

Fibre Information Disclosures Draft Decisions

Reasons Paper

Date of publication: 27 May 2021



Associated documents

Publication date	Reference	Title
15 Sep 2020	ISBN 978-1-869458-38-6	Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period
13 Oct 2020	ISBN 978-1-869458-43-0	Fibre Input Methodologies - Main final decisions reasons paper
13 Oct 2020	ISSN 1178-2560	Fibre Input Methodologies Determination 2020
3 Nov 2020	ISBN 978-1-869458-45-4	Fibre Input Methodologies - Financial loss asset final decision – reasons paper
3 Nov 2020	ISSN 1178-2560	Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020
28 Jan 2021	ISBN 978-1-869458-70-6	Promoting competition in telecommunications markets as part of fibre information disclosure (ID) and price-quality (PQ) regulation
4 Feb 2021	ISBN 978-1-869458-70-6	Promoting competition in telecommunications markets as part of fibre information disclosure (ID) and price-quality (PQ) regulation – survey questions
26 Feb 2021		Fibre PQID - Quality workshop presentation – 26 February 2021
26 Feb 2021	3695339.1	Fibre PQID - Quality workshop Questions and Answers – 26 February 2021
30 April 2021	ISBN 978-1-869458-86-7	Determining Chorus' first fibre price-quality path: Process update paper April 2021

Publication date	Reference	Title
29 April 2021	ISBN 978-1-869458-87-4	Notice of Intention for potential amendments to IMs for Fibre in August 2021
30 April 2021	ISBN 978-1-869458-90-4	Notice of Intention for potential amendments to IMs for Fibre in November 2021
27 May 2021	ISBN 978-1-869458-91-1	[Draft] Fibre Information Disclosure Determination 2021 [2021] NZCC[XX]
27 May 2021	ISBN 978-1-869458-96-6	Proposed Amendments to Fibre Input Methodologies: draft decisions, Reasons paper
27 May 2021	ISBN 978-1-869458-97-3	[Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC[XX]
27 May 2021	ISBN 978-1-869458-99-7	Chorus' price-quality path from 1 January 2022 – Draft decisions, Reasons paper.
27 May 2021	ISBN 978-1-869458-94-2	[Draft] Fibre Price-Quality Path Determination 2021 [2021] NZCC[XX]

Commerce Commission
Wellington, New Zealand

Foreword

Tēnā koutou,

From 1 January 2022, Chorus, Enable, Northpower and Ultrafast (the local fibre companies) will be required to publicly disclose information about their performance in delivering fibre broadband services.

Information disclosure has proved to be a powerful tool in the regulation of other sectors, such as electricity and gas, where similar requirements apply.

Having successfully set the input methodologies for fibre broadband services last year, which provide the upfront framework of rules applying to local fibre companies, we are now using these input methodologies to determine detailed information disclosure requirements for regulated providers.

This paper sets out the reasons for our draft decisions on information disclosure and is published alongside the draft determination which will give legal effect to our decisions.

We have received helpful input from stakeholders on what information is important to them and have sought to reflect this in the draft decisions set out in this document. We have also sought to minimise compliance costs and complexity for the local fibre companies by drawing on relevant reporting and information disclosure requirements under the UFB contracts.

We have proposed a package of quantitative and qualitative information that is intended to:

- enable stakeholders to monitor regulated providers' performance and assess whether regulated providers are acting in a way that benefits consumers in the long-term; and
- incentivise regulated providers to innovate, invest and improve their efficiency so that consumers receive high quality and affordable broadband services, as would occur in a competitive market.

We expect to refine these requirements over time as the performance of regulated providers is better understood, and to capture changes in a dynamic and ever-evolving telecommunications market.

We are grateful for the engagement we have received from stakeholders on these important issues and value your ongoing input to ensure a successful transition into the new regime.

We look forward to continuing our work with you as we move forwards to our final decisions in November 2021.

Ngā mihi nui.

Tristan Gilbertson
Telecommunications Commissioner

Table of Contents

Glossary of Terms and Abbreviations	6
Executive summary	8
Chapter 1 Introduction	12
Chapter 2 Regulatory Framework	21
Chapter 3 Overview of ID requirements	50
Chapter 4 Financial Information for the Disclosure Year	60
Chapter 5 Pricing and Contract Disclosures	90
Chapter 6 Asset Management and Network Characteristics	114
Chapter 7 Quality metrics and performance measures	133
Chapter 8 Implementation of the ID Requirements	164
Chapter 9 Disclosures under s 187(1)(c) to assess compliance	169
Attachment A How the ROI calculation works	170
Attachment B Summary of timing, and audit and certification requirements	175
Attachment C Expenditure Categories	179

Glossary of Terms and Abbreviations

Term/Abbreviation	Definition
AMP	Asset Management Plan
Capex	Capital Expenditure
CIP	Crown Infrastructure Partners
DFAS	Direct fibre access service
FCM	Financial capital maintenance
FFLAS	Fibre fixed line access services
FLA	Financial loss asset
GAAP	Generally accepted accounting practice
ID	Information disclosure
IMs	Input methodologies
IRR	Internal rate of return
ISPANZ	Internet Service Providers Association of New Zealand
LFC	Local fibre company
Non-FFLAS	Not FFLAS
ONT	Optical network terminal
Opex	Operating Expenditure
PQ	Price-quality
R&D	Research and development
RAB	Regulatory asset base
ROI	Return on Investment
RSP	Retail service provider
TCSD	Term credit spread differential

Term/Abbreviation	Definition
UFB	Ultrafast broadband
WACC	Weighted average cost of capital

Executive summary

Request for feedback

- X1 This paper seeks feedback on our draft information disclosure (ID) requirements for regulated fibre service providers (regulated providers) who are subject to ID regulation under the Telecommunications Act 2001 (the Act).¹
- X2 We invite submissions on the matters discussed in this paper or on any other issues related to ID regulation by 5pm on **8 July 2021** and cross submissions by 5pm on **22 July 2021**. Submissions can be made through the submission portal available on our website at:

<https://comcom.govt.nz/file-upload-form-folder/file-upload-form>

Regulatory context

- X3 From 1 January 2022 (the implementation date), the Act specifies that we must determine ID requirements to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 is being met.²
- X4 Each regulated provider will be required to disclose information on its performance delivering fibre fixed line services (**FFLAS**). From 1 January 2022, ID regulation will apply to Chorus and the other local fibre companies (**LFCs**) – Enable Networks (Enable), Northpower Fibre Limited (Northpower), and Ultrafast Fibre Limited (Ultrafast).
- X5 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:
- X5.1 have incentives to innovate and to invest, including in replacement, upgraded, and new assets;
 - X5.2 have incentives to improve efficiency and provide services at a quality that reflects end-user demands;

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

² Section 186.

- X5.3 allow end-users to share the benefits of efficiency gains in the supply of FFLAS, including through lower prices; and
- X5.4 are limited in their ability to extract excessive profits.
- X6 'Interested persons' includes a wide range of stakeholders who are or may be affected by the way in which FFLAS are provided.

Draft ID requirements

- X7 These ID requirements supersede the existing Commission only ID requirements for the regulated providers under subpart 3 of Part 4AA.
- X8 Different types of information will be disclosed at different times of the year, depending on the nature of the information. Attachment B of this paper sets out the timing of each disclosure.
- X9 There is no fixed time period during which this ID determination applies, and ID requirements may be amended after they have been determined.³
- X10 These draft ID requirements have been developed following initial input from regulated providers and other interested parties. We considered submissions on our proposed process and approach paper as well as our competition survey. We also held a technical workshop on quality performance measures where stakeholders were able to discuss and seek clarification on the proposed requirements for quality ID regulation.⁴ We thank all those who participated in the process.
- X11 We expect to refine the ID requirements over time as the performance of regulated providers, particularly regarding asset management, is better understood and to capture industry changes.
- X12 We have proposed the minimum package of information that we consider interested persons will need to understand whether the purpose of Part 6 is being met for regulated providers. This package includes information on:
- X12.1 historic and forecast financial performance, including profitability and return on investment (ROI);
- X12.2 historic and forecast operational expenditure (opex) and capital expenditure (capex);

³ Section 173.

⁴ Commerce Commission "[Fibre PQID – Quality workshop presentation](#)" (26 February 2021).

- X12.3 pricing and contracts;
- X12.4 asset management and capability; and
- X12.5 quality outcomes (eg, availability and performance measures of the fibre network).

Standardised and robust information

- X13 Standardised information allows interested persons to assess disclosed information in a consistent manner across regulated providers and over time. We have developed Schedules for the disclosure of quantitative information where we consider it will be useful.
- X14 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 before it is disclosed to provide that assurance.

Balancing the benefits of ID against compliance costs

- X15 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.
- X16 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 benefits from the greater transparency more comprehensive and detailed ID requirements would provide, against the costs of complying with the requirements. We:
 - X16.1 considered regulated providers' existing practices and capability, including the scope and detail of disclosures made under the existing ID requirements for LFCs under s 156AU;
 - X16.2 require reporting based on generally accepted accounting practice (GAAP), using existing systems and processes for general purpose financial reporting, where it is consistent with the purpose of ID;
 - X16.3 require disaggregated information only where necessary; and
 - X16.4 have limited the draft ID requirements where we consider the benefit to interested persons does not justify the compliance costs.

- X17 Regulated providers that are subject to ID regulation must from 1 January 2022:⁵
- X17.1 publicly disclose information in accordance with the ID requirements set out in our ID determination;
 - X17.2 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
 - X17.3 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.
- X18 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.⁶
- X19 If a regulated provider is subject to ID regulation, we may monitor and analyse all information disclosed in accordance with our ID requirements.⁷

⁵ Section 187(1)(a)-(c).

⁶ Section 187(2)(b).

⁷ Section 187(2)(a).

Chapter 1 Introduction

Overview of ID regulation

Key features of ID regulation

- Regulations under s 226 provide: all Chorus' and other LFCs' FFLAS will be subject to information disclosure (ID) 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 (regulated 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 seeks feedback on our draft ID requirements for regulated providers who are subject to ID regulation under regulations made under s 226 of the Act.
- 1.2 This paper also notes updates to Input Methodologies (IMs) that may be appropriate due to our work on ID in the relevant technical chapters. Separate consultation will be undertaken on proposals to amend the IMs⁸.

⁸ Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions, Reasons paper" (27 May 2021). Where we refer to applying IMs in the remainder of this document, we are referring to both the IM in Commerce Commission [Fibre Input Methodologies Determination 2020](#) [2020] NZCC 21 and Commerce Commission [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24, the original IM, and the proposed IM amendment. As noted in the IM Amendments reasons paper, whether or not we make the proposed IM amendments will depend on the outcome of that consultation process taking account of submitters views.

- 1.3 We propose these ID requirements after considering feedback on our proposed process and approach for the first regulatory period, consultation around the IMs, a quality workshop with regulated providers and other industry stakeholders, and submissions on our competition survey.⁹
- 1.4 There is no fixed time period during which this ID determination applies. ID requirements may be amended after they have been determined and we expect to refine the ID requirements over time.¹⁰
- 1.5 We expect to refine the ID requirements over time as the performance of regulated providers, particularly regarding asset management, is better understood and to capture industry changes. For example, our draft decisions 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.
- 1.6 We invite submissions in response to this paper by 5pm on **8 July 2021**. You can find details on how to submit at the end of this chapter.

How we have structured this paper

- 1.7 This paper is structured as follows:
- 1.7.1 Chapter 2 sets out our understanding of the regulatory framework and explains how we have applied this in reaching our decisions on the draft ID requirements.
- 1.7.2 Chapter 3 contains a high-level view of the information we require to be disclosed and other key overarching decisions. ID requirements are broken down and discussed in detail in Chapters 4 to 7.
- 1.7.3 Chapter 4 provides the reasons behind our decisions on draft ID requirements for financial information for the disclosure year, including profitability and the value of the regulatory asset base (RAB).

⁹ This material is available on our website at: Commerce Commission - [Fibre price-quality path and information disclosure](#) (comcom.govt.nz)

¹⁰ Section 173.

- 1.7.4 Chapter 5 provides the reasons behind our decisions on draft ID requirements for pricing and contract disclosures.
- 1.7.5 Chapter 6 provides the reasons behind our decision on draft ID requirements for information on asset management and network characteristics.
- 1.7.6 Chapter 7 provides the reasons behind our decisions on draft ID requirements for quality measures and standards.
- 1.7.7 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.
- 1.7.8 Chapter 9 sets out disclosures needed to assess compliance with ID requirements.
- 1.7.9 Attachments to the paper contain additional detail on some matters and include supporting information (eg, expenditure categories and ROI calculations).

Materials we have published alongside this paper

- 1.8 To give effect to the amendments discussed in this paper, we have also today published a draft ID determination.¹¹
- 1.9 Alongside this paper, we are publishing our draft decisions and draft determinations for the PQ Path¹² and IM amendments.¹³

¹¹ Commerce Commission “[Draft] Fibre ID Determination 2021” (27 May 2021).

¹² Commerce Commission “Chorus’ price-quality path from 1 January 2022 – Draft decisions, Reasons paper” (27 May 2021); Commerce Commission “Fibre price-quality determination 2021” (27 May 2021).

¹³ Commerce Commission “Proposed Amendments to Fibre Input Methodologies: draft decisions, Reasons paper” (27 May 2021); Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021).

Background and Approach

Background

- 1.10 From 1 January 2022, regulated providers will be subject to new forms of regulation under Part 6 of the Act.¹⁴
- 1.11 The Commerce Commission is responsible for determining these regulations, which are:
- 1.11.1 ID regulation; and
 - 1.11.2 Price-quality (PQ) regulation.
- 1.12 The Governor-General, on the recommendation of the Minister, has made regulations under s 226 prescribing the persons who provide FFLAS as being subject to ID and PQ regulation. As a result:
- 1.12.1 Chorus Limited (Chorus), Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited¹⁵ and UltraFast Limited (other LFCs) are regulated providers, and all of their FFLAS are subject to ID regulation; and
 - 1.12.2 Chorus is a regulated provider, and its FFLAS are subject to PQ regulation, except FFLAS in a geographical area where another regulated provider has a fibre network as part of the ultrafast broadband (UFB) initiative.
- 1.13 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.
- 1.14 We indicated in Fibre input methodologies: Main final decisions reasons paper (IMs reasons paper) that we will reach a final view on the individual services that come within the definition of FFLAS when we make our PQ and ID determinations.¹⁶

¹⁴ Section 168.

¹⁵ A "[Public Notice of Amalgamation Proposal](#)", notice number 2021-ot1164 was published at gazette.govt.nz (29 March 2021). This proposes the amalgamation of Northpower Fibre Limited and Northpower LFC2 Limited into Northpower Fibre Limited.

¹⁶ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraphs 2.107 and 2.139.

- 1.15 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 IMs reasons paper (Voice services, Bitstream PON services, Unbundled PON services, Point-to-point services, Transport services, Co-location and interconnection services, Connection services).¹⁷ This list is included in attachment I of our Chorus' price quality path reasons paper.¹⁸
- 1.16 We note that some of the services are allocated wholly by Chorus to FFLAS and some are allocated in part. For example, questions remain about the level that CRT, a transport service, is allocated to FFLAS. However, since the other regulated providers all sell telecommunications services that are based on fibre only networks, our starting assumption is that all telecommunications services that they provide are likely to be FFLAS.
- 1.17 We are consulting on the completeness, accuracy and categorisation of Chorus' services and will make draft decisions on these matters in August a part of our process to set Chorus' PQ path. However, we also invite views on these matters for purposes of ID regulation. While we will provide further detail on the services we consider to be FFLAS when we publish our final ID decisions we currently do not plan to include a list of services in the determination.
- 1.18 In addition, under s 189(2) regulated providers subject to ID regulation may also be required to disclose consolidated information that includes information about services that are not FFLAS (non-FFLAS) to the extent necessary to enable us to monitor compliance with the ID requirements for FFLAS.

Approach

- 1.19 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).¹⁹

¹⁷ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 2.108.

¹⁸ Commerce Commission "Chorus' price-quality path from 1 January 2022 – Draft decisions, Reasons paper" (27 May 2021).

¹⁹ Commerce Commission "[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)" (15 September 2020).

- 1.20 Where interested parties offered feedback on our overall approach, they were generally supportive:
- 1.20.1 2degrees was broadly comfortable with the process and approach we outlined in the consultation paper for setting of ID requirements.²⁰
 - 1.20.2 Vocus considered that our proposed process and approach for the PQP1 determination is principally sound.²¹
 - 1.20.3 The Internet Service Providers Association of New Zealand (ISPANZ) agreed with the proposed approach to determining ID requirements.²²
- 1.21 Where interested parties offered feedback on key aspects of our approach, these are detailed in the relevant topic areas below.

Timing for Determination of ID Requirements

- 1.22 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.²³ We expect to refine the ID requirements over time.
- 1.23 Stakeholders were generally supportive of our approach to the timing of the determination of disclosures:
- 1.23.1 Enable and Ultrafast noted that the primary objective for the first regulatory period 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.²⁴
 - 1.23.2 2degrees stated a preference for ID requirements to be determined in 2021 and stressed the importance of making sure all key terms are determined.²⁵

²⁰ 2degrees "[Submissions on PQID process and approach paper](#)" (14 October 2020), page 1.

²¹ Vocus "[Submissions on PQID process and approach paper](#)" (14 October 2020), page 2.

²² ISPANZ "[Submissions on PQID process and approach paper](#)" (14 October 2020), page 2.

²³ Commerce Commission "[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)" (15 September 2020), paragraph 2.16.

²⁴ Enable and Ultrafast Fibre "[Submissions on PQID process and approach paper](#)" (14 October 2020), page 2.

²⁵ 2degrees "[Submissions on PQID process and approach paper](#)" (14 October 2020), page 2.

1.23.3 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”.²⁶

1.24 Chapter 3 contains our approach to determining information required to meet the Part 6 purpose and key overarching decisions.

