revenue is received 148 days before the end of a 12-month period.
- 3.58 We consider that making this change would enhance certainty more than the existing provision, consistent with s 174 of the Act, by providing exact figures rather than a formula which might be misinterpreted and result in incorrect figures.

**Proposed amendments to correct errors in Cost Allocation fibre IM provisions that specify requirements for operating costs and asset values that are not directly attributable to regulated FFLAS and UFB FFLAS**

*Current IM requirement*

- 3.59 The following clauses of the Cost Allocation fibre IM do not explicitly specify that asset allocators (and cost allocators) must be used to allocate applicable asset values (and operating costs) to “services that are not regulated FFLAS” (and “services that are not UFB FFLAS”) where those asset values (and operating costs) are not directly attributable to “regulated FFLAS” (and “UFB FFLAS”):<sup>51</sup>
- 3.59.1 clause 2.1.1(5)-(6);
- 3.59.2 clause 2.1.2(5)-(6);
- 3.59.3 clause 2.1.3(5);
- 3.59.4 clause 3.2.1(7)-(8); and
- 3.59.5 clause B1.1.6(4) of Schedule B.
- 3.60 The following clauses of the Cost Allocation fibre IM do not explicitly specify that asset allocators (and cost allocators) must be used to proportionally allocate applicable asset values (and operating costs) between “regulated FFLAS” and “services that are not regulated FFLAS” (and between “UFB FFLAS” and “services that are not UFB FFLAS”) where those asset values (and operating costs) are not directly attributable to “regulated FFLAS” (and “UFB FFLAS”):<sup>52</sup>

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<sup>51</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses 2.1.1(5)-(6), 2.1.2(5)-(6), 2.1.3(5), 3.2.1(7)-(8) and B1.1.6(4) of Schedule B.

<sup>52</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses 2.1.1(5)-(6), 2.1.2(5)-(6), 3.2.1(7)-(8), 3.2.1(11), B1.1.6(1)(b) of Schedule B and B1.1.6(2)(c) of Schedule B.

- 3.60.1 clause 2.1.1(5)-(6);
- 3.60.2 clause 2.1.2(5)-(6);
- 3.60.3 clause 3.2.1(7)-(8);
- 3.60.4 clause 3.2.1(11);
- 3.60.5 clause B1.1.6(1)(b) of Schedule B; and
- 3.60.6 clause B1.1.6(2)(c) of Schedule B.

*Proposed amendments and reasons*

- 3.61 In its submission on our August 2021 proposed IM amendments, Chorus suggested that clauses 2.1.1(5)-(6), 2.1.1(9), 3.2.1(7)-(8) and clause 3.2.1(13):

“have an error as they do not allow for cost/value to be allocated to services that are not regulated FFLAS...The omission of services that are not regulated FFLAS could unintentionally imply that non-FFLAS costs/values should be allocated to FFLAS”.<sup>53</sup>

- 3.62 We agree with Chorus and propose clarifying the clauses referred to in paragraphs 3.59-3.60 so that it is explicit that asset allocators (and cost allocators) must be used to:<sup>54</sup>

3.62.1 allocate applicable asset values (and operating costs) to “services that are not regulated FFLAS” (and “services that are not UFB FFLAS”) where those asset values (and operating costs) are not directly attributable to “regulated FFLAS” (and “UFB FFLAS”); and

3.62.2 proportionally allocate applicable asset values (and operating costs) between “regulated FFLAS” and “services that are not regulated FFLAS” (and between “UFB FFLAS” and “services that are not UFB FFLAS”) where those asset values (and operating costs) are not directly attributable to “regulated FFLAS” (and “UFB FFLAS”).

- 3.63 The current drafting in the clauses referred to in paragraphs 3.59-3.60 was made in error.<sup>55</sup>

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<sup>53</sup> Chorus “Amendments to the Input Methodologies for Fibre: August 2021 amendments” (24 June 2021), page 19.

<sup>54</sup> [Draft] *Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clauses 2.1.1(5)-(6), 2.1.2(5)-(6), 2.1.3(5), 3.2.1(7)-(8), (11), clauses B1.1.6(1)(b), (2)(c) of Schedule B and B1.1.6(4) of Schedule B of Attachment B.

