

# Fibre Information Disclosure Final Decisions

## Reasons Paper

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## Associated documents

Publication date	Reference	Title
15 Sep 2020	ISBN 978-1-869458-38-6	<a href="#">Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period</a>
13 Oct 2020	ISBN 978-1-869458-43-0	<a href="#">Fibre Input Methodologies - Main final decisions reasons paper</a>
13 Oct 2020	ISSN 1178-2560	<a href="#">Fibre Input Methodologies Determination 2020</a>
3 Nov 2020	ISBN 978-1-869458-45-4	<a href="#">Fibre Input Methodologies - Financial loss asset final decision – reasons paper</a>
3 Nov 2020	ISSN 1178-2560	<a href="#">Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020</a>
28 Jan 2021	ISBN 978-1-869458-70-6	<a href="#">Promoting competition in telecommunications markets as part of fibre information disclosure (ID) and price-quality (PQ) regulation</a>
4 Feb 2021	ISBN 978-1-869458-70-6	<a href="#">Promoting competition in telecommunications markets as part of fibre information disclosure (ID) and price-quality (PQ) regulation – survey questions</a>
26 Feb 2021		<a href="#">Fibre PQID - Quality workshop presentation – 26 February 2021</a>
26 Feb 2021	3695339.1	<a href="#">Fibre PQID - Quality workshop Questions and Answers – 26 February 2021</a>
30 April 2021	ISBN 978-1-869458-86-7	<a href="#">Determining Chorus' first fibre price-quality path: Process update paper April 2021</a>
29 April 2021	ISBN 978-1-869458-87-4	<a href="#">Notice of Intention for potential amendments to IMs for Fibre in August 2021</a>
30 April 2021	ISBN 978-1-869458-90-4	<a href="#">Notice of Intention for potential amendments to IMs for Fibre in November 2021</a>
27 May 2021	ISBN 978-1-869459-00-0	<a href="#">Fibre Information Disclosures – Draft decisions – Reasons Paper – 27 May 2021</a>
27 May 2021	ISBN 978-1-869458-91-1	<a href="#">[Draft] Fibre Information Disclosure Determination 2021 [2021] NZCC [XX]</a>
27 May 2021	ISBN 978-1-869458-96-6	<a href="#">Proposed Amendments to Fibre Input Methodologies: draft decisions, Reasons paper</a>

Publication date	Reference	Title
27 May 2021	ISBN 978-1-869458-97-3	<a href="#">[Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC[XX]</a>
18 June 2021		<a href="#">Expenditure working group session slides</a>
18 June 2021		<a href="#">ID Technical Working Group - Summary of Key Points</a>
9 September 2021		<a href="#">Quality ID working group session slides</a>
9 September 2021		<a href="#">Quality ID working group session - Summary of Key Points</a>
29 November 2021	ISBN 978-1-869459-55-0	Fibre Input Methodologies main 2021 amendments: final decisions
29 November 2021		Fibre Input Methodologies Amendment Determination (No 2) 2021 [2021] NZCC 25
30 November 2021	ISSN 1178-2560	Fibre Information Disclosure Determination 2021 [2021] NZCC 24

Commerce Commission  
Wellington, New Zealand

## Foreword

Tēnā koutou,

This paper on information disclosure sets out the first of a series of decisions we are making to establish the new regulatory regime for fibre fixed line access services (**FFLAS**), applying from 1 January 2022.

It is appropriate that we are announcing these decisions first given the importance of information disclosure in the new regime. It is not only important in its own right, but all other elements of the new regime build on this essential foundation.

The information required from the four regulated fibre service providers (**regulated providers**) will ensure the visibility of how each is performing over time, and when compared to each other, across a range of key measures. It will work arm in arm with the price-quality regulation of Chorus that we will announce on 16 December and the accompanying anchor service regulations to deliver high-quality broadband services at competitive prices.

Information disclosure has proven to be a powerful tool in other sectors we regulate like electricity lines and gas pipeline services. It includes key information intended to:

- enable stakeholders to monitor the regulated providers' performance and assess whether they are acting in a way that benefits consumers in the long-term;
- incentivise regulated providers to innovate, invest and improve their efficiency so that they provide consumers with high quality and affordable broadband services, as would occur in a competitive market; and
- increase transparency to reduce the risk of conduct that could harm competition in telecommunications markets.

We have engaged extensively on the design of the new regime and have made substantial adjustments from our draft decision in May 2021 to reflect what we have heard from the four regulated providers and other stakeholders.

By drawing on the contractual reporting and information disclosure requirements that guided the development of the fibre networks under the Government's Ultra-Fast Broadband (**UFB**) initiative, and progressively phasing in the new requirements, we have also sought to minimise compliance costs and complexity for regulated providers.

Our final decisions reflect the effort that all parties have put into the process and will deliver a workable and enduring regime that will lock-in the high-level of broadband performance that New Zealanders have come to expect.

We look forward to continuing to work closely with the industry to refine information disclosure requirements over time as the performance of the regulated providers becomes better understood and to reflect ongoing changes in the industry landscape.

Ngā mihi nui

Tristan Gilbertson

Telecommunications Commissioner

## Table of Contents

Associated documents .....	2
Foreword .....	4
Table of Contents.....	6
Glossary of Terms and Abbreviations.....	7
Executive summary.....	9
Chapter 1 Introduction.....	15
Chapter 2 Regulatory Framework.....	24
Chapter 3 Overview of ID requirements .....	53
Chapter 4 Financial Information for the Disclosure Year.....	63
Chapter 5 Pricing and Contract Disclosures .....	100
Chapter 6 Asset Management and Network Characteristics .....	157
Chapter 7 Quality metrics and performance measures .....	192
Chapter 8 Implementation of the ID Requirements .....	232
Chapter 9 Disclosures under s 187(1)(c) to assess compliance .....	244
Attachment A Summary of changes from draft decisions .....	245
Attachment B Summary of timing, transitional provisions, and audit and certification requirements	257
Attachment C Commission-only disclosures .....	274
Attachment D Expenditure Categories.....	275

## Glossary of Terms and Abbreviations

Term/Abbreviation	Definition
<b>AMP</b>	Asset Management Plan
<b>Capex</b>	Capital Expenditure
<b>CIP</b>	Crown Infrastructure Partners
<b>DFAS</b>	Direct fibre access service
<b>FCM</b>	Financial capital maintenance
<b>FFLAS</b>	Fibre fixed line access services
<b>FLA</b>	Financial loss asset
<b>GAAP</b>	Generally accepted accounting practice
<b>ID</b>	Information disclosure
<b>IMs</b>	Input methodologies
<b>IFP</b>	Integrated Fibre Plan
<b>IRR</b>	Internal rate of return
<b>ISPANZ</b>	Internet Service Providers Association of New Zealand
<b>LFC</b>	Local fibre company
<b>M&amp;A</b>	Mergers and acquisitions
<b>Non-FFLAS</b>	Not FFLAS
<b>ONT</b>	Optical network terminal
<b>Opex</b>	Operating Expenditure
<b>PQ</b>	Price-quality
<b>PQP1</b>	First regulatory period (1 January 2022 to 31 December 2024)
<b>R&amp;D</b>	Research and development
<b>RAB</b>	Regulatory asset base

Term/Abbreviation	Definition
<b>ROI</b>	Return on Investment
<b>RSP</b>	Retail service provider
<b>TCSD</b>	Term credit spread differential
<b>UFB</b>	Ultra-fast Broadband
<b>WACC</b>	Weighted average cost of capital

## Executive summary

- X1 This paper sets out the reasons for our determination of the information disclosure (ID) requirements applicable to the regulated fibre service providers (**regulated providers**), namely, Chorus Limited (**Chorus**) and the other local fibre companies (**other LFCs**) – Enable Networks Limited (**Enable**), Northpower Fibre Limited (**Northpower**), and Tuatahi First Fibre Limited (**Tuatahi**).

## Regulatory context

- X2 The Telecommunications Act 2001 (**the Act**)<sup>1</sup> specifies that from the start of the first regulatory period (**PQP1**) on 1 January 2022 we must determine ID requirements regulated providers to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 is being met.<sup>2</sup>
- X3 Each regulated provider will be required to disclose information on its performance delivering fibre fixed line access services (**FFLAS**)<sup>3</sup>.
- X4 The purpose of Part 6 is to promote the long-term benefit of end-users in markets for FFLAS where there is little or no competition and little or no likelihood of a substantial increase in competition. This is done by promoting outcomes that are consistent with outcomes produced in workably competitive markets so that regulated providers:
- X4.1 have incentives to innovate and to invest, including in replacement, upgraded, and new assets;
  - X4.2 have incentives to improve efficiency and provide services at a quality that reflects end-user demands;
  - X4.3 allow end-users to share the benefits of efficiency gains in the supply of FFLAS, including through lower prices; and
  - X4.4 are limited in their ability to extract excessive profits.

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<sup>1</sup> Unless stated otherwise all references to statutory provisions are references to provisions of the Telecommunications Act 2001.

<sup>2</sup> Sections 170, 172(1)(b) and 186.

<sup>3</sup> References to FFLAS in this paper mean references to regulated FFLAS unless it appears otherwise from the context.

- X5 'Interested persons' include a wide range of stakeholders who are or may be affected by the way in which FFLAS are provided.

### **ID requirements**

- X6 These ID requirements supersede the existing Commerce Commission (**Commission**) only ID requirements for the regulated providers under subpart 3 of Part 4AA.
- X7 An ID determination remains in force until it is revoked and ID requirements may be amended at any time after they have been determined.<sup>4</sup> The requirements in this ID determination therefore apply from 1 January 2022 until they are revoked or amended.
- X8 In developing these ID requirements, we:
- X8.1 gathered initial input from regulated providers and other interested parties;
  - X8.2 held technical working groups on expenditure and quality performance measures where stakeholders were able to discuss and seek clarification on the proposed ID requirements; and
  - X8.3 considered submissions on our proposed process and approach paper, our competition survey, our draft decisions, and working groups.
- X9 We expect to refine the ID requirements over time as the performance of regulated providers is better understood and to capture industry changes.
- X10 The ID determination specifies a package of information that we consider to be necessary for interested persons to understand whether the purpose of Part 6 is being met. This package includes information on:
- X10.1 historical and forecast financial performance, including profitability and return on investment (**ROI**);
  - X10.2 historical and forecast capital expenditure (**capex**) and operational expenditure (**opex**);
  - X10.3 pricing and contracts;
  - X10.4 asset management and capability; and

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<sup>4</sup> Sections 177(2) and 173.

- X10.5 quality outcomes (eg, availability and performance measures of the fibre network).
- X11 Our final decisions in each of the above areas are summarised at the front of each chapter. Attachment A contains a summary of changes from our draft decisions.

### **Standardised and robust information**

- X12 Standardised information allows interested persons to assess disclosed information in a consistent manner across regulated providers and over time. We have developed standardised templates (**Schedules**) for the disclosure of quantitative information where we consider it will be useful.
- X13 It is important that interested persons know they can rely on the accuracy of information that is publicly disclosed. We therefore require some of the information to be audited and/or director certified to provide that assurance.

### **Balancing greater transparency against the costs of implementation**

- X14 ID regulation is a statutory requirement, and therefore, our primary concern is setting ID requirements that meet the purpose of ID in s 186 and the Part 6 purpose.
- X15 In making these decisions we have been mindful of the costs of the new disclosure requirements on regulated providers and ultimately on end-users. We sought to balance the greater transparency more comprehensive and detailed ID requirements would provide, against the costs of implementing new systems and processes to comply with the requirements. We therefore:
- X15.1 considered whether the regulated providers' existing practices and capability, including the scope and detail of disclosures made under the existing ID requirements for LFCs under s 156AU would meet the purpose of ID;
  - X15.2 require reporting based on generally accepted accounting practice (**GAAP**), using existing systems and processes for general purpose financial reporting, where it would meet the purpose of ID;
  - X15.3 require disaggregated information only where necessary to meet the purpose of ID; and
  - X15.4 have limited the ID requirements where we consider that the benefit to interested persons in meeting the purpose of ID does not justify the compliance costs.

- X16 Regulated providers submitted on the importance of having workable information disclosure requirements that do not result in unnecessary assurance and compliance costs. We recognise that this is a new regime and that in the case of some requirements, regulated providers will take time to build the capability to be able to comply.
- X17 We consider that we have improved the workability of our ID requirements and reduced the compliance burden on regulated providers by, among other changes to our draft decisions:
- X17.1 staging the implementation of some ID requirements;
  - X17.2 aligning reporting dates for historical and forecast information;
  - X17.3 reducing the frequency of our pricing and quality disclosures and of our audit and certification requirements;
  - X17.4 requiring reporting at a higher level of aggregation; and
  - X17.5 removing the requirement for a consolidation statement.

### **Staged implementation**

- X18 We recognise that this is a new regime and that a staged implementation for some of the ID requirements will allow time for regulated providers to establish systems to capture or calculate relevant information and to implement the necessary reporting and assurance processes. For some information, progress against developing reporting capability during the allowed transition periods must itself be reported.
- X19 A summary of all transitional provisions are contained in Attachment B. Key changes we have made to stage the implementation are:
- X19.1 defer reporting for the 2022 disclosure year to 2023 for regulated providers other than Chorus to allow them sufficient time to prepare and certify 2022 information;
  - X19.2 defer reporting of material project and programme expenditure until after PQP1 and further consideration of whether to implement a full asset management plan (**AMP**) requirement;
  - X19.3 defer 5-year forecasting of financial (for regulated providers other than Chorus), capacity and utilisation and demand information (all regulated providers) for three years;

- X19.4 provide a 9-month transition period to enable regulated providers to develop systems for measuring and capturing quality data. During this period quality reporting is required on a limited number of existing measures currently reported to Crown Infrastructure Partners (**CIP**);
- X19.5 require reporting at a higher level of aggregation (level 1 category) for 3 years for regulated providers other than Chorus. During this time, progress towards developing level 2 category reporting must be disclosed in our mandatory explanatory notes.

### **Confidential and commercially sensitive information disclosures**

- X20 Attachment D contains a list of information we consider to be confidential or commercially sensitive disclosures that may be reported as Commission-only information under s188(3)(d).
- X21 We currently consider that we should only exempt regulated providers from publicly disclosing confidential or commercially sensitive information where the interests in protecting the information outweigh the interests of interested persons in the public disclosure of the information in light of the purpose of ID.
- X22 Regulated providers are able to seek exemptions from public disclosure over and above those that are already included or provided for in the ID determination under s 222 of the Act.

### **Regulated providers and Commerce Commission ID obligations**

- X23 Regulated providers that are subject to ID regulation must from 1 January 2022:<sup>5</sup>
- X23.1 publicly disclose information in accordance with the ID requirements set out in our ID determination;
- X23.2 supply to us a copy of all information disclosed in accordance with our ID determination, within five working days after the information is first made available to the public; and
- X23.3 supply to us, in accordance with a written notice by us, any further statements, reports, agreements, particulars, or other information required for the purposes of monitoring the regulated provider's compliance with our ID determination.

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<sup>5</sup> Section 187(1)(a)-(c).

- X24 If a regulated provider is subject to ID regulation, we must, as soon as practicable after any information is publicly disclosed, publish a summary and analysis of that information.<sup>6</sup>
- X25 If a regulated provider is subject to ID regulation, we may monitor and analyse all information disclosed in accordance with our ID requirements.<sup>7</sup>

### **Transitioning to the new regime**

- X26 As noted in paragraph X18 above, to assist regulated providers with compliance we have provided for staged implementation of some ID requirements.
- X27 To assist with interpretation and application issues we will maintain a public issues and guidance register. On this register we will record issues raised by regulated providers and publish guidance where appropriate. We expect this register will also provide an inventory of matters for correction or clarification that may be considered in future reviews of the requirements.
- X28 We intend to convene technical working group sessions focused on the practical application of the requirements after the implementation date. We envisage these will include sessions on quality and expenditure categorisation.
- X29 We also intend to engage with regulated providers other than Chorus to provide guidance on our processes for determining their initial RABs.<sup>8</sup>

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<sup>6</sup> Section 187(2)(b).

<sup>7</sup> Section 187(2)(a).

<sup>8</sup> We will publish our final decisions on the Transitional PQ RAB (initial RAB) for Chorus in December 2021.

# Chapter 1 Introduction

## Overview of ID regulation

### Key features of ID regulation

- Regulations under s 226 provide that all Chorus' and other LFCs' FFLAS will be subject to information disclosure regulation.
- ID requirements will be set from the start of the first regulatory period (**1 January 2022**) and remain in place until they are revoked or amended.
- Regulated fibre service providers subject to ID regulation will be required to publicly disclose information under the requirements we set.
- We will summarise and analyse this information to promote greater understanding of the performance of the regulated providers, their relative service performance, changes in their service performance over time, and their ability to extract excessive profits.
- We may use the information for the purpose of carrying out any of our functions, or exercising any of our powers, including assessing how effectively the ID regime is promoting the purpose of Part 6.

### Purpose of this paper

- 1.1 This paper sets out and explains the information disclosure (**ID**) requirements that apply to regulated fibre service providers (**regulated providers**) who are subject to ID regulation under regulations made under s 226 of the Act. The detailed ID requirements are set out in the determination (including the Schedules) that accompanies this paper.
- 1.2 An ID determination remains in force until it is revoked and ID requirements may be amended at any time after they have been determined.<sup>9</sup> The requirements in this ID determination apply from 1 January 2022 until they are revoked or amended.
- 1.3 In this chapter, we discuss:
  - 1.3.1 determining our ID requirements;
  - 1.3.2 staging the implementation;

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<sup>9</sup> Sections 177(2) and 173.

- 1.3.3 how we have structured this paper;
- 1.3.4 materials published alongside this paper;
- 1.3.5 our background and approach; and
- 1.3.6 transitioning to the new regime.

## Determining our ID requirements

### Balancing greater transparency against the costs of implementation

- 1.4 In making these decisions, we have been mindful of the costs of the new disclosure requirements on regulated providers and ultimately on end-users. We sought to balance the greater transparency more comprehensive and detailed ID requirements would provide, against the costs of implementing new systems and processes to comply. We therefore:
- 1.4.1 considered whether the regulated providers' existing practices and capability, including the scope and detail of disclosures made under the existing ID requirements for LFCs under s 156AU, would meet the purpose of ID;
  - 1.4.2 require reporting based on generally accepted accounting practice (**GAAP**), using existing systems and processes for general purpose financial reporting, where it would meet the purpose of ID;
  - 1.4.3 require disaggregated information only where necessary to meet the purpose of ID; and
  - 1.4.4 have limited the ID requirements where we consider the benefit to interested persons in meeting the purpose of ID does not justify the compliance costs.<sup>10</sup>
- 1.5 In consulting on our draft decisions, regulated providers submitted on the frequency and workability of our draft disclosure requirements, which they stated would result in high assurance and compliance costs. We recognise that this is a new regime and that in the case of some requirements regulated providers will need time to build the capability to be able to comply.

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<sup>10</sup> This material is available on our website at: Commerce Commission - [Fibre price-quality path and information disclosure](https://www.comcom.govt.nz/information-disclosure) (comcom.govt.nz)

- 1.6 We consider that we have improved the workability of our ID requirements and reduced the compliance burden on regulated providers by, among other changes to our draft decisions:
- 1.6.1 staging the implementation of some ID requirements to allow regulated providers time to develop the capability to capture the information;
  - 1.6.2 aligning reporting dates for historical and forecast information;
  - 1.6.3 reducing the frequency of our pricing and quality disclosures and of our audit and certification requirements;
  - 1.6.4 requiring reporting at a higher level of aggregation; and
  - 1.6.5 removing the requirement for a consolidation statement.

### Staging the implementation

- 1.7 While regulated providers supported transitional provisions contained in our draft decisions, Enable Networks Limited (**Enable**) and Tuatahi First Fibre Limited (**Tuatahi**) submitted that these were "not sufficient".<sup>11</sup> Chorus Limited (**Chorus**) submitted that we must allow "a realistic transition period for the new ID regime".<sup>12</sup>
- 1.8 After considering submissions on our draft decisions, we have added a number of transitional provisions included in Attachments A and B.. By deferring some disclosures to later disclosure periods and/or requiring a more aggregated level of reporting early on, our staged implementation plan provides a roadmap for supporting regulated providers to full disclosure requirements reporting.
- 1.9 As an example, we only require regulated providers to self-assess and report on their asset management capability at this time. This recognises the present transition by regulated providers from a focus on building assets to developing strategic asset management capability. In the future we may determine more prescriptive requirements such as the disclosure of full asset management plans (**AMP**), as currently required for electricity distributors.

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<sup>11</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), paragraph 3.5(a).

<sup>12</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 8.7.

## How we have structured this paper

1.10 This paper is structured as follows:

- 1.10.1 Chapter 2 sets out the regulatory framework we have applied in reaching our decisions on the ID requirements.
- 1.10.2 Chapter 3 contains a high-level view of the information we require to be disclosed and other key overarching decisions. The ID requirements are broken down and discussed in detail in Chapters 4 to 7.
- 1.10.3 Chapter 4 explains our decisions on ID requirements for financial information for the disclosure year, including profitability and the value of the regulatory asset base (**RAB**).
- 1.10.4 Chapter 5 explains our decisions on ID requirements for pricing and contract disclosures.
- 1.10.5 Chapter 6 explains our decisions on ID requirements for information on asset management and network characteristics.
- 1.10.6 Chapter 7 explains our decisions on ID requirements for quality measures and standards.
- 1.10.7 Chapter 8 provides requirements for when and how information must be publicly disclosed. This includes when the first disclosures under these new requirements should be made and any transitional provisions that are necessary. It also explains our requirements for information to be audited and certified to ensure that it is accurate.
- 1.10.8 Chapter 9 explains the disclosure requirements for monitoring compliance with ID requirements under s 187(1)(c).
- 1.10.9 Attachments to the paper contain additional detail on some matters and include supporting information (eg, expenditure categories).

## Materials published or to be published alongside this paper

1.11 We published our final decisions and determination on input methodology (**IM**) amendments on 29 November 2021.<sup>13</sup>

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<sup>13</sup> Commerce Commission “Fibre Input Methodologies main 2021 amendments: final decisions” (29 November 2021); and Fibre Input Methodologies Amendment Determination (No 2) 2021 [2021] NZCC 25.

- 1.12 We have also today published:
- 1.12.1 the ID determination that gives effect to the final decisions discussed in this paper;<sup>14</sup>
  - 1.12.2 a public issues and guidance register (**issues register**) for fibre information disclosure where we will record and respond to any feedback and/or queries raised by regulated providers; and
  - 1.12.3 notices under s 187(1)(c) requiring information from each of the regulated providers for the purposes of monitoring compliance with the ID requirements.
- 1.13 We will publish our final decisions and determinations for the price-quality (**PQ**) Path, including on our transitional initial PQ RAB for Chorus, in December 2021.

## Background and Approach

### Background

- 1.14 The following persons became subject to ID regulation on 20 December 2019 as a result of regulations made under s 226 by the Governor-General on 18 November 2019:<sup>15</sup>
- 1.14.1 Chorus Limited (**Chorus**);
  - 1.14.2 Enable Networks Limited (**Enable**);
  - 1.14.3 Northpower Fibre Limited;
  - 1.14.4 Northpower LFC2 Limited; and
  - 1.14.5 UltraFast Fibre Limited (**UltraFast**).
- 1.15 Northpower Fibre Limited and Northpower LFC2 Limited were named in the regulations, but amalgamated as Northpower Fibre Limited (**Northpower**) on 01 May 2021.
- 1.16 UltraFast Fibre Limited changed its name to Tuatahi First Fibre Limited (**Tuatahi**) on 1 November 2021.

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<sup>14</sup> *Fibre Information Disclosure Determination 2021* [2021] NZCC 24.

<sup>15</sup> Telecommunications (Regulated Fibre Service Providers) Regulations 2019, regulation 5.

- 1.17 Section 226(7) of the Act provides that the regulations apply to any subsidiary of, or successor to the persons named in the regulations in respect of the regulated services. Accordingly, the regulated providers are Chorus, Enable, Northpower and Tuatahi.
- 1.18 In this paper we refer to the regulated providers, and their respective submissions and cross-submissions made to us, by the regulated provider's most recent successor names.
- 1.19 Under the s 226 regulations:
- 1.19.1 Chorus, Enable, Northpower and Tuatahi are subject to ID regulation in respect of all of their fibre fixed line access services (**FFLAS**); and
- 1.19.2 Chorus is subject to PQ regulation in respect of all of its FFLAS, except in a geographical area where another regulated provider has a fibre network as part of the Ultra-fast Broadband (**UFB**) initiative.<sup>16</sup>
- 1.20 Under the Act, the Commerce Commission (**Commission**) is responsible for determining the ID and PQ regulations before 1 January 2022.<sup>17</sup>
- 1.21 Under s 188(2) regulated providers subject to ID regulation may be required to publicly disclose financial and non-financial information relating to their delivery of FFLAS.
- 1.22 We have considered the individual services that are FFLAS as part of our process for setting Chorus' PQ path for the first regulatory period (**PQP1**). We asked Chorus to provide a list of services matched against the categories of FFLAS we set out in the IM reasons paper (Voice services, Bitstream PON services, Unbundled PON services, Point-to-point services, Transport services, Co-location and interconnection services, Connection services).<sup>18</sup>

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<sup>16</sup> Section 226(7) provides that the regulations apply to any subsidiary of, or successor to a person subject to PQ or ID regulation (or both) under the regulations.

<sup>17</sup> Sections 170 and 172(1).

<sup>18</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 2.108.

- 1.23 We consulted on the completeness, accuracy and categorisation of Chorus' services in August 2021.<sup>19</sup> A full list of the services that we consider to fall within the scope of FFLAS will be included with our package of final PQ decisions to be published in December 2021.

### Approach and process to date

- 1.24 In September 2020, we published for consultation a paper that set out our proposed process and approach for PQP1, including our approach to ID (**approach paper**).<sup>20</sup> Where interested parties offered feedback on our overall approach, they were generally supportive.<sup>21</sup>
- 1.25 In May 2021, we published our draft decisions reasons paper and draft ID determination.<sup>22</sup> We received submissions from interested parties on 8 July 2021 and cross submissions, after granting a two-week extension, on 8 August 2021.
- 1.26 Practical implementation matters form part of our considerations when making our final decisions to help ensure that these are workable. As such, we held technical working group sessions with regulated providers after we published our draft decisions. This was supported by regulated providers who submitted that we should hold technical workshops prior to making our final decisions.<sup>23, 24</sup>
- 1.26.1 In June 2021, we held a technical working group session for regulated providers on the practical implementation of the proposed expenditure categorisation after our draft decisions were issued and before submissions were due.<sup>25</sup> We subsequently published a summary of key points.<sup>26</sup>

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<sup>19</sup> Commerce Commission "[Chorus' initial regulatory asset base as at 1 January 2022 - Draft Decisions](#)" (19 August 2021), Attachment A.

<sup>20</sup> Commerce Commission "[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)" (15 September 2020).

<sup>21</sup> Commerce Commission "[Fibre information disclosures – Draft decisions – Reasons paper](#)" (27 May 2021), paragraph 1.20.

<sup>22</sup> Commerce Commission "[Fibre information disclosures – draft decisions – reasons paper](#)" (27 May 2021). Commerce Commission "[\[Draft\] Fibre Information Disclosure Determination 2021 \[2021\] NZCC \[XX\]](#)" (27 May 2021).

<sup>23</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 19.3

<sup>24</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), paragraph 9.1.

<sup>25</sup> Commerce Commission "[Expenditure working group session slides](#)" (18 June 2021).

<sup>26</sup> Commerce Commission "[ID Technical Working Group – Summary of Key Points](#)" (18 June 2021).

- 1.26.2 In September 2021, following receipt of submissions, we held a technical working group session for regulated providers on the practical implementation of our proposed ID requirements for quality.<sup>27</sup> We published a summary of key points and considered submissions received on 23 September.<sup>28</sup>
- 1.26.3 We considered a submission made by Enable and Tuatahi (**Enable/Tuatahi**) that we facilitate a technical drafting consultation prior to the final determination being issued.<sup>29</sup> We agreed there would have been benefits to adding this process but decided against doing so due to time constraints. We have mitigated the risk of technical drafting errors by publishing an issues register along with the determination.
- 1.27 Where interested parties submitted on our draft decisions and/or the quality working group session, key issues have been addressed in the relevant chapters below.

#### *Timing for Determination of ID Requirements*

- 1.28 Under s 173, we can amend the ID requirements after they have been determined. In our approach paper, we stated our preference for determining all ID requirements prior to 1 January 2022, but noted that certain aspects of ID could be deferred until after this date if necessary.<sup>30</sup> We expect to refine the ID requirements over time.
- 1.29 Stakeholders were generally supportive of our approach to the timing of the determination of disclosures:
- 1.29.1 Enable/Tuatahi noted that the primary objective for PQP1 should be to establish a baseline set of data against which future performance can be assessed and that ID requirements will be refined over time.<sup>31</sup>

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<sup>27</sup> Commerce Commission "[Quality ID working group session slides](#)" (9 September 2021).

<sup>28</sup> Commerce Commission "[Quality ID working group session - Summary of Key Points](#)" (9 September 2021).

<sup>29</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), paragraph 9.2.

<sup>30</sup> Commerce Commission "[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)" (15 September 2020), paragraph 2.16.

<sup>31</sup> Enable and Tuatahi "[Submissions on PQID process and approach paper](#)" (14 October 2020), page 2.

- 1.29.2 2degrees stated a preference for ID requirements to be determined in 2021 and stressed the importance of making sure all key terms are determined.<sup>32</sup>
- 1.29.3 Vocus supported our position that “while our preference is to determine all ID requirements prior to 1 January 2022, if necessary, certain aspects of ID could be deferred until after this date”.<sup>33</sup>

### **Transitioning to the new regime**

- 1.30 As stated in paragraph 1.6.1, we are staging the implementation of ID requirements.
- 1.31 To assist with interpretation and application issues, we will maintain an issues register. On this register we will record issues raised by regulated providers and publish guidance where appropriate. We expect this register will also provide an inventory of matters for correction or clarification that may be considered in future reviews of the requirements.
- 1.32 We intend to convene technical working group sessions focused on the practical application of the requirements after the implementation date. We envisage these will include sessions on quality and expenditure categorisation.
- 1.33 We also intend to engage with regulated providers other than Chorus on our processes for determining their initial RABs.

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<sup>32</sup> 2degrees “[Submissions on PQID process and approach paper](#)” (14 October 2020), page 2.

<sup>33</sup> Vocus “[Submissions on PQID process and approach paper](#)” (14 October 2020), page 5.



## Legal Framework

### Background

- 2.3 As described in Chapter 1:
- 2.3.1 persons supplying FFLAS who are prescribed in regulations made under s 226 as being subject to ID regulation are subject to ID regulation under Part 6 of the Act (Chorus, Enable, Northpower and Tuatahi);
  - 2.3.2 we are required to make an ID determination before the implementation date (1 January 2022) which specifies how ID regulation applies to the regulated providers from the start of PQP1 (1 January 2022);<sup>34</sup> and
  - 2.3.3 An ID determination may last indefinitely as it remains in force until it is revoked.<sup>35</sup>

### The purpose of ID regulation in section 186

- 2.4 Section 186 of the Act provides that the purpose of ID regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 is being met.
- 2.5 As s 186 is the starting point for all of our ID requirements it is important that we understand the meaning of the key terms in s 186. Our approach to the meaning of “interested persons”, “sufficient information” and “readily available” is set in paragraphs 2.6-2.19.

### *Our interpretation of “interested persons”*

- 2.6 We interpret the meaning of “interested persons” broadly to include, among others, persons who are or may be affected by the way in which FFLAS are provided. Therefore, we consider interested persons to include, but not be limited to:
- 2.6.1 all the regulated providers currently subject to ID regulation (Chorus, Enable, Northpower and Tuatahi);
  - 2.6.2 end-users and end-user representative groups;

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<sup>34</sup> Section 172(1)(b).

<sup>35</sup> Section 172(2).

- 2.6.3 retail service providers (RSP) and RSP representative groups;
  - 2.6.4 central government, regional councils, and territorial authorities;
  - 2.6.5 suppliers of goods or services regulated under Part 4 of the Commerce Act (eg, Transpower New Zealand limited);
  - 2.6.6 market analysts and investors; and
  - 2.6.7 us (the Commerce Commission).
- 2.7 Interested persons are a diverse group. Information needs for interested persons will vary depending on their particular areas of interest and available resources. Some interested persons will wish to undertake their own customised analysis of disclosed information, while others may lack the resources or specialist knowledge for this, and so will prefer information to be summarised and analysed for them (eg, through our summary and analysis, as described in paragraphs 2.65-2.70).<sup>36</sup>
- 2.8 We used the same approach to the interpretation of “interested persons” in our approach paper and submitters did not take issue with our interpretation.<sup>37</sup>

*Our interpretation of “sufficient information”*

- 2.9 Section 186 requires that the information disclosed must be sufficient for interested persons to assess whether the Part 6 purpose is being met. Both quantitative and qualitative information is necessary to make this assessment, with quantitative information sufficiently disaggregated to allow interested persons to understand what drives regulated providers’ performance when delivering FFLAS.
- 2.10 Since ID regulation is a specific form of regulation under Part 6, with its own clearly defined purpose in s 186 independent of other regulatory instruments, we consider that the requirement for ‘sufficient’ information to make informed assessments against the Part 6 purpose is independent of whether or not a regulated provider is also subject to PQ regulation.<sup>38</sup>

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<sup>36</sup> Further, as discussed in paragraphs 2.51-2.59, in some instances where information is confidential or commercially sensitive regulated providers will only be required to make disclosures to the Commission. Also see ss 187(4) and 222.

<sup>37</sup> Commerce Commission “[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)” (15 September 2020), paras 3.33-3.34.

<sup>38</sup> However, as discussed later in the paper, PQ regulation is relevant context when we determine the ID requirements.

- 2.11 The Part 6 purpose highlights the importance of the following incentives:
- 2.11.1 incentives to innovate and to invest (s 162(a)); and
  - 2.11.2 incentives to improve efficiency and supply FFLAS of a quality that reflects end-user demands (s 162(b)).
- 2.12 We consider that the practical test of whether incentives are working is whether regulated providers are responding to those incentives. We therefore consider that interested persons can only assess whether these elements of the Part 6 purpose are being met by examining evidence of their performance – historical, current and expected future performance.
- 2.13 We used a similar approach to the interpretation of “sufficient information” in our approach paper and submitters did not take issue with our interpretation.<sup>39</sup>

*Our interpretation of “readily available”*

- 2.14 The form in which information is disclosed affects interested persons’ ability to use that information to assess performance. We consider that relevant factors in ensuring information is ‘readily available’ are the extent to which information is:
- 2.14.1 consistent;
  - 2.14.2 accessible; and
  - 2.14.3 understandable.
- 2.15 Consistent disclosure of data in a standardised form that can be compared over time and across regulated providers helps interested persons to compare regulated providers’ performance and identify potential trends in their performance.
- 2.16 Inconsistency may mean that data is not “readily available”. We therefore require most of the disclosures to be provided in a standardised format.<sup>40</sup> Without requirements ensuring consistency the disclosed data may not be useful for gaining valuable insights, or time-consuming processes may be needed to provide consistency and comparability of data.

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<sup>39</sup> Commerce Commission “[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)” (15 September 2020), paras 3.35-3.37.

<sup>40</sup> For example, in a standardised spreadsheet template or online disclosure system.

- 2.17 Accessibility of information refers to the ease with which the information can be accessed (for example, on a website) and the format in which it is available (for example, in a PDF report or a spreadsheet).
- 2.18 Understandability refers to the ease with which interested person can navigate quantitative or qualitative information and so as to get access to the key insights relevant to them.<sup>41</sup>
- 2.19 We used the same approach to the interpretation of “readily available” in our approach paper and submitters did not take issue with our interpretation.<sup>42</sup>

### **Other relevant purposes and mandatory considerations that apply when we make an ID determination**

#### *Sections 166(2) and 162*

2.20 In addition to the s 186 purpose, when we make our ID determination, we must consider the matters specified in s 166(2) of the Act.<sup>43</sup>

2.21 Section 166(2) reads:<sup>44</sup>

“166 Matters to be considered by Commission and Minister

[...]

(2) The Commission... must make the recommendation, determination, or decision that the Commission... considers best gives, or is likely to best give, effect—

(a) to the purpose in section 162 of the Act; and

(b) to the extent that the Commission... considers it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.”

2.22 The purpose of Part 6 of the Act, as specified in s 162 is:

“162 Purpose

<sup>41</sup> The format of disclosures and our summary and analysis of information will assist interested persons’ understanding.

<sup>42</sup> Commerce Commission “[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)” (15 September 2020), paras 3.33-3.34.

<sup>43</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 2.206-2.271.

<sup>44</sup> Section 166(2).

The purpose of this Part is to promote the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes that are consistent with outcomes produced in workably competitive markets so that regulated fibre service providers—

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

2.23 In *Wellington International Airport Ltd & Ors v Commerce Commission*, the High Court discussed the purpose and operation of s 52A of the Commerce Act (the equivalent provision under Part 4 of the Commerce Act to s 162 of the Act) in detail. Consistent with the High Court's analysis, we consider that:

2.23.1 We must promote the long-term benefit of FFLAS end-users by promoting the s 162(a)-(d) outcomes consistent with what would be produced in workably competitive markets.<sup>45</sup> Our focus is not on replicating all the potential outcomes of workably competitive markets as such, but rather with specifically promoting the s 162(a)-(d) outcomes for the long-term benefit of FFLAS end-users consistent with the way those outcomes are promoted in workably competitive markets; and

2.23.2 the objectives in s 162 (a) to (d) are integral to promoting the long-term benefit of end-users and reflect key areas of regulated provider performance that characterise workable competition. None of the objectives are paramount and, further, the objectives are not separate and distinct from each other, or from s 162 as a whole. Rather, we must balance the s 162(a)-(d) outcomes,<sup>46</sup> and must exercise judgement in doing so. When exercising this judgement, we are guided by what best promotes the long-term benefit of end-users.<sup>47</sup>

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<sup>45</sup> *Wellington International Airport Ltd & Ors v Commerce Commission* [2013] NZHC 3289 at [25] – [27].

<sup>46</sup> *Wellington International Airport Ltd & Ors v Commerce Commission* [2013] NZHC 3289 at [684].

<sup>47</sup> *Wellington International Airport Ltd & Ors v Commerce Commission* [2013] NZHC 3289 at [684].

- 2.24 In contrast to s 162, which is focused on promoting the outcomes of workable competition in the markets in which the regulated providers supply FFLAS, section 166(2)(b) is focussed on promoting actual competition in telecommunications markets more generally, but only where we consider this relevant.
- 2.25 We must exercise our judgement on a case by case basis and make the following observations about the two objectives in s 166(2):
- 2.25.1 section 166(2)(a) directs us to make decisions that best give effect to the purpose in s 162. This is a mandatory consideration;
  - 2.25.2 we are also required to make decisions that best give effect to the outcome in s 166(2)(b). This is also a mandatory consideration, but only in cases where we consider that it is “relevant”;
  - 2.25.3 section 166(2) does not establish a hierarchy between the promotion of the two outcomes and we must therefore seek to promote both outcomes where the promotion of competition is relevant; and
  - 2.25.4 the two objectives are generally complementary, since enabling regulated wholesale access to the regulated providers' networks under conditions that mimic the outcomes of workably competitive FFLAS markets, in itself promotes competition in retail end-user telecommunications markets.
- 2.26 A more comprehensive explanation of our views on these purpose statements can be found in our IMs reasons paper.<sup>48</sup>

*How s 186 and s 162 interact*

- 2.27 Section 186 is the starting point for all ID requirements and s 166 must be applied within that context.
- 2.28 In order to meet the purpose of s 186, we must set ID requirements that enable interested persons to assess whether the purpose specified in s 162 is being met. This means that the ID requirements we set must shed light on the performance of the regulated suppliers in relation to one or more of the outcomes set out in s 162. As discussed in paragraphs 2.29 to 2.34, we consider that setting ID requirements that do this will promote the purpose of Part 6 as required by s 166(2)(a).

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<sup>48</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 2.206-2.271.

- 2.29 ID regulation is a less intrusive and direct form of regulation than PQ regulation. Instead of regulating the price and quality of a regulated provider's FFLAS directly, it provides for the monitoring and scrutiny of the regulated provider's performance.
- 2.30 The public disclosure of information under ID regulation ensures that interested persons can assess the performance of regulated providers in relation to each of the outcomes in s 162.<sup>49</sup>
- 2.31 This transparency, together with the scrutiny through our summary and analysis, promotes the outcomes in s 162 by influencing regulated providers' performance to become more consistent with the outcomes in s 162 over time. The prospect of additional ID reporting requirements (or a potential move from ID to PQ regulation) strengthens the incentives provided by ID regulation.
- 2.32 We consider that there is a complete overlap between decisions that will meet the purpose in s 186 (decisions that will allow interested person to assess whether the Part 6 purpose is being met) and the purpose in s 162 (decisions that will promote the outcomes in s 162). We accordingly consider that if we set ID requirements that meet the s 186 purpose, such requirements will also best promote the purpose in s 162 (as required by s 166(2)(a)).
- 2.33 We, therefore, do not separately discuss the purposes in s 186 and 162 in relation to each of our decisions, but rather frame our decisions with reference to the purpose of ID in s 186 and the outcomes in s 162.
- 2.34 Figure 2.1 above illustrates how ID regulation promotes the purposes in s 162 and we discuss this further at paragraphs 2.98 to 2.103 in our Economic Framework.

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<sup>49</sup> For example, information on asset values, prices and conditions relating to prices, AMPs and quality performance measures shed light on whether a regulated provider's performance is consistent with the outcomes in s 162.

*How s 166(2)(b) and s 186/s 162 interact*

- 2.35 While we are required to consider s 166(2)(b) when setting ID requirements, the ID purpose in s 186 does not refer to the s 166(2)(b) purpose of promoting workable competition in telecommunications markets for the long-term benefit of end-users of telecommunication services (**promotion of workable competition**) where relevant. Accordingly, unlike the case of s 186 and s 162, there is no express statutory nexus between s 186 and s 166(2)(b).<sup>50</sup>
- 2.36 This lack of a statutory nexus is consistent with the fact that it is less readily apparent that ID requirements would promote workable competition in telecommunications markets (as envisaged by s 166(2)(b)) in a manner beyond the promotion of the ability of access seekers to compete on the merits in downstream telecommunications markets based on the outcomes of workable competition in the FFLAS markets that is already promoted under s 162.
- 2.37 However, we recognise that the transparency from ID, in addition to promoting the outcomes in s 162, can disincentivise regulated providers from behaving in ways that could harm competition in telecommunications markets generally, given the threat of further regulation.<sup>51</sup> Equally, it could enable access seekers to bargain more effectively with regulated providers thereby potentially realising better contract terms and prices which in turn could result in more effective competition developing in retail telecommunications markets. Our main focus in relation to s 166(2)(b) is therefore considering whether there are ID requirements that could promote workable competition on the merits, by mitigating conditions or the risk of conduct by regulated providers that could hinder or distort competition in telecommunications markets, while still shedding light on the regulated providers performance in relation to the purposes in s 162.
- 2.38 We further consider that there is little prospect of any tension between ID requirements that would promote the purpose in s 162 (the outcomes of workable competition) and the outcomes in s 166(2)(b) (workable competition) to the extent that the promotion of workable competition may be relevant. We therefore consider that when we set ID requirements that best promote the purposes in s 186 and s 162 (as required by s 166(2)(a)), they will generally also best promote the purpose in s 166(2)(b).

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<sup>50</sup> As discussed above, the promotion of the purpose in s 162 is a mandatory consideration under s 166(2)(a).

<sup>51</sup> Further regulation could include additional ID disclosure requirements or, for regulated providers currently subject to ID regulation only, the introduction of PQ regulation.

*We have limited ability to exercise judgement in certain instances*

- 2.39 While all ID decisions must best give, or be likely to best give, effect to the s 166(2) purposes, in certain instances, rather than requiring us to exercise judgement, some of our decisions may only require:
- 2.39.1 the application of IMs (for example, determining the annual cost of capital for ID which largely requires the use of parameters set in the IMs)<sup>52</sup> which were previously determined because they best give, or are likely to best give, effect to the s 166(2) purposes; and
  - 2.39.2 the application of mandatory requirements in the Act (for instance, the regulated providers to which the ID determination applies).<sup>53</sup>
- 2.40 Where certain ID decisions do not require us to exercise judgement, we have not specifically explained those decisions by reference to the s 186 and s 166(2) purposes. Rather, we have explained those decisions by referencing our specific obligations under the IMs or the Act.
- 2.41 Where our ID decisions require us to exercise judgement (for instance, the specification of quality performance measures and statistics for the mandatory quality dimensions under clause 2.5.1 of the IMs),<sup>54</sup> we have explained why our decision to require (or not require) the disclosure of certain information in our ID determination would promote:
- 2.41.1 the purpose of ID in s 186 and the outcomes in s 162; and
  - 2.41.2 the purpose in s 166(2)(b) where relevant.

**Key questions relating to the performance of regulated providers**

- 2.42 To promote the purpose of ID in s 186 and the outcomes in s 162, and workable competition where relevant, information will be needed to determine whether the performance of a regulated provider is consistent with the performance outcomes that would be expected in a workably competitive market (as envisioned in s 162(a)-(d)).

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<sup>52</sup> [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 4 of Part 2 of Attachment B.

<sup>53</sup> Section 188(1)(a).

<sup>54</sup> [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 5 of Part 2 of Attachment B.

- 2.43 In order to make this assessment, interested persons need to be able to answer several key questions on different aspects of a regulated provider's performance. These questions relate to historical, current and future performance. Key performance questions to assess if the Part 6 purpose is being met include:
- 2.43.1 Is the regulated provider operating and investing in their assets efficiently? (s 162(a)-(b));
  - 2.43.2 Is the regulated provider innovating where appropriate? (s 162(a));
  - 2.43.3 Is the regulated provider supplying FFLAS at a quality that reflects end-user demands? (s 162(b));
  - 2.43.4 Is the regulated provider sharing the benefits of efficiency gains with end-users, including through lower prices? (s 162(c));
  - 2.43.5 Do the prices set by the regulated provider promote efficiency (s 162(b));?; and
  - 2.43.6 Is the regulated provider earning an appropriate economic return over time (s 162(d))?
- 2.44 Our view is that in order to answer these key performance questions, interested persons need a package of different types of information (both quantitative and qualitative), including how the network is being (or plans to be) managed, expenditure on different activities (both historical and forecast), quality outcomes and pricing.
- 2.45 We expect that our ID determination will evolve over time as new circumstances arise, and where we consider that different requirements are necessary following an analysis of how effective the ID requirements are in promoting the purpose in s 162.<sup>55</sup>

#### **The matters that must be included in our ID determination**

- 2.46 An ID determination relating to FFLAS that are subject to ID regulation must specify the following:<sup>56</sup>

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<sup>55</sup> Under s 187(3), we may, as part of a summary and an analysis, include an analysis of how effective the ID requirements imposed on regulated providers are in promoting the purpose in s 162.

<sup>56</sup> Section 188(1)(a)-(g).

- 2.46.1 The regulated providers to which it applies;
- 2.46.2 the information to be disclosed;
- 2.46.3 the manner in which the information is disclosed;
- 2.46.4 the form of disclosure;
- 2.46.5 when, and for how long, information must be disclosed;
- 2.46.6 the IMs that apply; and
- 2.46.7 any other methodologies that are required in the preparation or compilation of the information.

**Information that may be required to be disclosed**

- 2.47 An ID determination relating to FFLAS that are subject to ID regulation may specify (without limitation) one or more of the following:<sup>57</sup>
  - 2.47.1 financial statements (including projected financial statements);
  - 2.47.2 asset values and valuation reports;
  - 2.47.3 prices, terms and conditions related to prices, and pricing methodologies;
  - 2.47.4 contracts;<sup>58</sup>
  - 2.47.5 transactions with related parties;
  - 2.47.6 financial and non-financial performance measures;
  - 2.47.7 plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements;
  - 2.47.8 asset management plans;
  - 2.47.9 quality performance measures and statistics;

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<sup>57</sup> Section 188(2)(a)-(l).

<sup>58</sup> However, s 188(4) provides that an ID determination may not require a regulated provider to publicly disclose any provision of an existing contract that, immediately before the FFLAS became subject to ID regulation, was not required by or under any other enactment to be publicly disclosed.

- 2.47.10 assumptions, policies, and methodologies used or applied in these or other areas;
- 2.47.11 consolidated information that includes information about unregulated services; and<sup>59</sup>
- 2.47.12 information related to one or more parts of a fibre network

**Other things an ID determination may do**

- 2.48 An ID determination may do one or more of the following:<sup>60</sup>
  - 2.48.1 require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration;
  - 2.48.2 require independent audits of disclosed information;
  - 2.48.3 require the retention of data on which disclosed information is based, and associated documentation;
  - 2.48.4 exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions;
  - 2.48.5 provide for transitional provisions; and
  - 2.48.6 impose any other requirements that we consider necessary or desirable to promote the purpose of ID regulation.

*Section 188(3)(f) provides us with wide powers*

- 2.49 As set out in paragraph 2.48.6, section 188(3)(f) means that we can set any other requirement in an ID determination that we consider is “necessary or desirable” to ensure that sufficient information is readily available to interested persons to assess whether the Part 6 purpose is being met.

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<sup>59</sup> The specific requirements for consolidated information are specified in s 189.

<sup>60</sup> Section 188(3)(a)-(f).

- 2.50 For example, we may consider it is necessary or desirable for the purposes of ID to require a regulated provider to do a particular thing in relation to the information it is disclosing, which may be to provide us (and other interested persons) with assurances relating to that information (as an independent audit or statutory declaration would do under s 188(3)(a) and (b)).

### **Commission-only disclosures and exemptions from ID requirements**

- 2.51 As set out in paragraph 2.48.4, we have wide powers to exempt any person or class of persons from any requirements of the determination, or to provide for exemptions under s 188(3)(d).
- 2.52 We consider that the general power to provide for exemptions in s 188(3)(d) includes the power to set ID requirements that only require disclosure of information to the Commission.<sup>61</sup>
- 2.53 In addition to our general power to exempt persons from any ID requirements, or to provide for exemptions when making an ID determination, s 222 of the Act gives us the specific power to exempt the disclosure of commercially sensitive information from public disclosure as part of the requirements of ID or PQ regulation on application by a regulated provider.<sup>62</sup> We consider that this provision does not limit our power to set Commission-only ID requirements under s 188(3)(d), or to include provisions allowing for exemptions generally, and that it is rather a complementary provision that enables regulated providers to seek exemptions from public disclosure over and above those that are already included or provided for in the ID determination.
- 2.54 We will follow the mandated process set out in s 222 if, after we have made the ID determination, regulated providers seek exemptions on the grounds that information they are required to disclose is commercially sensitive.<sup>63</sup>
- 2.55 In carrying out our summary and analysis function we are further required to ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.<sup>64</sup>

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<sup>61</sup> We have adopted the same position in our ID determinations under Part 4 of the Commerce Act.

<sup>62</sup> This exemption power would exist even if we did not provide for exemptions under s 188(3)(d).

<sup>63</sup> We must give public notice of the exemption and the reasons for our decision if we decide to grant the exemption.

<sup>64</sup> Section 187(4).

- 2.56 We currently consider that we should only exempt regulated providers from publicly disclosing confidential or commercially sensitive information where the interests in protecting the information outweigh the interests of interested persons in the public disclosure of the information in light of the purpose of ID.
- 2.57 We note that Commission-only disclosures would be official information under the Official Information Act 1982, and any requests for access to such information would therefore need to be assessed under that Act.
- 2.58 Since we are setting ID requirements that we consider are appropriate to enable interested persons to assess whether the purpose of s 186 has been met and that best give effect to the purposes in s 166(2) we expect to only grant exemptions where regulated providers are able to persuade us there are good reasons for the exemption and that granting the exemption will not materially detract from these purposes.
- 2.59 Where a regulated provider fails to comply with the terms of an exemption the exemption will become void and the regulated provider will accordingly be required to comply with the ID requirements. A failure to comply with the ID requirements in these circumstances may amount to a contravention of an ID requirement that is subject to a pecuniary penalty under s 212(1) or a fine under s 214 as set out in paragraphs 2.74 to 2.77.

#### **Input methodologies that apply**

- 2.60 The IMs set out rules, requirements and processes applying to PQ and ID regulation under Part 6.
- 2.61 IMs relating to the supply of FFLAS must be applied:
- 2.61.1 By each regulated provider in accordance with our ID determination;<sup>65</sup> and
- 2.61.2 by us in recommending, deciding or determining how ID regulation should apply to FFLAS.<sup>66</sup>
- 2.62 The following IMs will apply:

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<sup>65</sup> Section 175(a).

<sup>66</sup> Section 175(b)(i).

- 2.62.1 cost allocation;<sup>67</sup>
  - 2.62.2 asset valuation;<sup>68</sup>
  - 2.62.3 taxation;<sup>69</sup>
  - 2.62.4 cost of capital (the term credit spread differential (**TCSD**) methodology and the calculation of the annual benefit of Crown financing only);<sup>70, 71</sup>
  - 2.62.5 quality dimensions.<sup>72</sup>
- 2.63 Unless specified otherwise, the IMs that apply are those that are in place at the time the ID disclosures are made. This means that where an IM is amended, the amended IM will generally apply to any subsequent ID disclosures. It is therefore important that regulated providers stay up to date on amendments to the IMs that apply to ID. While we publish consolidated versions of the IMs from time to time to assist stakeholders, the official and binding IMs are the original IM determinations and any amendment determinations.