Process we are following

1.25 Our proposed process to finalise ID requirements is outlined in the table below.

Process	Indicative time frame
Draft Decisions on proposed ID requirements	27 May 2021
Technical working groups	Mid-June 2021
Submissions due from interested persons on the proposed ID requirements (6 weeks)	8 July 2021
Cross-submissions due from interested persons on the proposed ID requirements (2 weeks)	22 July 2021
Final decisions – publication of final decisions on ID requirements	November and December 2021

Technical working groups

1.26 We intend to convene technical working groups after the release of our draft decisions and before submissions are due. These working group discussions will be relatively informal and focused on practical implementation issues.

1.26.1 We will ask participants to reiterate any policy points raised during these discussions in their submissions so other interested persons may comment on them in cross-submissions; and

1.26.2 we intend to publish any workshop materials including questions raised and answers given.

²⁶ Vocus “[Submissions on PQID process and approach paper](#)” (14 October 2020), page 5.

- 1.27 At this stage, we envisage two key working group discussions:
- 1.27.1 Expenditure categorisation: a working group discussion with 1-2 (financial reporting/business systems) representatives from each regulated provider on the reporting implications of the proposed expenditure categorisation; and
 - 1.27.2 Quality definitions / templates: a working group discussion with 1-2 (technical/quality reporting) representatives from each regulated provider on the proposed quality performance measure definitions and template formats.
- 1.28 We will determine, based on submissions and cross-submissions, whether there is value in further technical consultation and/or additional working groups or workshop discussions prior to our final decisions.

How you can provide your views

Scope of submissions

- 1.29 We invite submissions on the matters discussed in this paper or on any other issues related to ID regulation.
- 1.30 In addition to the substance of our draft decisions we invite feedback on possible improvements to the method of data collection used for the disclosures required by these draft decisions. This will assist us in future decisions about the way in which ID information is to be provided to the Commission.²⁷
- 1.30.1 The standard Excel templates ensure the consistency of data formatting and enable automatic calculations to be carried out within worksheets, reducing the need for separate calculation inputs. They are, however, susceptible to corruption error, particularly those Schedules where rows may need to be inserted to accommodate additional information. This could be alleviated by the use, for example, of a secure information entry portal. A change in the method of data collection may help reduce the cost of compliance, eg, to one that is better aligned to the data export capability of regulated provider information systems.

²⁷ At this point we do not propose to change the Schedules presented with these draft decisions.

- 1.30.2 Also, for summary and analysis purposes, the information must be compiled into databases that enable easy manipulation of like data into time series. Methods of collection that can directly populate these databases will reduce the need for data collation and reduce the risk of error.

Process and timeline for making submissions

- 1.31 Submissions can be made through the submission portal available on our website at: <https://comcom.govt.nz/file-upload-form-folder/file-upload-form>.
- 1.32 The project page will direct you to a form with instructions on how to upload your submission. Your submission should be provided as an electronic file in an accessible form.
- 1.33 We invite submissions by 5pm on **8 July 2021** and cross submissions by 5pm on **22 July 2021**.

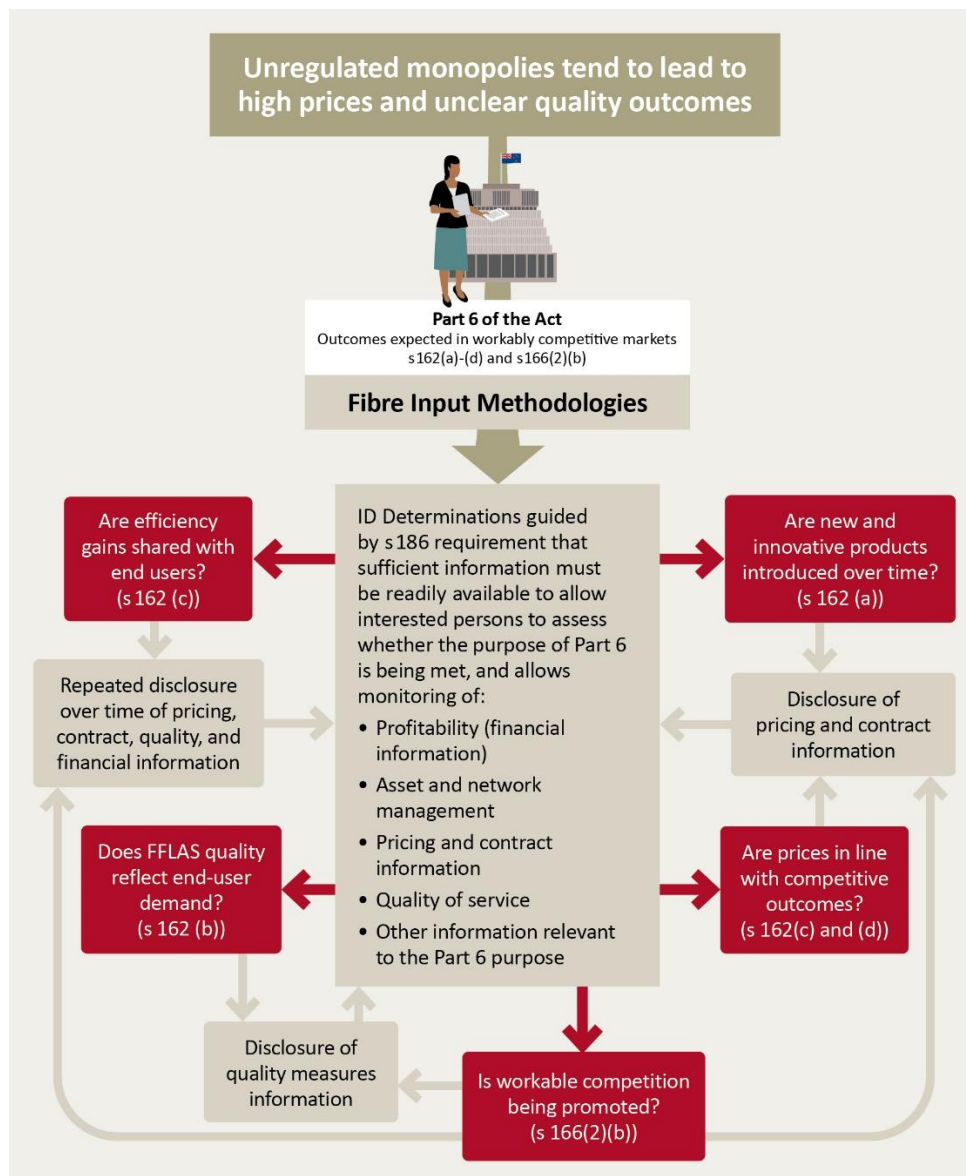
Confidentiality

- 1.34 We take the protection of confidential information seriously.
- 1.35 To protect confidential submissions, we will require you to upload your submission via the form on the project page. The process requires you to provide (if necessary) both a confidential and non-confidential/public version of your submission and to clearly identify the confidential and non-confidential/public versions.
- 1.36 When including commercially sensitive or confidential information in your submission, we offer the following guidance:
- 1.36.1 Please provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.
- 1.36.2 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.
- 1.36.3 Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult with the party that provided the information before any disclosure is made.

Chapter 2 Regulatory Framework

- 2.1 This chapter sets out the frameworks we apply to making decisions about ID regulation. Specifically, this chapter addresses:
- 2.1.1 the legal framework based on the relevant purposes set out in Part 6 of the Act; and
 - 2.1.2 the economic framework that helps us reach regulatory decisions that promote the relevant purposes set out in Part 6 of the Act.
- 2.2 Figure 2.1 below shows an overview of ID requirements and the how they address the relevant purposes of Part 6 of the Act:

Figure 2.1 How ID requirements meet the Part 6 purpose



Legal Framework

Regulated providers are subject to ID regulation

- 2.3 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.
- 2.4 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 2019:²⁸
- 2.4.1 Chorus Limited (Chorus):
 - 2.4.2 Enable Networks Limited (Enable):
 - 2.4.3 Northpower Fibre Limited (Northpower 1):
 - 2.4.4 Northpower LFC2 Limited (Northpower 2):²⁹ and
 - 2.4.5 UltraFast Fibre Limited (UltraFast).

We must make our ID determination before the implementation date

- 2.5 We are required to make an ID determination before the implementation date (1 January 2022) which specifies how ID regulation applies to regulated providers from the start of the first regulatory period (1 January 2022).³⁰
- 2.6 An ID determination may last indefinitely as it remains in force until it is revoked.³¹

The purpose of ID regulation in section 186

- 2.7 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.

²⁸ Telecommunications (Regulated Fibre Service Providers) Regulations 2019, regulation 5.

²⁹ We refer to Northpower 1 and Northpower 2 together as “Northpower” in the remainder of this paper. A [“Public Notice of Amalgamation Proposal”](#), notice number 2021-ot1164, proposing the amalgamation of Northpower Fibre Limited and Northpower LFC2 Limited into Northpower Fibre Limited was published on 29 March 2021.

³⁰ Section 172(1)(b).

³¹ Section 172(2).

- 2.8 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 2.9-2.22.³²

Our interpretation of “interested persons”

- 2.9 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:
- 2.9.1 all the regulated providers currently subject to ID regulation (Chorus, Enable, Northpower and UltraFast);
 - 2.9.2 end-users and end-user representative groups;
 - 2.9.3 retail service providers and retail service provider representative groups;
 - 2.9.4 central government, regional councils, and territorial authorities;
 - 2.9.5 suppliers of goods or services regulated under Part 4 of the Commerce Act, eg, Transpower New Zealand limited;
 - 2.9.6 market analysts and investors; and
 - 2.9.7 us (the Commerce Commission).
- 2.10 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 2.66-2.71).³³

³² We are not seeking submissions on our interpretation of these terms. We consulted on the interpretation of these terms in our approach paper and submitters did not take issue with our interpretation.

³³ Further, as discussed in paragraphs 2.54-2.59, 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.

- 2.11 We used the same approach to the interpretation of “interested persons” in our approach paper and submitters did not take issue with our interpretation.³⁴

Our interpretation of “sufficient information”

- 2.12 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.
- 2.13 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.³⁵
- 2.14 The Part 6 purpose highlights the importance of the following incentives:
- 2.14.1 incentives to innovate and to invest (s 162(a)); and
 - 2.14.2 incentives to improve efficiency and supply FFLAS of a quality that reflects end-user demands (s 162(b)).
- 2.15 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.
- 2.16 We used a similar approach to the interpretation of “sufficient information” in our approach paper and submitters did not take issue with our interpretation.³⁶

³⁴ 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.

³⁵ However, as discussed later in the paper, PQ regulation is relevant context when we determine the ID requirements.

³⁶ 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.

Our interpretation of “readily available”

- 2.17 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:
- 2.17.1 consistent;
 - 2.17.2 accessible; and
 - 2.17.3 understandable.
- 2.18 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.
- 2.19 Inconsistency may mean that data is not “readily available”. We therefore require most of the disclosures to be provided in a standardised format.³⁷ 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.
- 2.20 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).
- 2.21 Understandability refers to the ease with which interested person can navigate quantitative or qualitative information and get access to key insights relevant to them.³⁸
- 2.22 We used the same approach to the interpretation of “readily available” in our approach paper and submitters did not take issue with our interpretation.³⁹

³⁷ For example, in a standardised spreadsheet template or online disclosure system.

³⁸ The format of disclosures and our summary and analysis of information will assist interested persons’ understanding.

³⁹ 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.

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

Sections 166(2) and 162

2.23 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.⁴⁰

2.24 Section 166(2) reads:⁴¹

“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.”

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

“162 Purpose

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.”

⁴⁰ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 2.206-2.271.

⁴¹ Section 166(2).

- 2.26 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:
- 2.26.1 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.⁴² Our focus is not on replicating all the potential outcomes of workably competitive markets per se, 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
- 2.26.2 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,⁴³ 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.⁴⁴
- 2.27 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.
- 2.28 We must exercise our judgement on a case by case basis and make the following observations about the two objectives in s 166(2):
- 2.28.1 section 166(2)(a) directs us to make decisions that best give effect to the purpose in s 162. This is a mandatory consideration;
- 2.28.2 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”;

⁴² *Wellington International Airport Ltd & Ors v Commerce Commission* [2013] NZHC 3289 at [25] – [27].

⁴³ *Wellington International Airport Ltd & Ors v Commerce Commission* [2013] NZHC 3289 at [684].

⁴⁴ *Wellington International Airport Ltd & Ors v Commerce Commission* [2013] NZHC 3289 at [684].

2.28.3 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

2.28.4 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.

2.29 A more comprehensive explanation of our views on these purpose statements can be found in our IMs reasons paper.⁴⁵

How s 186 and s 162 interact

2.30 Section 186 is the starting point for all ID requirements and s 166 must be applied within that context.

2.31 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 2.32 to 2.37, we consider that setting ID requirements that do this will promote the purpose of Part 6 as required by s 166(2)(a).

2.32 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.

2.33 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 162.⁴⁶

⁴⁵ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraphs 2.206-2.271.

⁴⁶ 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.

- 2.34 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 where a provide) strengthens the incentives provided by ID regulation.
- 2.35 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)).
- 2.36 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.
- 2.37 Figure 2.1 above illustrates how ID regulation promotes the purposes in s 162 and we discuss this further at paragraphs 2.99 to 2.104 in our Economic Framework.

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

- 2.38 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).⁴⁷
- 2.39 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 via s 162.

⁴⁷ As discussed above, the promotion of the purpose in s 162 is a mandatory consideration under s 166(2)(a).

- 2.40 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.⁴⁸ 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.
- 2.41 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).

We have limited ability to exercise judgement in certain instances

- 2.42 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:
- 2.42.1 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)⁴⁹ which were previously determined because they best give, or are likely to best give, effect to the s 166(2) purposes; and
 - 2.42.2 the application of mandatory requirements in the Act (for instance, the regulated providers to which the ID determination applies).⁵⁰

⁴⁸ Further regulation could include additional ID disclosure requirements or, for regulated providers currently subject to ID regulation only, the introduction of PQ regulation.

⁴⁹ [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.

⁵⁰ Section 188(1)(a).

- 2.43 Where certain ID draft 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.
- 2.44 Where our ID draft 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),⁵¹ we have explained why our decision to require (or not require) the disclosure of certain information in our draft ID determination would promote:
- 2.44.1 the purpose of ID in s 186 and the outcomes in s 162; and
- 2.44.2 the purpose in s 166(2)(b) where relevant.

Key questions relating to the performance of regulated providers

- 2.45 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)).
- 2.46 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:
- 2.46.1 Is the regulated provider operating and investing in their assets efficiently? (s 162(a)-(b));
- 2.46.2 Is the regulated provider innovating where appropriate? (s 162(a));
- 2.46.3 Is the regulated provider supplying FFLAS at a quality that reflects end-user demands? (s 162(b));
- 2.46.4 Is the regulated provider sharing the benefits of efficiency gains with end-users, including through lower prices? (s 162(c));

⁵¹ [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.

- 2.46.5 Do the prices set by the regulated provider promote efficiency (s 162(b)); and
- 2.46.6 Is the regulated provider earning an appropriate economic return over time (s 162(d))?
- 2.47 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 historic and forecast), quality outcomes and pricing.
- 2.48 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 162.⁵²

The matters that must be included in our ID determination

- 2.49 An ID determination relating to FFLAS that are subject to ID regulation must specify the following:⁵³
- 2.49.1 The regulated providers to which it applies;
- 2.49.2 the information to be disclosed;
- 2.49.3 the manner in which the information is disclosed;
- 2.49.4 the form of disclosure;
- 2.49.5 when, and for how long, information must be disclosed;
- 2.49.6 the IMs that apply; and
- 2.49.7 any other methodologies that are required in the preparation or compilation of the information.

⁵² 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.

⁵³ Section 188(1)(a)-(g).

Information that may be required to be disclosed

- 2.50 An ID determination relating to FFLAS that are subject to ID regulation may specify (without limitation) one or more of the following:⁵⁴
- 2.50.1 financial statements (including projected financial statements);
 - 2.50.2 asset values and valuation reports;
 - 2.50.3 prices, terms and conditions related to prices, and pricing methodologies;
 - 2.50.4 contracts;⁵⁵
 - 2.50.5 transactions with related parties;
 - 2.50.6 financial and non-financial performance measures;
 - 2.50.7 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;
 - 2.50.8 asset management plans;
 - 2.50.9 quality performance measures and statistics;
 - 2.50.10 assumptions, policies, and methodologies used or applied in these or other areas;
 - 2.50.11 consolidated information that includes information about unregulated services; and ⁵⁶
 - 2.50.12 information related to one or more parts of a fibre network

Other things an ID determination may do

- 2.51 An ID determination may do one or more of the following:⁵⁷

⁵⁴ Section 188(2)(a)-(l).

⁵⁵ 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.

⁵⁶ The specific requirements for consolidated information are specified in s 189.

⁵⁷ Section 188(3)(a)-(f).

- 2.51.1 require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration;
- 2.51.2 require independent audits of disclosed information;
- 2.51.3 require the retention of data on which disclosed information is based, and associated documentation;
- 2.51.4 exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions;
- 2.51.5 provide for transitional provisions; and
- 2.51.6 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

- 2.52 As set out in paragraph 2.51.6, 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.
- 2.53 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

- 2.54 As set out in paragraph 2.50.4, 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).
- 2.55 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.⁵⁸

⁵⁸ We have adopted the same position in our ID determinations under Part 4 of the Commerce Act.

- 2.56 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.⁵⁹ 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.
- 2.57 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.⁶⁰
- 2.58 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.⁶¹
- 2.59 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.⁶²
- 2.60 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.

⁵⁹ This exemption power would exist even if we did not provide for exemptions under s 188(3)(d).

⁶⁰ We must give public notice of the exemption and the reasons for our decision if we decide to grant the exemption.

⁶¹ Section 187(4).

⁶² 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.

- 2.61 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 2.76 to 2.79.

Input methodologies that apply

- 2.62 The IMs set out rules, requirements and processes applying to PQ and ID regulation under Part 6.
- 2.63 IMs relating to the supply of FFLAS must be applied:
- 2.63.1 By each regulated provider in accordance with our ID determination;⁶³ and
 - 2.63.2 by us in recommending, deciding or determining how ID regulation should apply to FFLAS.⁶⁴
- 2.64 The following IMs will apply:
- 2.64.1 cost allocation;⁶⁵
 - 2.64.2 asset valuation;⁶⁶
 - 2.64.3 taxation;⁶⁷

⁶³ Section 175(a).

