

**Proposed  
amendments to  
fibre IMs:  
wash-up  
mechanism  
revised draft**

**21 October 2021**

**C H ● R U S**

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## Executive summary

1. This is Chorus' response to the Commission's proposed amendments to the fibre input methodologies (**IMs**) – Wash-up mechanism revised draft (**Draft Wash-up Amendments**). We are pleased the Commission is proposing to add two of the additional wash-ups Chorus suggested in our response to the Commission's first proposal to specify the wash-up mechanism in the IMs on 27 May 2021 (**May Amendment Proposal**).
2. We are also pleased the Commission has taken on board many of our proposed changes to the wash-up mechanism in the IMs to improve its workability.
3. However, as a matter of process it is not clear to us consultation on the Draft Wash-up Amendments was necessary. The Commission proposed specifying the wash-up mechanism in the May Amendment Proposal and stakeholders submitted views on the proposal, including us proposing the two additional wash-ups contemplated here. Other stakeholders were able to (and did) comment on our proposed additional wash-ups and detailed drafting suggestions in cross-submissions. Stakeholders' views on the additional wash-ups proposed are known to the Commission which calls into question the purpose of an additional consultation.
4. Nevertheless, in this submission we confirm our support of the proposed additional wash-ups and suggest drafting changes which might further improve the workability of the wash-up mechanism.
5. We continue to support the following additions to the wash-up IM:
  - 5.1 a wash-up for forecast allocator values used in setting the revenue path; and
  - 5.2 a wash-up for any forecast consumer price index (**CPI**) values used in a price-quality (**PQ**) determination.
6. In our submission on the May Amendment Proposal, we also recommended a wash-up for differences between forecast and actual values of commissioned assets to the extent they affect opening RAB values for the next regulatory period. We continue to believe this wash-up is desirable and would advance the purpose of Part 6 of the Telecommunications Act 2001 (**Act**). This wash-up is equivalent to the capex wash-up adjustment that has been in place for regulated energy firms for some time.
7. Even though this wash-up would not be calculated for the first regulatory period (**PQP1**), it makes sense to include this in the IMs now to avoid another consultation on amendment to the IMs wash-up mechanism in advance of the second regulatory period (**PQP2**).
8. Finally, we note that the draft notice to supply information (**section 221 notice**) creates new audit and reporting requirements for Chorus. The draft requirements are not aligned with the multiple other reporting obligations being imposed on Chorus through the Part 6 regulations.
9. Given the vast array of PQ and information disclosure (**ID**) reporting obligations Chorus will be subject to, the Commission needs to rationalise and streamline the set of reporting requirements. Otherwise the new regime will place an unreasonable regulatory burden on Chorus and, ultimately, end-users of FFLAS. We recommend the Commission change the deadline for annual actual wash-up reports from 50 working

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days after the end of a regulatory year to 5 months after the end of the regulatory year – this would be more achievable and would also align with ID reporting, meaning we can expect to combine many aspects of the audit for both.

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## Input Methodologies amendment process

10. The Commission should re-examine its process for amending IMs, and specifically its preference for publishing narrowly confined notices of intention (**NOIs**). The Commission's current approach is unnecessary and unduly burdensome on affected parties considering the already challenging time frames for finalising the PQ path for PQP1.
11. The Draft Wash-up Amendments incorporate a number of proposals Chorus made in response to the May Amendment Proposal. Rather than consider Chorus' submissions in the context of the May Amendment Proposal, the Commission has instead decided that it is necessary to issue a further NOI and conduct a separate round of consultation. This is the fourth NOI that the Commission has issued since April 2021.
12. The Commission's position appears to be that this is necessary because of the narrowly confined scope of its earlier NOIs, despite the fact that other submitters had the opportunity to (and did) submit in response to Chorus' proposals (including specific IM determination drafting suggestions) on the May Amendment Proposal.
13. The consequence of the Commission's approach is that we are only now, at a very late stage in the process, dealing with matters that Chorus raised in response to the Commission's consultation as far back as June. This has also introduced another process step – a separate consultation exercise – when this could have been avoided had these matters been dealt with in the Commission's earlier consultation.
14. The Commission's recent NOIs have very tightly defined the range of issues the Commission proposes to look at when amending IMs. This level of specification is not required by the Act. Section 181 provides that, if the Commission proposes to amend an IM to make a material change, section 179 applies as if the amendment were a new IM. Section 179 in turn provides that when the Commission begins work on an IM amendment, it must "give public notice of its intention to do so that—
  - 14.1 outlines the process that will be followed; and
  - 14.2 sets out the proposed time frames."
15. In order to meet those requirements, it is sufficient that the Commission indicate the IM that it proposes to amend, outlines the process steps that it intends to follow and indicates the timing of those steps. It is not necessary to describe, as the Commission has in its recent NOIs, the exact proposals on which the Commission proposes to consult in its draft determination.
16. We are concerned that one of the results of unduly narrowly framed NOIs is to artificially constrain the scope of issues that stakeholders can raise in responding to consultation. While we accept that IM amendments are at the Commission's initiative, and therefore the Commission can place some limits around the scope of the consultation process, it is not appropriate to seek to constrain consultation responses to simply accepting or rejecting the specific proposals the Commission outlines in its draft determinations.
17. Having decided to re-open an IM to address a particular issue, the Commission can and should be open to accepting submissions that are reasonably related to the issues the Commission is addressing in its consultation. A basic requirement of consultation is the obligation to consider alternative proposals with an open mind. For example,

