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# Proposed Amendments to Fibre Input Methodologies: draft decision

## Reasons paper

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# Associated documents

| Publication date | Reference | Title |
|---|---|---|
| 13 October 2020 | ISBN 978-1-869458-43-0 | Fibre Input Methodologies – Main final decisions reasons paper – 13 October 2020 |
| 3 November 2020 | ISBN 978-1-869458-45-4 | Fibre input methodologies – Financial loss asset – reasons paper – 3 November |
| 29 November 2021 | ISBN 978-1-869459-55-0 | Fibre Input Methodologies main 2021 amendments: final decisions |
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| 21 December 2021 | [2020] NZCC 21 | Fibre Input Methodologies Determination 2020 (consolidated 21 December 2021) |
| 7 March 2023 | | Amendment and clarification to 2020/21 fibre input methodologies - Notice of intention |

Commerce Commission
Wellington, New Zealand

# Contents

# Chapter 1 Introduction

## Purpose of this paper

1.1 The purpose of this paper is to outline our draft decisions, and invite submissions, on proposed amendments to the Fibre Input Methodologies Determination 2020 [2020] NZCC 21 (Fibre IMs).

## Structure of this paper

1.2 This paper explains:

1.2.1 our framework for considering the scope of input methodology (IM) amendments, and the decision-making framework we have applied in proposing the specific IM amendments set out in this paper (Chapter 2);

1.2.2 the proposed IM amendments that are necessary to the determination of the initial information disclosure (ID) regulated asset bases (RABs) for each of Enable Networks Limited, Northpower Fibre Limited and Tuatahi First Fibre Limited (Chapter 3);

1.2.3 the proposed IM amendments that are necessary to implement draft decisions that provide for a wash-up of Chorus' opening RAB (Chapter 4);

1.2.4 the proposed IM amendments that will allow additional time to determine Chorus' ID weighted average cost of capital (WACC) (Chapter 5);

## Materials published alongside this paper

1.3 To give effect to the amendments discussed in this paper, we have also published a draft IM amendment determination alongside this paper.[1]

## Process we intend to follow

1.4 We issued a Notice of Intention (NOI) advising that we were beginning work to consider certain potential amendments to the Fibre IMs in March 2023.[2] This paper sets out our draft decisions on potential Fibre IM amendments. Our process to finalise IM amendments will be to consider submissions before making a final decision on IM amendments in June 2023. The process for making submissions is outlined below.

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[1] Commerce Commission [Draft] Fibre Input Methodologies Amendment Determination 2023 [2023] NZCC [XX] (29 March 2023)

[2] Commerce Commission - Amendments and clarifications to 2020/21 fibre input methodologies - Notice of Intention, 3 March 2023.

## How you can provide your views

*Scope of submissions*

1.5 The Commission is inviting submissions from interested stakeholders. We will have regard to submissions, including any relevant further information received, when making our final determination.

1.6 We are interested in your views on our draft decisions on each of the proposed amendments.

*Process and timeline for making submissions*

1.7 Submissions on our draft decisions are due by 5pm on 27 April 2023. Cross-submissions are due by 5pm on 12 May 2023.

1.8 Submissions can be made to the Infrastructure Regulation mailbox (infrastructure.regulation@comcom.govt.nz). Please include "Proposed Amendments to Fibre Input Methodologies draft decision" in the subject line.

*Confidentiality*

1.9 The protection of confidential information is something the Commission takes seriously. The process requires you to provide (if necessary) both a confidential and non-confidential/public version of your submission and to clearly identify the confidential and non-confidential/public versions.

1.10 When including commercially sensitive or confidential information in your submission, we offer the following guidance:

1.10.1 Please provide a clearly labelled confidential version and a separate public version. We intend to publish all public versions on our website.

1.10.2 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.

1.11 Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult with the party that provided the information before any disclosure is made.

# Chapter 2 Framework for Fibre IM amendments

**Purpose of this chapter**

2.1 This chapter describes:

2.1.1 our framework for considering the scope of the Fibre IM amendments; and

2.1.2 the decision-making framework we have applied in making these draft Fibre IM amendments.