⁶⁴ Section 175(b)(i).

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ 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.

2.64.4 cost of capital (the TSCD methodology and the calculation of the annual benefit of Crown financing only);^{68, 69}

2.64.5 quality dimensions.⁷⁰

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

2.65 Regulated providers that are subject to ID regulation must from 1 January 2022:⁷¹

2.65.1 Publicly disclose information in accordance with the ID requirements set out in our ID determination;

2.65.2 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

2.65.3 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.

Summary and analysis

2.66 If a regulated provider is subject to ID regulation, we must, as soon as practicable after any information is publicly disclosed, publish⁷² 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.⁷³

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ 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.

⁷¹ Section 187(1)(a)-(c).

⁷² Section 187(2)(b) directs us to publish "on an Internet site maintained by or on behalf of [us]".

⁷³ Section 187(2)(b).

- 2.67 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.
- 2.68 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.
- 2.69 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.
- 2.70 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 162.⁷⁴
- 2.71 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.⁷⁵

Monitoring and analysis

- 2.72 If a regulated provider is subject to ID regulation, we may monitor and analyse all information disclosed in accordance with our ID requirements.⁷⁶

⁷⁴ Section 187(3).

⁷⁵ 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.

⁷⁶ Section 187(2)(a).

- 2.73 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.
- 2.74 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.
- 2.75 We may also require further information from a regulated provider by issuing a written notice under s 221. For example, if our ID analysis raised concerns regarding a regulated provider's performance, we may investigate that performance matter,⁷⁷ and we may require the regulated provider to provide us with an expert opinion in relation to that matter.⁷⁸ Under s221, we may also require a regulated provider to:
- 2.75.1 Prepare and produce forecasts, forward plans, or other information;⁷⁹
 - 2.75.2 apply any methodology specified by us in the preparation of forecasts, forward plans, or other information;⁸⁰ and
 - 2.75.3 in circumstances where we are conducting an investigation, audit, or inquiry, produce or supply documents and information in relation to the FFLAS, or the prices or operations of the person in respect of the services, and to answer any questions about any matter that we have reason to believe may be relevant to the investigation, audit, or inquiry.⁸¹

Enforcement provisions applicable to ID regulation

- 2.76 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:⁸²

⁷⁷ Under s 221(1)(b)(i), for the purposes of carrying out our functions and exercising our powers under Part 6, we may investigate how effectively and efficiently a regulated provider is providing FFLAS.

⁷⁸ Section 221(1)(g).

⁷⁹ Section 221(1)(e)(i).

⁸⁰ Section 221(1)(e)(ii).

⁸¹ Section 221(1)(f).

⁸² Section 212.

- 2.76.1 Exceed \$500,000 in the case of an individual; or
- 2.76.2 \$5,000,000 in the case of a body corporate.
- 2.77 The High Court may, on application by us, order a regulated provider to comply with an ID requirement that applies to the provider.⁸³
- 2.78 A person commits an offence if:⁸⁴
 - 2.78.1 The person, knowing that particular FFLAS are subject to ID regulation, intentionally contravenes any ID requirement relating to those services; or
 - 2.78.2 the person is subject to an order referred to in paragraph 2.77 and fails to comply with the order by the date, or within the period specified.
- 2.79 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.⁸⁵

Other matters

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

- 2.80 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.
- 2.81 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 and MBIE has released exposure drafts of the initial anchor services and DFAS declared services regulations.⁸⁶ We understand that anchor services and DFAS will be declared before the implementation date, but that unbundled fibre services will not be declared in the near future.

⁸³ Section 213.

⁸⁴ Section 214(1).

⁸⁵ Section 214(2).

⁸⁶ The exposure draft of the regulations for the declared services provides a similar contractual framework as that in the existing UFB Reference offers. MBIE [Declaration of anchor and direct fibre access services under the Telecommunications Act 2001](#) (26 May 2021).

- 2.82 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.
- 2.83 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.
- 2.84 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.
- 2.85 Section 193(1)(b) in turn provides that regulated providers that are subject to PQ regulation must comply with ss 198 to 201.
- 2.86 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:
- 2.86.1 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;
 - 2.86.2 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
 - 2.86.3 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.
- 2.87 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.
- 2.88 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

- 2.89 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.

- 2.90 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:
- 2.90.1 determining the appropriate duration of the regulatory period for purposes of PQ regulation per s 207(2);
 - 2.90.2 the anchor services review under s 208, which specifies that if a recommendation is made for a maximum price for the anchor services after the first regulatory period, such a price has to be cost-based (s 208(6)(b));
 - 2.90.3 the PQ reviews under s 209, including whether maximum revenues should continue to be specified under PQ regulation; and
 - 2.90.4 assessments on whether to open a deregulation review per s 210(3).
- 2.91 We also have enforcement responsibilities regarding regulated FFLAS including those relating to:
- 2.91.1 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);
 - 2.91.2 contraventions of information disclosure requirements by regulated providers subject to ID regulation;
 - 2.91.3 complaints under s 156O of a breach of an undertaking made under s 156AD; and
 - 2.91.4 the provisions of the Commerce Act that prohibit restrictive trade practices and certain business acquisitions.
- 2.92 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.
- 2.93 With the exception of the ID requirements relating to consolidated information under s 189 to enable us to monitor compliance with information disclosure regulation, we will instead 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), 193(2), and s 221.

Economic Framework

- 2.94 This section discusses:
- 2.94.1 the high-level economic framework we have applied when making decisions for our draft ID determinations; and
 - 2.94.2 the application of the economic framework for the initial ID determination.

Economic framework

- 2.95 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 draft ID determination.
- 2.96 The economic framework includes three components:⁸⁷
- 2.96.1 economic principles, including real financial capital maintenance (FCM), allocation of risk, and asymmetric consequences of under/over investment;
 - 2.96.2 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
 - 2.96.3 a ‘competition screening’ approach to help us assess whether our decisions might be relevant to competitive outcomes in telecommunications markets.

Key economic principles

- 2.97 We adopted the following key economic principles to help us develop and implement the Part 6 regime, including ID regulation.⁸⁸

⁸⁷ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 2.272-2.335 and 2.383-2.399.

⁸⁸ 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.

- 2.97.1 **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.⁸⁹ 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.
- 2.97.2 **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.
- 2.97.3 **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 WACC).
- 2.98 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.⁹⁰

Incentive framework

- 2.99 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:

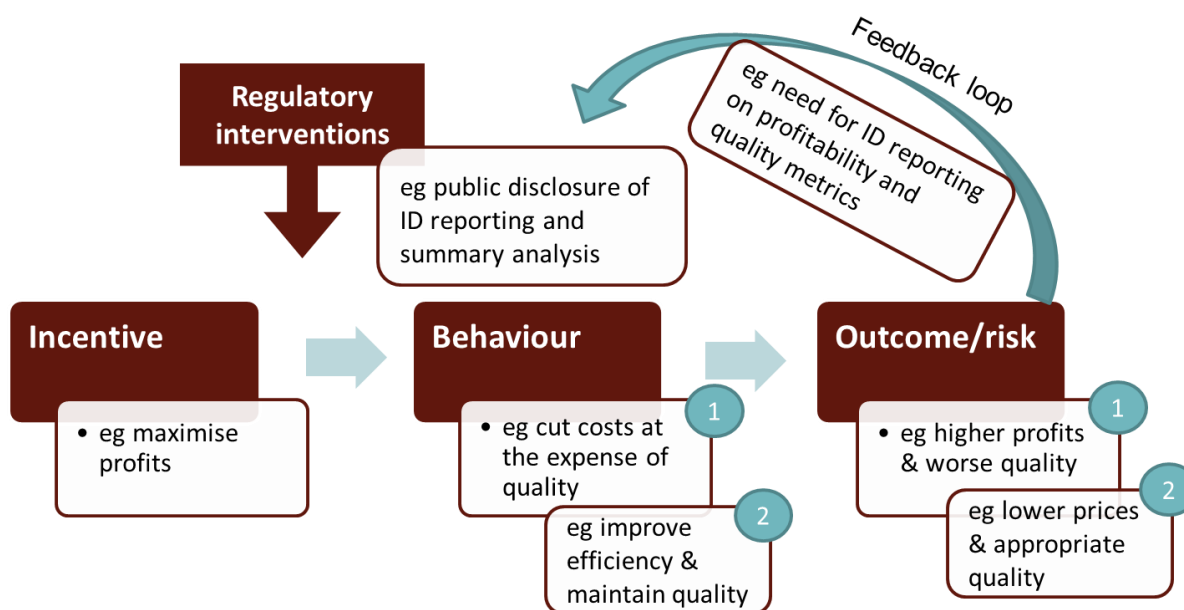
⁸⁹ A ‘normal return’ on capital is the return that an efficient firm has an *ex-ante* opportunity to earn in a workably competitive market. See also Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraph 2.26.

⁹⁰ See also Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 2.282-2.288.

- 2.99.1 incentivises regulated providers to charge prices in line with competitive outcomes limiting their ability to earn excessive profits (s 162(d));
 - 2.99.2 incentivises regulated providers to share any efficiency gains with end-users over time (s 162(c));
 - 2.99.3 allows interested persons to assess whether the quality of FFLAS reflects end-user demand (s 162(b)); and
 - 2.99.4 allows interested persons to evaluate whether new or innovative products are introduced over time (s 162(a)).
- 2.100 The threat of increased regulation through additional ID reporting requirements (or a potential move from ID to PQ regulation) further strengthens these incentives.
- 2.101 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,⁹¹ 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.

⁹¹ See discussion at paragraphs 2.76-2.79 above.

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



- 2.102 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.
- 2.103 The incentives faced by regulated providers may also be affected by competition.⁹² 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.
- 2.104 The following are examples of other relevant considerations that affect the incentives of regulated providers.
- 2.104.1 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.⁹³

⁹² 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.

⁹³ See discussion at paragraphs 2.66-2.75 above.

2.104.2 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)

2.105 We have not changed the considerations that we identified for our competition screening for purposes of our fibre IM decision-making process.

2.106 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:

2.106.1 have a role in mitigating risks to competition at any telecommunications market level; and/or

2.106.2 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.

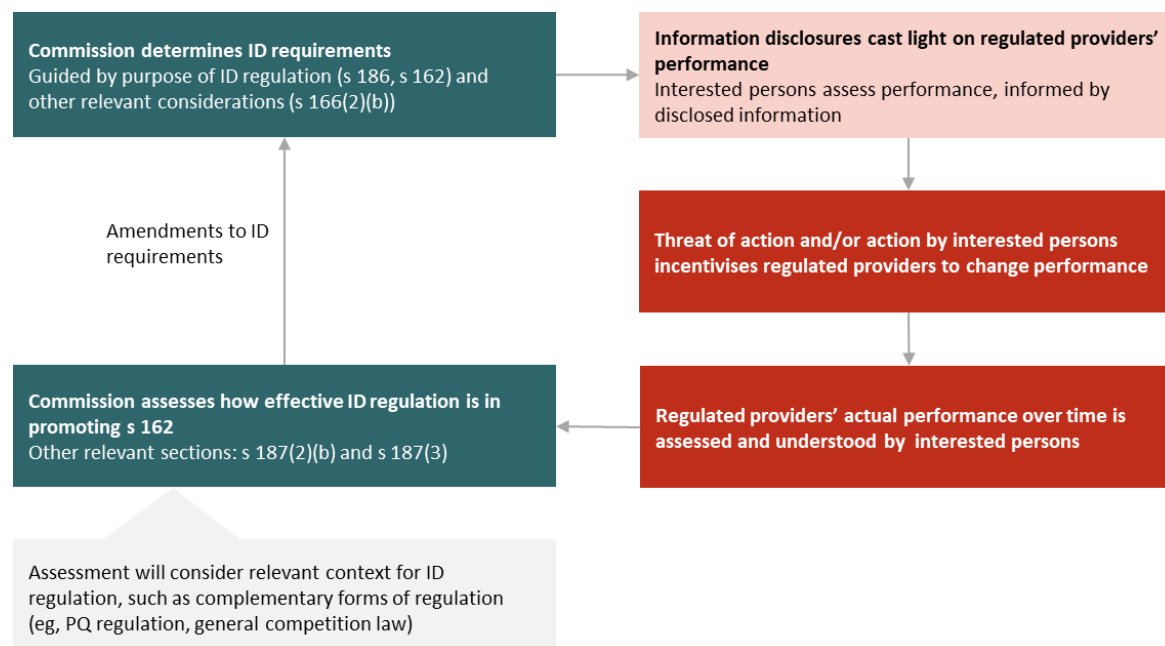
2.107 As explained at paragraphs 2.39-2.41 above we consider that ID regulation has a greater role in mitigating risks to competition than actively promoting competition.

2.108 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

2.109 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.

2.110 The reporting requirements contained in the draft ID determination and those that we will eventually set 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.

- 2.111 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.
- 2.112 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.
- 2.113 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:
- 2.113.1 to improve assessments of enduring performance areas (eg, profitability);
and
- 2.113.2 to enable assessments of newly emerging issues (eg, changes in competition due to market developments).

- 2.114 We acknowledge that prior to the implementation of the initial ID determination, we will know the least (relative to any subsequent period) about:
- 2.114.1 the existing cost efficiency of regulated providers and their ability to realise cost efficiencies over time;
 - 2.114.2 the extent to which the profitability of regulated providers is consistent with the return on capital that might be expected in workably competitive markets;
 - 2.114.3 the extent to which prices of FFLAS are efficient (and thus, consistent with those that might be expected in workably competitive markets);
 - 2.114.4 end-users' and retail service providers' (RSP) preferences about the quality of FFLAS supplied, including the quality dimensions and measures that are of greatest concern to end-users; and
 - 2.114.5 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).
- 2.115 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.
- 2.116 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.⁹⁴
- 2.117 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 draft ID requirements related to prices are outlined in Chapter 5 below.

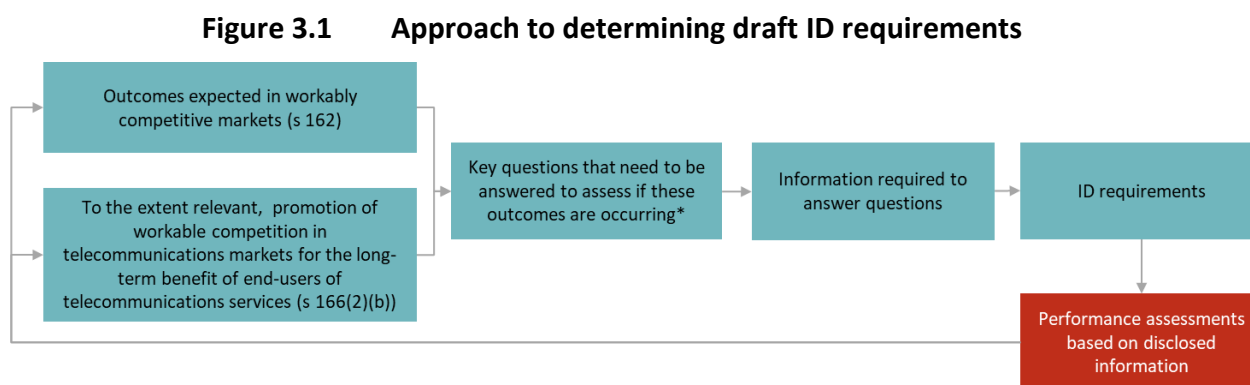
⁹⁴ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), Chapter 9, paragraphs 9.173 – 9.177.

Chapter 3 Overview of ID requirements

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

Overall approach to determining ID requirements

3.1 The figure below shows the approach we followed to determine the draft ID requirements.



Note: *Key performance questions to be answered are contained in paragraph 2.46 above. In practice, we identified more detailed questions which then drove our ID requirements.

Overview of areas for which we have determined ID requirements

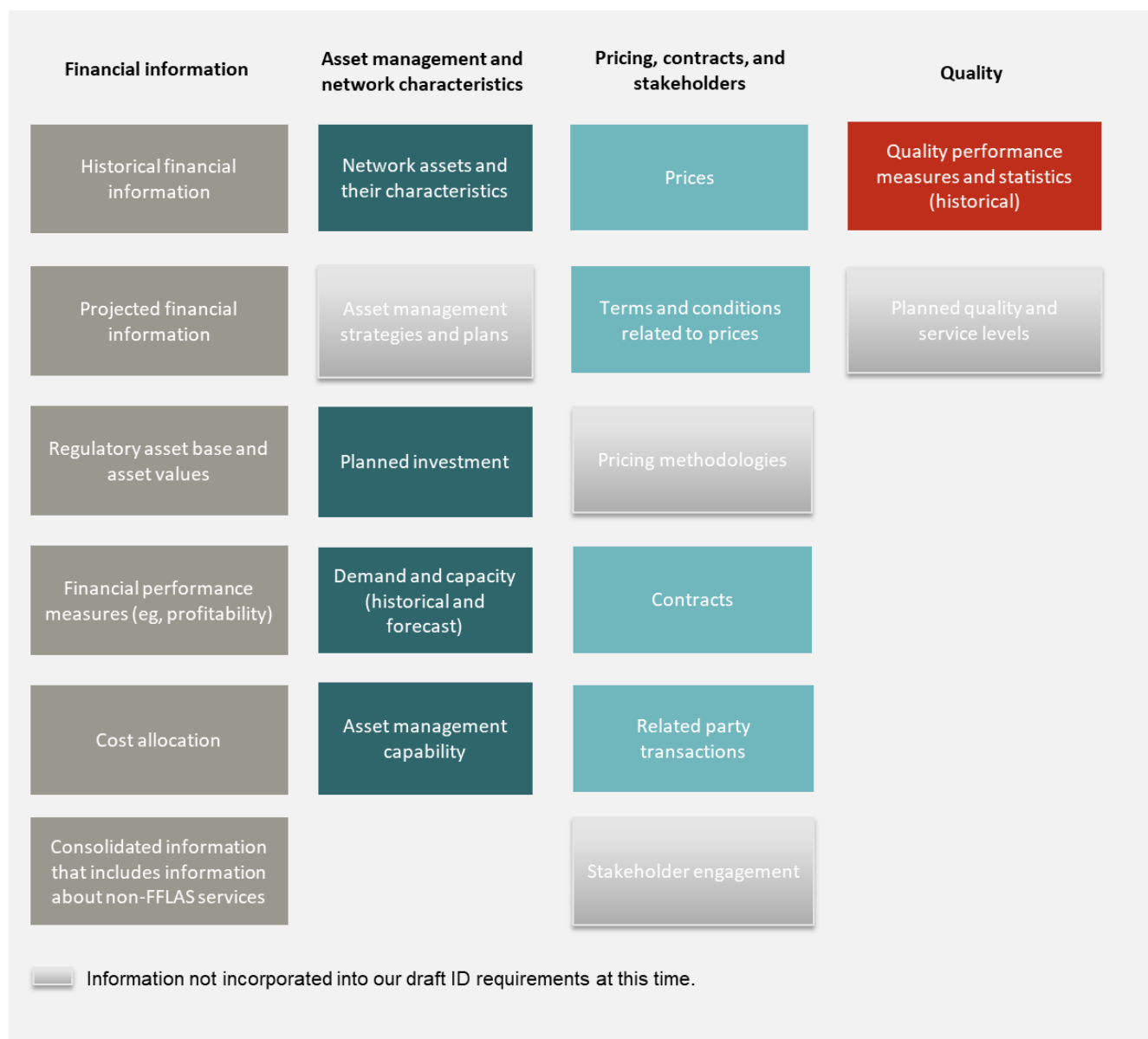
3.2 We consulted on our initial view of areas that might inform the development of the ID requirements in our approach paper and set out existing disclosures which we considered provided useful context.⁹⁵ Figure 3.2 below reproduces a high-level view of these initial areas.