given the May Amendment Proposal focused on the wash-up mechanism, the Commission was entitled to consider any submissions that related to the functioning of the wash-up mechanism.<sup>1</sup> It was not necessary (as the Commission has now done) to issue a further NOI and commence an entirely separate consultation process to consider Chorus' submission. Other stakeholders had an opportunity to comment on Chorus' proposals in the course of cross-submission, and they in fact did so.

18. The Commission's approach has not resulted in a more efficient or expeditious process. Instead, the approach has encouraged submitters to engage on the scope of the NOI rather than to engage with the substance of the proposal.<sup>2</sup> That undermines the value of consultation, and the need to participate in additional consultation processes places an avoidable burden on stakeholders when timing is already tight.
19. The result is that the IM amendment process has become unnecessarily unwieldy. It is difficult to engage meaningfully in an IM amendment process in which several different sets of amendments are at different stages of consultation and in which the content, timing and process are repeatedly changed prior to finalisation. Stakeholders are unable to consider the interdependencies between the various issues the Commission is separately dealing with. A better approach would be for the Commission to issue more broadly defined NOIs and then be explicitly open in consultation to the full range of possible solutions to the issues, and adjacent issues, identified in the draft determination.

<sup>1</sup> The Commission appears to acknowledge this in paragraph 3.17 of the Draft Wash-up Amendments reasons paper

<sup>2</sup> See for example: Spark "Cross submission on Fibre IM Amendments draft decision" (8 July 2021) paragraphs 11-15

## Proposed additional wash-ups

### Wash-ups for allocator values and CPI

20. The Commission has proposed to include two additional wash-ups to those proposed in the May Amendment Proposal:
  - 20.1 a wash-up for forecast allocator values used in setting the revenue path; and
  - 20.2 a wash-up for any forecast CPI values used in a PQ determination.
21. As recognised by the Commission, both of these were suggested by Chorus in our submission on the May Amendment Proposal, together with specific IM determination drafting suggestions.<sup>3</sup> We continue to believe they are desirable and that including them in the IMs will better promote the purpose of Part 6, relative to the May Amendment Proposal. In particular:
  - 21.1 A wash-up for forecast allocator values will promote the long-term benefit of end-users by preserving the expectation of an NPV=0 outcome and reducing the risk of windfall gains or losses. It will promote competition by ensuring the allocation of costs between FFLAS and non-FFLAS services is correct over time.
  - 21.2 A wash-up for forecast CPI values will promote the long-term benefit of end-users as it will preserve investment incentives by ensuring Chorus can recover its allowable revenue and ensuring that prices are consistent with actual rather than forecast CPI over time.
22. For further discussion of these two wash-ups we refer the Commission to our submission on the May Amendment Proposal.<sup>4</sup>