#### **Obligations on regulated providers and us once our ID determination has been made**

- 2.64 Regulated providers that are subject to ID regulation must from 1 January 2022:<sup>73</sup>
- 2.64.1 Publicly disclose information in accordance with the ID requirements set out in our ID determination;

<sup>67</sup> The cost allocation IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 1 of Part 2 of Attachment B.

<sup>68</sup> The asset valuation IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 2 of Part 2 of Attachment B. The methodologies for determining the “initial RAB value” of the financial loss asset under clause 2.2.4(1) of Attachment B of the IMs are specified in Schedule B of Attachment B. Schedule B of the IMs includes a section for the asset valuation (Section 2) cost allocation (Section 3), taxation (Section 4) and cost of capital (Section 5) IMs used to determine the “initial RAB value” of the financial loss asset.

<sup>69</sup> The taxation IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 3 of Part 2 of Attachment B.

<sup>70</sup> The cost of capital IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 4 of Part 2 of Attachment B.

<sup>71</sup> Under s 191(1) regulated providers who are subject only to ID regulation do not have to apply IMs for evaluating or determining the cost of capital.

<sup>72</sup> The quality dimension IMs for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 5 of Part 2 of Attachment B.

<sup>73</sup> Section 187(1)(a)-(c).

- 2.64.2 supply to us a copy of all information required to be disclosed in accordance with our ID determination, with the ID requirements set out in our ID determination; and
- 2.64.3 supply to us, in accordance with a written notice by us under s 187(1)(c), any further statements, reports, agreements, particulars, or other information required for the purposes of monitoring the regulated provider's compliance with our ID determination.

### Summary and analysis

- 2.65 If a regulated provider is subject to ID regulation, we must, as soon as practicable after any information is publicly disclosed, publish a summary and analysis of that information for the purpose of promoting greater understanding of the performance of individual regulated providers, their relative performance, changes in their performance over time, and their ability to extract excessive profits.<sup>74, 75</sup>
- 2.66 The requirement to publish a summary and analysis of the information a regulated provider discloses confers an ongoing, active role on us in respect of the information disclosure regime after the ID requirements have been determined. We must, as soon as practicable, analyse the information regulated providers publicly disclose and then publish that analysis for the public (along with a summary of the disclosed information). As information is disclosed and analysed over time, it provides an ongoing source of information so that performance trends can be identified and monitored over time.
- 2.67 Our summary and analysis assists interested persons in assessing whether the Part 6 purpose is being met, because the summary and analysis we produce would help people to better understand the information that will be publicly disclosed and its relationship with the outcomes in s 162.
- 2.68 Our analysis role under ID is not simply to explain the information disclosed under ID, but to promote greater understanding of a regulated provider's performance. This means the scope of the analysis we undertake of information that a regulated provider discloses can be broad. For example, if we are analysing the information a regulated provider has publicly disclosed under ID, part of our analysis may extend to considering what factors are impacting that regulated provider's performance.

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<sup>74</sup> Section 187(2)(b) directs us to publish "on an Internet site maintained by or on behalf of [us]".

<sup>75</sup> Section 187(2)(b).

- 2.69 We may, as part of a summary and an analysis, include an analysis of how effective our ID requirements imposed on regulated providers are in promoting the purpose of Part 6 in s 162.<sup>76</sup>
- 2.70 If we assess that our ID requirements are not working effectively to promote the purpose of Part 6 in s 162, we may decide different ID requirements (or changes to existing ID requirements) are necessary. We may amend an ID determination at any time by setting new ID requirements or revising existing ID requirements, provided we consult with interested parties on material changes.<sup>77</sup>

### **Monitoring and analysis**

- 2.71 If a regulated provider is subject to ID regulation, we may monitor and analyse all information disclosed in accordance with our ID requirements.<sup>78</sup>
- 2.72 If we have questions regarding the information a regulated provider has disclosed, or if our analysis of the information a regulated provider has disclosed raises concerns regarding that regulated provider's performance, we may decide we need to engage with that regulated provider to gather more information.
- 2.73 Part of that further engagement may involve us issuing a regulated provider with a notice under s 187(1)(c) to supply us with further information (eg, further statements, reports, agreements or particulars), for the purpose of monitoring that regulated provider's compliance with our ID requirements.

### **Enforcement provisions applicable to ID regulation**

- 2.74 The High Court may, on application by us, order any person to pay a pecuniary penalty to the Crown for contravening an ID requirement under s 212, which must not, in respect of each act or omission:<sup>79</sup>
- 2.74.1 Exceed \$500,000 in the case of an individual; or
- 2.74.2 \$5,000,000 in the case of a body corporate.

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<sup>76</sup> Section 187(3).

<sup>77</sup> Under s 173(1), we must consult with interested parties before we make a material amendment to an ID determination. We may amend an ID determination in a non-material way without prior consultation.

<sup>78</sup> Section 187(2)(a).

<sup>79</sup> Section 212.

- 2.75 The High Court may, on application by us, order a regulated provider to comply with an ID requirement that applies to the provider.<sup>80</sup>
- 2.76 A person commits an offence if:<sup>81</sup>
- 2.76.1 The person, knowing that particular FFLAS are subject to ID regulation, intentionally contravenes any ID requirement relating to those services; or
  - 2.76.2 the person is subject to an order referred to in paragraph 2.75 and fails to comply with the order by the date, or within the period specified.
- 2.77 Where a person commits an offence under s 214(1), they are liable on conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate.<sup>82</sup>

### **Other matters**

#### *Declared services under Part 6 and undertakings under subpart 2 of Part 4AA*

- 2.78 In addition to ID regulation, Part 6 provides for an additional form of regulation through declared services that will apply to regulated providers that are subject to PQ regulation.
- 2.79 The Act provides for regulations made under ss 227 to 229 to declare certain FFLAS as anchor services (s 227), direct fibre access services (DFAS) (s 228) and unbundled fibre services (s 229). The Minister has responsibility for recommending that declared services regulations be made.
- 2.80 The Telecommunications (Regulated Fibre Services) Regulations 2021 were made on 13 September 2021. The regulations specify anchor broadband and voice services and one DFAS that Chorus must provide to RSPs.<sup>83</sup>
- 2.81 Sections 227 to 229 contemplate that the requirements of the declared services may be specified in detail, including by prescribing maximum prices and conditions on which the declared services must be offered to access seekers.

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<sup>80</sup> Section 213.

<sup>81</sup> Section 214(1).

<sup>82</sup> Section 214(2).

<sup>83</sup> [MBIE Fibre regulations](#) last updated 26 October 2021.

- 2.82 The declared services are matters that must be complied with as part of PQ regulation. Once services are declared, ss 198 to 200 provide that regulated providers that are subject to PQ regulation will have to provide the services and comply with the prescribed maximum prices and conditions.
- 2.83 Section 201 also provides that regulated providers that are subject to PQ regulation must apply geographically consistent pricing for FFLAS that are, in all material respects, the same.
- 2.84 Section 193(1)(b) in turn provides that regulated providers that are subject to PQ regulation must comply with ss 198 to 201.
- 2.85 Subject to any modifications under ss 206 and 230 regulated providers are also required to comply with the undertakings made under s 156AD in relation to the supply of FFLAS. The undertakings require:
- 2.85.1 non-discrimination in relation to the supply of wholesale telecommunications services provided using, or that provide access to unbundled elements of the regulated provider's fibre network;
  - 2.85.2 design and build of the fibre network in a way that enables equivalence in relation to the supply of unbundled layer 1 services on or after 1 January 2020 for UFB1 and 1 January 2026 for UFB2; and
  - 2.85.3 equivalence in relation to the supply of unbundled layer 1 services on or after 1 January 2020 for UFB1 and 1 January 2026 for UFB2.
- 2.86 We consider that these matters are relevant considerations when we set the ID requirements as they are directed at promoting the Part 6 purpose and their application will feed through to the performance of the regulated providers relative to the outcomes in s 162.
- 2.87 Where we considered any of these matters to be relevant to our decisions they are discussed in our reasoning.

*ID requirements and our other functions and responsibilities*

- 2.88 In addition to allowing interested persons to assess whether the purpose of Part 6 is being met the information we receive under ID regulation will often assist us in carrying out our other responsibilities.
- 2.89 Revenue, pricing and quality information together with other disclosures will assist us in making Chorus' future PQ determinations and carrying out our statutory reviews under subpart 7 of Part 6 such as:

- 2.89.1 determining the appropriate duration of the regulatory period for purposes of PQ regulation per s 207(2);
  - 2.89.2 the anchor services review under s 208, which specifies that if a recommendation is made for a maximum price for the anchor services after PQP1, such a price has to be cost-based (s 208(6)(b));
  - 2.89.3 the PQ reviews under s 209, including whether maximum revenues should continue to be specified under PQ regulation; and
  - 2.89.4 assessments on whether to open a deregulation review per s 210(3).
- 2.90 We also have enforcement responsibilities regarding regulated FFLAS including those relating to:
- 2.90.1 contraventions of PQ requirements by regulated providers subject to PQ regulation (including any failure to comply with the requirements of the declared services in ss 198 to 200 and the obligation under s 201 to apply geographically consistent pricing);
  - 2.90.2 contraventions of information disclosure requirements by regulated providers subject to ID regulation;
  - 2.90.3 complaints under s 156O of a breach of an undertaking made under s 156AD; and
  - 2.90.4 the provisions of the Commerce Act that prohibit restrictive trade practices and certain business acquisitions.
- 2.91 While the information we obtain from ID can be used for all of these ancillary purposes, we have not taken account of these matters when setting the ID requirements, as we consider they are too remote from the purpose of ID to warrant their consideration when setting the ID requirements.
- 2.92 We will use the information gathering powers that are specified in the Act for these purposes, including the powers under s 98 of the Commerce Act incorporated via s 15(f), s 187(1)(c), s 193(2), and s 221.

### **Economic Framework**

- 2.93 This section discusses:
- 2.93.1 the high-level economic framework we have applied when making decisions for our initial ID determination; and

2.93.2 the application of the economic framework for the initial ID determination.

### **Economic framework**

2.94 As part of our fibre IM decision-making process, we developed an economic framework to help guide the decisions we make in developing the new regulatory regime for Part 6. The framework helps us make individual decisions that are consistent with each other, and with the requirement to best give effect to the purposes described in s 166(2) of the Act. We consider that this framework is equally relevant to our decision-making process for ID regulation and we have relied on it in developing the reporting requirements in the ID determination.

2.95 The economic framework includes three components:<sup>84</sup>

2.95.1 economic principles, including real financial capital maintenance (FCM), allocation of risk, and asymmetric consequences of under/over investment;

2.95.2 an incentive framework to help us evaluate how the regime may interact with the incentives faced by regulated providers and assist us in identifying risks to end-users; and

2.95.3 a ‘competition screening’ approach to help us assess whether our decisions might be relevant to competitive outcomes in telecommunications markets.

### *Key economic principles*

2.96 We adopted the following key economic principles to help us develop and implement the Part 6 regime, including ID regulation.<sup>85</sup>

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<sup>84</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 2.272-2.335 and 2.383-2.399.

<sup>85</sup> For an in-depth discussion of the key economic principles, see Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 2.272-2.316.

- 2.96.1 **Real financial capital maintenance (FCM):** we set our regulatory rules in a way that provides a regulated provider with an *ex-ante* opportunity to earn a normal return on capital.<sup>86</sup> Allowing regulated providers the *ex-ante* opportunity, but not the guarantee, of earning normal returns provides them with a chance to maintain the financial capital they have invested, therefore maintaining incentives to invest.
- 2.96.2 **Allocation of risk:** ideally, we allocate risks to regulated providers or end users depending on who is most able to manage the risk, unless doing so would be inconsistent with the Part 6 purposes. Appropriate risk allocation, and where relevant appropriate compensation for the risks carried, maintains incentives to invest and promotes efficient behaviour.
- 2.96.3 **Asymmetric consequences of over-/under-investment:** this principle requires us to consider whether, over the long-term, there are asymmetric consequences to end-users of under-investment in regulated FFLAS versus over-investment. If a material asymmetry exists, this principle allows us to recognise the asymmetry and consider ways to mitigate the risks to end-users (eg, through applying an uplift to the regulatory weighted average cost of capital (**WACC**)).
- 2.97 The three key economic principles provide useful guidance to us in giving effect to the purposes in s 166(2) and we would not depart from them lightly. However, these principles are not intended as a ‘regulatory compact’—that is, they do not form an (implicit) agreement between us as the regulator and regulated providers. If the principles cease to be consistent with the purposes in s 166(2) or are not, in a particular situation, consistent with these purposes, we will be transparent with stakeholders about the fact that we could not continue to apply one (or more) of the principles.<sup>87</sup>

### *Incentive framework*

- 2.98 At its core, our regulation aims to introduce incentives for regulated providers to behave in ways consistent with the purposes described in s 162 of the Act. The transparency introduced through ID reporting requirements:

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<sup>86</sup> A ‘normal return’ on capital is the return that an efficient firm has an *ex-ante* opportunity to earn in a workably competitive market. See also Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraph 2.26.

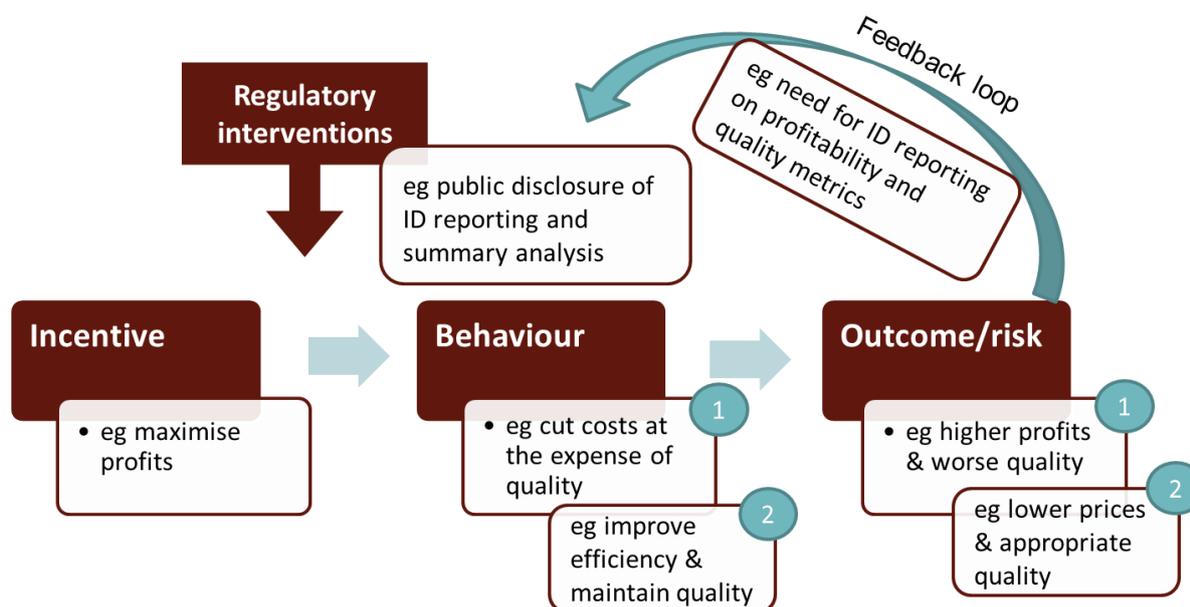
<sup>87</sup> See also Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 2.282-2.288.

- 2.98.1 incentivises regulated providers to charge prices in line with competitive outcomes limiting their ability to earn excessive profits (s 162(d));
  - 2.98.2 incentivises regulated providers to share any efficiency gains with end-users over time (s 162(c));
  - 2.98.3 allows interested persons to assess whether the quality of FFLAS reflects end-user demand (s 162(b)); and
  - 2.98.4 allows interested persons to evaluate whether new or innovative products are introduced over time (s 162(a)).
- 2.99 The threat of increased regulation through additional ID reporting requirements (or a potential move from ID to PQ regulation) further strengthens these incentives.
- 2.100 In line with the purposes in s 166(2), the regulatory rules introduced through our ID determinations, underpinned by the fibre IMs and supported by the enforcement provisions specified in sections 212-214 of the Act,<sup>88</sup> aim to better align the incentives of regulated providers with the long-term interests of end-users. The incentive framework (partly illustrated in Figure 2.2 below) helps us ensure we have a more holistic view of how the regime may interact with the incentives faced by regulated providers or create consequential incentives for regulated providers. The incentive framework therefore assists us in identifying risks to end-users.

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<sup>88</sup> See discussion at paragraphs 2.74-2.77 above.

**Figure 2.2 A regulated provider's incentives without and with ID regulation**



- 2.101 We have relied on this incentive framework to identify the approach to setting the ID rules that we consider will best promote the long-term benefit of FFLAS end-users, as required by the Part 6 purpose described in s 162.
- 2.102 The incentives faced by regulated providers may also be affected by competition.<sup>89</sup> This is explicitly recognised by the requirement in s 166(2)(b) of the Act for our decisions to consider the promotion of workable competition in telecommunications markets for the long-term benefit of end-users, where relevant.
- 2.103 The following are examples of other relevant considerations that affect the incentives of regulated providers.

<sup>89</sup> For regulated providers that are also subject to PQ regulation, the incentives created by the requirements set under PQ regulation, such as the revenue cap, will further interact with the incentives created by ID regulation.

- 2.103.1 The repeated nature of regulation allows us to observe and publish information on the performance of individual regulated providers (including their relative performance and changes in their performance over time), which lessens the incentive and therefore the risk of regulated providers behaving in ways that are not to the long-term benefit of end-users.<sup>90</sup>
- 2.103.2 Greater competitive pressure mitigates some of the incentives of regulated providers to behave in ways that are not in the long-term interest of end-users, which lessens the need for regulation. For example, the incentive to under-invest at the expense of quality is weakened, since the regulated provider would then risk losing end-users dissatisfied with the level of quality to competing firms supplying products based on alternative technologies.

*Approach to applying s 166(2)(b)*

- 2.104 We have not changed the considerations that we identified for our competition screening for purposes of our fibre IM decision-making process.
- 2.105 We consider that the most appropriate way to give effect to s 166(2)(b) at this stage of our regulatory development process is to apply a high-level 'competition screening' by asking ourselves whether the ID requirements we are considering:
- 2.105.1 have a role in mitigating risks to competition at any telecommunications market level; and/or
- 2.105.2 could be used to promote competition at a given market level that would result in expected net benefits to telecommunications end-users in the long-term.
- 2.106 As explained at paragraphs 2.36-2.38 above we consider that ID regulation has a greater role in mitigating risks to competition than actively promoting competition.

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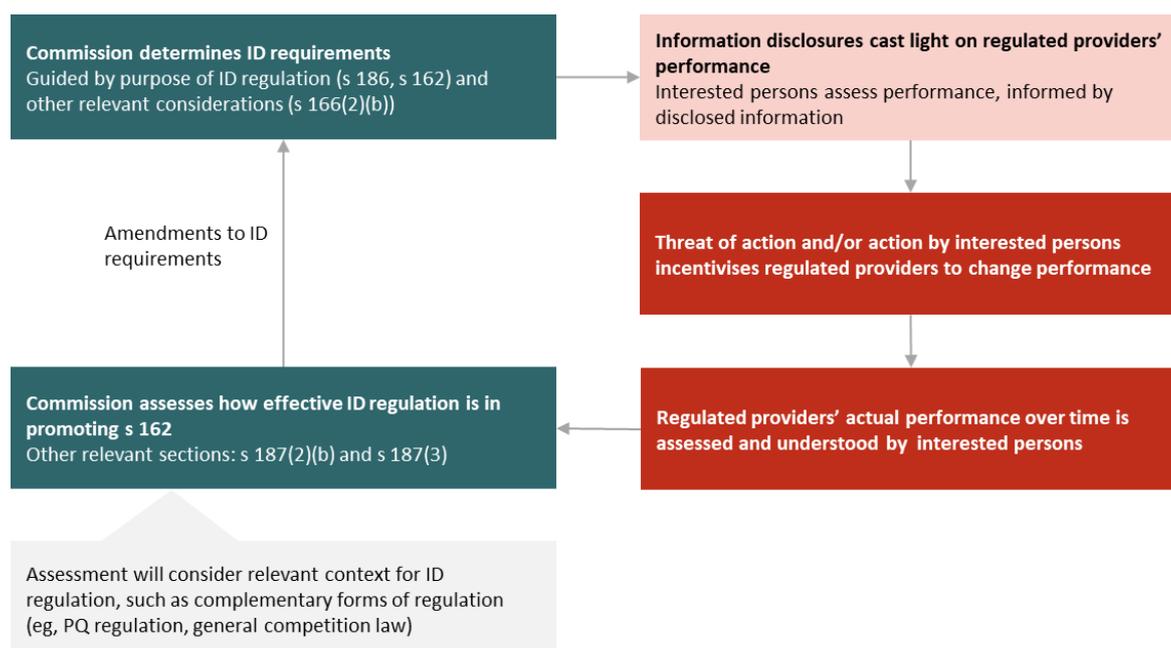
<sup>90</sup> See discussion from paragraph 2.65 above.

- 2.107 In particular, when we set the ID requirements, we see our role in relation to s 166(2)(b) as promoting conditions that allow for competition on the merits by mainly mitigating the risk of regulated providers engaging in conduct that might hinder the emergence of competition, rather than one where we should take active steps to encourage competition by favouring the interests of an actual or potential competitor or class of competitors.

### Application of the economic framework when we make the initial ID determination

- 2.108 The reporting requirements imposed by ID regulation on regulated providers will assist interested parties in assessing whether the purposes of Part 6 are being met and may incentivise regulated providers to improve their performance.
- 2.109 The reporting requirements contained in the initial ID determination are a starting point that we expect to refine over time (see Figure 2.3 below).

**Figure 2.3 How information disclosure regulation is intended to work**



Note: The evolving understanding of performance may also inform other changes outside the scope of ID regulation, for example a change in the scope of PQ regulation.

- 2.110 The increased level of transparency resulting from public disclosure of information ensures that all stakeholders can assess the performance of regulated providers against the purposes at s 166(2). This transparency, together with the prospect of the information being summarised and analysed by us also influences regulated providers' performance to become more consistent with the outcomes in s 162 over time.
- 2.111 For example, influencing regulated providers' performance includes encouraging the movement of prices closer to efficient prices, and the provision of services of a quality demanded by end-users. The threat of further regulation strengthens the incentives provided by ID regulation.
- 2.112 Over time we intend to assess how effective ID regulation is in promoting s 162. This may result in changes to ID requirements, for example:
- 2.112.1 to improve assessments of enduring performance areas (eg, profitability); and
  - 2.112.2 to enable assessments of newly emerging issues (eg, changes in competition due to market developments).
- 2.113 We acknowledge that prior to the implementation of the initial ID determination, we will know the least (relative to any subsequent period) about:
- 2.113.1 the existing cost efficiency of regulated providers and their ability to realise cost efficiencies over time;
  - 2.113.2 the extent to which the profitability of regulated providers is consistent with the return on capital that might be expected in workably competitive markets;
  - 2.113.3 the extent to which prices of FFLAS are efficient (and thus, consistent with those that might be expected in workably competitive markets);
  - 2.113.4 end-users' and RSPs' preferences about the quality of FFLAS supplied, including the quality dimensions and measures that are of greatest concern to end-users; and
  - 2.113.5 to the extent relevant, the expected efficacy of the (initial) ID reporting requirements in achieving outcomes consistent with the purposes at s 162 and, in promoting workable competition in telecommunications markets for the long-term benefit of end-users over time, consistent with s 166(2)(b).

- 2.114 The repeated nature of reporting under ID regulation and assessing performance will reveal more information about each of these factors over time. In turn, we expect to refine the initial ID reporting requirements to reflect market developments or to increase the incentives on regulated providers to behave in ways consistent with outcomes in workably competitive markets.
- 2.115 We note that as part of our IM decision-making process, we considered whether setting a pricing structure or a pricing methodology IM would best promote the Part 6 purposes at s 166(2). For the reasons explained in our fibre IMs main reasons paper we did not consider that a pricing structure IM is necessary at this time.<sup>91</sup>
- 2.116 Nonetheless, we are aware of the risks of inefficient price structures, including price structures that may have anticompetitive effects. We intend to monitor prices through targeted ID requirements and assess whether further intervention is required in the future. Our ID requirements related to prices are outlined in Chapter 5 below.

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<sup>91</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), Chapter 9, paragraphs 9.173 – 9.177.

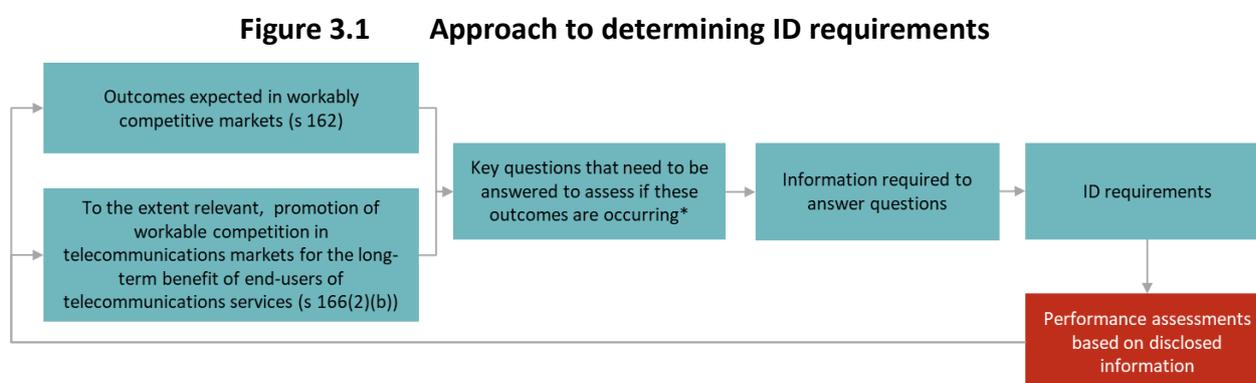
## Chapter 3 Overview of ID requirements

- 3.1 This chapter contains a high-level view of the information we require to be disclosed and other key overarching decisions.
- 3.2 In this chapter we discuss the following matters:
- 3.2.1 overview of information needed to assess whether the Part 6 purpose is being met;
  - 3.2.2 balance dates and timing of disclosure reporting;
  - 3.2.3 form of disclosures; and
  - 3.2.4 commercially sensitive disclosures.

### Overview of information needed to assess whether the Part 6 purpose is being met

#### Overall approach to determining ID requirements

- 3.3 The figure below shows the approach we followed to determine the ID requirements.

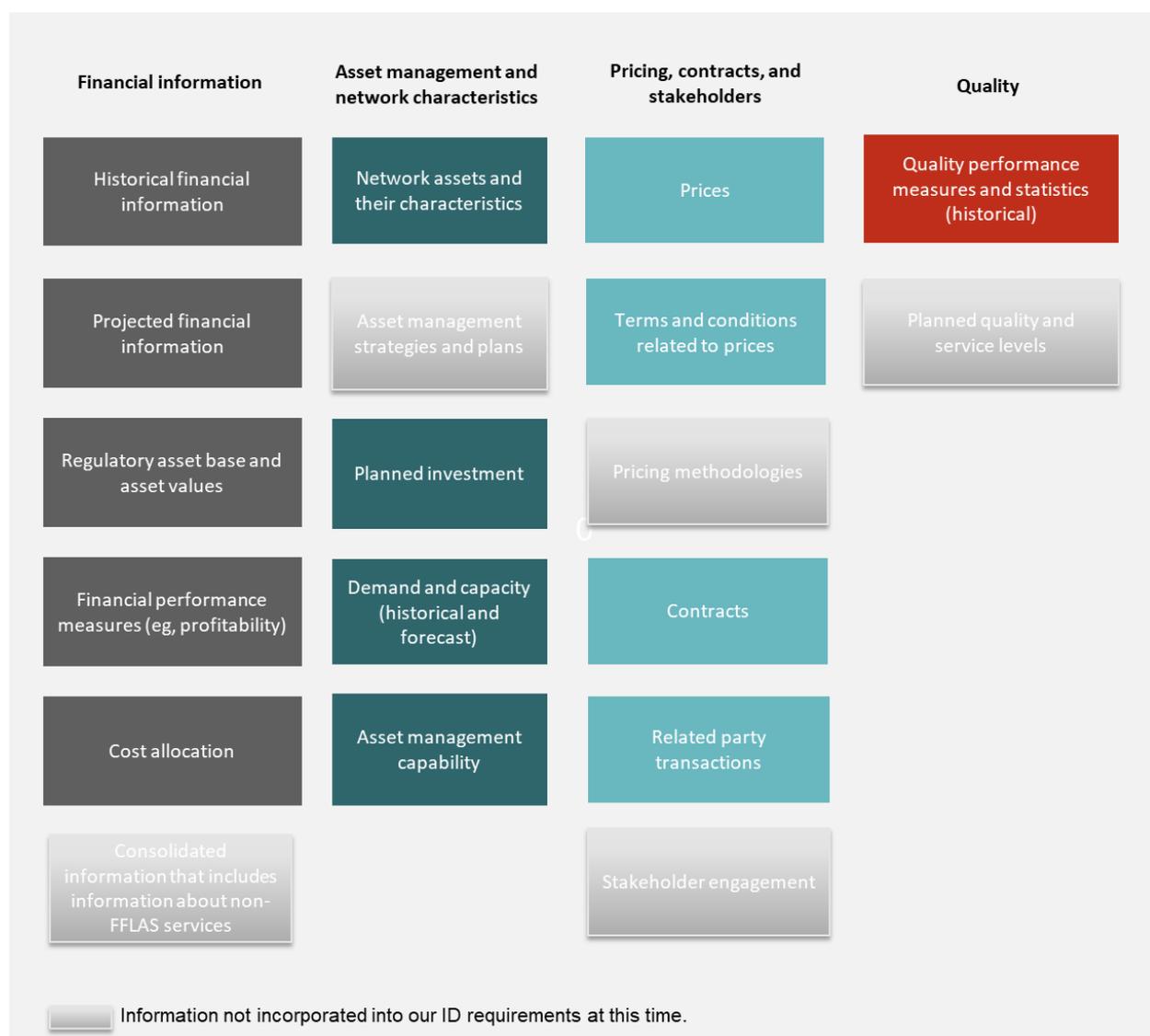


Note: \*Key performance questions to be answered are contained in paragraph 2.43 above. In practice, we identified more detailed questions which then drove our ID requirements.

### Overview of areas for which we have determined ID requirements

- 3.4 We consulted on our initial view of areas that might inform the development of the ID requirements in our approach paper and set out existing disclosures which we considered provided useful context.<sup>92</sup>
- 3.5 Figure 3.2 shows which areas we have incorporated into our final requirements.

**Figure 3.2 Areas incorporated into our ID requirements**



<sup>92</sup> Commerce Commission “[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)” (15 September 2020), pages 77 to 81.

## General matters we considered when deciding on our approach to ID

3.6 When deciding our approach to developing the ID requirements we have sought to minimise compliance costs and complexity and to ensure consistency where this does not detract from the relevant statutory purposes and mandatory considerations in Part 6. Such measures include:

3.6.1 Drawing on other ID precedents (while remaining cognisant of differences in the technological and market contexts and the language in the relevant statutory provisions) which stakeholders generally supported,<sup>93</sup> including:

3.6.1.1 existing LFC ID requirements under Subpart 3 of Part 4AA,<sup>94</sup> and

3.6.1.2 ID requirements under Part 4 of the Commerce Act 1986 (Commerce Act).<sup>95</sup>

3.6.2 Aligning our ID requirements with Crown Infrastructure Partners (CIP) requirements. CIP, as part of its oversight of the regulated providers, has imposed certain reporting obligations that may overlap with our requirements.<sup>96</sup> Drawing on current UFB contractual reporting that is well-understood by stakeholders will also ease transition.

3.6.2.1 We have aligned our requirements to allow regulated providers to produce information for us using the same data as that used for reporting to CIP where we consider this appropriate.

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<sup>93</sup> Commerce Commission “[Fibre information disclosures – draft decisions – reasons paper](#)” (27 May 2021), paragraphs 3.5-3.7.

<sup>94</sup> [LFC Information Disclosure Determination 2018](#) [2018] NZCC 10 (22 August 2018). [Chorus Information Disclosure Determination 2018](#) [2018] NZCC 9 (29 June 2018). These disclosures are only to the Commerce Commission. The disclosures themselves are not published, but some of the information has been used in published reports, eg, Commerce Commission “[Study into fibre services, Summary report issued under s 9A of the Telecommunications Act 2001](#)” (17 December 2018).

<sup>95</sup> For example, Commerce Commission “[Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper](#)” (1 October 2012); Commerce Commission “[Electricity Distribution Information Disclosure Determination 2012](#)” (3 April 2018); and our [disclosure requirements for airports](#).

<sup>96</sup> For example, those agreed as part of the Network Infrastructure Project Agreements between CIP and each regulated provider [www.crowninfrastructure.govt.nz/ufb/who/](http://www.crowninfrastructure.govt.nz/ufb/who/).

- 3.6.2.2 For quality disclosures, we have built in a 9-month transitional period when regulated providers can continue to report on a subset of CIP measures quarterly as they currently do, although in a standardised format.
- 3.6.3 Utilising data the regulated providers are likely to have for other purposes.
- 3.6.4 Focusing on key information that is most likely to enable interested persons to assess whether the Part 6 purpose is being met.

### **Regulatory reporting principles**

- 3.7 Regulated providers must adopt regulatory reporting principles. This will avoid the cost and complexity of developing a comprehensive set of detailed requirements while promoting the accuracy and consistency of the disclosures. The regulatory reporting principles are:
  - 3.7.1 *Objectivity*: regulated providers must apply reporting processes that are objectively justifiable and reasonable. These processes, any changes to them, and any supporting assumptions or data, should be documented such that an informed reader can easily judge their reasonableness.
  - 3.7.2 *Consistent treatment*: regulated providers must treat similar types of information consistently, both within a reporting period and from year to year.
  - 3.7.3 *Causality*: regulated providers must attribute all revenue, expenses, and assets on the basis of cost causation principles.
  - 3.7.4 *Data Retention*: regulated providers must retain copies of all data and documentation detailing the processes related to the information disclosed for seven years.<sup>97</sup> This is consistent with the data retention requirements in New Zealand for taxation and under the Companies Act.
  - 3.7.5 *Use of NZ GAAP*: Except where the requirements otherwise provide, regulated providers must prepare all financial ID in accordance with NZ GAAP.<sup>98</sup>

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<sup>97</sup> Under s 188(3)(c) we can "require the retention of data on which disclosed information is based, and associated documentation."

<sup>98</sup> GAAP is defined in section 8 of the Financial Reporting Act 2013.

### **Different Requirements for Chorus and other regulated providers**

- 3.8 As Chorus is subject to PQ as well ID regulation, Chorus has additional reporting requirements over and above those required by other regulated providers. Chorus is required to complete three sets of disclosures, being PQ, ID-only and ID (which combines the other two).
- 3.9 In addition, for disclosure years 2022, 2023 and 2024 Chorus is required to report expenditure information at a more detailed level than other regulated providers. This is to enable other regulated providers to develop the capability for reporting at the more detailed level, which is based on the categorisation in Chorus' expenditure proposal for PQP1.
- 3.10 We have therefore developed two sets of disclosure Schedules: one for Chorus and one for other regulated providers. The information required is essentially the same but reflects that Chorus is reporting performance in relation to PQ regulated assets and ID-only regulated assets separately and also some information at a more detailed level than other regulated providers.

### **Balance dates and timing of disclosure reporting**

#### **Regulatory disclosure years**

##### *Final decision*

- 3.11 The regulatory disclosure year-end for each regulated provider is as follows:
- 3.11.1 Chorus: 31 December;
  - 3.11.2 Enable: 30 June;
  - 3.11.3 Northpower: 31 March;
  - 3.11.4 Tuatahi: 31 March.
- 3.12 With the exception of Chorus all regulated providers disclosure year-ends are aligned with their financial reporting balance dates.

##### *Reasons*

- 3.13 Aligning the regulatory disclosure year-end with the company financial reporting balance dates is the least cost option for regulated providers other than Chorus.

- 3.14 Northpower advised that it changed its balance date on 30 June 2021 to align with that of its parent company, Northpower Limited, and to meet requirements for subsidiary companies under the Companies Act 1993. Northpower's new balance date is 31 March and its 2022 financial year will end on 31 March 2022. We have revised Northpower's disclosure year-end to align with its financial year-end. Relevant IM amendments have also made to reflect the change of balance date.
- 3.15 For Chorus, the 31 December date is a pragmatic choice, which aligns its PQ path, annual PQ path compliance requirements and disclosure years to 31 December. Because Chorus produces six monthly accounts for investors, the compliance costs of departing from its company balance date of 30 June are less significant.
- 3.16 Regulatory financial information based on general purpose financial reporting is likely to be more accurate and robust. For example, year-end accruals are incorporated and the information, where it is GAAP-based, is already audited to the same level as the statutory accounts. There is no need for additional reconciliations.
- 3.17 We consider that the information will therefore best meet the needs of interested persons to assess whether the purpose of Part 6 is being met.

#### *Discussion*

- 3.18 Regulatory accounting and reporting is largely based on GAAP financial information which is prepared to align with statutory general purpose financial reporting dates, based on company balance dates.
- 3.19 Generally, implementing a different reporting period to that already being used by companies for general purpose financial reporting is costly. This is because reconciliations between the regulatory reporting and the general purpose financial reporting need to be prepared and the preparation of information for different periods often involves duplication of other reporting processes (including, for example, certification and audit) to ensure that the information produced is reliable.
- 3.20 There need to be good reasons why a company should incur the additional cost of maintaining additional accounting period dates purely for regulatory purposes (companies can choose additional accounting periods for other reasons).
- 3.21 The compliance costs associated with implementing common reporting dates which differ to financial reporting dates for non-financial information are likely to be less significant.
- 3.22 In making our draft decision we have assessed three main considerations:

- 3.22.1 regulatory and statutory accounting information have different purposes;
- 3.22.2 linkages with statutory requirements under Part 6 (Chorus PQP1 regulatory year ends on 31 December 2022); and
- 3.22.3 costs of dealing with regulatory accounting issues following a merger/acquisition transaction.

*Submissions on the draft decisions*

- 3.23 Enable/Tuatahi supported the alignment of their disclosure year ends to their financial reporting balance dates.<sup>99</sup>

*Regulatory and statutory accounting information have a different purpose.*

- 3.24 Information disclosed under Part 6 has a targeted purpose which is different than that applying to statutory financial accounts.
- 3.25 To the extent that comparisons between companies provide useful insights for interested persons on company performance consistent with the purpose of Part 6 a common regulatory balance date may be justified.
- 3.26 In most cases, however, performance measures for the same reporting period, (ie, 12 months, can be directly compared, notwithstanding that balance dates are not aligned). We do not consider that factors that may affect the measurement of performance at a particular date, such as seasonality of demand, provide sufficient reason to require a common reporting date.

*Linkages with statutory requirements under Part 6*

- 3.27 Chorus' first PQ regulatory period is required to start on 1 January 2022 and end on 31 December 2024. Chorus' PQP1 regulatory year ends on 31 December.
- 3.28 Our PQ decision is therefore to align price-path projections with calendar years (eg, the financial modelling will use an opening RAB of 1 January and a closing RAB of 31 December).<sup>100</sup> This will mean that for PQP1 there are no part years.

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<sup>99</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), paragraph 3.4.

<sup>100</sup> Our final PQ decision will be published on 16 December 2021.

- 3.29 Setting a disclosure year-end of 31 December will also ensure that all Part 6 regulatory information for Chorus is produced for the same period, reducing compliance costs.

*Costs of dealing with regulatory accounting issues following a transaction.*

- 3.30 There are complex consequences of mergers and acquisitions including consideration of whether a subsidiary should adopt a parent balance date for financial reporting purposes.<sup>101</sup>
- 3.31 The adoption of a common regulatory reporting date would not necessarily reduce this complexity as regulatory accounts would still need to deal with the effects of part-year transactions.
- 3.32 To the extent there are additional costs arising from a merger or acquisition in the event that there is not a common regulatory reporting date, it is unclear whether it is more beneficial to consumers for the businesses or the regulator, for whom the opportunity cost may be higher, to bear these costs. The expected value of these costs must also be weighed against the ongoing costs to the businesses of having a regulatory reporting date that is not aligned to their statutory balance dates.
- 3.33 On balance we consider the value of the ongoing costs of not having regulatory reporting dates aligned to statutory financial reporting dates outweighs the expected value of merger and acquisition costs that might be mitigated by having a common regulatory reporting date.

**Form of disclosures**

- 3.34 We have developed Schedules that all regulated providers must use when providing information to us. These Schedules are part of our Determination and serve several purposes. They:
- 3.34.1 reduce the risk of non-compliance and error by regulated providers by making it easier for them to check that all required information is provided and providing links between summaries and calculations that use common inputs;
  - 3.34.2 reduce the cost and complexity of preparing disclosures; and

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<sup>101</sup> A recent example of an acquisition under Part 4 is the First Gas purchase of Vector's gas transmission and non-Auckland gas distribution networks.

3.34.3 ensure consistency across regulated providers. Disclosures should generally be consistent across regulated providers and reporting periods. This will enable the Commission to meaningfully compare the performance of regulated providers, monitor industry trends, and publish summaries and reports for the benefit of industry and the public. Accordingly, we have defined many of the line items that will be used in the standard report layouts.

3.35 Some ID requirements will not need to be provided in Schedules (eg, asset capability information).

### **Confidential or commercially sensitive disclosures**

3.36 Attachment C contains a list of what we consider to be confidential or commercially sensitive disclosures that may be disclosed as Commission-only information under s188(3)(d).

3.37 We currently consider that we should only exempt regulated providers from publicly disclosing confidential or commercially sensitive information where the interests in protecting the information outweigh the interests of interested persons in the public disclosure of the information in light of the purpose of ID.

### **Process for considering how to treat commercially sensitive ID requirements**

3.38 Where we considered commercially sensitive information to be required as part of ID disclosures, we have protected the interests of the supplier of the information by:

3.38.1 disclosure in a form that renders the information less sensitive (eg, by requiring reporting at a higher level of aggregation); and

3.38.2 reporting of information at such frequency or with a time delay that the information loses its commercial sensitivity.

3.39 Where we could not render the information less commercially sensitive, and the interests in protecting the information outweigh the need for public disclosure of the information in light of the purpose of ID, we have required the disclosure of this information as Commission-only.<sup>102</sup>

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<sup>102</sup> Relevant worksheets in the Schedule templates are marked with the words "May be Commission only" in blue text where disclosures may be Commission only.

- 3.40 However, regulated providers are able to seek exemptions from public disclosure over and above those that are already included or provided for in the ID determination under s 222.

#### **Submissions on our draft decisions**

- 3.41 Chorus submitted that a more appropriate avenue for some commercially sensitive disclosures would be a request under either s 187(1)(c) or s 221 of the Act, rather than via the ID regime.<sup>103</sup>
- 3.42 Regulated providers also submitted that we required a number of disclosures of commercially sensitive information that should be Commission-only information under s188(3)(d).
- 3.43 We are of the view that all of the information we proposed as ID requirements in our draft decisions is required as part of an ID regime to meet the Part 6 purpose.
- 3.44 We considered whether the information in each submission is commercially sensitive and:
- 3.44.1 concluded that some of the information was not commercially sensitive, or some the information was commercially sensitive but the aggregated level at which we required reporting, or the frequency or delay in timing of the disclosures, made it less commercially sensitive;
  - 3.44.2 we made some changes to require reporting at an aggregated level; and
  - 3.44.3 we made some disclosures Commission-only as indicated in Attachment C.
- 3.45 Submissions received on information purported to be commercially sensitive related to historical and forecast financial, asset management, pricing and contracts and quality information. These are discussed more fully in the relevant chapters.

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<sup>103</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 24.

## Chapter 4 Financial Information for the Disclosure Year

### Purpose and structure of this chapter

- 4.1 This chapter provides the background to, and our reasoning for, the disclosure of historical financial information.
- 4.2 In this chapter we discuss the following matters:
- 4.2.1 summary of final decisions;
  - 4.2.2 requirements of the Act and IMs;
  - 4.2.3 an explanation as to why interested persons need historical financial information to assess performance;
  - 4.2.4 the relationship of historical financial information to other reporting frameworks and our IM Determination;
  - 4.2.5 return on investment;
  - 4.2.6 calculation of regulatory profit (and supporting Schedules) including our reasons for the rules regarding disclosure of related party transactions;
  - 4.2.7 our approach to updating the initial RAB value for ongoing changes (annual roll-forward); and
  - 4.2.8 our approach to the level of assurance required for historical financial information.

### Summary of final decisions

**Table 4.1 Overview – Final Decisions on Financial Information**

Category	Final decisions on information required	Reference to Schedules	Relevant part of Part 6 purpose statement
<b>Return on investment</b>	Headline ROI		
	ROI (comparable to a vanilla, and post-tax WACC)	Chorus: Schedules 1a, 1b, 1c	S 162(d)
	Supporting information on the calculation of the ROI, including limited information on the benefit of crown financing, asset stranding allowance and TCSD, cost of capital	ID-only regulated providers: Schedule 1	

Category	Final decisions on information required	Reference to Schedules	Relevant part of Part 6 purpose statement
<b>Regulatory profit</b>	Calculation of regulatory profit	Schedule 2	S 162(d)
<b>Historical expenditure by category</b>	A breakdown of historical expenditure by category.	Schedules 5, 5a, 6, and 7	S162(a), s162(b)
<b>Value of the Regulatory Asset Base (RAB value)</b>	RAB value, including loss asset, rolled forward, with information on the roll forward calculation, and asset allocation	Chorus: Schedules 4b, 4c, 4d  ID-only regulated providers: Schedule 4	S 162(d)
<b>Supporting information</b>	TCSD, Annual benefit of crown financing, regulatory tax, treatment of related party transactions  Information on qualifying debt may be disclosed to the Commission only	Schedules 2a, 2b, 3, 5, 6, 9	S 162(d)
<b>Allocation of assets and costs</b>	Disaggregated by expenditure type  Information at a cost/asset category level may be disclosed to the Commission only	Schedules 4a, 5a	S 162(d)
<b>Information to assist compliance: asset and cost allocation</b>	Additional detail on the allocation of assets and costs.	Chorus: Schedules 10a, 10b, 11, 11a  ID-only regulated providers: Schedules 10, 11, 11a	S 162(d)
<b>Transitional financial information</b>	For the first disclosure, the financial information does not need to include targets, and only has to include information from the implementation date.	All Schedules	S 162(d)

## Requirements of the Act and IMs

- 4.3 We have required the disclosure of financial information on historical and expected future performance.

- 4.4 Historical financial information is required in a series of Schedules about return on investment (**ROI**), regulatory profit, and investments in assets used for regulatory purposes (**the RAB value**). It includes both key indicators and supporting information. The Schedules include disclosure of line items or components underlying the high-level financial indicators.
- 4.5 Each required disclosure is able to be specified as part of ID regulation under the Act,<sup>104</sup> as explained in Chapter 2, paragraph 2.47.
- 4.6 The information will:
- 4.6.1 allow interested parties to better understand trends over time, as well as understand issues such as the overall profitability of fibre networks and the costs of rolling out and operating a fibre network; and
  - 4.6.2 allow the Commission to carry out summary and analysis to help interested persons to better understand the information disclosed and the financial performance of the regulated provider.
- 4.7 The importance of the disclosure of the financial information is explained further in this chapter, from paragraph 4.13.
- 4.8 As Chorus is subject to PQ as well ID regulation, Chorus has additional reporting requirements over and above those required by other regulated providers.

### **Application of our Regulatory Framework**

#### *The purposes in Part 6*

- 4.9 We have applied our Regulatory Framework and consider that the decisions in this chapter meet the purpose of s 186 by requiring the disclosure of sufficient, readily available financial information on historical and expected future performance so that the Commission and other interested persons can assess whether the Part 6 purpose is being met.
- 4.10 We consider that all our final decisions in this chapter, together, best give, or are likely to best give, effect to the s 166(2) purposes as:

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<sup>104</sup> Section 188(2).

- 4.10.1 the disclosure of the financial information that enables the Commission and other interested persons to assess whether a regulated provider's performance is consistent with the outcomes in s 162 will also best promote those outcomes; and
- 4.10.2 we have considered our competition screening questions and have not identified any reasons why the promotion of workable competition in telecommunications markets for the long-term benefit of end-users has implications for any of the decisions.
- 4.11 We have not explained why each individual decision best gives, or is likely to best give, effect to the s 166(2) purposes. Rather, each decision is intended to contribute to our overall determination of the provision of financial information that meets the purpose of s 186 and best gives, or is likely to best give, effect to the s 166(2) purposes.

#### *Application of IMs*

- 4.12 Regulated providers must apply the following IMs to financial information disclosures:
- 4.12.1 cost allocation;<sup>105</sup>
- 4.12.2 asset valuation;<sup>106</sup>
- 4.12.3 taxation; and<sup>107</sup>
- 4.12.4 cost of capital.<sup>108</sup> (the TCSD methodology and the calculation of the annual benefit of Crown financing only).

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<sup>105</sup> The cost allocation IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 1 of Part 2 of Attachment B.

<sup>106</sup> The asset valuation IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 2 of Part 2 of Attachment B. The methodologies for determining the "initial RAB value" of the financial loss asset under clause 2.2.4(1) of Attachment B of the IMs are specified in Schedule B of Attachment B. Schedule B of the IMs includes a section for the asset valuation (Section 2) cost allocation (Section 3), taxation (Section 4) and cost of capital (Section 5) IMs used to determine the "initial RAB value" of the financial loss asset.

<sup>107</sup> The taxation IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 3 of Part 2 of Attachment B.

<sup>108</sup> The cost of capital IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 4 of Part 2 of Attachment B.

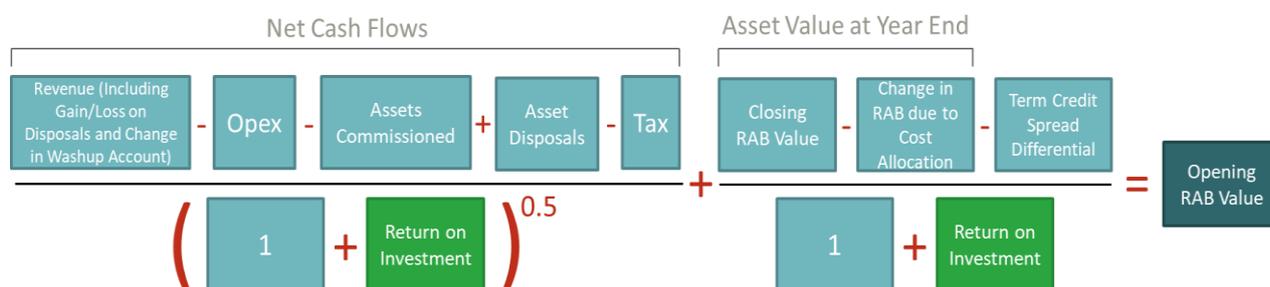
### Why interested persons need historical financial information to assess performance

- 4.13 Historical financial information helps interested persons assess whether the Part 6 purpose is being met, and in particular whether regulated providers are earning an appropriate economic return over time.<sup>109</sup> This information is therefore particularly relevant to the outcome in s 162(d) of limiting regulated providers' ability to extract excessive profits. An assessment of ROI can also inform the outcome in s162(a), (ie, whether providers have incentives to invest).
- 4.14 To assess whether regulated providers are earning an appropriate return, interested persons need to understand providers' efficiency, the quality of service provided, and whether they are passing historical efficiency gains on to consumers, as well as information on financial performance.
- 4.15 A regulated provider's ROI is a key measure of profitability. Interested persons can compare the ROI against returns that a similar business could earn in a workably competitive market to judge whether the supplier is earning an appropriate economic return. This can be done by comparing the ROI to the WACC.
- 4.16 The WACC is an estimate of the percentage return on capital that is consistent with a return a provider achieves in a workably competitive market over time.<sup>110</sup>
- 4.17 To assess the profitability of a given regulated provider, interested persons must have sufficient information to understand the provider's ROI, and changes in the ROI over time. In addition to the overall performance indicators, interested persons need supporting information on key determinants of regulatory profit and the value of the RAB.
- 4.18 The calculation of ROI is often based on simple accounting measures of return (eg, net profit/opening value of investments). For regulatory purposes, ROI is based on an internal rate of return (**XIRR**) measure, which takes account of the specific timing of investment and operating cashflows and the time value of money. The calculation of this measure is represented in Figure 4.1. below. The ID Schedules that carry out this calculation import the numerator cashflow input values into the formula and the IRR Excel function then solves for the ROI.

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<sup>109</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 2.297.

<sup>110</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 6 sets out the methodology for calculating the WACC.