3.3 As a comparison, Figure 3.3 shows which areas we have actually incorporated into our draft requirements.

⁹⁵ Commerce Commission “[Fibre Information disclosure and price-quality regulation – proposed process and approach for the first regulatory period](#)” (15 September 2020), tables 4.2-4.6.

**Figure 3.2 Initial view of areas for ID requirements
(Table 4.2 from our approach paper)**

Financial information	Asset management and network characteristics	Pricing, contracts, and stakeholders	Quality
Historical financial information	Network assets and their characteristics	Prices	Quality performance measures and statistics (historical)
Projected financial information	Asset management strategies and plans	Terms and conditions related to prices	Planned quality and service levels
Regulatory asset base and asset values	Planned investment	Pricing methodologies	
Financial performance measures (eg, profitability)	Demand and capacity (historical and forecast)	Contracts	
Cost allocation		Related party transactions	
Consolidated information that includes information about non-FFLAS services		Stakeholder engagement	

Figure 3.3 Areas incorporated into our draft ID requirements**General matters we considered when deciding on our approach to ID**

3.4 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:

3.4.1 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 as detailed in paragraphs 3.5 to 3.7 below, including:

- 3.4.1.1 existing LFC ID requirements under Subpart 3 of Part 4AA,⁹⁶ and
- 3.4.1.2 ID requirements under Part 4 of the Commerce Act 1986 (Commerce Act).⁹⁷
- 3.4.2 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.⁹⁸ Drawing on current UFB contractual reporting that is well-understood by stakeholders will also ease transition. 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.
- 3.4.3 Utilising data the regulated providers are likely to have for other purposes.
- 3.4.4 Focusing on key information that is most likely to enable interested persons to assess whether the Part 6 purpose is being met.

General stakeholder support for drawing on relevant ID precedents

- 3.5 **Enable and Ultrafast** supported referencing existing disclosure precedents and the undertakings to determine the ID requirements subject to ensuring consistency with the s 186 purpose of ID.⁹⁹
- 3.6 **Vocus** supported drawing on existing information requirements under Part 4 and Part 6.¹⁰⁰

⁹⁶ [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).

⁹⁷ 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](#).

⁹⁸ For example, those agreed as part of the Network Infrastructure Project Agreements between CIP and each regulated provider www.crowninfrastructure.govt.nz/ufb/who/.

⁹⁹ Enable and Ultrafast Fibre "[Submissions on PQID process and approach paper](#)" (14 October 2020), page 2.

¹⁰⁰ Vocus "[Submissions on PQID process and approach paper](#)" (14 October 2020), page 5.

- 3.7 **Chorus** stated: “Historical ID under the pre-existing regime is not appropriate. As we are aware, it was created for an entirely different purpose and the information disclosed as a result, or its form, cannot be relied upon for the purposes of Part 6.”¹⁰¹ As an example, cost allocation in the current ID regime is very simple and its scope applies to all Chorus’ fibre and is not limited to FFLAS. However, we note that this comment appears to be in relation to the information actually disclosed rather than the type of information disclosed.

Regulatory reporting principles

- 3.8 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:
- 3.8.1 *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.
 - 3.8.2 *Consistent treatment*: regulated providers must treat similar types of information consistently, both within a reporting period and from year to year.
 - 3.8.3 *Causality*: regulated providers must attribute all revenue, expenses, and assets on the basis of cost causation principles.
 - 3.8.4 *Data Retention*: regulated providers must retain copies of all data and documentation detailing the processes related to the information disclosed for seven years.¹⁰² This is consistent with the data retention requirements in New Zealand for taxation and under the Companies Act.
 - 3.8.5 *Use of NZ GAAP*: Except where the requirements otherwise provide, regulated providers must prepare all financial ID in accordance with NZ GAAP.¹⁰³

¹⁰¹ Chorus “[Submissions on PQID process and approach paper](#)” (14 October 2020), pages 6-7.

¹⁰² Under s 188(3)(c) we can “require the retention of data on which disclosed information is based, and associated documentation:”

¹⁰³ GAAP is defined in section 8 of the Financial Reporting Act 2013.

Different Requirements for Chorus and other regulated providers

- 3.9 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).
- 3.10 We have therefore developed two sets of disclosure Schedules: one for Chorus and one for other regulated providers. The information required is the same but reflects that Chorus is reporting performance in relation to PQ regulated assets and ID-only regulated assets separately whereas this is not the case for other regulated providers.

Balance dates and timing of disclosure reporting

Regulatory disclosure years

Draft 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: 30 June;
 - 3.11.4 Ultrafast: 31 March.

Reasons

- 3.12 Aligning the regulatory disclosure year-end with company balance dates is the least cost option for regulated providers other than Chorus.
- 3.13 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 6 monthly accounts for investors, the compliance costs of departing from its company balance date of 30 June are less significant.
- 3.14 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.

- 3.15 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

- 3.16 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.
- 3.17 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.
- 3.18 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).
- 3.19 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.
- 3.20 In making our draft decision we have assessed three main considerations:
- 3.20.1 regulatory and statutory accounting information have a different purpose;
 - 3.20.2 linkages with statutory requirements under Part 6 (Chorus PQP1 regulatory year ends on 31 December 2022); and
 - 3.20.3 costs of dealing with regulatory accounting issues following a merger/acquisition transaction.

Submissions on the approach paper

- 3.21 In the approach paper we proposed a common regulatory balance date for ID of 30 June.
- 3.22 We did not specify a disclosure year in the IMs but specified that it must be a 12-month period.

- 3.23 ISPANZ and Vocus supported common balance dates (eg, to ensure comparability)¹⁰⁴.
- 3.24 Chorus supported a common balance date for PQ and ID (31 December)¹⁰⁵.
- 3.25 Enable and Ultrafast did not support a common disclosure year-end because of the additional cost and complexity involved for those with different financial reporting dates.¹⁰⁶
- 3.26 In adopting provider-specific disclosure year-ends we will need to process an IM amendment to allow the initial disclosure years to be for a period of less than 12 months from the implementation date for those providers on a 31 March or 30 June disclosure year-end.¹⁰⁷
- 3.27 We consider that our draft decisions in this regard best give, or are likely to best give, effect to the s 166(2) purposes.

Regulatory and statutory accounting information have a different purpose.

- 3.28 Information disclosed under Part 6 has a targeted purpose which is different than that applying to statutory financial accounts.
- 3.29 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.
- 3.30 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 in this context.

Linkages with statutory requirements under Part 6

- 3.31 Chorus' first PQ regulatory period (PQP1) is required to start on 1 January 2022 and end on 31 December 2024. Chorus' PQP1 regulatory year ends on 31 December.

¹⁰⁴ ISPANZ "[Submissions on PQID process and approach paper](#)" (14 October 2020), Page 2. Vocus "[Submissions on PQID process and approach paper](#)" (14 October 2020), paragraph 1(iii).

¹⁰⁵ Chorus "[Submissions on PQID process and approach paper](#)" (14 October 2020), paragraph 44.

¹⁰⁶ Enable and Ultrafast Fibre "[Submissions on PQID process and approach paper](#)" (14 October 2020), paragraph 5.

¹⁰⁷ Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions Reasons paper" (27 May 2021).

- 3.32 Our draft 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). This will mean that for PQP1 there are no part years.
- 3.33 This 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.

- 3.34 There are complex consequences of mergers and acquisitions including consideration of whether a subsidiary should adopt a parent balance date for financial reporting purposes.¹⁰⁸
- 3.35 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.
- 3.36 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.
- 3.37 On balance we think 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

- 3.38 We have developed standardised templates (Schedules) that all regulated providers must use when providing information to us. These Schedules are a part of our Draft Determination and serve several purposes. They:
- 3.38.1 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;

¹⁰⁸ 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.

- 3.38.2 reduce the cost and complexity of preparing disclosures; and
- 3.38.3 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.

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

Submissions on the approach paper

- 3.40 Vocus states that “making disclosed information easily accessible including electronically is important” and agrees with us that disclosure of data in a standardised form helps interested persons to assess performance of regulated providers.¹⁰⁹
- 3.41 There were no other submissions on the use of standard layouts.

¹⁰⁹ Vocus “[Submissions on PQID process and approach paper](#)” (14 October 2020), page 5.

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 draft 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 establishing the initial RAB value and updating the value for ongoing changes (annual roll-forward); and
 - 4.2.8 our approach to information required for assessing compliance with our ID requirements.

Summary of draft decisions

Table 4.1 Overview – Draft Decisions on Financial Information

Category	Draft decisions on information required	Reference to Determination	Relevant part of Part 6 purpose statement
Return on investment	Headline ROI		
	ROI (comparable to a vanilla, and post-tax WACC) Supporting information on the calculation of the ROI, including limited information on the benefit of crown financing and term credit spread differential (TCSD), cost of capital	Chorus: Schedules 1a, 1b, 1c ID-only regulated providers: Schedule 1	S 162(d)
Regulatory profit	Calculation of regulatory profit	Schedule 2	S 162(d)
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	Chorus: Schedules 4b, 4c, 4d ID-only regulated providers: Schedule 4	S 162(d)
Supporting information	TCSD, Annual benefit of crown financing, Regulatory tax, treatment of related party transactions, consolidation statement	Schedules 2a, 2b, 3, 5, 6, 8, 9	S 162(d)
	Information on qualifying debt may be disclosed to the Commission only		
Allocation of assets and costs	Disaggregated by expenditure type with non-public disclosure at a cost/asset category level	Schedules 4a, 4e, 5a, 5b	S 162(d)
Information to assist compliance: asset and cost allocation	Additional detail on the allocation of assets and costs.	Chorus: Schedules 10a, 10b, 11, 11a	S 162(d)
		ID-only regulated providers: Schedules 10, 11, 11a	
Transitional financial information	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, current 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 Act¹¹⁰, as explained in Chapter 2, paragraph 2.50
- 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 people 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 4.14
- 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 draft decisions in this chapter meet the purpose of s 186 by requiring the disclosure of sufficient, readily available financial 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.
- 4.10 We consider that all our draft decisions in this chapter, together, best give, or are likely to best give, effect to the s 166(2) purposes as:

¹¹⁰ 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 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 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 allocation¹¹¹;
- 4.12.2 asset valuation¹¹²; and
- 4.12.3 taxation¹¹³;
- 4.12.4 cost of capital¹¹⁴ (the TSCD methodology and the calculation of the annual benefit of Crown financing only).

¹¹¹ 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.

¹¹² 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.

¹¹³ 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.

¹¹⁴ 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.

- 4.13 Draft Amendments to the above IMs are proposed as we are proposing to use a transitional initial PQ RAB for Chorus' first PQ path to recognise that at the time of determining the PQ path, scrutiny of unallocated asset values may not have been completed and final cost allocators to be applied may not yet be available.

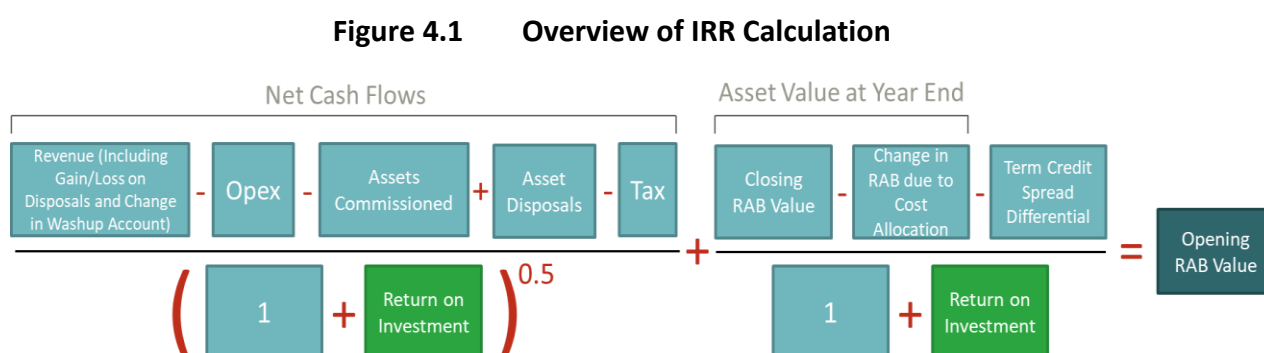
Why interested persons need historical financial information to assess performance

- 4.14 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.¹¹⁵ 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.
- 4.15 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.
- 4.16 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 weighted average cost of capital (WACC). 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.¹¹⁶
- 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.

¹¹⁵ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 2.297.

¹¹⁶ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 6 sets out the methodology for calculating the WACC.

- 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 (IRR) 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.



- 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 amounts, 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.¹¹⁷

¹¹⁷ 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.

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).
- 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 Determinations, 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, we have specified 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 is designed to inform an assessment of whether returns are consistent with what would occur in a workably competitive market. This is 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 Regulated providers 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 6.¹¹⁸

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.

¹¹⁸ Commerce Act 1986, s 53F.

- 4.35 This section discusses the:
- 4.35.1 calculation of regulatory income, including other regulated income;
 - 4.35.2 approach to gain/loss on sale of assets so interested persons can remove any resulting volatility in regulatory profit;
 - 4.35.3 revaluations;
 - 4.35.4 expenditure;
 - 4.35.5 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;
 - 4.35.6 treatment of taxation, including accounting for the effect of permanent and temporary (timing) differences;
 - 4.35.7 treatment of related party transactions so that interested persons can assess the extent to which reported performance may be influenced by related party transactions;
 - 4.35.8 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
 - 4.35.9 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 on page 69).
- 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, as adjusted in accordance with GAAP.
- 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.¹¹⁹ Losses on asset sales recognised under GAAP are not recoverable from consumers under PQ regulation but they do reduce the regulatory profit reported under ID.
- 4.45 This is different from the treatment of stranded assets where providers subject to PQ regulation are compensated by way of an *ex ante* stranding allowance for asymmetric asset stranding risk.

¹¹⁹ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 3.443-3.462.

- 4.46 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:
- 4.46.1 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.
 - 4.46.2 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.
- 4.47 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.
- 4.48 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.
- 4.49 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

- 4.50 For regulated providers subject to PQ regulation various categories of wash-up amounts are provided for in the IMs and the PQ Determination.¹²⁰ These amounts are generally captured in other regulated income and a specific adjustment is made to the ROI to account for their impact.

¹²⁰ 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.

- 4.51 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.
- 4.52 This adjustment calculates the difference between the wash-up amount 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.
- 4.53 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

- 4.54 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.
- 4.55 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.
- 4.56 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

- 4.57 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.

Reporting of specific expenditure items

- 4.58 We have also specified how regulated providers must disclose information on a range of other items which impact regulatory profit, including requiring:
- 4.58.1 recognition of merger and acquisition cost to the extent the merger or acquisition benefits the regulated service. This allows costs to be matched with benefits. Merger and acquisition 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, merger and acquisitions costs are required to be separately disclosed;
 - 4.58.2 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;¹²¹ and
 - 4.58.3 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.

Valuation and disclosure of related party transactions

- 4.59 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.¹²²
- 4.60 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:
- 4.60.1 increase overall profits in a fibre service provider group including the related party by overcharging the regulated services for inputs supplied by the related party, contrary to s 162(d); and/or

¹²¹ 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.

¹²² In referring to 'input costs', we are referring to capex and/or opex costs to the regulated provider.

- 4.60.2 purchase services from a related party when it is not the most efficient supplier, contrary to s 162(b).
- 4.61 Consumers of the regulated service should not be harmed by having to pay higher prices for the regulated service as a result of either of these two causes.
- 4.62 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.
- 4.63 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.
- 4.64 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).
- 4.65 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.
- 4.66 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:
- 4.66.1 the value placed on services supplied by a related party; or
- 4.66.2 the value of revenues from sales to a related party.

- 4.66.3 These are dealt with in the related party transactions provisions to ensure such transactions are valued on terms that are equivalent to arm's-length. For example, when considering an internal division providing unregulated services within 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.¹²³
- 4.67 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.
- 4.68 If a regulated provider sells assets, 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.¹²⁴

Draft decisions on valuation and disclosure of related party transactions

- 4.69 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:
- 4.69.1 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;
- 4.69.2 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
- 4.69.3 an objective and independent measure must be used in determining the terms of an arm's-length transaction.