### Wash-up for forecast commissioning values for PQP2 and later

23. In our submission on the May Amendment Proposal we proposed a third additional wash-up for differences between forecast and actual values of commissioned assets for the regulatory period to the extent they affect opening RAB values for the next regulatory period.
24. We continue to believe this wash-up is desirable and consistent with the criteria the Commission has established for including explicit wash-ups, namely where:
  - 24.1 Chorus not bearing the risk that outcomes differ from forecast best promotes the purpose of Part 6 or workable competition; and
  - 24.2 There is no existing mechanism that provides for that.
25. A wash-up for the difference between forecast and actual commissioning values in a prior period will promote investment incentives, and hence the long-term benefit of end-users, by ensuring that Chorus can expect to recover the actual cost of its new

<sup>3</sup> Chorus, Amendments to the Input Methodologies for Fibre August 2021 amendments (24 June 2021) at [30 to 32 and 36 to 38]

<sup>4</sup> Ibid at [21 to 38]

investments in future periods and minimises excessive profits by ensuring that prices over time can more closely reflect actual expenditure on these investments.

26. We recognise that this wash-up would not be required to be calculated for PQP1 (given that opening RAB values at the start of PQP1 are effectively trued-up by the proposed wash-up for the transitional and final initial RABs), but we think it should be specified now to promote certainty and minimise further consultations in IMs amendments. The wash-up should be straight-forward to implement,<sup>5</sup> and is equivalent to the capex wash-up adjustment that has been in place in the IMs for regulated energy firms for some time.

<sup>5</sup> See Chorus' drafting suggestions contained in its June 2021 submission – "Amendments to the Input Methodologies for Fibre: August 2021 amendments" (24 June 2021) at [page 23]

## Wash-up process and draft section 221 notice

### Process will be ongoing and require resources

- 27. We support the Commission’s approach of determining the wash-ups in accordance with rules contained in the fibre IMs. This provides certainty and a clear process for us to follow. We agree with the approach of annual actual wash-up reports after the end of a regulatory year, plus a forecast wash-up report for 2024. This means the wash-up draw-down amount for PQP1, which will be carried into PQP2 pricing, will include actual wash-up values for 2022 and 2023 plus forecast wash-up values for 2024.
- 28. The Commission’s proposed approach involves updating the BBM model used for PQP1 revenue setting each year out to March 2025 in order to generate the necessary wash-up accruals. We note this will require Chorus and the Commission to ensure staff are available across that timeframe with the necessary expertise to understand and accurately update the existing model each year. Both Chorus and the Commission will need to ensure that plans are put in place now for this ongoing exercise.

### Extent of PQ and ID reporting and compliance requirements

- 29. The section 221 notice creates new audit and reporting requirements for Chorus. While we agree audited reporting is needed for wash-ups, the draft requirements are not aligned with the multiple other reporting and compliance obligations being imposed on Chorus through the Part 6 regulations.
- 30. The graphic below shows Chorus’ full set of PQID reporting and compliance requirements across 2022-2025 based on the draft PQ and ID decisions (it has been updated from a similar graphic in our July ID submission to include the wash-up reports). This extent of reporting is excessive, costly and goes far beyond what is necessary for the regulation of a business that faces competition from alternative access technologies and is incentivised to respond to market demands.



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31. Additional to the items shown here, we have a raft of other regulatory reporting and compliance obligations outside of the Part 6 regime. The graphic also does not show the lead-times and resourcing required for preparation and evaluation of the PQ proposal for PQP2 during PQP1, nor the other parallel financial accounting, company law and market disclosures required by other regulatory regimes.
  32. As noted, we agree with the need to make wash-up reports. We encourage the Commission to rationalise and streamline the set of reporting requirements or the new regime will place such a regulatory burden on Chorus (including needing to be on the agenda of virtually every Chorus board meeting) that it will distract our focus from other priorities, including growth and service quality improvements. We do not see this as benefitting end-users.
  33. We also have concerns whether all of the information we produce will actually be used. The Commission should only require disclosures where it has capacity to use the information and we question if it will be able to promptly and fully assess all of these reports and disclosures from Chorus each year. Interested parties will also find it very difficult to keep across the mass of information where it is made public, particularly if the release of information is staggered across years and different regulatory periods.