**Framework for considering the scope of Fibre IM amendments**

*Statutory context*

2.2 The purpose of Fibre IMs, set out in s 174 of the Telecommunications Act 2001, is to promote certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of fibre fixed line access services (FFLAS) under Part 6 of the Act. To that end, Fibre IMs, as far as is reasonably practicable, are required to set out relevant matters in sufficient detail so that each affected regulated provider is reasonably able to estimate the material effects of the methodology on the regulated provider (s 176(2)(a)). In that way, Fibre IMs constrain our evaluative judgements in subsequent regulatory decisions and increase predictability.[3]

2.3 However, some uncertainty remains inevitable.[4] As the Court of Appeal observed (in relation to a judicial review against decisions made in the IMs under Part 4 of the Commerce Act 1986 in 2012) "certainty is a relative rather than an absolute value",[5] and “there is a continuum between complete certainty at one end and complete flexibility at the other”.[6]

2.4 The s 174 purpose is therefore primarily promoted by having the rules, processes and requirements set upfront prior to being applied by regulated providers or ourselves.

2.5 However, as recognised in sections 181 and 182, these rules, processes and requirements may change.

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3 *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph [213].

4 *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph [214].

5 *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph [34].

6 *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph [60].

2.6 The power to amend a Fibre IM must be used to promote the policy and objectives of the Act as ascertained by reading it as a whole. It is clear that Parliament saw the promotion of certainty as being important to the achievement of the purposes of price quality (PQ) and ID regulation. This is reflected in s 174 in relation to the purpose of IMs, as well as in other aspects of the regime.[7]

2.7 Accordingly, we are cautious about making amendments to Fibre IMs given the importance of certainty and predictability in the regime. While this is to an extent inherent in s 162 (for example providing regulated providers with incentives to invest in accordance with s 162(a) requires recognition of the role that predictability plays), it is given extra force by s 174.

2.8 There will often be a tension between making changes to improve the regime and better promote the s 162 purpose (and, where we consider it relevant, the s 166(2)(b) purpose)) on the one hand, and certainty on the other.

2.9 While we will have regard to the s 174 purpose (and the other indications of the importance of promoting certainty), ultimately under s 166(2), we must nevertheless make recommendations, determinations and decisions that we consider best give, or are likely to best give, effect:

2.9.1 to the purpose of s 162, as set out in s 166(2)(a); and

2.9.2 to the extent that we consider it relevant to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services (promotion of workable competition), as set out in s 166(2)(b).

2.10 Section 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6 of the Act. The other purpose statements within Part 6 are relevant matters, but they should be applied consistently with s 166(2).[8]

2.11 When making our decisions we must only give effect to these other purposes to the extent that doing so does not detract from our overriding obligation to promote the purposes set out in s 166(2).

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[7] *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraphs [213]-[221].

[8] We note that the High Court in *Wellington International Airport Ltd & Ors v Commerce Commission* considered that the purpose of IMs, set out in s 52R of the Commerce Act 1986, is "conceptually subordinate" to the purpose of Part 4 of the Commerce Act 1986 as set out in s 52A when applying the "materially better" test. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, paragraph [165].

*Powers to amend the Fibre IMs*

2.12 We may amend the Fibre IMs at any time, under s 181 of the Act. Where an amendment is material, we must follow the process in s 179 that we were required to follow when first setting the Fibre IMs.

*Amendments inside and outside the Fibre IM review cycle*

2.13 All Fibre IMs must be reviewed at least once every seven years, as mandated by s 182. This process is key to delivering on the s 174 certainty purpose of Fibre IMs, while at the same time allowing the regime to mature and to evolve in response to changing circumstances.

2.14 Given the certainty purpose of the Fibre IMs and the scheme set out in the Act to promote this purpose, we must carefully assess what amendments are appropriate to consider outside the Fibre IM review cycle. Additionally, the predictability the Fibre IMs provide is key to promoting the s 162 purpose (as required under s 166(2)(a)) and, in particular, incentives to invest.