¹²³ 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.

¹²⁴ 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.

- 4.70 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 draft decisions to make it clear to interested parties the basis on which related party transaction terms, including prices, have been set:
- 4.70.1 if a regulated provider of the regulated service transacts with a related party in a disclosure year, it will be required to disclose:
 - 4.70.1.1 details of the related party relationships;
 - 4.70.1.2 the regulated provider's procurement policies and processes in respect of a related party relationship;
 - 4.70.1.3 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
 - 4.70.1.4 details of how and when the regulated provider last tested the market valuation of transactions in at least one expenditure category.
- 4.71 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 think this will ensure that compliance costs are proportionate to the size of the provider and its level of related party transactions.
- 4.72 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.
- 4.73 Regulated providers will also be required to obtain a more detailed report from an independent auditor or another qualified independent expert if:
- 4.73.1 the related party transactions are 65% or more of a year's total opex or capex spend; or
 - 4.73.2 the independent auditor is not able to conclude that the disclosures of related party transactions comply with the related party disclosure rules; and
 - 4.73.3 that regulated provider will only be required to obtain and disclose this independent report in any year if:

- 4.73.3.1 there was no equivalent report published for one of the immediately prior two years; and
 - 4.73.3.2 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.
- 4.74 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.

Term credit spread differential

- 4.75 Regulated providers can where applicable, when calculating regulatory profit, 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.
- 4.76 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.¹²⁵ This greater cost is known as the term credit spread differential (TCSD).
- 4.77 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.¹²⁶
- 4.78 The TCSD allowance must be calculated in accordance with the Fibre IMs, which include the decisions to:
- 4.78.1 cap the qualifying debt “original tenor” at ten years;¹²⁷
 - 4.78.2 calculate the TCSD allowance using the spread premium adjusted for debt issuance costs;¹²⁸ and

¹²⁵ 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.

¹²⁶ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 6.314-6.343.

¹²⁷ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 6.318 and 6.326.

¹²⁸ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraphs 6.319, 6.325, and 6.327-6.328.

- 4.78.3 provide the formula for the TCSD and use it to calculate the TCSD allowance, which is done via Schedule 2a.
- 4.79 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.
- 4.80 However, we do not require regulated providers to publish details on individual debts. Rather, they must 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.¹²⁹
- 4.81 We do not require regulated providers to disclose detailed information on non-qualifying debt.

Regulatory tax allowance

- 4.82 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.¹³⁰
- 4.83 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

- 4.84 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.

¹²⁹ Some providers may have term credit arrangements which are not confidential (for example, if the funds were raised via a public issue of bonds).

¹³⁰ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 8.

- 4.85 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.
- 4.86 The IM Reasons Paper outlines how costs and asset values are to be allocated between FFLAS and non-FFLAS activities.¹³¹
- 4.87 Regulated providers must disclose information about the cost and asset allocator used within each operating cost or asset category. This includes the value of:
- 4.87.1 assets and costs directly attributable to FFLAS for each operating cost or asset category; and
 - 4.87.2 assets and costs not directly attributable to FFLAS for each operating cost or asset category.
 - 4.87.3 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.

Return on investment approach

Summary

- 4.88 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 below).
- 4.89 Regulated providers must provide the following information on ROI on a headline (before benefit of Crown financing adjustment, discussed below), vanilla and post-tax basis:
- 4.89.1 ROI indicator derived from the expression for an IRR calculation undertaken over a one-year period, which assumes mid-year timings for revenue and expenditure items (mid-year ROI); and

¹³¹ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 4.

4.89.2 ROI indicator based on monthly notional cash flow if specified criteria are met (monthly ROI).

4.90 Regulated providers subject to PQ regulation must also disclose the ROI excluding wash-up amounts on a vanilla and post-tax basis.

4.91 The three ROI measures can be summarised as follows:

ROI Measure	Calculation
Headline ROI	ROI calculated on all cashflows
ROI comparable to Vanilla WACC	ROI calculated after adding back benefit of Crown financing to cashflows
ROI comparable to post-tax WACC	ROI comparable to Vanilla WACC less interest tax shield on debt

Weighted Average Cost of Capital

4.92 Regulated providers must disclose information relating to cost of capital following the cost of capital IM,¹³² which sets out the methodology that should be applied when determining the Weighted Average Cost of Capital (WACC).

4.93 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.¹³³

4.94 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.¹³⁴

¹³² Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 6.

¹³³ This decision was considered along with alternative options of publishing a specific percentile, and publishing the mid-point together with the 25th and 75th percentiles, see Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraphs 6.862-6.873.

¹³⁴ 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.

Benefit of Crown financing adjustment to ROI

- 4.95 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.
- 4.96 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.¹³⁵
- 4.97 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. 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. The ROI comparable to a vanilla WACC is the economic return before sharing the benefit included in the allowable revenue calculation.
- 4.98 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.
- 4.99 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.

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.

¹³⁵ Clause 2.4.10.

- 4.100 We invite submissions on potential alternative adjustments that would achieve the same result of a vanilla WACC comparable measure of ROI.

ROI assuming mid-year timing

- 4.101 An ROI which assumes mid-year timing of revenue and expenditure 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. The approach is set out in detail in Attachment A.
- 4.102 By having a regulated provider disclose the mid-year 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.

ROI based on monthly cash flows

- 4.103 Under some circumstances, calculating the ROI using the regulated provider's monthly revenues and expenditure will result in a significantly better estimation of returns than using a mid-year ROI. Examples include when asset expenditure during the year is lumpy or revenue is seasonal.
- 4.104 Providers have the option of disclosing an ROI calculated using monthly cash flows (monthly ROI). Providers must disclose a monthly ROI if their cash flow is particularly volatile over the year.
- 4.105 Our final determinations only require providers to disclose monthly ROIs if, in the first or last quarter of the disclosure year, either the value of assets commissioned exceeds 10% of the opening RAB or the notional net cash flows in each quarter exceeds 40% of the annual notional net cash flows. We set these thresholds based on our approach in Part 4 such that a regulated provider with typical capex would only have to prepare the mid-year ROIs cash flow.

Value of the Regulatory Asset Base

Summary

- 4.106 Regulated providers must provide the following information on their RAB value for ID purposes:
- 4.106.1 the value of the initial RAB as of the implementation date;
 - 4.106.2 annual roll forward of the RAB value to determine the closing value of the RAB;

- 4.106.3 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;
- 4.106.4 details on the value of works under construction which represents likely future additions to the RAB value;
- 4.106.5 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

- 4.107 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.
- 4.108 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.
 - 4.108.1 It follows that interested persons need information on the value, composition, and movements of the RAB value.
 - 4.108.2 They also need information on non-network assets because these can be significant.
 - 4.108.3 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.
- 4.109 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, regulated providers must first establish an initial RAB and then roll it forward on an annual basis.

Unallocated and allocated RABs

- 4.110 We make a distinction between the unallocated and allocated RAB.
 - 4.110.1 The unallocated RAB is the value of assets the provider employs to provide regulated services.

4.110.2 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.

4.111 The ROI calculation makes use of the allocated RAB.

4.112 The FLA, discussed in paragraphs 4.121 to 4.124 to forms a part of the initial allocated RAB.

Initial RAB disclosures

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

4.114 In implementing the asset valuation IM, regulated providers must establish an initial RAB by making required adjustments to the asset values recorded for general purpose financial reporting including:

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

4.114.2 recognition of the FLA;

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

4.114.4 adjustments to asset values to recognise capital contributions.

Roll-forward of initial RAB balances

4.115 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.

4.116 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

4.117 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.

- 4.118 The RAB roll forward is calculated in accordance with the asset valuation IM.¹³⁶ 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.¹³⁷
- 4.119 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 on page 86 under the Works under construction heading.
- 4.120 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.

Financial Loss Asset

- 4.121 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.
- 4.122 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 (RAB) of each regulated provider as at 1 January 2022 (implementation date).

¹³⁶ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 2.

¹³⁷ Line entry 'adjustment resulting from asset allocation' on Schedules 4 and 4b.

- 4.123 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.
- 4.124 What this means for ID is that regulated providers will be required to provide an initial RAB value of the FLA, 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.¹³⁸

Depreciation

- 4.125 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.
- 4.126 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.
- 4.127 The IM Determination does not directly prescribe how depreciation is to be calculated, but the following rules apply:
- 4.127.1 Regulated providers must calculate their depreciation with a method consistent with GAAP, although there are exceptions for using an alternative or different depreciation method;¹³⁹
- 4.127.2 regulated providers subject to PQ regulation must for ID purposes apply the same depreciation method applied under a PQ determination;¹⁴⁰
- 4.127.3 the sum of unallocated depreciation calculated for a fibre asset over its asset life is constrained according to the IM Determination.¹⁴¹

¹³⁸ 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.

¹³⁹ Commerce Commission, *Fibre Input Methodologies Determination 2020*, 13 October 2020, section 3.3.2.

¹⁴⁰ *Ibid*, section 2.2.8(8).

¹⁴¹ *Ibid*, section 2.2.9.

- 4.128 Regulated providers must disclose the following information about depreciation annually:
- 4.128.1 Total depreciation for both the unallocated RAB and RAB;
 - 4.128.2 the values of depreciation calculated in a manner consistent with GAAP and with an alternative method; and
 - 4.128.3 the weighted average remaining lives and weighted average total average asset lives of assets by category.
- 4.129 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

- 4.130 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.
- 4.131 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 these 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.
- 4.132 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

- 4.133 Capital contributions and vested assets must be treated in accordance with the asset valuation IM.¹⁴²

¹⁴² Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 3.

- 4.134 To be consistent with the IM determinations (but differing from GAAP), capital contributions and vested assets are not recognised as regulatory income.
- 4.135 Capital contributions must be deducted from the costs of a commissioned asset at the commissioning date.
- 4.136 Each disclosure year, capital contributions are deducted from expenditure on assets to determine a regulated provider's capex.
- 4.137 A regulated provider's capex is a component of works under construction which, as an asset, is a component of the RAB.
- 4.138 If capitalised financing costs are received, these must not be applied to capital contributions.¹⁴³
- 4.139 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.
- 4.140 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

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

¹⁴³ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), C10.

- 4.143 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.
- 4.144 Explanations for variances between targeted and actual operating revenue (derived from quarterly 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.
- 4.145 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.

Consolidation statement

- 4.146 We require 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.
- 4.147 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. This enables interested persons to see the relationship between the consolidated performance reported under GAAP and the regulatory performance including the total effect of GAAP to IM value adjustments.
- 4.148 We consider that the requirement to complete a consolidation statement is in line with the purpose in s 189(1). As regulated providers may be subject to ID under Part 6 of the Act or be engaged in the provision of other services not regulated under Part 6 of the Act, we believe that a consolidation statement is necessary to monitor and assess compliance.

Assurance and certification of historical financial information

- 4.149 Regulated providers must provide assurances as to the level of compliance with the ID requirements for the historical financial information including:

- 4.149.1 external audit assurance of the financial information disclosed in Schedules 1 to 9;
- 4.149.2 having director certification for all disclosed financial information; and
- 4.149.3 specific certification by directors for some related party transactions.

Transitional provisions of historical financial information

- 4.150 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.

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 draft decision category:
- 5.2.1 frequency of reporting;
 - 5.2.2 pricing and revenues information (PQ FFLAS);¹⁴⁴
 - 5.2.3 incentives (PQ FFLAS);
 - 5.2.4 pricing, revenues and incentives (ID-only FFLAS);¹⁴⁵ and
 - 5.2.5 contracts disclosures.

Summary of Draft Decisions

Table 5.1 Overview – Draft Decisions on Pricing and Contract Disclosures

Category	Draft decisions on information required	Reference to Determination	Relevant part of purpose statement
Frequency of reporting	Except for disclosure of contracts, information will be recorded monthly and disclosed quarterly.	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	s 186
Pricing and revenues (PQ FFLAS)	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).	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	s 162(a)-(d), s 166(2)(b)

¹⁴⁴ 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.

¹⁴⁵ 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	Draft decisions on information required	Reference to Determination	Relevant part of purpose statement
Incentives (PQ FFLAS)	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).	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	s 162(c), s 166(2)(b)
Pricing and revenues (ID-only FFLAS)	Provide the same information as for "Pricing and revenue" for each service in ID-only areas, split by each ID-only area.	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	s 162(a)-(d), s 166(2)(b)
Incentives (ID-only FFLAS)	Provide the same information as for "Incentives" for each service in ID-only areas, split by each ID-only area.	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	s 162(c), s 166(2)(b)
Pricing methodologies	Disclosure of the methodologies used to determine pricing is not required under the initial ID determination.	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	
Contracts disclosures: prescribed terms & conditions	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.	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	s 162(b), s 166(2)(b)
Contracts disclosures: comparative information	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 vs. non-standard contracts.	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	s 162(b), s 166(2)(b)
Contract disclosures: other disclosures on non-standard contracts	Disclosure of criteria used to enter non-standard contracts and criteria used to determine prices in non-standard contracts.	Chorus: Schedule 24 ID-only regulated providers: Schedule 25	s 162(b), s 166(2)(b)

Frequency of reporting

- 5.3 Information related to pricing and incentives must be recorded monthly and disclosed quarterly.

Pricing and revenues (PQ FFLAS)

- 5.4 Information on all PQ FFLAS must be disclosed by service. The disclosure template groups the different FFLAS into the following three categories, based on the Open Systems Interconnection model where the service is provided:

5.4.1 Layer 1 services;

5.4.2 Layer 2 services; and

5.4.3 other FFLAS.

- 5.5 For each PQ FFLAS:

5.5.1 a service description;

5.5.2 an indication for whether the service is available at all fibre central offices within the geographical area subject to PQ regulation (**PQ area**) (yes/no);

5.5.3 only for services not available at all PQ area fibre central offices – information on the central offices where the service is not available;

5.5.4 the number of connections:

5.5.4.1 the number of connections (opening);

5.5.4.2 the number of connections (closing);

5.5.5 list prices for each service, separately for:

5.5.5.1 connection charge;

5.5.5.2 monthly charge;

5.5.6 operating revenues, split by:

5.5.6.1 revenues earned from connection charges;

5.5.6.2 revenues earned from monthly charges;

- 5.5.6.3 revenues earned from other changes; and
 - 5.5.7 an indication whether an incentive is offered for the service (yes/no).
- 5.6 Under the initial ID determination, our draft decision is to require disclosure of service availability at the central office level (by exception), but not to require geographic segmentation of the pricing information for PQ FFLAS .

Incentives (PQ FFLAS)

- 5.7 For each incentive applied to PQ FFLAS disclose:
- 5.7.1 incentive description, including conditions / availability / duration;
 - 5.7.2 an indication for whether the incentive is available in the entire PQ area (yes/no);
 - 5.7.3 an indication for whether the costs for the incentive are capitalised under GAAP (yes/no);
 - 5.7.4 number of connections receiving an incentive:
 - 5.7.4.1 total connections receiving a one-off incentive;
 - 5.7.4.2 total connections receiving a monthly incentive;
 - 5.7.5 value of incentive per connection (\$), split by:
 - 5.7.5.1 one off incentive (\$ per connection); and
 - 5.7.5.2 recurring monthly incentives (\$ per connection).

Pricing, revenues and incentives (ID-only FFLAS)

- 5.8 For regulated providers that offer FFLAS that are subject only to ID regulation, our draft decision is to require disclosure of the same information as listed under 'Pricing and revenues (PQ FFLAS)' and 'Incentives (PQ FFLAS)', with the additional requirement that the information is provided separately for each distinct geographical ID-only area.¹⁴⁶

¹⁴⁶ 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.

- 5.9 Each regulated provider will be required to report separately on the FFLAS they supply in each ID-only area, if the regulated provider operates in that area.

Contracts disclosures

Disclosure of prescribed terms and conditions

- 5.10 Disclose prescribed terms and conditions in standard contracts between regulated providers and access seekers for the provision of FFLAS, including:
- 5.10.1 service descriptions;
 - 5.10.2 quantities to be supplied;
 - 5.10.3 service level terms, including performance guarantees, prices and incentives; and
 - 5.10.4 operations manuals.
- 5.11 Disclose amendments to the prescribed terms and conditions of any existing standard contracts or non-standard contracts between regulated providers and access seekers for the provision of FFLAS.

Disclosure of comparative information

- 5.12 In relation to equivalent standard contracts and non-standard contracts between regulated providers and access seekers for the provision of FFLAS disclose:
- 5.12.1 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;
 - 5.12.2 the number of access seekers on non-standard contract(s) and the number of access seekers on the equivalent standard contract;
 - 5.12.3 the value of target revenue expected to be collected under the non-standard contract(s) compared to the value of target revenue expected to be collected under the equivalent standard contract; and
 - 5.12.4 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.

Other disclosures on non-standard contracts

- 5.13 In relation to non-standard contracts between regulated providers and access seekers for the provision of FFLAS disclose:
- 5.13.1 information on the criteria used to decide whether / when a non-standard contract should be used; and
 - 5.13.2 any specific criteria used to determine the prices for non-standard contracts.

Application of our Regulatory Framework**The purposes in Part 6**

- 5.14 We have applied our Regulatory Framework and consider that the draft 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.
- 5.15 We consider that all of our draft decisions in this chapter, together, best give, or are likely to best give, effect to the s 166(2) purposes as:
- 5.15.1 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
 - 5.15.2 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).
- 5.16 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 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.

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

- 5.17 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.
- 5.18 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.
- 5.19 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 effective 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.
- 5.20 The decisions in this chapter promote the purpose of s 186 and the outcomes in s 162 by:
- 5.20.1 requiring reporting on service-level prices and incentives that will allow interested parties to evaluate whether over time:
- 5.20.1.1 section 162(c) is being met (ie, whether end-users share in the benefits of efficiency gains in the supply of FFLAS, including through lower prices); and
- 5.20.1.2 section 162(d) is being met (assisting interested persons to understand whether suppliers are earning excessive returns over time).
- 5.20.2 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:
- 5.20.2.1 new products are introduced in accordance with incentives for innovation (s 162(a)); and/or

- 5.20.2.2 product characteristics are tailored to the quality that end-users demand (s 162(b)).
- 5.20.3 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:
 - 5.20.3.1 the regulated providers' obligations and responsibilities to access seekers in the event the provision of FFLAS to end-users is impeded or interrupted can help inform whether the quality of FFLAS supplied reflects end-users' demands.
- 5.21 The decisions in this chapter also promote the purpose in s 166(2)(b) in that:
 - 5.21.1 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.
- 5.22 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.