**Figure 4.1 Overview of IRR Calculation**

- 4.19 The report on regulatory profit provides cashflow inputs directly to the ROI calculation, as well as providing the basis for the calculation of the regulatory tax allowance cashflow.
- 4.20 The key determinants of regulatory profit include operating revenue and other regulated income, wash-up accruals, depreciation, taxation, the allocation of costs between the regulated and unregulated parts of the business, gains and losses from the sale of assets, asset revaluations, transactions with related parties, costs arising from mergers and acquisitions, the impact of any credit spread arising from long term debt, and costs that are outside the control of management (pass-through costs).
- 4.21 The value of the RAB is determined by the initial RAB value and how the RAB value is rolled forward, including the calculation of depreciation, allocation of assets to the regulated part of the business, and works under construction.<sup>111</sup>

### Relationship with GAAP and other financial reporting

- 4.22 Regulated providers produce historical financial information for a variety of purposes. These include internal management purposes and external statutory purposes such as to external stakeholders and the Inland Revenue Department (IRD).

<sup>111</sup> While works under construction is not included in the RAB value, information on works under construction enables interested persons to reconcile the value of capital expenditure to the value of commissioned assets that enters the RAB in a disclosure year. Works under construction also signals the level of future additions to the RAB value.

- 4.23 The way in which financial information is prepared depends on their purpose (eg, internal management reporting will generally be designed following the structure of management accountabilities and will often contain a greater level of detail than is required for statutory financial reporting purposes). Accounting information prepared for external purposes is typically prepared on the basis of GAAP.
- 4.24 GAAP is a cost-effective means of reporting financial information. It is well understood and is reflected in existing business systems and processes.
- 4.25 We have developed reporting requirements which allow regulated providers to use their existing reporting systems and GAAP where GAAP best gives effect to the purpose of Part 6. GAAP is the starting point in complying with the ID requirements, but has been modified where necessary for regulatory purposes, including through the application of the IMs.
- 4.26 The purpose of regulatory reporting is distinct from other forms of external reporting. Accordingly, consideration needs to be given to the ability of GAAP reporting requirements to meet the purpose of Part 6. Where GAAP is not sufficient to meet the purpose of regulatory reporting, alternate rules are required. A key example of a purpose that is not met by GAAP is that regulatory reporting under Part 6 requires information to be disclosed based on a business activity rather than an entity basis.
- 4.27 Where GAAP is not sufficient to meet the purpose of ID under Part 6, we have developed alternate requirements. Given that the reported ROI has a key role in assessing profitability, interested persons must have confidence that the ROI is accurate and is calculated based on objective and verifiable information. In some instances, for example the treatment of sales/purchases of assets between regulated providers and between related parties, we have IMs and specified ID rules that depart from GAAP to provide this assurance.
- 4.28 Information required to be disclosed through general purpose financial reporting under GAAP may not be necessary for the purposes of regulatory reporting.
- 4.29 The historical financial information required under the ID determinations has many similarities to statutory general purpose financial reports but differ because they are prepared for regulatory purposes.
- 4.30 The disclosure requirements for financial information are designed to inform an assessment of whether returns are consistent with what would occur in a workably competitive market. This is generally achieved through applying the IMs.

- 4.31 We consider that regulated providers should reasonably be able to source most of the financial information required from existing reporting systems.
- 4.32 Suppliers that are subject only to information disclosure regulation do not have to apply IMs for evaluating or determining the cost of capital for ID purposes. However, we can use estimates of the cost of capital under the cost of capital IM to monitor and analyse information disclosed under Part 6.<sup>112</sup>

## **Regulatory profit**

### **Summary**

- 4.33 Regulated providers must calculate their regulatory profit and disclose the results using the prescribed Schedules. In making this disclosure, providers must:
- 4.33.1 follow prescribed IMs, including those that apply to the treatment of taxation, revenue and operating expenses;
  - 4.33.2 disclose related party transactions according to the asset valuation IM and ID rules; and
  - 4.33.3 disclose specified items which contribute to the calculation of the regulatory profit including tax differences, calculation of the term credit spread differential allowance and cost allocations.

### **Reasoning**

- 4.34 Regulatory profit represents the returns earned from the regulated provider's business activities which are regulated under Part 6. This differs from whole-of-entity profits, both in scope of activities and how profit is calculated and presented. Information on regulatory profit helps interested persons assess whether providers are earning an appropriate economic return over time.
- 4.35 This section discusses:
- 4.35.1 the calculation of regulatory income, including other regulated income;
  - 4.35.2 the approach to gain/loss on sale of assets so interested persons can remove any resulting volatility in regulatory profit;
  - 4.35.3 wash-up accruals;

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<sup>112</sup> Commerce Act 1986, s 53F.

- 4.35.4 revaluations;
- 4.35.5 expenditure;
- 4.35.6 the treatment of various expense items including pass through costs, and merger and acquisition costs. Our requirements help ensure that the disclosed expense amounts reflect the regulated providers' underlying costs and provide consistency of reporting across the regulated providers;
- 4.35.7 the treatment of taxation, including accounting for the effect of permanent and temporary (timing) differences;
- 4.35.8 the treatment of related party transactions so that interested persons can assess the extent to which reported performance may be influenced by related party transactions;
- 4.35.9 the calculation of the term credit spread differential allowance which recognises the additional costs associated with debt that has a term greater than five years; and
- 4.35.10 depreciation, which is included in the calculation of regulatory profit, is discussed later in this chapter under the value of the RAB.

### **Regulatory income**

- 4.36 Regulated providers must disclose regulatory income such that all regulated income is recognised in the year that it is received so that there is no transfer of income between years. Regulatory income includes operating revenue from FFLAS, other regulated income and gains or losses on asset disposals (discussed below from paragraph 4.40).
- 4.37 Under the Act, all income associated with the supply of regulated services can be regulated. However, regulatory income as disclosed in regulatory profit requires adjustments to accommodate unique characteristics of regulated services and to align with the IMs.

- 4.38 Consistent with the IM definition of “total FFLAS revenue”, discounts and rebates taken up by access seekers must be subtracted, and adjusted in accordance with GAAP. This does not include incentive payments which are treated as capital expenditure under GAAP and the asset valuation IMs and, accordingly, added to the RAB.<sup>113</sup>
- 4.39 The requirement to recognise revenue in the year that it is received is irrespective of any mechanisms provided in operating agreements or under other regulation. We require revenue to be disclosed without the effect of any mechanism.

### **Gain/(loss) on sale of assets**

- 4.40 Gains and losses on asset sales affect regulatory profit and the ROI.
- 4.41 Assets used to provide regulated services will typically sell at a different price than the asset’s regulatory carrying value, resulting in a regulatory gain or loss on sale. This is consistent with GAAP, where the difference between the sale price of an asset and the book value is reflected as a gain or loss in income. The recognition of the gain or loss provides for the full economic benefit or cost of owning the asset to be reflected in regulatory profits.
- 4.42 For a regulated provider, recovery of the financial loss asset (**FLA**) is intrinsically linked to selling services provided using the core fibre asset RAB. If a portion of the FLA is not transferred as part of the sale of the core fibre assets, it becomes unrecoverable and ex-ante FCM is not achievable.
- 4.43 For this reason, the value of the FLA that is removed from the RAB will be calculated by applying a factor to the FLA. This factor will be equal to the percentage reduction in the current value of the aggregated original UFB assets that remain in the core fibre asset RAB at the end of the disclosure year.
- 4.44 Gains and losses on the sale of an asset, including the portion of the FLA, are to be treated by the seller in a manner consistent with GAAP.<sup>114</sup>
- 4.45 There are exceptions where applying GAAP rules may result in outcomes inconsistent with those in the Part 6 purpose in s 162. These exceptions are as follows:

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<sup>113</sup> Notwithstanding their recognition as capital expenditure, incentive payments are required to be treated as price adjustments for pricing disclosure purposes in accordance with the definition of “price” in the Act.

<sup>114</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 3.443-3.462.

- 4.45.1 Where the transaction is between a regulated provider and a related party the valuation of the disposed asset is dealt with under the related party rules, discussed in paragraph 4.68.
- 4.45.2 When a regulated provider sells an asset to another regulated provider or an entity regulated under Part 4 of the Commerce Act, the RAB from which a return can be earned should not be affected by the sale price. Therefore, the overall recognised value of the asset, including the portion of the FLA, across the books of the seller and the purchaser when recording the transaction is set at the pre-sale RAB value. The gain or loss for the seller is measured at nil.
- 4.46 Setting the asset value in the books of the purchaser to the pre-sale RAB rather than using the acquisition price is a departure from GAAP that is required by the asset valuation IM. Doing this ensures that regulated providers cannot increase prices by trading assets with other regulated providers at inflated prices, which would not be possible in a workably competitive market.
- 4.47 If the sale value of the asset is not recognised in the RAB of the acquirer, then it would be inconsistent with the concept of FCM for the seller to recognise the gain or loss on sale.
- 4.48 We consider that this departure from GAAP gives effect to the s 162 purpose of promoting outcomes that are consistent with outcomes produced in a workably competitive market by ensuring that RAB values are not reported at inflated values.

#### **Wash-up amounts**

- 4.49 For regulated providers subject to PQ regulation various categories of wash-up accruals are provided for in the IMs and the PQ Determination.<sup>115</sup> These amounts are generally captured in other regulated income and a specific adjustment is made to the ROI to account for their impact.

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<sup>115</sup> Section 196 of the Act requires the Commission to apply a wash-up mechanism that provides for any over-recovery or under-recovery of revenue by the regulated fibre service provider in the previous regulatory period.

- 4.50 Operating revenue includes revenue from pricing in the current disclosure year but does not include allowable revenue that may be carried forward through the revenue wash-up account to be collected in future pricing years. Because other regulated income excludes revenue from prices, a separate adjustment is required to regulatory profit to recognise the economic value of revenue recoverable through the revenue wash-up account.
- 4.51 This adjustment calculates the difference between the wash-up accruals calculated in respect of the current pricing year, which may be recovered in future years, and the amounts collected in the current year's operating revenue, including WACC adjustments, that relate to previous years.
- 4.52 Making this adjustment means that revenue is properly attributed to the year in which it is earned (and allowed), reducing the volatility of the regulatory profit measure from year to year.

### **Revaluations**

- 4.53 Gains on asset revaluations are required to be treated as income. This treatment of revaluations for ID is intended to ensure that the ROI more accurately reflects the overall return on capital that providers of regulated services are earning, which facilitates comparisons with the regulatory cost of capital.
- 4.54 To use a measure of profitability that does not reflect asset revaluations would present a misleading picture of performance to interested persons. This is because the ROI would consequently not capture the entirety of returns earned by the provider of the regulated service over time and not produce a profitability indicator that is comparable with the vanilla WACC.
- 4.55 There is a link between revaluations and the tax calculation. An adjustment for the tax effect of revaluations needs to be made in calculating the regulatory tax allowance because tax rules do not allow for asset revaluations.

### **Expenditure**

- 4.56 Regulated providers must disclose information on their expenditure. Opex is a significant component of regulatory profit and therefore can impact the ROI. Capex contributes to the RAB. We consider that the disclosure of both capex and opex is necessary to allow interested persons to assess whether the purpose of Part 6 is being met.
- 4.57 The expenditure categories in the ID determination include level 1 and level 2 categories for capex and opex. Our draft decision required historical financial information to be disclosed under both categories.

- 4.58 Based on submissions from regulated providers, we have decided to defer the requirement to report historical and forecast financial information at the more detailed level 2 category for regulated providers other than Chorus. Those affected providers will in the interim be required to report on their progress in developing reporting capability for the more detailed level 2 disclosures. The reporting categories and the requirements are discussed in more detail in Chapter 6Chapter 6.
- 4.59 Chorus submitted it supports the proposed expenditure categories, subject to an opex correction to align fully with its expenditure proposal categories. The requirement for the use of these categories aligns expenditure disclosures for both PQ and ID regulation.<sup>116</sup>

### **Reporting of specific expenditure items**

- 4.60 We have also specified how regulated providers must disclose information on a range of other items which impact regulatory profit, including requiring the following disclosures:
- 4.60.1 merger and acquisition costs;
  - 4.60.2 pass through and recoverable costs; and
  - 4.60.3 insurance costs including self-insurance.

#### *Merger and acquisition costs*

- 4.61 We require the disclosure of merger and acquisition (**M&A**) costs to the extent the M&A benefits the regulated service. This allows costs to be matched with benefits. M&A expenses tend to be irregular but may be substantial when they occur. Accordingly, for interested persons to have sufficient information to assess profits and expenditure, M&A costs are required to be separately disclosed.

### Submissions

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<sup>116</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 64-69 and Appendix 1.

- 4.62 Enable/Tuatahi submitted that "there is little reason to call our[sic] one subcategory of expenses in S2 because S14 requires information to be disclosed about items which have a material impact on regulatory profit" and suggested we remove disclosure of M&A expenditure from Schedule 2 as well as from Schedule 14.<sup>117</sup>
- 4.63 As we state in paragraph 4.61 above, M&A expenses may be significant. Disclosure in Schedule 14 does not require an estimate of costs unlike Schedule 2, which may be of interest to users of the information. Therefore, the requirement to disclose M&A costs in Schedule 2 as well as Schedule 14 remains.

*Pass through and recoverable costs*

- 4.64 We require the disclosure of pass through and recoverable costs. To assess profitability and efficiency, interested persons need an understanding of costs that are outside the control of management.<sup>118</sup>

*Insurance costs, including self-insurance*

- 4.65 We require the disclosure of insurance costs including self-insurance. Generally only insurance costs paid to an insurance provider constitute opex. However, self-insurance may be approved as a cost for the purposes of regulatory profit under a PQ determination and therefore may be recognised as an expense in regulatory profit.

Submissions

- 4.66 Chorus submitted that the requirement to disclose insurance costs should be removed, stating that this level of granularity is unnecessary and reporting at this level adds to its compliance cost.<sup>119</sup> Enable/Tuatahi also submitted that the requirement should be removed.<sup>120</sup>

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<sup>117</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 1 and Table 9.

<sup>118</sup> Pass through and recoverable costs are considered to be outside the control of management and are therefore excluded from price-quality path regulation. Although they are included in the ROI calculation, it is appropriate to exclude them from efficiency assessments and therefore they are not disclosed as part of opex.

<sup>119</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 61-63 and Appendix 1.

<sup>120</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 1.

- 4.67 Insurance costs may be significant and are of interest to stakeholders. Additionally, insurance costs should be easily obtained from existing accounting records and therefore cost of compliance is unlikely to be high.

#### **Valuation and disclosure of related party transactions**

- 4.68 Related party transactions occur when a regulated provider transacts with an entity which is related to it by a common shareholding or other common control. Those transactions may not be on arm's-length terms and the input costs of the regulated provider may not reflect efficient costs that we would expect might otherwise apply in the absence of such a relationship.<sup>121</sup>
- 4.69 The presence of related party transactions may not promote the Part 6 purpose. Our concern is that regulated providers can use a related party to:
- 4.69.1 increase overall profits in a regulated service provider group including the related party by overcharging the regulated service provider group for inputs supplied by the related party, contrary to s 162(d); and/or
  - 4.69.2 purchase services from a related party when it is not the most efficient supplier, contrary to s 162(b).
- 4.70 Consumers of the regulated service should not have to pay higher prices for the regulated service as a result of either of these two causes.
- 4.71 The terms (particularly price) and conditions agreed between the related parties can influence the information disclosed by the regulated entity. These transactions are potentially substantial enough to impact on the ROI. For this reason, it is important to ensure the values assigned to related party transactions are based on objective criteria, and verifiable information. Such transparency helps interested persons understand the impact of these transactions and understand the impact on the ROI over time.
- 4.72 The asset valuation IM sets out the rules for the valuation of related party commissioned assets. These requirements have been applied for the disclosure of related party asset acquisition transactions. The ID requirements set out additional rules, using the same principles, that regulated providers must use to value related party transactions other than purchases of assets.

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<sup>121</sup> In referring to 'input costs', we are referring to capex and/or opex costs to the regulated provider.

- 4.73 There may be an incentive for the regulated provider to use an unregulated related party to supply inputs at increased prices (and higher overall profits to the group).
- 4.74 There is a relationship between cost allocation and the related party transactions provisions in that the cost allocation rules in the IMs split shared costs between regulated and unregulated activities for regulatory purposes. For example, common operating costs (eg, expenses for a head office) and commonly used assets (such as central office space) have their costs shared between regulated and unregulated services.
- 4.75 Sharing of services can produce cost efficiencies. A purpose of cost allocation is to ensure these efficiencies are effectively shared with consumers. However, the cost allocation provisions do not address:
- 4.75.1 the value placed on services supplied by a related party; or
  - 4.75.2 the value of revenues from sales to a related party.
  - 4.75.3 These are dealt with in the related party transactions provisions to ensure such transactions are valued on terms that are equivalent to those at arm's-length. For example, when considering an internal division providing unregulated services to a regulated provider. The related party rules specify the valuation approach, for ID purposes, of goods and services provided by the internal division or related separate legal entities.<sup>122</sup>
- 4.76 Also, we are concerned that a provider of a regulated service may be incentivised to use a related party for an input to the regulated service even though it may not be the most efficient provider of the input.
- 4.77 If a regulated provider sells assets, or goods or services to a related party at prices below arm's-length, consumers of the regulated service will essentially be subsidising the supply to the related party.<sup>123</sup>

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<sup>122</sup> The transactions may be conducted at a value which is different to the value specified under the related party valuation rules. For disclosure purposes, however, the related party valuation rules must be applied.

<sup>123</sup> The related party will be procuring these services from the regulated provider at a lower cost than we would expect from a transaction between two independent parties acting in their own best interests.

*Final decisions on valuation and disclosure of related party transactions*

4.78 To address these concerns, we have adopted a principles-based valuation approach in the draft, based on the principles-based related party requirements of the asset valuation IM. The general valuation rule for related party transactions is that the cost of an asset or the value of a good or service acquired from a related party, or the price received from the sale or supply of an asset or good or service to a related party, must be set for the purposes of the IMs and ID on the basis that:

4.78.1 each related party transaction for an acquisition from a related party must be given a value that is no greater than if that transaction had the terms of an arm's-length transaction;

4.78.2 each related party transaction for a sale or supply to a related party must be given a value that is no less than if that transaction had the terms of an arm's-length transaction; and

4.78.3 an objective and independent measure must be used in determining the terms of an arm's-length transaction.

4.79 We have considered the Part 4 ID related party requirements and if the same approach would be relevant to Part 6. In doing so, we have also made the following final decisions to make it clear to interested parties the basis on which related party transaction terms, including prices, have been set:

4.79.1 if a regulated provider of the regulated service transacts with a related party in a disclosure year, it will be required to disclose:

4.79.1.1 details of the related party relationships;

4.79.1.2 the regulated provider's procurement policies and processes in respect of a related party relationship;

4.79.1.3 policies which require or have the effect of requiring a consumer to purchase unregulated services from a related party that is related to the regulated service; and

4.79.1.4 details of how and when the regulated provider last tested the market valuation of transactions in at least one expenditure category.

- 4.80 A 'de minimis' threshold will apply that limits the need for disclosures where regulated providers have a minimal proportion of related party transactions by value relative to total expenditure. We consider this will ensure that compliance costs are proportionate to the size of the provider and its level of related party transactions.
- 4.81 The 'de minimis' threshold will apply where a provider has under 10% of total annual expenditure (opex and capex) made up of related party transactions.
- 4.82 Regulated providers will also be required to obtain a more detailed report from an independent auditor or another qualified independent expert if:
- 4.82.1 the related party transactions are 65% or more of a year's total opex or capex spend; or
  - 4.82.2 the independent auditor is not able to conclude that the disclosures of related party transactions comply with the related party disclosure rules; and
  - 4.82.3 that regulated provider will only be required to obtain and disclose this independent report in any year if:
    - 4.82.3.1 there was no equivalent report published for one of the immediately prior two years; and
    - 4.82.3.2 the total value of related party transactions in each of the opex or capex categories has increased by more than 5% for any year since the year covered by the last report.
- 4.83 These thresholds are based on the thresholds used for related party disclosures under Part 4, which we believe will provide sufficient information to interested parties in the context of the Part 6 purpose.

- 4.84 Enable/Tuatahi submitted that the draft decisions do not take the specific characteristics of the telecommunications sector into account and have not been designed in a way which is proportionate to a perceived or potential problem. They also question whether it is possible to report related party transactions at the proposed level of disaggregation and consider the compliance costs outweigh the benefits of supporting disclosures specified in clause 2.3.20 to 2.3.22 where related party transactions are not material. They do, however, support the arm's-length transaction standard for the valuation of related party transactions.<sup>124</sup>
- 4.85 Given the 10% total expenditure materiality threshold that must be exceeded before the additional disclosures are required under clause 2.3.22 and clauses 2.5.2-2.5.5, we consider additional compliance costs will only be incurred where related party expenditure is material. Therefore, we have not changed our draft requirements in this respect.
- 4.86 The related party expenditure categories in Schedule 9 have been aligned to the aggregated categories specified for capex and opex reporting.
- 4.87 Spark submitted that It is unclear whether the related party transactions arrangements – which are predominantly concerned with over rather than under-pricing services - cater well for the scenario where social tariff services are being provided.<sup>125</sup>
- 4.88 The total regulatory income from related party services provided is required to be disclosed. To calculate this revenue, an asset or a good or a service an ID-regulated provider sells or provides in a related party transaction must be given a value not less than if the transaction was an arm's-length transaction. To address Spark's concern, we have added a requirement to describe the nature of related party services to which the total regulatory income from related party services applies and to state the portion of the income that has been valued on an arms-length basis but which has been provided at a lesser value. We consider this will assist interested persons to understand circumstances where social tariff or other services are being provided at below arms-length prices.

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<sup>124</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), page 16.

<sup>125</sup> Spark "[Fibre ID and PQ draft decisions- Submission](#)" (8 July 2021), paragraphs. 85-88.

### Term credit spread differential

- 4.89 When calculating regulatory profit, regulated providers can, where applicable, recognise an allowance for a long-term credit spread differential by disclosing specified information about long-term debt (ie, debt issued with a term to maturity greater than the term of the debt premium allowance in the WACC).
- 4.90 A firm with long-term debt may incur a credit spread that, due to the long maturity of that debt, is greater than assumed in the WACC.<sup>126</sup> This greater cost is known as the term credit spread differential.
- 4.91 The TCSD allows regulated providers to recognise the greater credit spread on long-term debt as an expense in regulatory profit. Further reasoning for recognising a term credit spread differential allowance is outlined in the IM Reasons Paper.<sup>127</sup>
- 4.92 The TCSD allowance must be calculated in accordance with the Fibre IMs, which include the decisions to:
- 4.92.1 cap the qualifying debt “original tenor” at ten years;<sup>128</sup>
  - 4.92.2 calculate the TCSD allowance using the spread premium adjusted for debt issuance costs,<sup>129</sup> and
  - 4.92.3 provide the formula for the TCSD and use it to calculate the TCSD allowance, which is done via Schedule 8a.
- 4.93 We require regulated providers to publish the aggregate of the term credit spread differential values and the calculation required to determine the credit spread differential allowance.

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<sup>126</sup> The cost of capital IM estimates a debt premium based on a term of five years, but some firms may have debt with a longer term.

<sup>127</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 6.314-6.343.

<sup>128</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 6.318 and 6.326.

<sup>129</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 6.319, 6.325, and 6.327-6.328.

- 4.94 However, we do not require regulated providers to publish details on individual debts. Rather, they may provide this information on a confidential basis to the Commission. This approach addresses confidentiality concerns raised in submissions. Providers may voluntarily disclose information on individual debts.<sup>130</sup>
- 4.95 We do not require regulated providers to disclose detailed information on non-qualifying debt.

### **Regulatory tax allowance**

- 4.96 Regulated providers must prepare and disclose a reconciliation of regulatory profit to the regulatory tax allowance, which is calculated in accordance with the Tax IM.<sup>131</sup>
- 4.97 Regulatory tax is a significant component of regulatory profit, and so an important determinant of the ROI. In applying tax rules, as required by the Tax IM, regulated providers must make adjustments to the regulatory profit/(loss) before tax to determine the regulatory tax allowance. This is analogous to businesses taking accounting profits and adjusting them to determine tax payable to the IRD. We consider that regulated providers, therefore, should have information that reconciles the regulatory income to taxable income.

### **Cost allocation disclosures**

- 4.98 The allocation of assets and costs can impact significantly on the reported performance. Accordingly, interested persons need to understand the degree to which these have been allocated, and where that allocation has changed, to assess a regulated provider's performance.
- 4.99 Regulated providers must allocate costs to FFLAS only. The purpose of Part 6 is in the context of markets for FFLAS. Therefore, for interested parties to be able to determine whether the purpose of Part 6 is being met, regulated providers must provide information on how their total costs are allocated between FFLAS and non-FFLAS.

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<sup>130</sup> Some providers may have term credit arrangements which are not confidential (eg, if the funds were raised via a public issue of bonds).

<sup>131</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 8.

- 4.100 The IM Reasons Paper outlines how costs and asset values are to be allocated between FFLAS and non-FFLAS activities.<sup>132</sup>
- 4.101 Regulated providers must disclose information about the cost and asset allocator used within each operating cost or asset category. This includes the value of:
- 4.101.1 assets and costs directly attributable to FFLAS for each operating cost or asset category; and
  - 4.101.2 assets and costs not directly attributable to FFLAS for each operating cost or asset category.
- 4.102 We also require that when cost or asset allocation methodologies, or cost or asset value allocator metrics change, additional disclosure of operating cost line items and assets must be made in the year of change.
- 4.103 Enable/Tuatahi submitted that the proposed disclosure will reveal information about unregulated services, and this should not be made public. This is especially true for LFCs who are primarily FFLAS businesses. They proposed that Schedule 4a be exempt from public disclosure where non-FFLAS assets are less than 10% of total assets and an ID regulated provider be exempt from the asset value disclosure reporting under clause 2.3.17 where non-FFLAS assets are less than 10% of total assets.<sup>133</sup>
- 4.104 To reduce the information about assets related to unregulated services we have removed the requirement for direct attribution of assets to non-FFLAS services in Schedule 4a. This also removes the requirement for disclosure reporting of these directly attributed asset values under clause 2.3.17.

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<sup>132</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 4.

<sup>133</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), page 11.

## Return on investment approach

### Summary

- 4.105 For interested persons to assess whether the Part 6 purpose is being met they require an indicator of profits. ROI is a commonly used measure of profitability that gives the ability to compare relative performance of firms of different sizes. In particular, measures of ROI allow interested persons to compare a regulated provider's profitability to what an efficient firm in a workably competitive market could expect to earn (its cost of capital, discussed at paragraph 4.109).
- 4.106 Regulated providers must provide the following information on ROI on a headline (before benefit of Crown financing adjustment, discussed at paragraph 4.112), vanilla and post-tax basis:
- 4.106.1 ROI indicator derived from the expression for an XIRR calculation undertaken over a one-year period; and
- 4.107 Regulated providers subject to PQ regulation must also disclose the ROI excluding wash-up accruals on a vanilla and post-tax basis.
- 4.108 The three ROI measures can be summarised as follows:

ROI Measure	Calculation
<b>Headline ROI</b>	ROI calculated on all cashflows adjusted for asset stranding allowance.
<b>ROI comparable to Vanilla WACC</b>	ROI calculated after adding back benefit of Crown financing to cashflows
<b>ROI comparable to post-tax WACC</b>	ROI comparable to Vanilla WACC less interest tax shield on debt

### Weighted Average Cost of Capital

- 4.109 Regulated providers must disclose information relating to cost of capital following the cost of capital IM,<sup>134</sup> which sets out the methodology that should be applied when determining the WACC.

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<sup>134</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 6.

- 4.110 The WACC is a measure of the market cost of equity and the cost of debt and does not take into account the cost of Crown financing, which is discussed below. Being an estimation, the decision was made in the cost of capital IM to require a mid-point WACC and a standard error to allow for interested persons to calculate any percentile they consider relevant.<sup>135</sup>
- 4.111 To allow interested persons to assess whether the purpose of Part 6 is being met and to remain consistent with our approach for PQ, the WACC will be disclosed on both a vanilla and post-tax basis in accordance with the cost of capital IM.<sup>136</sup>

#### **Benefit of Crown financing adjustment to ROI**

- 4.112 For regulated providers subject to PQ regulation, the Cost of Capital IM requires the annual benefit of crown financing to be deducted as a building block in determining allowable revenue.
- 4.113 Because the annual benefit of crown financing is calculated at a cost of capital which is different from the vanilla WACC, the ROI on the allowable revenue determined using the mix of vanilla WACC and the cost of capital applicable to crown financing (the headline ROI) will not be directly comparable to the vanilla WACC.<sup>137</sup>
- 4.114 Therefore, an adjustment is required to allow interested persons to assess performance relative to the vanilla WACC. This is achieved in the ROI disclosure template by adding back the allowed annual benefit of Crown financing to the cashflows in the ROI calculation. Three ROI measures are disclosed as a result: the headline ROI, the ROI comparable to a vanilla WACC and the ROI comparable to a post-tax WACC.
- 4.115 For regulated providers subject to PQ regulation the Headline ROI is the economic return after having shared the benefit of Crown financing with consumers and after adjusting for the actual benefit achieved versus the forecast benefit included in the allowable revenue calculation.

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<sup>135</sup> This decision was considered along with alternative options of publishing a specific percentile, and publishing the mid-point together with the 25<sup>th</sup> and 75<sup>th</sup> percentiles, see Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraphs 6.862-6.873.

<sup>136</sup> Vanilla WACC is where the corporate tax shield provided by debt capital is ignored in the cost of capital calculation and post-tax WACC is where the cost of debt is adjusted down by an interest tax deduction. Further discussion on Vanilla and Post-tax WACC is available in Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraphs 6.7-6.8.

<sup>137</sup> Clause 2.4.10.

- 4.116 The ROI comparable to a vanilla WACC is the economic return before sharing the benefit included in the allowable revenue calculation.
- 4.117 A wash-up adjustment is calculated for the difference between the annual benefit of Crown financing included in the PQ path as a forecast and the benefit for the disclosure year based on the actual debt profile adjusted for drawdowns and debt repayments. This enables transparency regarding how the difference between the actual benefit of Crown financing achieved and the forecast amount contributes to the headline ROI.
- 4.118 An alternative solution to this comparability problem would be to determine an annual cost of capital which is equivalent to the mix of the vanilla WACC and cost of capital used to calculate the benefit of Crown financing. We consider the additional administrative costs of this would outweigh the benefits and create unnecessary confusion about which cost of capital is the appropriate reference rate for assessing performance.
- 4.119 Chorus submitted that the Crown financing adjustment should be a year-end cashflow to be consistent with the MAR calculation.<sup>138</sup> We agree and have corrected the timing of the cashflow input in the definition of ROI – comparable to a vanilla WACC in the final determination and in the IRR calculation in Schedule 1.

#### **Asset stranding allowance**

- 4.120 Enable/Tuatahi submitted that the regulatory profit statement incorrectly omits the asset stranding allowance and that it was acknowledged by the Commission that LFCs may choose to incorporate their own allowance when setting target revenues. It is therefore appropriate that a stranding allowance input is included in the regulatory profit schedule for Chorus and the LFCs.<sup>139</sup>
- 4.121 Chorus submitted that the asset stranding allowance needs to be incorporated as a deduction from the revenue input to the ROI calculation.<sup>140</sup>

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<sup>138</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), para.73.

<sup>139</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), page 9.

<sup>140</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), Appendix 2.

- 4.122 We agree that an adjustment is necessary to provide an appropriate ROI comparison to the benchmark WACC, but do not agree that this should be reflected in the regulatory profit measure. We have included the asset stranding allowance as a deduction from the revenue input in the IRR calculation for both Chorus and the other LFCs. An additional disclosure for the calculation of the allowance for LFCs other than Chorus has been added to Schedule 8.

#### **ROI assuming value date timing of cashflows**

- 4.123 An ROI which assumes value date timing of cashflows can take account of intra-year effects and hence improve accuracy. This approach provides a good approximation of when transactions occur and provides a more accurate basis for interested persons to assess financial performance than a year-end ROI.
- 4.124 By having a regulated provider disclose the ROI indicator on both a vanilla and post-tax basis, interested persons can compare returns to both a vanilla WACC and post-tax WACC respectively.
- 4.125 Chorus proposed an amended derivation of the ROI formula to be used as a check of the IRR Excel function that solves for the ROI.<sup>141</sup> We note that the Commission's template actually employs an XIRR formula calculation that calculates the cashflows based on their value dates so there is no need to apply Chorus' suggested adjustment for revenue timing. Other differences between Chorus' formula and the ROI formula included in Attachment A of the draft reasons paper relate to the Crown financing adjustment, and the inclusion of the asset stranding allowance. We have updated the value dates of these inputs in the final determination and Excel schedules to reflect the correct cashflow timings.

#### *ROI based on monthly cash flows.*

- 4.126 Enable/Tuatahi submitted that the difference between monthly and annual ROIs is not material for FFLAS services which are provided and billed continuously over the year, and where assets are built and commissioned incrementally during the year, such that this requirement introduces unnecessary complexity.<sup>142</sup>
- 4.127 We accept that given the incremental commissioning of FFLAS assets the monthly ROI may introduce unnecessary complexity. Our final determinations therefore only require providers to disclose an annual ROI.

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<sup>141</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), page 21.

<sup>142</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 1.

## Value of the Regulatory Asset Base

### Summary

4.128 Regulated providers must provide the following information on their RAB value for ID purposes:

- 4.128.1 the value of the initial RAB as of the implementation date;<sup>143</sup>
- 4.128.2 annual roll forward of the RAB value to determine the closing value of the RAB;
- 4.128.3 details of the key components of the above disclosures including information on commissioned and disposed assets, asset revaluations, asset allocations, depreciation, and adjustments to the FLA;
- 4.128.4 details on the value of works under construction which represents likely future additions to the RAB value; and
- 4.128.5 details of capital contributions and vested assets which are not recognised as income for regulatory purposes. This approach removes the potential for large or volatile levels of capital contributions to distort the ROI results.

### Reasoning

- 4.129 The RAB value is important to interested persons as it is a major component of the ROI calculation, which is a key indicator in assessing whether the Part 6 purpose is being met.
- 4.130 As fibre service provision is asset-intense, the RAB value can be substantial and movements in the RAB value can have a material impact on the ROI.
  - 4.130.1 It follows that interested persons need information on the value, composition, and movements of the RAB value.
  - 4.130.2 They also need information on non-network assets because these can be significant.

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<sup>143</sup> The process by which the initial RAB value is determined by the Commission for regulated providers other than Chorus, in accordance with clause 2.2.4 of the IMs, is planned to be completed prior to 31 March 2023.

4.130.3 Together this information lets them assess the underlying value of the assets, and their impact on ROI and other regulatory objectives in the Part 6 purpose.

4.131 In particular, interested parties need sufficient information on how the RAB value was rolled forward to understand changes in the RAB value, and how this affects the ROI from year to year. To provide this information, an initial asset base must first be established and then rolled forward on an annual basis.

#### **Unallocated and allocated RABs**

4.132 We make a distinction between the unallocated and allocated RAB.

4.132.1 The unallocated RAB is the value of assets the provider employs to provide regulated services.

4.132.2 As regulated providers may have assets employed for both regulated services and unregulated services, the cost allocation IM should be used to determine the portion of the costs that is applicable to FFLAS. This results in the value of the allocated RAB.

4.133 The ROI calculation makes use of the allocated RAB.

4.134 The FLA, discussed in paragraphs 4.150 to 4.153, is part of the initial allocated RAB.

#### ***Initial RAB disclosures***

4.135 As network assets typically have long lives, it is important to ensure that assets are appropriately valued in the initial RAB.

4.136 In implementing the asset valuation IM, an initial RAB must be established by making required adjustments to the asset values recorded for general purpose financial reporting including:

4.136.1 adjustments to the total RAB value for asset values excluded under the IM (eg, goodwill);

4.136.2 recognition of the FLA;

4.136.3 adjustments for the application of the cost allocation IM; and

4.136.4 adjustments to asset values to recognise capital contributions.

- 4.137 Enable/Tuatahi submitted that "there is no disclosure of the initial RAB at implementation date in the Draft Determination. This appears to be an omission for LFCs, as there is a separate process for Chorus for establishing its initial RAB... Given the complexity of the FLA component, and the adjustments which must be made to GAAP asset register data to meet the IM rules, the determination of the opening RABs will be a substantial exercise for LFCs, which will require specific audit and Director attention before 2022 disclosures can be completed. Given the significance of the RAB values to the financial disclosures, it is important that these values are robust and specified in the appropriate format given the RAB roll forward requirements that will apply in future years."<sup>144</sup>
- 4.138 We note that the initial RAB at implementation date by asset class including the financial loss asset is disclosed in Schedule 4. This schedule, which includes the closing value of the RAB, is subject to audit and director certification requirements.
- 4.139 The process by which the initial RAB value is determined by the Commission for regulated providers other than Chorus, in accordance with clause 2.2.4 of the IMs, is planned to be completed prior to 31 March 2023. We consider that the deferral of the 2022 annual disclosures until 2023 for regulated providers other than Chorus will accommodate this target completion date.

#### **Roll-forward of initial RAB balances**

- 4.140 Regulated providers must roll forward the initial RAB values from the implementation date to the end of the 2022 disclosure year. This is the first disclosure year for which the current ID determination applies.
- 4.141 In rolling the initial RAB values forward suppliers must disclose movements in key components of the RAB to provide interested persons with transparency of the RAB values.

#### **Annual roll-forward of RAB balances**

- 4.142 Regulated providers must disclose the RAB roll-forward including movements in key components for each subsequent disclosure year. The unallocated value of the assets in the RAB is also disclosed for the current disclosure year to provide interested persons with transparency in respect of the allocation process.

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<sup>144</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 1.

- 4.143 The RAB roll forward is calculated in accordance with the asset valuation IM.<sup>145</sup> As outlined in the IM Reasons Paper, the RAB value in any given year is determined by rolling forward the unallocated value of the assets in the RAB from previous years and allocating the relevant values to the RAB. The RAB roll-forward includes an adjusting item which accounts for changes over time in the proportion of shared assets which are used for providing specified services.<sup>146</sup>
- 4.144 To help interested persons better understand capex and how the closing value of the RAB was reached, regulated providers must disclose details on the roll forward of works under construction. This disclosure must show the value of capex and assets commissioned in accordance with the asset valuation IM. This is also discussed in paragraphs 4.159 to 4.161.
- 4.145 To enable reconciliation between actual capex and commissioned assets and to ensure comparability of the forecasts of key capital projects and the RAB (both of which are allocated) as well as to the unallocated closing value of the assets in the RAB, regulated providers must disclose both unallocated and allocated values for works under construction. For reasons of simplicity and consistency, this allocation must be calculated in a manner consistent with either the principles of the Cost Allocation IM or the assumptions used in formulating the key capex forecasts.
- 4.146 Enable/Tuatahi submitted that "the requirement to disclose the unallocated depreciation, works under construction (WUC) and revaluation is unnecessary and confusing for stakeholders. It is not information which directly impacts regulatory profit or other regulatory financial performance measures. There is sufficient information about the allocation of assets between regulated and unregulated services in S4a and S4(ii) which provides the necessary insights into the application of the cost allocation IM on the RAB."<sup>147</sup>

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<sup>145</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 2.

<sup>146</sup> Line entry 'adjustment resulting from asset allocation' on Schedules 4 and 4b.

<sup>147</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 1.

- 4.147 Chorus submitted that "where costs are shared between Chorus' copper and fibre assets identifying the FFLAS component for splitting works under construction between unallocated and allocated assets is challenging. While we may know where the cost has originated, we may necessarily know or be able to identify the final asset it will settle to (i.e. FFLAS or non-FFLAS). This exercise will require us to make several assumptions using the historical information or business expert judgment of the assets these costs will likely settle to. We will need time to implement this change in its systems."<sup>148</sup>
- 4.148 We acknowledge the allocation of works under construction will initially require some level of judgement where cost allocation systems are not in place. We consider that allocations based on expert assumptions may still allow interested persons to reconcile the value of capital expenditure to the value of commissioned assets that enters the RAB in a disclosure year and also signal the level of future additions to the RAB value.
- 4.149 We consider that the provision for unallocated values for depreciation and revaluations provides transparency about the application of the roll-forward formula in the IMs, which includes unallocated depreciation and revaluations.

#### **Financial Loss Asset**

- 4.150 Under the UFB initiative, the Government awarded fibre contracts to Chorus and the LFCs. Despite the provision of partial funding via concessionary Crown financing, the LFCs were expected to incur financial losses during the initial period of operation, as initial low uptake of UFB services and associated revenues recovered in accordance with the UFB contracts was not expected to be sufficient to cover the costs that the LFCs incurred during that period.
- 4.151 The Act provides for these accumulated financial losses to be captured for the purposes of the regime. In particular, s 177(2) requires the Commission to determine the amount of the losses for each regulated provider incurred from 2011 through to the implementation date and to treat this as the initial value of an additional asset (ie, the FLA) included in the regulated asset base of each regulated provider as at 1 January 2022
- 4.152 The inclusion of the FLA in the RAB, together with other assets employed to provide FFLAS, is able to inform profitability assessments under ID and the prices or revenues recovered over time by providers subject to PQ.

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<sup>148</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 75.

- 4.153 What this means for ID is that an initial RAB value of the FLA will need to be determined, and this value will be rolled-forward in a similar way to any other regulated asset, subject to deregulation and disposal adjustments under the asset valuation IM.<sup>149</sup>

### Depreciation

- 4.154 Depreciation is a significant component of the providers' capital costs included in regulatory profit and is therefore a key consideration for interested persons when assessing returns over time.
- 4.155 Depreciation must be calculated and disclosed in accordance with the IMs. While depreciation may be calculated with GAAP or via another method, changes in how providers depreciate their assets can directly affect the ROI measure. Accordingly, providers must disclose information on depreciation, including where non-standard depreciation has been applied, as this can affect the ROI.
- 4.156 The IM Determination does not directly prescribe how depreciation is to be calculated, but the following rules apply:
- 4.156.1 regulated providers must calculate their depreciation using a method consistent with GAAP, although there are exceptions for using an alternative or different depreciation method;<sup>150</sup>
  - 4.156.2 regulated providers subject to PQ regulation must for ID purposes apply the same depreciation method applied under a PQ determination;<sup>151</sup>
  - 4.156.3 the sum of unallocated depreciation calculated for a fibre asset over its asset life is constrained according to the IM Determination.<sup>152</sup>
- 4.157 Regulated providers must disclose the following information about depreciation annually:
- 4.157.1 total depreciation for both the unallocated RAB and RAB;

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<sup>149</sup> The asset valuation IM provides a mechanism for the event of a deregulation review in which either certain FFLAS is no longer subject to PQ or certain FFLAS is deregulated altogether. See Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraphs 3.46-3.47.

<sup>150</sup> [Fibre Input Methodologies Determination 2020](#) [2020] NZCC 21, clause 3.3.2.

<sup>151</sup> *Ibid*, section 2.2.8(8).

<sup>152</sup> *Ibid*, section 2.2.9.

- 4.157.2 the values of depreciation calculated in a manner consistent with GAAP and with an alternative method; and
- 4.157.3 the weighted average remaining lives and weighted average total average asset lives of assets by category.
- 4.158 To help interested persons understand changes to depreciation profiles, regulated providers are required to provide further details, including the reason for and impact of any changes, in the year in which a change is made.

### **Works under construction**

- 4.159 Regulated providers must disclose details on the roll-forward of works under construction, including the value of capex and assets commissioned in accordance with the relevant asset valuation.
- 4.160 GAAP requires the disclosure of works under construction, which is the value of assets being constructed or assets which have been constructed but not yet commissioned. The disclosure of this information allows interested persons to reconcile disclosed capex with the value of commissioned assets entering the RAB. The closing value of works under construction provides interested persons with some indication of expenditure to date on future additions to the RAB value.
- 4.161 To ensure comparability to the forecasts of key capital projects and the RAB, both of which are allocated, as well as to the unallocated value of the assets in the RAB disclosed in the RAB roll-forward, the ID determination requires that both unallocated and allocated values are disclosed for works under construction. For reasons of simplicity and consistency, this allocation must be calculated in a manner consistent with either the principles of the Cost Allocation IM or the assumptions used in formulating the key capex forecasts.

### **Capital contributions and vested assets**

- 4.162 Capital contributions and vested assets must be treated in accordance with the asset valuation IM.<sup>153</sup>
- 4.163 To be consistent with the IM determinations (but differing from GAAP), capital contributions and vested assets are not recognised as regulatory income.

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<sup>153</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 3.

- 4.164 Capital contributions must be deducted from the costs of a commissioned asset at the commissioning date.
- 4.165 Each disclosure year, capital contributions are deducted from expenditure on assets to determine a regulated provider's capex.
- 4.166 A regulated provider's capex is a component of works under construction which, as an asset, is a component of the RAB.
- 4.167 If capitalised financing costs are received, these must not be applied to capital contributions.<sup>154</sup>
- 4.168 Vested assets are to be included in the RAB using a cost-based approach. In other words, vested assets are to be valued at the actual cost to the provider, and no higher than the value of the consideration the provider paid for the asset. If there was no consideration paid for the asset, then the RAB value of that asset is nil.
- 4.169 We consider that the treatment of capital contributions and vested assets will improve the transparency of the information needed to assess the prudence and efficiency of capex forecasts. This transparency will help interested persons identify instances where regulated providers have made potential RAB additions that do not give best effect to s 162(d).

### **Actual versus forecast financial information**

- 4.170 Regulated providers are required to forecast their opex and capex. When disclosing historical financial information providers must disclose a comparison of expenditure for the disclosure year against the previously disclosed forecast for that year and provide explanatory comment on any variances.
- 4.171 This information will enable interested persons to form a view on the reasonableness of forecast expenditure. Together with the qualitative information provided this will also enable interested persons to understand the link between planned expenditure and the expected outcomes from that expenditure (eg, improved asset condition).

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<sup>154</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), C10.

- 4.172 Disclosing this information in a standardised format will ensure that quantitative data on suppliers' network planning is available to interested persons in a readily accessible format. This will make it easier for interested persons to understand the basis for planned expenditure, to identify changes in planned investment and the reasons for those changes over time. Over time, comparisons of forecasts to actual expenditure will provide information on the reliability of expenditure forecasts, and the reasons for any variances.
- 4.173 Explanations for variances between targeted and actual operating revenue (derived from pricing disclosure templates) are also required. This will help to explain how changes in the structure of pricing have impacted on overall profitability. Explanations of expenditure variances and revenue variances together help to explain changes in profitability over time.
- 4.174 An explanation of actual connections with targeted connection volumes will provide interested persons with an understanding of the reliability of the connection volume forecasts that drive planned installations expenditure.
- 4.175 Our final decisions on the provision of multi-year forecasts for asset management planning purposes are discussed in Chapter 6.

#### *Submissions*

- 4.176 Enable/Tuatahi submitted that the disclosure of the proposed connection volume data is not required in Schedule 7 because it is included elsewhere (in Schedule 12).<sup>155</sup>
- 4.177 We have retained the requirement to disclose the forecast connection volume opening and closing data used for the actual to forecast comparison in Schedule 7. The CY+1 forecast connections for a disclosure year in Schedule 12 is not the same but provides the value that constitutes the difference between the forecast opening and closing connections volumes required to be disclosed in Schedule 7 for the next disclosure year.

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<sup>155</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 1.

## Consolidation statement

- 4.178 Our draft decision required regulated providers to disclose a consolidation statement as part of the ID requirements. The purpose of the consolidation statement is to allow us to assess and monitor compliance with the ID regime in accordance with s 189 of the Act.
- 4.179 A consolidation statement allows for the reconciliation between a fibre service provider’s financial statements at a group level, and information disclosed under ID requirements for regulated services.
- 4.180 Enable/Tuatahi submitted that the requirement to disclose a consolidation statement should be removed.<sup>156</sup> Chorus was of the same opinion and submitted that, as the regulatory financial disclosures are required to be audited and certified, the requirement is unjustified, burdensome, and not useful for interested parties.<sup>157</sup>
- 4.181 We accept that the requirement may be unnecessary where the Commission and other interested parties are able to rely on director certification and audits. We have therefore removed the consolidation statement requirement.

## Assurance and certification of historical financial information

- 4.182 Regulated providers must provide assurances as to the level of compliance with the ID requirements for the historical financial information including:
- 4.182.1 external audit assurance of the financial information disclosed in Schedules 1 to 9;
  - 4.182.2 having director certification for all disclosed financial information; and
  - 4.182.3 specific certification by directors for some related party transactions.
- 4.183 Chorus supported our proposed level of assurance for historical financial data.<sup>158</sup>

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<sup>156</sup> Enable and Tuatahi “[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)” (8 July 2021), Table 1.

<sup>157</sup> Chorus “[Submission on Draft Information Disclosure Determination](#)” (8 July 2021), paragraphs 36.2, 46-48.

<sup>158</sup> Chorus “[Submission on Draft Information Disclosure Determination](#)” (8 July 2021), paragraph 25.2.

- 4.184 Enable/Tuatahi submitted that the specific assurance statements on related party transactions, proposed under clause 2.5.1(1)(d), and the additional assurance required under clauses 2.5.2 – 2.5.5 should be deleted. These are disproportionate for the FFLAS sector. However, they do support annual audit of financial year-end disclosures, which will be achievable if the first year is deferred until 2023.<sup>159</sup>
- 4.185 We consider that due to the nature of related party transactions and the specific rules that apply to their valuation for ID purposes, an audit requirement is appropriate. The extent of the audit work to be carried out will be proportionate to the volume and complexity of transactions undertaken.

### **Transitional provisions of historical financial information**

- 4.186 We have specified transitional provisions for part-year disclosures based on the disclosure years for each regulated provider. This is discussed further in Chapter 8.
- 4.187 Transitional requirements for the disclosure of expenditure by category are discussed in Chapter 6.

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<sup>159</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), para 3.7(b)(ii) & (iii).

## Chapter 5 Pricing and Contract Disclosures

### Purpose and structure of this chapter

- 5.1 The purpose of this chapter is to lay out the ID requirements relating to FFLAS pricing and the terms on which FFLAS are offered to access seekers.
- 5.2 The chapter is split into sections for each decision category:
- 5.2.1 frequency of reporting;
  - 5.2.2 pricing and revenues information (PQ FFLAS);<sup>160</sup>
  - 5.2.3 incentives (PQ FFLAS);
  - 5.2.4 pricing, revenues and incentives (ID-only FFLAS);<sup>161</sup> and
  - 5.2.5 contracts disclosures.

### Summary of Final Decisions

**Table 5.1 Overview – Final Decisions on Pricing and Contract Disclosures**

Category	Final decisions on information required	Reference to Schedules	Relevant part of purpose statement
<b>Frequency of reporting</b>	Except for contract-related disclosures, information will be recorded monthly and disclosed semi-annually.	Chorus: Schedule 24	s 186
	For disclosure year 2022 (Chorus) and disclosure years 2022 and 2023 (ID-only regulated providers), the information will be recorded monthly and disclosed annually.	ID-only regulated providers: Schedule 25	

<sup>160</sup> As defined in the ID determination, PQ FFLAS has the same meaning as in the definitions included in the [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24.

<sup>161</sup> As defined in the ID determination, ID-only FFLAS has the same meaning as in the definitions included in the [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24.

Category	Final decisions on information required	Reference to Schedules	Relevant part of purpose statement
<b>Pricing and revenues (PQ FFLAS)</b>	<p>Public: for each regulated FFLAS, by service, the service description and geographic availability, list prices per the regulated provider's standard contracts (connection and monthly charges), and operating revenues (from connection, monthly, any other charges).</p> <p>Commission-only: number of connections (opening and closing) for each regulated FFLAS, by service.</p>	Chorus: Schedules 14 and 24	s 162(a)-(d), s 166(2)(b)
<b>Incentives (PQ FFLAS)</b>	<p>Public: where active incentives are offered for a service - a description of the incentive including conditions on availability; and the value of the incentive per connection (split between one off incentives and recurring monthly incentives).</p> <p>Commission only: the number of connections receiving the incentive and total incentive clawback values (if relevant).</p>	Chorus: Schedules 14 and 24	s 162(c), s 166(2)(b)
<b>Pricing and revenues (ID-only FFLAS)</b>	<p>Provide the same information as for "Pricing and revenue (PQ FFLAS)" for each service in ID-only areas, split by each ID-only area.</p> <p>For disclosure years 2022 and 2023 only, if ID-only regulated providers do not have the technical capability to report service availability at the central office level, they are required to complete the information on service availability in Schedule 25(iii) to the most detailed level of geographic aggregation that they have the technical capability to disclose.</p>	Chorus: Schedules 14 and 24  ID-only regulated providers: Schedules 14a and 25	s 162(a)-(d), s 166(2)(b)

Category	Final decisions on information required	Reference to Schedules	Relevant part of purpose statement
<b>Incentives (ID-only FFLAS)</b>	Provide the same information as for “Incentives (PQ FFLAS)” for each service in ID-only areas, split by each ID-only area.	Chorus: Schedules 14 and 24  ID-only regulated providers: Schedules 14a and 25	s 162(c), s 166(2)(b)
<b>Pricing methodologies</b>	Disclosure of the specific formulas or methodologies used to determine pricing is not required under the initial ID determination.	N/A	
<b>Contracts disclosures: prescribed terms &amp; conditions</b>	Public: disclosure of prescribed terms and conditions in standard and non-standard contracts for regulated FFLAS, as well as any amendments to the prescribed terms and conditions.  Commission-only: disclosure of terms and conditions that specify prices or incentives, in non-standard contracts for regulated FFLAS as well as amendments to these terms and conditions.	N/A	s 162(b), s 166(2)(b)
<b>Contracts disclosures: comparative information</b>	Public: disclosure of a summary of how prescribed terms and conditions differ between standard and non-standard contracts (except those specifying or determining an incentive or price); as well as the number of access seekers on, and percentages of target revenues under, standard contracts versus non-standard contracts.  Commission only: disclosure of the combined total value of target operating revenue under standard and equivalent non-standard contracts.	N/A	s 162(b), s 166(2)(b)

Category	Final decisions on information required	Reference to Schedules	Relevant part of purpose statement
<b>Contract disclosures: other disclosures on non-standard contracts</b>	Public: disclosure of criteria used to enter non-standard contracts.  Commission only: disclosure of the factors used to determine prices and incentives in non-standard contracts.  For disclosure years 2022 and 2023, these disclosures are subject to a materiality threshold based on the percentage of target revenues that a regulated provider expects to collect under non-standard contracts for each FFLAS.	N/A	s 162(b), s 166(2)(b)

### Frequency of reporting

- 5.3 Information related to pricing and incentives in Schedule 24 (Chorus) and Schedule 25 (ID-only regulated providers) must be recorded monthly and disclosed semi-annually within one month of the second quarter of the disclosure year and within 5 months of the fourth quarter of the disclosure year.
- 5.4 For disclosure year 2022, Chorus must record the information related to pricing and incentives in Schedule 24 monthly and disclose it annually (5 months after year-end). The ID-only regulated providers must record the information related to pricing and incentives in Schedule 25 monthly for disclosure years 2022 and 2023 and disclose this information 5 months after the end of disclosure year 2023.