2.15 On the other hand, it is important that the IMs are fit-for-purpose for decisions with long-term effects, such as the establishment of the initial ID RAB.

*Types of amendments outside the Fibre IM review*

2.16 In the past, the need to balance these competing considerations has led us to focus on two sorts of amendments outside the Fibre IM review:

2.16.1 those that support incremental improvements to regulatory determinations, such as PQ paths and ID regulation; and

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

2.17 Conversely, it will not generally be appropriate to consider 'fundamental' changes outside the Fibre IM review cycle. Fundamental IMs are generally those that define the fundamental building blocks used to set PQ paths (listed in s 176(1)(a)), and that are central to defining the balance of risk and benefits between regulated providers and end-users.

2.18 This distinction is not absolute: we can and have reconsidered fundamental building blocks in relative isolation in the past. However, there needs to be a compelling and urgent rationale for doing so.[9]

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

**Decision-making framework we have applied**

*IM amendment decision-making framework*

2.19 Consistent with the decision-making framework in Part 4 IM amendments, we have considered each Fibre IM amendment by asking the questions:

2.19.1 does it best give (or is it likely to best give) effect to the Part 6 purpose in s 162 of the Act, and workable competition (where relevant) as referred to in s 166(2)(b), more effectively than the current Fibre IM;

2.19.2 does it promote the IM purpose in s 174 of the Act more effectively (without detrimentally affecting our obligation under s 166(2)); or

2.19.3 does it significantly reduce compliance costs, other regulatory costs or complexity without detrimentally affecting our obligation under s 166(2) of the Act.

2.20 When asking each of the questions in paragraph 2.19 for each Fibre IM amendment, we have had regard to the impacts on the IM purpose in s 174 and considered whether the amendment overall:

2.20.1 promotes the IM purpose in s 174 more effectively than the current Fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6; or

2.20.2 does not promote the IM purpose in s 174 more effectively than the current Fibre IM by providing less certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation of FFLAS under Part 6.

2.21 As discussed at paragraphs 2.5 to 2.11, while the other purpose statements in Part 6 of the Act (including s 174) are relevant matters, s 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6. Therefore, we may make a Fibre IM amendment that does not promote the IM purpose in s 174 more effectively than the current Fibre IM where we consider that the amendment nevertheless best gives, or is likely to best give, effect to the s 166(2) purposes.

2.22 We refer to the outcomes specified in paragraph 2.19 and 2.20 as the 'IM amendments framework outcomes' in this paper.

# Chapter 3 Proposed IM amendments for LFC ID RABs

## Purpose of this chapter

3.1 This chapter sets out the proposed IM amendments that are necessary to implement the proposed approach to determining initial ID RABs for each of Enable Networks Limited, Northpower Fibre Limited and Tuatahi First Fibre Limited. These proposed IM amendments were identified as potential IM amendments in the March NOI.

3.2 For each of our proposed changes, we explain:

3.2.1 the current IM requirement; and

3.2.2 our proposed amendment, and how the proposed amendment is likely to promote an IM amendments framework outcome.

## Summary of proposed IM amendments

3.3 We are determining the initial ID RABs for Enable Networks Limited (Enable), Northpower Fibre Limited (Northpower) and Tuatahi First Fibre Limited (Tuatahi) under the Fibre IMs and s 177 of the Act.

3.4 As part of the process to determine the initial ID RABs, we have identified amendments to the Fibre IMs that may better promote the outcomes in s 162 of the Act, promote the certainty purpose in s 174 more effectively, or reduce compliance or other regulatory costs or complexity.

3.5 To facilitate our determination of the draft initial ID RABs for each of the three LFCs, we are proposing the following amendments to the Fibre IMs:

3.5.1 an amendment to the Fibre IMs to enable the benefits of Crown financing received prior to 1 December 2011 but enjoyed during the financial loss period to be included in the calculation of the financial loss asset; and

3.5.2 an amendment to clause B1.1.2(9)(c) of Schedule B of the Fibre IMs so that the provision references the calculation of the UFB opening asset value for all regulated fibre service providers, rather than just Chorus.