Draft Decision: Frequency of reporting

Draft decision

- 5.23 Information related to pricing and incentives must be recorded monthly and disclosed quarterly.

Reasons

- 5.24 Quarterly 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.
- 5.25 Recording 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 quarterly reduces the reporting burden on LFCs and the likelihood that the information disclosed would be commercially sensitive at the time of disclosure.

- 5.26 Annual reporting of prices and incentives 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 annual 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.

Draft Decision: Pricing and revenues (PQ FFLAS)

Draft decision

- 5.27 Information on all PQ FFLAS must be disclosed, by service. The disclosure template groups the different FFLAS into the following three categories, based on the Open Systems Interconnection model where the service is provided:
- 5.27.1 Layer 1 services;
 - 5.27.2 Layer 2 services; and
 - 5.27.3 other FFLAS.
- 5.28 For each PQ FFLAS:
- 5.28.1 a service description;
 - 5.28.2 an indication for whether the service is available at all fibre central offices within the PQ area (yes/no);
 - 5.28.3 only for services not available at all PQ area fibre central offices – information on the central offices where the service is not available;
 - 5.28.4 the number of connections:
 - 5.28.4.1 the number of connections (opening);
 - 5.28.4.2 the number of connections (closing);
 - 5.28.5 list prices for each service, separately for:
 - 5.28.5.1 connection charge;
 - 5.28.5.2 monthly charge;
 - 5.28.6 operating revenues, split by:
 - 5.28.6.1 revenues earned from connection charges;

- 5.28.6.2 revenues earned from monthly charges;
 - 5.28.6.3 revenues earned from other changes; and
 - 5.28.7 an indication whether an incentive is offered for the service (yes/no).
- 5.29 Under the initial ID determination, our draft decision is to require disclosure of service availability at the central office level (by exception), but not to require geographic segmentation of the pricing information for PQ FFLAS.

Reasons

- 5.30 As explained at paragraphs 5.17-5.21 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.
- 5.31 Specifically, pricing information can help interested persons understand:
- 5.31.1 whether regulated providers are sharing the benefits of efficiency gains with end-users through lower prices over time (per s 162(c);
 - 5.31.2 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;
 - 5.31.3 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;¹⁴⁷ and
 - 5.31.4 in combination with other information that may be disclosed, whether regulated providers are earning excessive returns over time (s 162(d)).

¹⁴⁷ 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 5.41 below.

- 5.32 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 contractually agreed prices.¹⁴⁸ For this reason, our disclosure requirements related to prices include:
- 5.32.1 a service description;
 - 5.32.2 revenues received from different types of service changes (after incentives are applied), and
 - 5.32.3 quantities billed (in the form of connections for each service).
- 5.33 Our draft decisions on ID requirements for incentives applied to each service are discussed at paragraphs 5.43-5.50,¹⁴⁹ while the ID requirements related to contract terms are discussed at paragraphs 5.62-5.76 below.
- 5.34 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.

¹⁴⁸ For the purposes of this paper, the prices specified in contracts between regulated providers and access seekers are sometimes referred to as 'list prices'. See also the pricing definitions Schedule in the ID determination.

¹⁴⁹ 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.

- 5.35 Trends in prices relative to the number of connections can also help interested persons to determine 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.¹⁵⁰
- 5.36 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 area(s) – eg, areas with lower costs or areas where they may face competition from alternative technologies.¹⁵¹ Reporting this information would allow interested persons to assess whether such practices are likely to be efficient and not harmful to competition in the long-term.

Existing information disclosure

- 5.37 Our initial ID reporting requirements related to prices were modelled after the existing disclosures under the LFC Information Disclosure Determination 2018, with a revised reporting frequency and additional requirements related to incentives (see next section).¹⁵²
- 5.38 Our draft decision departs from the existing pricing disclosure requirements, however, by not requiring reporting by access seeker or by UFB area.
- 5.39 Our view is that such additional granularity is not required for the initial regulatory period, given the additional restrictions on prices that PQ regulated providers have to comply with, including:
- 5.39.1 geographically consistent prices under s 201;
 - 5.39.2 maximum prices for the declared services (anchor services and DFAS) – see paragraphs 2.80-2.83 above; and

¹⁵⁰ ARPU is calculated in Schedules 24 and 25 by dividing the total revenues earned from a given FFLAS by the average number of active connections for that service.

¹⁵¹ Under PQ regulation, regulated providers are subject to the requirement of geographically consistent pricing under s 201. However, as explained in our Draft Guidance on the application of s 201, this section does not impose an obligation on PQ regulated providers to provide all services in all geographical areas. See Commerce Commission "Section 201 – Geographically consistent pricing: Draft guidance" (27 May 2021), paragraph 29.

¹⁵² [LFC Information Disclosure Determination 2018](#) [2018] NZCC 10, Schedules 5 and 6.

- 5.39.3 the undertakings made under s 156AD for regulated providers to supply FFLAS on non-discriminatory and equivalent basis – see paragraph 2.86 above.

Stakeholder views

- 5.40 A number of RSPs that made submissions on our approach paper supported the monitoring of prices through ID. In particular:
- 5.40.1 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.¹⁵³
- 5.40.2 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”.¹⁵⁴
- 5.40.3 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.¹⁵⁵
- 5.41 In response to our competition survey, stakeholders made the following submissions relevant to ID pricing disclosures.
- 5.41.1 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.¹⁵⁶

¹⁵³ Spark “[Submissions on PQID process and approach paper](#)” (14 October 2020), page 1 and paragraph 3.

¹⁵⁴ Vodafone “[Submissions on PQID process and approach paper](#)” (14 October 2020), pages 2 and 4-5.

¹⁵⁵ Vocus “[Submissions on PQID process and approach paper](#)” (14 October 2020), paragraphs 14-15.

¹⁵⁶ Spark “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), pages 6-7.

- 5.41.2 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.¹⁵⁷
- 5.41.3 Enable and Ultrafast 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.¹⁵⁸
- 5.41.4 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.”¹⁵⁹
- 5.42 We have noted stakeholders’ concerns about potentially inefficient pricing practices in the supply of FFLAS and/or pricing practices that may not promote competition for the long-term benefit of end-users. In the draft ID determination, we have sought to ensure that the pricing requirements we have set are sufficiently detailed to allow interested persons to assess whether the purposes of Part 6 are being met. At the same time, we acknowledge that regulated providers are subject to other regulatory obligations that limit their ability to engage in anti-competitive pricing and for this reason, we have chosen not to require at this time pricing reporting by access seeker or by granular geographical areas such as POI areas or central office areas.

Draft Decision: Incentives (PQ FFLAS)

Draft decision

- 5.43 For each incentive applied to PQ FFLAS disclose:

¹⁵⁷ 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.

¹⁵⁸ Enable Networks Limited [“Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation”](#) (25 February 2021), pages 3-5 and Ultrafast Fibre Ltd [“Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation”](#) (25 February 2021), pages 3-5.

¹⁵⁹ Chorus [“Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation”](#) (25 February 2021), pages 1 and 4.

- 5.43.1 incentive description, including conditions / availability / duration;
- 5.43.2 an indication for whether the incentive is available in the entire PQ area (yes/no);
- 5.43.3 an indication for whether the costs for the incentive are capitalised under GAAP (yes/no);
- 5.43.4 number of connections receiving an incentive:
 - 5.43.4.1 total connections receiving a one-off incentive;
 - 5.43.4.2 total connections receiving a monthly incentive;
- 5.43.5 value of incentive per connection (\$), split by:
 - 5.43.5.1 one off incentive (\$ per connection); and
 - 5.43.5.2 recurring monthly incentives (\$ per connection).

Reasons

- 5.44 We consider that incentives 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 end-users and are one way through which efficiency gains achieved by regulated providers could be passed on to end-users (in line with s 162(c)).
- 5.45 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 FFLAS. In addition, the disclosure of incentive information would allow interested persons to calculate the total value of incentives for each service which can be used to reconcile list prices with actual revenues.
- 5.46 We have included reporting requirements on the number of end-users (expressed as connections) that benefited from different types of incentives, as well as on the conditions linked to each incentive, including on geographic availability of the incentive, because this information would allow interested persons to assess:
 - 5.46.1 the materiality of the incentive relative to the overall revenues earned from sales of the service to which the incentive applied; and

5.46.2 whether the incentive is targeted at particular market segments, end-users or geographic areas and thus, whether it is likely to promote competition or not.

5.47 This information 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

5.48 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.¹⁶⁰ 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 5 RSPs.

5.49 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 draft 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 (when implemented under the regulations), the draft 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

5.50 In their submission on our approach paper, Vodafone argued that “scrutiny [should be] applied to any discounts to ensure that they do not harm competition”.¹⁶¹ Further, 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.¹⁶²

¹⁶⁰ [LFC Information Disclosure Determination 2018](#) [2018] NZCC 10, Schedule 6.

¹⁶¹ Vodafone “[Submissions on PQID process and approach paper](#)” (14 October 2020), pages 7.

¹⁶² Spark “[Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)” (25 February 2021), pages 5 and 9.

Draft Decision: Pricing methodology

Draft decision

- 5.51 Disclosure of the methodologies used to determine pricing is not required under the initial ID determination.

Reasons

- 5.52 Our final decision in our IM Reasons paper was not to determine input pricing methodologies in PQP1.¹⁶³
- 5.53 We understand that the disclosure of pricing methodologies can provide information on how regulated providers recover their costs. However, we consider that the legal constraints that the Act imposes on Chorus' pricing will, at least initially, sufficiently limit 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, regulated providers that are subject to ID regulation only 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.
- 5.54 We consider that the disclosure requirements on prices and incentives that we are setting will also encourage regulated providers to set efficient prices in line with those that could be achieved in workably competitive markets. These disclosure requirements will thus provide some further constraints on how regulated providers set their prices.
- 5.55 By not requiring disclosure of pricing methodologies under the initial ID determination, we are seeking to balance the additional transparency that could assist in assessing whether the purposes of Part 6 are being met with the potential risk to competition from disclosures that could potentially facilitate collusive behaviour between regulated providers in any areas, such as ID-only areas, where regulated providers might compete. 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 purposes of Part 6.

¹⁶³ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), page 771.

Draft Decision: Pricing, revenues and incentives (ID-only FFLAS)

Draft decision

- 5.56 For regulated providers that offer FFLAS that are subject only to ID regulation, our draft decision is to require disclosure of the same information as listed under 'Pricing and revenues (PQ FFLAS)' and 'Incentives (PQ FFLAS)', with the additional requirement that the information is provided separately for each distinct geographical ID-only area.¹⁶⁴
- 5.57 Each regulated provider will be required to report separately on the FFLAS they supply in each ID-only area, if the regulated provider operates in that area.

Reasons

- 5.58 In addition to the rationale for pricing and incentive disclosures explained at paragraphs 5.30-5.42 and paragraphs 5.44-5.50 above, our draft 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.
- 5.59 This information can in turn be used to evaluate whether:
- 5.59.1 new services are introduced in each ID-only area in accordance with incentives for innovation (s 162(a));
 - 5.59.2 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
 - 5.59.3 the prices and service characteristics in each ID-only area are indicative of different level of competition developing in the ID-only areas (s 166(2)(b)).
- 5.60 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.

¹⁶⁴ 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.

- 5.61 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, and in particular whether Chorus offers a greater variety (and more innovative) products in ID-only areas than in PQ areas (eg, due to increased competitive pressure).

Draft Decision: Contract disclosures

Draft decision

Disclosure of prescribed terms and conditions¹⁶⁵

- 5.62 Disclose prescribed terms and conditions in standard contracts between regulated providers and access seekers for the provision of FFLAS, including:
- 5.62.1 service descriptions;
 - 5.62.2 quantities to be supplied;
 - 5.62.3 service level terms, including performance guarantees, prices and incentives; and
 - 5.62.4 operations manuals.
- 5.63 Disclose amendments to the prescribed terms and conditions of any existing standard contracts or non-standard contracts between regulated providers and access seekers for the provision of FFLAS.

Disclosure of comparative information

- 5.64 In relation to equivalent standard contracts and non-standard contracts between regulated providers and access seekers for the provision of FFLAS disclose:
- 5.64.1 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;

¹⁶⁵We note that the disclosure of prescribed terms and conditions of contracts is subject to s 188(4) of the Act which 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.

- 5.64.2 the number of access seekers on non-standard contract(s) and the number of access seekers on the equivalent standard contract;
- 5.64.3 the value of target revenue expected to be collected under the non-standard contract(s) compared to the value of target revenue expected to be collected under the equivalent standard contract; and
- 5.64.4 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.

Other disclosures on non-standard contracts

- 5.65 In relation to non-standard contracts between regulated providers and access seekers for the provision of FFLAS disclose:
 - 5.65.1 information on the criteria used to decide whether / when a non-standard contract should be used; and
 - 5.65.2 any specific criteria used to determine the prices for non-standard contracts.

Reasons

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

- 5.66 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, eg, by evaluating whether the terms on which services are supplied reflect the quality that end-users demand (per s 162(b)) and whether the risks are allocated to the party to the contract most able to deal with them (as is observed in workably competitive markets), as well as whether there are any hindrances or obstacles to competition emerging in telecommunications markets as contemplated by s 166(2)(b).

- 5.67 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.¹⁶⁶ 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.
- 5.68 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.¹⁶⁷ 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

- 5.69 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.¹⁶⁸
- 5.70 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 further 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.

¹⁶⁶A standard contract is a contract for the supply of a given regulated service where the same terms and conditions are offered to at least 4 access seekers. An equivalent non-standard contract is a contract for a regulated service that is in all material respects the same as the service covered by the standard contract, but where some (or all) of the prescribed terms and conditions offered to access seekers are different from the terms in the standard contract. We note that some non-standard contracts may not have an equivalent standard contract – eg, contracts for new services where fewer than 4 access seekers have signed up for the service.

¹⁶⁷ See also paragraph 2.86.

¹⁶⁸ See the discussion of the declared services in paragraphs 2.80-2.83.

Stakeholders views

- 5.71 RSPs support our view that the disclosure of contract terms, including information on changes to contract terms, will promote the s 162 outcomes.
- 5.71.1 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.”¹⁶⁹ This view was supported by Trustpower in their cross-submission on the Draft IM reasons paper.¹⁷⁰
- 5.71.2 In their 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.¹⁷¹ 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.¹⁷²
- 5.71.3 2degrees, Spark, Vocus & 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.¹⁷³ They go on to say, “[o]nce the Part 6 regime is implemented, LFCs will be motivated to amend these terms in their favour.”¹⁷⁴
- 5.71.4 2degrees, Spark, Vocus and Vodafone also argued in their 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.”¹⁷⁵

¹⁶⁹ Spark [“Submission on Fibre input methodologies – Draft decision”](#) (30 January 2020), page 2.

¹⁷⁰ Trustpower [“Cross-submission on Fibre input methodologies draft decision”](#) (18 February 2020), page 1.

¹⁷¹ Spark [“Survey on Promoting competition in telecommunication markets as part of ID and PQ regulation”](#) (25 February 2021), page 7.

¹⁷² Ibid, pages 9-10.

¹⁷³ 2degrees, Spark, Vocus and Vodafone [“Submission on Fibre input methodologies – Draft decision”](#) (30 January 2020), page 7.

¹⁷⁴ Ibid, page 7.

¹⁷⁵ Ibid, page 6.

- 5.71.5 Further, 2degrees, Spark, Vocus and Vodafone argued that we should adopt a change process that would require changes to be consulted with access seekers with sufficient notice periods for changes and in some cases a vote before changes could come into effect.¹⁷⁶
- 5.71.6 2degrees also submitted that Ofcom required BT to notify changes to charges, terms, conditions and technical information where they 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.¹⁷⁷
- 5.72 On the other hand, Chorus pointed out in its submission on our competition survey that "[c]ontract terms will in many cases be competitively sensitive and disclosure would increase the risk of coordination by Chorus' competitors."¹⁷⁸
- 5.73 We believe stakeholders 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.
- 5.74 We also agree that disclosure of changes to terms quarterly will give interested persons transparency on how any contractual changes could impact the quality of services supplied and the risks for anti-competitive behaviour.
- 5.75 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 and may also encourage Chorus to retain similar terms and conditions for the supply of other FFLAS. However, we acknowledge the diverse nature of FFLAS and the possibility that all LFCs could have an incentive to amend the contract terms for other FFLAS in their favour. We therefore believe that disclosure of the prescribed terms and conditions for contracts for all FFLAS will improve transparency and promote outcomes consistent with a workably competitive market in line with s 162.

¹⁷⁶ Ibid, page 8.

¹⁷⁷ 2degrees "[Submission on Fibre input methodologies – Draft decision](#)" (30 January 2020), page 27.

¹⁷⁸ Chorus "[Additional document for survey on Promoting competition in telecommunication markets as part of ID and PQ regulation](#)" (25 February 2021), page 16.

- 5.76 We do not believe it is necessary for interested persons to have access to each service agreement between regulated providers and access seekers and have therefore limited the disclosures to prescribed terms and conditions in standard contracts and equivalent non-standard contracts.

Chapter 6 Asset Management and Network Characteristics

Purpose and structure of this chapter

- 6.1 The ID Determinations require 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 requirements.

- 6.3 Interested persons need this information 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 Determinations are sufficient to answer the above questions.