### Pricing and revenues (PQ FFLAS)

- 5.5 Information on all PQ FFLAS must be disclosed by service from disclosure year 2024. For disclosure years 2022 and 2023, some services may be grouped together within each regulated FFLAS category.<sup>162</sup> Schedule 24 contains guidance on the maximum level of service aggregation within each regulated FFLAS category that should be adopted when completing the Schedule.<sup>163</sup>

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<sup>162</sup> There are seven regulated FFLAS service categories: Bitstream Passive Optical Network (PON) Services; Colocation and interconnection services; Connection services; Point-to-point services; Unbundled PON services; Transport services and Voice services. See Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 2.108.

<sup>163</sup> See sheet 'Service-level Reporting' in Schedule 24.

- 5.6 The disclosure template (Schedule 24) groups the different FFLAS into the following three categories, based on the Open Systems Interconnection model where the service is provided:
- 5.6.1 layer 1 services;
  - 5.6.2 layer 2 services; and
  - 5.6.3 other FFLAS.
- 5.7 For each PQ FFLAS within each of these categories, publicly disclose:
- 5.7.1 a service description;
  - 5.7.2 an indication whether the service has changed since the previous reporting month (no, new, stopped, other);
  - 5.7.3 only for services where the changes from the previous reporting month are 'other' - an explanation of the changes to the service description, level of aggregation and/or other relevant changes (in the mandatory notes in Schedule 14);
  - 5.7.4 an indication whether the service is available at all fibre central offices within the geographical area subject to PQ regulation (**PQ area**) (yes/no);
  - 5.7.5 only for services not available at all PQ area fibre central offices – information on the central offices where the service is not available;
  - 5.7.6 list prices for each service, separately for:
    - 5.7.6.1 connection charge;
    - 5.7.6.2 monthly charge;
  - 5.7.7 operating revenues, split by:
    - 5.7.7.1 revenues earned from connection charges;
    - 5.7.7.2 revenues earned from monthly charges;
    - 5.7.7.3 revenues earned from other changes; and
  - 5.7.8 an indication whether an incentive is offered for the service (yes/no).
- 5.8 For each PQ FFLAS within each of these categories, also disclose to the Commission only:

5.8.1 the number of connections:<sup>164</sup>

5.8.1.1 the number of connections (opening); and

5.8.1.2 the number of connections (closing).

5.9 Under the initial ID determination, our final decision is to require disclosure of service availability at the central office level (by exception), ie, only for services that are not available at all central offices. Our initial ID determination does not require geographic segmentation of the pricing information for PQ FFLAS.

### **Incentives (PQ FFLAS)**

5.10 For each incentive applied to PQ FFLAS, publicly disclose:

5.10.1 incentive description, including conditions/availability/duration;

5.10.2 an indication whether the incentive is available in the entire PQ area (yes/no);

5.10.3 an indication whether the costs for the incentive are capitalised under GAAP (yes/no);

5.10.4 value (\$) of the incentive for each connection receiving the incentive, split by:

5.10.4.1 one off incentive (\$ per connection receiving the incentive);  
and

5.10.4.2 recurring monthly incentives (\$ per connection receiving the incentive).

5.11 For each incentive applied to PQ FFLAS also disclose to the Commission only:

5.11.1 number of connections receiving an incentive:

5.11.1.1 total connections receiving a one-off incentive;

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<sup>164</sup> For the purposes of the pricing, incentives and contract disclosures discussed in this Chapter, references to the number of 'connections' should be understood as the number of instances a service is sold. Specifically, references to 'connection' in this Chapter include both 'connection' and 'ENNI/ co-location connection' as defined in clause 1.4.3 of *Fibre Information Disclosure Determination 2021* [2021] NZCC 24. See also paragraph 5.63 below.

- 5.11.1.2 total connections receiving a monthly incentive;
- 5.11.2 total value of any incentive clawback payments received during the reporting period related to the incentive;<sup>165</sup> and
- 5.11.3 the period covered by the incentive clawback payment (months/year).

### **Pricing, revenues and incentives (ID-only FFLAS)**

- 5.12 For regulated providers that offer ID-only FFLAS, our final decision is to require disclosure of the same information as listed under 'Pricing and revenues (PQ FFLAS)' and 'Incentives (PQ FFLAS)', subject to the following additional requirements.
  - 5.12.1 Each regulated provider is required to report separately on the regulated FFLAS they supply in each distinct geographical ID-only area.<sup>166</sup> Until such time as applying the regulations under s 226 of the Act requires a different geographical segmentation, each ID-only regulated provider is required to report on the entire geographical area where they supply regulated FFLAS. Chorus is required to report separately for each geographical area where another regulated provider operates (ie, separately for Enable's area, Tuatahi's area and Northpower's area) and where Chorus provides regulated FFLAS. The PQ geographical area and the separate ID-only areas are collectively referred to as 'Reporting areas' in Schedules 24 and 25.
  - 5.12.2 From disclosure year 2024, all regulated providers are required to complete the information required on service availability in Schedule 24(iii) and Schedule 25(iii), respectively, at the central office level.<sup>167</sup> This requirement applies to Chorus also for disclosure years 2022 and 2023.

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<sup>165</sup> The ID determination defines an "incentive clawback payment" as "a payment made by an access seeker to reimburse an ID-regulated provider for any connections that received an incentive, but for which the access seeker subsequently cancelled the relevant service".

<sup>166</sup> Distinct ID-only areas may be determined as part of the application of the s 226 regulations – for example, we may determine one or more distinct geographical area for each ID-only regulated provider where that ID-only regulated provider has installed a fibre network as part of the UFB initiative.

<sup>167</sup> Regulated providers are required to complete Schedules 24(iii) and 25(iii) only for regulated FFLAS that are not available at all central offices. See paragraph 5.9 above.

- 5.12.3 For disclosure years 2022 and 2023, ID-only regulated providers should complete the information required on service availability in Schedule 25(iii) to the most detailed level of geographic aggregation that they have the technical capability to disclose, up to and including central office level.
- 5.12.4 In disclosure year 2023 ID-only regulated providers are required to complete a statement in Schedule 14a noting the progress achieved, work planned and outstanding steps to be taken to enable the ID-only regulated provider to complete Schedule 25(iii) at the central office level from disclosure year 2024.

### **Pricing methodologies**

- 5.13 Disclosure of the specific formulas or methodologies used to determine pricing is not required under the initial ID determination.

### **Contracts disclosures for PQ FFLAS and ID-only FFLAS**

#### *Disclosure of prescribed terms and conditions in standard and non-standard contracts*

- 5.14 Within 20 working days of entering into a new standard contract or making amendments to an existing contract, disclose the prescribed terms and conditions, and any amendments to these terms and conditions, in standard contracts between regulated providers and access seekers for the provision of regulated FFLAS, including:<sup>168</sup>
- 5.14.1 service descriptions;
  - 5.14.2 quantities to be supplied;
  - 5.14.3 service level terms, including performance guarantees, prices and incentives; and
  - 5.14.4 operations manuals.

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<sup>168</sup> A standard contract is a contract for the provision of regulated FFLAS between a regulated provider and an access seeker, and in respect of which, at least 3 other access seekers have the same prescribed terms and conditions. See *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, cl. 1.4.3.

5.15 With respect to non-standard contracts for the provision of regulated FFLAS between regulated providers and access seekers, within 20 working days of entering into a new non-standard contract or making amendments to an existing non-standard contract:<sup>169</sup>

5.15.1 disclose publicly the prescribed terms and conditions, and any amendments to these terms and conditions, with the exception of the terms and conditions that specify the incentives or prices that apply; and

5.15.2 disclose to the Commission the terms and conditions that specify the prices and incentives, as well as any amendments to these terms and conditions.

*Disclosure of comparative information*

5.16 In relation to equivalent standard contracts and non-standard contracts between regulated providers and access seekers for the provision of regulated FFLAS:<sup>170</sup>

5.16.1 disclose publicly a summary of how the prescribed terms and conditions (except those specifying or determining the price at which goods or services are to be provided) differ between the non-standard and standard contracts within 20 working days of entering a new non-standard contract;

5.16.2 disclose publicly the number of access seekers on non-standard contract(s) and the number of access seekers on the equivalent standard contract before the start of each disclosure year except disclosure year 2022;

5.16.3 before the start of each disclosure year except disclosure year 2022, disclose publicly the percentage of target revenue expected to be collected under the non-standard contract(s) as well as the percentage of target revenue expected to be collected under the equivalent standard contract from the combined target revenues under equivalent standard and non-standard contracts; and

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<sup>169</sup> A non-standard contract is a contract for the provision of regulated FFLAS between a regulated provider and an access seeker that has prescribed terms and conditions and is not a standard contract. See *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, cl. 1.4.3.

<sup>170</sup> An equivalent non-standard contract is a non-standard contract for the provision of regulated FFLAS that are in all material respects the same as those provided under a standard contract (see *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, cl. 1.4.3). We note that some non-standard contracts may not have an equivalent standard contract (eg, contracts for new services where fewer than four access seekers have signed up for the regulated service).

- 5.16.4 disclose to the Commission only the total value of the combined target operating revenue expected to be collected under both standard and equivalent non-standard contracts for each regulated FFLAS before the start of each disclosure year except disclosure year 2022.
- 5.17 For disclosure year 2022, the disclosures outlined at paragraphs 5.16.2-5.16.4 should be made no later than 3 months after the start of disclosure year 2022 by Chorus and before the start of disclosure year 2023 by the ID-only regulated providers.

*Other disclosures on non-standard contracts*

- 5.18 In relation to non-standard contracts between regulated providers and access seekers for the provision of regulated FFLAS, before the start of each disclosure year except disclosure year 2022:
- 5.18.1 disclose publicly information on the criteria used to decide whether/when a non-standard contract should be used; and
- 5.18.2 disclose to the Commission an explanation of any specific criteria or factors used to determine the prices or incentives for regulated FFLAS in non-standard contracts.
- 5.19 For disclosure year 2022, the disclosures outlined at paragraph 5.18 should be made no later than 3 months after the start of disclosure year 2022 by Chorus and before the start of disclosure year 2023 by the ID-only regulated providers.
- 5.20 These disclosures are subject to a materiality threshold for disclosure years 2022 and 2023 and only apply if the percentage of target operating revenue that a regulated provider expects to collect from the provision of regulated FFLAS under equivalent non-standard contracts is greater than 10% of the combined target operating revenue that the regulated provider expects to collect under both the standard and all non-standard contracts for a particular FFLAS.

## **Application of our Regulatory Framework**

### **The purposes in Part 6**

- 5.21 We have applied our Regulatory Framework and consider that the final decisions in this chapter meet the purpose of s 186 by requiring the disclosure of sufficient readily available pricing and contract information so that the Commission and other interested persons can assess whether the Part 6 purpose is being met.
- 5.22 We consider that together all of our final decisions in this chapter best give, or are likely to best give, effect to the s 166(2) purposes as:

- 5.22.1 the disclosure of the pricing and contract information that enables the Commission and other interested persons to assess whether a regulated provider's performance is consistent with the outcomes in s 162 will also best promote those outcomes; and
  - 5.22.2 the disclosure of the pricing and contract information will promote competition where relevant. We do not consider that there is any tension between the requirements we have set that would promote the outcomes in s 162 (the outcomes produced by workable competition) and requirements that would promote the outcomes in s 166(2)(b) (workable competition).
- 5.23 Each decision is intended to contribute to our overall determination of pricing and contract disclosures that meet the purpose of s 186 and best gives, or is likely to best give, effect to the s 166(2) purposes. Where relevant, we have responded to submissions by stakeholders on individual draft decisions.

**Why interested persons need information on prices and contract terms to assess whether the purposes of Part 6 are met**

- 5.24 In workably competitive markets, suppliers can be expected to share any efficiency gains they achieve with consumers, including through lower prices. Similarly, in workably competitive markets where suppliers compete for customers, contract terms would tend to reflect changing market conditions and balance the interests of suppliers and customers (eg, through offering appropriate performance guarantees).
- 5.25 The disclosure of pricing information and contract terms can therefore help interested persons answer some of the key performance questions necessary to understand if the Part 6 purpose is being met.
- 5.26 In addition, the disclosure of pricing information and contract terms can assist in assessing whether and how workable competition has developed for different services or different geographical areas. For example, all else being equal, the emergence of competition is often associated with lower prices over time as suppliers compete to attract customers. Pricing disclosures in combination with contract and other information disclosed under ID could also provide an early indication of anti-competitive behaviour that might be harmful to competition.
- 5.27 The decisions in this chapter promote the purpose of s 186 and the outcomes in s 162 by:
- 5.27.1 requiring reporting on service-level prices and incentives that will allow interested parties to evaluate whether over time:

- 5.27.1.1 section 162(c) is being met (ie, whether end-users share in the benefits of efficiency gains in the supply of regulated FFLAS, including through lower prices); and
  - 5.27.1.2 section 162(d) is being met (assisting interested persons to understand whether suppliers are earning excessive returns over time).
- 5.27.2 requiring reporting on the service descriptions or functionality of each service which provides context for any analyses of prices and allows interested persons to evaluate over time whether the purposes in s 162(a) and (b) are being met in that:
- 5.27.2.1 new products are introduced in accordance with incentives for innovation (s 162(a)); and/or
  - 5.27.2.2 product characteristics are tailored to the quality that end-users demand (s 162(b)).
- 5.27.3 requiring reporting of the prescribed terms and conditions in standard and non-standard contracts can also help interested persons assess whether the purposes in s 162(b) are being met in that:
- 5.27.3.1 the regulated providers' obligations and responsibilities to access seekers in the event the provision of regulated FFLAS is impeded or interrupted can help inform whether the quality of FFLAS supplied reflects end-users' demands.
- 5.28 The decisions in this chapter also promote the purpose in s 166(2)(b) in that:
- 5.28.1 requiring reporting of the prescribed terms and conditions in standard and non-standard contracts, including terms related to prices and operations and comparative information, can also help to promote competition by ensuring that regulated providers do not use contract terms to reduce quality or distort competition by introducing restrictive terms that favour their own operations or favour some access seekers over others.
- 5.29 Below we set out our decisions on pricing-related information and contract terms. We consider that our requirements achieve a balance between cost-effectiveness and the need for sufficient information to be disclosed to assess regulated providers' performance against the relevant Part 6 purposes.

## **Final Decision: Frequency of reporting**

### **Final decision**

- 5.30 Information related to pricing and incentives in Schedule 24 (Chorus) and Schedule 25 (ID-only regulated providers) must be recorded monthly and disclosed semi-annually within one month of the second quarter of the disclosure year and within 5 months of the fourth quarter of the disclosure year. Our final decision requires less frequent pricing and incentive disclosures than our draft decision, which required quarterly disclosures.
- 5.31 For disclosure year 2022, Chorus must record the information related to pricing and incentives in Schedule 24 monthly and disclose it annually (5 months after year-end). The ID-only regulated providers must record the information related to pricing and incentives in Schedule 25 monthly for disclosure years 2022 and 2023 and disclose this information 5 months after the end of disclose year 2023.

### **Reasons**

- 5.32 Recording pricing and incentives information each month will give sufficient granularity to interested parties to observe trends in pricing over time. At the same time, requiring the monthly information to be disclosed semi-annually reduces the reporting burden on regulated providers and the likelihood that the information disclosed would be commercially sensitive at the time of disclosure.
- 5.33 We consider that semi-annual reporting of prices and incentives is reflective of the dynamic nature of telecommunications markets where prices, and particularly incentives, may be revised more frequently than annually.
- 5.34 Recording of prices and incentives once a year and disclosing these annually would reduce transparency and detract from the usefulness of the reporting in assessing whether prices reflect efficient outcomes and are likely to promote competition in telecommunication markets. This is because annualized pricing and incentive information will represent averages over the period that would not necessarily be reflective of the actual prices paid by access seekers or the changing market conditions during the year.

### Stakeholder views

- 5.35 All regulated providers (Chorus, Enable/Tuatahi, and Northpower) submitted that prices can only change once per year in accordance with the wholesale service agreements and are already public. The regulated providers did not support the requirement to record pricing and incentive information monthly and disclose quarterly and argued for annual disclosures to reduce compliance costs.<sup>171</sup>
- 5.36 We note that the UFB contracts will substantially fall away after the Part 6 regime comes into effect on the implementation date. In future, regulated providers will not be limited in their ability to change prices to once a year. Similarly, regulated providers can introduce new discounts, promotions or other incentives as well as new services at any point driven by technology changes or market dynamics. Further, while the reference offers are currently published on the regulated providers' websites, not all regulated FFLAS are subject to reference offers.
- 5.37 We consider that recording monthly information on prices and incentives should not impose a significant compliance burden on regulated providers, because this information ought to be readily collected in the normal course of their business. To the extent that list prices change infrequently or are specified in standard contracts already disclosed under the Part 6 regime, completing the pricing disclosures can be carried over from month to month.
- 5.38 For the reasons explained above at paragraphs 5.32 to 5.34, we consider that disclosure of pricing and incentive information is required on a more frequent basis than annually. However, we acknowledge the concerns raised by regulated providers on compliance costs and have reduced the frequency of disclosures to semi-annual from quarterly. In our view, these reporting requirements are both appropriate and proportionate given that increased transparency of prices and price trends for regulated FFLAS, in combination with other information, could help interested persons assess whether prices for regulated FFLAS are efficient (s 162(c)) and could support increased competition between broadband service providers at the retail level (s 166(2)(b)).

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<sup>171</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 5.1 and 82.2; Enable and Tuatahi "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 3.6 and 4.8; and Northpower "[Submission on Fibre price-quality and information disclosure and IM amendments - 8 July 2021](#)" (12 July 2021), page 2.

- 5.39 We note that the ID reporting requirements should be sufficiently comprehensive to accommodate future pricing patterns as well as enduring enough to allow regulated providers to set systems and processes in place for the required disclosures. We accept that the disclosure requirements under the Part 6 regime differ from the existing ID requirements and have deferred the first pricing and incentive disclosures to the end of disclosure year 2022 for Chorus and the end of disclosure year 2023 for the ID-only regulated providers to allow regulated providers additional time to prepare the first disclosures.

## **Final Decision: Pricing and revenues (PQ FFLAS)**

### **Final decision**

- 5.40 Information on all PQ FFLAS must be disclosed, by service from disclosure year 2024. For disclosure years 2022 and 2023, some services may be grouped together within each regulated FFLAS category. Schedule 24 contains guidance on the maximum level of service aggregation within each regulated FFLAS category that should be adopted when completing the Schedule.<sup>172</sup>
- 5.41 The disclosure template (Schedule 24) groups the different FFLAS into the following three categories, based on the Open Systems Interconnection model where the service is provided:
- 5.41.1 Layer 1 services;
  - 5.41.2 Layer 2 services; and
  - 5.41.3 other FFLAS.
- 5.42 For each PQ FFLAS within each of these categories, publicly disclose:
- 5.42.1 a service description;
  - 5.42.2 an indication of whether the service has changed since the previous reporting month (no, new, stopped, other);

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<sup>172</sup> See sheet 'Service-level Reporting' in Schedule 24. An equivalent sheet is included in Schedule 25 for ID-only regulated providers.

- 5.42.3 only for services where the changes from the previous reporting month are 'other' - an explanation of the changes to the service description, level of aggregation and/or other relevant changes (in the mandatory notes in Schedule 14);<sup>173</sup>
  - 5.42.4 an indication for whether the service is available at all fibre central offices within the PQ area (yes/no);
  - 5.42.5 only for services not available at all PQ area fibre central offices – information on the central offices where the service is not available;
  - 5.42.6 list prices for each service, separately for:
    - 5.42.6.1 connection charge;
    - 5.42.6.2 monthly charge;
  - 5.42.7 operating revenues, split by:
    - 5.42.7.1 revenues earned from connection charges;
    - 5.42.7.2 revenues earned from monthly charges;
    - 5.42.7.3 revenues earned from other changes; and
  - 5.42.8 an indication whether an incentive is offered for the service (yes/no).
- 5.43 For each PQ FFLAS within each of these categories, also disclose to the Commission only:
- 5.43.1 the number of connections:
    - 5.43.1.1 the number of connections (opening); and
    - 5.43.1.2 the number of connections (closing).

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<sup>173</sup> The same requirement applies to ID-only regulated providers for reporting changes to ID-only FFLAS service descriptions or aggregation - an explanation of these changes has to be included in the mandatory notes in Schedule 14a.

- 5.44 Under the initial ID determination, our final decision is to require disclosure of service availability at the central office level (by exception) - ie, only for services that are not available at all central offices. Our initial ID determination does not require geographic segmentation of the pricing information for PQ FFLAS.

### Reasons

- 5.45 As explained at paragraphs 5.24-5.28 above, the disclosure of pricing information can help interested persons answer some of the key performance questions necessary to understand whether the Part 6 purpose is being met.
- 5.46 Specifically, in combination with other information, pricing information can help interested persons understand:
- 5.46.1 whether regulated providers are sharing the benefits of efficiency gains with end-users through lower prices over time (per s 162(c);
  - 5.46.2 whether the price structure set by regulated providers is efficient and/or is likely to promote efficiency in line with the outcomes in workably competitive markets;
  - 5.46.3 whether regulated providers are potentially seeking to distort competition, contrary to s 166(2)(b), in different geographical areas or telecommunication markets, including but not limited to, competition between regulated providers of FFLAS and providers of alternative technologies, such as fixed wireless, that rely on layer 1 input services but compete with fixed line access services at retail level;<sup>174</sup>
  - 5.46.4 whether regulated providers are innovating (s 162(a)); and
  - 5.46.5 whether regulated providers are earning excessive returns over time (s 162(d)).

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<sup>174</sup> As part of the survey on promoting competition in telecommunications markets we published in February 2021 (**competition survey**), we identified six different risks related to pricing practices (and two further risks related to incentive payments) that could affect the development of workable competition in NZ telecommunications markets in ways that would not be to the long-term benefit of end-users. See Commerce Commission "[Promoting competition in telecommunications markets as part of fibre information disclosure \(ID\) and price-quality \(PQ\) regulation – survey questions](#)" (4 February 2021) and Commerce Commission "[Promoting competition in telecommunications markets as part of fibre information disclosure \(ID\) and price-quality \(PQ\) regulation – companion paper](#)" (4 February 2021). We discuss the responses we received on the survey at paragraph 5.56 below.

- 5.47 In order for interested persons to undertake the type of assessments outlined above, the information on prices has to be provided in the context of the technical specification or other characteristics of each service, including the relevant contract terms and guarantees. Further, to assess efficiency and potential impact on competition, it would be important to understand whether the actual prices paid by access seekers, after incentives are applied, differ significantly from the contract prices.<sup>175</sup> For this reason, our disclosure requirements related to prices include:
- 5.47.1 a service description;
  - 5.47.2 revenues received from different types of service changes (after incentives are applied), and
  - 5.47.3 quantities billed in the form of instances sold of each service - ie, number of connections or ENNI/ co-location connections (depending on the service).
- 5.48 Our final decisions on ID requirements for incentives applied to each service are discussed at paragraphs 5.85-5.110,<sup>176</sup> while the ID requirements related to contract terms are discussed at paragraphs 5.131-5.170 below.
- 5.49 Revenue is a key factor in profitability and return on investment, assisting interested persons to assess whether excess profits are being earned. While revenue and pricing disclosures at the service level cannot be used in isolation to assess the profitability of individual services, the relative prices of different services (in the context of their technical characteristics) could provide an indication of whether price structures are likely to be efficient.

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<sup>175</sup> For the purposes of this paper, the prices specified in standard contracts between regulated providers and access seekers are sometimes referred to as 'list prices'. See also the pricing definitions in Schedule 26 in the ID determination.

<sup>176</sup> For the purposes of this paper, the concept of 'incentive' includes any discount, promotion, rebate and any other incentive that has monetary value, including incentives whose costs are capitalised under GAAP. See also the pricing definitions Schedule in the ID determination.

- 5.50 Trends in prices relative to the number of connections can also help interested persons to understand better whether efficiency gains are being passed on to end-users over time. As connections increase, any fixed costs can be spread over a larger number of connections and one would expect prices per connection to decline. In addition, a regulated provider's average revenue per unit (ARPU) for individual services can be compared with the list prices to determine the effect that incentives have on revenue.
- 5.51 We have also included a requirement to disclose information on each regulated service availability at the central office level (by exception). This requirement can reveal whether regulated providers target the availability of services with specific technical characteristics to certain geographical areas (eg, areas with lower costs or areas where they may face competition from alternative technologies). Reporting this information would help interested persons to assess whether such practices are likely to be efficient and not harmful to competition in the long-term.

#### **Existing information disclosure**

- 5.52 Our initial ID reporting requirements related to prices were modelled on the existing disclosures under the LFC Information Disclosure Determination 2018, with a revised reporting frequency and additional requirements related to incentives (see next section).<sup>177</sup>
- 5.53 Our final decision departs from the existing pricing disclosure requirements, however, by not requiring reporting by access seeker or by UFB area.
- 5.54 Our current view is that such additional granularity is not required, given the additional restrictions on prices that regulated providers have to comply with, including:
- 5.54.1 the undertakings made under s 156AD for regulated providers to supply FFLAS on non-discriminatory and equivalent basis – see paragraph 2.85 above;
  - 5.54.2 geographically consistent prices under s 201 that PQ regulated providers have to apply; and
  - 5.54.3 maximum prices for the declared services (anchor services and DFAS) that will apply to PQ regulated providers – see paragraphs 2.78-2.82 above.

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<sup>177</sup> [LFC Information Disclosure Determination 2018](#) [2018] NZCC 10, Schedules 5 and 6.

## Stakeholder views

### *Submissions on the initial approach paper and the competition survey*

- 5.55 A number of RSPs that made submissions on our approach paper supported the monitoring of prices through ID. In particular:
- 5.55.1 Spark noted that services that are not price capped are susceptible to price volatility and supported our proposal to include ID requirements related to the prices of regulated services.<sup>178</sup>
  - 5.55.2 Vodafone raised concerns about inefficient pricing structures and practices that may emerge in the supply of FFLAS and supported price monitoring through ID. Vodafone further argued in favour of “comprehensive pricing principles” to ensure that the LFCs price efficiently and do not harm competition, including information on the “range of services available and [that] there are meaningful differences in price to meet the needs of all New Zealanders”.<sup>179</sup>
  - 5.55.3 Vocus noted that the risks of inefficient price structures are particularly significant in relation to layer 1 unbundled products and argued mitigating these risks required further regulatory intervention.<sup>180</sup>
- 5.56 In response to our competition survey, stakeholders made the following submissions relevant to ID pricing disclosures.
- 5.56.1 Spark noted that ID requirements can increase transparency and help mitigate the risks of anti-competitive pricing – specifically, the risks that regulated providers will charge anti-competitive prices for certain layer 2 services where they face competition, or for layer 1 services used as inputs to rivals’ services at layer 2. However, Spark also argued that it cannot be assumed that ID requirements will be sufficiently granular to provide a meaningful assessment of the regulated provider’s conduct.<sup>181</sup>

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<sup>178</sup> Spark “[Submissions on PQID process and approach paper](#)” (14 October 2020), page 1 and paragraph 3.

<sup>179</sup> Vodafone “[Submissions on PQID process and approach paper](#)” (14 October 2020), pages 2 and 4-5.

<sup>180</sup> Vocus “[Submissions on PQID process and approach paper](#)” (14 October 2020), paragraphs 14-15.

<sup>181</sup> Spark “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), pages 6-7.

- 5.56.2 Kordia rated ID disclosures as the most useful regulatory tool to mitigate the risks to competition that may arise from anti-competitive pricing. Kordia also argued that “full disclosure of underlying costs and assumptions” will allow the industry to better assess the fairness of regulated providers’ pricing.<sup>182</sup>
- 5.56.3 Enable/Tuatahi argued that the undertakings given by regulated providers under Part 4AA to provide Layer 1 services on equivalent and non-discriminatory basis and Layer 2 services on non-discriminatory basis, combined with the requirement for publicly disclosed Reference Offers for the relevant services, are sufficient to ensure that no risks to competition could materialise in practice from pricing practices.<sup>183</sup>
- 5.56.4 Chorus submitted that other existing legal and regulatory tools are available to mitigate any risks to competition that might arise from anti-competitive pricing practices, including section 36 of the Commerce Act and the equivalence obligation under the deeds. Chorus argued that “[t]here is no need for any additional ID intervention.”<sup>184</sup>
- 5.57 We have noted stakeholders’ concerns about potentially inefficient pricing practices in the supply of regulated FFLAS and/or pricing practices that may not promote competition for the long-term benefit of end-users. In the ID determination, we have sought to set pricing requirements that are sufficiently detailed to allow interested persons to assess whether the purpose of Part 6 is being met, whilst not imposing unduly onerous compliance costs on regulated providers. We acknowledge that regulated providers are subject to other regulatory obligations that limit their ability to engage in anti-competitive pricing. For this reason, our final decisions do not require pricing reporting by access seeker or by granular geographical areas such as POI areas as part of the initial ID requirements. Further, our initial ID determination does not require the disclosure of pricing methodologies (see paragraphs 5.124-5.130 below).

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<sup>182</sup> Kordia NZ Ltd “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (24 February 2021), pages 2-3 and 8-9.

<sup>183</sup> Enable Networks Limited “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), pages 3-5 and Tuatahi First Fibre Ltd “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), pages 3-5.

<sup>184</sup> Chorus “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), pages 1 and 4.

*Submissions on the draft ID decisions*

Granularity of reporting

5.58 In their submission on our draft ID decisions, Enable/Tuatahi supported "the use of LFC specific service descriptions for S25(i)." <sup>185</sup>

5.59 Chorus submitted it broadly supports the approach to pricing and contract disclosures in our draft ID decisions. <sup>186</sup> However, Chorus raised the following concerns with the granularity of price reporting specified in Schedule 24:

5.59.1 that the expected level of granularity for price reporting is unclear; <sup>187</sup>

5.59.2 that the format of the draft pricing schedules does not work for services that are not access services since Chorus is unable to quantify connection numbers for services such as co-location and backhaul and prices for such services are variable; <sup>188</sup>

5.59.3 that disclosure at a granular level, such as plan level, has not been justified and would produce an excessive amount of detail that would not be meaningful because Chorus has over 190 different plans for access services alone, some with multiple price points; <sup>189</sup> and

5.59.4 that considerable work is required to deliver the new ID requirements, as some pricing disclosures are different to the way Chorus records information in its systems. <sup>190</sup>

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<sup>185</sup> Enable and Tuatahi "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), page 22, Table 8.

<sup>186</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 82.

<sup>187</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 82.3 and 98.

<sup>188</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 82.4, 110-112 and Appendix 1, page 45.

<sup>189</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 102. Chorus made a similar point in its cross-submission - see Chorus "[Cross submission on Fibre ID draft decisions - 5 August 2021](#)" (9 August 2021), page 9.

<sup>190</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 82.9.

- 5.60 Chorus proposed instead to report pricing information at the level of Chorus' core FFLAS products augmented to include four speed groupings under Bitstream 2. Chorus argued that this level of service aggregation will provide interested persons with sufficient information to assess whether the purpose of the ID regime is being met.<sup>191</sup>
- 5.61 In cross-submissions, Enable/Tuatahi supported Chorus' argument that non-access services should be excluded from the pricing disclosures in Schedule 25 because connection numbers cannot be accurately counted for aggregated services.<sup>192</sup>
- 5.62 We consider that the draft ID decisions reasons paper was clear that pricing disclosures in Schedules 24 and 25 should be at the individual service level.<sup>193</sup> Each service is defined by a set of unique technical characteristics (as will be reported in field 'Service description' in Schedules 24(i) and 25(i)). Examples of the technical characteristics that determine a service can be found in the regulated providers' reference offers and in the regulations declaring the anchor service and DFAS.<sup>194</sup>

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<sup>191</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 82.3, 99-101 and Appendix 1, page 44. For the list of Chorus' proposed core FFLAS products in each FFLAS service category see Chorus "[Submission on Chorus price-quality path from 1 January 2022 draft decision - 8 July 2021](#)" (12 July 2021), Appendix D.

<sup>192</sup> Enable and Tuatahi "[Cross submission on Fibre ID draft decisions - 5 August 2021](#)" (9 August 2021), page 6.

<sup>193</sup> See for example Commerce Commission "[Fibre information disclosures – draft decisions – reasons paper](#)" (27 May 2021), paragraphs 5.27-28 and 5.32.

<sup>194</sup> See for example Chorus "Bitstream 2 Accelerate Service Description" (June 2017), clauses 3.6 and 3.7 or the [Telecommunications \(Regulated Fibre Services\) Regulations 2021](#).

- 5.63 We note Chorus' and Enable/Tuatahi's concern that the format of reporting in Schedules 24 and 25 does not work for services that are not access services because they are unable to quantify connection numbers for aggregated services. The fields on connection numbers in Schedules 24 and 25 are intended to capture the number of instances that a given service is sold - for access services, the number of instances sold would be the same as end-user connections, but this is not the case for aggregated services which by their nature combine traffic from multiple end-user connections. We agree that the definition of 'connection' in the draft ID determination did not appropriately capture the concept of 'an instance of service sold' for aggregated services and have therefore added a new definition for 'ENNI/ colocation connection' to provide clarity on the information to be captured for aggregated services. We have also amended the relevant column headings in Schedules 24 and 25 to list both 'connections' and 'ENNI/ colocation connections' (as relevant). The disclosure of complex pricing structures is discussed at paragraph 5.84.2 below.
- 5.64 As explained in more detail in paragraphs 5.45-5.50 above, the purpose of pricing and incentives disclosures in Schedules 24 and 25 is, in combination with other information, to assist interested persons to assess whether:
- 5.64.1 end-users share in the benefits of efficiency gains, including through lower prices over time (s 162(c));
  - 5.64.2 the services provided reflect innovation by regulated providers (s 162(a));
  - 5.64.3 relative prices between different FFLAS are likely to be efficient in the context of their technical characteristics, including whether the services offered reflect end-users' demands (s 162(b)); and
  - 5.64.4 whether the pricing structures are likely to promote, rather than distort, competition in telecommunication markets (s 166(2)(b)).
- 5.65 Part 6 regulation applies to all regulated FFLAS, not just access services or 'core products', and hence our final ID requirements on prices, incentives and service availability encompass all regulated FFLAS. The disclosures are set to allow interested persons to undertake the assessments outlined above for each regulated FFLAS.

- 5.66 We consider that disclosing prices, incentives and service availability in a consistent format (as specified in Schedules 24 and 25) for all regulated FFLAS and across all regulated providers has significant advantages for allowing interested persons to undertake the assessments outlined above. Aggregated revenue (and costs) reporting might be appropriate when assessing whether regulated FFLAS providers earn excessive profits (contrary to s 162(d)), but is insufficient to meet the purposes at s 162 discussed above.
- 5.67 We note that there is a trade-off between the usefulness of pricing information and the level of aggregation at which it is disclosed. The more aggregated the price and service availability data, the less meaningful it is for assessing whether end-users of specific regulated FFLAS are benefitting from efficiency gains, including through lower prices (per s 162(c)) or from innovation by regulated providers (per s 162(a)). For example, aggregated price information could indicate overall average prices for regulated FFLAS are falling, but this average trend could be caused by prices in one regulated FFLAS category (with either high initial prices or high volumes), while prices for other regulated FFLAS categories or individual services (with eg low volumes) could be rising.
- 5.68 We acknowledge that it might be appropriate to balance the level of granularity of price and service availability reporting with the cost of compliance for regulated providers and/or the complexity of assessments if service reporting is disaggregated to minor technical variations which have no significant impact on the prices charged. For this reason, we have provided guidance on the level of maximum aggregation of technical characteristics that can be applied to services in different FFLAS categories in sheet 'Service level reporting' in Schedules 24 and 25. We note that if it is easier for regulated providers to report on a more disaggregated service level than the level indicated in sheet 'Service level reporting' in Schedules 24 and 25, depending on the way their financial systems are set up, they may do so.

- 5.69 We note Chorus' submission on the complexity of its regulated FFLAS offering. Given that our final decision provides for some service aggregation by technical characteristics (with additional aggregation applicable for disclosure years 2022 and 2023 - see paragraph 5.72 below), we consider that it may be difficult for interested persons to reconcile month to month pricing and incentives disclosures in the context of changes in the service offerings and/or level of aggregation. This in turn could lead to incomplete or misleading assessments - for example, where effects on average prices are driven by changes to the service offers mix, rather than changes to prices charged. For this reason, we have included a new field in Schedules 24(i) and 25(i) to record whether a service or a group of services has changed from the previous reporting month. Additionally, we have included a new mandatory note in Schedules 14 and 14a that requires regulated providers to disclose sufficient information on changes to the list of services (or groups of services) reported in Schedules 24 and 25 to allow interested persons to reconcile the data disclosed from month to month.
- 5.70 We are not persuaded by Chorus' argument that considerable work is required to deliver the new ID requirements on prices and connections for each regulated FFLAS it sells. We consider that this information should be able to be collected in the course of a regulated provider's business operations.
- 5.71 Nonetheless, to allow regulated providers time to put the necessary systems and processes in place to disclose the pricing and incentives information in Schedules 24 and 25, our final ID decision is to defer the first semi-annual pricing disclosures for all regulated providers. Regulated providers will first have to disclose the monthly Pricing reports in Schedules 24 and 25 within five months of the end of the relevant disclosure years. The first disclosures will be due after disclosure year 2022 for Chorus, and after disclosure year 2023 for the ID-only regulated providers.<sup>195</sup> We consider this deferral to be adequate to allow the regulated providers to adapt their systems to provide the required information.
- 5.72 Our final decision also allows all regulated providers, if they choose to do so, to report pricing, incentive and service availability at a more aggregated level in disclosure years 2022 and 2023 than the level of reporting required from disclosure year 2024 onwards - see sheet 'Service level reporting' in Schedules 24 and 25. We note that:

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<sup>195</sup> As noted at paragraphs X19.1 and 8.11.5, all year-end disclosures required of the ID-only regulated providers for disclosure year 2022 may be deferred to year-end for disclosure year 2023.

- 5.72.1 to the extent we considered it appropriate we have aligned the service aggregation reporting for Chorus in disclosure years 2022 and 2023 to their proposed 'core FFLAS products' level. In the cases where the service aggregation in disclosure years 2022 and 2023 is not aligned to Chorus' core FFLAS products, this is because we considered the 'core FFLAS' grouping to be too general to provide meaningful price information.
- 5.72.2 we have not sought to apply Chorus' core FFLAS product aggregation to ID-only regulated providers for disclosure years 2022 and 2023, in part because it was not clear from Chorus' proposal exactly which regulated FFLAS offered by Chorus were included in each 'core FFLAS product' grouping. Further, the ID-only regulated providers do not necessarily offer the same regulated FFLAS as Chorus. We have instead specified more aggregated service reporting for disclosure years 2022 and 2023 for 4 of the 7 regulated FFLAS service categories.

### Commercial sensitivity

- 5.73 In its submission on our draft ID decisions related to pricing, Chorus argued:<sup>196</sup>

Reporting at a more granular level than at the level of Chorus' core FFLAS products (and, in particular, in combination with reporting connection numbers) would expose information that is commercially sensitive to Chorus and to RSPs, and potentially market sensitive information. Disclosing this commercially sensitive information to competitors would be inconsistent with our competition law compliance obligations (as it would reduce competitive tension) and is contrary to the Part 6 purpose statement (as it is not consistent with what would occur in a workably competitive market).

- 5.74 Chorus also submitted that if pricing disclosures were instead at the level of its core FFLAS products, the disclosures would not give rise to the same competitive concerns.<sup>197</sup>

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<sup>196</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 82.5. See also Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 103-105.

<sup>197</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 82.6.

- 5.75 In cross-submissions, Enable/Tuatahi supported Chorus' submission that "disclosure of commercially sensitive pricing information by plan does not promote competition and is contrary to the s162 purpose", and argued that "any pricing information made available through ID should be consistent with our current public disclosures".<sup>198</sup>
- 5.76 We have considered these submissions and concluded that reporting the price and incentives information required by Schedules 24 and 25 at the service level is unlikely to be commercially sensitive for the following reasons.
- 5.76.1 The prices of many regulated FFLAS covered by standard contracts are already public and available on the regulated providers' respective websites - as also noted in submissions by both Chorus and Enable/Tuatahi.<sup>199</sup> We have clarified the definitions of 'list connection charge' and 'list monthly charge' in Schedule 26 to make clear that the prices to be reported in these fields of Schedule 24 and 25 should be the prices specified in standard contracts. Providing these prices for each service in Schedule 24 and 25 will not reveal any commercially sensitive information but has the advantage of making the prices available for interested persons in a consistent and easy to access way.
- 5.76.2 We accept that disclosing information about future price and incentive strategies is likely to be commercially sensitive. If disclosed, such information could potentially provide access seekers with services that compete with Chorus' regulated FFLAS with a competitive advantage. However, the disclosures in Schedules 24 and 25 require only historical information - by the time of disclosure some of the information will be 6 or more months old (in the semi-annual disclosures, some of the lags are shorter).

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<sup>198</sup> Enable and Tuatahi "[Cross submission on Fibre ID draft decisions - 5 August 2021](#)" (9 August 2021), paragraph 6.2.

<sup>199</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 82.2; and Enable and Tuatahi "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 4.8.

- 5.76.3 Increased price transparency can result in increased competition in the market (in line with s 166(2)(b)). Transparent prices are a feature of many workably competitive markets, including the retail telecommunications markets. We acknowledge that price transparency can, in certain market circumstances, lead to increased risk of collusive behaviour, but we believe this risk is mitigated by the historical nature of the disclosures.
- 5.76.4 We note Chorus' particular concern on revealing service take-up in addition to prices. While the information on connection numbers would also be historical, we acknowledge that the information is more granular than currently disclosed by the regulated providers. To mitigate the risk of disclosing commercially sensitive information, we have specified the information related to connection numbers in Schedules 24 and 25 as a Commission-only disclosure.
- 5.77 We believe that disclosing historical price and revenue information to access seekers, in combination with other information including information on service availability and new services, will help interested persons to evaluate whether prices reflect efficiencies over time (per s 162(c)) and whether regulated providers continue to innovate (per s 162(a)). On balance, we believe that the benefits from disclosing this information are likely to outweigh any potential negative effects from the increased risk of coordination with competitors that could result from increased price transparency. Our final decision is to continue to require public disclosure of prices at service level in Schedules 24 and 25, but to require disclosure of connection numbers on a Commission only basis.

#### ARPU calculations

- 5.78 In its submission on our draft ID decisions, Chorus commented on the calculations of ARPU contained in Schedules 24(i) and 25(i) as follows:<sup>200</sup>
- 5.78.1 that the calculation of 'ARPU connection charge' should be adjusted to reflect that this charge is only levied on new connections; and
- 5.78.2 that 'Other charges' would predominantly include one-off items, rather than recurring charges, so the calculation of 'ARPU other charges' should not be based on the whole connection base.

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<sup>200</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 113.2 and Appendix 1, page 45.

- 5.79 In our draft Schedules 24(i) and 25(i), the calculation of 'ARPU connection charge', 'ARPU monthly charge' and 'ARPU other charges' was done by dividing the total revenues earned from the relevant type of charges for a given FFLAS by the average number of connections for that service.
- 5.80 We agree with Chorus that connection charges only apply to new connections, which would be represented by the difference between closing and opening connections in each month. We have amended the formula for 'ARPU connection charges' in Schedules 24(i) and 25(i) accordingly.
- 5.81 We also acknowledge that 'Other charges' capture a large number of different one-off charges, beyond connection and monthly recurring charges. We consider that information on the overall value of these charges (in field 'Total revenues - other charges') is an important part of assessing how significant such charges are relative to connection and monthly charges. This information would allow interested persons to understand the impact of 'Other charges' on the overall prices paid by access seekers for FFLAS (eg, to evaluate whether lower connection charges are being offset by increased other charges). However, we agree with Chorus that the ARPU measure is less meaningful in a context where the 'Other charges' cover a wide array of different one-off charges and do not apply to every existing or new connection for the service. For this reason, we have removed the calculation of 'ARPU other charges' from Schedules 24(i) and 25(i).

#### Other clarifications

- 5.82 In its submission on the draft ID decisions, Chorus also commented that:
- 5.82.1 we should clarify that the pricing disclosure requirements in Schedule 24 are not intended to capture information on non-standard contracts;<sup>201</sup>
- 5.82.2 the fields for 'list connection charge' and 'list monthly charge' in Schedule 24(i) should be amended so that a range of prices can be provided in these fields, eg because pricing for co-location and transport can be complex and variable;<sup>202</sup> and

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<sup>201</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 114 and Appendix 1, page 45.

<sup>202</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 99, 112 and Appendix 1, page 44.

- 5.82.3 we should amend the definition of 'central office' in the ID determination to limit reporting on service availability to exchanges and to those fibre cabinets that contain active equipment.<sup>203</sup>
- 5.83 In cross-submissions, Enable/Tuatahi supported Chorus' proposal that "only buildings and active roadside cabinets that are fibre concentration points should be included" in the definition of 'central office'.<sup>204</sup>
- 5.84 Our responses are as follows.
- 5.84.1 The information recorded in Schedules 24 and 25 should capture the sales (in terms of revenues and connection numbers) of all regulated FFLAS irrespective of whether the specific service is sold under standard and/or non-standard contracts (aggregated over all contracts for that service). Since the information is aggregated across both standard and non-standard contracts for each service, we do not consider that the revenue reporting required is likely to reveal the prices of individual non-standard contracts (if any). As explained at paragraph 5.76.4 above, in our final decisions we have specified the connection numbers as a Commission only disclosure. Further, to protect the confidentiality of prices in non-standard contracts, we have amended the definitions of 'list connection charge' and 'list monthly charge' in Schedule 26 to include only the prices specified in standard contracts. If a service is sold under non-standard contracts only, these fields can be marked as 'N/A' when completing Schedules 24(i) and 25(i), respectively.
- 5.84.2 We acknowledge Chorus' comment that some regulated FFLAS have complex pricing structures that could not easily be captured in the fields for 'list connection charge' and 'list monthly charge' in Schedules 24(i) and 25(i). Where this is the case, the response in these fields should include a cross-reference to the relevant disclosure of the price term in the prescribed terms and conditions required to be disclosed for the standard contract for each relevant service.<sup>205</sup>

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<sup>203</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 113.1 and Appendix 1, page 45.

<sup>204</sup> Enable and Tuatahi "[Cross submission on Fibre ID draft decisions - 5 August 2021](#)" (9 August 2021), page 7.

<sup>205</sup> See also paragraph 5.131 below.

5.84.3 In our view the alternative definition for 'central office' proposed by Chorus materially differs from the definition in our draft ID determination only in requiring that a cabinet "has been designated as a central office by the regulated provider."<sup>206</sup> Chorus' proposed definition may require further (potentially commercially sensitive) information on the processes and criteria used by regulated providers to designate cabinets as central offices. For this reason, we have chosen not to adopt the definition of 'central office' proposed by Chorus. However, we have added a new definition of 'termination point' to complement the definition of 'central office' that we believe resolves the issue raised by Chorus.<sup>207</sup>

## Final Decision: Incentives (PQ FFLAS)

### Final decision

- 5.85 For each incentive applied to PQ FFLAS publicly disclose:
- 5.85.1 incentive description, including conditions/availability/duration;
  - 5.85.2 an indication for whether the incentive is available in the entire PQ area (yes/no);
  - 5.85.3 an indication for whether the costs for the incentive are capitalised under GAAP (yes/no);
  - 5.85.4 value (\$) of the incentive for each connection receiving the incentive, split by:
    - 5.85.4.1 one off incentive (\$ per connection receiving the incentive); and
    - 5.85.4.2 recurring monthly incentives (\$ per connection receiving the incentive).
- 5.86 For each incentive applied to PQ FFLAS also disclose to the Commission only:
- 5.86.1 number of connections receiving an incentive:

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<sup>206</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), Appendix 1, page 45.

<sup>207</sup> *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, cl. 1.4.3.

- 5.86.1.1 total connections receiving a one-off incentive;
  - 5.86.1.2 total connections receiving a monthly incentive;
  - 5.86.2 total value of any incentive clawback payments received during the reporting period related to the incentive; and
  - 5.86.3 the period covered by the incentive clawback payment (months/year).
- 5.87 Our final decision on incentives disclosures differs from our draft decision in not requiring public disclosures of connection numbers receiving the relevant incentive. Instead, these disclosures are to be made to the Commission only. We have also added, on a Commission only basis, the requirement to disclose information on incentive clawback payments received by the regulated providers.

### Reasons

- 5.88 The definition of incentive is broad and covers any discounts, rebates, promotions or other incentives that have the effect of reducing the price that access seekers pay for regulated FFLAS.<sup>208</sup> The ID requirements include disclosures of incentive information because we consider that without these disclosures, the information disclosed for the prices of regulated FFLAS will be incomplete and potentially misleading.
- 5.89 Specifically, we do not consider that 'price' is necessarily confined to the consideration for a specified individual regulated FFLAS service or connection, or that the definition is limited to consideration flowing directly from access seekers to regulated providers. For example, rebates may be calculated and paid on an aggregated basis, but still constitute part of the price, given that they form a (negative) element of the revenue earned from the provision of regulated services.<sup>209</sup>

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<sup>208</sup> *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, cl. 1.4.3.

<sup>209</sup> For a more detailed discussion on why we consider that all forms of incentives are relevant to the assessment of prices for regulated FFLAS, see Commerce Commission "[Geographically consistent pricing – Guidance on our approach to section 201 of the Telecommunications Act – 30 September 2021](#)" (30 September 2021), paragraphs 37-48.

- 5.90 As explained in paragraphs 2.49-2.50 above, we can set any ID requirements we consider are “necessary or desirable” to ensure that sufficient information is readily available to interested persons to assess whether the Part 6 purpose is being met. Thus, even if our view that ‘incentives’ are part of the definition of ‘price’ under the Act is incorrect, this would not be relevant to setting disclosure requirements related to incentives if we believe (as we do) that information on incentives is necessary in order for interested persons to obtain complete information on the actual prices paid by access seekers for regulated FFLAS.
- 5.91 We consider that incentives disclosures are relevant to the assessment of whether the prices of regulated FFLAS are set in a way that is likely to promote the purposes of Part 6, because incentives affect the actual prices paid by access seekers (and thus, are likely to influence the prices paid by end-users). Incentives therefore are one way through which efficiency gains achieved by regulated providers could be passed on to end-users (in line with s 162(c)).
- 5.92 Without the disclosure of incentives, including the terms and conditions on which a particular incentive is offered, interested persons would not have complete and meaningful information on the prices paid for regulated FFLAS. In addition, the disclosure of incentive information, in combination with the disclosure of incentive clawback payments on a Commission-only basis, would allow us to calculate the total value of incentives (adjusted for clawbacks) for each service and reconcile list prices with actual revenues.
- 5.93 Our final decisions include, as Commission-only disclosures, reporting requirements on the number of connections that benefited from different types of incentives. Our final decisions also include public disclosures of the conditions linked to each incentive, including on geographic availability of the incentive. This information will allow interested persons to assess:
- 5.93.1 the materiality of the incentive relative to the overall revenues earned from sales of the service to which the incentive applied; and
  - 5.93.2 whether the incentive is targeted at particular market segments, end-users or geographic areas and, thus, whether it is likely to promote or distort competition.
- 5.94 Collectively, these disclosures would help interested persons to assess whether the regulated providers supply FFLAS on terms and at price levels that are consistent with the outcomes of workable competition.