## Proposed amendment to the calculation of the benefit of Crown financing

*Current IM requirement*

3.6 The current specification of the calculation of the 'present value benefit of Crown financing' limits the calculation of benefits to those associated with Crown financing drawn down during the financial loss period.[10]

3.7 Therefore, the benefit received from any Crown financing drawn down prior to the beginning of the financial loss period, that is 1 December 2011, is not taken into account when calculating the financial loss asset.

*Proposed amendment and reasons*

3.8 We propose allowing the benefit of any Crown financing received prior to the commencement of the financial loss period that has not been repaid to be included in the calculation of the present value benefit of Crown financing during the financial loss period.[11] This amendment will better promote the s 162 purpose, as it will ensure that costs involved in the calculation of the financial loss asset reflect the actual costs incurred by the LFCs.

3.9 As Crown financing received prior to 1 December 2011 will have an ongoing benefit that extends beyond 1 December 2011 until the Crown financing is repaid (ie avoiding the need for and cost of alternative financing), the benefit relating to each period during the financial loss period should be recognised. This is the equivalent treatment to that of pre-1 December 2011 assets.

3.10 We propose taking any opening balance for Crown financing at 1 December 2011 and adjusting it to account for the time value of money so that the Crown financing compounding factor for financial loss year 2012 can be applied to it.[12] This adjusted opening balance for Crown financing is added to the 'net drawdowns' of Crown financing in financial loss year 2012. The resulting summed amount is then used to calculate the 'present value of annual benefits' of Crown financing for financial loss year 2012 for the purpose of B1.1.2(6).

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[10] Fibre input methodologies determination 2020 [2020] NZCC 21, Clause B1.1.2(2).

[11] We observe that it would defeat the purpose of the Crown financing for it to have been drawn down and then repaid in a matter of months prior to 1 December 2011, so we do not expect any repayments.

[12] The Crown financing compounding factor for financial loss year 2012 is based on the Crown financing being received in the middle of the financial loss year 2012, or 17 March 2012. Any opening balance of Crown financing at 1 December 2012 must therefore be adjusted to account for the time value of money between 1 December 2011 and 17 March 2012.

3.11 The adjustment to the opening balance to allow it to be added to the net Crown financing drawn down in financial loss year 2012 utilises the existing time factors defined in the Fibre IMs. These are the 'start date compounding factor' and the 'mid-year compounding factor for the financial loss year 2012' defined in B1.1.2(7).

3.12 For the calculation of the 'present value of annual benefits' of Crown financing for financial loss year 2012, the definition of item B in the formula to be applied in B1.1.2(6)[13], is now defined in B1.1.2(6)(b)(i), which amends B for financial loss year 2012 to be:

*Opening balance for Crown financing at 1 December 2011 x (Start date compounding factor) ÷ (Mid-year compounding factor for financial loss year 2012) + Net Crown financing drawn down in financial loss year 2012*

3.13 The definition of B for the remaining financial loss years, now B1.1.2(6)(b)(ii), will not change.

3.14 The benefit the regulated provider receives from any opening balance of Crown financing is then recognised for the financial loss period. We do not recognise any benefit accruing to the regulated provider from this Crown financing that is enjoyed prior to 1 December 2011.

3.15 The opening Crown financing balance will be equal to the sum of Crown financing drawn down prior to 1 December 2011 in the IM.

## Proposed amendment to the definition of the UFB opening asset value

*Current IM requirement*

3.16 The current specification of the UFB opening asset value in B1.1.2(9)(c) of Schedule B defines it as a UFB asset owned by Chorus before 1 December 2011. This does not specifically allow for other LFCs to have an opening balance of UFB assets at 1 December 2011.

*Proposed amendment and reasons*

3.17 We propose amending clause B1.1.2(9)(c) of Schedule B to remove the specific reference to "a UFB asset owned by Chorus". It will be replaced by "a UFB asset owned by a regulated provider".