Summary of draft decisions

Table 6.1 Overview – Draft Decisions on Asset Management

Category	Draft decisions on information required	Reference to Determination	Relevant part of purpose statement
Key qualitative information			
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>	Schedule 13	S162(a), s162(b)
Link between forecast expenditure and network quality performance	<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>	Mandatory explanatory notes (Schedule 14)	S162(a), s162(b)
Key quantitative information			
Historical expenditure by category	A breakdown of historical expenditure by high level category.	Schedules 5, 5a, 6, and 7	S162(a), s162(b)
Information about the network, supporting information about asset management and expenditure	<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, % to be replaced in the next 5 years.</p> <p>Forecast cost of assets to be replaced in next 5 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.	Schedule 12	S162(a), s162(b)

	Observed and forecasted information on demand for the current and following five disclosure years, by POI area.	Schedule 12a	S162(a), s162(b)
Forecast expenditure	Forecast expenditure over a five-year period, with a breakdown of the forecasts by expenditure category for the first five years	Schedule 7	S162(a), s162(b)

- 6.5 We have required the disclosure of information about asset management and network characteristics.
- 6.6 This information is required in a series of Schedules. The Schedules require qualitative information such as an assessment of the regulated provider's asset management capability and an explanation of the link between forecast expenditure 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 of POI area.
- 6.7 Each required disclosure is able to be specified as part of ID regulation under the Act, s 179 as explained in Chapter 2, paragraph 2.50.
- 6.8 This information will:
- 6.8.1 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
 - 6.8.2 allow the Commission to carry out summary and analysis to help people to better understand the information disclosed and both the historic and future financial and network performance of the regulated provider.
- 6.9 The importance of the disclosure of the asset management and network information is explained further in this chapter.
- 6.10 As Chorus is subject to PQ regulation as well as ID regulation, Chorus has additional reporting requirements over and above those required by other regulated providers.

¹⁷⁹ Section 188(2).

Application of our Regulatory Framework

The purposes in Part 6

- 6.11 We have applied our Regulatory Framework and consider that the draft 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.
- 6.12 We consider that all of our draft decisions in this chapter, together, best give, or are likely to best give, effect to the s 166(2) purposes as:
- 6.12.1 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
 - 6.12.2 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.
- 6.13 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

- 6.14 Regulated providers must apply the following IMs to information disclosures on asset management and network characteristics:
- 6.14.1 cost allocation;¹⁸⁰ and
 - 6.14.2 asset valuation.¹⁸¹

¹⁸⁰ The cost allocation IM for ID is specified in 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.

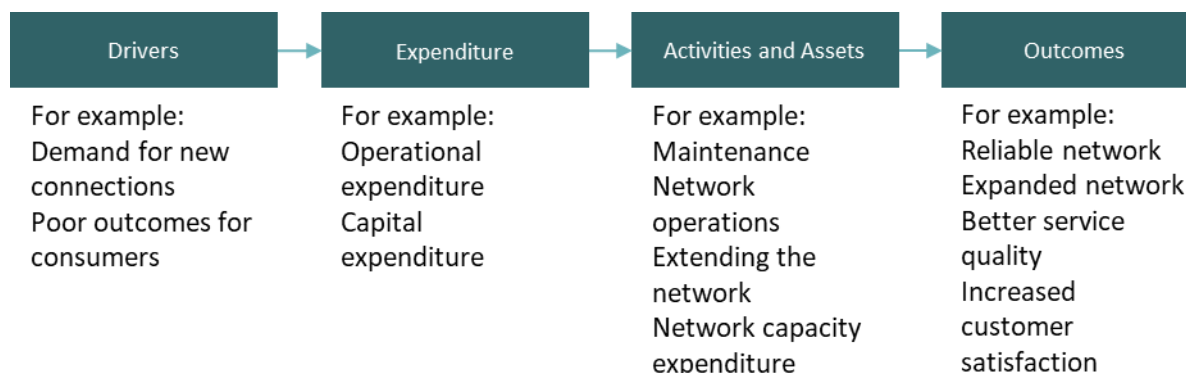
¹⁸¹ The asset valuation IM for ID is specified in [Fibre Input Methodologies \(initial value of financial loss asset\) Amendment Determination 2020](#) [2020] NZCC 24 (3 November 2020), Subpart 2 of Part 2 of Attachment B.

Are regulated providers operating and investing in their assets efficiently?

- 6.15 Regulated providers incur expenditure in order to carry out a range of activities and invest in assets. They do this to achieve intended outcomes, eg, connect new locations, meet expected levels of reliability, manage changing customer demand, and so on, as represented in Figure 6.1. To assess whether regulated providers are operating and investing in their assets efficiently, it is helpful to consider these four elements of network management:¹⁸²
- 6.15.1 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.
 - 6.15.2 Expenditure: what is the regulated provider's historical, current and planned level of expenditure?
 - 6.15.3 Activities and assets: what activities and assets is 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?
 - 6.15.4 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?

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.

¹⁸² The questions in paragraph 6.15 are not exhaustive, but are useful in understanding the link between operational and capital expenditure, and the level of service a regulated provider delivers over the long term.

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

- 6.16 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.
- 6.17 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.
- 6.18 Regulated providers must disclose historical information on network assets, demand, and network capacity, for each disclosure year.
- 6.19 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.
- 6.20 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.
- 6.21 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.

- 6.22 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.
- 6.23 For these reasons our draft 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.
- 6.24 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.
- 6.25 A number of our other requirements incorporate aspects of reports that are required under our Capex IM, for example forecast demand, investment, quality and reporting on the link between capex and opex and between capex and network quality performance.
- 6.26 Network information must be disaggregated using a standardised hierarchy (see, for example, Figure 1). 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?

- 6.27 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.
- 6.28 Regulated providers must therefore disclose information on historical and forecast R&D expenditure, and:

- 6.28.1 the extent to which forecast expenditure is in respect of innovations that will improve efficiencies within the network;
- 6.28.2 innovations they have made with opex or capex in the disclosure year that have deferred the need for asset replacement.

Are suppliers providing services at a quality that reflects consumer demands?

- 6.29 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.
- 6.30 The concept of 'quality' covers a potentially wide range of service parameters. One key measures of quality, for example, is availability - to what extent is the regulated provider able to provide a reliable, uninterrupted service?
- 6.31 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.
- 6.32 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

- 6.33 Regulated providers must disclose:
 - 6.33.1 a self-assessment report on asset management capability;
 - 6.33.2 explanation on the link between historical and forecast capex on material projects or programmes and:
 - 6.33.2.1 forecast opex; and
 - 6.33.2.2 network quality performance;
 - 6.33.3 historical expenditure for the disclosure year, including a comparison of historical expenditure against forecasts; and

6.33.4 information about the network.

6.34 Below, we discuss the reasons for our specific decisions on the above ID requirements.

Report on Asset Management Capability

6.35 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.

6.36 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.

6.37 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.

6.38 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.

6.39 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 allows the possibility that we could commission an audit by a qualified independent person of the responses in the report on asset management capability disclosures.

6.40 We expect that at this point regulated providers will have identified some initiatives to improve their asset management capability and therefore we are requiring a forward-looking disclosure of their target capability within 3 years and a description of the initiatives planned to achieve the target level of capability.

6.41 The disclosed information may help to inform our future reviews of the requirements including whether to prescribe detailed requirements for AMPs.

Explanation of link between historical and forecast capex on material projects or programmes and opex and network quality performance

- 6.42 The required explanations of the link between historical and forecast capex on material projects or programmes 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 historic year, this will help interested persons to make judgements on whether these outcomes have been achieved.
- 6.43 For the purpose of identifying material projects or programmes we have specified a draft materiality threshold of 0.1% of the opening allocated RAB for each disclosure year. Regulated providers may also disclose projects or programmes whose cost is below this threshold that they consider to be material for qualitative reasons. For example, some projects or programmes may be considered to be strategically important.

Capability

- 6.44 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.
- 6.45 Regulated providers are currently required to disclose information to the Commission on network rollout performance including number of connections.¹⁸³
- 6.46 While we are not requiring full AMPs, we are requiring regulated providers to carry out a report on their asset management capability. This, in combination with the asset and expenditure information discussed above, will allow interested persons to assess a regulated provider's asset management capability.
- 6.47 The asset management capability report 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 6.35 to 6.41 in this chapter.

¹⁸³ Schedule 12

- 6.48 The asset management capability report 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 and allow interested persons to compare the regulated provider's capability to the same standards.
- 6.49 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.
- 6.50 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.
- 6.51 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.
- 6.52 The disclosure of the asset management capability report will allow interested persons to understand how well suppliers are managing their assets against an objective standard. Disclosure of the report 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.
- 6.53 Completing the asset management capability report requires the supplier to identify references to its own documents that support its assessment of its maturity rating. This allows the possibility that we could commission an audit by a qualified independent person of the responses in the report disclosures.

Forecast expenditure and information supporting asset management plans and forecasts

- 6.54 Forecasts of operational and capex are important aspects of asset management. These forecasts must:
- 6.54.1 be in a standardised format, in accordance with Schedules 11 and 11a of the ID Determinations; and

- 6.54.2 use standardised expenditure categories.¹⁸⁴
- 6.55 In addition, regulated providers must disclose information supporting their asset management planning and expenditure forecasts—that is information on the factors that are expected to drive changes in future expenditure. Specifically, regulated providers must disclose the following standardised reports:¹⁸⁵
- 6.55.1 forecast demand; and
 - 6.55.2 forecast capacity.
- 6.56 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 against the previously disclosed forecast for that year and provide explanatory comment on any variances.
- 6.57 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 6.54 and 6.55 will also enable interested persons to understand the link between planned expenditure and the expected outcomes from that expenditure.
- 6.58 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.
- 6.59 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.

¹⁸⁴ Forecast expenditure must be disclosed using the same expenditure categories as historic financial information, see paragraphs 6.60 to 6.4 below, and Attachment C.

¹⁸⁵ Schedules 12 and 12a as applicable.

Historical expenditure for the disclosure year, by category

- 6.60 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 6.15 to 6.16).
- 6.61 Regulated providers must therefore disclose information on historic operational and capex using a standardised set of expenditure categories (see Table 6.2 and Table 6.3 on page 127 below).¹⁸⁶ These categories also apply to expenditure forecasts to allow for a direct comparison between historic expenditure for a financial year and the expenditure forecast previously disclosed for that year.
- 6.62 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.¹⁸⁷
- 6.63 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.
- 6.64 For information on expenditure to inform interested persons, it must be based on categories that:
- 6.64.1 have a clear relationship to a driver or outcome of expenditure, which is also covered by the ID requirements; and
 - 6.64.2 are reasonably likely to provide interested persons with an understanding of relationships between expenditure and the disclosed drivers (or outcomes of expenditure).¹⁸⁸
- 6.65 For information on expenditure to be cost-effective, the expenditure categories should:

¹⁸⁶ Attachment C explains the reasons for our detailed decisions on expenditure categories.

¹⁸⁷ 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.

¹⁸⁸ We provide examples of the linkages between the expenditure categories in the ID Determinations and drivers of expenditure in paragraph 6.9.

- 6.65.1 align with existing business practice where possible, to reduce the compliance costs incurred by suppliers needing to modify financial information systems. As a basis we have adopted Chorus' existing business practice categories included in its PQ path expenditure proposal, which we think appropriately capture the underlying drivers for the expenditure. We believe other regulated providers should be able to provide reporting at this level with minimal adjustment to existing systems.
- 6.66 The expenditure categories in the ID Determinations include high level categories for operational and capex. Regulated providers must further disaggregate capex into more detailed sub-categories. We consider that the expenditure categories and classes in Chorus' expenditure proposal 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.
- 6.1 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

ID Determination	Subcategories
Extending the network	Augmentation
	New property developments
	UFB communal
Installations	Complex installations
	Standard installations
Network capacity	Access
	Aggregation
	Transport
Network sustain and enhance	Field sustain
	Relocations
	Resilience
	Site sustain
IT and support - network	Network and customer IT

Table 6.3 High level operational expenditure categories

ID Determination
Network opex
Customer operations
Product sales and marketing
Maintenance
Network operations
Other network costs
Non-network opex
Asset management
Corporate
Technology

- 6.2 In addition to the expenditure categories in Table 6.2 and Table 6.3 suppliers must provide expenditure information on breakout categories of expenditure. Breakout categories highlight expenditure on activities that are included in other expenditure categories but are of particular interest in assessing regulated providers' performance.
- 6.3 For example, regulated providers must provide breakout expenditure information on research and development and insurance. Information on research and development expenditure 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.
- 6.4 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.

Information about the network

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

- 6.5.1 Information on the network assets used to provide regulated services (asset register) provided for asset categories and classes;¹⁸⁹
- 6.5.2 information on the ducts and cables and other standard asset units that make up the network;¹⁹⁰ and
- 6.5.3 information on system capacity, utilisation, and demand.¹⁹¹
- 6.6 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.¹⁹²
- 6.7 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.
- 6.8 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.
- 6.9 In addition, interested persons need information about the network in order to assess the reasonableness of regulated providers' expenditure.¹⁹³ 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

¹⁸⁹ Schedules 10, 10a, and 10b.

¹⁹⁰ Schedules 10, 10a, and 10b.

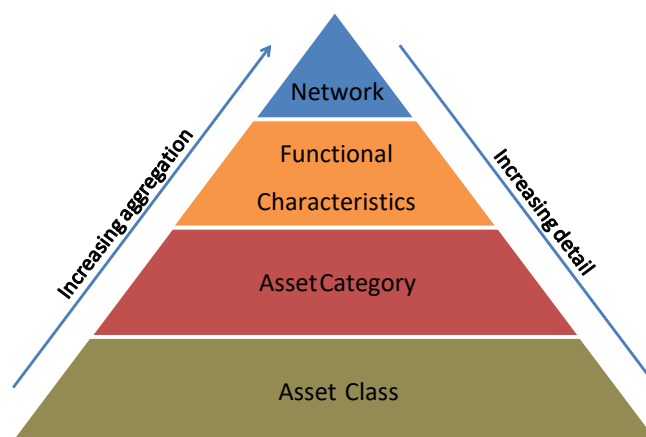
¹⁹¹ Schedules 12 and 12a.

¹⁹² See paragraphs 6.16 to 6.17.

¹⁹³ See paragraphs 6.16 to 6.17.

- 6.10 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:
- 6.10.1 the condition of network assets influences the need for asset replacement and renewal;¹⁹⁴
 - 6.10.2 demand (ie, for new connections, for higher connection speed) creates the need for expenditure on system growth;¹⁹⁵
 - 6.10.3 the number of connections demanded influences expenditure on consumer connections and new installations; and¹⁹⁶
 - 6.10.4 the network's existing capacity relative to demand influences expenditure on the asset base.
- 6.11 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



¹⁹⁴ Schedule 10a requires information on the asset age profile.

¹⁹⁵ Schedule 12a requires information on demand.

¹⁹⁶ Schedule 12a requires information on connections.

- 6.12 The ID Determinations 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.

Timing of disclosures for asset management information

- 6.13 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.
- 6.14 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 in determinations
Report on asset management capability	Annually, 5 months after the end of a disclosure year	Schedule 13
Forecast expenditure and information supporting asset management planning and forecasts	Prior to the end of a disclosure year	Schedules 11, 11a, 12, 12
Historical expenditure by category and comparison to forecasts	Annually, 5 months after the end of a disclosure year	Schedules 5, 5a, 6, 7
Information about the network	Annually, 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

- 6.15 Historical financial information for each disclosure year must be accompanied by an assurance report from an auditor, as stated in paragraph 4.149.

- 6.16 The remaining information on network management must be certified, but does not require audit assurance, that is:¹⁹⁷
- 6.16.1 forecast expenditure;
 - 6.16.2 information supporting expenditure forecasts;
 - 6.16.3 asset management capability report; and
 - 6.16.4 information about the network.

¹⁹⁷ 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 draft decisions for quality metrics and performance measures, and the reasons for our draft decisions. The chapter is structured as follows:

7.1.1 Summary of draft decisions on quality metrics and performance measures.

7.1.2 Application of our regulatory framework.

7.1.3 Key interactions.

7.1.4 Draft decisions on quality metrics and performance measures.

Summary of draft decisions on quality metrics and performance measures

Table 7.1 Overview – draft decisions on quality metrics and performance measures

Draft decisions on quality	Quality performance measures	Reference to Determination	Relevant part of purpose statement
Frequency of reporting: Information will be recorded monthly and disclosed quarterly	N/A	Chorus: Schedule 19 ID-only regulated providers: Schedule 20	S 186 Ss 162(a), (b) and (d) S 166(2)(b)
Ordering: No metrics	None	None	None

Draft decisions on quality	Quality performance measures	Reference to Determination	Relevant part of purpose statement
<p>Provisioning: Time to provision ID FFLAS</p> <p>Reporting differentiated by geography (POI area) and ID FFLAS type (business services, residential services, layer 1 services, and layer 2 services).</p>	<p>Number of ID FFLAS orders completed, differentiated by: intact connections, simple new connections, complex new connections and transport services.</p> <p>Percentage of ID FFLAS orders that met agreed provisioning dates, differentiated by: intact connections, simple new connections, complex new connections and transport services.</p> <p>Average time to provision ID FFLAS, differentiated by: intact connections, simple new connections, complex new connections and transport services.</p> <p>Percentage of simple new connection orders that took ≥ 50 calendar days.</p> <p>Percentage of complex new connection orders that took ≥ 120 calendar days.</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>S 186</p> <p>Ss 162(a), (b) and (d)</p> <p>S 166(2)(b)</p>
<p>Switching: None</p>	<p>None</p>	<p>None</p>	<p>None</p>
<p>Faults: Incidence of faults</p> <p>Reporting differentiated by geography (POI area) and ID FFLAS type (business services, and residential services).</p>	<p>Fault cause, differentiated by:</p> <ul style="list-style-type: none"> - regulated provider faults, including faults caused by layer 1, layer 2, and ONT; - non-regulated provider faults, including faults caused by the end-user, access seeker, or if no fault is found. <p>Number of regulated provider faults per 100 connections.</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>S 186</p> <p>Ss 162(a), (b) and (d)</p> <p>S 166(2)(b)</p>

Draft decisions on quality	Quality performance measures	Reference to Determination	Relevant part of purpose statement
<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>S 186</p> <p>Ss 162(a), (b) and (d)</p> <p>S 166(2)(b)</p>
<p>Availability: Average downtime</p> <p>Reporting differentiated by geography (POI area) and network architecture (layer 1, and layer 2) and by force majeure events.</p>	<p>Minutes of planned downtime.</p> <p>Minutes of unplanned downtime.</p> <p>Number of connections.</p> <p>Average unplanned downtime.</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>S 186</p> <p>Ss 162(a), (b) and (d)</p> <p>S 166(2)(b)</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>S 186</p> <p>Ss 162(a), (b) and (d)</p> <p>S 166(2)(b)</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>S 186</p> <p>Ss 162(a), (b) and (d)</p> <p>S 166(2)(b)</p>

Draft decisions on quality	Quality performance measures	Reference to Determination	Relevant part of purpose statement
Performance: Traffic performance	<p>Number of exceedances of frame delay equal to or above 7mS.</p> <p>Number of exceedances of frame delay variation equal to or above 3 mS.</p> <p>Number of exceedances of frame loss ratio CIR equal to or above 0.1%.</p> <p>Number of exceedances of frame loss ratio EIR equal to or above 2%.</p>	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>S 186</p> <p>Ss 162(a), (b) and (d)</p> <p>S 166(2)(b)</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>	<p>S 186</p> <p>Ss 162(a), (b) and (d)</p>
Customer Service: Missed appointments	Number of missed provisioning appointments.	<p>Chorus: Schedule 19</p> <p>ID-only regulated providers: Schedule 20</p>	<p>S 186</p> <p>Ss 162(a), (b) and (d)</p>

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 draft decisions for quality metrics and performance measures in relation to ID regulation. It explains how our draft 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.¹⁹⁸

¹⁹⁸ Regulatory framework chapter, from paragraph 2.2.

