

# Proposed amendments to fibre Input Methodologies – wash-up mechanism revised draft

## Reasons paper

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## Associated documents

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3 November 2020	ISSN 1178-2560	[2020] NZCC 24 – Fibre input methodologies (initial value of financial loss asset) Amendment determination 2020 – 3 November 2020.
30 April 2021	ISBN 978-1-869458-86-7	Determining Chorus' first fibre price-quality path: Process update paper April 2021.
30 April 2021	ISBN 978-1-869458-85-0	Chorus' initial regulatory asset base as at 1 January 2022 - Consultation on Chorus' initial price quality RAB proposal.
29 April 2021	-	Notice of intention: Proposal to make potential amendments to the Input Methodologies for Fibre – potential August 2021 amendments
27 May 2021	ISBN 978-1-869458-96-6	Proposed Amendments to Fibre Input Methodologies: draft decisions - Reasons paper - 27 May 2021.
27 May 2021	ISBN 978-1-869458-97-3	[Draft] Fibre Input Methodologies Amendment Determination 2021 – 27 May 2021.
27 May 2021	ISBN 978-1-869458-99-7	Chorus' price-quality path from 1 January 2022 – Draft decision – Reasons Paper – 27 May 2021.
27 May 2021	ISBN: 978-1-869458-94-2	[Draft] Fibre Price-Quality Path Determination 2021 – 27 May 2021.
29 June 2021	-	Determining Chorus' PQ RAB - Process update - 29 June 2021.
19 August 2021	-	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	ISBN 978-1-869459-23-9	Chorus' initial regulatory asset base as at 1 January 2022 - Draft Decisions: Reasons paper
23 September 2021	-	Amended notice of intention: (Amending the Notice of Intention dated 19 August 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments)
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Publication date	Reference	Title
29 September 2021	ISBN 978-1-869459-30-7	Amendments to Fibre Input Methodologies: Capex IM final decision – Reasons paper – 29 September 2021
30 September 2021	ISBN 978-1-869459-31-4	[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021 – 30 September 2021.

Commerce Commission  
Wellington, New Zealand

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## Chapter 1 Introduction

### Purpose of this paper

- 1.1 This paper explains and seeks submissions on additional amendments we have proposed making to the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21 (**fibre IMs**).<sup>1</sup> As a package, these proposed amendments are necessary 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, and our approach to price-quality regulation. They focus on changes to the scope of the wash-up mechanism that will apply to fibre fixed line access service (**FFLAS**) providers subject to price-quality (**PQ**) regulation.
- 1.2 These changes build on and refine the proposed amendments in our 27 May 2021 draft IM amendment decision.<sup>2</sup>

### Structure of this paper

- 1.3 This chapter sets out the process we are following and how you can provide your views.
- 1.4 Chapter 2 sets out our framework for considering the scope of input methodology (**IM**) amendments, and the decision-making framework we have applied in proposing the specific fibre IMs amendments set out in this paper.
- 1.5 Chapter 3 discusses the additional amendments to the fibre IMs we propose, and our reasons for proposing them in terms of the framework discussed in Chapter 2.

### Materials published alongside this paper

- 1.6 To give effect to the amendments discussed in this paper, we have today published a revised draft IM amendment determination.<sup>3</sup> We have drafted this draft determination as a 'track-change' version where:
  - 1.6.1 changes in purple indicate changes proposed in our 27 May 2021 draft amendment determination;
  - 1.6.2 changes in blue indicate changes proposed in our 31 August 2021 draft amendment determination; and

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<sup>1</sup> The fibre IM determination was most recently amended on 29 September 2021 by [the \*Fibre Input Methodologies \(base capex and connection capex baseline allowance determination dates\) Amendment Determination 2021\* \[2021\] NZCC 17](#).

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

<sup>3</sup> Commerce Commission "[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021" (30 September 2021).

1.6.3 changes in red indicate changes proposed in this (30 September 2021) revised draft amendment determination.

1.7 We have also published a draft of the information gathering notice under s 221 of the Act (**the draft s 221 notice**).<sup>4</sup> The information obtained under this notice would allow us to obtain the information necessary from Chorus in each regulatory year of the first regulatory period, which starts on 1 January 2022 and ends on 31 December 2024 (**PQP1**) so that we could make the relevant determinations specified in our revised draft IM amendment determination.

### **Process we are following**

1.8 The steps in the process we are following to amend the fibre IMs are set out in Table 1.1. To explain the different tranches of IM amendment decisions we are making, we have also broken this process down by tranche in Table 1.2.

#### *Scope of this consultation*

1.9 In this paper, we are only proposing amendments about and responding to submissions on a specific set of issues: those to do with the scope and workability of the wash-up mechanism in clause 3.1.1 of the Specification of Price and Revenues fibre IM.

1.10 On 29 September 2021 we amended the Capital Expenditure fibre IM to require us to determine a base capex allowance and connection capex baseline allowance for PQP1 as soon as practicable, but no later than before the start of PQP1 (**capex allowance determination date changes**).<sup>5</sup>

1.11 We are still considering submissions on the wider scope of proposed IM amendments (the proposed amendments not covered by the capex allowance determination date changes) and will publish our final decisions on these in November 2021.

1.12 We are also still considering submissions on our draft PQ path decision, and will publish our final decision on this in December 2021.

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<sup>4</sup> Commerce Commission “[Draft] Notice to supply information to the Commerce Commission under section 221 of the Telecommunications Act 2001 – Wash-up information (30 September 2021).

<sup>5</sup> Commerce Commission “Amendments to Fibre Input Methodologies: Capex IM final decision – Reasons paper” (29 September 2021).