### Timeframe for wash-up reporting

34. The section 221 notice requires actual wash-up values to be provided within 50 working days of the end of each regulatory year and forecast wash-up values for 2024 to be provided by 6 September 2024. The timeframes for the actual wash-up reports are unnecessarily tight.
35. For the annual actual wash-up reports, 50 working days after the end of a regulatory year is approximately mid-March each year. This is unreasonable and will be onerous in practice. The proposed timeframe does not align with other audit deadlines and only provides a short space of time to collate and audit the data after year end:
  - 35.1 Chorus and audit staff tend to be on leave early in the regulatory year – meaning 15 to 20 working days are automatically lost.
  - 35.2 Chorus' half-year financial results are published in the third week of February each year. Key Chorus personnel and our auditors will be focused on producing the half-year results until that time. Requiring them to also produce the wash-up report at that time would unnecessarily add to the workload.
  - 35.3 Chorus' half-year results will also be relied upon to produce the wash-up results, so we can be confident we are using accurate information. As the results will not be completed until late February, there would only be limited time to finalise the wash-up report each year.
36. Instead, we recommend the Commission requires this report 5 months after the end of the regulatory year – this would be more achievable and would also align with ID reporting, meaning we can combine the audit for both. There should be no downside from this proposal – we do not see any reason why the Commission would need the wash-up reports 50 working days, rather than 5 months, after the end of the regulatory year.
37. Reporting of the wash-up information to the Commission so quickly after the end of a regulatory year may trigger market disclosure obligations. This is another reason why aligning the wash-up reporting to the ID reporting timeframe would be helpful.

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38. The requirement to provide forecast 2024 wash-up information by 6 September 2024 is workable from Chorus' perspective. It should enable us to use FY24 full year results and thus only have to forecast for the second half of the regulatory year. We note the Commission will receive the forecast wash-up report relatively late in the process for determining PQP2 revenue path and will need to ensure it has enough time to build in the forecast wash-up information.

### **Audit and certification**

39. For the annual actual wash-up information reports, the draft section 221 notice requires audit and no certification. We support this approach.
40. For the forecast wash-up information report for 2024, the draft section 221 notice also requires audit. We assume this is an error – it is not practicable to audit a forecast and we are not aware of the Commission requiring audit for any other forecast. A certification requirement would be more appropriate for this report.

## Drafting clarifications

### Input Methodologies amendments

41. Appendix A sets out Chorus' detailed comments on the drafting of the proposed IM amendments.
42. We agree with most of the clarifications outlined in table 3.1 as they provide more certainty about how the wash-up mechanism works.
43. However, we would like more certainty on the connection capex variable adjustment. We previously submitted that there were two timing issues to be addressed.<sup>6</sup> The Commission has not proposed to address either of the issues:
  - 43.1 First, it appears the Commission expects to calculate the wash-up for the connection capex variable adjustment in the final year of each regulatory period. However, the final connection capex annual report (which is required to calculate the variable adjustment) is not received until after the end of the regulatory period as per clauses 3.7.18(1) and 3.7.21(1). As a result, this wash-up would be deferred by one regulatory period. This would mean the wash-up for the connection capex variable adjustment relating to PQP1 would not be calculated until PQP2 and only available to draw down in PQP3. In Appendix A we propose a new subclause 3.1.1(9)(d) to provide certainty that a forecast of the connection capex variable adjustment is included in the forecast wash-up drawdown amount.
  - 43.2 Second, neither clause 3.7.21 nor clause 3.1.1 indicate how the Commission intends to account for the timing of connection capex through the regulatory period when calculating the connection capex variable adjustment. The connection capex variable adjustment reflects differences between forecast and actual connection volumes and the impact of those differences on Chorus' connection capex. It does not specify how that capex would affect the forecast allowable revenue due to WACC, depreciation, revaluations and other associated building block revenue effects during the regulatory period. In Appendix A we propose changes to subclause (11)(g) that would provide additional certainty that these effects are included.
44. In Appendix A we also set out a number of smaller changes to clause 3.1.1 we think should be made to provide additional certainty and simplify the drafting.

### Section 221 notice

45. Appendix B sets out Chorus' detailed comments on the drafting of the section 221 notice.
46. Our suggested changes to paragraphs A7.3 to A7.6 of the section 221 notice generally improve the workability and flexibility of the notice. The Commission's specific cell references to the model have the potential to cause issues and a more general set of requirements will aid implementation. The changes remove the cell references from the request which will mean that the notice will be less likely to become incorrect and won't need any changes if the structure of the model changes. The changes do not

<sup>6</sup> Chorus, [Amendments to the Input Methodologies for Fibre August 2021 amendments \(24 June 2021\)](#) at [page 24]

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change the intended effect of the requests and they align with the drafting for paragraphs A7.1 and A7.2.