[13] That is the factor B in the formula "*A* × *B* × benefit of Crown financing compounding factor for the financial loss year in question".

3.18 This amendment is necessary to reflect the policy decision we made when originally determining the Fibre IMs for the financial loss asset. In our reasons papers for that determination, we concluded that "under s 177, the costs of assets that were constructed or acquired prior to 1 December 2011 (pre-2011 assets) which have been employed during the pre-implementation period to provide UFB FFLAS are eligible to be included in the calculation of the FLA".[14]

3.19 The above reasoning applied to both Chorus and the other LFCs. As such, the amendment is required to ensure the Fibre IMs reflect the policy decision and also to ensure consistent treatment between Chorus and the other LFCs.

3.20 We also note that B1.1.3(1) of Schedule B contemplates that the other LFCs will have a UFB opening asset value as at 1 December 2011, as it provides a method to value assets commissioned before 1 December 2011:

> Subject to subclause (2) and (3), 'value of commissioned asset', in relation to a UFB asset with a commissioning date prior to 1 December 2011 or in the financial loss period (including a UFB asset in respect of which capital contributions were received, or a vested asset), means:
>
> (a) the cost as of the commissioning date:
>
> (i) incurred by a regulated provider under GAAP in constructing or acquiring the UFB asset, net of capital contributions; and
>
> (ii) if Chorus owned the UFB asset before 1 December 2011, recorded by Chorus for the UFB asset in its published general purpose financial statements as of 1 December 2011; and
>
> (b) adjusting:
>
> (i) in respect of a UFB asset commissioned prior to 1 December 2011, that cost for accumulated depreciation and impairment losses (if any) recognised by the regulated provider (ignoring any accounting adjustment for Crown financing), as at the UFB FFLAS commissioning date, under GAAP; or
>
> (ii) in respect of a UFB asset commissioned in the financial loss period, adjusting that cost for accumulated depreciation and impairment losses (if any) recognised by the regulated provider (ignoring any accounting adjustment for Crown financing), as at the UFB FFLAS commissioning date, under GAAP.

3.21 This amendment will ensure that any LFC with a UFB opening asset value will have that opening value recognised appropriately in the calculation of the financial loss asset. This is aligned with the calculation of Chorus' financial loss asset.

[14] Commerce Commission "Fibre Input Methodologies – Financial loss asset final decision – reasons paper" (3 November 2020), paragraph X16.

# Chapter 4 Proposed amendment to extend the opening RAB wash-up

## Purpose of this chapter

4.1 This chapter sets out our proposed IM amendment to include a wash-up for the opening RAB value of Chorus at the start of each regulatory period. These proposed IM amendments were identified as potential IM amendments in the March NOI.

4.2 This chapter explains:

4.2.1 the current IM requirement; and

4.2.2 our proposed amendment, and how the proposed amendment is likely to promote an IM amendments framework outcome.

## Summary of proposed amendment

4.3 We propose extending the scope of the RAB wash-up provision in clause 3.1.1(11)(a) of the Fibre IMs to cover the opening RAB for all future regulatory periods, rather than just the initial RAB at the start of the first regulatory period.

## Reasons for proposing this amendment

### Scope considerations

*Why make this amendment now*

4.4 While the amendment relates to the wash-up for the second and future regulatory periods, making this amendment (or not making it) will affect Chorus' incentives to invest during the final year of the current regulatory period. As a matter of good regulatory practice and to provide certainty, amendments to the IMs should generally be made in advance of the conduct to which they relate.

*Considering this amendment outside the IM review*

4.5 It is appropriate to consider this amendment now because:

4.5.1 it supports an incremental improvement to the PQ path, by ensuring Chorus has the right incentives to invest in the final year of each regulatory period, and by maintaining ex-ante FCM for a fundamental building block; and

4.5.2 it enhances certainty, by resolving an issue with the current Fibre IMs that a stakeholder had previously identified.