**Table 1.1 Fibre IM amendment process**

Process	Timeframe
Draft decision on PQ and ID-related IM amendments	27 May 2021 <i>Complete</i>
Submissions on PQ and ID-related IM amendments (August 'fast-track' amendments) <sup>6</sup>	24 June 2021
Submissions on PQ and ID-related IM amendments (November 2021 amendments)	8 July 2021 <i>Complete</i>
Cross-submissions on the proposed August 2021 fibre IM amendments (2 weeks)	8 July 2021 <i>Complete</i>
Cross-submissions on the proposed November 2021 fibre IM amendments (2 weeks)	22 July 2021 <i>Complete</i>
Draft decision on proposed additional amendments to fibre IMs	31 August 2021 <i>Complete</i>
Submissions on proposed additional amendments to fibre IMs	16 September 2021 <i>Complete</i>
Final decision on Capex IM 'fast-track' amendment	29 September 2021 <i>Complete</i>
Revised draft decision on wash-up mechanism IM amendments	30 September 2021 <i>This paper</i>
Cross-submissions on proposed additional amendments to fibre IMs	30 September 2021
Submission on wash-up IMs amendments revised draft	21 October 2021
Cross-submission on wash-up IMs amendments revised draft	28 October 2021
Final decision on all IM amendments not covered by Capex IM final decisions	November 2021

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<sup>6</sup> Our original intention was that these amendments would be finalised in August rather than September 2021.

**Table 1.2 Tranches of proposed IM amendments**

Milestones	“Fast-track” PQ-related amendments	“November” PQ and ID-related amendments	Initial RAB-related amendments
<b>Draft decision</b>	<a href="#">27 May 2021</a>	<a href="#">27 May 2021</a>	<a href="#">31 Aug 2021</a>
<b>Submissions on draft decision</b>	<a href="#">24 Jun 2021</a>	<a href="#">8 Jul 2021</a>	<a href="#">16 Sep 2021</a>
<b>Cross-submissions on draft decision</b>	<a href="#">8 Jul 2021</a>	<a href="#">22 Jul 2021</a>	30 Sep 2021
<b>Revised draft</b>	n/a	30 Sep 2021 <i>This paper</i>	n/a
<b>Final decision</b>	29 Sep 2021	Nov 2021	Nov 2021

### How you can provide your views

- 1.13 We encourage interested persons to consider these proposed IM amendments to the fibre IMs and the associated draft s 221 notice and provide views to help shape the final IM decision and any associated final information gathering notice under s 221 notice.
- 1.14 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 and Chorus’ initial PQ RAB and transitional initial PQ RAB.
- 1.15 We are not seeking further submissions on the wider range of proposed IM amendments (the proposed amendments not covered by the capex allowance determination date changes) or the PQ path. Out of fairness to all interested parties, we will not have regard to submissions beyond the scope of issues raised in this paper.

### How to make a submission

- 1.16 Submissions and cross-submissions can be made through the submission portal available on our website at: <https://comcom.govt.nz/file-upload-form-folder/file-upload-form>.
- 1.17 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.



### **Timeframes for submissions**

- 1.18 We invite submissions by 5pm on **Tuesday 21 October 2021**, and cross-submissions by 5pm on **Tuesday 28 October 2021**.
- 1.19 Due to the timeline for finalising these amendments, we are unable to consider extensions to these timelines, or to consider any submissions or cross-submissions made after the due dates.

### **Confidentiality**

- 1.20 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.
- 1.21 When including commercially sensitive or confidential information in your submission, we offer the following guidance:
- 1.21.1 Please provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.
- 1.21.2 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.
- 1.21.3 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

### Purpose of this chapter

- 2.1 As part of the process to make information disclosure (**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 Act, is to promote certainty for regulated fibre service providers (**regulated providers**), access seekers, and end-users in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of 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>
- 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.

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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].

- 2.5 However, as recognised in sections 181 and 182, these rules, processes and requirements may change. We have further considered the relationship between the power to amend an IM and the s 174 purpose in light of submissions received on our *Proposed Amendments to Fibre Input Methodologies: draft decisions - reasons paper*, published 27 May 2021 (**draft IM amendment decisions paper**).<sup>12</sup>
- 2.6 The power to amend an IM must be used to promote the policy and objectives of the Act as ascertained by reading it as a whole. It is clear that Parliament saw the promotion of certainty as being important to the achievement of the purposes of PQ and ID regulation. This is reflected in s 174 in relation to the purpose of IMs, but also in other aspects of the regime.<sup>13</sup>
- 2.7 Accordingly, we are cautious about making amendments to IMs given the importance of certainty and predictability in the regime. While this is to an extent inherent in s 162 (for example providing regulated providers with incentives to invest in accordance with s 162(a) requires recognition of the role that predictability plays)), it is given extra force by s 174. However, we do not agree with Chorus that the Commission may only make amendments "that are consistent with the achievement of both" s 162 and s 174, such that s 174 acts as a veto to IM amendments.<sup>14</sup> There will often be a tension between making changes to improve the regime and better promote the s 162 purpose (and, where we consider it relevant, the s 166(2)(b) purpose)) on the one hand, and certainty on the other.
- 2.8 While we will have regard to the s 174 purpose (and the other indications of the importance of promoting certainty), ultimately under s 166(2), we must nevertheless make recommendations, determinations and decisions that we consider best give, or are likely to best give, effect:
- 2.8.1 to the purpose of s 162, as set out in s 166(2)(a); and
- 2.8.2 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).

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<sup>12</sup> Chorus "Amendments to the Input Methodologies for Fibre: August 2021 amendments" (24 June 2021), paragraphs 2-6.

<sup>13</sup> *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraphs [213]-[221].

<sup>14</sup> Chorus "Amendments to the Input Methodologies for Fibre: August 2021 amendments" (24 June 2021), paragraph 5.

- 2.9 Section 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6. The other purpose statements within Part 6 are relevant matters, but should be applied consistently with s 166(2).<sup>15</sup>
- 2.10 When making our decisions we must only give effect to these other purposes to the extent that doing so does not detract from our overriding obligation to promote the purposes set out in s 166(2).

*Powers to amend the IMs*

- 2.11 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.
- 2.12 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 considering 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 (s166(2)(b)) and could affect a decision to consider new IMs.