### Existing information disclosure

- 5.95 Our initial ID reporting requirements related to incentives use the existing LFC information disclosure requirements, specifically 'Schedule 6: Exception Report on Pricing' as a starting point.<sup>210</sup> The existing disclosure requirements require information to be disclosed on the number of connections that benefited from prices below price caps by candidate area for the top five RSPs.
- 5.96 While Part 6 regulation does not impose price caps for individual FFLAS, with the exception of price caps for declared services, the information on incentives required under our initial ID determination is not dissimilar to reporting on prices below price caps. Likewise, our disclosure requirements will allow interested persons to assess how prices after the incentive is applied compare to the prices specified in contracts between regulated providers and access seekers. At the same time, for the declared services (anchor service and DFAS) that will be subject to price caps under the regulations, the disclosure requirements on pricing and incentives will allow interested persons to assess whether any access seekers benefit from prices below the price cap.

### Stakeholder views

- 5.97 In its submission on our approach paper, Vodafone noted that “scrutiny [should be] applied to any discounts to ensure that they do not harm competition”.<sup>211</sup>
- 5.98 In response to our competition survey, Spark identified Chorus’ incentive payment practices as a key area of concern and noted that these practices are ongoing and risk distorting retail markets.<sup>212</sup>
- 5.99 In its submission on our draft ID decisions, Chorus argued that:
- 5.99.1 incentive payments are expenditure rather than a part of price and should be reported as expenditure. The reporting requirements for incentives should therefore be removed from pricing disclosures;<sup>213</sup>

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<sup>210</sup> [LFC Information Disclosure Determination 2018](#) [2018] NZCC 10, Schedule 6.

<sup>211</sup> Vodafone “[Submissions on PQID process and approach paper](#)” (14 October 2020), pages 7.

<sup>212</sup> Spark “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), pages 5 and 9.

<sup>213</sup> Chorus “[Submission on Fibre information disclosure draft decision - 8 July 2021](#)” (12 July 2021), paragraphs 8.2, 82.1, 84, 87-94 and Appendix 1, page 44. Chorus reiterated this point in its cross-submission - see Chorus “[Cross submission on Fibre ID draft decisions - 5 August 2021](#)” (9 August 2021), page 7.

- 5.99.2 the Commission's approach in requiring information on incentives to be disclosed is inconsistent with the relevant definitions of 'price' in the Act;<sup>214</sup>
- 5.99.3 interested persons will get the incentive information through Chorus' PQP1 proposal and the contract disclosures. While Chorus acknowledges that the Commission wants more information on its incentive programme, Chorus considers that ID is not well suited for gathering information that is ad hoc, bespoke or time critical;<sup>215</sup>
- 5.99.4 the draft incentives disclosure requirements are not workable and will not provide interested parties with meaningful information, because "[m]onthly results would be heavily skewed as our largest incentive programme is paid quarterly. Our incentives are often also subject to clawbacks on an annual basis, which would further skew monthly results";<sup>216</sup>
- 5.99.5 Chorus currently does not report incentive availability at an individual address level and it is not clear why this level of granularity, implied by the note in Schedule 24(ii), is required;<sup>217</sup> and
- 5.99.6 the incentives disclosure requirements are unclear as to whether they require reporting on areas where an incentive is not available only because the service is not available in that area.<sup>218</sup>

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<sup>214</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 93.

<sup>215</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 85-86.

<sup>216</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 95.

<sup>217</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 96.

<sup>218</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 97.

- 5.100 In their submission on our draft ID decisions, Enable/Tuatahi pointed out that financial incentives are not material for Enable and Tuatahi and for this reason, ID-only regulated providers should be exempt from incentive disclosures.<sup>219</sup> In cross-submissions, Enable/Tuatahi supported Chorus' position that incentives are expenditure, and thus incentives should be excluded from the pricing disclosures.<sup>220</sup>
- 5.101 In its cross-submission Spark did not support Chorus' proposal to roll back the requirements proposed in the draft ID decisions, including on pricing discounts/incentives. Spark noted that "[p]ricing transparency is, in part, intended to mitigate concerns that Chorus has little incentives to efficiently price services consistent with the Part 6 purposes and the potential impact on competition."<sup>221</sup>
- 5.102 In response to Chorus' submission that the incentive disclosures should be removed from the Pricing Reports in Schedules 24 and 25 because incentive payments are treated as expenditure under GAAP, we note that the definition of 'incentive', which remains unchanged from the draft Determination, is broad and intended to capture all forms of discounts, rebates, promotions or other incentives offered by regulated providers.<sup>222</sup> Chorus' incentive payments are only one type of incentive that would be captured by the incentive disclosures in Schedules 24(ii) and 25(ii).
- 5.103 As explained at paragraph 5.90 above, the Act allow us to include in the ID requirements any information that is required to ensure that sufficient information is readily available to interested persons to assess whether the Part 6 purpose is being met. For the purpose of setting ID requirements for incentives, we consider it irrelevant whether 'incentives' are part of the legal definition of 'price' under the Act.

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<sup>219</sup> Enable and Tuatahi "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 4.8(e) and Table 8.

<sup>220</sup> Enable and Tuatahi "[Cross submission on Fibre ID draft decisions - 5 August 2021](#)" (9 August 2021), paragraph 6.1.

<sup>221</sup> Spark "Cross submission on Fibre PQID draft decisions - 5 August 2021" (9 August 2021), paragraph 65(a). See also paragraphs 62-63.

<sup>222</sup> See paragraph 5.88 above, as well as *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, cl. 1.4.3 and Commerce Commission "[\[Draft\] Fibre Information Disclosure Determination 2021](#)" (27 May 2021), Schedule 26.

- 5.104 We acknowledge that some forms of incentives may also be treated as expenditure under accounting rules and captured, in an aggregated format, in other parts of ID reporting. However, as explained at paragraphs 5.89-5.94 above, we consider that all forms of incentives are an important part of the ability to assess the efficiency of prices per s 162(b) and whether FFLAS providers are passing through any efficiency gains to end-users including through lower prices over time per s 162(c). This assessment cannot be carried out sufficiently for different regulated FFLAS categories or services based solely on the aggregated expenditure reporting of some forms of incentives.
- 5.105 Similarly, we do not consider it relevant for the purposes of setting ID reporting requirements that some information on the value of Chorus' intended incentive payments during PQP1 is included in Chorus' PQP1 proposal. The information in Chorus' PQP1 proposal comprises forecasts. The actual values of incentives, and the conditions that determine access seekers' ability to take up a particular incentive, can change during the regulatory period. The information collected through ID reporting is on the actual incentives that applied during the relevant period.
- 5.106 We note Enable and Tuatahi's submission that they do not currently offer material incentives to access seekers when supplying regulated FFLAS. While we acknowledge that the dynamic telecommunications environment in which regulated providers operate is likely to require changes to the Part 6 ID regime in future, our initial ID requirements are intended to be stable and enduring to the extent possible. Given that all regulated providers are free to start offering any type of discounts, rebates or other promotions and incentives for the supply of regulated FFLAS at any point after the implementation date, we believe it is important to allow for this information to be captured. To the extent that regulated providers do not currently offer incentives, they can state so in the disclosures and the existence of the incentives reporting does not impose a significant compliance burden. For the reasons explained above, we have retained Schedules 24(ii) and 25(ii) in the final ID determination.
- 5.107 To address Chorus' argument that the draft incentive disclosure requirements are not workable, because monthly information would be heavily skewed by quarterly or annual incentive payments and/or clawback amounts, we note the following.

- 5.107.1 Schedules 24(ii) and 25(ii) do not ask for information on the actual incentive or rebate payments made in a given month. The information specified is the value of the incentive per connection, based on the rules of the offer made to access seekers. Separately, the Schedules require disclosure, on a Commission only basis, of the number of connections that benefitted from the incentive in a given month.<sup>223</sup> Irrespective of whether payments are made quarterly (or at any other frequency), regulated providers would be aware of the number of connections to which the discount or incentive applied in each month in order to make correct payments.
- 5.107.2 We believe it will be possible for regulated providers to report on the number of connections that benefitted from a given incentive in each month since the incentive disclosures are ex post on a semi-annual basis, when the actual quarterly rebate or other incentive payment made would be known. In our view, this requirement is unlikely to impose a significant compliance burden given regulated providers would track incentives in their financial systems.
- 5.107.3 We agree with Chorus that incentive clawback payments can be an important part of estimating the correct total value of incentives for regulated FFLAS that access seekers received. We have added two additional fields to Schedule 24(ii) for 'Total clawback value' and 'Period to which clawback value applies' to capture the information on incentive clawback payments received by the regulated providers from access seekers. Given that clawback payments are usually linked to specific discontinued connections, in our view it is likely that they can be allocated to individual months. However, we acknowledge that regulated providers may not be currently capturing this information in their systems. We have therefore asked for actual incentive clawback payments to be reported in the month they are received by regulated providers (plus the additional field to note the period covered by the clawback payment) in order to reduce the compliance burden.

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<sup>223</sup> The total value of one-off or monthly incentives in a given month are calculated fields in Schedules 24(ii) and 25(ii) from the information provided on the value of the incentive per connection and the number of connections that benefitted from the incentive. These fields do not require the disclosure of the value of incentives actually paid in the reporting month.

- 5.108 We acknowledge that clawback amounts are likely to be commercially sensitive and have specified these additional disclosures as Commission-only disclosures. The information provided in the new fields for incentive clawback payments will allow us to allocate the clawback amounts across the appropriate period of the incentive. This adjustment will improve the estimate of the average revenue per user to reflect better the average prices paid by access seekers for regulated FFLAS when we undertake our summary and analysis functions under s 187(2).
- 5.109 In response to Chorus' request for clarification on how to report incentives availability in Schedule 24(ii), we provide the following guidance.
- 5.109.1 If the incentive is not available in the entire reporting area because the service is not available in the entire reporting area, this statement can be made in field 'Incentive description' of Schedule 24(ii) and cross-referred to the relevant rows in Schedules 24(i) and 24(iii) that provide information on the relevant service availability.
- 5.109.2 When disclosing information on incentive availability in the 'Incentive description' field of Schedule 24(ii), the information should cover the rules determining where the incentive is made available (eg, only in the Auckland metro region or only to customers that have previously had a regulated FFLAS connection, but currently do not). To the extent that the rules on where the incentive is made available are linked to individual end-user addresses (eg, on a target list), this information should be disclosed. Since it is the regulated providers that set the rules on incentive availability, this information should be readily available to the regulated providers. The field 'Incentive description' is not intended to capture actual take-up of any incentive and/or whether the access seekers have chosen to pass on the incentives to the end-users in a given area.
- 5.110 We have amended the notes on the 'Instructions' sheet of Schedule 24 to capture this guidance.

## **Final Decision: Pricing, revenues and incentives (ID-only FFLAS)**

### **Final decision**

- 5.111 For regulated providers that offer ID-only FFLAS, our final decision is to require disclosure of the same information as listed under 'Pricing and revenues (PQ FFLAS)' and 'Incentives (PQ FFLAS)', subject to the following additional requirements.

- 5.111.1 Each regulated provider is required to report separately on the regulated FFLAS they supply in each distinct geographical ID-only area, if the regulated provider operates in that area.<sup>224</sup> Until such time as applying the regulations under s 226 of the Act requires a different geographical segmentation, each ID-only regulated provider is required to report on the entire geographical area where they supply regulated FFLAS. Chorus is required to report separately for each geographical area where another regulated provider operates (ie, separately for Enable's area, Tuatahi's area and Northpower's area).
- 5.111.2 From disclosure year 2024, all regulated providers should complete the information required on service availability in Schedule 24(iii) and Schedule 25(iii), respectively, at the central office level.<sup>225</sup> This requirement applies to Chorus also for disclosure years 2022 and 2023.
- 5.111.3 For disclosure years 2022 and 2023, ID-only regulated providers should complete the information required on service availability in Schedule 25(iii) to the most detailed level of geographic aggregation that they have the technical capability to disclose, up to and including central office level.
- 5.111.4 In disclosure year 2023 ID-only regulated providers are required to complete a statement in Schedule 14a noting the progress achieved, work planned and outstanding steps to be taken to enable the ID-only regulated provider to complete Schedule 25(iii) at the central office level from disclosure year 2024.

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<sup>224</sup> The distinct ID-only areas will be determined as part of the application of the s 226 regulations – for example, we may determine one or more distinct geographical area for each LFC (other than Chorus) where that LFC has installed a fibre network as part of the UFB initiative.

<sup>225</sup> Regulated providers are required to complete Schedules 24(iii) and 25(iii) only for regulated FFLAS that are not available at all central offices. See paragraph 5.9 above.

- 5.112 Since our final decisions on disclosures of pricing, revenues and incentives information for ID-only FFLAS are aligned with the decisions on reporting of pricing, revenues and incentives for PQ FFLAS, the same changes to the final disclosure requirements from the draft decisions apply to the ID-only FFLAS disclosures as those described in paragraphs 5.40-5.44 and 5.85-5.86 for PQ FFLAS disclosures. Further, we note that the same guidance applies to the ID-only regulated providers in completing Schedule 25(ii) as the guidance on completing Schedule 24(ii) described in paragraph 5.109 above. We have amended the notes on the 'Instructions' sheet of Schedule 25 to capture this guidance.
- 5.113 For ID-only regulated providers we have also changed the reporting requirement on service availability for disclosure years 2022 and 2023 as described in paragraph 5.111.3 above.

### **Reasons**

- 5.114 In addition to the rationale for pricing and incentive disclosures explained at paragraphs 5.45-5.57 and paragraphs 5.88-5.97 above, our final decision on reporting requirements for prices and incentives in ID-only areas will allow interested persons to assess whether different services are offered in individual ID-only areas where each regulated provider operates, and whether the prices of these services vary between ID-only areas.
- 5.115 This information can in turn be used to evaluate whether:
- 5.115.1 new services are introduced in each ID-only area in accordance with incentives for innovation (s 162(a));
  - 5.115.2 service characteristics are tailored to the quality that end-users demand and, if so, whether the service characteristics vary between ID-only areas (s 162(b)); and
  - 5.115.3 the prices and service characteristics in each ID-only area are indicative of different levels of competition developing in the ID-only areas (s 166(2)(b)).
- 5.116 A comparison of pricing information between regulated providers aids in the assessment of whether the purposes of Part 6 are being met since trends in pricing over time would reflect pricing strategies.

5.117 In addition, a comparison of the pricing and incentive information disclosed for ID-only areas with the information disclosed by Chorus for the PQ area will allow interested persons to evaluate whether the outcomes in s 162(a) and (b) are being met in ID-only areas. For example, this information will help interested persons assess whether Chorus offers a greater variety of regulated FFLAS (and more innovative services) in ID-only areas than in PQ areas (eg, due to increased competitive pressure).

### **Stakeholder views**

5.118 In addition to the submissions discussed above related to pricing and incentives disclosures, Northpower submitted that the reporting of service availability data at a central office level is unnecessary, and that a higher level, such as town level, might be more useful and have less of an impact on resources.<sup>226</sup>

5.119 We consider that reporting on a standard and well-understood geographic aggregation level, such as central office level, has the advantage of consistency between all regulated providers. If each regulated provider were to report service availability at a different level of aggregation, this would decrease the ability of interested persons to evaluate whether all end-users benefit from the introduction of innovative services (per s 162(a)) and/or whether services are being supplied to the quality end-users demand (per s 162(b)).

5.120 Further, reporting of service availability on central office level is only required by exception - for regulated FFLAS that are not available at all central offices. Given that we expect that most regulated FFLAS would be offered throughout the geographical area where the regulated provider operates, the requirement to disclose service availability at central office level should apply to a relatively small number of regulated FFLAS.

5.121 For these reasons, our final decision on service availability reporting remains unchanged from the draft decision.

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<sup>226</sup> Northpower "[Submission on Fibre price-quality and information disclosure and IM amendments - 8 July 2021](#)" (12 July 2021), page 5.

- 5.122 However, we recognise that the ID-only regulated providers might not be as well-resourced as Chorus and may not have systems in place to report service availability at the central office level from the start of the Part 6 ID regime. To allow the ID-only regulated providers to adopt the necessary systems and processes, we have deferred the reporting of service availability at central office level in Schedule 25(iii) to disclosure year 2024.
- 5.123 For disclosure years 2022 and 2023, the ID-only regulated providers should report service availability at the most detailed geographical level they have the technical capability to disclose (up to and including central office level). Where service availability is being disclosed at a more aggregate level, the ID-only regulated providers should include information in the disclosures on the aggregation level used, eg which central offices are grouped together. In disclosure year 2023, ID-only regulated providers are also required to complete a statement in Schedule 14a summarising the progress made and work planned to enable the ID-only regulated providers to complete Schedule 25(iii) at the central office level from disclosure year 2024.

## **Final Decision: Pricing methodology**

### **Final decision**

- 5.124 Disclosure of the specific formulas or methodologies used to determine pricing is not required under the initial ID determination. This decision is unchanged from our draft decision on the disclosure of pricing methodologies.

### **Reasons**

- 5.125 Our final decision in our IM Reasons paper was not to determine input pricing methodologies in PQP1.<sup>227</sup>
- 5.126 We understand that the disclosure of pricing methodologies can provide additional information on how regulated providers recover their costs. However, we consider that the disclosure requirements on prices and incentives that we are setting will encourage regulated providers to set efficient prices in line with those that could be achieved in workably competitive markets.

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<sup>227</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), page 771.

- 5.127 We also acknowledge the legal constraints that the Act imposes on Chorus' pricing that will, at least initially, limit to some extent Chorus' ability to set prices in ways that could lead to long-term harm to competition or to the detriment of end-users. At the same time, ID-only regulated providers will be subject to some competitive pressure (eg, from Chorus or alternative technologies), which in turn would provide incentives for them to set efficient pricing methodologies.
- 5.128 By not requiring disclosure of pricing methodologies under the initial ID determination, we are seeking to balance:
- 5.128.1 the additional transparency from pricing methodologies disclosures that could assist in assessing whether the purpose of Part 6 is being met; and w
  - 5.128.2 the potential risk to competition from disclosures that could provide a competitive advantage to unregulated providers that offer technologies that compete with regulated FFLAS and/or that could facilitate collusive behaviour between regulated providers in any areas where the regulated providers might compete, such as ID-only areas.
- 5.129 While at this time we consider that disclosure of pricing methodologies is not necessary, we may reassess this decision in future if evidence emerges that such disclosures might best promote the purpose of Part 6.

### **Stakeholder views**

- 5.130 In its submission on our draft ID decisions, Chorus agreed that pricing methodologies should not be required under the initial ID determination.<sup>228</sup> We did not receive any other submissions from stakeholders commenting on our draft decision related to pricing methodologies disclosures.

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<sup>228</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 115.

## **Final Decision: Contract disclosures for PQ FFLAS and ID-only FFLAS**

### **Final decision**

#### *Disclosure of prescribed terms and conditions in standard and non-standard contracts*

- 5.131 Our final decision for the disclosure of prescribed terms and conditions in standard contracts for the provision of regulated FFLAS between regulated providers and access seekers is unchanged from the draft decision.<sup>229</sup> Within 20 working days of entering into a new standard contract or making amendments to an existing contract, disclosure is required for the prescribed terms and conditions, and amendments to these terms and conditions, including:
- 5.131.1 service descriptions;
  - 5.131.2 quantities to be supplied;
  - 5.131.3 service level terms, including performance guarantees, prices and incentives; and
  - 5.131.4 operations manuals.
- 5.132 Our final decision on prescribed terms and conditions in non-standard contracts for the provision of regulated FFLAS between regulated providers and access seekers is to require within 20 working days of entering into a new non-standard contract or making amendments to an existing contract:
- 5.132.1 public disclosure of the prescribed terms and conditions, and any amendments to these terms and conditions, with the exception of the terms and conditions that specify the incentives or prices that apply; and
  - 5.132.2 disclosure to the Commission of the terms and conditions that specify the prices and incentives, as well as of any amendments to these terms and conditions.
- 5.133 The final decision related to disclosure of prescribed terms and conditions in non-standard contracts differs from the draft decision in requiring disclosure to the Commission only of the terms and conditions related to prices and incentives.

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<sup>229</sup> We note that the disclosure of prescribed terms and conditions of contracts is subject to s 188(4) of the Act. Section s 188(4) provides that the determination may not require a regulated provider to publicly disclose any provision of an existing contract that, immediately before the FFLAS became subject to information disclosure regulation, was not required by or under any other enactment to be publicly disclosed.

*Disclosure of comparative information*

- 5.134 In relation to equivalent standard contracts and non-standard contracts between regulated providers and access seekers for the provision of regulated FFLAS, our final decision is to require:
- 5.134.1 public disclosure of a summary of how the prescribed terms and conditions (except those specifying or determining the price at which goods or services are to be provided) differ between the non-standard and standard contracts within 20 working days of entering into a new non-standard contract;
  - 5.134.2 public disclosure of the number of access seekers on non-standard contract(s) and the number of access seekers on the equivalent standard contract before the start of each disclosure year except disclosure year 2022;
  - 5.134.3 before the start of each disclosure year except disclosure year 2022, public disclosure of the percentage of target revenue expected to be collected under the non-standard contract(s) as well as the percentage of target revenue expected to be collected under the equivalent standard contract from the combined target revenues under equivalent standard and non-standard contracts; and
  - 5.134.4 before the start of each disclosure year except disclosure year 2022, disclosure to the Commission only of the total value of the combined target revenue expected to be collected under both standard and equivalent non-standard contracts for each regulated FFLAS.
- 5.135 For disclosure year 2022, the disclosures outlined at paragraphs 5.134.2-5.134.4 must be made no later than 3 months after the start of disclosure year 2022 by Chorus and before the start of disclosure year 2023 by the ID-only regulated providers.
- 5.136 In our final decision we have removed the draft decision requirement to disclose a summary of the differences between the non-standard contract(s) and the standard contract in the terms specifying the obligations and responsibilities of the regulated provider to end-users when the supply of regulated FFLAS is interrupted, as well as the implications of these differences for determining the prices in the non-standard contract. We have also changed the public disclosure requirements related to target operating revenue under standard versus non-standard contracts from absolute values to percentages.

*Other disclosures on non-standard contracts*

5.137 Our final decision on other disclosures related to non-standard contracts between regulated providers and access seekers for the provision of regulated FFLAS is to require before the start of each disclosure year except disclosure year 2022:

5.137.1 public disclosure of information on the criteria used to decide whether/when a non-standard contract should be used; and

5.137.2 disclosure to the Commission of an explanation of any specific criteria or factors used to determine the prices or incentives for regulated FFLAS in non-standard contracts.

5.138 For disclosure year 2022, the disclosures outlined at paragraph 5.137 should be made no later than 3 months after the start of disclosure year 2022 by Chorus and before the start of disclosure year 2023 by the ID-only regulated providers.

5.139 These disclosures are subject to a materiality threshold for disclosure years 2022 and 2023. They only apply if the percentage of target operating revenue that a regulated provider expects to collect from the provision of regulated FFLAS under equivalent non-standard contracts is greater than 10% of the combined target operating revenue that the regulated provider expects to collect under both the standard and all equivalent non-standard contracts for a particular FFLAS.

5.140 The application of a materiality threshold for these disclosures in disclosure years 2022 and 2023 is a change from our draft decision, where no materiality threshold applied. Further, the disclosure of the explanation of the criteria or factors that determine prices in non-standard contracts was specified as a public disclosure in our draft decision, while our final decision is to require this information on a Commission-only basis.

**Reasons***Relevance of decisions to the purposes in s 166(2)*

5.141 The disclosure of key contract terms, including information on how the terms are amended from time to time, can help interested persons assess whether markets are working well for end-users. For example, these disclosures could help interested persons evaluate whether:

5.141.1 the terms on which services are supplied reflect the quality that end-users demand (per s 162(b));

5.141.2 the risks are allocated to the party to the contract most able to deal with them (as is observed in workably competitive markets); and

5.141.3 there are any hindrances or obstacles to competition emerging in telecommunications markets as contemplated by s 166(2)(b).

5.142 In particular, such information, including comparative information in relation to standard and non-standard contracts for FFLAS can shed light on whether regulated providers are supplying regulated FFLAS on an objectively justifiable and non-discriminatory basis. Over time, this information can help interested persons assess the strength of regulated providers' incentives to supply services on an efficient basis as well as their incentives to compete. The disclosure of key contract terms can also protect smaller access seekers from being disadvantaged in contract negotiations with regulated providers because of asymmetry in information and bargaining power.

5.143 We acknowledge that under the Part 4AA undertakings, regulated providers must provide the fibre services covered by the undertakings on a non-discriminatory and, for some services, also equivalent basis.<sup>230</sup> For this reason, we expect there to be some standardisation across contracts with individual access seekers as there is today with the UFB reference offers. Nonetheless, we consider that disclosure of key contract terms will allow interested persons to assess whether services are being supplied on terms consistent with the outcomes of workable competition, in line with the Part 6 purposes.

#### *Anchor services and DFAS*

5.144 The declared services (anchor services and DFAS) regulations may provide sufficient incentive for Chorus to retain similar terms for other services and for other regulated providers to follow Chorus' lead.<sup>231</sup>

5.145 However, for the initial ID determination, we have not distinguished between contracts relating to anchor services and DFAS as this outcome is not yet certain. We consider that the disclosure of contract information that covers the anchor services and DFAS is also important to help interested persons understand how these forms of regulation are helping to promote the outcomes in s 162.

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<sup>230</sup> See also paragraph 2.85.

<sup>231</sup> See the discussion of the declared services in paragraphs 2.78-2.82.

## Stakeholders views

### *Disclosure of prescribed terms and conditions*

5.146 While we did not receive any submissions on our draft ID decisions that related to contract disclosures from RSPs, in the consultation processes that preceded the draft decisions a number of RSPs supported the view that the disclosure of contract terms, including information on changes to contract terms, will promote the s 162 outcomes.

5.146.1 Spark submitted on the Draft IM reasons paper that, “[o]ur key concern is that fibre suppliers facing only high level obligations will have the incentive and ability to amend services in a way that reduces quality or distorts competition, and shift costs and risks on to RSPs and end users.”<sup>232</sup> This view was supported by Trustpower in its cross-submission on the Draft IM reasons paper.<sup>233</sup>

5.146.2 In its submission on our competition survey, Spark also expressed the view that regulated providers “should be required to disclose reference contract terms” in order to make transparent services and pricing.<sup>234</sup> Spark further noted that “[e]nsuring comprehensive disclosure of price and non-price terms, service performance” is an activity that can help mitigate competition risks.<sup>235</sup>

5.146.3 2degrees, Spark, Vocus and Vodafone submitted on the Draft IM reasons paper that topics such as notice periods, requirements to provide timely information, additional services, processes, additional charges and technical specifications would be at risk.<sup>236</sup> They go on to say, “[o]nce the Part 6 regime is implemented, LFCs will be motivated to amend these terms in their favour.”<sup>237</sup>

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<sup>232</sup> Spark “[Submission on Fibre input methodologies – Draft decision](#)” (30 January 2020), page 2.

<sup>233</sup> Trustpower “[Cross-submission on Fibre input methodologies draft decision](#)” (18 February 2020), page 1.

<sup>234</sup> Spark “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), page 7.

<sup>235</sup> Spark “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), pages 9-10.

<sup>236</sup> 2degrees, Spark, Vocus and Vodafone “[Submission on Fibre input methodologies – Draft decision](#)” (30 January 2020), page 7.

<sup>237</sup> 2degrees, Spark, Vocus and Vodafone “[Submission on Fibre input methodologies – Draft decision](#)” (30 January 2020), page 7.

- 5.146.4 2degrees, Spark, Vocus and Vodafone also argued in their joint submission on the Draft IM reasons paper that “where there is an imbalance of power there will be an outcome that is inconsistent with a workably competitive market, in direct conflict with the Part 6 purpose statement.”<sup>238</sup>
- 5.146.5 In its submission on our Draft IM reasons paper, 2degrees also noted that Ofcom required British Telecom to notify changes to charges, terms, conditions and technical information where it held significant market power. Ofcom’s reasons were that notification of changes to charges at the wholesale level has the joint purpose of improving transparency for monitoring possible anti-competitive behaviour and giving advance warning of price changes to competing providers who purchase wholesale access services.<sup>239</sup>
- 5.147 In their respective submissions on our draft ID decisions, both Chorus and Enable/Tuatahi broadly supported the disclosure of standard contract terms and conditions.<sup>240</sup> However, Enable/Tuatahi argued that the disclosure requirements that relate to prescribed terms and conditions in contracts for regulated FFLAS duplicate existing requirements under Part 4AA and the Open Access Deeds (Deeds).<sup>241</sup>
- 5.148 In cross-submissions, Chorus supported Enable/Tuatahi's submission about duplication and noted:<sup>242</sup>

there is no need to duplicate our existing reporting requirements. Our Reference Offer terms, including any variations or additions, are already public.

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<sup>238</sup> 2degrees, Spark, Vocus and Vodafone “[Submission on Fibre input methodologies – Draft decision](#)” (30 January 2020), page 6.

<sup>239</sup> 2degrees “[Submission on Fibre input methodologies – Draft decision](#)” (30 January 2020), page 27.

<sup>240</sup> Chorus “[Submission on Fibre information disclosure draft decision - 8 July 2021](#)” (12 July 2021), paragraph 106.

<sup>241</sup> Enable and Tuatahi “[Submission on Fibre information disclosure draft decision - 8 July 2021](#)” (12 July 2021), paragraph 4.9(a).

<sup>242</sup> Chorus “[Cross submission on Fibre ID draft decisions - 5 August 2021](#)” (9 August 2021), page 7.

- 5.149 In response to the point raised by Enable/Tuatahi, we note that the requirements to disclose prescribed terms and conditions in contracts for regulated FFLAS do not duplicate the requirements under Part 4AA since the requirements to publish reference offers under Part 4AA will largely fall away once Part 6 regulation comes into force. In particular, while the obligation to publish reference offers in the Deeds will continue, this will be limited to services that the regulated providers are required to provide under the Deeds.
- 5.150 We believe access seekers are concerned that as we transition from a highly prescribed regime under UFB contracts with CIP to regulation under Part 6 there is significant risk that their level of service will decline due to an imbalance of bargaining power.
- 5.151 We also agree that disclosure of changes to terms will give interested persons transparency on how any contractual changes could impact the quality of services supplied and the risks for anti-competitive behaviour.
- 5.152 As also noted at paragraph 5.144, the regulations governing the declared services (anchor service and DFAS) will provide transparency on the terms and conditions applicable to the supply of those services. The regulations may also encourage Chorus to retain similar terms and conditions for the supply of other regulated FFLAS. However, we acknowledge the diverse nature of FFLAS and the possibility that regulated providers could have an incentive to amend the contract terms for other regulated FFLAS in their favour. We therefore believe that disclosure of the prescribed terms and conditions for contracts for all regulated FFLAS will improve transparency and promote outcomes consistent with a workably competitive market in line with s 162.
- 5.153 We do not believe it is necessary for interested persons to have access to each full service agreement between regulated providers and access seekers and have therefore limited the disclosures to prescribed terms and conditions in standard contracts and non-standard contracts.

- 5.154 In its submission on our draft ID decisions, Chorus did not support the disclosure of prescribed terms and conditions for non-standard contracts and submitted that disclosures of non-standard contracts would expose commercially sensitive information.<sup>243</sup> Chorus also noted that it has identified very few instances of potential non-standard contracts and these contracts largely involve non-FFLAS.<sup>244</sup>
- 5.155 We note that services that are not regulated FFLAS are not subject to any disclosure requirements under Part 6. We accept that the terms in non-standard contracts might reflect individual negotiations between a regulated provider and an access seeker, and for this reason some terms in non-standard contracts are likely to be commercially sensitive. For this reason, we have specified the disclosure of terms and conditions related to prices or incentives in non-standard contracts as Commission only disclosures.
- 5.156 We do not consider that the contract terms related to quantity are likely to be commercially sensitive in general. This is because, as explained below, contract terms are not likely to specify the exact quantity that will be provided by the regulated provider in a given year. Nonetheless, if a regulated provider identifies further prescribed terms and conditions in non-standard contracts that they believe would disclose commercially sensitive information, they can make an application for exemption under s 222.
- 5.157 Chorus also asked for a clarification of the 'quantity' term in the prescribed terms and conditions that are required to be disclosed for standard and non-standard contracts. Specifically, Chorus wanted to know how this requirement differs from the requirement to disclose quantity in the Pricing schedules and noted we should ensure that there is no duplication.<sup>245</sup>
- 5.158 In response, we provide the following clarification.

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<sup>243</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraphs 82.7 and 107. Chorus made a similar argument in its submission on our competition survey. See Chorus "[Additional document for survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)" (25 February 2021), page 16.

<sup>244</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 109.

<sup>245</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), Appendix 1, page 46.

- 5.158.1 The contract term related to 'quantity' included in the prescribed terms and conditions refers to the language/clause (if any) in a contract that specifies quantity to be supplied (eg, minimum or maximum connections to be activated in a given period). The requirement to disclose this term covers the contractual obligations related to quantity, not the exact quantity supplied in a given disclosure year.
- 5.158.2 The Pricing Schedules 24 and 25, on the other hand, specify reporting of actual connections active for a particular FFLAS in a given disclosure month/year and the reporting is not linked to individual contracts - it is aggregated across all contracts for the supply of a given FFLAS.

*Disclosure of comparative information*

- 5.159 In its submission on our draft ID decisions, Chorus raised the following concerns related to the requirements to disclose comparative information on standard and equivalent non-standard contracts.
- 5.159.1 The requirement to disclose target revenues for non-standard contracts can have the inadvertent effect of revealing commercially-sensitive pricing information, when combined with the requirement to disclose quantity terms under prescribed terms and conditions for non-standard contracts. This concern is exacerbated by the small number of non-standard contracts, which could mean that the information disclosed refers to a single contract.<sup>246</sup>
- 5.159.2 The requirement to disclose the regulated providers' obligations and responsibilities under non-standard contracts when the supply of regulated FFLAS to end-users is interrupted is not relevant and should be removed. Chorus' contracts do not set out any obligations and responsibilities to end-users, only to access seekers.<sup>247</sup>

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<sup>246</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 108.

<sup>247</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), Appendix 1, page 47.

- 5.159.3 The requirement to disclose the comparative contract information before the beginning of each disclosure year should not apply for disclosure year 2022.<sup>248</sup>
- 5.160 Enable/Tuatahi submitted that target revenues by contract are commercially sensitive and should be specified as Commission-only information under s 188(3)(d). They also argued that if comparative information for standard and equivalent non-standard contracts is to be disclosed, such disclosures should be subject to a materiality threshold and only be required when target revenues from non-standard contracts exceeds 10% of total FFLAS revenue in the year.<sup>249</sup> The application of a materiality threshold would reduce compliance burden on regulated providers.<sup>250</sup>
- 5.161 We note that our draft decisions did not require the disclosure of target revenue by contract, but rather the aggregated value of target revenues for all equivalent non-standard contracts associated with a given standard contract. However, we acknowledge that if the use of non-standard contracts is uncommon for all or some categories of FFLAS, disclosing the value of target revenues associated with non-standard contracts can inadvertently reveal target revenues for a single non-standard contract. We also accept that such information could be commercially sensitive.
- 5.162 For this reason, we have changed our decision on comparative contract information to require the public disclosure of the percentage of target operating revenue associated with standard and equivalent non-standard contracts for each regulated FFLAS, instead of the value of such revenues. We have also specified the disclosure of the aggregate value of target operating revenue across standard and equivalent non-standard contracts for each regulated FFLAS as Commission-only disclosure.

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<sup>248</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), Appendix 1, page 47.

<sup>249</sup> Enable and Tuatahi "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 4.9(b)&(c).

<sup>250</sup> Enable and Tuatahi "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 3.1.

- 5.163 These disclosures will still allow interested parties to assess the importance and prevalence of use of non-standard contracts for the supply of regulated FFLAS without revealing potentially sensitive price information. At the same time, the Commission only disclosures will allow us to evaluate whether individual regulated FFLAS supplied on non-standard contracts comprise a significant share of the regulated providers' regulated FFLAS portfolio overall. Understanding the extent to which regulated FFLAS are supplied via non-standard contracts could help interested parties evaluate whether contractual arrangements between regulated providers and access seekers provide incentives for regulated providers to continue to innovate (s 162(a)) and to supply services of a quality that reflects end-user demands (s 162(c)). This information could also be indicative of whether competition is developing in the markets for regulated FFLAS (s 166(2)(b)).
- 5.164 We note Chorus' argument that its contracts do not contain clauses that refer to the interruption of supply to end-users. We have removed the reference to 'end-users' from the relevant limb of the definition of prescribed terms and conditions, although we note that any interruption of the supply of regulated FFLAS to access seekers will also impact end-users.
- 5.165 We have also removed the requirement to disclose a summary of the differences between the non-standard contract(s) and the standard contract in the terms specifying the obligations of the regulated provider to end-users when the supply of regulated FFLAS is interrupted, as well as the implications of these differences for determining the prices in the non-standard contract. We have removed this requirement because we believe that the differences, if any, in the obligations related to interruption of supply of regulated FFLAS in standard and non-standard contracts could be determined from the prescribed terms and conditions disclosures. While this disclosure requirement could have provided a useful summary on how terms that affect the quality of supply affect the prices in non-standard contracts, we consider that the removal of this requirement will not, at this time, substantively affect the ability of interested parties to assess whether the purpose of Part 6 is being met.
- 5.166 We agree with Chorus' submission on the timing of comparative contract disclosures for disclosure year 2022. We have amended this timing to:
- 5.166.1 three months after the start of disclosure year 2022 for Chorus; and
- 5.166.2 before the start of disclosure year 2023 for the ID-only regulated providers.

5.167 We acknowledge Enable/Tuatahi's suggestion for a materiality threshold in the disclosure of comparative contract information to reduce compliance burden. Our final decision is to apply a materiality threshold only for disclosure years 2022 and 2023 with respect to the disclosure requirements on non-standard contracts, as described in paragraphs 5.137 and 5.138 above. This decision balances the reporting requirements on regulated providers during the initial period of the Part 6 ID regime against the additional information on the factors considered by regulated providers when relying on non-standard contracts for the supply of regulated FFLAS that would help interested parties assess whether the purpose of Part 6 is met.

*Other disclosures on non-standard contracts*

5.168 In its submission on our draft ID decisions, Chorus argued that the requirement to disclose the criteria or methodology used for determining the prices for access seekers on non-standard contracts should be removed since it is not consistent with our policy decision not to include the disclosure of pricing methodologies in the initial ID reporting requirements.<sup>251</sup>

5.169 We have clarified this requirement to require the disclosure of an explanation of the factors or criteria considered by regulated providers in negotiating prices in non-standard contracts. This requirement is not intended to capture a formula or specific set of rules for determining prices in non-standard contracts, but rather help us understand some of the factors that result in a need for non-standard contracts for the supply of regulated FFLAS. This information could help us interpret correctly the results of any price analyses we undertake as part of our summary and analysis functions under s 187(2).

5.170 We have specified this requirement as a Commission-only disclosure under s 188(3), because we acknowledge that the rationale that influences prices in non-standard contracts can be commercially sensitive and specific to individual contracts.

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<sup>251</sup> Chorus "[Submission on Fibre information disclosure draft decision - 8 July 2021](#)" (12 July 2021), paragraph 115 and Appendix 1, page 47.

## **Chapter 6     Asset Management and Network Characteristics**

### **Purpose and structure of this chapter**

- 6.1     The ID determination requires regulated providers to disclose information about their network, and how they manage and invest in their network.
  
- 6.2     This chapter sets out our reasons for requiring the information described in Table 6.1 to be publicly disclosed. The chapter discusses the following:
  - 6.2.1     why interested persons need information on network management to assess performance;
  - 6.2.2     the reasons for our specific decisions on requirements for information on network management;
  - 6.2.3     the timing of required disclosures and transitional provisions; and
  - 6.2.4     certification and assurance requirements.
  
- 6.3     Interested persons need the information set out in Table 6.1 to assess whether regulated providers are operating and investing in their assets efficiently, as observed in workably competitive markets. To assess this key performance question, regulated providers also need to answer additional key performance questions:
  - 6.3.1     Are regulated providers innovating where appropriate?
  - 6.3.2     Are regulated providers providing services at a quality that reflects consumer demands?
  
- 6.4     We consider the information requirements in the ID determination are sufficient to answer the above questions.

## Summary of final decisions

**Table 6.1 Overview – Final Decisions on Asset Management**

Category	Final decisions on information required	Reference to Schedules	Relevant part of purpose statement
<b>Key qualitative information</b>			
<b>Report on asset management capability</b>	<p>This report requires regulated providers to assess their asset management capability against an objective standard. The standard includes policies and processes for maintaining and developing the network, performance against targets, information and risk management, and communication with stakeholders.</p> <p>The report takes the form of a self-assessment based on predetermined questions and guidelines to assess maturity. Each question requires a score, a target score, evidence of the score, and initiatives planned to achieve the target score.</p>	Schedule 13	S162(a), s162(b)
<b>Link between forecast expenditure and network quality performance</b>	<p>Provide narrative explanation of the link between forecast capex expenditure and:</p> <p>a) forecast opex; and</p> <p>b) network quality performance.</p>	Mandatory explanatory notes (Schedule 14b)	S162(a), s162(b)
<b>Key quantitative information</b>			
<b>Forecast expenditure by category</b>	Forecast expenditure over a five-year period (three-year forecast during transition period), with a breakdown of the forecasts by expenditure category.	Schedule 11, 11a	S162(a), s162(b)
<b>Information about the network, supporting information about asset management and expenditure</b>	<p>Asset register, number of assets at the start and end of each disclosure year and value of commissioned assets, asset condition, asset age profile, percentage to be replaced in the next five years.</p> <p>Forecast cost of assets to be replaced in next five years may be disclosed to the Commission only.</p>	<p>Chorus: Schedules 10a, 10b</p> <p>ID-only regulated providers: Schedule 10</p>	S162(a), s162(b)
	Information on network capacity and five year forecast on network capacity measures by POI area (three year forecast during transition period).	Schedule 12	S162(a), s162(b)

Category	Final decisions on information required	Reference to Schedules	Relevant part of purpose statement
	Observed and forecasted information on demand for the current and following five disclosure years, by POI area (three year forecast during transition period).	Schedule 12a	S162(a), s162(b)

## Application of our Regulatory Framework

### The purposes in Part 6

- 6.5 We have applied our Regulatory Framework and consider that the final decisions in this chapter promote the purpose of s 186 by requiring the disclosure of sufficient, readily available asset management and network information on historical, current and expected future performance so that the Commission and other interested persons can assess whether the Part 6 purpose is being met.
- 6.6 We consider that all of our final decisions in this chapter, together, best give, or are likely to best give, effect to the s 166(2) purposes as:
- 6.6.1 the disclosure of the asset management and network information which enables the Commission and other interested persons to assess whether a regulated provider's performance is consistent with the outcomes in s 162 will also best promote those outcomes; and
- 6.6.2 we have considered our competition screening questions and have not identified any reasons why the promotion of workable competition in telecommunications markets for the long-term benefit of end-users has implications for any of the decisions.
- 6.7 We have not considered it necessary to specifically explain why each individual decision best gives, or is likely to best give, effect to the s 166(2) purposes. Rather, each decision is intended to contribute to our overall determination of the provision of asset management and network information that meet the purpose of s 186 and best gives, or is likely to best give, effect to the s 166(2) purposes.

### Application of IMs

- 6.8 Regulated providers must apply the following IMs to information disclosures on asset management and network characteristics:

6.8.1 cost allocation;<sup>252</sup> and

6.8.2 asset valuation.<sup>253</sup>

### **Are regulated providers operating and investing in their assets efficiently?**

6.9 Regulated providers incur expenditure in order to carry out a range of activities and invest in assets. They do this to achieve intended outcomes such as connecting new locations, meeting expected levels of reliability and managing changing customer demand, as represented in Figure 6.1.

6.10 To assess whether regulated providers are operating and investing in their assets efficiently, it is helpful to consider the following four elements of network management:<sup>254</sup>

6.10.1 **Drivers:** what is the reason for this expenditure? A range of factors drives expenditure, including consumer requirements, consumer growth and the location and condition of the regulated providers' assets. These factors may change over time and may be specific to each business.

6.10.2 **Expenditure:** what is the regulated provider's historical, current and planned level of expenditure?

6.10.3 **Activities and assets:** what activities and assets are the regulated provider spending its money on? How does the regulated provider decide what activities it should carry out and which assets to invest in?

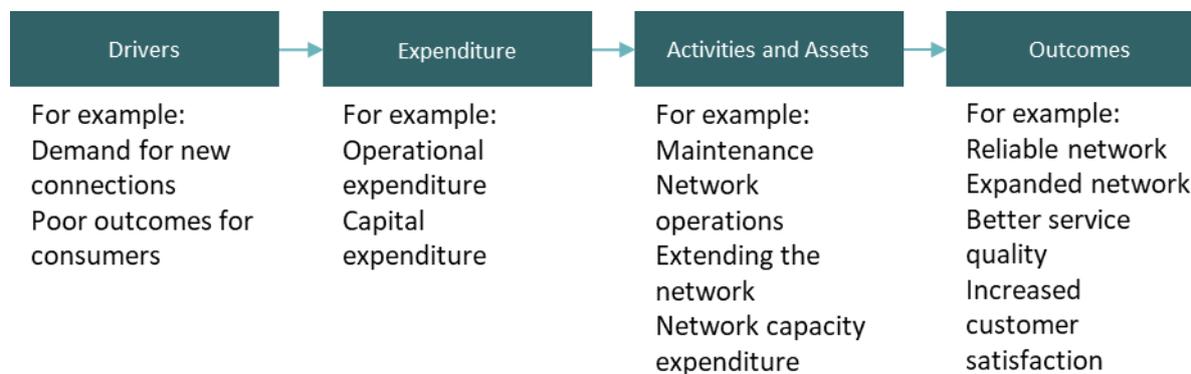
6.10.4 **Planned outcomes:** what is the regulated provider's intention in spending the money? What are the outcomes the regulated provider expects or achieves? How does this compare to consumer expectations?

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<sup>252</sup> The cost allocation IM for ID is specified in *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24 (3 November 2020), Subpart 1 of Part 2 of Attachment B.

<sup>253</sup> The asset valuation IM for ID is specified in *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24 (3 November 2020), Subpart 2 of Part 2 of Attachment B. The methodologies for determining the "initial RAB value" of the financial loss asset under clause 2.2.4(1) of Attachment B of the IMs are specified in Schedule B of Attachment B. Schedule B of the IMs includes a section for the asset valuation (Section 2) cost allocation (Section 3), taxation (Section 4) and cost of capital (Section 5) IMs used to determine the "initial RAB value" of the financial loss asset.

<sup>254</sup> The questions in paragraph 6.10 are not exhaustive, but are useful in understanding the link between opex and capex, and the level of service a regulated provider delivers over the long term.

**Figure 6.1 Assessing expenditure, activities and assets, and planned outcomes**

- 6.11 To assess whether a regulated provider is operating and investing efficiently, we consider that interested persons need a suite of information on historical, current and forecast expenditure, the drivers of this expenditure, the assets and activities associated with this expenditure, and the outcome of the expenditure. This information will enable interested persons to look at past trends of expenditure efficiency, current performance (including how this compares to past performance, and to other regulated providers), and planned future performance.
- 6.12 We consider that interested persons need a variety of qualitative and standardised quantitative information to assess network management. However, we are not requiring regulated providers to provide full AMPs. Instead, we are focused on only the information required to assess current asset management performance.
- 6.13 Regulated providers must disclose historical information on network assets, demand, and network capacity, for each disclosure year.
- 6.14 Network asset and expenditure information must be disclosed. This allows for interested persons to understand the links between expenditure and the assets used to provide regulated services, to identify changes in the state of the network over time, and to assess the impact of past expenditure on the network.
- 6.15 We recognise that, in respect of the infrastructure asset management lifecycle, regulated providers are transitioning from a phase of network construction to a new phase which requires the development of long-term strategies focused on steady state asset maintenance and renewal and directed towards outcomes of achieving improvements in efficiency, network performance and quality of service.
- 6.16 Nonetheless poor asset management at any time can impose significant costs on consumers. Events such as the Christchurch earthquake have highlighted the potentially significant economic cost when key infrastructure assets are damaged or fail, and the importance of having appropriate risk management policies in place.

- 6.17 Regulated providers may not have yet achieved the level of asset management capability seen in more established infrastructure sectors, but we would expect to see improvements in asset management practices over time. At this point we do not have sufficient information to assess the asset management capability of regulated providers and to set detailed requirements for AMPs.
- 6.18 For these reasons, our requirements do not require the disclosure of AMPs, but include a report on asset management capability, discussed further below. The information we require to be disclosed now will help to inform our future decisions on asset management planning disclosure requirements including whether to require the disclosure of AMPs.
- 6.19 Specific questions contained in the report on asset management capability assess how regulated providers are improving their asset data collection and cost estimation practices. Together with our requirements to provide explanation for the variances between forecast and actual expenditure and between forecast and actual connections (discussed in Chapter 4) these will help interested persons to understand the reliability of disclosed forecasts.
- 6.20 A number of our other requirements incorporate aspects of reports that are required under our Capex IM (eg, forecast demand, investment, quality and reporting on the link between capex and opex and between capex and network quality performance).
- 6.21 Network information must be disaggregated using a standardised hierarchy (see, for example, Figure 6.2 on page 183). This will make it easier for interested persons to understand the links between expenditure and the assets used to provide regulated services, to identify changes in the state of the network over time, and to assess the impact of past expenditure on the network. For example, understanding performance risks and investment requirements caused by poor asset condition requires a disaggregation of asset information between asset classes and asset categories, as the condition and expenditure requirements of some network components (eg, poles) can vary significantly from other components (eg, cabinets).

### **Are regulated providers innovating where appropriate?**

- 6.22 To assess whether regulated providers are innovating where appropriate, interested persons are likely to require information on expenditure on research and development (R&D) activities, the outcomes of this expenditure and the impact on planned network investment, as well as evidence of innovation.

- 6.23 Regulated providers must therefore disclose information on historical and forecast R&D expenditure, and:
- 6.23.1 the extent to which forecast expenditure is in respect of innovations that will improve efficiencies within the network;
  - 6.23.2 innovations they have made with opex or capex in the disclosure year that have deferred the need for asset replacement.

### **Are regulated providers providing services at a quality that reflects consumer demands?**

- 6.24 To answer this question, interested persons need to understand the level of quality being delivered, how this compares to consumers' demands, forecast any future changes in quality (eg, to continue to respond to forecast changes in consumer demands), and how this impacts on planned expenditure.
- 6.25 The concept of 'quality' covers a potentially wide range of service parameters. One key measure of quality, for example, is availability - to what extent is the regulated provider able to provide a reliable, uninterrupted service?
- 6.26 To assess whether regulated providers are providing services at a quality that reflects consumer demands, interested persons will need information on current, past and forecast quality, and the level of quality consumers are prepared to pay for.
- 6.27 Our quality requirements are separately discussed in Chapter 7. The requirement set out in this chapter to provide an explanation of the link between historical and planned expenditure and network quality performance deals with the link between expenditure and changes in quality levels for the disclosure year and also with the movement from current levels of quality to the levels that reflect consumer demands.

### **Decisions on requirements for information on asset management**

- 6.28 We have required the disclosure of information about asset management and network characteristics.

- 6.29 This information is required in a series of Schedules. The Schedules require qualitative information including an assessment of the regulated provider's asset management capability and an explanation of the link between forecast capex and opex and network quality performance. Quantitative information required includes historical and expected future capex and information about network demand and capacity. The Schedules include disclosure of disaggregated information such as by expenditure category or POI area.
- 6.30 Each required disclosure is able to be specified as part of ID regulation under s 188(2) of the Act as explained in paragraphs 2.46 to 2.50.
- 6.31 This information will:
- 6.31.1 allow interested parties to better understand trends over time, as well as future demand, and the costs of rolling out and operating a fibre network; and
  - 6.31.2 allow the Commission to carry out summary and analysis to help interested parties to better understand the information disclosed and both the historical and future financial and network performance of the regulated provider.
- 6.32 As Chorus is subject to PQ regulation as well as ID regulation, Chorus has additional reporting requirements over and above those required of other regulated providers.