<sup>55</sup> Commerce Commission “Fibre input methodologies: Main final decisions – reasons paper” (13 October 2020), paras 4.57-4.62 and Commerce Commission “Fibre input methodologies: Financial loss asset final decision – reasons paper” (3 November 2020), para 3.239.3.

- 3.64 We consider that making these proposed changes will enhance certainty more than the existing provisions, consistent with s 174, about the requirements for allocating asset values (and operating costs) not directly attributable to “regulated FFLAS” (and “UFB FFLAS”).
- 3.65 We do not consider that clauses 2.1.1(9) and 3.2.1(13) are drafted in error as submitted by Chorus.

**Proposed amendments to improve workability of Asset Valuation fibre IM requirements in respect of the cost allocation process used to determine the “opening RAB value” of fibre assets at implementation date in Chorus’ transitional initial PQ RAB**

*Current IM requirement*

- 3.66 Clauses 3.3.1(8) of the Asset Valuation fibre IM and clause B1.1.5(1) of the Asset Valuation fibre IM in Schedule B are transitional provisions that operate for the purposes of determining Chorus’ maximum revenues for PQP1.<sup>56</sup>
- 3.67 Chorus’ transitional initial PQ RAB is determined, in part, based on “relevant actual values” and “relevant forecast values”. In particular, it is determined by taking the “opening RAB value” of all fibre assets employed in the provision of “PQ FFLAS” “as of the implementation date”, which involves:<sup>57</sup>
- 3.67.1 adopting any relevant actual values prepared in accordance with GAAP and obtained from a regulated provider by the Commission prior to the implementation date, provided those GAAP values are applied in accordance with s 177 of the Act relating to the “initial value of a fibre asset”;
- 3.67.2 where relevant actual values are not available in respect of any disclosure year prior to the implementation date, applying forecasts of all values required to determine the “opening RAB values” as of the implementation date using GAAP values obtained under the previous paragraph to inform or support those forecast values.

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<sup>56</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(7)(a), clause 3.3.1(8) and clause B1.1.5(1) of Schedule B.

<sup>57</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(8)(a)-(b).

3.68 Clause 3.3.1(8)(d)-(e) provides:<sup>58</sup>

- (d) the relevant actual values contributing to the “opening RAB value” of the **financial loss asset**, as adopted under paragraph (a), are determined in accordance with clause B1.1.5(1)(a) of Schedule B; and
- (e) the relevant forecast values contributing to the “opening RAB value” of the **financial loss asset**, as applied under paragraph (b) are determined in accordance with clause B1.1.5(1)(b) of Schedule B.

3.69 Clause B1.1.5(1)(a) of Schedule B provides:<sup>59</sup>

- (1) For the purpose of clauses 3.3.1(8)(d)-(e), the “opening RAB value” of the **financial loss asset** adopted under clauses 3.3.1(8)(a)-(b) is determined by:
  - (a) adopting actual values for calculations under clauses B1.1.2(2)-(9) of Schedule B in respect of **financial loss year 2012, financial loss year 2013, financial loss year 2014, financial loss year 2015, financial loss year 2016, financial loss year 2017, financial loss year 2018, financial loss year 2019, and financial loss year 2020**; and
  - (b) applying forecasts for calculations under clauses B1.1.2(2)-(9) of Schedule B in respect of **financial loss year 2021 and financial loss year 2022**,

where

- (c) any relevant values adopted under clause 3.3.1(8)(a) must be consistent with any equivalent values adopted under paragraph (a); and
- (d) any relevant forecasts applied under clause 3.3.1(8)(b) must be consistent with any equivalent forecasts applied under paragraph (b).

#### *Proposed amendments and reasons*

3.70 We consider that the drafting in the current clause 3.3.1(8) may cause confusion about the cost allocation process used to determine the “opening RAB value” of fibre assets at implementation date in Chorus’ transitional initial PQ RAB.

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<sup>58</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(8)(d)-(e).

<sup>59</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.5(1) of Schedule B.