*Amendments inside and outside the IM review cycle*

- 2.13 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.
- 2.14 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 is key to promoting the s 162 purpose (as required under s 166(2)(a)) and, in particular, incentives to invest.

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<sup>15</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 when applying the “materially better” test. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, paragraph [165].

- 2.15 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>16</sup>

*Types of amendments outside the IM review*

- 2.16 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:

2.16.1 those that support incremental improvements to PQ paths; and

2.16.2 those that enhance certainty about – or correct technical errors in – the existing IMs.

- 2.17 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.

- 2.18 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>17</sup>

*Status of the regulatory processes and rules IMs*

- 2.19 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.

- 2.20 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.

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<sup>16</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>17</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 quality and Capital Expenditure IMs*

- 2.21 We consider that the quality dimensions and Capital Expenditure IMs are not ‘fundamental’ in the sense described above and should be treated in a similar way to the RPR IMs.
- 2.22 An exception to this could be the clauses of the Capital Expenditure 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*

- 2.23 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.
- 2.24 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>18</sup> As such, we have not considered the framework for doing so under Part 4.
- 2.25 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:
- 2.25.1 best give, or are likely to best give effect to s 166(2)(a) and s 166(2)(b) (where relevant); or
- 2.25.2 promote sufficient certainty to achieve the purpose of IMs in s 174.

*Introducing new IMs outside of the IM review*

- 2.26 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.
- 2.27 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).

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<sup>18</sup> Telecommunications Act 2001, section 178(2).

- 2.28 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**

- 2.29 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>19</sup> Because of these factors it was likely that the set of IM amendments that meet our criteria will be larger prior to PQP1 than in future resets (and compared to recent Part 4 resets).

#### *Error correction*

- 2.30 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 DPP2 for electricity distribution businesses).

#### *Implementing PQ and ID approaches*

- 2.31 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.
- 2.32 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>20</sup> We also sought submissions on our proposed approach for making fibre IM amendments in our 27 May 2021 draft IM amendment decisions paper.<sup>21</sup> We have had regard to submissions received on our proposed approach for making fibre IM amendments in our framework above.<sup>22</sup>

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<sup>19</sup> [Commerce Commission “Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period” \(15 September 2020\)](#), paragraph A27.

<sup>20</sup> *Ibid*, paragraphs 23-24.

<sup>21</sup> [Commerce Commission “Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” \(27 May 2021\)](#).

<sup>22</sup> For example, Chorus “Amendments to the Input Methodologies for Fibre: August 2021 amendments” (24 June 2021), paragraphs 1a, 2-6.

## Decision-making framework we have applied

### *Statutory compliance*

- 2.33 The IM amendments proposed in this paper are in accordance with s 181 of the Act.
- 2.34 In accordance with section s 179(1) of the Act, we published an amended notice of intention which explained that we would publish a revised draft decision on the wash-up mechanism by the end of September 2021.<sup>23</sup>

### *IM amendment decision-making framework*

- 2.35 We are using a decision-making framework based on one that we have developed over time to support our decision making under Part 4 of the Commerce Act 1986.<sup>24</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.
- 2.36 Consistent with the decision-making framework in previous Part 4 IM amendments, we have considered each proposed IM amendment by asking the questions:
- 2.36.1 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;
- 2.36.2 does it promote the IM purpose in s 174 of the Act more effectively (without detrimentally affecting our obligation under s 166(2)); or
- 2.36.3 does it significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting our obligation under s 166(2)).

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<sup>23</sup> Commerce Commission “Amended notice of intention: (Amending the Notice of Intention dated 19 August 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments)” (23 September 2021), paragraph 14. Our original notice of intention relevant to this matter was dated 29 April 2021 and published on 30 April 2021 - see Commerce Commission “Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments” (29 April 2021), paragraph 5a. We amended this notice on 19 August 2021 – see 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), paragraph 7a.

<sup>24</sup> Commerce Commission “Proposed amendments to input methodologies for electricity distributors and Transpower New Zealand Limited – Reasons paper (29 May 2019) paragraph 1.10.



- 2.37 When asking each of the questions in paragraph 2.36, for each proposed IM amendment we have had regard to the impacts on the IM purpose in s 174 and considered whether the proposed amendment overall:
- 2.37.1 promotes the IM purpose in s 174 more effectively than the existing IM by providing more 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 FFLAS under Part 6; or
  - 2.37.2 does not promote the IM purpose in s 174 more effectively than the existing IM by providing less 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 FFLAS under Part 6.
- 2.38 As discussed at paragraphs 2.5 to 2.10, while the other purpose statements in Part 6 (including s 174) are relevant matters, s 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6. Therefore, we may make an IM amendment that does not promote the IM purpose in s 174 more effectively than the existing IM where we consider that the amendment nevertheless best gives, or is likely to best give, effect to the s 166(2) purposes.
- 2.39 We refer to the outcomes specified in paragraph 2.36 and 2.37 as the “IM amendments framework outcomes” in this paper.

## Chapter 3 Proposed amendments

### Purpose of this chapter

- 3.1 This chapter sets out the additional IM amendments we have proposed to give effect to the wash-up mechanism. These changes are necessary to implement our proposed approach to determining Chorus' initial PQ RAB and transitional initial PQ RAB (which we propose is subject to the wash-up mechanism), and our approach to PQ regulation.
- 3.2 It covers our revised draft decisions on:
- 3.2.1 a wash-up for forecast allocator values used in setting the revenue path;
  - 3.2.2 a wash-up for any forecast consumer price index (**CPI**) values used in a price-quality path (**PQP**) determination;
  - 3.2.3 changes to the process for calculating and determining the wash-up; and
  - 3.2.4 drafting improvements and clarification to improve the workability of the wash-up mechanism.

### Wash-up for forecast cost allocator values

#### Proposed amendment

- 3.3 We have proposed including the impact of actual allocator values on forecast expenditure and asset values within the scope of the wash-up.<sup>25</sup>
- 3.4 Each cost allocator and asset allocator has an "allocator type" and an "allocator value". The allocator type is the 'basis for the attribution or allocation of an operating cost or asset value'.<sup>26</sup> The allocator value is the value in units for each allocator.<sup>27</sup> This wash-up applies only to the allocator values and does not extend to changes in allocator types.