## Appendix A: Detailed Input Methodology comments and drafting proposals

Text in black in the “Proposed IM with Chorus proposed drafting” column is as per the Commission’s “[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021”. Our suggested changes are included in red text.

Reference	Proposed IM with Chorus proposed drafting	Chorus response
<b>3.1.1</b>		
(1)	For the purpose of s 194(2)(b) and s 195 of the <b>Act</b> , the ‘maximum revenues’ that may be recovered by a <b>regulated provider</b> for a <b>regulatory year</b> in a <b>regulatory period</b> will be specified in a <b>PQ determination</b> as a revenue cap, whereby the <b>forecast total FFLAS revenue</b> must not exceed <b>forecast allowable revenue</b> specified in the <b>PQ determination</b> for that <b>regulatory year</b> .	We agree with removing “derived by a regulated provider” as the wording was redundant. No changes suggested.
(2)	‘Forecast allowable revenue’ means the sum of the following for a <b>regulatory year</b> : (a) forecast <b>building blocks revenue</b> ; (b) forecast <b>pass-through costs</b> ; and (c) the <b>wash-up amount</b> , and is calculated in accordance with the methodology specified in a <b>PQ determination</b> .	Our understanding is that the forecast pass-through costs referred to in paragraph (b) are those calculated at the beginning of each regulatory year as specified in Schedule 2 of the PQ determination.  For paragraph (c), any wash-up amount is <i>specified</i> in the PQ determination, but the <i>methodology</i> for determining the amount is set out in clause 3.1.1 of the IMs (not the PQ determination). The drafting could be clarified accordingly.
(4)	For the purpose of subclause (2), the ‘wash-up amount’ for each <b>regulatory year</b> of the <b>second regulatory period</b> onwards comprises amounts (which may be positive or negative) determined by the <b>Commission</b> and the sum of those amounts:	We agree with the proposed change. This is consistent with our previous submission on (4) which recommended

Reference	Proposed IM with Chorus proposed drafting	Chorus response
	<p>(a) in present value terms as of the final day of the preceding <b>regulatory period</b>; equals</p> <p>(b) the <b>wash-up draw down amount</b> for the preceding <b>regulatory period</b>.</p>	<p>changing “includes” to “comprises” and clarifying that the wash-up amount could be positive or negative.<sup>7</sup></p>
(5)	<p>‘Wash-up draw down amount’ for a <b>regulatory period</b> means a positive or negative amount as determined by the <b>Commission</b>, <del>where such amount must be and that must be:</del></p> <p>(a)</p> <p>(i) no greater <del>in absolute terms</del> than the sum in present value terms as of the final day of the <b>regulatory period</b> of:</p> <p>(iA) the <b>wash-up account balance</b> for the final completed <b>regulatory year</b> of the <b>regulatory period</b>; and</p> <p>(iB) a <b>forecast wash-up accrual</b> for the final <b>regulatory year</b> of the <b>regulatory period</b>; where the sum of (A) and (B) is positive.</p> <p>(ii) no less than the sum in present value terms as of the final day of the <b>regulatory period</b> of:</p> <p>(A) the <b>wash-up account balance</b> for the final completed <b>regulatory year</b> of the <b>regulatory period</b>; and</p> <p>(B) a <b>forecast wash-up accrual</b> for the final <b>regulatory year</b> of the <b>regulatory period</b>; where the sum of (A) and (B) is negative.</p>	<p>The use of absolute value is incorrect since, without further specification, it permits the wash-up draw down amount to be the opposite sign of the wash-up account balance. For example, a wash-up draw down amount of -\$100m in absolute terms is no greater than a +\$100m wash-up account balance so would satisfy the condition but would be \$200m less.</p> <p>Limb (c) ignored the fact that section 170(3) of the Act provides for more than one PQ determination to be made for a regulatory period, and limb (d) was not effective in limiting the determination of a draw down amount to a final year of PQP1 and beyond.</p> <p>We have proposed corrected drafting in red.</p>