- 3.71 In order to clarify that the adopted historic values (and forecast values applied) to determine the “opening RAB value” of core fibre assets at implementation date in Chorus’ transitional initial PQ RAB are allocated in accordance with the Cost Allocation fibre IM for price-quality paths (clause 3.2.1), we propose:
- 3.71.1 splitting clause 3.3.1(7)(a) into clause 3.3.1(7)(a)-(b) so that:<sup>60</sup>
- 3.71.1.1 clause 3.3.1(7)(a) specifies that the “opening RAB values” of core fibre assets for the PQ RAB as of the implementation date are adopted in accordance with clause 3.3.1(8); and
- 3.71.1.2 clause 3.3.1(7)(b) specifies that the “opening RAB value” of the financial loss asset for the PQ RAB as of the implementation date is adopted in accordance with a new provision (clause 3.3.1(9)); and
- 3.71.2 refining clause 3.3.1(8) so that:<sup>61</sup>
- 3.71.2.1 all adopted historic vales (and forecast values applied) are explicitly “treated as asset values” and allocated to “PQ FFLAS” as of the implementation date in accordance with clause 3.2.1; and
- 3.71.2.2 the resulting values referred to in paragraph 3.71.2.1 are considered “estimates”,<sup>62</sup> rather than the requirements proposed in May 2021 which specified that the adopted historic values (and forecast values applied) are “estimates”.<sup>63</sup>
- 3.72 As the proposed clause 3.3.1(8)(d) specifies that clause 3.2.1 is used to allocate the estimated values of adopted historic values (and forecast values applied) to PQ FFLAS, we have proposed removing clause 2.2.3(2)(b)(ii) as this subclause would become redundant.<sup>64</sup>

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<sup>60</sup> [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 3.3.1(7)(a)-(b) of Attachment B.

<sup>61</sup> [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 3.3.1(8) of Attachment B.

<sup>62</sup> [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 3.3.1(8) of Attachment B.

<sup>63</sup> [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (27 May 2021), clause 3.3.1(8)(a)-(d) of Attachment B.

<sup>64</sup> Under clause 2.2.3(2)(b)(ii) of the fibre IMs, the initial RAB value of a core fibre asset as at the implementation date is the unallocated initial RAB value allocated to regulated FFLAS as a result of- (a) adopting its unallocated initial RAB value; and (b) applying...in respect of forecast values, clause 3.2.1. Our proposed amendment is captured in [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 2.2.3(2)(b) of Attachment B.

- 3.73 In order to clarify, consistent with clause 2.1.1(7) of the fibre IMs,<sup>65</sup> that the adopted “opening RAB value” of the financial loss asset for Chorus’ transitional initial PQ RAB is treated as being directly attributable to PQ FFLAS, we propose:
- 3.73.1 moving the previous clauses which specified how to adopt values contributing to the “opening RAB value” of the financial loss asset (clause 3.3.1(8)(d)-(e)) to the new clause 3.3.1(9), as referred to in paragraph 3.71.1.2;<sup>66</sup>
  - 3.73.2 specifying in clause B1.1.5(1)(c)-(d) of Schedule B that only unallocated adopted values (and forecast applied) under the new clause 3.3.1(9)(a)-(b) must be consistent with equivalent values adopted under clauses B1.1.2(2)-(9) of Schedule B;<sup>67</sup> and
  - 3.73.3 explicitly specifying that the value resulting from the determination under clause B1.1.5(1) of Schedule B is treated as:<sup>68</sup>
    - 3.73.3.1 an ‘asset value’; and
    - 3.73.3.2 being directly attributable to PQ FFLAS.
- 3.74 As a consequence of making these changes, we have also:
- 3.74.1 proposed removing reference to “estimates” in clause 3.5.7(2)(c)-(d) and 3.5.10(1)(d)(i)-(ii) of the Cost of Capital fibre IM,<sup>69</sup> which was proposed in our May 2021 draft decisions;<sup>70</sup> and
  - 3.74.2 proposed updating the cross-references in 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of the Cost of Capital fibre IM to:<sup>71</sup>

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<sup>65</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 2.1.1(7).

<sup>66</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 3.3.1(9)(d)-(e) of Attachment B.

<sup>67</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause B1.1.5(1)(c)-(d) of Schedule B of Attachment B.