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<sup>25</sup> *[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021 [2021] NZCC [XX]* (30 September 2021), clause 3.1.1(11)(c) of Attachment B.

<sup>26</sup> *Fibre Input Methodologies Determination 2020 [2020] NZCC 21, as amended by the Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021 [2021] NZCC 17 (29 September 2021)*, definition for "allocator type" in clause 1.1.4(2).

<sup>27</sup> *Ibid*, definition for "allocator value" in clause 1.1.4(2).

### Current IM requirements

- 3.5 The current Specification of Price and Revenues IM provides for the inclusion of a wash-up amount as a component of allowable revenue.<sup>28</sup> The wash-up amount is defined as the amount the Commission specifies in a PQ determination for a regulatory year, including amounts in relation to the wash-up mechanism referred to in s 196(2) of the Act.
- 3.6 The scope of the wash-up mechanism and how it operates are not further specified.

### Reasons for making this amendment

#### *What we said in our draft decision*

- 3.7 In our draft decision, we proposed a list of factors that would be captured by the wash-up mechanism via the calculation of an “actual revenue allowance”. These were:<sup>29</sup>
- 3.7.1 the difference between the transitional initial PQ RAB and the final initial PQ RAB (for PQP1 only);
  - 3.7.2 the difference between the forecast and actual “annual benefit of Crown financing building block”;
  - 3.7.3 the difference between the capex allowance determined before the regulatory period commences, and the actual capex allowance (updated for any individual capex allowance determined in respect of that year after that period commences);
  - 3.7.4 the difference between forecast and actual pass-through costs; and
  - 3.7.5 the forecast connection capex variable adjustment (for the final year of a regulatory period only).
- 3.8 We have included a table of the proposed scope of the wash-up (including elements of the forecast allowable revenue formula not included in the wash-up) at the end of this paper.
- 3.9 We did not include the impact on allowable revenue of forecasts of cost allocator values.

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<sup>28</sup> [Fibre Input Methodologies Determination 2020 \[2020\] NZCC 21, as amended by the Fibre Input Methodologies \(base capex and connection capex baseline allowance determination dates\) Amendment Determination 2021 \[2021\] NZCC 17 \(29 September 2021\)](#), clause 3.1.1(1).

<sup>29</sup> [Commerce Commission “\[Draft\] Fibre Input Methodologies Amendment Determination 2021” \(27 May 2021\)](#), clause 3.1.1(8).

- 3.10 In determining the scope of what is captured by the wash-up, we said we would implement explicit wash-ups where:<sup>30</sup>

Chorus not bearing the risk that outcomes differ from forecast best promotes the purpose of Part 6 or workable competition (often in terms of the economic principles and incentive framework); and

There is no existing mechanism that provides for that.

*Response in submissions*

- 3.11 In its submission on the draft decision, Chorus proposed that the difference between forecast cost allocator metrics be included in the wash-up. In support of this position, Chorus noted:<sup>31</sup>

Chorus's FFLAS business is still growing and the rates of demand, expenditure and other relative utilisation indicators over time are particularly hard to forecast. There is a material risk that some forecast allocator metrics turn out to not reflect the actual utilisation of expenditure or assets that are shared between PQ-FFLAS and other services. In particular, given the forecast uncertainty, Chorus has set allocators for PQP1 based on past actuals which in light of a growing fibre business could lead to actual utilisation (between PQ-FFLAS and other services) varying materially over PQP1.

To manage this risk, and to mitigate the need for extensive debate on cost allocator metrics at the time revenues are set, it is reasonable to wash-up for the revenue impact of differences between forecast and actual allocator metrics i.e. that this risk is not borne by Chorus. This is especially important given the transitional nature of PQP1. We note that this wash-up incentivises accurate forecasting of allocator metrics.

- 3.12 Vocus supported the inclusion of a wash-up mechanism in the IMs generally.<sup>32</sup> At the same time, Vocus noted that the scope of the proposed amendments went "well beyond" what was necessary to implement a transitional RAB approach.<sup>33</sup>
- 3.13 Spark opposed any further additions to the wash-up mechanism in its IM amendment cross-submission. This was on the basis that we should not revisit positions settled in the IMs, and that these proposals go beyond the scope of our Notice of Intention.<sup>34</sup>

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<sup>30</sup> [Commerce Commission "Chorus' price-quality path from 1 January 2022 – Draft decision Reasons paper" \(27 May 2021, updated 16 June 2021\), para A136.](#)

<sup>31</sup> Chorus "Amendments to the Input Methodologies for Fibre – August 2021 amendments" (24 June 2021), paragraphs 30 and 31.

<sup>32</sup> [Vocus "Submission and cross-submission on Fibre IM Amendments draft decision" \(8 July 2021\), paragraphs 20-22.](#)

<sup>33</sup> [Ibid](#), paragraph 23.

<sup>34</sup> [Spark "Cross submission on Fibre IM Amendments draft decision" \(8 July 2021\), paragraphs 11-15.](#)

- 3.14 Both Spark and Vocus, as well as 2Degrees submitted in opposition to an ‘unlimited’ wash-up.<sup>35</sup>

#### *Analysis of submissions*

- 3.15 We have considered submissions about the proper scope of our proposed IM amendments in light of the IM framework in paragraph 2.16 of Chapter 2. We have then considered submissions and the impact of this proposed change in light of the framework outcomes listed in paragraph 2.36 and 2.37 of Chapter 2.
- 3.16 We consider including cost allocation values within the scope of the wash-up would better promote the purpose of Part 6, relative to our draft decision. We also consider the promotion of competition, as referred to in s 166(2)(b), is relevant to this decision.