<sup>7</sup> Chorus, Amendments to the Input Methodologies for Fibre August 2021 amendments (24 June 2021) at [26.2]

Reference	Proposed IM with Chorus proposed drafting	Chorus response
	<p>(b) deemed to accrue on the final day of the <b>regulatory period</b>;</p> <p>(c) determined by the <b>Commission</b> in the final year of a <del>for the current</del> <b>regulatory period</b> <del>at the same time as the PQ determination for the next regulatory period</del>; and</p> <p>(d) not determined by the <b>Commission</b> <del>prior to at the same time as the PQ determination for</del> the <b>first regulatory period</b>.</p>	
(8)	<p>'Wash-up accrual' means an amount for a <b>regulatory year</b>, being the difference between the <b>actual allowable revenue</b> and actual <b>total FFLAS revenue</b> for that <b>regulatory year</b>, and is deemed to accrue <del>182</del> 148 days prior to the final day of that <b>regulatory year</b>.</p>	<p>The accrual date should match the revenue date to align with when revenue is received. This is consistent with the description in Table 3.1 – that the date is equivalent in PV terms to 12 equal revenue amounts on the 20<sup>th</sup> of each month.</p>
(9)	<p>'Forecast wash-up accrual' means an amount for a <b>regulatory year</b>, being the forecast difference between the <b>actual allowable revenue</b> and actual <b>total FFLAS revenue</b> for that <b>regulatory year</b>, and is:</p> <p>(a) determined by the <b>Commission</b> <del>at the same time as the PQ determination for the next</del> in the final year of a <b>regulatory period</b>; <del>and</del></p> <p>(b) not determined by the <b>Commission</b> <del>for any regulatory year prior to at the same time as the PQ determination for</del> the <b>first regulatory period</b>; <del>and</del></p>	<p>We recommend adding an accrual date for consistency with subclause (8).</p> <p>For certainty we have included paragraph (d) to clarify that the forecast wash-up accrual includes a forecast of the connection capex variable adjustment and its modelled impacts on forecast allowable revenue. We previously submitted that the final connection capex annual report is not received until after the final year of the regulatory period but that the wash-up amounts (and therefore forecast wash-up accrual) would be specified before the end of each regulatory period and as a result this would mean this wash-up would be deferred.<sup>8</sup> Not correcting for this error would mean that the wash-up for the connection</p>

<sup>8</sup> Chorus, Amendments to the Input Methodologies for Fibre August 2021 amendments (24 June 2021) at [page 24]

Reference	Proposed IM with Chorus proposed drafting	Chorus response
	<p>(c) deemed to accrue 148 days prior to the final day of that <b>regulatory year</b>.</p> <p>(d) for the avoidance of doubt inclusive of a forecast of the <b>connection capex variable adjustment</b> specified in subclause 11(g) and its associated modelled impacts.</p>	<p>capex variable adjustment for PQP1 would not be calculated until PQP2 and only available to draw down in PQP3.</p>
(11)	<p>'Actual allowable revenue' means the sum of forecast <b>building blocks revenue</b>, forecast <b>pass-through costs</b> and the <b>wash-up amount</b> for a <b>regulatory year</b>, as specified by the <b>Commission</b>, for the purposes of calculating a <b>wash-up accrual</b> or <b>forecast wash-up accrual</b>, and must include the <del>actual</del> <b>modelled</b> impacts on <b>forecast allowable revenue</b> (for a <b>wash-up accrual</b>) or forecast of <del>actual</del> <b>modelled</b> impacts on <b>forecast allowable revenue</b> (for a <b>forecast wash-up accrual</b>) (whichever is applicable) for that <b>regulatory year</b> of:</p>	<p>We have proposed the use of "modelled" rather than "actual" impacts. The impacts to forecast allowable revenue that are required for the wash-up calculation are only due to substituting actual data for the wash-ups in subclauses (11)(a) to (g), not all data is updated for actuals.</p>
(11)(d)	<p><del>the difference between:</del></p> <p><del>(i) the sum of:</del></p> <p><del>(A) the <b>base capex allowance</b> determined in respect of the current <b>regulatory period</b>; and</del></p> <p><del>(B) any <b>individual capex allowance</b> determined in respect of the current <b>regulatory period</b> that was determined before the current <b>regulatory period</b> commenced; and</del></p> <p><del>(ii) the sum of:</del></p> <p><del>(A) the <b>base capex allowance</b> determined in respect of the current <b>regulatory period</b>;</del></p>	<p>We propose simplifying this calculation since the difference between the sums in subparagraphs (i) and (ii) is the amount specified in subparagraph (C).</p>