<sup>68</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 3.3.1(9)(f) of Attachment B.

<sup>69</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of Attachment B.

<sup>70</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (27 May 2021), clause 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of Attachment B.

<sup>71</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of Attachment B.

3.74.2.1 refer to the updated provisions in clauses 3.3.1(8)(a) and (d) and 3.3.1(9)(d), as applicable; and

3.74.2.2 refer to clause 3.3.1(8)(c) and the new clause 3.3.1(9)(c), which were previously omitted in error.

3.75 We consider that making these proposed changes will enhance certainty more than the existing provisions, consistent with s 174, about the cost allocation process used to determine the “opening RAB value” of fibre assets at implementation date in Chorus’ transitional initial PQ RAB.

### **Proposed amendments to clarify how certain Asset Valuation IMs for ID are used to determine asset valuation inputs for Chorus’ maximum revenues for PQP1**

#### *Current IM requirement*

3.76 Under the current clause 3.3.1(7)(b), subject to certain exceptions,<sup>72</sup> the “opening RAB value” of all fibre assets for the PQ RAB as of the implementation date, as adopted in accordance with clause 3.3.1(8), are applied as forecast values to determine asset values for each regulatory year of PQP1.<sup>73</sup> Subject to certain exceptions,<sup>74</sup> those forecast values are determined by applying the Asset Valuation fibre IM for ID (as specified in Subpart 2 of Part 2 of the fibre IMs) for the “PQ RAB”.<sup>75</sup>

#### *Proposed amendments and reasons*

3.77 We propose clarifying that the forecast values determined by applying the Asset Valuation fibre IM for ID (as specified in Subpart 2 of Part 2 of the fibre IMs) for the “PQ RAB” are determined, in part, as follows:

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<sup>72</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses 3.3.1(7)(b), 3.3.1(3)-(5).

<sup>73</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(7)(b).

<sup>74</sup> Under clause 3.3.1(7)(b)(ii) of the fibre IMs, ‘depreciation’ and ‘revaluation’ are determined in accordance with clauses 3.3.2-3.3.4 of the fibre IMs.

<sup>75</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(7)(b)(i).

- 3.77.1 the “opening RAB value” of a core fibre asset adopted in accordance with clause 3.3.1(8) is treated as if it is a “unallocated closing RAB value” for the purposes of:<sup>76</sup>
- 3.77.1.1 forecasting the value of that asset for each regulatory year of PQP1; and
  - 3.77.1.2 allocating a forecast ‘asset value’ to regulated FFLAS under clause 2.2.5(4); and
- 3.77.2 the “opening RAB value” of the financial loss asset adopted in accordance with clause 3.3.1(9) is treated as if it is the “initial RAB value” for disclosure year 2022 for the purposes of forecasting the value of that asset for each regulatory year of PQP1 under clause 2.2.6.<sup>77</sup>
- 3.78 We have proposed these changes to improve the workability of these provisions as the RAB roll forward provisions in clause 2.2.5-2.2.6 of the Asset Valuation fibre IM for ID use:
- 3.78.1 different terms to clause 3.3.1 to determine the unallocated (and allocated) values of core fibre assets “rolled forward” over time – the Asset Valuation fibre IM for ID apply the Cost Allocation fibre IM to the “unallocated closing RAB value’ of a core fibre asset, rather than the “opening RAB value”;<sup>78</sup> and
  - 3.78.2 different terms to clause 3.3.1 to determine the value of the financial loss asset “rolled forward” over time – the Asset Valuation fibre IM for ID use the term “initial RAB value” as the starting point for tracking the value of the financial loss asset over time.<sup>79</sup>
- 3.79 We consider that making these process changes will enhance certainty more than the existing provisions, consistent with s 174, about the forecasting process used to determine asset values for each regulatory year of PQP1.

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<sup>76</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 3.3.1(7)(c)(i)(A) of Attachment B.

<sup>77</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 3.3.1(7)(c)(i)(B) of Attachment B.

<sup>78</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 2.2.5(2) and 2.2.5(4).

<sup>79</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 2.2.6(1)(a).