#### Scope of IM amendments

- 3.17 We do not agree with Spark’s submission that this proposal goes beyond the scope of the original draft IM amendment and the Notice of Intention under s 179. The scope of this process is all aspects of the revenue path and wash-up mechanism necessary to implement our proposed approach to determining Chorus’ initial PQ RAB, whereby we are considering amendments to clause 3.1.1 of the Specification of Price and Revenues fibre IM. These would specify that the “wash-up amount” for each regulatory year of the second regulatory period onwards would include a wash-up account balance available to draw down, including a true-up for differences in revenue due to differences between the initial PQ RAB and the transitional initial PQ RAB.<sup>36</sup> Further additions to (or removal of items from) the scope of the wash-up clearly fall within this.

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<sup>35</sup> [Spark “Submission on fibre PQID initial RAB and IM amendments draft decision” \(16 September 2021\)](#), paragraphs 37-38; [Vocus “Submission and cross-submission on Fibre IM Amendments draft decision” \(8 July 2021\)](#), paragraphs 23-28; [2Degrees “Submission on Fibre IM Amendments draft decision” \(8 July 2021\)](#), page 2-3.

<sup>36</sup> Commerce Commission “Amended notice of intention: (Amending the Notice of Intention dated 19 August 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments)” (23 September 2021), paragraph 14. Our original notice of intention relevant to this matter was dated 29 April 2021 and published on 30 April 2021 - see Commerce Commission “Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments” (29 April 2021), paragraph 5a. We amended this notice on 19 August 2021 – see 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), paragraph 7a.

## Promotion of the purpose of Part 6

- 3.18 Cost and asset allocation determines what costs can be recovered from PQ FFLAS end-users, and what costs Chorus can be expected to recover from its other services (ID-only FFLAS and services that are not regulated FFLAS). As Chorus notes, the underlying values (especially those linked to demand) are also subject to significant uncertainty.
- 3.19 Given the *ex ante* nature of building-blocks regulation, it is necessary to use forecasts of allocator values to determine the revenue path for a regulatory period. However, the differences between actual and forecast values:
- 3.19.1 are largely beyond Chorus' ability to control, so there is limited efficiency incentive benefit in terms of s 162(b) (the outcome of regulated providers having incentives to improve efficiency and supply FFLAS of a quality that reflects end-user demands);
  - 3.19.2 could give rise to windfall gains or losses by Chorus or end-users, with a detrimental effect on either:
    - 3.19.2.1 incentives to invest under s 162(a) (the outcome of regulated providers having incentives to innovate and to invest);
    - 3.19.2.2 or limits on excessive profitability under s 162(d) (the outcome of regulated providers being limited in their ability to extract excessive profits).
- 3.20 Additionally, a wash-up for cost allocator values helps counterbalance the effect of the wash-up for under- or over-recovery of revenue due to differences in demand. This in part addresses the concerns raised by Spark, Vocus, and 2Degrees about limitations on wash-up balances.<sup>37</sup>
- 3.21 Holding all other things equal, where actual demand is higher than forecast, "actual total FFLAS revenue" will be higher, giving rise to a negative wash-up accrual (and a lower revenue allowance in PQP2). However, demand-linked allocators will also be higher, giving rise to higher "actual allowable revenue" and a positive wash-up accrual. The effect is not a complete hedge but has the beneficial effect of moderating the size of any wash-up accruals.
- 3.22 While still giving effect to the requirement under s 196 to provide for any over- or under-recoveries of revenue, this approach does so in a way that reduces the likelihood of future revenue volatility.

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<sup>37</sup> We are still considering this issue as part of our final PQ decision.

- 3.23 The materiality of these effects may be especially high for Chorus and FFLAS end-users. This is because:
- 3.23.1 a large proportion of Chorus' costs and assets are subject to the Cost Allocation fibre IM;
  - 3.23.2 many of the cost allocator values we have proposed to apply to Chorus as part of our draft cost allocation decision are influenced directly or indirectly by levels of demand for FFLAS;<sup>38</sup> and
  - 3.23.3 forecasts of demand on a relatively new network are subject to significant uncertainties.
- 3.24 As noted above, the wash-up applies to allocator values only, and not to allocator types. A regulated provider subject to price-quality regulation must apply the same cost allocation approach for disclosing actual expenditure under ID as was applied under Subpart 2 of Part 3 of the IMs for PQ, unless the regulated provider can show it is objectively justifiable and demonstrably reasonable to use an alternative allocator type or uses an allocator type that is comparable in all material respects to the allocator type applied for PQ.<sup>39</sup>

#### Promotion of workable competition

- 3.25 In terms of competition in telecommunications markets, differences between forecast allocation values and actual allocation values may result in cross-subsidies between PQ FFLAS and unregulated or ID-only FFLAS. This may be a result of simple forecast error but may also give rise to gaming opportunities, where the costs of unregulated or ID-only FFLAS services are over-allocated to PQ FFLAS due to diverging forecasts and actual of allocator values.
- 3.26 Removing these effects through a wash-up therefore better gives effect to the s 166(2) purposes than our original draft decision.

#### Promoting certainty

- 3.27 Relative to the existing IM, we consider this amendment (as part of our broader package of wash-up IM amendments) better promotes certainty under s 174, as the treatment of allocator values is no longer left to each PQ determination.

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<sup>38</sup> For example, allocator types such as provisioning overhead, subscribers, or totex are all influenced by relative levels of demand for FFLAS and non-FFLAS services. See: [Analysys Mason "Report for Chorus – Documentation of opex allocation for the BBM Opex workstream" \(26 March 2021\)](#), pages 15- 62.

<sup>39</sup> [Fibre Input Methodologies Determination 2020 \[2020\] NZCC 21, as amended by the Fibre Input Methodologies \(base capex and connection capex baseline allowance determination dates\) Amendment Determination 2021 \[2021\] NZCC 17 \(29 September 2021\)](#), clause 2.1.3(4).

### Compliance cost and complexity

- 3.28 Finally, we acknowledge that any addition to the scope of the wash-up mechanism increases the complexity and potentially increases the compliance cost of applying the wash-up. However, given the purpose of Part 6, competition, and certainty reasons above, we consider this additional complexity is justified. Additionally, given the wash-ups already proposed for other elements of the PQ path, the marginal cost is lower.