Reference	Proposed IM with Chorus proposed drafting	Chorus response
	<p><del>(B) any <b>individual capex allowance</b> determined in respect of the current <b>regulatory period</b> that was determined before the current <b>regulatory period</b> commenced; and</del>  <del>(C) any <b>individual capex allowance</b> determined in respect of the current <b>regulatory period</b> that was determined after the current <b>regulatory period</b> commenced;</del></p>	
(11)(e)	<p>the difference between:</p> <p>(i) the forecast <b>pass-through costs</b> for that <b>regulatory year</b>; and</p> <p>(ii) the actual <b>pass-through costs</b> for that <b>regulatory year</b>;</p>	<p>Our understanding is that the forecast pass-through costs referred to in subparagraph (i) are those calculated at the beginning of each regulatory year as specified in Schedule 2 of the PQ determination.</p>
(11)(f)	<p>the difference between:</p> <p>(i) any forecast <b>CPI</b> values referred to in a <b>PQ determination</b> for the purposes of calculating <b>forecast allowable revenue</b> under subclause (2) for that <b>regulatory year</b>; and</p> <p>(ii) the corresponding actual <b>CPI</b> values for that <b>regulatory year</b>; and</p>	<p>We support this change. As we have previously submitted, in order to maintain an ex-ante expectation of real FCM forecast <math>\Delta CPI_t</math> needs to be used to calculate the forecast building block revenue and this needs to be washed-up for actual CPI.<sup>9</sup></p>
(11)(g)	<p><del>in respect of the final <b>regulatory year</b> of a <b>regulatory period</b>, the <b>connection capex variable adjustment</b> for that <b>regulatory period</b> as determined under clause 3.7.21(2), where the modelled impacts take account of the respective differences referred to in clause 3.7.21(2) for each <b>regulatory year</b>.</del></p>	<p>As we have previously submitted, the IMs need to be updated to ensure that the connection capex adjustment can be included in the wash-up draw down amount for the following regulatory period and to ensure the modelled impacts of the connection capex adjustment are included.<sup>10</sup></p>

<sup>9</sup> Chorus, Amendments to the Input Methodologies for Fibre August 2021 amendments (24 June 2021) at [36 to 38]

<sup>10</sup> Ibid at [page 24]

Reference	Proposed IM with Chorus proposed drafting	Chorus response
12	<p>For the purpose of subclause (11), the 'actual allowable revenue' for a <b>regulatory year</b> only includes the <del>actual</del> <b>modelled</b> impacts on <b>forecast allowable revenue</b> (for a <b>wash-up accrual</b>) or forecast of <del>actual</del> <b>modelled</b> impacts on <b>forecast allowable revenue</b> (for a <b>forecast wash-up accrual</b>) for that <b>regulatory year</b> of the matters specified in subclause (11)(a) for the <b>first regulatory period</b>.</p>	<p>We have proposed the use of "modelled" rather than "actual" impacts. The impacts to forecast allowable revenue that are required for the wash-up calculation are only due to substituting actual data for the wash-ups in 11(a)-(g), not all data is updated for actuals.</p>