### **Submissions**

- 6.33 Enable/Tuatahi submitted that "the proposed asset management information disclosures for LFCs are too onerous for the first regulatory period and do not adequately take account of the relative immaturity of the FFLAS sector compared to other utility services. They proposed that that the following information is not disclosed annually during the first regulatory period:
- 6.33.1 Schedule 6(ii)-(vii), clause 2.3.23 - Material capex project and programme disclosures;
  - 6.33.2 Schedule 10 – Asset condition, forecast replacement and age profile disclosures;
  - 6.33.3 Schedule c11(ii)-(vii) – Forecast of material capex projects and programmes;
  - 6.33.4 Schedule 12 – Forecast capacity, utilisation and demand disclosures;

- 6.33.5 Schedule 13 – Asset management maturity assessment; and
- 6.33.6 Schedule 14 – Commentary supporting asset management decisions and plans."
- 6.34 Enable/Tuatahi also suggested each LFC be required to disclose Network Plans as an alternative to the required information and potential future disclosure of asset management plans.<sup>255</sup>
- 6.35 Chorus supported the disclosure of the report on asset management capability as a sensible approach that will enable the Commission to establish a sense of each regulated provider’s asset management practices but requested clarity on what the Commission intends to do with the information and how long Chorus are expected to record it in the proposed form. Chorus also noted that it compares its practices to another standard equivalent to the ISO 55000 standard referred to in Schedule 13 and suggested the reference be widened to include equivalent industry standards.
- 6.36 In respect of a possible future requirement for an AMP, Chorus submitted that there is a risk that a requirement to produce an AMP under ID would duplicate the Integrated Fibre Plan (**IFP**) requirements. Rather than introducing duplicate requirements, it would make more sense to rely on the IFP.<sup>256</sup>
- 6.37 We consider the required information is necessary to best give effect to the 166(2) purposes. We recognise that asset management is a journey and maturity and accuracy of data can take time to establish, but also that a gradual implementation of aspects of information that might be required in asset management plans will be of use to interested parties in understanding the future financial and network performance of the regulated provider.
- 6.38 We therefore consider that reporting should commence immediately. Provision has been made to ensure that regulated providers can report on their reporting capability via the asset management self-assessment tool. We accept that asset management standards equivalent to ISO 55000 may also provide a suitable benchmark for assessing asset management capability.

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<sup>255</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), paragraph 4.6.

<sup>256</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 78-81.

- 6.39 Any future decision on whether to implement full AMPs, based on analysis of the information disclosed to that point, will also consider the information already required in the IFP requirements for Chorus.
- 6.40 We have decided to defer project and programme expenditure reporting until further consideration of whether to implement full AMPs. We consider this expenditure detail would be better communicated at a level that is useful for interested persons within an AMP or similar document where there is the opportunity to provide context within which it is carried out or planned.

#### *Summary of decisions*

- 6.41 We confirm our draft decision that regulated providers must disclose:
- 6.41.1 a self-assessment report on asset management capability;
  - 6.41.2 explanation on the link between historical and forecast capex and:
    - 6.41.2.1 forecast opex; and
    - 6.41.2.2 network quality performance;
  - 6.41.3 opex and capex based on standardised formats and categories;
  - 6.41.4 information about the network; and
  - 6.41.5 information about forecast capacity and utilisation and demand.
- 6.42 We discuss the reasons for our specific decisions on the above ID requirements and address submissions on particular aspects of the asset management disclosures under the relevant topic headings below.

#### **Report on Asset Management Capability**

- 6.43 We recognise that poor asset management can impose significant costs on consumers. FFLAS is an important input into high-speed broadband services and other important telecommunications services such as mobile. Therefore, it is important for consumers to be able to rely on a robust network with strong risk management practices.
- 6.44 While we are not requiring full AMPs, we are requiring regulated providers to disclose a report on their asset management capability. This, in combination with the asset and expenditure information discussed below, will allow interested persons to assess a regulated provider's asset management capability.

- 6.45 Regulated providers must undertake and disclose a self-assessment of the maturity of their practices in relation to asset management using the report on asset management capability in Schedule 13.
- 6.46 We do not consider that it is appropriate or necessary for us to specify comprehensive standards on asset management as each regulated provider should adopt whatever standard or approach it considers is most appropriate for it. However, given the importance of asset management to the quality and the cost of services that consumers receive over time, interested persons should understand whether regulated providers are reviewing their asset management practices, and whether this has identified areas for asset management improvements.
- 6.47 The report on asset management capability seeks to identify the maturity of current asset management practices regulated providers use. The self-assessment questions have been determined based on standard asset management practices.
- 6.48 Disclosure of the report will allow interested persons to understand how well regulated providers are managing their assets against an objective standard. Disclosure of the results does not require a regulated provider to lift its asset management capabilities to a higher level of maturity, but it makes the decision to settle for a lower standard a more conscious and transparent one.
- 6.49 Completing the report on asset management capability requires the regulated provider to identify references to its own documents that support its assessment of its capability rating. This will enable us to commission an audit by a qualified independent person of the responses in the report on asset management capability disclosures, if necessary.
- 6.50 In addition to reporting on progress against forecasting and asset condition assessment capability, the report on asset management capability contains 31 self-assessment questions about aspects of asset management. The purpose of these questions is to extract information that interested persons would need to assess a regulated provider's asset management capability, for the reasons discussed in paragraphs 6.15 to 6.19 in this chapter.

- 6.51 The report on asset management capability also contains 12 additional questions about how a regulated provider manages network asset data, makes risk-based decisions, and manages cost estimation models. A number of these questions reference objective international (ISO) asset management standards. The standards allow the regulated provider to assess their capability against objective standards, whether these be the referenced ISO or other industry standards, and allow interested persons to compare the regulated provider's capability to the same standards.
- 6.52 For each of the self-assessment questions, a maturity score of 0 to 4 is to be applied. We have provided a qualitative matrix for regulated providers to assess their capability to help determine their maturity score. We also require a target score for three years from the current disclosure year.
- 6.53 For each of the self-assessment questions, we also require a summary of evidence to support the maturity score given, as well as initiatives planned to reach the target score. This is to provide an overview of the strategy and priorities a regulated provider has assigned to its asset management capabilities. It will also help interested persons reconcile quantitative information with a regulated provider's asset management capability planning.
- 6.54 Each self-assessment question also includes a rationale as to why that specific question is important, who is responsible for providing information, and which internal asset management documentation relates to the question.
- 6.55 We expect that at this point regulated providers will have identified some initiatives to improve their asset management capability in general and therefore we are requiring a forward-looking disclosure of their target capability within three years and a description of the initiatives planned to achieve the target level of capability.
- 6.56 The disclosed information may help to inform our future reviews of the requirements including whether to prescribe detailed requirements for AMPs.

#### *Submissions*

- 6.57 Enable/Tuatahi suggested each LFC be required to disclose a Network Plan prior to the commencement of each disclosure year which describes:
- 6.57.1 approach to asset management, including asset management policies
  - 6.57.2 asset management priorities, including:
    - 6.57.2.1 network constraints;

- 6.57.2.2 network extensions;
  - 6.57.2.3 network maintenance and renewals;
  - 6.57.3 network performance and performance targets; and
  - 6.57.4 significant projects/programmes.
- 6.58 The Network Plan would be consistent with the Schedule 11 and Schedule 11a expenditure forecasts which are to be disclosed to the Commission.<sup>257</sup>
- 6.59 Enable/Tuatahi supported self-assessment of asset management maturity though they submitted it should be disclosed at the start of the 2024 disclosure year.<sup>258</sup>
- 6.60 Chorus agreed that the proposed report on asset management capability (Schedule 13) is a sensible approach that will enable the Commission to establish a sense of each regulated provider's asset management practices.
- 6.61 However, Chorus proposed that that the report on asset management capability be disclosed five months after the disclosure year along with the other schedules. Chorus does not see the benefit in the Commission receiving this information before the end of the disclosure year and considers the compliance cost to carry out a separate assurance process for a single schedule outweighs any benefit in providing the information prior to the end of the disclosure year.<sup>259</sup>

### *Response*

- 6.62 As noted in paragraph 6.17 above, we do not have sufficient information to assess the asset management capability of regulated providers and to set detailed requirements for AMPs. The self-assessment tool provides important asset management capability information while other disclosures are deferred.

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<sup>257</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), paragraph 4.6.

<sup>258</sup> Ibid. paragraph 4.5.

<sup>259</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 77-78.

- 6.63 The core information required as part of a Network Plan or AMP is included in the schedules without requiring the work associated with the development of a publishable plan. As such we consider it provides for an easier transition. We also consider that quantitative reporting as required in our final decisions provides for the standardisation of information being provided to interested persons.
- 6.64 We also note that regulated providers are free to develop and publish their own Network Plans or AMPs outside of the required disclosures.
- 6.65 However, we have decided to change the due date for the disclosure of the report on asset management capability to align it with the due date for year-end schedules in accordance with Chorus' proposal.

#### **Explanation of link between historical and forecast capex and opex and network quality performance**

- 6.66 The required explanations of the link between historical and forecast capex and opex and network quality performance (availability and utilisation) will be an important source of information on the intended outcomes of planned expenditure. Together with the historical information suppliers must disclose after the end of each year, this will help interested persons to make judgements on whether these outcomes have been achieved.

#### *Submissions*

- 6.67 Our draft requirements included the reporting of historical and forecast capex and opex on material projects and programmes.
- 6.68 Enable/Tuatahi included significant projects/programmes as part of its proposed Network Plan (see paragraph 6.57) but suggested we change the definition of material project or programme to include a de-minimis threshold of \$1m within the disclosure year for network projects.<sup>260</sup>
- 6.69 Chorus opposed the requirement for project and programme expenditure reporting. Chorus' submission covered a number of points, including those set out below:

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<sup>260</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 1.

- 6.69.1 "The Commission has not defined what projects and programme expenditure is or explained why it thinks disclosure of projects and programme expenditure, including forecasts, is necessary";
- 6.69.2 "The sub-category expenditure level reporting provides enough information for the Commission and interested persons to assess whether the Part 6 purpose is being met";
- 6.69.3 "It is unclear what the 'scope' of project and programme is. The terms 'project' and 'programme' are too vague to provide a useful basis for reporting. The scope of disclosure can change at any time as components are added or removed from projects, or as work moves through strategy into planning and delivery";
- 6.69.4 Project and programme reporting would duplicate existing reporting. In addition, many areas of Chorus' expenditure are iterative programmes with repetitive capex spend that does not fit with 'projects' or 'programmes'; and
- 6.69.5 "Reporting on projects and programmes will reveal information on commercially and competitively sensitive projects. Giving our competitors a higher degree of transparency about our confidential commercial strategy will reduce strategic uncertainty for our competitors, which will disadvantage us in contractual negotiations and distort competition in the market."<sup>261</sup>

### *Response*

- 6.70 After considering these submissions, we have decided to defer project and programme expenditure reporting until further consideration of whether to implement full AMPs. We consider this expenditure detail would be better communicated at a level that is useful for interested persons within an AMP or similar document where there is the opportunity to provide context within which it is carried out or planned.

### **Opex and capex based on standardised formats and categories**

- 6.71 Forecasts of opex and capex are important aspects of asset management. These forecasts must:

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<sup>261</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 49-54.

- 6.71.1 be in a standardised format, in accordance with Schedules 11 and 11a of the ID determination;
  - 6.71.2 use standardised expenditure categories;<sup>262</sup>
  - 6.71.3 be for an initial rolling period of three years, with progress on developing capability for five-year forecasts to be reported in the Schedule 14b Mandatory Disclosures on Forecast Information, along with a description of the forecasting methodology used in the transition period; and
  - 6.71.4 be required on a nominal and constant price basis.
- 6.72 We will not require Chorus to produce forecasts in the years in which Chorus submits an expenditure proposal or the Commission determines the PQP for the next period.
- 6.73 Regulated providers must also disclose information supporting their asset management planning and expenditure forecasts (ie, information on the factors that are expected to drive changes in future expenditure). Specifically, regulated providers must disclose the following standardised reports:<sup>263</sup>
- 6.73.1 forecast capacity and utilisation; and
  - 6.73.2 forecast demand.
- 6.74 The rolling forecast period for capacity and utilisation, and demand is aligned to the forecasting period for expenditure, initially three years with progress on developing capability for five-year forecasts to be reported in the schedule 14b Mandatory Disclosures on Forecast Information, along with a description of the forecasting methodology used in the transition period.
- 6.75 Regulated providers must disclose this information, together with financial and non-financial information, after the end of each disclosure year. In addition, when disclosing financial information, regulated providers must disclose a comparison of expenditure for the disclosure year against the previously disclosed forecast for that year and provide explanatory comment on any variances.

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<sup>262</sup> Forecast expenditure must be disclosed using the same expenditure categories as historical financial information, see paragraphs 6.94 to 6.96 below, and Attachment C.

<sup>263</sup> Schedules 12 and 12a as applicable.

- 6.76 This information will enable interested persons to form a view on the reasonableness of forecast expenditure. Together with the qualitative information provided by the asset management capability report, the information in paragraphs 6.71 and 6.73 will also enable interested persons to understand the link between planned expenditure and the expected outcomes from that expenditure.
- 6.77 Disclosing this information in a standardised format will ensure that quantitative data on providers' network planning is available to interested persons in a readily accessible format. This will make it easier for interested persons to understand the basis for planned expenditure, to identify changes in planned investment and the reasons for those changes over time. Over time, comparisons of forecasts to actual expenditure will provide information on the reliability of expenditure forecasts and the reasons for any variances.
- 6.78 Including forecast information with the end of year disclosures of historical information will provide interested persons with an integrated package of information on current and planned performance.

#### *Submissions*

- 6.79 Enable/Tuatahi submitted that the forecast expenditure information is commercially sensitive and should not be publicly disclosed. They also submitted that:
- 6.79.1 the proposed five year forecast period is too long because the competitive telecommunications environment means they do not have sufficient certainty to forecast beyond three years, the period currently used for business planning purposes;
- 6.79.2 the disclosure of actual versus forecast expenditure at the proposed disaggregated level is excessive but they supported the exemption for 2022, as there has not been a forecast disclosed for the year; and
- 6.79.3 disclosure of both nominal and constant price forecast expenditure is not required, and this is potentially confusing for stakeholders. This is because inflationary impacts are less significant for a short forecast period and users of the information can apply their own inflationary assumptions if they wish.<sup>264</sup>

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<sup>264</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), page 17 and Table 1.

- 6.80 Northpower submitted that all forecast information required under the IDs should be disclosed to the Commission on a confidential basis. As LFCs are not true monopolies (they face competition from other technologies) the information is commercially sensitive and would unfairly benefit competitors.<sup>265</sup>
- 6.81 Chorus agreed in principle with the Commission's proposal for disclosure of a rolling five-year forecast but suggested this requirement be deferred to at least 2025, given that PQP1 is only three years, and amended so that there is no requirement to produce a forecast in the years in which Chorus submits an expenditure proposal or the Commission determines the PQP for the next period. Chorus suggested that if the Commission needs the outer year forecasts, the appropriate avenue would be a request under either s 187(1)(c) or s 221 of the Act. Chorus also requested the definition of 'forecast' be amended to make it clear it is a rolling forecast.<sup>266</sup>
- 6.82 Chorus did not support the Commission's proposal that it provide Schedules 11, 11a, 12, 12a and 13 prior to the start of the disclosure year and submitted that these Schedules should be provided with the other required Schedules in one package, 5 months after the end of the disclosure year. Aligning the timing of the disclosures would be more efficient for its assurance processes, reducing the compliance burden.<sup>267</sup>

### *Response*

- 6.83 We have made a number of changes to the draft requirements in response to these submissions:
- 6.83.1 To reduce the compliance burden, we have aligned the date for providing forecast information to the same date the annual historical disclosures are due, five months after the disclosure year-end.

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<sup>265</sup> Northpower "[Submission on Fibre Information Disclosures draft decisions, Input Methodologies amendments draft decision](#)" (8 July 2021), page 2.

<sup>266</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 36.1, 38, 40-45, Appendix 1.

<sup>267</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 76-77, Appendix 1.

- 6.83.2 We now require that three year rolling forecasts are to be disclosed for disclosure years 2022 to 2024, with five-year forecasts to be provided with the annual disclosure reporting from 2025. In the transition period, progress in developing this five -year forecasting capability must be reported in the schedule 14b Mandatory Disclosure Notes on Forecast Information, along with a description of the methodology used in the transition period.
- 6.83.3 Chorus will not be required to disclose a five-year rolling forecast at the end of a disclosure year during which an expenditure proposal is submitted, or the Commission determines the PQP for the next period.
- 6.83.4 Forecast expenditure will be categorised to align with changes to the categorisation of historical capex and opex financial information.
- 6.84 We do not consider that the present state of competition in the telecommunications environment means providers of FFLAS do not have sufficient certainty to forecast network expenditure beyond three years.
- 6.85 We do not consider the forecast information at the aggregated level required in our draft decision is likely to be commercially sensitive and consider it is of interest for interested parties to see what the network expenditure profile is for at least the next five years. We note that the provision for transitional reporting at category level 1 (see Table 6.2 below) should remove immediate concerns about disclosing forecasts at category level 2 for ID-only regulated providers from the 2022 disclosure year.
- 6.86 Commercial sensitivity has only been raised by Chorus in respect of market sensitivity of year four and five forecasts, given that with the exception of its expenditure proposal for PQP1 they have not been made public to date. To accommodate Chorus' concerns, we have provided for disclosure of the year four and five forecasts for 2022 to 2024 to be on a Commission-only basis.
- 6.87 We do not agree that the requirement to provide both nominal and constant price forecast expenditure is unnecessary and potentially confusing for stakeholders. The conversion is a mechanical process that can readily be carried out by regulated providers and will enable interested persons to compare nominal changes with real changes in expenditure over time.

*Categorisation of expenditure*

- 6.88 Expenditure is a significant consideration in assessing whether suppliers are operating and investing in their assets efficiently. In particular, this assessment requires that expenditure is categorised to identify the link between expenditure, and the factors that drive expenditure (see paragraphs 6.9 to 6.11).
- 6.89 Regulated providers must therefore disclose information on historical capex and opex using a standardised set of expenditure categories (see Table 6.2 and Table 6.3).<sup>268</sup> These categories also apply to expenditure forecasts to allow for a direct comparison between historical expenditure for a financial year and the expenditure forecast previously disclosed for that year.
- 6.90 Standardised expenditure categories that are linked to drivers of expenditure have the added benefit of allowing interested persons to compare expenditure over time, both to identify trends and between regulated providers.<sup>269</sup>
- 6.91 In determining appropriate expenditure categories for ID, we have balanced the relevance of expenditure categories to interested persons against practical considerations, including the desirability of a cost-effective Part 6 regulatory regime.
- 6.92 For information on expenditure to inform interested persons, it must be based on categories that:
- 6.92.1 have a clear relationship to a driver or outcome of expenditure, which is also covered by the ID requirements; and
  - 6.92.2 are reasonably likely to provide interested persons with an understanding of relationships between expenditure and the disclosed drivers (or outcomes of expenditure).<sup>270</sup>

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<sup>268</sup> Attachment D explains the reasons for our detailed decisions on expenditure categories.

<sup>269</sup> We note that care is needed in comparing performance, including in relation to expenditure, across different regulated providers. Such comparisons must take account of the specific characteristics of individual businesses. By requiring financial and non-financial information that is sufficiently standardised to identify the links between network assets, expenditure drivers, and expenditure, the information required under the ID Determinations will enable interested persons to compare performance across suppliers on a more informed basis than was possible under previous arrangements.

<sup>270</sup> We provide examples of the linkages between the expenditure categories in the ID Determination and drivers of expenditure in paragraph 6.116.

- 6.93 For information on expenditure to be cost-effective, the expenditure categories should align with existing business practice where possible, to reduce the compliance costs incurred by suppliers needing to modify financial information systems.
- 6.94 The expenditure categories in the ID determination include level 1 and level 2 categories for opex and capex. Chorus must disclose historical expenditure under both categories, which are consistent with the categories included in Chorus' expenditure proposal for PQP1. We think these appropriately capture the underlying drivers for the expenditure and provide an informative level of detail as a basis for disclosing expenditure. The adoption of these categories also aligns expenditure disclosures for both PQ and ID regulation.
- 6.95 Other regulated providers must report expenditure for disclosure years 2022 to 2024 against the level 1 categories and then against the more detailed categories in level 2 from 2025. We consider this will allow sufficient time for them to be able to develop financial reporting systems to capture the relevant information at level 2. Progress in developing this capability must be reported in the report on asset management capability.
- 6.96 Table 6.2 and Table 6.3 show the high level capex and opex categories (respectively). Attachment C discusses the expenditure categories and, in particular, sub-categories in more detail.

**Table 6.2 High level capital expenditure categories for regulated providers**

Level 1 category	Level 2 category
<b>Extending the network</b>	Augmentation
	New property developments
	UFB communal
<b>Installations</b>	Complex installations
	Standard installations
<b>Network capacity</b>	Access
	Aggregation
	Transport
<b>Network sustain and enhance</b>	Field sustain
	Relocations
	Resilience
	Site sustain
<b>Network IT &amp; support</b>	Network and customer IT

Level 1 category	Level 2 category
<b>Non-network IT &amp; support</b>	Business IT
	Corporate capex

**Table 6.3 High level operational expenditure categories**

Level 1 category	Level 2 category
<b>Customer opex</b>	Customer operations
	Product sales and marketing
<b>Network opex</b>	Maintenance
	Network operations
	Network operating costs
<b>Support opex</b>	Asset management
	Corporate
	Technology

- 6.97 In addition to the expenditure categories in Table 6.2 and Table 6.3 regulated providers must provide expenditure information on the subcomponent categories of research and development and insurance expenditure. Subcomponent categories highlight expenditure on activities that are included in other expenditure categories but are of particular interest in assessing regulated providers' performance.

*Submissions*

- 6.98 Chorus supported the Commission’s proposal to use the expenditure categories from its PQP1 proposal as these categories have a clear relationship to a driver or outcome of expenditure but noted the Commission’s proposed split between 'network' and 'non-network' is not workable for Chorus, as network and non-network may span more than one category. Chorus suggested the Commission target its opex reporting requirements to the splits proposed in its PQP1 proposal: “customer”, “network” and “support”.<sup>271</sup>
- 6.99 Enable/Tuatahi suggested that we adopt the following categories:
- 6.99.1 Opex:
    - 6.99.1.1 customer (incorporating customer call centre and marketing);
    - 6.99.1.2 network (incorporating network maintenance and operations);  
and
    - 6.99.1.3 support (incorporating business and other support).
  - 6.99.2 Opex is allocated to each category using the primary purpose principle.
  - 6.99.3 Expenditure on assets (capex):
    - 6.99.3.1 Layer 1 – growth;
    - 6.99.3.2 Layer 1 – maintain and renew;
    - 6.99.3.3 Layer 2 – growth;
    - 6.99.3.4 Layer 2 – maintain and renew;
    - 6.99.3.5 other network; and
    - 6.99.3.6 non-network.

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<sup>271</sup> Chorus “[Submission on Draft Information Disclosure Determination](#)” (8 July 2021), paragraphs 64 to 67.

- 6.100 Enable/Tuatahi also submitted that we should remove the research and development and insurance subcomponents of opex.<sup>272</sup>
- 6.101 Northpower submitted that, provided it had sufficient time and the determination had clear and distinct definitions of different categories, it would be able to provide the level of financial information detail requested. It considers, however, that a "higher level of aggregation of categories of the information requested generally, would reduce both the time and cost involved in having to comply with the schedules and would also make comparison and analysis of the information by interested persons easier."<sup>273</sup>
- 6.102 Chorus supported Enable/Tuatahi's and Northpower's proposals for more aggregated reporting for capex and opex categories to enable comparability between regulated providers.<sup>274</sup>
- 6.103 Chorus, Enable/Tuatahi and Northpower all opposed the requirement for subcomponent reporting on research and development expenditure. Chorus submitted that while it is technically possible to provide the subcomponents of insurance costs and research and development costs, this level of granularity is unnecessary and reporting at this level simply adds to its compliance cost.<sup>275</sup>
- 6.104 Enable/Tuatahi submitted that research and development expenditure is commercially sensitive and should not be publicly disclosed. It is also unlikely to be material. They also submitted that insurance expenditure will be included in the other opex categories and is not a significant line item.<sup>276</sup>

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<sup>272</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), page 11-12 and Table 1.

<sup>273</sup> Northpower "[Submission on Fibre Information Disclosures draft decisions, Input Methodologies amendments draft decision](#)" (8 July 2021), page 3.

<sup>274</sup> Chorus "[Cross-submission on Draft Information Disclosure Determination](#)" (5 August 2021), pages 6 and 7.

<sup>275</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 61 to 63 & Appendix 1.

<sup>276</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 1.

*Response*

- 6.105 We accept that a transition period is needed to allow regulated providers other than Chorus to set up systems to capture data and develop processes and reporting capability at the level of granularity proposed in our draft decisions. However, we do not consider that aggregation to Enable/Tuatahi's proposed level would be useful to interested parties or provide for meaningful comparison of expenditure between regulated providers.
- 6.106 We have decided to specify the expenditure categories as level 1 and level 2 categories. Chorus is required to report expenditure at both levels, which are consistent with the categories from its PQP1 expenditure proposal (corrected to remove the network/non-network split for opex).
- 6.107 Non-Chorus regulated providers will be required to report against the level 1 categories only for disclosure years 2022 to 2024, with reporting against the level 2 categories to commence in 2025. During the transition period, progress in developing level 2 reporting capability is to be disclosed in the Mandatory notes, schedules 14a and 14b.
- 6.108 Information on research and development expenditure is important as it will provide increased transparency on costs of innovation activities across regulated providers and over time, consistent with our obligation under the purpose of Part 6 to promote incentives to innovate and to invest, including in replacement, upgraded, and new assets.
- 6.109 Similarly, information on insurance costs and associated narrative disclosures will provide greater transparency on the regulated provider's approaches and practices in regard to the insurance of assets used to provide FFLAS, including the level of insurance and self-insurance, details of how reserves are managed and invested, and details of any reinsurance.
- 6.110 We consider that reporting on research and development expenditure is at an aggregate level which will not reveal commercially sensitivity information about specific initiatives. The level of detail for narrative descriptions required in schedule 14 and 14a is not prescribed and so the descriptions can be constructed by regulated providers to manage commercial sensitivity concerns.

**Information about the network**

- 6.111 The ID determination requires suppliers to disclose information about their networks, at the end of each disclosure year. This information includes:

- 6.111.1 information on the network assets used to provide regulated services (asset register) provided for asset categories and classes;<sup>277</sup>
- 6.111.2 information on the ducts and cables and other standard asset units that make up the network;<sup>278</sup> and
- 6.111.3 information on system capacity, utilisation, and demand.<sup>279</sup>
- 6.112 Disclosures on quality are discussed in Chapter 7. We consider that interested persons should be able to compare information on network assets and expenditure to the quality of the networks. This information is necessary for interested persons to assess the reasonableness and efficiency of regulated providers' expenditure.<sup>280</sup>
- 6.113 Capacity, demand, and the volume and value of assets can influence the overall performance of the network. Sufficient and consistent information on these factors is needed to appropriately and fairly assess each regulated provider's performance, and to assess whether the purpose of Part 6 is being met.
- 6.114 The condition, suitability and performance of the regulated providers' assets, and the way each regulated provider manages and invests in its assets, are critical determinants of the price, cost and quality of services that consumers receive from regulated providers.
- 6.115 In addition, interested persons need information about the network in order to assess the reasonableness of regulated providers' expenditure.<sup>281</sup> Network quality performance can be affected by a number of factors, including consumer requirements, consumer growth and the nature and condition of the regulated providers' assets. Some of these factors are outside management control and change over time. Sufficient and consistent information of this type is needed to appropriately and fairly assess each regulated provider's performance, and to assess whether the purpose of Part 6 is being met.

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<sup>277</sup> Schedules 10, 10a, and 10b.

<sup>278</sup> Schedules 10, 10a, and 10b.

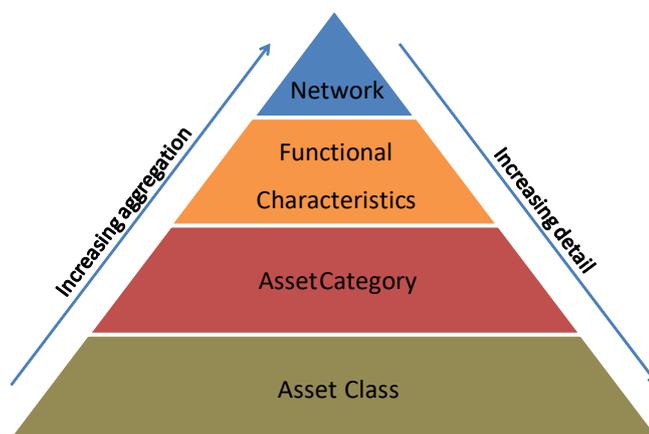
<sup>279</sup> Schedules 12 and 12a.

<sup>280</sup> See paragraphs 6.11-6.12.

<sup>281</sup> See paragraphs 6.11-6.12.

- 6.116 The aspects of network information we require disclosure on are factors that influence expenditure. Interested persons can use this information to help to assess expenditure, based on the expenditure categories listed in Tables 6.2 and 6.3 above. For example:
- 6.116.1 the condition of network assets influences the need for asset replacement and renewal;<sup>282</sup>
  - 6.116.2 demand (ie, for new connections, for higher connection speed) creates the need for expenditure on system growth;<sup>283</sup>
  - 6.116.3 the number of connections demanded influences expenditure on consumer connections and new installations;<sup>284</sup> and
  - 6.116.4 the network's existing capacity relative to demand influences expenditure on the asset base.
- 6.117 Information on the network should be based, wherever possible, on a consistent hierarchy. Figure 6.2 illustrates the standardised hierarchy we have applied to information about the network.

**Figure 6.2 Hierarchy applied to information about the network**




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<sup>282</sup> Schedule 10a requires information on the asset age profile.

<sup>283</sup> Schedule 12a requires information on demand.

<sup>284</sup> Schedule 12a requires information on connections.

- 6.118 The ID determination require suppliers to disaggregate information about the network into functional characteristics of assets, for example layer 1 or layer 2, and then asset categories and asset classes. This will enable interested persons to compare information across networks, expenditure drivers, expenditure, and quality outcomes.

*Submissions on asset information*

- 6.119 Chorus agreed that information on its asset volumes and asset condition is useful information for the Commission and interested persons but notes it does not have asset condition reporting available today, primarily because of the age of its fibre network. Chorus proposed that asset condition reporting in Schedules 10a and 10b should be deferred until at least PQP2 once it has had more time to develop its reporting capability.<sup>285</sup>
- 6.120 Chorus submitted that ID-only asset information is commercially sensitive and that that ID-only asset information should be disclosed to the Commission only. Chorus considers that public interest in this information is limited and would only be of use for competitors, therefore public disclosure would prejudice Chorus' commercial position. It submitted that if we did not agree with its position on deferring these requirements to PQP2 it should not be required to disclose its ID-only information on asset volumes and asset condition.<sup>286</sup>
- 6.121 Chorus submitted that most of the asset classes proposed by the Commission make sense but recommends the following clarifications and refinements:
- 6.121.1 Remove the breakdown of cabinet distribution fibre, backhaul fibre, feeder fibre, direct fed fibre and fibre route length and report fibre optic cable in one line. Splitting fibre cables into these categories requires an arbitrary split;
  - 6.121.2 OFDF should be reported in one line as the split between 24 port, 48 port and greater than 48 port is not meaningful;
  - 6.121.3 Network land and buildings should be reported as one category. Chorus does not think there is benefit in splitting between access, mesh, core, handover as a building may serve multiple purposes and may change over time;

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<sup>285</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 129 and 132.

<sup>286</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 118.2-118.3.

- 6.121.4 Network spares are held in distribution centres around the country. While they are held as spares, Chorus does not distinguish whether they will be used in PQ or ID-only areas. It can only do this reporting at a National level.<sup>287</sup>
- 6.121.5 While data accuracy has a value set of 1 to 4, no definitions are provided, and we would need this rating system to be clarified.<sup>288</sup>
- 6.122 Northpower submitted that the sub-categories of Extending the network, Installations and Network capacity currently under Expenditure on Assets could all be aggregated. Northpower also sought clarification of the definitions of terminologies mentioned in the schedule that are not commonly defined in its GIS system.<sup>289</sup>
- 6.123 Enable/Tuatahi submitted that disclosing the draft asset categories would require substantial investment in systems and staff time. They submitted alternative categories to the proposed asset register categories.
- 6.124 Enable/Tuatahi did not support the proposed asset condition H1-5 scoring system as fibre networks are not configured in the same way as electricity and gas networks and significant components will remain largely untouched for some time. As network assets are relatively new with long useful lives, there is little business focus on asset replacement at this point in time. Enable/Tuatahi therefore consider that the schedule 10 proposals are premature. The majority of schedule 10 disclosures should be deferred beyond the first regulatory period.
- 6.125 Enable/Tuatahi did not support the proposed template for forecast replacement of assets and expenditure at this time. They submitted that asset replacement is not currently a key driver of their business and the proposed expenditure information duplicates the information proposed in schedule 11, and therefore is not required. For disclosure years 2022 to 2025 the forecast replacement data is not required to be disclosed. Forecast expenditure (Column R) should be deleted as forecast capex is disclosed in schedule 11.

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<sup>287</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 133.

<sup>288</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 130.

<sup>289</sup> Northpower "[Submission on Fibre Information Disclosures draft decisions, Input Methodologies amendments draft decision](#)" (8 July 2021), pages 3 to 4.

- 6.126 Enable/Tuatahi also submitted that the proposed forecast period is too long and should be reduced to three years. They explain that the competitive telecommunications environment means they do not have sufficient certainty to forecast beyond three years. They currently prepare three-year forecasts for business planning purposes.<sup>290</sup>

*Response*

- 6.127 We consider that the ID-only asset reporting is generally at a high enough level not to create commercial sensitivity issues. Where forecast expenditure is linked to specific asset types we have required this as “Commission-only” information.
- 6.128 We agree that the draft asset categories would be too onerous to disclose immediately. We have made changes to address many of the specific asset register submissions to address this issue. These include:
- 6.128.1 only requiring reporting of fibre by aerial and underground, and sheath length and route length;
  - 6.128.2 requiring reporting of OFDF as one category;
  - 6.128.3 consolidating reporting of network building into two categories, retaining the reporting of handover sites as a separate subcategory;
  - 6.128.4 for Chorus, we have removed the duplicate reporting of spares under both PQ and ID only and only require it within PQ disclosures; and
  - 6.128.5 we have defined the meaning of the 1 to 4 data accuracy ratings.
- 6.129 In response to Northpower’s submissions specifically:
- 6.129.1 We have allowed for standardised asset categories for the reporting. We consider that the terms utilised are commonly understood, and as such do not need to be defined within the determination. We also consider there is a risk that in creating specific definitions may result in excluding assets that might otherwise be included. The main purpose is for the reporting to be inclusive over the whole. However, we have removed the detailed categorisation of fibre types and the "internal" classification from the asset register disclosures.

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<sup>290</sup> Enable and Tuatahi “[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)” (8 July 2021), Table 2 and paragraph 4.2a.

- 6.129.2 Expenditure on extending the network, installations and network capacity have different ways of impacting both the network and customers, so aggregation of these as proposed would make the information less useful.
- 6.130 In response to Enable/Tuatahi's submission that the proposed expenditure information in Schedule 10 duplicates the information proposed in Schedule 11, we do not agree. The Schedule 11 information is categorised on an expenditure purpose basis whereas the forecast in Schedule 10 is of forecast expenditure by asset type. Although the assets are relatively new asset management is a core function required of fibre service providers, and we consider it is appropriate to require reporting on future asset spend to give effect to the s166 purposes.
- 6.131 For the same reason, given its impact on asset expenditure decision making, we have retained the requirement to disclose asset condition assessments using the 1-5 scoring system. The robustness of this information should be reflected in the data accuracy scores assigned. Reporting of progress in developing mature asset condition assessment capability is required in the report on asset management capability.

*Submissions on capacity and utilisation and demand*

- 6.132 Enable/Tuatahi submitted that it is not possible to estimate forecast utilisation, capacity or fill in a meaningful or consistent way across the LFCs and Chorus. Capacity is acquired in blocks, which means the ratios present as step changes when a new block is added. Accordingly, the proposed information will not be useful and will be misleading to stakeholders. More specific points include:
- 6.132.1 premises passed is no longer a key indicator for the networks which have already been built;
- 6.132.2 forecast connection information is commercially sensitive and should not be publicly disclosed. Information on actual versus forecast demand should be deleted or disclosed on a Commission-only basis;
- 6.132.3 a five-year forecast period is too long;
- 6.132.4 as network performance information is provided in the quality disclosures in schedule 20, much of what is proposed in schedule 12 can be removed;
- 6.132.5 any disclosures by area should be consistent with the geographic reporting areas which are reported under the current disclosure requirements;

- 6.132.6 it is not sensible to forecast the information specified in schedule 12a(i) and (ii) and then derive an average demand in schedule 12a(iii) resulting in a peak to average ratio. While the aggregation of total demand divided by the number of active PON connections derive a static current position, the forecasting of future demand is complicated by technology trends, including transmission efficiencies, and end user demands and behaviours. A simple extrapolation can be calculated by the Commission with the use of historical data.<sup>291</sup>
- 6.133 Chorus agreed with Enable/Tuatahi that premises passed should be removed. It explains that this measure was useful during the UFB build, as it related to Chorus' contractual requirements with CIP, but is no longer useful under the new fibre regime that applies to a built network. Chorus also submitted that the requirements for forecast information in columns H, J, L, N, P and R of Schedule 12 should also be removed for the following reasons:
- 6.133.1 It does not currently forecast P2P or GPON connections at the POI level, as required in columns H and J and considers that forecasting at this level would be too granular to be accurate or meaningful at this time;
- 6.133.2 It does not currently forecast the number of FFPs with FFLAS fibre connections and the number of GPON end-users from FFPs, as required in columns L and N. Chorus asserts that this information would not be meaningful for decision-making;
- 6.133.3 It does not forecast the CO to FFP capacity (total fibres) or the % fill (lit fibres) at the level required in columns P and R. Instead, it uses a demand forecast combined with actual network capacity monitoring to form a view on expected network capacity and required investment.<sup>292</sup>
- 6.134 Chorus suggested replacing the requirements to report on peak demand and the peak to average ratio with requirements to report peak throughput and average throughput per user.<sup>293</sup>

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<sup>291</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 4.

<sup>292</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraphs 121 to 122.

<sup>293</sup> Ibid. paragraphs 125.1 to 125.2.

- 6.135 Chorus requested that the requirements clarify that GPON information is to be provided at the level of Chorus' core FFLAS products, which is shown in the list in Appendix D of its PQ submission.<sup>294</sup>
- 6.136 Chorus also asked whether the Commission intends Schedule 12a to include or exclude P2P information. FFLAS revenue comprises fibre GPON, fibre P2P as well as some other products and backhaul. Schedule 12a requests only GPON connections, a narrower segment of Chorus' FFLAS revenue. It would be more appropriate to provide both GPON and P2P information. Without P2P information the disclosures would be incomplete and will not easily reconcile to Chorus' current market disclosure updates it gives on fibre connection information.<sup>295</sup>

*Response*

- 6.137 We do not consider that step changes are likely to be large and the nature of change in capacity is likely to be well understood by interested parties.
- 6.138 We appreciate premises passed is a measure used for reporting to CIP and has been defined accordingly. We think this continues to provide a common denominator for comparing demand for connections and traffic growth by POI area at a high level.
- 6.139 We accept that, at a disaggregated level, connections and forecast demand information may be commercially sensitive. Therefore, we have provided for forecast PON connections by service level and forecast demand by POI area to be disclosed on a Commission-only basis.
- 6.140 Connection measures are fundamental to understanding revenues and forecasting network equipment and capacity at the POI level and will be useful to interested parties. Therefore, we have decided to retain this disclosure.
- 6.141 We consider the complicating technology factors described by Enable/Tuatahi should have been taken into account in arriving at the forecast demand numbers and accept that some degree of judgement will be necessary. The calculated forecast extrapolation will therefore reflect such judgements.

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<sup>294</sup> Ibid. paragraph 128.

<sup>295</sup> Ibid. paragraph 128.2.

- 6.142 We have aligned the forecast horizon to the initial three-year period required for opex and capex reporting. In the transition period we will require reporting on the development of capability for forecasting out to five years in schedule 14b Mandatory Disclosures on Forecast Information, along with a narrative commentary on the methodology used for the transition period.
- 6.143 The CO to FFP capacity (total fibres) and percentage fill (lit fibres) measure has been aligned to Chorus' suggested alternative. We consider that this will address the issue of Chorus being unable to forecast this information.
- 6.144 We have added P2P connections to Schedule 12a and changed the heading to "Active Forecast Connections". The amended schedule now requires PON connections information by standard PON service to be disclosed along with single aggregate connections numbers for non-standard PON services and P2P services. The move from using "GPON" terminology to using "PON" terminology is to encompass in the definition all of the PON technologies that might be employed in providing FFLAS.
- 6.145 We have not required connections to be reported at the level of Chorus' core FFLAS products but at service levels consistent with those required for pricing and contract disclosures discussed at paragraphs 5.8-5.11 above. This will enable the forecast connections and the link between forecast connections and asset expenditure to be seen in the context of the associated service and pricing levels.

### Timing of disclosures for asset management information

- 6.146 Asset management information is required to be disclosed along with the other ID disclosures at the end of each disclosure year. We consider that a consistent timing of disclosures reduces the cost of compliance for regulated providers.
- 6.147 Table 6.4 shows when suppliers must disclose the different types of information discussed in this chapter.

**Table 6.4 Timing of information disclosures: information on network management**

Disclosure requirement	Timing of disclosures	Reference to Schedules
<b>Report on asset management capability</b>	Annually, no later than 5 months after the end of a disclosure year	Schedule 13
<b>Forecast expenditure and information supporting asset management planning and forecasts</b>	Annually, no later than 5 months after the end of a disclosure year	Schedules 11, 11a, 12, 12a

<b>Historical expenditure by category and comparison to forecasts</b>	Annually, no later than 5 months after the end of a disclosure year	Schedules 5, 5a, 6, 7,9
<b>Information about the network</b>	Annually, no later than 5 months after the end of a disclosure year	Schedules 10, 10a, 10b (as applicable)

## Implementation issues specific to asset management and network characteristics

### Assurance and certification

- 6.148 Historical financial information for each disclosure year must be accompanied by an assurance report from an auditor.
- 6.149 The remaining information on network management must be certified, but does not require audit assurance, that is:<sup>296</sup>
- 6.149.1 forecast expenditure;
  - 6.149.2 information supporting expenditure forecasts;
  - 6.149.3 asset management capability report; and
  - 6.149.4 information about the network.

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<sup>296</sup> This is in line with the assurance and certification of the current ID requirements for LFCs under Part 4A and those for electricity distribution and gas pipeline businesses under Part 4 of the Commerce Act 1986 which both require audit assurance for historical financial information only. See: Commerce Commission "[LFC information disclosure reasons paper](#)" (28 June 2012), Chapter 18 and Commerce Commission "[Information disclosure for electricity distribution businesses and gas pipeline businesses: Final reasons paper](#)" (1 October 2012), Chapter 9 respectively.

## Chapter 7 Quality metrics and performance measures

### Purpose and structure of this chapter

- 7.1 This chapter sets out our decisions on quality metrics and performance measures, and the reasons for our decisions. The chapter is structured as follows:
- 7.1.1 Summary of decisions on quality metrics and performance measures;
  - 7.1.2 Application of our regulatory framework;
  - 7.1.3 Key interactions;;
  - 7.1.4 Decisions on quality metrics and performance measures; and.
  - 7.1.5 Decisions on transition period and reporting

### Summary of decisions on quality metrics and performance measures

**Table 7.1 Overview – Decisions on quality metrics and performance measures**

Decisions on quality	Quality performance measures	Reference to Schedules	Change from draft
Transition period provisioning: Time to provision	Percentage of connections that meet the service level of $\geq 75\%$ connections completed within agreed time, differentiated by Layer 1 services and Layer 2 services.	Chorus: Schedule 19A  ID-only regulated providers: Schedule 20A	New
Transition period provisioning: Time to provision	Median time to provision ID FFLAS, differentiated by: simple new connections, complex new connections and geography (POI Area)	Chorus: Schedule 19A  ID-only regulated providers: Schedule 20A	New
Transition period faults: Incidence of faults	Number of regulated provider faults per 100 connections.	Chorus: Schedule 19A  ID-only regulated providers: Schedule 20A	New

Decisions on quality	Quality performance measures	Reference to Schedules	Change from draft
Transition period availability: Average downtime	Average unplanned downtime. Rolling average since the last breach of the service level of average unplanned downtime, or for the last 12 calendar months, differentiated by architecture (layer 1 and Layer 2) and geography (POI Area)	Chorus: Schedule 19A  ID-only regulated providers: Schedule 20A	New
Transition period Performance: Port utilisation	Percentage of ports with port utilisation equal to or exceeding 95%.  Percentage of ports with port utilisation equal to or exceeding 90%.	Chorus: Schedule 19A  ID-only regulated providers: Schedule 20A	New
Transition period Performance: Traffic performance	Number of exceedances of high priority traffic frame delay equal to or above 5mS.  Number of exceedances of high priority traffic frame delay variation equal to or above 3 mS.  Number of exceedances of high priority traffic frame loss ratio equal to or above 0.1%.  Number of exceedances of low priority traffic frame loss ratio equal to or above 2%.  Number of active OLT reference probes .	Chorus: Schedule 19A  ID-only regulated providers: Schedule 20A	New
Transition period Customer Service: End-user connection satisfaction	End-user connection satisfaction survey question results	Chorus: Schedule 19A  ID-only regulated providers: Schedule 20A	New
Frequency of reporting: Information will be recorded monthly and disclosed annually	N/A	Chorus: Schedule 19  ID-only regulated providers: Schedule 20	Changed from quarterly to annual disclosure

Decisions on quality	Quality performance measures	Reference to Schedules	Change from draft
Ordering: No metrics	None	None	None
Provisioning: Time to provision ID FFLAS  Reporting differentiated by geography (POI area) and ID FFLAS type (layer 1 services, and layer 2 services).	Number of ID FFLAS orders completed, differentiated by: intact connections (remote activation or truck roll needed), simple new connections, complex new connections and transport services.  Percentage of ID FFLAS orders that met agreed provisioning dates, differentiated by: intact connections (remote activation or truck roll needed), simple new connections, complex new connections and transport services.  Median time to provision ID FFLAS, differentiated by: intact connections (remote activation or truck roll needed), simple new connections, complex new connections and transport services.  Percentage of simple new connection orders that took $\geq 50$ calendar days.  Percentage of complex new connection orders that took $\geq 120$ calendar days.	Chorus: Schedule 19  ID-only regulated providers: Schedule 20	Removed business services and residential services differentiation  Changed from average time to provision to median time to provision.  Intact reporting for Layer 1 services is not required
Switching: None	None	None	None
Faults: Incidence of faults  Reporting differentiated by geography (POI area)	Fault cause, differentiated by:  - regulated provider faults, including faults caused by layer 1, layer 2, and ONT;  - non-regulated provider faults reported (where no fault is found).  Number of regulated provider faults per 100 connections.	Chorus: Schedule 19  ID-only regulated providers: Schedule 20	Non-regulated provider faults have been reduced to no fault found

Decisions on quality	Quality performance measures	Reference to Schedules	Change from draft
<p>Faults: Time to restore ID FFLAS (regulated provider faults)</p>	<p>Percentage of regulated provider faults that met expected restoration time.</p> <p>Percentage of regulated provider faults not restored within 2 calendar days.</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>No change</p>
<p>Availability: Average downtime</p> <p>Reporting differentiated by geography (POI area) and network architecture (layer 1, and layer 2).</p>	<p>Number of connections.</p> <p>Minutes of planned downtime.</p> <p>Minutes of unplanned downtime.</p> <p>Average unplanned downtime.</p> <p>Minutes of Force Majeure events</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>Force majeure has been changed to a separate measure</p>
<p>Availability: Notification to access seekers of outages</p> <p>Reporting differentiated by geography (POI area), network architecture (layer 1, and layer 2)</p>	<p>Percentage of unplanned outages notified to access seekers within 2 hours.</p> <p>Percentage of planned outages notified to access seekers 6 or more days before the planned outage occurs.</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20)</p>	<p>No change</p>
<p>Performance: Port utilisation</p> <p>Reporting differentiated by geography (POI area).</p>	<p>Percentage of ports with port utilisation equal to or exceeding 95%.</p> <p>Percentage of ports with port utilisation equal to or exceeding 90%.</p> <p>Percentage of ports with port utilisation below or equal to 70%.</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>No change</p>

Decisions on quality	Quality performance measures	Reference to Schedules	Change from draft
Performance: Traffic performance	<p>Number of exceedances of high priority traffic frame delay equal to or above 5mS.</p> <p>Number of exceedances of high priority traffic frame delay variation equal to or above 3 mS.</p> <p>Number of exceedances of high priority traffic frame loss ratio equal to or above 0.1%.</p> <p>Number of exceedances of low priority traffic frame loss ratio equal to or above 2%.</p> <p>Number of active OLT reference probes</p> <p>Number of 5-minute samples</p> <p>Report on significant changes or network events</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>Changed names to high priority traffic and low priority traffic from CIR and EIR.</p> <p>Changed high priority traffic frame delay threshold to 5mS from 7mS.</p>
Customer Service: End-user connection satisfaction	End-user connection satisfaction survey.	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	Changed from specified questions to questions on three topics
Customer Service: Missed appointments	Number of missed provisioning appointments.	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	No change

*The relevant Schedules for quality disclosures are Schedules 19 and 20*

## Application of our Regulatory Framework

7.2 This section sets out the legal requirements and regulatory framework which underpin our decisions for quality metrics and performance measures in relation to ID regulation. It explains how our decisions give effect to the statutory purposes in Part 6.

### Requirements under the Act and the quality IM

#### *Requirements under the Act*

7.3 The regulatory framework chapter explains the purpose of ID regulation, and our obligations and the timeframes to make ID determinations.

- 7.4 We seek to meet the purpose of ID regulation under s 186 by setting appropriate quality metrics and performance measures, thereby providing the appropriate level of scrutiny across regulated providers' networks and respective service quality.
- 7.5 Section 188 specifies that an ID determination must specify the IMs that apply,<sup>297</sup> and that information required to be disclosed may include quality performance measures and statistics.<sup>298</sup> We discuss the requirements and application of the quality IM to our decisions in the following section.
- 7.6 Section 188(2)(g) also states that we may require disclosure of information such as plans and forecasts about quality and service levels. Our decisions have not required this information specifically. However, we requested plans and forecasts about quality and service levels from regulated providers under information requests, and that information has informed our decisions. This is discussed in more detail from paragraph 7.57 below.

*Requirements under the quality IM*

- 7.7 The quality IM specifies quality dimensions which underpin the quality ID requirements.<sup>299</sup> The quality IM sets out an exhaustive list of quality dimensions as well as a non-exhaustive list of example quality metrics.
- 7.8 The quality IM requires an ID determination to specify quality performance measures and statistics for availability, performance, faults, and customer service quality dimensions. Additional performance measures may also be specified for the optional quality dimensions of ordering, provisioning and switching.
- 7.9 The quality IM also provides for an ID determination to differentiate by regulated provider, geography, fibre network architecture, ID FFLAS, and classes of end-users.
- 7.10 In our IM Reasons Paper, we defined the following terms:<sup>300</sup>

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<sup>297</sup> Section 188(1)(f).

<sup>298</sup> Section 188(2)(i).

<sup>299</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 5.

<sup>300</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 5.6.

- 7.10.1 **Quality dimensions:** are defined in s 164 as measures of FFLAS quality. We see these as measures encompassing the broad aspects of service quality. The Act requires us to include quality dimensions in the IMs. The PQ and ID determinations have selected the quality dimensions against which providers will be assessed.
- 7.10.2 **Quality metrics:** apply to PQ and ID regulation and describe what is being measured and provide more granularity to quality dimensions. We have included example quality metrics in the quality IM to increase certainty for regulated providers, access seekers and end-users. The actual metrics have been selected as part of the PQ and ID processes.
- 7.10.3 **Performance measures:** are referred to in s 188 and will set out how quality metrics are measured and reported on by regulated providers under ID. Performance measures are specified in the ID determination.

### **Economic incentives**

- 7.11 The quality metrics and performance measures we set via ID regulation aim to incentivise regulated providers to supply FFLAS in a manner that is consistent with outcomes produced in workably competitive markets and provide a level of service quality demanded by end-users. This includes incentives to appropriately maintain and replace assets, support service levels, connect access seekers and end-users in a timely manner, and facilitate network competition.
- 7.12 Setting appropriate quality metrics and performance measures creates a level of public and regulatory scrutiny on the regulated provider's performance and should incentivise regulated providers to maintain quality at appropriate levels as required by the Act. This can allow interested parties to assess whether the Part 6 purpose is being met in providing service quality to end-users.

### **Legal framework**

- 7.13 Under s 166(2) of the Act, we must make determinations and decisions that we consider best give, or are likely to best give, effect:
- 7.13.1 to the purpose in s 162; and
- 7.13.2 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.
- 7.14 The decisions about quality of service are constrained by the Act and the IMs but will primarily require an exercise of judgement.

- 7.15 As our ID decisions require us to exercise judgement, we have explained why our decision to require (or not require) the disclosure of certain information in our ID determination would promote the purpose of ID in s 186 and (if relevant) workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services (promotion of workable competition).
- 7.16 We consider that promoting the purpose of ID in s 186 and (if relevant) workable competition will result in us making a draft ID determination that best gives, or is likely to best give, effect to the s 166(2) purposes. Our ID determination best gives (or is likely to best give) effect to the s 166(2) purposes as the disclosure of the requirement information will enable interested persons to assess whether a regulated provider's performance is consistent with:
- 7.16.1 the promotion of the outcomes in s 162, consistent with s 166(2)(a); and
- 7.16.2 (if relevant) the promotion of workable competition, consistent with s 166(2)(b).