### Wash-up for in-period CPI forecasts

#### Proposed amendment

- 3.29 We propose adding a wash-up for any forecast CPI values referred to in a PQ determination for the purposes of calculating “forecast allowable revenue” under clause 3.1.1(2).<sup>40</sup>
- 3.30 Note that this is not a comprehensive CPI wash-up. It does not extend to:
- 3.30.1 CPI forecasts used in the forecast revaluation of the price-quality regulatory asset base;
  - 3.30.2 CPI forecasts used to smooth revenue over the PQP period on a forecast basis at the start of the PQP period.

#### Current IM requirements

- 3.31 As noted above at paragraph 3.6, the current IMs do not specify detailed requirements for the wash-up.

#### Reasons for making this amendment

##### *What we said in our draft decision*

- 3.32 As above at paragraphs 3.7 and 3.8 for the cost allocator value wash-up, a wash-up for updated CPI forecasts in the revenue path was not included in the draft decision.

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<sup>40</sup> [Revised draft] *Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021* [2021] NZCC [XX] (30 September 2021), clause 3.1.1(11)(f) of Attachment B.



### *Response in submissions*

- 3.33 Chorus proposed this amendment as part of a wider submission on changes to the treatment of the CPI term within the PQP1 determination. In its submission, Chorus said:<sup>41</sup>

... the draft determination requires forecast building blocks revenue (FBBR) to be rolled forward using the term  $(1+\Delta\text{CPI}t-1)$ . However, this is inconsistent with the formula for in period revenue smoothing which means the ex-ante expectation of real FCM will not hold. Failure to correct this will result in error due to variability in inflation. We expect this means Chorus will under-recover the PV of its maximum allowable revenue (MAR) by approximately \$4m for PQP1

A better approach is to roll-forward FBBR using forecast CPI for the current regulatory year  $(1+\Delta\text{CPI}t)$ . This will give Chorus an ex-ante expectation it will be able to recover its MAR, but would then require a wash-up for the difference between forecast and actual CPI for year t.

This will promote the long-term benefit of end-users as it would preserve investment incentives by ensuring Chorus can recover its MAR (as will be explained in our price quality submission) and ensuring that prices are consistent with actual rather than forecast CPI over time.

### *Analysis of submissions*

- 3.34 We have considered submissions and the impact of this proposed change in light of the framework outcomes listed in paragraph 2.36 and 2.37 of Chapter 2.

#### Promotion of the purpose of Part 6

- 3.35 We are still considering Chorus and other parties' submissions on the drafting of our PQP1 determination. This proposed change (including a wash-up for residual differences in updated forecast versus actual CPI) would enable the PQ determination to be drafted in a way that is consistent with ex ante real FCM. Through doing so, it better promote incentives to invest under s 162(a) (the outcome of regulated providers having incentives to innovate and to invest) and limits on excessive profits under s 162(d) (the outcome of regulated providers being limited in their ability to extract excessive profits).

- 3.36 Making allowance for a CPI forecast wash-up in the IMs permits (but does not require) such an approach. Where no forecast CPI values are used in the PQP determination, this element of the wash-up would have an effective zero value.

#### Promotion of workable competition

- 3.37 We do not consider the promotion of workable competition relevant to this decision.

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<sup>41</sup> [Chorus "Submission on draft decisions for fibre PQID IM amendments" \(24 June 2021\)](#), paragraphs 36-38.

### Promotion of certainty

- 3.38 Relative to the existing IM, we consider this amendment (as part of our broader package of wash-up IM amendments) better promotes certainty under s 174, as the treatment of any CPI forecasts used in PQ formulae is now partly fixed in the IMs, rather than being entirely a matter for the PQ determination.

### Compliance cost and complexity

- 3.39 As with the proposed wash-up for allocation values, this additional wash-up adds to the complexity of the mechanism. However, it may also us to reduce the complexity of underlying PQ determination, and to ensure consistency with the declared service regulations.<sup>42</sup> This should reduce the overall compliance cost of the regulatory regime.

## Changes to the process for administering the wash-up

### Propose amendment

- 3.40 We have proposed that the “wash-up accruals” and “wash-up account balance” be maintained by the Commission, and subject to a definitive determination:
- 3.40.1 in respect of wash-up accruals and the wash-up account balance for all regulatory years except the final regulatory year of a regulatory period, before the subsequent PQ path commences;<sup>43</sup> and
  - 3.40.2 in respect of wash-up accruals and the wash-up account balance for the final regulatory year of the regulatory period.<sup>44</sup>
- 3.41 We have an included an illustration of how this process would work in practice in Figure 3.1 below.