## Proposed amendments clarifying the treatment of negative, positive or nil values for the calculation of price-quality path forecast values for the financial loss asset

### *Current IM requirement*

- 3.80 Under clause B1.1.2(1) of Schedule B, for the purposes of clause 2.2.4, in the case where the value of the ‘financial losses’ is:<sup>80</sup>
- 3.80.1 negative, the initial RAB value of the financial loss asset for a regulated provider will be determined by us to be the absolute value of the financial losses; and
  - 3.80.2 positive or nil, the initial RAB value of the financial loss asset for a regulated provider will be determined by us to be nil.
- 3.81 Under clause 3.3.1(8)(d)-(e), the relevant actual values (and forecast values) contributing to the “opening RAB value” of the financial loss asset, as adopted (and applied) under clauses 3.3.1(8)(a)-(b) are determined in accordance with clause B1.1.5(1)(a) of Schedule B (and clause B1.1.5(1)(b) of Schedule B)).<sup>81</sup> Under clause B1.1.5(1)(a)-(b) of Schedule B, the actual values (and forecast values) are determined by adopting (and applying) calculations under clauses B1.1.2(2)-(9) of Schedule B.<sup>82</sup> However, there is no provision similar to clause B1.1.2(1) of Schedule B which specifies what happens when the resulting calculation is negative, positive or nil.

### *Proposed amendments and reasons*

- 3.82 We propose introducing a new subclause B1.1.5(1)(e) of Schedule B which clarifies that:<sup>83</sup>
- (e) “in the case where the sum of the adopted values under paragraph (a)-(b) is:

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<sup>80</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.2(1) of Schedule B.

<sup>81</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses 3.3.1(8)(d)-(e).

<sup>82</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.5(1) of Schedule B.

<sup>83</sup> *[Draft] Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause B1.1.5(1)(e) of Schedule B of Attachment B.

- (i) negative, the “opening RAB value” of the **financial loss asset** for a **regulated provider** will be determined by the **Commission** to be the absolute value of the financial losses; and
- (ii) positive or nil, the “opening RAB value” of the **financial loss asset** for a **regulated provider** will be determined by the **Commission** to be nil.”

3.83 This text was omitted from clause B1.1.5(1) of Schedule B in error.

3.84 This change clarifies our policy intent, consistent with s 166(2), as expressed in our final decisions on the financial loss asset in November 2020.<sup>84</sup>

“where the overall value of the financial losses at implementation date is negative – indicating an overall shortfall for the pre-implementation period – the initial value of the regulated provider’s FLA is set to the absolute value of the losses (ie, an asset with a positive asset value will be established at implementation date). If overall financial losses are nil or a positive amount, this indicates that there is no overall shortfall, and the initial value of the FLA at implementation date is determined as nil.”

### **Proposed amendments to correct an error in clause 3.2.1(4) of the Cost Allocation fibre IM for price-quality paths**

#### *Current IM requirement*

3.85 Clause 3.2.1(4) of the fibre IMs specifies that, subject to certain exceptions, “any **asset value** must be determined by applying...**asset allocators**...or **proxy asset allocators**...”.<sup>85</sup>

#### *Proposed amendment and reasons*

3.86 We propose refining clause 3.2.1(4) of the fibre IMs so that it specifies that, subject to certain exceptions, “any ‘closing RAB value’ must be determined by applying, in respect of an **asset value**...**asset allocators**...or **proxy asset allocators**...”.<sup>86</sup>

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<sup>84</sup> Commerce Commission “Fibre input methodologies: Financial loss asset final decision – reasons paper” (3 November 2020), para 3.6.

<sup>85</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.2.1(4).

<sup>86</sup> [Draft] *Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 3.2.1(4) of Attachment B.

- 3.87 The current drafting is in error as it suggests that an ‘asset value’ is determined by applying asset allocators and proxy asset allocators. As ‘asset value’ is defined by reference to unallocated values,<sup>87</sup> we have proposed using the term “closing RAB value” instead to make it clear that the resulting value will apply the (unallocated) asset value to determine an allocated value. We consider that this change would enhance certainty more than the existing provision, consistent with s 174 of the Act.

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<sup>87</sup> See *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, definition of “asset value” in clause 1.1.4(2).