#### **Relevance and application of s 166(2) to our decisions**

- 7.17 This section sets out how our decisions fit within the outcomes of s 162 and, where relevant, the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

#### *Relevance and application of s 162 to our decisions*

- 7.18 We consider that all our decisions together give effect to the purpose outlined in s 162 and, where relevant, the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services. In particular, our decisions ensure regulated providers:
- 7.18.1 have incentives to innovate and to invest in network and service quality (s 162(a));
- 7.18.2 have incentives to improve efficiency and supply FFLAS of a quality that reflects end-user demands (s 162(b)); and
- 7.18.3 are limited in their ability to extract excessive profits (s 162(d)).
- 7.19 We consider the principal way our decisions give effect to the s 162 purpose is by helping ensure that regulated providers "have incentives to...supply FFLAS of a quality that reflects end-user demands" as set out in s 162(b). We achieve this by allowing scrutiny of information about FFLAS quality, along with differentiated reporting requirements (eg, by geography).

- 7.20 Fibre end-users make PQ trade-offs when making decisions about which retail service is best for them, so we interpret “quality that reflects end-user demands” as “the quality that end-users are willing to pay for,” since demand is generally linked to price.
- 7.21 We expect end-user demand to change over time and, therefore, quality metrics and performance measures for a range of the quality dimensions with differentiated reporting requirements, should allow scrutiny across most aspects of the fibre service lifecycle for a range of services in telecommunications markets.
- 7.22 We also consider that our decisions will play a role in giving effect to the s 162(d) purpose by helping ensure regulated providers “are limited in their ability to extract excessive profits”. The quality metrics and performance measures we propose should limit incentives that may otherwise have existed to profit from underspending on network services and quality. Summary and analysis of quality performance measures and statistics will promote greater understanding of the performance of regulated providers, changes in their performance over time, and their ability to extract excessive profits.
- 7.23 Further, our quality ID regulation should incentivise investment and innovation in line with s 162(a) due to interested persons being able to see a range of regulated provider FFLAS quality information, with additional differentiated reporting requirements allowing a greater level of scrutiny. Clear and consistent reporting requirements to ensure interested persons can analyse and interpret quality information in a meaningful way.
- 7.24 Quality metrics and performance measures may also show whether the quality of a particular regulated provider’s FFLAS has been deteriorating over time. It may indicate a regulated provider has failed to invest in the quality of its network, whether to extract excess profits or otherwise.
- 7.25 We do not think our decisions have a direct role in promoting the outcomes described in s 162(c).

*Relevance and application of s 166(2)(b) to our decisions*

- 7.26 In our view, the disclosure of quality information in relation to FFLAS is relevant to the promotion of competition in telecommunications markets. Transparency of FFLAS quality information will inform interested persons about not only FFLAS markets but also other telecommunications markets.

- 7.27 FFLAS may be used as an input for competing services in downstream and other telecommunications markets. For example, access seekers use DFAS as an input to fixed wireless services which compete with fixed fibre broadband. This could lead to competition issues if the regulated provider offered a lower quality of service for FFLAS used as an input for competing services.
- 7.28 Our decisions specifying quality metrics and performance measures across a range of quality dimensions, including the optional dimension of provisioning, and with differentiated reporting requirements (e.g. by ID FFLAS type, layer 1 services and layer 2 services) will allow interested persons to scrutinise FFLAS quality information broadly across telecommunications markets, and at a more granular level than might otherwise be possible. In our view, the greater availability and transparency of this information will help promote competition in telecommunications markets more widely for the long-term benefit of end-users of telecommunications services.

*Best practice principles*

- 7.29 In the quality IM we committed to the following best practice principles when applying the quality IM to ID regulation.<sup>301</sup> We have considered and applied the following best practice principles in setting the quality metrics and performance measures:
- 7.29.1 **relevant:** to ensure ID FFLAS service quality reflects end-user demands;
  - 7.29.2 **measurable:** able to be measured by regulated providers;
  - 7.29.3 **verifiable:** able to be checked or demonstrated to be true or accurate;
  - 7.29.4 **controllable:** able to be controlled (at least to some extent) by regulated providers; and
  - 7.29.5 **proportionate:** the benefits to access seekers or end-users justify the costs to regulated providers.
- 7.30 We have also added timely to the best practice principles. If there are areas of concern about FFLAS quality, it is important that these can be identified in a timely way via ID regulation:

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<sup>301</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 5.77.

- 7.30.1 **timely:** information is quickly available to interested persons, including the Commission, to identify areas of concern and assess trends in information.

## Key interactions

### Declared Services

- 7.31 The regulation governing declared services is explained at paragraphs 2.78-2.82 of the Regulatory Framework chapter.
- 7.32 Clauses 14(3) and 15(3) of Schedule 1AA require that regulations prescribing a description of the declared services, or conditions of the declared services not be materially different from the terms set out in a UFB contract. Accordingly, the exposure draft for the declared services prescribed the current UFB service levels and default payments for failure to meet those service levels.
- 7.33 In our view, it is desirable that the quality metrics and performance measures we determine complement and, to the extent it is appropriate, be consistent with service levels prescribed by the regulated fibre services. In setting performance measures for quality ID regulation, we have considered the service levels in the regulated fibre services and we have also based our quality metrics and performance measures largely on the existing UFB contracts.<sup>302</sup>
- 7.34 We discuss how we have taken the regulated fibre services into account where we explain our decisions in the section below headed: Decisions on quality metrics and performance measures.

### Retail service quality (Part 7)

- 7.35 While Part 6 sets out the requirements for regulating FFLAS quality, we also have powers to regulate retail service quality, and telecommunications consumer matters more broadly, via Part 7.
- 7.36 We said at paragraph 5.39 of our IM Reasons Paper that we consider the main interaction between Parts 6 and 7 will be on the aspects of service quality that affect fibre end-users and can be controlled, to some extent, by the regulated provider. For example, the service quality that end-users perceive will be based on the end-to-end service experience. This may be made up of actions from the retailer as well as the regulated provider.

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<sup>302</sup> MBIE [Declaration of anchor and direct fibre access services under the Telecommunications Act 2001](#) (26 May 2021).

- 7.37 In setting our quality metrics and performance measures, we have considered what can be regulated by retail service quality under Part 7 to ensure our decisions are consistent and complementary and do not over-burden industry participants.

#### **Existing measures under UFB contracts**

- 7.38 In our IM Reasons Paper, we said, “we anticipate the quality service levels in the UFB contracts are likely to be a useful starting point for seeking stakeholder views in PQP1.”<sup>303</sup>
- 7.39 From the implementation date:
- 7.39.1 the regulated providers’ supply of services currently governed by the UFB contracts (including pricing of those services) will be subject to regulation under Part 6 and the supply obligations under the UFB contracts will, for the most part, cease; and
  - 7.39.2 we will regulate ID FFLAS quality in accordance with the provisions of Part 6. We do this by setting quality metrics and performance measures for ID FFLAS, underpinned by the quality dimensions in the quality IM.
- 7.40 The quality requirements in the UFB contracts assisted us in setting the quality IM and our proposed quality metrics and performance measures for ID regulation.

#### **Lessons from Part 4**

- 7.41 Part 4 of the Commerce Act provides for the regulation of the price and quality of goods or services in markets where there is little or no competition. Part 6 is the equivalent provision of the Telecommunications Act that relates to the regulation of fibre. Due to the similarities between the two regimes, there are lessons to be learnt from experiences in Part 4 that can be applied to the rollout of the Part 6 regulations in respect of quality ID regulation.
- 7.42 We received submissions on our draft IM Reasons Paper that we should consider lessons from Part 4. We said in our IM Reasons Paper that “these learnings from Part 4 are not directly relevant to the quality IM but will be useful when we develop PQ and ID regulation.”<sup>304</sup>

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<sup>303</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraph 5.155.

<sup>304</sup> Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraph 5.90.

- 7.43 Some of these lessons relate more to PQ, but some of the more relevant for ID are:
- 7.43.1 Service quality should distinguish between planned and unplanned outages.
  - 7.43.2 Our default assumption is that there should be no deterioration in service quality.
  - 7.43.3 Service quality that directly impacts end-users is important.
- 7.44 We have amended the quality IM to distinguish between planned and unplanned outages and to exclude planned outages from the calculation of average unplanned downtime. This will prevent perverse outcomes of delaying critical infrastructure work to meet quality service levels.<sup>305</sup>
- 7.45 Monitoring quality performance and our summary and analysis of ID will show if quality is changing over time.
- 7.46 Service quality that directly reflects end-user impacts is important. Many of the proposed quality metrics and performance measures relate to aspects that directly impact end-users (such as time to provision and restore FFLAS).

## Decisions on quality metrics and performance measures

### General approach

- 7.47 As set out from paragraph 2.3 of the regulatory framework chapter, the quality ID determination applies to all regulated providers and the ID FFLAS they provide.

### *UFB contracts*

- 7.48 In our IM Reasons Paper, we said "the quality requirements in the UFB contracts assisted us in setting the quality IM dimensions and ... they will provide a useful starting point for PQ and ID regulation."<sup>306</sup>
- 7.49 In making our decisions, we have based the quality metrics and performance measures largely on the UFB contracts.

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<sup>305</sup> [Fibre Input Methodologies Amendment Determination \(No 2\) 2021](#) [2021] NZ 25.

<sup>306</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 5.45.

*Part 4AA ID requirements*

- 7.50 Clause 10 of Schedule 1AA provides that regulated providers are not required to comply with ID requirements under subpart 3 of Part 4AA in respect of any period during which they are also subject to ID regulation under Part 6.
- 7.51 In making our decisions, we have considered and applied relevant quality ID regulation requirements from subpart 3 of Part 4AA to the quality metrics and performance measures in our ID determination. For example, we have specified performance measures of average unplanned downtime and traffic performance similar to those currently reported on under subpart 3 of Part 4AA.

*Existing reporting systems*

- 7.52 In our IM Reasons Paper, we said we would consider the costs and benefits of regulated providers upgrading or changing reporting systems and processes to generate accurate performance measures.<sup>307</sup>
- 7.53 In making our decisions, we have considered regulated provider reporting systems and processes and their existing ability to collect and disclose information, so as not to unnecessarily increase the compliance costs of implementing our ID requirements.
- 7.54 We have also considered the costs and benefits of our ID requirements that require regulated providers to upgrade or change their reporting systems and processes to improve or produce more accurate quality ID information.
- 7.55 In our view, our decisions to largely base quality metrics and performance measures on the UFB contracts and current ID requirements under Part 4AA helps to achieve this. Regulated providers can continue with many of the existing information reporting processes under the UFB contracts and existing ID regulation.
- 7.56 We consider clear and consistent reporting requirements are necessary to ensure interested parties are able to analyse and interpret quality information in a meaningful way. We consider that the benefits of consistent and meaningful quality ID information outweighs incremental costs (if any) for regulated providers to change their reporting processes to comply with our quality ID requirements.

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<sup>307</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 5.149.

*Available information*

- 7.57 In our IM Reasons Paper, we said we would consider available information on the quality of FFLAS currently or historically supplied by regulated providers.<sup>308</sup>
- 7.58 On 11 December 2020, we issued notices under s 221 to regulated providers for quality information in relation to the UFB contracts and reporting capability as well as plans and forecasts. We also made an informal request to Chorus for further and more recent historical data for its average downtime and port utilisation (together the **information requests**). Finally, we have also considered Chorus' PQ expenditure proposal including relevant published plans and forecasts in relation to quality, such as included in its paper titled "Our Fibre Plans 2020."<sup>309</sup>
- 7.59 Our general observations from the information we received is that in some cases:
- 7.59.1 different information is presented by each regulated provider;
  - 7.59.2 information is presented in different formats, including charts published as an image;
  - 7.59.3 information is presented in different ways, often without the source data, which makes aggregated comparisons and further analysis difficult;
  - 7.59.4 regulated providers may use different performance measures and statistics; and
  - 7.59.5 the same measure may be calculated in different ways.
- 7.60 Our review of data from the information requests has informed our decisions to specify detailed definitions and prescriptive quality metrics and performance measures. It has also informed our decisions to specify reporting requirements that will ensure quality information disclosed is consistent across regulated providers and presented using common formats. Requiring regulated providers to complete the ID templates prescribed in the ID determination will also help achieve this.

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<sup>308</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 5.151.

<sup>309</sup> Chorus [Chorus-Our-Fibre-Plans-12-February-2021.pdf](#), (12 February 2021).

- 7.61 In determining quality metrics and performance measures we also held a technical workshop on current fibre industry practices on 26 February 2021 (**February workshop**) where stakeholders were able to discuss and seek clarification on the requirements for quality ID regulation. Discussions at the February workshop have informed our decisions, as explained in our decisions below.<sup>310</sup>
- 7.62 We held a further technical working group on 9 September 2021 (**working group**) where regulated providers were able to discuss the practical implementation of our draft decisions. After consideration of this workshop and subsequent submissions we have made changes to our draft decisions, as explained in our decisions below.

#### *Approach paper and quality IM*

- 7.63 In making our decisions we have considered submissions made on our approach paper. We reference these, where relevant, when explaining the reasons for our draft decisions.
- 7.64 We have also had regard to relevant considerations from:
- 7.64.1 the quality IM, our IM Reasons Paper and stakeholder submissions on the same;
  - 7.64.2 submissions and cross-submissions on our Draft ID Reasons Paper;
  - 7.64.3 our quality workshop in February 2021; and
  - 7.64.4 our quality Working Group in September 2021 and submissions on the same.
- 7.65 We reference these, where relevant, when explaining the reasons for our decisions.

#### **Decision on optional quality dimensions**

- 7.66 We have specified quality metrics and performance measures for the optional quality dimension of provisioning, in addition to the mandatory quality dimensions for ID regulation as required by the quality IM.

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<sup>310</sup> Commerce Commission quality of service stakeholder workshop materials: Chorus "[Quality workshop proposal presentation](#)" (26 February 2021); Commerce Commission "[Fibre PQID – Quality workshop presentation](#)" (26 February 2021); and Commerce Commission "[Fibre PQID – Quality Workshop Questions and Answers](#)" (26 February 2021).

- 7.67 Our reasons for our decisions on provisioning are set out from paragraph 7.83 below.
- 7.68 We have not specified quality metrics and performance measures for the optional quality dimensions of ordering or switching at this stage.

#### *Reasons*

- 7.69 Provisioning performance has improved over time and incentives appear to be strong for regulated providers to continue to perform well. However, we consider provisioning is of high importance to access seekers and end-users, so we propose quality metrics and performance measures be specified for provisioning.
- 7.70 We have not seen sufficient evidence that ordering, and switching are important to the purpose of ID at this stage. Stakeholders at the workshop discussed that ordering is largely automated and instantaneous and switching is covered by the New Zealand Telecommunications Forum (**TCF**) Customer Transfer Code and it appears to be working well.
- 7.71 In its submission following the working group, Spark submitted that abandonments were a problem area.<sup>311</sup> We consider this more appropriately addressed by the proposed TCF Abandoned Intact Connection Process being extended to fibre. This code will put in place all of the processes required for parties to resolve abandoned fibre connections.
- 7.72 For the reasons set out above, we consider our draft decisions for the optional quality dimensions best give effect to the purposes of ss 186 and 166(2).

#### **Decision on reporting**

- 7.73 Regulated providers are to report on all quality metrics and performance measures by month.
- 7.74 Regulated providers are to publish reports on an annual basis.
- 7.75 Differentiated reporting requirements apply to the quality metrics and performance measures detailed in each respective decision below.<sup>312</sup>

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<sup>311</sup> Spark "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 3.

<sup>312</sup> [Fibre Input Methodologies Determination 2020](#) [2020] NZCC 21, clause 2.5.3(1).

*Reasons*

- 7.76 We have based our reporting decisions on what we believe to be good industry practice in the telecommunications industry where the reporting frequency is monthly. We consider that this level of detail will provide the appropriate level of granularity to analyse trends over the year.
- 7.77 We have also considered existing fibre ID requirements under Part 4AA. Under Part 4AA disclosure is made annually. However, we do not consider that annual reporting frequency is sufficient and have therefore proposed the more frequent monthly reporting for ID regulation under Part 6 while retaining annual disclosure.
- 7.78 Our decisions on reporting are consistent with reporting practices under the UFB contracts where reporting frequency is monthly.
- 7.79 A number of our decisions specify differentiated reporting requirements by geography, being POI areas. The ID determination adopts the POIs specified in the most recent notice of points of interconnection under s 231. We explain any reporting requirements by POI area in the relevant decisions below.
- 7.80 A number of our decisions also specify differentiated reporting by ID FFLAS type or network architecture. ID FFLAS type might include business services, residential services, layer 1 services and layer 2 services. Where we specify differentiated reporting requirements by network architecture, this is either layer 1 or layer 2. Where this applies, the requirements will be set out in the ID determination and explained in the relevant draft decisions below.
- 7.81 We consider the principal way our decisions on reporting give effect to the s 162 purpose is by helping ensure that regulated providers have incentives to supply ID FFLAS of a quality that reflects end-user demands (s 162(b)). If there are areas of concern about FFLAS quality, it is important that these can be identified in a timely way via ID regulation.
- 7.82 For the reasons set out above, we consider our decisions on reporting best give effect to the purposes of ss 186 and 166(2).

**Decisions on provisioning**

- 7.83 For the provisioning quality dimension, we have determined a “time to provision ID FFLAS” quality metric with the following performance measures:
- 7.83.1 number of ID FFLAS orders completed, differentiated by:

- 7.83.1.1 intact connections (for Layer 2 services only, and further differentiated in terms of whether by "remote activation" or "truck roll required");
  - 7.83.1.2 simple new connections;
  - 7.83.1.3 complex new connections; and
  - 7.83.1.4 transport services;
- 7.83.2 percentage of ID FFLAS orders that met agreed provisioning date, differentiated by:
- 7.83.2.1 intact connections (for Layer 2 services only, and further differentiated in terms of whether by "remote activation" or "truck roll required");
  - 7.83.2.2 simple new connections;
  - 7.83.2.3 complex new connections; and
  - 7.83.2.4 transport services;
- 7.83.3 median time to provision ID FFLAS, differentiated by:
- 7.83.3.1 intact connections (for Layer 2 services only, and further differentiated in terms of whether by "remote activation" or "truck roll required");
  - 7.83.3.2 simple new connections;
  - 7.83.3.3 complex new connections; and
  - 7.83.3.4 transport services.
- 7.83.4 percentage of simple new connection ID FFLAS orders that took equal to or over 50 calendar days to provision; and
- 7.83.5 percentage of complex new connection ID FFLAS orders that took equal to or over 120 calendar days to provision.
- 7.84 We have specified differentiated reporting requirements for provisioning based on:
- 7.84.1 geography (by POI area); and

7.84.2 ID FFLAS type: layer 1 services, layer 2 services. (Intact reporting for Layer 1 services is not required).

*Reasons*

- 7.85 Disclosure against the specified performance measures will show how long provisioning is taking, whether it is meeting end-users' expectations and how often regulated providers are failing to meet provisioning timeframes.
- 7.86 As we move into a more mature phase of the fibre roll out, we expect the greater percentage of provisioning requests to be at locations where there is already a fibre connection (intact). Therefore, we believe that, at least initially, it is important to monitor how provisioning is performing against both intact and new connections.
- 7.87 However, we have said that we anticipate the provisioning dimension may become less important over time as fibre uptake levels slow or flatten.<sup>313</sup> We will continue to monitor provisioning volumes and performance by category.
- 7.88 With the completion of the UFB1 rollout, the number of field provisioning contractors has diminished significantly, reflecting the change from build to operate. It is important to monitor that for new connections, provisioning quality does not deteriorate due to the capacity and capability of the remaining provisioning workforce. This is another reason why categories for new connections have been included in performance measures.
- 7.89 Differentiated reporting by geography is also important, as UFB2 goes to increasingly rural areas and interested persons need to understand any geographic differences in provisioning quality.
- 7.90 Differentiated reporting by types of FFLAS (such as layer 1 and layer 2 services) will show whether provisioning quality is consistent across FFLAS types and identify any provisioning variations for certain FFLAS.
- 7.91 We considered further differentiated categories such as single dwelling units, multi-dwelling units, right of ways, and non-building access points. At the February workshop, stakeholders did not express strong views or provide reasons for why we should specify additional differentiated reporting requirements.

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<sup>313</sup> Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), page 592.

- 7.92 In our view, the provisioning performance measures, differentiated by geography and ID FFLAS type, provide meaningful information to interested persons so they can assess whether FFLAS provisioning is of a quality that reflects end-user demands (s 162(b)).
- 7.93 Our decisions on provisioning are consistent with reporting practices under the UFB contracts. Under the UFB contracts, regulated providers report on simple and complex installations, the number of orders completed by POI area and the median installation time.
- 7.94 Stakeholders discussed the importance of monitoring provisioning at the February workshop. Stakeholders also discussed the importance of geographic differentiation for provisioning. Provisioning was discussed further at the September working group. We received submissions on our working group that Layer 1 services require a truck roll and physical intervention. We agree and accordingly in our final decision we have removed the requirement for Layer 1 intact connections to be reported.
- 7.95 We have also aligned our definitions for Simple and Complex to be largely consistent with the UFB contracts. These being the definitions for qualifying and complex in the Chorus service level terms<sup>314</sup> and the contractual definitions provided by Tuatahi in the chat at the working group. We have also specified that point to point services are complex installations. These definitions were discussed at the working group where regulated providers expressed that the draft definitions were unclear and strongly suggested that they be clarified and aligned with the UFB contracts.
- 7.96 Enable and Tuatahi submitted that "simple" and "complex" are only relevant to Layer 1 for new installations.<sup>315</sup> We are interested in reporting differentiated by the Layer 1 and Layer 2 services not architecture. For example PON Bitstream services (Layer 2) would fall into simple and complex

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<sup>314</sup> Chorus "[Bitstream service level terms](#)" (October 2020), clause 10.1 (b) and (c).

<sup>315</sup> Enable and Tuatahi "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), paragraph 2.1(a).

- 7.97 Enable and Tuatahi submitted that they had not received a response on why transport services are to be disclosed separately.<sup>316</sup> We consider that transport services are sufficiently different to the other FFLAS categories of Voice services, PON Bitstream services, Unbundled PON services and Point to Point services that are grouped into simple and complex to warrant separate reporting.
- 7.98 Providers discussed in the working group that they use median provisioning time in their reporting. We have changed from average to median as we agree an average can give a skewed result where a small number take a long time to provision. Spark submitted that while a median gives a better indication of what is likely to happen it obscures the impact of extremely long tails.<sup>317</sup> We consider that this impact is covered by the requirement to report connections that took over 50 days for simple and over 120 days for complex.
- 7.99 The agreed provisioning date is the last date agreed between the end-user and the regulated provider. This was discussed at the working group as the agreed date can change during the provisioning process for several reasons.
- 7.100 Our analysis of data from the information requests shows regulated providers have been performing well against their provisioning requirements under the UFB contracts. Targets have been missed on rare occasions and usually due to complex connections with extended cycle times.
- 7.101 For the reasons set out above, we consider our draft decisions on provisioning best give effect to the purposes of ss 186 and 166(2).

### **Decisions on faults**

- 7.102 For the faults quality dimension, we have determined “incidence of faults” and “time to restore ID FFLAS” quality metrics with the following performance measures (recording the number of ID FFLAS faults):
- 7.102.1 fault cause, differentiated by:
- 7.102.1.1 regulated provider faults, including faults caused by layer 1, layer 2, and the optical network terminal (ONT); and
  - 7.102.1.2 non-regulated provider faults reported where no fault is found.

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<sup>316</sup> Enable and Tuatahi "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), paragraph 2.1(b).

<sup>317</sup> Spark "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 4.

7.102.2 for regulated provider faults:

- 7.102.2.1 number of regulated provider faults;
- 7.102.2.2 number of regulated provider faults per 100 connections;
- 7.102.2.3 percentage of regulated provider faults that met expected restoration times; and
- 7.102.2.4 percentage of regulated provider faults not restored within two calendar days.

7.103 We have specified differentiated reporting requirements for faults based on geography (by POI area).

*Reasons*

- 7.104 'Faults' is a mandatory quality dimension for ID. The quality metrics and performance measures we have specified for faults will disclose the types and causes of faults and time taken to restore service. This information will allow interested persons to assess regulated providers' fault management performance.
- 7.105 The definition of a fault for the fault dimension is from clause (a)(i) of the definition of fault in clause 1.1.4(2) of the quality IM: "an unplanned outage in ID FFLAS".
- 7.106 Scrutiny of fault information gives an indication of the health of a regulated provider's network and its responsiveness when there are problems. This allows interested persons to assess whether fault management is of a quality that reflects end-user demands (s 162(b)).
- 7.107 Where the regulated provider is responsible for a fault, we propose performance measures for the number of faults and time to restore. Where the regulated provider is not responsible, we propose performance measures on the incidence of faults reported. We have removed additional non-regulated provider fault categories of end-user and access seeker. We agree with submissions from Enable, Tuatahi and Chorus that these categories are not practical as the cause of faults are not reported by access seekers and the information does not serve the purpose of ID.<sup>318</sup>

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<sup>318</sup> Enable and Tuatahi "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 4, and Chorus "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 7.

- 7.108 We have not included quality performance measures for maximum downtime but have included a measure for the number of faults not resolved within 2 calendar days for all ID FFLAS. This will show how many faults are not resolved in a time that end-users could expect to be reasonable.
- 7.109 Our decisions on faults are consistent with reporting practices under the UFB contracts. Regulated providers report on the number of faults per active connection under the UFB contracts.
- 7.110 Our analysis of data from the information requests shows that overall fault rates have been reducing. However, we consider that the level of faults will always be an important focus area. Data from the information requests also highlighted the importance of clear and precise quality metrics, performance measures and reporting requirements, to allow for meaningful and accurate analysis. The importance of clear and precise definitions for fault management was also discussed at the February workshop.
- 7.111 In making our decisions we have considered 2degrees' cross-submission on the quality IM where it said:
- 7.111.1 "It is important to allow for reporting on the incidence of faults to accurately track network degradation and responsiveness to access seekers over time."<sup>319</sup>
- 7.111.2 "Targeted reporting on the incidence of network faults will allow the Commission to more accurately track network degradation and responsiveness to access seekers over time, as well as provide transparency of this fault information to relevant stakeholders."<sup>320</sup>
- 7.112 In making our decisions, we considered the granularity of categories for differentiation. determined reporting is required on layer 1 and layer 2 service faults; where the cause was an ONT; and where a reported fault there was no fault found. We consider that this is sufficient to provide interested persons with meaningful information to assess FFLAS quality and whether the demands of end-users are being met. We have determined differentiated reporting by geography to highlight any regional differences in fault performance.

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<sup>319</sup> 2degrees "[Cross-submission on fibre input methodologies draft decision](#)" (17 February 2020), page 11.

<sup>320</sup> Ibid, page 14.

- 7.113 The expected restore time can be delayed at the request of the end-user or access seeker. This was discussed at the working group and we clarified that this would be the case.
- 7.114 For the reasons set out above, we consider our draft decisions on faults best give effect to the purposes of ss 186 and 166(2).

### **Decisions on availability**

- 7.115 For the availability quality dimension, we have determined an “average downtime” and “notification to access seekers of outages” quality metric with the following performance measures:
- 7.115.1 number of connections;
  - 7.115.2 minutes of unplanned downtime;
  - 7.115.3 minutes of unplanned downtime due to force majeure events;
  - 7.115.4 minutes of planned downtime;
  - 7.115.5 average unplanned downtime;
  - 7.115.6 average unplanned downtime excluding force majeure events; and
  - 7.115.7 percentage of unplanned outages notified to access seekers within two hours; and
  - 7.115.8 percentage of planned outages notified to access seekers six or more days before the planned outage occurs.
- 7.116 Average unplanned downtime means total unplanned downtime divided by the average number of connections over the month.
- 7.117 For unplanned downtime, fault, as defined in the IM means:
- 7.117.1 (i) an unplanned outage in ID FFLAS; or
  - 7.117.2 (ii) a reduction in the performance of ID FFLAS below any levels specified in an ID determination.
- 7.118 For the purposes of (ii) we are specifying the level as a port utilisation of equal to or greater than 95%.
- 7.119 We have specified differentiated reporting requirements for availability based on:

- 7.119.1 geography.(by POI area); and
  - 7.119.2 network architecture (layer 1 and layer 2).
- 7.120 Force majeure events for the calculation of average unplanned downtime include:
- 7.120.1 fire, floods, storms, earthquake, or other act of God;
  - 7.120.2 any act of a public enemy, war, riot, act of civil or military authority;
  - 7.120.3 nuclear, chemical or biological contamination; and
  - 7.120.4 any act of a third party (not being an employee, agent or subcontractor of that party) engaged in subversive or terrorist activity or sabotage.

#### *Reasons*

- 7.121 Availability is a mandatory quality dimension for ID. In our view, the availability of FFLAS (such as broadband services) is of high importance to end-users and it will continue to be. People are increasingly reliant on FFLAS for a variety of activities, including home working, on-line shopping and banking, staying connected to friends and family, and for entertainment. FFLAS is also an important input to other telecommunications services, such as mobile and fixed wireless services. Most businesses also rely on FFLAS for their business operations.
- 7.122 Availability is an indicator of the state of health of network infrastructure. The regulated providers' UFB networks are relatively new and degradation will likely take a number of years to show. However, as the fibre networks age, they may begin to perform below specification. It is therefore important that we continue to monitor network availability.
- 7.123 Loss of FFLAS availability has an immediate effect on an end-user's ability to enjoy the activities for which they rely on FFLAS. Early notification of outages is also important to end users.
- 7.124 We understand that some aspects of availability may be out of a regulated provider's control. Therefore, interested persons may want to consider information on availability alongside information on faults, where we have proposed differentiated reporting based on faults reported to or identified by the regulated provider that are, and are not, caused by the regulated provider.

- 7.125 Our decisions on availability are consistent with reporting practices under the UFB contracts. Differentiation by layer 1 and layer 2 means that downtime for all affected ID FFLAS is attributed to the layer that caused by downtime. For example, where an outage occurs in layer 1, which affects a layer 2 service such as Bitstream, this is recorded as layer 1 downtime.
- 7.126 We have adopted the level for reduction in performance based on standards specified in the UFB contracts for PON layer 2 which is where a port has a port utilisation at or above 95% (maximum port utilisation threshold).<sup>321</sup>
- 7.127 Our analysis of data from the information requests showed a variance in availability reporting across regulated providers. For these reasons, we have determined clear and consistent quality metrics and performance measures for the availability dimension.
- 7.128 It was discussed at the February workshop that availability performance measures can lead to perverse incentives. For example, where a regulated provider upgrading its network requires planned outages this can affect its availability performance measure. We therefore have excluded planned downtime in the calculation of average unplanned downtime. This means we have determined a measure for average unplanned downtime and have downtime due to planned outages reported separately.
- 7.129 We have determined separate reporting of unplanned downtime attributable to force majeure events. Force majeure events can have a significant influence on reported unplanned downtime, distinguishing them from events that regulated providers share control over will allow interested parties greater visibility of underlying performance.
- 7.130 We have determined average unplanned downtime to be the average unplanned downtime each month.

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<sup>321</sup> Chorus "[Bitstream service level terms](#)" (October 2020), clause 5.6(a)(ii).

- 7.131 Enable/Tuatahi submitted we should retain the current reporting method which is a 12-month rolling average since a service level was breached in the UFB contracts or for the last 12 calendar months.<sup>322</sup> Chorus submitted following the working group that "while we think a rolling average downtime measure is a good way of smoothing spikes from high impact events, it is important that ID reporting align with what is required under any price-quality availability standard".<sup>323</sup>
- 7.132 Spark submitted that a rolling average may obscure the impact of events and minimise the reported impact.<sup>324</sup> We agree with Spark and consider that smoothing events by averaging them over past months obscures the impact of such events to interested parties. This is also consistent with our decision in PQ.
- 7.133 Chorus submitted that the reporting of average unplanned downtime by splitting planned and unplanned downtime, and separating downtime as a result of force majeure events, will require them to build new reporting to accommodate this, but understood and accepted the need to do that work<sup>325</sup>. We have addressed this in our decisions introducing a transition period. We have based our definition of force majeure event largely on the definition from the UFB contracts.
- 7.134 For the reasons set out above, we consider our draft decisions on availability best give effect to the purposes of ss 186 and 166(2).

### **Decisions on performance**

- 7.135 For the performance quality dimension, we have determined a "port utilisation" and "traffic performance" quality metric with the following performance measures:

#### *Port utilisation*

- 7.136 Port utilisation, specified as:
- 7.136.1 percentage of ports with port utilisation equal to or exceeding 95%;
  - 7.136.2 percentage of ports with port utilisation equal to or exceeding 90%; and
  - 7.136.3 percentage of ports with port utilisation below or equal to 70%.

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<sup>322</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), Table 7.

<sup>323</sup> Chorus "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 7.

<sup>324</sup> Enable and Tuatahi "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 4.

<sup>325</sup> Chorus "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 7.

- 7.137 Port utilisation is calculated as a percentage figure in accordance with the following formula:

$$\frac{octets \times 8}{5 \text{ minutes} \times 60 \text{ seconds} \times PS} \times 100$$

- 7.138 Port utilisation measurement includes all physical, virtual and sub-interfaces within the physical ports that are within the regulated provider's network (these exclude UNI, ENNI and PON ports).
- 7.139 The number of octets used in the calculation is the greater of the inOctets or the outOctets, measured over a 5-minute interval in accordance with RFC 2863, and includes framing characters, but excludes Ethernet preamble, start frame delimiter, and interpacket gaps.
- 7.140 PS used in the calculation is the port speed measured in bits per second.
- 7.141 We have specified differentiated reporting requirements for the port utilisation performance measure based on geography (by POI area).

#### *Traffic performance*

- 7.142 Traffic performance, specified as:
- 7.142.1 number of exceedances of high priority traffic frame delay equal to or above 5mS; and
  - 7.142.2 number of exceedances of high priority traffic frame delay variation equal to or above 3mS;
  - 7.142.3 number of exceedances of frame loss ratio, specified as:
    - 7.142.3.1 high priority traffic equal to or above 0.1%; and
    - 7.142.3.2 low priority traffic equal to or above 2%;
  - 7.142.4 number of active OLT reference probes;
  - 7.142.5 number of 5-minute samples; and
  - 7.142.6 textual report on significant changes or network events.
- 7.143 Traffic performance exceedance is calculated by reference to bitstream PON service FFLAS types only. The method and calculation are set out in Schedule 22 of the Determination.

### *Reasons*

- 7.144 Performance is a mandatory quality dimension for ID. Disclosure against performance measures for port utilisation and traffic performance allows interested persons to determine how regulated providers are managing network capacity and whether regulated providers are making sufficient investments in their networks.
- 7.145 Our decisions are consistent with, but more detailed than, existing quality ID reporting requirements under Part 4AA.<sup>326</sup> Currently, regulated providers report on average downtime, maximum downtime and the number of layer 2 traffic performance exceedances.
- 7.146 Data from the information requests showed that some regulated providers, but not all, report on port utilisation and traffic performance measures.
- 7.147 For the reasons set out above, we consider our draft decisions on performance best give effect to the purposes of ss 186 and 166(2).

### Port utilisation

- 7.148 We have determined port utilisation performance measures based on Chorus' existing measures for port utilisation.<sup>327</sup> We have defined what ports are to be measured and meaningful thresholds for measurement. We have also had regard to Chorus' traffic light system that it uses to highlight network planning for port utilisation.<sup>328</sup>
- 7.149 In our view, the best way to measure performance is to measure how fully utilised the network ports are across the fibre network. Therefore, we have proposed performance measures with three percentile thresholds to allow interested persons to assess network performance and whether it is of a quality that reflects end-user demands (s 162(b)).
- 7.150 The thresholds we have defined to be measured are meaningful as they indicate the degree of congestion in the fibre network which is linked to end-user experience.

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<sup>326</sup> Section 156AU.

<sup>327</sup> Chorus "[Congestion free networks white paper](#)" (September 2016), page 5.

<sup>328</sup> *Ibid*, page 7.

- 7.151 The threshold for the percentage of ports with port utilisation at  $\leq 70\%$  shows the extent that the fibre network is operating in a normal network condition.
- 7.152 The threshold for the percentage of ports with port utilisation at  $\geq 90\%$  is important as it shows the extent that end-users are starting to experience performance degradation. In our view if a port reaches 90% utilisation, then imminent investment is needed to upgrade infrastructure. It therefore follows that a very low percentage of ports should ever reach or exceed this level.
- 7.153 Finally, the third threshold for the percentage of ports with port utilisation at  $\geq 95\%$  shows the proportion of end-users who have a poor experience. In our view port utilisation should never reach this level.
- 7.154 The working group asked how to count the exceedances of port utilisation for reporting. If a port exceeds a utilisation threshold (e.g. 90%) over a five-minute measurement period that port is counted as exceeding for that month (i.e. 1 port). If that same port exceeds the threshold again during the month in any number of five-minute intervals it still only counts once. So, whether that port only exceeds the threshold in one five minute interval or in every five minute interval in the month, it counts as one port. The percentage of ports exceeding the threshold for the month is calculated by dividing the number of ports exceeding the threshold by the total number of ports.<sup>329</sup>
- 7.155 For Chorus the only ports on Fibre Access Network (FAN) will be measured, rather than also including the Regional Ethernet Network (REN) in the measurement.<sup>330</sup> This is consistent with the UFB contracts and captures almost all of the FFLAS services over Chorus' network.
- 7.155.1 Chorus estimates that only approximately 2.3% of the traffic on the REN at peak time is FFLAS, and that this is expected to reduce over time.
- 7.155.2 It would be difficult to try and measure the FFLAS component of the REN consistently and accurately, and we consider it not to be proportional when it only applies to a very small proportion of the overall FFLAS network.

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<sup>329</sup> Chorus "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 8.

<sup>330</sup> Chorus essentially operates two aggregation networks: The Regional Ethernet Network (REN) and the Fibre Aggregation Network (FAN). The REN principally supports copper services, and the FAN supports fibre services. Historically, Chorus only reported port utilisation on the FAN to CIP because all UFB traffic was supported by the FAN.

### Traffic performance

- 7.156 The purpose of traffic performance information disclosure is to make available sufficient information to interested persons to assess whether the traffic performance delivered by regulated fibre network operators is consistent with a workably competitive market. We have determined a probe-based measurement regime based loosely on the Layer 2 performance and reporting regime<sup>331</sup> and subsequently updated in the Bitstream Operations Manual.<sup>332</sup> The CIP measurement regime was developed after consultation with the industry via the TCF.
- 7.157 We consider the method we have determined is largely consistent with reporting provided by regulated providers to CIP which has separate targets for UFB1 and UFB2 traffic.
- 7.158 We presented an alternative method in the working group to measure low priority traffic which we have decided not to proceed with at this time. It was submitted that the existing layer 2 performance measurement and reporting framework was established after significant industry work.<sup>333</sup> We agree that any changes we propose in the future would be after industry consultation.
- 7.159 Our method is probe-based traffic reporting which is based on measuring traffic performance across a sample of traffic paths in the network using a set of reference probes. The purpose of this sampling is to ensure that regulated providers are investing appropriately in the network capacity to deliver the target quality of service.
- 7.160 Measurements will include Frame Delay (FD), Frame Delay Variation (FDV) and Frame Loss Ratio (FLR) for best effort traffic. This will provide a good indication of the adequacy of network dimensioning to deliver traffic performance from end-user demarcation to the POI.

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<sup>331</sup> Crown Infrastructure Partners, Layer 2 Performance Measurement and Reporting Regime, 17 November 2016.

<sup>332</sup> Chorus Bitstream Services: Operations Manual for Bitstream Services, October 2020, pages 92-97.

<sup>333</sup> Chorus "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), paragraph 16.4.

- 7.161 Chorus submitted: "The purpose of these disclosures is, and should be, limited to monitoring by the Commission and interested parties to ensure we have incentives to provide quality of service demanded by end-users by monitoring our operation of the network and services."<sup>334</sup>
- 7.162 The reference network and sampling method set out in Schedule 22 of the ID determination is based on a priori knowledge that the regulated providers have appropriate network monitoring and dimensioning processes in place to ensure the target QoS is met. A sampling regime is required only to ensure that the LFCs' and Chorus' processes are appropriate and are working consistently. It does not need to be an exhaustive observer of the network. If the processes are working consistently, they will ensure correct network behaviour across the whole network.
- 7.163 We have changed the Frame Delay threshold to 5mS from 7mS from our draft decision. This change will make the measurement the same as in the Bitstream Service Level Terms for GPON UFB1 Bitstream Services. The SLA has different Frame Delay targets for GPON UFB2 Bitstream Services for Primary (7mS) and Secondary (12mS) routes as they may be longer.<sup>335</sup>
- 7.164 We consider that one measurement at 5mS is sufficient and that regulated providers also can report on events 'the cause exceedances' in a text field we have included. We have included a text field where regulated providers can report on any significant changes or network events that may have given rise to exceedances. This could, for example be where a secondary route had to be used that resulted in increased frame delay.
- 7.165 We have also determined measures for the number of active OLT reference probes and the number of 5-minute samples to give statistical meaning to the number of exceedances.

### **Decisions on customer service**

- 7.166 For the customer service quality dimension, we have determined an "end-user connection satisfaction" and "missed appointments" quality metric with the following performance measures:

7.166.1 survey of end-user connection satisfaction; and

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<sup>334</sup> Chorus, Submission on Draft Information Disclosure Determination, 8 July 2021, paragraph 140, page 36.

<sup>335</sup> Chorus, Bitstream Services: Service Level Terms for Bitstream Services, October 2020, pages 16-17.

7.166.2 missed appointments for provisioning, excluding where the missed appointment was not caused by the regulated provider.

7.167 We have not specified differentiated reporting requirements for customer service.

*End-user satisfaction survey questions*

7.168 We have determined three topics of end user satisfaction to be measured.

7.169 Regulated providers must provide the number end-users who answered each topic question and an average rating from end-users for each of the questions, which address: installation quality satisfaction; installation process satisfaction; and fibre broadband performance satisfaction. Regulated providers have the freedom to phrase the questions in their surveys (in accordance with the topics as set out in Schedule 21 of the Determination) to accommodate their own style. Each response to a question has a range from 1 to 10.

*Reasons*

7.170 Customer service is a mandatory quality dimension for ID. Installation of FFLAS will continue to be an important part of the end-user experience both for new installations and activations where a FFLAS has previously been supplied.

7.171 Regulated providers have a high degree of control over end-user installation experience

7.172 Therefore, we have proposed that regulated providers report on an installation end-user survey containing mandatory topics. This will also allow regulated providers and access seekers to add their own questions for focus areas to improve customer experience.

7.173 The three areas of end-user satisfaction being measured are drawn from the end-user connection satisfaction survey questions from Chorus' submission on the approach paper<sup>336</sup> and included in the NIPA. They reflect the critical categories of the end-user experience.

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<sup>336</sup> Chorus "[Submissions on PQID process and approach paper](#)" (14 October 2020), pages 16-22.

- 7.174 Chorus submitted following the working group that the survey should cover general topics which end-user satisfaction surveys must cover but there should be flexibility for regulated providers to adapt the questions under those topics.<sup>337</sup> We agree and the regulated providers have the freedom to phrase the questions under the three topics in Schedule 21.
- 7.175 Missed appointments are frustrating and can be confusing for end-users. Missed appointments can be attributed to end-users, the access seeker or the regulated provider (or its representative). It is therefore suitable to require clear and consistent information on missed appointments, and where the cause is attributed to the regulated provider.
- 7.176 At the working group and in Chorus' submission<sup>338</sup> further clarification was sought and offered on the definition of missed appointments.
- 7.177 Missed appointments include appointments for a technician to attend an end-user's premises where either the technician does not attend, or the appointment is rescheduled by the regulated provider or the technician. It does not include appointments which are rescheduled by the end-user, or where the technician attends but the end-user is not present.
- 7.178 We have not proposed performance measures for time to establish an access seeker because we see it as of decreasing relevance. Now that the fibre networks are well-established, there are only limited numbers of new access seekers. Participants in the February workshop agreed that this metric is less relevant now.
- 7.179 Our decisions are consistent with, but not the same as, the customer service reporting under the UFB contracts. Reported results from the UFB contracts show customer satisfaction results by category such as installer performance, installation experience, communication by regulated provider, and communication by access seeker.<sup>339</sup>
- 7.180 Our review of data from the information requests, and reports from the UFB contracts generally show installation satisfaction seems to be trending upwards while residential appointments met remains stable.

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<sup>337</sup> Chorus "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), pages 8-9.

<sup>338</sup> Chorus "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), pages 9.

<sup>339</sup> Crown Infrastructure Partners "[Quarterly connectivity update](#)" (Q4: to Dec 2020), page 6.

- 7.181 Customer satisfaction surveys and end-user satisfaction in the product lifecycle was also discussed at the February workshop and working group where it was noted that surveys are an important tool to monitor and improve customer experience.
- 7.182 In making our decisions we have considered 2degrees' submission on the quality IM where it stated that customer service "tracks across the lifecycle of fibre products meaning that as the fibre network matures, it will remain crucial to the end-user experience."<sup>340</sup>
- 7.183 We have also considered the joint access seeker submission on the quality IM indicating that a broad customer survey is important, especially in relation to RSPs as well as end-users.<sup>341</sup> The challenge with broad customer surveys is that they cover aspects of service that are outside the control of regulated providers.
- 7.184 We considered a broader customer survey and/or a measure of complaints and/or responsiveness to access seekers and end users. We consider that many of the metrics and performance measures across all quality dimensions are indicators of responsiveness to access seekers and end users. The current measures of customer service, with the exception of time to establish an access seeker, form a useful starting point for measuring quality performance for the customer service dimension.
- 7.185 Our decisions to measure end-user connection satisfaction and missed appointments allow interested persons to assess what regulated providers have direct control over and whether this is of a quality that reflects end-user demands (s 162(b)).
- 7.186 For the reasons set out above, we consider our draft decisions on customer service best give effect to the purposes of ss 186 and 166(2).

## **Decisions on the transition period and reporting**

### **Decision on a transition period**

- 7.187 We have introduced a transition period of nine months from 1 January 2022 provided for regulated providers to build capability and start recording information for disclosure in the format we require in our final decisions.

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<sup>340</sup> 2degrees "[Submission on Fibre input methodologies draft decision](#)" (28 January 2020), page 28.

<sup>341</sup> 2degrees, Spark, Vocus and Vodafone "[Submission on Fibre input methodologies – Draft decision](#)" (30 January 2020), page 13.

- 7.188 During the transition period regulated providers will be required to report every quarter selected reporting measures that are provided to CIP as defined below. These measures are not intended to be any different to those currently reported to CIP.
- 7.189 During the transition period we encourage regulated providers to report these measures in a standard template in Schedule 19A and 20A. If this is not possible, we may accept reporting in the format used to present this information to CIP.

#### *Reasons*

- 7.190 We have introduced this transition period as we do not think it is appropriate to set ID requirements that suppliers will be unable to meet by the date required. As explained further below submitters told us they would not be able to meet the 1 January 2022 date and would prefer to continue with the existing CIP reporting.
- 7.191 We have considered submissions that reporting will take time to develop, Chorus submitted that they would need a transition to the new scope of required quality reporting.<sup>342</sup> We believe that a nine-month period is sufficient for regulated providers to develop the necessary capability.
- 7.192 Reporting on a subset of the CIP measures during the transition period will provide a smooth move to the new regulatory performance measures. We have chosen these transitional measures as they best represent the ongoing performance measures we have determined.

#### **Decisions on provisioning during the transition period**

- 7.193 For provisioning during the transition period, we have determined the following performance measures:
- 7.193.1 Percentage of connections that meet the service level of  $\geq 75\%$  connections completed within agreed time as defined in Schedule 5 of the NIPA,<sup>343</sup> differentiated by type of FFLAS (Layer 1 service and Layer 2 service); and
- 7.193.2 Median time in hours to provision for simple and complex new connections and differentiated by geography (POI area).

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<sup>342</sup> Chorus "[Submission on Fibre Quality ID – 23 September 2021](#)" (24 September 2021), page 7.

<sup>343</sup> Chorus, Network Infrastructure Project Agreement (NIPA), 26-January-2017, Schedule 5, pages 3-4.

*Explanation*

- 7.194 The percentage of ID FFLAS orders that met agreed provisioning date is a performance measure we have determined for ID FFLAS. The transitional performance measure is consistent with the NIPA Schedule 5 which has a service level of  $\geq 75\%$  and is currently reported to CIP.<sup>344</sup>
- 7.195 The median time to provision ID FFLAS is a performance measure we have determined for ID FFLAS.

**Decisions on availability during the transition period**

- 7.196 For availability during the transition period, we have determined the following performance measures:
- 7.196.1 Rolling average since the last breach of the service level of average unplanned downtime, or for the last 12 calendar months, differentiated by architecture (layer 1 and layer 2 geography (POI area)).
- 7.196.2 Service levels are defined in Schedule 5 of the NIPA as follows:<sup>345</sup>
- 7.196.2.1 Layer 1 average unplanned downtime  $\leq 2$  hours (excluding force majeure events); and
- 7.196.2.2 Layer 2 average unplanned downtime  $\leq 30$  minutes (excluding force majeure events).

*Explanation*

- 7.197 Average unplanned downtime is a performance measure we have determined for ID FFLAS. The transition performance measure is calculated consistently with the current reporting to CIP using a rolling average since the last breach.

**Decisions on faults during the transition period**

- 7.198 For faults during the transition period, we have determined the following performance measure:
- 7.198.1 The number of regulated provider faults per 100 connections.

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<sup>344</sup> Chorus, Network Infrastructure Project Agreement (NIPA), 26-January-2017, Schedule 5, clause 1.2(ii) and 2.1 (ii).

<sup>345</sup> Chorus, Network Infrastructure Project Agreement (NIPA), 26-January-2017, Schedule 5, clause 3.1 and 4.1.

*Explanation*

7.199 This is a performance measure we have determined for ID FFLAS and it is also reported currently on a voluntary basis to CIP.

**Decisions on performance during the transition period**

7.200 For performance during the transition period, we have determined the following performance measures (for the port utilisation and traffic performance metrics):

*Port utilisation*

7.200.1 Port utilisation is specified as:

- 7.200.1.1 percentage of ports with port utilisation equal to or exceeding 95%; and
- 7.200.1.2 percentage of ports with port utilisation equal to or exceeding 90%.

*Traffic performance*

7.200.2 Traffic performance is specified as:

- 7.200.2.1 number of exceedances of high priority traffic frame delay equal to or above 5mS (UFB1);
- 7.200.2.2 number of exceedances of high priority traffic frame delay equal to or above 7mS (UFB2);
- 7.200.2.3 number of exceedances of high priority traffic frame delay variation equal to or above 3mS;
- 7.200.2.4 number of exceedances of frame loss ratio, specified as:
- 7.200.2.5 high priority traffic equal to or above 0.1%; and
- 7.200.2.6 low priority traffic equal to or above 2%; and
- 7.200.2.7 the number of active OLT probes.

7.200.3 Traffic performance exceedance is calculated by reference to bitstream PON service FFLAS types only.

*Explanation*

- 7.201 Traffic performances is a performance measure we have determined for ID FFLAS. The transition performance measure is consistent with current reporting to CIP.<sup>346</sup>

**Decisions on customer service during the transition period**

- 7.202 For the customer service we have determined the following performance measure:
- 7.202.1 survey of end-user connection satisfaction results.

*Explanation*

- 7.203 Results of End-User Connection Satisfaction Surveys is a performance measure we have determined for ID FFLAS. The transition performance measure is consistent with current reporting to CIP.<sup>347</sup>

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<sup>346</sup> Chorus "[Bitstream service level terms](#)" (October 2020), clause 5.3 and 5.4 for CIR Primary, EIR.

<sup>347</sup> Chorus, Network Infrastructure Project Agreement (NIPA), 26-January-2017, Annexure 3: Connection Satisfaction Survey.

## **Chapter 8 Implementation of the ID Requirements**

### **Purpose and structure of this chapter**

- 8.1 This chapter provides the background to, and our reasoning for, matters relating to the implementation of the ID requirements.
- 8.2 In this chapter we discuss the following:
  - 8.2.1 a summary of commencement, transition provisions, timing and audit and certification requirements;
  - 8.2.2 transitional timing of disclosures;
  - 8.2.3 staged implementation; and
  - 8.2.4 assurance and certification.

### **Commencement, timing and audit and certification requirements**

- 8.3 Attachment B contains a summary of commencement, transition provisions, timing, and audit and certification requirements for each disclosure type, specifically:
  - 8.3.1 the timing of initial disclosures;
  - 8.3.2 any transitional provisions;
  - 8.3.3 the timing of ongoing disclosures;
  - 8.3.4 whether information must be publicly disclosed and in what form; and
  - 8.3.5 requirements for audit assurance and director certification.

### **Transitional timing of disclosures**

- 8.4 The disclosure year generally covers a period of 12 months. Depending on the disclosure year-end of each regulated provider the first disclosure period from the implementation date to the end of the disclosure year may be 3, 6 or 12 months.<sup>348</sup>

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<sup>348</sup> For the disclosure year-end of each regulated provider, see paragraph 3.11.