4.6 We consider this is not a fundamental change to the Fibre IMs: it simply extends an existing approach into future periods, so does not need to be considered as part of a review of the overall regulatory settings in the IM review.

**Amendment considerations**

*Problem definition*

4.7 The revenue path for each regulatory period needs to be set in advance of the regulatory period starting. This creates a "gap" year (or years) where forecast values must be used. In some cases, differences between forecasts and actual values can have a material impact on allowable revenue. Where these differences are identified in advance, we need to consider whether a wash-up would best promote the s 166(2) outcomes.

4.8 Using PQP2 as an example:

4.8.1 the regulatory period starts on 1 January 2025;

4.8.2 the revenue path will need to be set at some point in 2024;

4.8.3 data from 2023 (or potentially 2022) will be used as the "base year"; and

4.8.4 2024 (and potentially 2023) will be a "gap year" where forecast values must be used.

*Stakeholder views on problem definition*

4.9 In a submission on IM amendments made prior to PQP1, Chorus proposed the extension of the initial RAB wash-up to subsequent periods:[15]

> The primary purpose of the wash-up between the transitional and final initial PQ RAB is to ensure there is a correct opening RAB value for PQP1. There is a similar wash-up (recoverable cost) for the energy firms regulated under Part 4 with respect to the value of commissioned assets forecast to be included in the opening RAB for the forthcoming regulatory period. We consider that this wash-up should also apply to Chorus such that the opening RAB for each regulatory period is corrected for this variance.

*Current requirements*

4.10 The current Fibre IMs require a wash-up for the difference between the forecast and actual value of the initial RAB.[16] This wash-up applies only for PQP1.[17]

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[15] Chorus "Amendments to the Input Methodologies for Fibre - August 2021 amendments" (24 June 2021), paragraph 33.

[16] Fibre input methodologies determination 2020 [2020] NZCC 21, Clause 3.1.1(11)(a).

[17] Fibre input methodologies determination 2020 [2020] NZCC 21, Clause 3.1.1(12).

*Promotion of the purpose of Part 6*

4.11 As with the existing initial RAB wash-up, this amendment would better promote incentives to invest (consistent with s 162(a) of the Act), as the regulated providers will have a better prospect of recovering the actual value of their investments over time.

4.12 Conversely, it will also help avoid excessive profits where expenditure on assets for the gap year is over-forecast (consistent with s 162(d) of the Act).

4.13 The situation for forecasts for years prior to the PQ reset is different for the years after the reset. For the years during the PQ period, actuals differing from forecasts is what creates an incentive for suppliers to improve efficiencies (consistent with s 162(b)). However, absent a wash-up like the one we have proposed, there is a risk that incentives to reduce expenditure in the final year of the regulatory period are unduly magnified because of the impact lower than forecast expenditure would have through-out PQP2.

4.14 Similar provisions exist for electricity distribution businesses under the Part 4 IMs.[18]

*Stakeholder views on promoting the purpose of Part 6*

4.15 When submitting on the pre-PQP1 IM amendments, Chorus cited improved incentives to invest as a reason for making an amendment like this:[19]

> This [amendment] will promote investment incentives, and hence the long-term benefit of end users, by ensuring that Chorus is able to recover the actual cost of its new investments in future periods and minimises excessive profits by ensuring that prices reflect actual opening RAB values for these investments over time.

**Implementation**

4.16 We have proposed implementing this change by:

4.16.1 amending clause 3.1.1(11)(a) to wash-up for the difference in the value of the "opening RAB" (rather than "initial RAB"); and

4.16.2 removing the limitation in clause 3.1.1(12) that only applied this wash-up to the first period.

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[18] Commerce Commission Electricity Distribution Services Input Methodologies [2012] NZCC 26 (consolidated as of 20 May 2020), clause 3.1.3(1)(p) and (8);

[19] Chorus "Amendments to the Input Methodologies for Fibre - August 2021 amendments" (24 June 2021), paragraph 34.