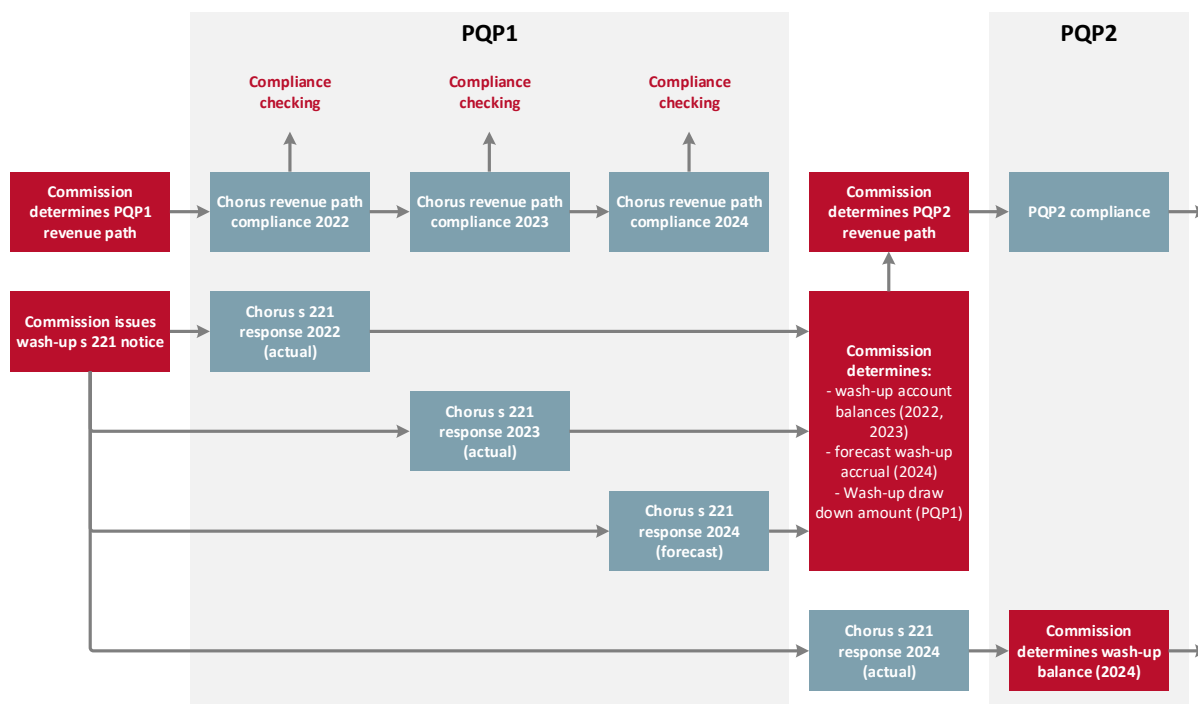
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<sup>42</sup> [Telecommunications \(Regulated Fibre Services\) Regulations 2021](#)

<sup>43</sup> [\[Revised draft\] Fibre Input Methodologies \(wash-up mechanism\) Amendment Determination 2021 \[2021\]](#) NZCC [XX] (30 September 2021), clauses 3.1.1(5)(a)(i), 3.1.1(8) and 3.1.1(9) of Attachment B.

<sup>44</sup> *Ibid.*, clauses 3.1.1(7) of Attachment B.

**Figure 3.1 Illustrative process for the revenue path and wash-up**



### Current IM requirements

3.42 As noted above at paragraph 3.6, the current IMs do not specify detailed requirements for the wash-up.

### Reasons for making this amendment

#### *What we said in our draft decision*

3.43 In our draft decision, the IMs required that the “wash-up account” (the means for recording accruals, closing wash-up account balance adjustments, and time value of money adjustments) be maintained by a regulated provider.<sup>45</sup> The draft IMs also required that the method for doing so would be either “as specified and obtained by the Commission” or “as specified in a PQ determination”.<sup>46</sup>

#### *Reasons for this change*

3.44 We have considered this proposed change in light of the framework outcomes listed in paragraph 2.36 and 2.37 of Chapter 2.

<sup>45</sup> Ibid, clause 3.1.1(9).

<sup>46</sup> Ibid.

### Promotion of the purpose of Part 6

- 3.45 Firstly, we consider a more robust compliance process – where the Commission obtains information from regulated providers via an information gathering request under s 221 of the Act<sup>47</sup> (the appropriate use of that power) that then forms the basis of a determination by the Commission<sup>48</sup> – reduces the likelihood of error, and subsequent windfall gains or losses. This better promotes the s 162(a) (the outcome of regulated providers having incentives to innovate and to invest) and s 162(d) (the outcome of regulated providers being limited in their ability to extract excessive profits) purposes than the existing IMs and draft decision.

### Promotion of certainty

- 3.46 Secondly, we consider this amendment better promotes the certainty purpose of the IMs under s 174 over the medium term (between regulatory periods). This is because:

3.46.1 previously, substantive regulatory requirements were not contained in the IMs or PQ path, but depended on an information gathering notice under s 221 of the Act;

3.46.2 no provision was made for the Commission to fix with certainty the value of the wash-up account that will be carried forward into future regulatory years and regulatory periods.

### Compliance cost and complexity

- 3.47 We consider that, overall, this proposed process would be lower cost to administer and less complex than the unspecified process in the current IMs, or a process where substantive wash-up requirements were split across multiple determinations and notices. In particular, the clarification that the wash-up operates on a ‘balance’ basis, and further detail on how present value adjustments apply will simplify the compliance process.

### Drafting clarifications

- 3.48 In addition to the substantive changes outlined above, we are also proposing a series of additional amendments to clarify the drafting of the wash-up provisions. Some of these have been generated as part of our own further work on the revenue path and wash-up mechanisms, and others were proposed by parties in submissions.

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<sup>47</sup> We have published a draft of this s 221 notice alongside this paper.

<sup>48</sup> We apply a similar determination approach to other values used in price-quality regulation. Specifically, to the cost of capital and to the financial loss asset determinations.

- 3.49 By clarifying or better expressing our intent, we consider these changes help better promote certainty under s 174 about the rules, requirements, and processes applying to PQ regulation, and help to reduce compliance cost and complexity.<sup>49</sup>
- 3.50 The proposed changes are set out in Table 3.1 below.<sup>50</sup>

**Table 3.1 Proposed drafting clarifications**

Amendment	Clause(s) affected	Reasons
Addition removal of “derived by a regulated provider”.	3.1.1(1)	To remove redundant wording, as the definition of “forecast total FFLAS revenue” already includes this.
Clarification that “forecast allowable revenue” and “[forecast] total FFLAS revenue” <sup>51</sup> is calculated in accordance with a PQ determination	3.1.1(2) 1.1.4(2) – definition of “forecast total FFLAS revenue”	To clarify that the methodology for calculating the elements of “forecast allowable revenue” and “forecast total FFLAS revenue” are specified in the PQ determination.
Redrafting the clause such that the “wash-up amounts” (for a regulatory period) are a function of the “wash-up draw down amount” from the preceding regulatory period.	3.1.1(4)	To make the timing aspect of this requirement clearer (which regulatory periods are being referred to).  Per Chorus’ submission, clarified that these amounts may be positive or negative. <sup>52</sup>
Replaced reference to the “wash-up amounts” “including” recovery of the “wash-up draw down amount” to “comprising” this amount.	3.1.1(4)	Per Chorus submission, to clarify that the “wash-up amounts” for future periods do not include any items other than recovery of the “wash-up draw down amount”. <sup>53</sup>  Where any future items are to be included (such as quality incentive payments) our view is that these could be included in the calculation of the wash-up accrual in clause 3.1.1(11) and would require an IM amendment.