- 8.5 To provide for a reporting period of less than 12 months the term “disclosure year” has been defined in the ID determination to reference a shortened disclosure period for the 2022 disclosure year. This means the RAB must be rolled forward from the implementation date to the end of that disclosure year and operating results must be reported for the same period.
- 8.6 In order to implement decisions that we have made for our ID requirements, we have amended a number of the fibre IMs for disclosure year 2022 for the ID-only regulated providers. These consist of:
- 8.6.1 an amendment to the asset valuation fibre IM to amend the definition of “revaluation rate”;
  - 8.6.2 an amendment to the taxation fibre IM to amend the definition of “notional deductible interest”; and
  - 8.6.3 an amendment to the cost of capital fibre IM to change the timing of our WACC determinations.<sup>349</sup>
- 8.7 We have aligned forecast information previously required at the start of the disclosure year with the timing of historical information due not later than 5 months after the end of the disclosure year. The only information required to be disclosed at the start of the disclosure year on an ongoing basis is the disclosure of comparative information for standard and non-standard contracts.

### **Staged Implementation approach**

- 8.8 A staged approach to implementation and transitional timing of our disclosures will allow regulated providers time to build capability, recognising that this is a new regime and regulated providers will not have processes and systems in place to be able to fully comply with the ID requirements from the implementation date.

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<sup>349</sup> Commerce Commission "Fibre Input Methodologies main 2021 amendments final decisions: Final reasons paper" (29 November 2021), page 74.

- 8.9 There are necessarily differences between how we stage Chorus' implementation as opposed to the other regulated providers. This is partly because Chorus is a relatively larger organisation on which we have based some of our requirements, such as how expenditure is categorised, so it already has the capability to capture this information, and Chorus has a regulatory year that ends on 31 December giving it more time than ID-only regulated providers to comply with ID requirements in the first year.
- 8.10 In staging the implementation in the initial years, we have used the following mechanisms:
- 8.10.1 deferred timing of disclosures;
  - 8.10.2 introduced transitional reporting requirements such as requiring CIP-based quality reporting for a 9 month transition period;
  - 8.10.3 allowed reporting at a higher level of aggregation (eg, reporting expenditure at level 1 categories);
  - 8.10.4 allowed Commission-only disclosures such as Chorus' year 4 and 5 forecast information; and
  - 8.10.5 removed the immediate need to disclose certain information such as years 4 and 5 forecasts for ID-only regulated providers.
- 8.11 We have deferred the timing for initial disclosures as follows:
- 8.11.1 for Chorus, the disclosure of comparative information for standard and non-standard contracts is required no later than 3 months after the start of the 2022 disclosure year;
  - 8.11.2 for Chorus, the semi-annual disclosures of pricing, revenue and incentives are required no later than 5 months after its 2022 disclosure year-end;
  - 8.11.3 for ID-only regulated providers, the disclosure of comparative information for standard and non-standard contracts is required before the start of the 2023 disclosure year;
  - 8.11.4 for ID-only regulated providers, the semi-annual disclosures of pricing, revenue and incentives for 2022 and 2023 are required no later than 5 months after their 2023 disclosure year-end;

- 8.11.5 for ID-only regulated providers, disclosures required at the end of the disclosure year are not required to be disclosed for 2022 and may be provided at the same time as the 2023 year-end disclosures; and
- 8.11.6 as well as the above blanket changes to the commencement of disclosures, we have deferred disclosure of specific requirements for a number of years such as 5-year forecasting of expenditure for ID-only regulated providers, 5-year forecasting of capacity utilisation and demand for all ID-regulated providers and material project and programme disclosures.
- 8.12 A full list of the transitional reporting provisions and ongoing timing of disclosures is included in Attachment B, in Table B1 for Chorus and Table B2 for ID-only regulated providers.
- 8.13 We consider our staged approach will allow regulated providers sufficient time to prepare for the disclosure of the required information.

*Submissions on our draft decisions*

- 8.14 Our staged approach is supported by regulated providers' submissions.
- 8.15 Chorus submitted that "a realistic transition period for the new ID regime" is required.<sup>350</sup> "To ensure the regime is workable from the implementation date, a staged implementation is essential. This should start with a 'minimum package' that builds over time."<sup>351</sup>
- 8.16 Enable/Tuatahi submitted " We support transitional provisions for the first regulatory period to allow time for LFCs to implement the necessary reporting and assurance processes and establish regulatory information sources. However, we submit that the proposed 2022 transitional provisions are not sufficient."<sup>352</sup>

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<sup>350</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 8.7.

<sup>351</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 19.

<sup>352</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), paragraph 3.5(a).

- 8.17 Enable/Tuatahi also submitted "As Ultrafast Fibre [Tuatahi] has a 31 March balance date, and Enable has a 30 June balance date, the proposals provide insufficient time from the publication of the final determination for either entity to prepare, audit, certify and disclose the 2022 information... we submit that it is essential that the part-year disclosures be deferred until the respective 2023 year-end disclosures are made."
- 8.18 "We submit that it would be more equitable amongst LFCs and Chorus to allow Northpower Fibre (and other LFCs with early balance dates) to defer the first reporting period...until the FY23 regulatory period..."
- 8.19 As part of their submissions, Chorus, Enable and Tuatahi proposed to defer certain requirements to later years.

### **Assurance and Certification**

- 8.20 For ID regulation to be effective, the Commission and other interested parties must be able to rely on the accuracy and completeness of the disclosed information.
- 8.21 The Commission therefore requires that regulated providers provide:
- 8.21.1 director certification for all information provided to the Commission – annually for financial, asset management, quality, pricing information and existing contracts;
  - 8.21.2 director certification for semi-annual pricing, revenues and incentives disclosures and for new contracts and changes; and
  - 8.21.3 an assurance opinion in respect of the quantitative historical information annually provided by an independent auditor, which applies:
    - 8.21.3.1 a reasonable assurance standard of assurance except for the mandatory notes included in Schedules 14 and 14a;
    - 8.21.3.2 in respect of the mandatory notes included in Schedules 14 and 14a, a limited assurance standard of assurance in respect of notes relating to information for which a reasonable assurance opinion is required.

### *Submissions on our draft decisions*

- 8.22 The majority of submissions on our draft decisions focused on the frequency and timing of assurance requirements and the time and effort required to gain the required level of assurance, leading to high compliance costs.

- 8.23 Some regulated providers also noted their lack of current capability to produce and provide the assurance required to comply with the ID requirements in the time available, particularly with regard to quality disclosure.
- 8.24 We consider we have reduced the impact and cost of assurance and certification requirements as a result of changes we have made across ID requirements as a whole as well as in addressing submissions on the assurance requirements. We have weighed this against the benefits that assurance provides. We considered:
- 8.24.1 timing and frequency of assurance and certification; and
  - 8.24.2 the form of audit opinion.

#### **Timing of assurance and certification**

- 8.25 We require director certification of disclosures, and audit where appropriate, annually as stated in paragraph 8.21.
- 8.26 Our final decision addresses issues raised in submissions on our draft decision, improves workability and reduces the compliance burden on regulated providers.
- 8.27 Disclosure of pricing and quality information is semi-annual and annual respectively with audit and certification done on an annual basis, at the same time as historical financial information disclosures. We have also aligned the date for disclosure and certification of forecast information to the same date as the annual historical disclosures are due.
- 8.28 We have addressed concerns other LFCs have with regard to being able to meet the assurance standard by deferring most of the 2022 disclosures to the 2023 disclosure year in addition to introducing a nine month transition period for quality disclosures.

#### *Submissions on our draft decisions*

- 8.29 Our draft decisions required forecast information subject to director certification to be disclosed prior to the start of the disclosure year. Quality and pricing information was to be reported quarterly and audit and/or director certified quarterly.

- 8.30 Chorus submitted that forecast information should be provided with other Schedules in a single package rather than prior to the start of the disclosure year. "Aligning the timing of the disclosures would be more efficient for its assurance processes, reducing the compliance burden."<sup>353</sup>
- 8.31 Chorus submitted that disclosure and certification requirements under Part 4 of the Commerce Act, and for Chorus and other LFCs under Part 4AA of the Telecommunications Act, are annual and that for quarterly disclosures of some of their KPIs, director certification is annual. This approach reflects the reality that director certification is a time-consuming process.<sup>354</sup>
- 8.32 Enable/Tuatahi submitted an alternative "proposal to publish pricing and quality information annually with the historical financial information so this could be assessed at the same time. Our compliance processes will be considerably more cost effective as a result." They also submitted that the "...assurance standard is unlikely to be met for 2022 because the proposed initial disclosures are too early, and the information required is not consistent with our current business information." They also proposed transitional disclosure provisions for audit sign-off of the initial RAB values which we will not determine until 31 March 2023.<sup>355</sup>
- 8.33 Northpower submitted " Audit of separate quarterly periods will increase compliance costs as they will need to be run as individual audit engagements, as opposed to auditing 12 months of information as one audit."<sup>356</sup>

### **Form of audit opinion**

- 8.34 We have provided for a limited assurance opinion in respect of the Schedule 14 and 14a mandatory narrative disclosures only in respect of information that relates to those schedules that are subject to reasonable assurance audit requirements.
- 8.35 A reasonable assurance standard of opinion for all other quantitative historical information provided by an independent auditor is required.

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<sup>353</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 76.

<sup>354</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), paragraph 27.

<sup>355</sup> Enable and Tuatahi "[Submission on NZCC Fibre information disclosures draft decisions reasons paper dated 27 May 2021](#)" (8 July 2021), paragraph 3.7.

<sup>356</sup> Northpower "[Submission on Fibre Information Disclosures draft decisions, Input Methodologies amendments draft decision](#)" (8 July 2021), page 3.

- 8.36 We have retained the requirement for an audit opinion of quality measures. We have provided a nine-month transition period for the capture of quality information to enable auditable information systems to be developed.

*Reasons*

- 8.37 We agree that there should be a lesser standard of assurance in relation to narrative disclosures. We have changed the requirements for schedules 14 and 14a to require a limited assurance opinion only for notes relating to numbers and schedules requiring a reasonable assurance opinion, consistent with Chorus' submission.
- 8.38 We believe that retaining the opinion in respect of whether proper records to enable the complete and accurate compilation of the audited disclosure information required have been kept by the ID-regulated provider will, even in the event of audit qualifications, provide useful information on a regulated provider's progress in developing such systems and the level of confidence interested parties may have in the information disclosed.
- 8.39 We note that a number of the quality measures will be required to be reported to demonstrate compliance with the quality standards set for Chorus's price-quality path. We therefore consider that an assurance opinion which includes the "proper records" assurance statement is appropriate.

*Submissions on our draft decisions*

- 8.40 KPMG suggested on behalf of Chorus a "phased increase in assurance requirements" using different levers such as:
- 8.40.1 changes between reasonable assurance and limited assurance for different schedules. This could also include lesser forms of assurance, such as opining on whether information has been materially extracted correctly from operational systems without a specific requirement to conclude on whether appropriate records have kept for compliance with regulations;
  - 8.40.2 including individual schedules as in/out of scope of assurance procedures; and/or

8.40.3 specific exemptions/clarifications to aspects of the ID requirements, such as what was provided for Chorus at the beginning of their current Information Disclosure reporting requirements.<sup>357</sup>

8.41 Chorus submitted that the same level of assurance for historical financial data is "...not appropriate for the level of granularity required to be provided (and audited) for quality measures. As recommended by KPMG, a better approach to the assurance requirement for the quality measures is an opinion of the form that the "information has been materially extracted correctly from system and operational data"<sup>358</sup>

8.42 Chorus also submitted that "the level of assurance proposed for the mandatory notes on Schedule 14 is not appropriate as the notes are narrative. Audit requirement is a departure of current requirements but could be possible if audit scope was limited to notes relating to audited figures."<sup>359</sup>

#### **Verification of disclosed information**

8.43 The Act allows the Commission to require information to be verified by audit or certification.<sup>360</sup>

8.44 The Commission considers that there is significant benefit in having an independent auditor provide assurance of the information disclosure, and in particular the processes used to prepare these statements. An independent auditor is expected to identify and report deficiencies in processes and information and provide reassurance as to its reliability.

8.45 In developing the new requirements under Part 6, we have drawn on existing requirements to provide or disclose information (specified under existing ID regulation or specified in contracts), where those requirements promote the purpose of ID regulation:

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<sup>357</sup> KPMG (on behalf of Chorus) "[Submission on Fibre information disclosure draft decision \(audit requirements\)](#)" (8 July 2021), page 2.

<sup>358</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), 33-34. KPMG (on behalf of Chorus) "[Submission on Fibre information disclosure draft decision \(audit requirements\)](#)" (8 July 2021), page 2.

<sup>359</sup> Chorus "[Submission on Draft Information Disclosure Determination](#)" (8 July 2021), 35.

<sup>360</sup> Sections 156AV(d) and (e).

- 8.45.1 information disclosed as a result of contractual requirements in UFB agreements between regulated providers and CIP;<sup>361</sup>
  - 8.45.2 existing LFC ID requirements under Subpart 3 of Part 4AA;<sup>362</sup> and
  - 8.45.3 ID requirements under Part 4 of the Commerce Act 1986.<sup>363</sup>
- 8.46 In determining the verification framework, the Commission considered assurance and certification provided for existing reporting requirements noted in paragraphs 8.45.1 to 8.45.3 above, the availability of supporting records, the level of prescription in the relevant requirements, the regulated provider's other likely verification requirements, the costs involved, and the extent to which reliance may be placed on the disclosed information.

#### **Assurance review by the Commission**

- 8.47 The Commission will review and analyse the information disclosed by the regulated providers to assess each regulated provider's compliance and the appropriateness of the methodologies applied (such as cost allocation).
- 8.47.1 Should the Commission identify any concerns, it intends to raise these concerns with the regulated provider and/or the independent auditor who provided the assurance report; and

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<sup>361</sup> For example, those agreed as part of the Network Infrastructure Project Agreements between CIP and each regulated provider [www.crowninfrastructure.govt.nz/ufb/who/](http://www.crowninfrastructure.govt.nz/ufb/who/).

<sup>362</sup> Commerce Commission [LFC Information Disclosure Determination 2018](#) [2018] NZCC 10 (22 August 2018); and Commerce Commission [Chorus Information Disclosure Determination 2018](#) [2018] NZCC 9 (29 June 2018). These disclosures are only to the Commerce Commission. The disclosures themselves are not published but some of the information has been used in published reports, eg, Commerce Commission ["Study into fibre services, Summary report issued under s 9A of the Telecommunications Act 2001"](#) (17 December 2018).

<sup>363</sup> For example, Commerce Commission ["Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper"](#) (1 October 2012); Commerce Commission [Electricity Distribution Information Disclosure Determination 2012](#) [2012] NZCC 22 (3 April 2018); and Commerce Commission ["Disclosure requirements for airports"](#).

- 8.47.2 Should the Commission consider that a significant issue exists, the Commission can take action to address it, including requiring the regulated provider to provide the Commission with supporting documentation, requiring restatement of the disclosed information, or revising the disclosure requirements for subsequent years (for example requiring disclosure of supporting material or the assumptions used for cost allocations).

#### **Director certification**

- 8.48 The Commission requires director certification that all information disclosures are compliant with the Requirements.
- 8.49 Director certification is a relatively cost-effective means of gaining assurance as it is expected that directors would be able to certify information given their knowledge of the business. The Commission expects that directors will seek whatever advice they consider is needed prior to signing the director's certificate, which may include senior executive or external advice.
- 8.50 This is consistent with the verification requirements used by the Commission for current ID reporting for regulated providers.

#### **Level of assurance and scope**

- 8.51 The Commission requires that the auditor provides an opinion of the form that "[name of regulated provider] has complied, in all material respects with the ID determination." This is consistent with the Commission's approach in airports, electricity and existing telecommunication regulatory reporting. The assurance standards are ISAE (NZ) 3000 (Revised) and SAE (NZ) 3100 (Revised). These are incorporated by reference under Schedule 5 of the Commerce Act as applied by s 15(2)(e) of the Act.<sup>364</sup>
- 8.52 The assurance report must be addressed to directors and the Commerce Commission as the intended users of the assurance report.
- 8.53 The assurance report must also state any key audit matters, being those matters that:

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<sup>364</sup> The assurance standards required are available at External Reporting Board (XRB), "[ISAE \(NZ\) 3000 \(Revised\)](#)" and "[SAE \(NZ\) 3100 \(Revised\)](#)".

- 8.53.1 (a) required significant attention by the independent auditor in carrying out its assurance engagement;
  - 8.53.2 (b) are selected from matters communicated with those charged with governance of the regulated provider; and
  - 8.53.3 (c) the independent auditor has identified, taking into account:
    - 8.53.3.1 areas of higher assessed risk of material misstatement of audited disclosure information;
    - 8.53.3.2 significant auditor judgements relating to areas in the audited disclosure information that involved significant judgement of the management of the regulated provider; and
    - 8.53.3.3 the effect on the assurance engagement of any significant events or transactions by the regulated provider that occurred during the disclosure year.
- 8.54 The requirements allow regulated providers to engage the same auditor for both regulatory information disclosure and the statutory reports, provided the relevant professional standards allow this whilst ensuring audit independence. This should reduce regulators providers' compliance costs as much of the information to be provided to the Commission will be subject to independent audit for statutory purposes.

## Chapter 9 Disclosures under s 187(1)(c) to assess compliance

### Cost allocation

- 9.1 Section 187(1)(c) of the Act requires regulated providers to supply us with any statement, reports, agreements, particulars or other information required for the purpose of monitoring their compliance with the ID determination where we require this by way of a written notice.
- 9.2 In addition to the public disclosure of asset and cost allocation information under the ID requirements in Schedules 4a and 5a, we have issued notices under s 187(1)(c) requiring regulated providers to supply us with information explaining how the allocations have been made. This helps us to monitor compliance with the cost allocation requirements in the IMs that are incorporated in the ID determination and have to be applied by regulated providers when making their disclosures under ID. These s 187(1)(c) disclosures also require audit assurance and director certification.
- 9.3 These disclosures are not ID requirements and the information is not required to be publicly disclosed. However, the Commission may publish this information after considering the regulated providers' views on the confidentiality and/or commercial sensitivity of the information. This information must be supplied to the Commission by the same date as the information in Schedules 4a and 5a which must be publicly disclosed.<sup>365</sup>
- 9.4 The Commission may issue further written notices to regulated providers under s 187(1)(c) if it considers this necessary for purposes of monitoring compliance with the ID determination.

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<sup>365</sup> A failure to comply with the s 187(1)(c) requirements may be an offence under s 103 of the Commerce Act via s 15 of the Act.

## Attachment A Summary of changes from draft decisions

**Table A1 Overview – Changes to Decisions on Financial Information**

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
Return on investment	<b>Asset stranding allowance</b> included in the supporting information on the calculation of the ROI. The Headline ROI is the ROI calculated on all cashflows <b>adjusted for asset stranding allowance</b> .	Headline ROI	<b>Asset stranding allowance</b> - see paragraphs 4.119-4.121.
	<b>Correction of value date for benefit of Crown financing to align with timing used in MAR calculation.</b>	Supporting information on the calculation of the ROI, including limited information on the benefit of crown financing and TCSD, cost of capital	<b>Benefit of Crown financing adjustments</b> - See paragraph 4.124.
	<b>No annual ROI based on monthly cash flows</b>	Annual ROI based on monthly cash flows	<b>Annual ROI.</b> Remove monthly ROI. See paragraphs 4.125-4.126.
Regulatory profit		Calculation of regulatory profit	. <b>No change</b>
Value of the Regulatory Asset Base (RAB value)		RAB value, including loss asset, rolled forward, with information on the roll forward calculation, and asset allocation	No change

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
<b>Supporting information</b>	<b>Related-party transactions.</b> We have added a requirement to describe the nature of related party services to which the total regulatory income from related party services applies and to state the portion of the income that has been valued on an arms-length basis, but which has been provided at a lesser value.	Treatment of related party transactions	<b>Related party transactions.</b> See paragraphs 4.87-4.88.
<b>Allocation of assets and costs</b>	<b>Cost allocation disclosures.</b> We have removed the requirement for direct attribution of assets to Non-FFLAS services in schedule 4a.	Disaggregated by expenditure type with non-public disclosure at a cost/asset category level	<b>Cost allocation disclosures.</b> See paragraphs 4.103-4.104.
<b>Information to assist compliance: asset and cost allocation</b>	The information in these schedules is now required separately by way of section 187(1)(c) notices	Additional detail on the allocation of assets and costs.	Clarifies that these schedules are for monitoring purposes.
<b>Actual versus forecast financial information</b>	<b>Not required for disclosure year 2022</b>	Comparison of expenditure for the disclosure year against the previously disclosed forecast for that year with explanatory comment on any variances.  Explanations for variances between targeted and actual operating revenue.  Explanation of difference between actual connections and targeted connections	Recognises regulated providers current capabilities, reduces burden and cost of compliance, and allows time for regulated providers to develop their processes, systems and capability.
<b>Consolidation statement</b>	Removed the requirement for a consolidation statement	Consolidation statement required	See paragraphs 4.178-4.181

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
<b>Historical financial information</b>	Disclosure due date for 2022 year to be deferred to 2023 for regulated providers other than Chorus. The requirement for reporting historical and forecast financial information at a level 2 category of detail is to be deferred till 2025 for regulated providers other than Chorus. Reporting on progress towards developing the capability to report expenditure at level 2 category is required for disclosure years 22 to 24.	For the first disclosure, the financial information does not need to include targets, and only has to include information from the implementation date.	Recognises regulated providers current capabilities, reduces burden and cost of compliance, and allows time for regulated providers to develop their processes, systems and capability.

**Table A2 Overview – Changes to Decisions on Pricing and Contract Disclosures**

Category	Final decisions on information required	Draft decisions on information required	Reason for change
<b>Frequency of reporting</b>	<p>Except for contract-related disclosures, information will be recorded monthly and disclosed semi-annually.</p> <p>For disclosure year 2022 (Chorus) and disclosure years 2022 and 2023 (ID-only regulated providers), the information will be recorded monthly and disclosed annually.</p>	<p>Except for disclosure of contracts, information will be recorded monthly and disclosed quarterly.</p>	<p>See paragraphs 5.35-5.39.</p>
<b>Pricing and revenues (PQ FFLAS)</b>	<p>Public: for each regulated FFLAS, by service, the service description and geographic availability, list prices per the regulated provider’s standard contracts (connection and monthly charges), and operating revenues (from connection, monthly, any other charges).</p> <p>Commission only: number of connections (opening and closing) for each regulated FFLAS, by service.</p>	<p>FFLAS by service with description and geographic availability, list prices as per the regulated provider’s price books (connections, monthly charges), number of connections (opening and closing) and operating revenues (from connection, monthly, any other charges).</p>	<p>See paragraphs 5.73-5.77.</p>
<b>Incentives (PQ FFLAS)</b>	<p>Public: where active incentives are offered for a service - a description of the incentive including conditions on availability; and the value of the incentive per connection (split between one off incentives and recurring monthly incentives).</p> <p>Commission only: the number of connections receiving the incentive and total incentive clawback values (if relevant).</p>	<p>Where active incentives are offered for a service, a description of the incentive incl. conditions on availability, the number of connections, and the value of the incentive (per connection and total split between one off incentives and recurring monthly incentives).</p>	<p>See paragraphs 5.73-5.77 and 5.107-5.108.</p>

Category	Final decisions on information required	Draft decisions on information required	Reason for change
<b>Pricing and revenues (ID-only FFLAS)</b>	<p>Provide the same information as for “Pricing and revenue (PQ FFLAS)” for each service in ID-only areas, split by each ID-only area.</p> <p>For disclosure years 2022 and 2023 only, if ID-only regulated providers do not have the technical capability to report service availability at the central office level, they are required to complete the information on service availability in Schedule 25(iii) to the most detailed level of geographic aggregation that they have the technical capability to disclose.</p>	Provide the same information as for “Pricing and revenue” for each service in ID-only areas, split by each ID-only area.	See paragraphs 5.118-5.123.
<b>Incentives (ID-only FFLAS)</b>	Provide the same information as for “Incentives (PQ FFLAS)” for each service in ID-only areas, split by each ID-only area.	Provide the same information as for “Incentives” for each service in ID-only areas, split by each ID-only area.	See the row for 'Incentives (PQ FFLAS)' above.
<b>Pricing methodologies</b>	Disclosure of the specific formulas or methodologies used to determine pricing is not required under the initial ID determination.	Disclosure of the methodologies used to determine pricing is not required under the initial ID determination.	No change.
<b>Contracts disclosures: prescribed terms &amp; conditions</b>	<p>Public: disclosure of prescribed terms and conditions in standard and non-standard contracts for regulated FFLAS, as well as any amendments to the prescribed terms and conditions.</p> <p>Commission-only: disclosure of terms and conditions that specify prices or incentives, in non-standard contracts for regulated FFLAS as well as amendments to these terms and conditions.</p>	Disclosure of prescribed terms and conditions in standard and non-standard contracts for FFLAS, as well as any amendments to the prescribed terms and conditions.	See paragraphs 5.154-5.156.

Category	Final decisions on information required	Draft decisions on information required	Reason for change
<b>Contracts disclosures: comparative information</b>	<p>Public: disclosure of a summary of how prescribed terms and conditions differ between standard and non-standard contracts (except those specifying or determining an incentive or price); as well as the number of access seekers on, and percentages of target revenues under, standard contracts versus non-standard contracts.</p> <p>Commission only: disclosure of the combined total value of target revenues under standard and equivalent non-standard contracts.</p> <p>We have removed the requirement to disclose summary information with respect to interruption of service and the implication for prices.</p>	<p>Disclose summary of how prescribed terms and conditions differ between standard and non-standard contracts; as well as number of access seekers and target revenues under standard contracts versus non-standard contracts.</p>	<p>See paragraphs 5.159-5.166.</p>
<b>Contract disclosures: other disclosures on non-standard contracts</b>	<p>Public: disclosure of criteria used to enter non-standard contracts.</p> <p>Commission only: disclosure of the factors used to determine prices and incentives in non-standard contracts.</p> <p>For disclosure years 2022 and 2023, these disclosures are subject to a materiality threshold based on the percentage of target revenues that a regulated provider expects to collect under non-standard contracts for each FFLAS.</p>	<p>Disclosure of criteria used to enter non-standard contracts and criteria used to determine prices in non-standard contracts.</p>	<p>See paragraphs 5.154-5.155, 5.160 and 5.167.</p>

**Table A3 Overview – Changes to Decisions on Asset Management**

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
<b>Key qualitative information</b>			
<b>Report on asset management capability</b>	We have changed the due date disclosure of the report on asset management capability.	<p>This report requires regulated providers to assess their asset management capability against an objective standard. The standard includes policies and processes for maintaining and developing the network, performance against targets, information and risk management, and communication with stakeholders.</p> <p>The report takes the form of a self-assessment based on predetermined questions and guidelines to assess maturity. Each question requires a score, a target score, evidence of the score, and initiatives planned to achieve the target score.</p>	See paragraph 6.67
<b>Link between forecast expenditure and network quality performance</b>	<p>Provide narrative explanation of the link between forecast expenditure and:</p> <p>a) forecast opex; and</p> <p>b) network quality performance.</p> <p>No requirement to report on material projects/programmes. Defer project and programme expenditure reporting until further considerations of whether to implement full AMPs.</p>	<p>Provide narrative explanation of the link between forecast capex expenditure on material projects or programmes and:</p> <p>a) forecast opex; and</p> <p>b) network quality performance.</p>	See paragraph 6.72

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
<b>Key quantitative information</b>			
<b>Historical expenditure by category</b>	Reporting at category level 1 and 2 for Chorus. Reporting at category level 1 for other regulated providers for disclosure years 22 to 24, with progress reporting on developing capability to report at category level 1 from 2025.	A breakdown of historical expenditure by high level category.	
<b>Information about the network, supporting information about asset management and expenditure</b>		Asset register, number of assets at the start and end of each disclosure year and value of commissioned assets, asset condition, asset age profile, % to be replaced in the next 5 years.  Forecast cost of assets to be replaced in next 5 years may be disclosed to the Commission only.	
	Some changes in the network capacity and utilisation measures to be reported. Three-year forecasts for disclosure years 22 to 24. Five-year forecasts from 2025.	Information on network capacity and five year forecast on network capacity measures by POI area.	
	Some changes in the demand measures to be reported. Three-year forecasts for disclosure years 22 to 24. Five-year forecasts from 2025.	Observed and forecasted information on demand for the current and following five disclosure years, by POI area.	

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
<b>Forecast expenditure</b>	<p>Timing of disclosure. Alignment of the date for providing forecast information to the same date as annual historical disclosures are due.</p>		
	<p>Progression from three to five year rolling forecasts. Three year rolling forecasts are to be disclosed from the end of disclosure year 2022, with five-year forecasts to be provided from 2025. In the transition period regulated providers will be required to report their progress in developing processes to prepare five year rolling forecasts by the end of disclosure year 2024.</p>		
	<p>Exemptions for Chorus. Chorus will not be required to disclose a five-year rolling forecast at the end of a disclosure year during which an expenditure proposal is submitted, or the Commission determines the PQP for the next period. Year 4 and 5 forecasts may be commission only.</p> <p>Information aggregation. Forecast expenditure categorised to align with changes to the categorisation of historical capex and opex financial information. Five year rolling forecasts due at the end of the disclosure year, reported at a disaggregated level for opex and capex categories.</p>	<p>Forecast expenditure for a rolling five-year period, with a breakdown of the forecasts by expenditure category</p>	

**Table A4 Overview – Changes to Decisions on Quality**

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
<b>Transitional disclosures</b>			See paragraphs 7.190-7.192
<b>Transitional period</b>	9 months	-	
<b>Frequency of reporting - transitional period</b>	Recorded monthly, reported quarterly	-	
<b>Provisioning - transitional</b>	Time to provision Percentage met agreed date, Layer 1 and Layer 2 Median time to provision, simple and complex new connections	-	
<b>Faults - transitional</b>	Incidence of faults	-	
<b>Availability - transitional</b>	Average downtime	-	
<b>Performance - transitional</b>	Port utilisation Traffic performance	-	

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
<b>Customer Service - transitional</b>	End-user connection satisfaction		
<b>Ongoing disclosures</b>			Refer Chapter 7
<b>Frequency of reporting</b>	Information to be recorded monthly and disclosed annually	Information to be recorded monthly and disclosed quarterly	
<b>Provisioning: Time to provision ID FFLAS</b>	Reporting differentiated by geography (POI area) and ID FFLAS type (layer 1 services, and layer 2 services).	Reporting differentiated by geography (POI area) and ID FFLAS type ( <b>business services, residential services</b> , layer 1 services, and layer 2 services).	
	<b>Median</b> time to provision ID FFLAS, differentiated by: intact connections, simple new connections, complex new connections and transport services.	<b>Average</b> time to provision ID FFLAS, differentiated by: intact connections, simple new connections, complex new connections and transport services.	
<b>Faults: Incidence of faults</b>	Fault cause, differentiated by: <ul style="list-style-type: none"> <li>- regulated provider faults, including faults caused by layer 1, layer 2, and ONT;</li> <li>- non-regulated provider faults reported (no fault is found).</li> </ul>	Fault cause, differentiated by: <ul style="list-style-type: none"> <li>- regulated provider faults, including faults caused by layer 1, layer 2, and ONT;</li> <li>- non-regulated provider faults reported (<b>including faults caused by the end user, access seeker, or if no fault is found</b>).</li> </ul>	

Category	Final decision where different from draft decision	Draft decisions on information required	Reason for change
<b>Availability: Average downtime</b>	Reporting differentiated by geography (POI area) and network architecture (layer 1, and layer 2).  Minutes of Force Majeure events	Reporting differentiated by geography (POI area) and network architecture (layer 1, and layer 2) <b>and by force majeure events.</b>	
<b>Performance: Traffic performance</b>	Number of exceedances of <b>high priority traffic</b> frame delay equal to or above <b>5mS</b> .  Number of exceedances of <b>high priority traffic</b> frame delay variation equal to or above 3 mS.  Number of exceedances of <b>high priority traffic</b> frame loss ratio equal to or above 0.1%.  Number of exceedances of <b>low priority traffic</b> frame loss ratio equal to or above 2%.  <b>Number of active OLT reference probes</b>  <b>Number of 5-minute samples</b>  <b>Report on significant changes or network events</b>	Number of exceedances of frame delay equal to or above <b>7mS</b> .  Number of exceedances of frame delay variation equal to or above 3 mS.  Number of exceedances of frame loss ratio <b>CIR</b> equal to or above 0.1%.  Number of exceedances of frame loss ratio <b>EIR</b> equal to or above 2%.	
<b>Customer Service: End-user connection satisfaction</b>	Questions on 3 specified topics, being installation quality, installation process and fibre broadband performance.	7 specified questions	

## **Attachment B Summary of timing, transitional provisions, and audit and certification requirements**

- B1 The tables over the page provide an overview of the implementation of the ID requirements, for each type of disclosure, specifically:
  - B1.1 the timing of initial disclosures;
  - B1.2 any transitional provisions;
  - B1.3 the timing of ongoing disclosures;
  - B1.4 whether disclosures are public or commission-only; and
  - B1.5 requirements for assurance and director certification.
- B2 There are two tables:
  - B2.1 Table B1 provides an overview of Chorus disclosures.
  - B2.2 Table B2 provides an overview of disclosures for other regulated providers. We have deferred the 2022 historical disclosures for ID-only regulated providers to the end of the 2023 disclosure year. ID-only regulated providers are also able to report expenditure at a higher level of aggregation than Chorus for disclosure years 2022 to 2024.
- B3 When reading these tables, please note:
  - B3.1 only information from the implementation date must be disclosed;
  - B3.2 where public disclosure is required, this information must be provided to us within five working days of publication.

**Table B1 Implementation of ID requirements for Chorus**

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Annual Disclosures</b>						
<b>Financial Information</b>						
<b>Historical financial information</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end		Annually, no later than 5 months after Chorus' disclosure year-end	Public disclosure Commission only Schedule 8a(i) <sup>366</sup>	Yes Reasonable assurance	Yes
<b>Actual v forecast financial and non-financial information</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end  Prior year forecast for actual versus forecast is not required for disclosure year 2022.		Annually, no later than 5 months after Chorus' disclosure year-end .	Public disclosure	Yes	Yes

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<sup>366</sup> Where information is publicly disclosed it must be: disclosed on the Internet; made available for inspection at the regulated provider's offices; provided on request (within 10 working days); within 5 working days provided to the Commission in the form that it is disclosed to the public and in an electronic format that is compatible with Microsoft Excel or Microsoft Word.

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Asset Management and self-assessment</b>						
<b>Report on asset management capability (RAMC)</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end	In place until such time as asset management capability has matured and/or disclosure of full AMPs considered appropriate	Annually, no later than 5 months after Chorus' disclosure year-end	Public disclosure	No	Yes
<b>Forecast expenditure and supporting information</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end.	Deferred material project and programme expenditure reporting until after PQP1 and further consideration of whether to implement full AMP	Annually, no later than 5 months after Chorus' disclosure year-end. No disclosure required in years when Chorus submits a PQ expenditure proposal or Commission approves a PQ determination	Public disclosure for years 1-3  Forecasts for years 4-5 may be Commission only	No	Yes
<b>Asset register information</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end	Capability reporting in RAMC for asset condition assessment for disclosure years 2022-2024.	Annually, no later than 5 months after Chorus' disclosure year-end	Public disclosure  Forecast of assets to be replaced in next five years and ID-only asset register may be Commission only	No	Yes
<b>Network information - forecast capacity and utilisation</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end	3-year forecasts for disclosure years 2022 to 2024. Narrative commentary on forecasting methodology used.	Annually, no later than 5 months after Chorus' disclosure year-end.  5-year forecasts from 2025.	Public disclosure	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Network information - forecast demand</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end	3-year forecasts for disclosure years 2022 to 2024. Narrative commentary on forecasting methodology used.	Annually, no later than 5 months after Chorus' disclosure year-end  5-year forecasts from 2025.	Public disclosure  PON connections by service description may be Commission only  Demand by POI area may be Commission only	No	Yes
<b>Quality Information</b>						
<b>Quality information - transitional period</b>	Disclosure required no later than 1 month after 31 March 2022.	Quarterly for 3 quarters to 30 September 2022.  Limited to 7 CIP measures.	Quarterly, no later than one month after the relevant quarter	Public disclosure	No	No
<b>Quality information</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end	9 months transitional reporting of 7 CIP measures (see immediately above)	Annually, no later than 5 months after Chorus' disclosure year-end	Public disclosure	Yes	Yes  Annually for the full disclosure year

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Pricing and Contracts</b>						
<b>Contract disclosures: comparative information</b>	No later than 3 months after the start of Chorus' disclosure year 2022	N/A	Annually, before the start of each disclosure year after disclosure year 2022	Public disclosure Disclosure of the target operating revenue from each standard contract and all equivalent non-standard contracts may be Commission only	No	Yes
<b>Contract disclosures: other disclosures on non-standard contracts</b>	No later than 3 months after the start of Chorus' disclosure year 2022	Materiality threshold applies in disclosure years 2022 and 2023: disclosures are required only if the target operating revenue from equivalent non-standard contracts is 10% or greater from the combined target operating revenues from equivalent standard and non-standard contracts for each regulated FFLAS	Annually, before the start of each disclosure year after disclosure year 2022	Public disclosure Disclosure of the explanation of any criteria or factor used for determining prices and incentives in non-standard contracts may be Commission only	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Explanatory notes</b>						
<b>Mandatory explanatory notes</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end	Explanations required for methodology used to forecast capacity and utilisation and demand for disclosure years 2022 to 2024	Annually, 5 months after Chorus' disclosure year-end	Disclosure consistent with the Schedule to which the explanatory note is related	Yes Limited Assurance for notes relating to audited numbers and schedules in Schedule 14  No for Schedule 14b	Yes
<b>Voluntary explanatory notes</b>	N/A		Annually, 5 months after Chorus' disclosure year-end	Public disclosure consistent with the Schedule to which the explanatory note is related to	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Disclosures required semi-annually</b>						
<b>Pricing, revenues and incentives for PQ FFLAS and ID FFLAS</b>	Disclosure required no later than 5 months after Chorus' 2022 disclosure year-end	<p>The first semi-annual disclosure is deferred to no later than 5 months after Chorus' 2022 disclosure year-end.</p> <p>For disclosure years 2022 and 2023, services in each FFLAS category can be aggregated to the level indicated in sheet 'Service level Reporting' in Schedule 24 (column I).</p>	<p>Semi-annually:</p> <ul style="list-style-type: none"> <li>- no later than 1 month after the second quarter of Chorus' disclosure year for the first and second quarter disclosures; and</li> <li>- no later than 5 months after Chorus' disclosure year-end for the third and fourth quarters disclosures.</li> </ul>	<p>Public disclosure</p> <p>Number of connections and ENNI/co-location connections, as well as incentive clawback payment values may be Commission only</p>	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Continuous disclosures</b>						
<b>Contract disclosures: prescribed terms and conditions</b>	No later than 20 working days after entering a new standard or non-standard contract for regulated FFLAS or amending the prescribed terms and conditions in standard or non-standard contracts for regulated FFLAS	N/A	No later than 20 working days after entering a new standard or non-standard contract for regulated FFLAS or amending the prescribed terms and conditions in standard or non-standard contracts for regulated FFLAS	Public disclosure  Disclosure of prescribed terms and conditions that specify the price or incentives, or amendments to these terms, may be Commission only	No	No

**Table B2 Implementation of ID requirements for ID-only Regulated Providers**

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Annual Disclosures</b>						
<b>Financial Information</b>						
<b>Historical financial information</b>	Disclosure required no later than 5 months after the regulated provider's 2023 disclosure year-end	Defer 2022 disclosures until due date for disclosure of 2023 historical information	Annually, no later than 5 months after the regulated provider's disclosure year-end	Public disclosure Commission only Schedule 8(i) <sup>367</sup>	Yes Reasonable assurance	Yes
<b>Actual v forecast financial and non-financial information</b>	Disclosure required no later than 5 months after the regulated provider's 2023 disclosure year-end	Defer 2022 disclosures until end of 2023 disclosure year  Prior year forecast for actual v forecast is not required for disclosure year 2022.	Annually, no later than 5 months after the regulated provider's disclosure year-end.	Public disclosure	Yes	Yes

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<sup>367</sup> Where information is publicly disclosed it must be: disclosed on the Internet; made available for inspection at the regulated provider's offices; provided on request (within 10 working days); within 5 working days provided to the Commission in the form that it is disclosed to the public and in an electronic format that is compatible with Microsoft Excel or Microsoft Word.

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Asset Management and self-assessment</b>						
<b>Report on asset management capability (RAMC)</b>	Disclosure required no later than 5 months after the regulated provider's 2023 disclosure year-end	Defer until due date for 2023 historical disclosures  In place until such time as asset management capability has matured and/or disclosure of full AMPs considered appropriate	Annually, no later than 5 months after the regulated provider's disclosure year-end	Public disclosure	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Forecast expenditure and supporting information</b>	Disclosure required no later than 5 months after the regulated provider's 2023 disclosure year-end	<p>Defer 2022 disclosures until due date for 2023 historical disclosures</p> <p>3-year forecasts for disclosure years 2022 to 2024</p> <p>Report at Level 1 expenditure categorisation for disclosure years 2022 to 2024</p> <p>Narrative commentary on progress towards developing 5-year forecasting in Mandatory Notes schedule for disclosure years 2022 to 2024</p> <p>Deferred material project and programme expenditure reporting until after PQP1 and further consideration of whether to implement full AMP</p>	<p>Annually, no later than 5 months after the regulated provider's disclosure year-end</p> <p>5 year forecast at category level 2 from 2025</p>	Public disclosure	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Asset register information</b>	Disclosure required no later than 5 months after the regulated provider's 2023 disclosure year-end	Defer 2022 disclosures until due date for 2023 historical disclosures  Capability reporting in RAMC for asset condition assessment for disclosure years 2022-2024.	Annually, no later than 5 months after the regulated provider's disclosure year-end	Public disclosure  Forecast of assets to be replaced in next five years may be Commission only	No	Yes
<b>Network information - forecast capacity and utilisation</b>	Disclosure required no later than 5 months after the regulated provider's 2023 financial year-end	Defer 2022 disclosures until end of 2023 disclosure year  3-year forecasts for disclosure years 2022 to 2024.  Narrative commentary on forecasting methodology used.	Annually, no later than 5 months after regulated provider's disclosure year-end  5-year forecasts from 2025.	Public disclosure	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Network information - forecast demand</b>	Disclosure required no later than 5 months after the regulated provider's 2023 disclosure year-end	Defer 2022 disclosures until due date for 2023 historical disclosures  Narrative commentary on forecasting methodology used.	Disclosure required no later than 5 months after the regulated provider's disclosure year-end	Public disclosure  PON connections by service description may be Commission only  Demand by POI area may be Commission only	No	Yes
<b>Quality Information</b>						
<b>Quality information - transitional period</b>	Disclosure required no later than 1 month after 31 March 2022.	Quarterly for 3 quarters to 30 September 2022.  Limited to 7 CIP measures.	Quarterly, no later than one month after the relevant quarter	Public disclosure	No	No
<b>Quality information</b>	Disclosure required no later than 5 months after the regulated provider's 2023 disclosure year-end	9 months transitional reporting of 7 CIP measures (see immediately above)	Annually, no later than 5 months after the regulated provider's disclosure year-end	Public disclosure	Yes	Yes  Annually for the full disclosure year

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Pricing and Contracts</b>						
<b>Contract disclosures: comparative information</b>	Before the start of disclosure year 2023 for each ID-only regulated provider	First disclosure deferred to before the start of disclosure year 2023	Annually, before the start of each disclosure year from disclosure year 2023	Public disclosure Disclosure of the target operating revenue from each standard contract and all equivalent non-standard contracts may be Commission only	No	Yes
<b>Contract disclosures: other disclosures on non-standard contracts</b>	Before the start of disclosure year 2023 for each ID-only regulated provider	Materiality threshold applies in disclosure years 2022 and 2023: disclosures are required only if the target operating revenue from equivalent non-standard contracts is 10% or greater from the combined target operating revenues from equivalent standard and non-standard contracts for each regulated FFLAS	Annually, before the start of each disclosure year from disclosure year 2023	Public disclosure Disclosure of the explanation of any criteria or factor used for determining prices and incentives in non-standard contracts may be Commission only	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Explanatory notes</b>						
<b>Mandatory explanatory notes</b>	Disclosure required no later than 5 months after the regulated provider's 2023 disclosure year-end	<p>Disclosure required no later than 5 months after regulated provider's due date for 2023 historical disclosures</p> <p>Explanations required for methodology used to forecast capacity and utilisation and demand for disclosure years 22 to 24</p> <p>Deferred material project and programme expenditure reporting until after PQP1 and further consideration of whether to implement full AMP</p>	Annually, 5 months after the regulated provider's disclosure year-end	Disclosure consistent with the Schedule to which the explanatory note is related	<p>Yes Limited Assurance for notes relating to audited numbers and schedules in Schedule 14a</p> <p>No for Schedule 14b</p>	Yes
<b>Voluntary explanatory notes</b>	N/A		Annually, 5 months after the regulated provider's financial year-end	Disclosure consistent with the Schedule to which the explanatory note is related to	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Semi-annual disclosures</b>						
<b>Pricing, revenues and incentives for PQ FFLAS and ID FFLAS</b>	Disclosure required no later than 5 months after the ID-only regulated provider's 2023 disclosure year-end	<p>Disclosures for disclosure years 2022 and 2023 are deferred until 5 months after the end of 2023 disclosure year</p> <p>For disclosure years 2022 and 2023, services in each FFLAS category can be aggregated to the level indicated in sheet 'Service level Reporting' in Schedule 25 (column K).</p> <p>Service availability in Schedule 25(iii) can be reported at a more aggregated geographical level than central office level.</p> <p>Reporting on capability to disclose at central office level from disclosure year 2024 required no later than 5 months after the end of disclosure year 2023.</p>	<p>Semi-annually:</p> <ul style="list-style-type: none"> <li>- no later than 1 month after the second quarter of the ID-only regulated provider's disclosure year for the first and second quarter disclosures; and</li> <li>- no later than 5 months after the ID-only regulated provider's disclosure year-end for the third and fourth quarter disclosures.</li> </ul>	<p>Public disclosure</p> <p>Number of connections and ENNI/co-location connections, as well as incentive clawback payment values may be Commission only</p>	No	Yes

Information disclosure	Initial disclosure requirements	Transitional provisions	Ongoing disclosure requirements	Public or Commission only disclosure	Assurance report	Director certification
<b>Continuous disclosures</b>						
<b>Contract disclosures: prescribed terms and conditions</b>	No later than 20 working days after entering a new standard or non-standard contract for regulated FFLAS or amending the prescribed terms and conditions in standard or non-standard contracts for regulated FFLAS	N/A	No later than 20 working days after entering a new standard or non-standard contract for regulated FFLAS or amending the prescribed terms and conditions in standard or non-standard contracts for regulated FFLAS	Public disclosure  Disclosure of prescribed terms and conditions that specify the price or incentives, or amendments to these terms, may be Commission only	No	No

## Attachment C Commission-only disclosures

- C1 Relevant worksheets are marked with the words "May be Commission only" in blue text where disclosures may be Commission only.
- C2 Where indicated by "(all)" below, all disclosures in the Schedule are Commission-only.

Disclosure	Link to Determination	Change from Draft Decision
<b>Financial information</b>		
Qualifying debt	Schedule 8a	Unchanged (was Schedule 2a)
<b>Asset management</b>		
Forecast cost of assets to be replaced in the next 5 years	Schedules 10 and 10a	Unchanged
ID-only asset register (Chorus)	Schedule 10b (all)	Changed
Capex forecast, years 4 and 5 (Chorus)	Schedule 11	Changed
Opex forecast, years 4 and 5 (Chorus)	Schedule 11a	Changed
Active forecast connections by service level	Schedule 12a	Changed
Forecast demand by POI area	Schedule 12a	Changed
<b>Pricing</b>		
Connections and ENNI/colocation connections	Schedules 24 and 25	Changed
Incentive clawback payments	Schedules 24(ii) and 25(ii)	New
<b>Contracts and comparative information</b>		
Prescribed terms and conditions specifying prices and incentives in non-standard contracts	clauses 2.5.9(2) and 2.5.10(3).	Changed
Target operating revenues across each standard and equivalent non-standard contracts	clause 2.5.11(2)(a)	Changed
Explanation of any criteria or factor used for determining prices and incentives for access seekers on non-standard contracts	clause 2.5.11(2)(b)	Changed
<b>Quality</b>		
Connection numbers	Schedules 19 and 20	Changed

## Attachment D Expenditure Categories

D1 The following tables set out the standardised expenditure categories, and their definitions, for both operational and capex, relevant to asset management disclosures.

**Table D1 Capital Expenditure Categories**

Capex Level 1 Category	Capex Level 2 Category	Definition
<b>Extending the Network</b>		means capital expenditure to extend communal infrastructure to new streets or developments, and to infill the network to accommodate address growth.
	Augmentation	means new address creation within the existing footprint of the network (infill) and extension work to extend coverage to communities outside the UFB contracts.
	New Property Developments	means capex on work with developers to build communal fibre into new developments, such as residential subdivisions or office parks.
	UFB Communal	UFB communal covers contracted commitments with the government under the Ultra-fast Broadband programme.
<b>Installations</b>		means capital expenditure to establish a physical link between the communal network and an ONT at an end point. It includes associated provisioning and incentive costs.
	Complex Installations	means design and build of installations for specific business requirements.
	Standard Installations	means installations that are not complex installations, and associated investment in incentives.
<b>Network Capacity</b>		means capital expenditure on network electronics and associated systems to optimise for capacity growth and lifecycle requirements.
	Access	means networks that enable end user connections to the fibre network. They include ONTs and OLTs and the software which manages the configuration and alarms called an Element Management Platform;
	Aggregation	means networks that link access networks to RSP POI. They consist of switches (rack-mounted equipment with interface cards) and the links between them;

Capex Level 1 Category	Capex Level 2 Category	Definition
	Transport	means capex on the transport network which provides high-capacity connectivity over long distances between aggregation nodes and OLTs. It consists of equipment supporting transmission links over core, transport and access cables.
<b>Network Sustain and Enhance</b>		means capex to sustain or enhance physical network performance, manage risk or satisfy compliance requirements. It includes replacing end of life assets, ensuring compliance to health and safety regulations, adding resilience to the network, reducing its risk profile and developing new products.
	Field Sustain	means capital expenditure on physical network assets outside of network sites, such as poles, fibre, and terminators.
	Relocations	means capex in relation to relocation of network assets arising from roading authority work programmes; undergrounding (overhead to underground (OHUG) programmes) and third-party requests
	Resilience	means the ability to keep the network running through adverse events (diversity, robustness or contingency)
	Site Sustain	means most install work, and associated investment in incentives.
<b>Network &amp; Customer IT</b>		means Network and Customer IT
	Network and Customer IT	means capital expenditure on systems and platforms across IT domains that support network or customer activities. These include product development, customer experience and optimisation, lifecycle and compliance.
<b>Non-network IT &amp; Support</b>		means capital expenditure on information technology systems, plus corporate capex.
	Business IT	means systems and applications across IT domains that support business activities.
	Corporate	means sundry business investment in relation to corporate functional units.

**Table D2 Operating Expenditure Categories**

Opex Level 1 Category	Opex Level 2 Category	Definition
<b>Customer Opex</b>		means the sum of operating expenditure relating to customer operations and product, sales & marketing,
	Customer operations	means operating expenditure in relation to the teams that connect consumers by managing installations and provisioning network services including higher-volume demand-driven activity (such as call centres), lower-volume demand driven activity (such as coordinating complex installations and multi-unit extensions) and project work (such as managed migrations programmes).
	Product, Sales & Marketing	means opex directed at attracting and retaining end users, managing RSP relationships and evolving the regulated provider's product suite.
<b>Network expenditure</b>		operating expenditure on outsourced physical network maintenance activities, physical network operating costs (such as power and leases) and outsourced costs of network and security operating centres.
	Maintenance	means operating expenditure in relation to the network on reactive work (work to address an issue identified through a fault, alarm or inspection); recoverable work (work for which all or part of the cost can be recovered from another party); and preventative work (routine inspection works, including testing and survey).
	Network operations	means opex in respect of network operations and associated support resources. Network operations includes management of network electronics alarms, technical support and configuration services, and provision of network electronics equipment repair and return.
	Network operating costs	means leases; electricity; security operations and fire protection and building compliance costs.
<b>Support opex</b>		means the sum of operating expenditure relating to asset management, corporate, and technology costs

Opex Level 1 Category	Opex Level 2 Category	Definition
	Asset Management	means activities such as strategic planning, investment management and technology operations for the fibre network and supporting IT systems, and activities such as programme management, contract management, property operations, consent acquisition, network scoping, health, safety and environment, and process optimisation.
	Corporate opex	sundry business operating expenditure for corporate functional units including accommodation, insurance and professional services.
	Technology	means the non-capitalised costs of operating business IT and customer and network IT systems – including licences, support and maintenance
<b>Subcomponents of Opex</b>		
<b>Research and development</b>		<p>in relation to expenditure, means expenditure on assets or opex where the primary driver for the expenditure relates to increasing the efficient provision of electricity lines services through:</p> <p>implementing an original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge or understanding; or</p> <p>applying research findings or other knowledge to a plan or design for the production of new or substantially improved materials, devices, products, processes, systems or services before the start of commercial production or use.</p>
<b>Insurance</b>		means costs that relate to insurance of the regulated provider and its assets