# Chapter 5 Proposed amendment for timing of Chorus ID WACC

## Purpose of this chapter

5.1 This chapter sets out the proposed Fibre IM amendments that will allow additional time to make weighted average cost of capital (WACC) determinations, to avoid the deadline for Chorus' ID WACC determination falling at the end of January. The proposed change seeks to avoid issues due to a lack of a quorum for decision making over the extended holiday period.

5.2 For these proposed changes, we explain:

5.2.1 the current IM requirements; and

5.2.2 our proposed amendments.

## Summary of proposed amendments

5.3 We propose to amend the Fibre IMs in order to determine Chorus' ID WACC within two months of the start of Chorus' disclosure year, which commences on 1 January. The current Fibre IMs require determination of the WACC within one month of the start of each regulated providers' disclosure year.

5.4 Due to the timing of the end-of-year holiday break, this change would reduce the possibility of a quorum not being available to approve the Chorus ID-specific WACC determination by 31 January, which is the current deadline.

## Proposed amendment to allow additional time to make Chorus' ID WACC determinations

*Current IM requirement*

5.5 Under the current Fibre IMs we are required to determine the following cost of capital estimates for each disclosure year, within one month of the start of the disclosure year in question:

5.5.1 mid-point estimate of vanilla WACC, under clauses 2.4.1(1)(b) and 2.4.5(1)(b), determined in respect of the regulatory period term commencing on the first day of the disclosure year in question; and

5.5.2 mid-point estimate of post-tax WACC, under clauses 2.4.1(2)(b) and 2.4.5(1)(b), determined in respect of the regulatory period term commencing on the first day of the disclosure year in question; and

5.5.3 a risk-free rate, under clause 2.4.3(1)(b), determined in respect of each disclosure year; and

5.5.4 amount for the average debt premium, under clause 2.4.4(1)(b), determined in respect of each disclosure year.

5.6 Under clause 2.4.9(b) of the Fibre IMs we are required to publish all determinations and estimates that we are required to make under clauses 2.4.1-2.4.8 no later than one month after having made them.

5.7 For Chorus ID WACC determinations, the clauses above require determination in respect of the regulatory period commencing 1 January, by 31 January each year.

5.8 Under section 10(1) of the Telecommunications Act 2001, all determinations in respect of fibre fixed line services under Part 6 must be made by the Telecommunications Commissioner and no fewer than two other members of the Commission. The Commission in this context is the Fibre Regulation Division constituted under s 16 of the Commerce Act 1986.

*Proposed amendment and reasons*

5.9 We propose to amend the IM clauses, listed in paragraphs 5.5.1 to 5.5.4, to allow the WACC determinations made for Chorus ID to be made within two months of the start of Chorus' disclosure year, rather than one month. The proposed change seeks to avoid potential issues that might arise if there were to be a lack of a quorum for decision making.

5.10 Amending the Fibre IMs to extend the date by which we must make the WACC determination for Chorus ID to the last day of February would reduce the possibility of a quorum not being available to approve the Chorus ID-specific WACC determination.

5.11 Under the current IM clause 2.4.9(1)(b), we are required to publish the Chorus ID WACC determined on 31 January no later than one month after having made the determination (ie by the last day of February).

5.12 Note that, under the proposed amendment to the IM, depending on actual approval date, we will have up to 31 March to publish the Chorus ID WACC determination.

5.13 The proposed amendments to the Fibre IM clauses are as follows:

5.13.1 Each of the clauses 2.4.1(1)(b), 2.4.5(1)(b), 2.4.1(2)(b), 2.4.5(1)(b), 2.4.3(1)(b) and 2.4.4(1)(b) where the following wording specifies the time frame for each of the estimates listed in paragraphs 5.5.1 to 5.5.4 of this chapter:

"subject to paragraph (c), within 1 month of the start of the disclosure year in question;"

5.14 We propose to update the wording of the clauses with the following:

"subject to paragraph (c), within 1 month of the start of the disclosure year in question for regulated providers other than regulated providers whose disclosure year starts on 1 January, and in respect of regulated providers whose disclosure year starts on 1 January, within 2 months of the start of the disclosure year in question;".