<sup>49</sup> Telecommunications Act 2001, s 174.

<sup>50</sup> All references to fibre IMs clauses in this table refer to clauses in our revised draft amendment determination. See - *[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021* [2021] NZCC [XX] (30 September 2021).

<sup>51</sup> In our 27 May 2021 draft decision, we proposed changing the term “total FFLAS revenue” to “forecast total FFLAS revenue”. See Commerce Commission “Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” (27 May 2021), paragraph 5.6.

<sup>52</sup> [Chorus “Submission on draft decisions for fibre PQID IM amendments” \(24 June 2021\)](#), Appendix A.

<sup>53</sup> Ibid.

Amendment	Clause(s) affected	Reasons
Relabelling of the “closing wash-up account balance adjustment” as the “wash-up draw down amount”.  Refining of the discretion, limits, and timing requirements for this amount.	3.1.1(5)	Relabelled to better reflect the purpose of this amount.  To making it explicit that this is a decision where the Commission retains discretion, and the limits of that discretion.  To clarify the timing of determination, including how present values are calculated.
Clause related to the “wash-up account” moved up (was previously clause 3.1.1(9)).  Relabelled as the “wash-up account balance”.	3.1.1(6) and 3.1.1(7)	Clause moved per Chorus’ submission to aid clarity.  Relabelled to better reflects the on-going roll-forward nature of this mechanism.
Additional clause specifying the value of the “wash-up account balance” for regulatory year 2021 is nil.	3.1.1(6)	Per Chorus’ submission, to clarify the starting point for “the wash-up account balance”. <sup>54</sup>
Redrafting of the “wash-up account balance” to clearly reflect the items that enter and exit the account, and how they are treated in present value (PV) terms	3.1.1(7)	To remove ambiguity about how the account balance operates and to avoid the potential for under- or over-counting based on present values.
Removal of the phrase “not yet returned to or recovered from access seekers”.	3.1.1(7)	To remove redundant wording, as “wash-up amounts” are inherently recovered from or returned to access seekers.
Specification that the “wash-up accrual” is deemed to accrue on a date 182 days prior to the end of a regulatory year (the date equivalent in PV terms to 12 equal revenue amounts on the 20 <sup>th</sup> of each month).	3.1.1(8)	To enhances certainty and to avoid the potential for under- or over-counting based on present values.
Clarification of the timing and determination of the “forecast wash-up accrual”.	3.1.1(9)	To enhance certainty.
New clause stating that the discount rate for all PV calculations is the post-tax WACC for the relevant regulatory period, as determined under clause 3.5.1(2).	3.1.1(10)	To clarify that the post-tax WACC as the discount rate applies to all PV wash-up calculations, not just the maintenance of the “wash-up account balance”.
Relabelling of “actual revenue allowance” as “actual allowable revenue”.	1.1.4(2) – definition of “actual allowable revenue”  3.1.1(11)	For symmetry with “forecast allowable revenue”, per Chorus submission. <sup>55</sup>

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

Amendment	Clause(s) affected	Reasons
Clarification of how “actual allowable revenue” must be calculated.	3.1.1(11)	To make it explicit that “actual allowable revenue” is a recalculation of building blocks revenue and pass-through costs, per Chorus submission. <sup>56</sup>
Specification that for the calculation of any “individual capex allowance’s” impact on “actual allowable revenue”, the relevant difference is the incremental impact of the “individual capex allowance”.	3.1.1(11)(d)	Corrects for an error in the original draft determination (which treated “individual capex allowances” as a stand-alone amount replacing capex allowances approved prior to the period, rather than an increment).

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<sup>56</sup> Ibid.

**Table 3.2 Proposed scope of the wash-up mechanism**

Factor	Washed-up	Mechanism	Rationale
Real WACC	No		Economic principle is <i>ex ante</i> RFCM.
Nominal WACC	Yes	Hedged against revaluation CPI	Required by IMs.
PQP1 return on/of initial RAB	Yes	Wash-up	Maintains RFCM/limits excessive profits.
Enduring impact of initial RAB	Yes	PQP2 reset	Required by IMs.
<i>Asset allocator values</i>	Yes	<i>Wash-up</i>	<i>Risk allocation, consistency with demand wash-up.</i>
Depreciation	Partial	PQP2 reset	Required by IMs.
Revaluation CPI	Yes	Hedged against nominal WACC	Required by IMs.
Real unallocated opex	No		Incentives to improve efficiency.
<i>Cost allocator values</i>	Yes	<i>Wash-up</i>	<i>Risk allocation, consistency with demand wash-up.</i>
Real base capex	Partial	PQP2 reset	Incentives to improve efficiency.
Connection capex real unit cost	Partial	PQP2 reset	Incentives to improve efficiency.
Connection capex volumes	Yes	Wash-up	Required by IMs.
Individual capex	Yes	Wash-up	Required by IM.
Expenditure input price inflation	Partial	Hedged against revenue path CPI	Risk allocation, consistency with revenue path CPI.
Benefit of Crown financing rates	No		Consistency with IMs.
Benefit of Crown financing level/mix	Yes	Wash-up	Consistency with IMs. Incentive framework.
Tax	Partial	Via recalculation of other factors	Tax building block “just follows” other building blocks.
Stranding allowance	No		Consistency with IMs.
Revenue path CPI	Partial	Annual updating <i>Wash-up mechanism</i>	Risk allocation, consistency with input price inflation.
Pass-through costs	Yes	Wash-up	Consistency with IM policy intent.
Demand forecasts	Yes	Wash-up	Required by section 196.