## Appendix B: Detailed section 221 notice drafting proposals

Reference	Chorus response with proposed drafting
<p><b>Definition of “initial RAB model”</b></p>	<p>The reference to a model version published on the Commission’s website is incorrect, and should be removed, since the public version is redacted and will not contain the confidential information needed to calculate the MAR.</p> <p>There are currently two versions of the IAV model required to run the MAR model and therefore this definition needs to reference both. Currently, the MAR model links to a version of the IAV model that calculates pre-implementation values (without changes to the forecast capex and opex in the first half of FY22) and a second version for post-implementation calculations which includes post-implementation date modifications to the forecast opex and capex, both will need to be updated to reflect the final decision (other than the forecast capex and opex, and everything derived from these, these two copies of the IAV model are identical). This reference should be updated when the final version of the notice is updated to include a reference to both of the final version(s) of the IAV model.</p>
<p><b>Definition of “opex allocation model”</b></p>	<p>There are currently two versions of the opex model required to run the MAR model and therefore this definition needs to reference both. Currently, each of the two IAV models links to a version of the opex model. One calculates pre-implementation values and a second version is used for post-implementation calculations incorporating changes to the forecast opex post-implementation, both will need to be updated to reflect the final decision. This reference should be updated when the final version of the notice is updated to include a reference to the final versions of the opex model.</p>
<p><b>Paragraph A5</b></p>	<p>As discussed above, the requirement to provide wash-up information reports 50 working days after the end of a year is too tight and does not line up with other requirements. We propose the following change to subparagraphs A5.1, A5.2 and A5.3 to align the wording to the year-end information disclosure rules:</p> <p><del>“within 50 working days no later than 5 months after of</del> the end of regulatory year...”</p>

Reference	Chorus response with proposed drafting
<p><b>Paragraph A7.3:</b></p>	<p>We propose the following drafting to make the request more consistent with the wording in A7.2 while giving the same effect:</p> <p>the benefit of Crown financing inputs for the relevant <b>regulatory year</b> <del>in cells “Z4658:AC4668” of the “SMARInputsFromIAV” sheet of the BBR model</del> updated to reflect actual benefits of Crown Financing as determined under clause 2.4.10 of the <b>IM determination</b>;</p>
<p><b>Paragraph A7.4:</b></p>	<p>We propose the following drafting to make the request more consistent with the wording in A7.2 while giving the same effect:</p> <p>the <b>capex allowance</b> inputs <del>sourced from the initial RAB model in cells Z4684:AC6183, Z6190:AC7689, and Z7696:AC9195 of the “SMARInputsFromIAV” sheet of the BBR model,</del> updated to include the value of any <b>individual capex</b> determined in respect of the <b>first regulatory period</b> determined after the <b>first regulatory period</b> commenced</p>
<p><b>Paragraph A7.5:</b></p>	<p>We propose the following drafting to make the request more consistent with the wording in A7.2 while giving the same effect:</p> <p>actual <b>pass-through costs</b> <del>in cells Z9217:AC9221 of the “SMARInputsFromIAV” sheet of the BBR model</del> for that <b>regulatory year</b> in place of forecast <b>pass-through costs</b>;</p>
<p><b>Paragraph A7.6:</b></p>	<p>We propose the following drafting to make the request more consistent with the wording in A7.2 while giving the same effect:</p> <p>in respect of <b>regulatory year 2024</b>, the <b>connection capex variable adjustment</b> for the <b>first regulatory period</b> as determined under clause 3.7.21(2) of the <b>IM determination</b> <del>in cells Z4684:AC6183, Z6190:AC7689, and Z7696:AC9195 of the “SMARInputsFromIAV” sheet of the BBR model;</del> and</p>

Reference	Chorus response with proposed drafting
<p><b>Paragraph A8:</b></p> <p>Specifies that 'Total FFLAS revenue' is calculated using this formula:</p> $\sum_t (P_t - D_t) \times AQ_t$	<p>This formula assumes all Chorus' PQ FFLAS revenue is earned from fibre products on a P*Q basis.</p> <p>As we have explained in a similar context,<sup>11</sup> while the majority of Chorus' forecast total PQ FFLAS revenue is calculated on a P*Q basis, a portion is not. This includes revenue from products such as Colocation and handover links.</p> <p>We therefore suggest an additional term (<b>AR</b>, meaning any PQ FFLAS revenue not derived on a P*Q basis) is added to this formula to account for other PQ FFLAS revenues.</p>
<p><b>Paragraph A10.3</b></p>	<p>This clause requires an audit report to be provided with both the actual and forecast wash-up reports. As discussed above, we assume the requirement for audit of the forecast report to be an error.</p> <p>We suggest:</p> <p><b>For the purpose of clause A5, be accompanied by an assurance report meeting the requirements in clause A11; and for the purpose of clause A6, be accompanied by a certificate in the form set out in clause [xx], duly signed by one director of Chorus</b></p>

<sup>11</sup> Chorus, Submission on price-quality path draft decision (8 July 2021) Appendix B item B3, and Appendix C item C3.