- 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,¹⁹⁹ and that information required to be disclosed may include quality performance measures and statistics.²⁰⁰ We discuss the requirements and application of the quality IM to our draft 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 draft 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 draft decisions. This is discussed in more detail from paragraph 7.57 below.

Requirements under the quality IM

- 7.7 The quality IM²⁰¹ specifies quality dimensions which underpin the quality ID requirements. 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:²⁰²

¹⁹⁹ Section 188(1)(f).

²⁰⁰ Sections 188(2)(g) and (i).

²⁰¹ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), chapter 5.

²⁰² 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 judgment.

- 7.15 As our ID draft decisions require us to exercise judgement, we have explained why our decision to require (or not require) the disclosure of certain information in our draft 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 draft ID determination would best give (or be likely to best give), effect to the s 166(2) purposes as the disclosure of the required information would 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 draft 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 draft 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 draft 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 draft decisions will 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 draft 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. We explain at paragraph 7.59 below the importance of clear and consistent reporting requirements to ensure interested persons are able to analyse and interpret quality information in a meaningful way.
- 7.24 The proposed 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 draft 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 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 draft 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 they might otherwise be able to. 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 following best practice principles when applying the quality IM to ID regulation.²⁰³ 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.

²⁰³ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 5.77.

7.30 We propose adding 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.

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 2.80-2.83 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 prescribe 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 declared services. In setting performance measures for quality ID regulation, we have considered the service levels in the exposure draft for the declared services and we have also based our quality metrics and performance measures largely on the existing UFB contracts.

7.34 We discuss how we have taken the declared services into account where we explain our draft decisions from the section below, Draft 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.

- 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.”²⁰⁴
- 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.
 - 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.”²⁰⁵
- 7.43 Some of these lessons relate more to PQ, but some of the more relevant for ID are:

²⁰⁴ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraph 5.155.

²⁰⁵ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), paragraph 5.90.

- 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 propose to make a change to the quality IM to acknowledge the distinction between planned and unplanned outages and exclude planned outages from the calculation of average unplanned downtime. This will prevent perverse outcomes of delaying critical infrastructure work to meet quality service levels²⁰⁶.
- 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).

Draft 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.²⁰⁷
- 7.49 In making our draft decisions, we have based the quality metrics and performance measures largely on the UFB contracts.

Part 4AA ID requirements

²⁰⁶ Commerce Commission, [Draft] *Fibre Input Methodologies Amendment Determination 2021* (27 May 2021).

²⁰⁷ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 5.45.

- 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 draft 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.²⁰⁸
- 7.53 In making our draft 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 draft decisions to largely base quality metrics and performance measures on the UFB contracts and current ID requirements under Part 4AA helps achieve this. Regulated providers can continue with many of the existing information reporting processes under the UFB contracts and ID regulation.
- 7.56 We discuss at paragraph 7.59 below the need for common formats and consistency of reporting between regulated providers. 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.

Available information

²⁰⁸ Ibid, paragraph 5.149.

- 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.²⁰⁹
- 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."²¹⁰
- 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 draft decisions to specify detailed definitions and prescriptive quality metrics and performance measures. It has also informed our draft 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.

²⁰⁹ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), paragraph 5.151.

²¹⁰ 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)²¹¹ where stakeholders were able to discuss and seek clarification on the requirements for quality ID regulation. Discussions at the February workshop have informed our draft decisions, as explained in our draft decisions below.

Approach paper and quality IM

7.62 In making our draft decisions we have considered submissions made on our approach paper. We reference these, where relevant, when explaining the reasons for our draft decisions.

7.63 We have also had regard to relevant considerations from the quality IM, our IM Reasons Paper and stakeholder submissions on the same. We reference these, where relevant, when explaining the reasons for our draft decisions.

Draft decision on optional quality dimensions

7.64 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.

7.65 Our reasons for our draft decisions on provisioning are set out from paragraph 7.83 below.

7.66 We have not specified quality metrics and performance measures for the optional quality dimensions of ordering or switching at this stage.

Reasons

7.67 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.

7.68 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 TCF Customer Transfer Code and it appears to be working well.

²¹¹ 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).

- 7.69 For the reasons set out above, and in the legal framework from paragraph 7.13, we consider our draft decisions for the optional quality dimensions best give effect to the purposes of ss 186 and 166(2).

Draft decision on reporting

- 7.70 Regulated providers are to report on all quality metrics and performance measures by month.
- 7.71 Regulated providers are to publish reports on a quarterly basis.
- 7.72 Differentiated reporting requirements apply to the quality metrics and performance measures detailed in each respective draft decision below.²¹²

Reasons

- 7.73 We have based our draft reporting decisions on what we believe to be good industry practice in the telecommunications industry. We consider that this level of detail will provide the appropriate level of granularity to analyse trends over the year.
- 7.74 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 disclosure is sufficient and have therefore proposed more frequent reporting for ID regulation under Part 6.
- 7.75 We also note that under Part 4, ID reporting is done on an annual basis. However, as noted above, we do not consider that annual disclosure is sufficient for interested persons, including the Commission, to assess trends in quality performance and therefore have proposed more frequent reporting requirements. Telecommunications markets experience a high rate of change, more so than electricity markets.
- 7.76 Our draft decisions on reporting are consistent with reporting practices under the UFB contracts where reporting frequency is monthly or quarterly.
- 7.77 In our view, in a dynamic telecommunications market, where performance can vary month to month, interested persons will require more frequent reporting as proposed in our draft decisions. We consider that for quality information to be 'readily available' under s 186, quarterly publication is the most appropriate.

²¹² [Fibre Input Methodologies Determination 2020](#) [2020] NZCC 21, clause 2.5.3(1).

- 7.78 A number of our draft decisions specify differentiated reporting requirements by geography, being POI areas. Where this applies, POI areas will be set out in the ID determination and explained in the relevant draft decisions below. POI areas are UFB geographic areas listed in the Notice of points of interconnection under section 231 of the Act issued by the Commission on 19 December 2019.
- 7.79 A number of our draft 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.
- 7.80 We consider the principal way our draft 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.
- 7.81 Our draft decisions on reporting align with our draft decisions for pricing ID.
- 7.82 For the reasons set out above, and in the legal framework from paragraph 7.13, we consider our draft decisions on reporting best give effect to the purposes of ss 186 and 166(2).

Draft decision 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;
 - 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;

- 7.83.2.2 simple new connections;
- 7.83.2.3 complex new connections; and
- 7.83.2.4 transport services;
- 7.83.3 average time to provision ID FFLAS, differentiated by:
 - 7.83.3.1 intact connections;
 - 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: business services, residential services, layer 1 services, layer 2 services.

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.²¹³ We will continue to monitor provisioning volumes and performance by category.
- 7.88 As the rollout of UFB1 has completed, 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.
- 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 draft 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. Regulated providers are required to highlight where installation times are above the specified median times.
- 7.94 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.

²¹³ Commerce Commission "[Fibre input methodologies: Main final decisions – reasons paper](#)" (13 October 2020), page 592.

- 7.95 Stakeholders discussed the importance of monitoring provisioning at the February workshop. Stakeholders also discussed the importance of geographic differentiation for provisioning.
- 7.96 For the reasons set out above, and in the legal framework from paragraph 7.13, we consider our draft decisions on provisioning best give effect to the purposes of ss 186 and 166(2).

Draft decision on faults

- 7.97 For the faults quality dimension, we have determined an “incidence of faults” and “time to restore ID FFLAS” quality metric with the following performance measures (recording the number of ID FFLAS faults):
- 7.97.1 fault cause, differentiated by:
 - 7.97.1.1 regulated provider faults, including faults caused by layer 1, layer 2, and the optical network terminal (ONT); and
 - 7.97.1.2 non regulated provider faults, including faults caused by the end-user, access seeker, or if no fault is found.
 - 7.97.2 for regulated provider faults;
 - 7.97.2.1 number of regulated provider faults that met expected restoration times;
 - 7.97.2.2 number of regulated provider faults per 100 connections; and
 - 7.97.2.3 percentage of regulated provider faults not restored within 2 calendar days.
- 7.98 We have specified differentiated reporting requirements for faults based on:
- 7.98.1 geography: by POI area; and
 - 7.98.2 ID FFLAS type: business services, and residential services.

Reasons

- 7.99 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.

- 7.100 The definition of a fault for the fault dimension is from clause (a)(i) of the quality IM an unplanned outage in ID FFLAS.
- 7.101 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)).
- 7.102 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.
- 7.103 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.
- 7.104 Our draft 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.
- 7.105 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.
- 7.106 In making our draft decisions we have considered 2degrees' cross-submission on the quality IM where it said:
- 7.106.1 "It is important to allow for reporting on the incidence of faults to accurately track network degradation and responsiveness to access seekers over time."²¹⁴

²¹⁴ 2degrees "[Cross-submission on fibre input methodologies draft decision](#)" (17 February 2020), page 11.

7.106.2 “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.”²¹⁵

- 7.107 In making our draft decisions we considered only specifying layer 1 and layer 2 service faults as categories for differentiation. However, we propose more granular categories for fault causes to provide interested persons with more meaningful information to assess FFLAS quality and whether the demands of end-users are being met. We have also proposed differentiated reporting by geography and ID FFLAS type to highlight any regional or ID FFLAS type differences in fault performance.
- 7.108 For the reasons set out above, and in the legal framework from paragraph 7.13, we consider our draft decisions on faults best give effect to the purposes of ss 186 and 166(2).

Draft decisions on availability

- 7.109 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:
- 7.109.1 minutes of planned downtime;
 - 7.109.2 minutes of unplanned downtime;
 - 7.109.3 number of connections;
 - 7.109.4 average unplanned downtime;
 - 7.109.5 percentage of unplanned outages notified to access seekers within 2 hours; and
 - 7.109.6 percentage of planned outages notified to access seekers 6 or more days before the planned outage occurs.
- 7.110 Average unplanned downtime means total unplanned downtime divided by the average number of connections.
- 7.111 For unplanned downtime, fault, as defined in the quality IM means:

²¹⁵ Ibid page 14.

- 7.111.1 (i) an unplanned outage in ID FFLAS; or
- 7.111.2 (ii) a reduction in the performance of ID FFLAS below any levels specified in an ID determination;
- 7.112 For the purposes of (ii) we are specifying the level as a port utilisation of equal to or greater than 90%.
- 7.113 We have specified differentiated reporting requirements for availability based on:
 - 7.113.1 geography: by POI area;
 - 7.113.2 network architecture: layer 1 and layer 2;
 - 7.113.3 force majeure events: average unplanned downtime attributable to force majeure events.
- 7.114 Force majeure events for the calculation of average unplanned downtime include:
 - 7.114.1 fire, floods, storms, tempest, earthquake or other act of God;
 - 7.114.2 any act of a public enemy, war, riot, act of civil or military authority;
 - 7.114.3 nuclear, chemical or biological contamination; and
 - 7.114.4 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

- 7.115 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, ranging from 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.
- 7.116 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.

- 7.117 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.
- 7.118 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 that are, and are not, caused by the regulated provider.
- 7.119 Our draft 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 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. We have adopted the level for reduction in performance based on standards specified in the UFB contracts for PON layer 2.²¹⁶
- 7.120 Our analysis of data from the information requests showed a variance in availability reporting across regulated providers. For these reasons, we have proposed clear and consistent quality metrics and performance measures for the availability dimension.
- 7.121 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, affecting its availability performance measure. We therefore propose excluding planned downtime in the calculation of average unplanned downtime. This means we propose a measure for average unplanned downtime and have downtime due to planned outages reported separately.
- 7.122 We have proposed 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.
- 7.123 We have based our definition of force majeure event largely on that definition from the UFB contracts.

²¹⁶ Chorus, "[Bitstream service level terms](#)" (October 2020), clause 5.6(a)(ii).

- 7.124 We have not included a performance measure for traffic lost due to an outage. We would welcome views on whether this would be a necessary measure and if so, how it could be specified. We have also not specified performance measures for maximum downtime.
- 7.125 For the reasons set out above, and in the legal framework from paragraph 7.13, we consider our draft decisions on availability best give effect to the purposes of ss 186 and 166(2).

Draft decisions on performance

- 7.126 For the performance quality dimension, we have determined a “port utilisation” and “traffic performance” quality metric with the following performance measures:

Port utilisation

7.126.1 Port utilisation, specified as:

- 7.126.1.1 percentage of ports with port utilisation equal to or exceeding 95%; and
- 7.126.1.2 percentage of ports with port utilisation equal to or exceeding 90%; and
- 7.126.1.3 percentage of ports with port utilisation below or equal to 70%.

- 7.127 Port utilisation is calculated as a percentage figure in accordance with the following formula:

$$\frac{\text{octets} \times 8}{5 \text{ minutes} \times 60 \text{ seconds} \times PS} \times 100$$

- 7.128 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).
- 7.129 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.
- 7.130 We have specified differentiated reporting requirements for the port utilisation performance measure based on geography (by POI area).

Traffic performance

7.130.1 Traffic performance, specified as:

7.130.1.1 number of exceedances of frame delay equal to or above 7mS;
and

7.130.1.2 number of exceedances of frame delay variation equal to or
above 3mS.

7.130.1.3 number of exceedances of frame loss ratio, specified as:

7.130.1.3.1 CIR traffic equal to or above 0.1%; and

7.130.1.3.2 EIR traffic equal to or above 2%.

7.130.2 Traffic performance exceedance is calculated by reference to bitstream PON service FFLAS types only. The calculation is set out in Schedule 22 of the determination.

Reasons

7.131 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.

7.132 We have proposed port utilisation performance measures based on Chorus' existing measures for port utilisation.²¹⁷ 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.²¹⁸

7.133 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)).

²¹⁷ Chorus "[Congestion free networks white paper](#)" (September 2016), page 5.

²¹⁸ Ibid, page 7.

- 7.134 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.
- 7.135 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.
- 7.136 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 investment is needed to upgrade infrastructure. It therefore follows that a very low percentage of ports should ever reach or exceed this level.
- 7.137 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.
- 7.138 We also propose to measure traffic performance. While a port may have sufficient capacity, the network equipment may not be dimensioned adequately to handle the traffic. Therefore, we have proposed performance measures with three industry standard measures of frame delay, frame delay variation and frame loss ratio to give an indication of how well traffic is being transported across the fibre network.
- 7.139 We considered only including performance measures for port utilisation and none for traffic performance, because it is arguable that that if port utilisation is being managed effectively then traffic performance will show no degradation. However, we have decided to include traffic performance for the reasons outlined above in para 7.57.

- 7.140 We have included in the determination a Schedule that includes methods to calculate and measure port utilisation and traffic performance. The methods are based on standard industry practice and are also based on CIP's UFB performance management and reporting document in relation to the UFB contracts.²¹⁹ We believe that it is important to ensure consistency across all regulated providers so that interested persons can make valid comparisons of the data and that it accurately reflects what is being presented. There is a calculation method for port utilisation and a description of how the traffic performance measurements of frame delay, frame delay variation and frame loss ratio are to be made. We are interested in stakeholder views on the methods and calculations in this Schedule.
- 7.141 Our draft decisions are generally consistent with the performance measures that regulated providers report on under the UFB contracts, although they are not the same.
- 7.142 Our draft decisions are consistent with, but more detailed than existing quality ID reporting requirements under Part 4AA.²²⁰ Currently, regulated providers report on average downtime, maximum downtime and the number of layer 2 traffic performance exceedances.
- 7.143 Data from the information requests showed that some regulated providers, but not all, report on port utilisation and traffic performance measures.
- 7.144 For the reasons set out above and in the legal framework from paragraph 7.13, we consider our draft decisions on performance best give effect to the purposes of ss 186 and 166(2).

Draft decisions on customer service

- 7.145 For the customer service quality dimension, we have determined an "end-user connection satisfaction" and "missed appointments" quality metric with the following performance measures:
- 7.145.1 survey of end-user connection satisfaction; and
 - 7.145.2 missed appointments for provisioning, excluding where the missed appointment was not caused by the regulated provider.
- 7.146 We have not specified differentiated reporting requirements for customer service.

²¹⁹ Crown Infrastructure Partners "[UFB Performance Management and Reporting](#)" (June 2017).

²²⁰Section 156AU.

End-user satisfaction survey questions

- 7.147 We have largely adopted the end-user connection satisfaction survey questions from Chorus' submission on the approach paper.²²¹
- 7.148 Regulated providers must provide the number of end-users who answered each question and an average rating from end-users for each of the questions in Table 7.2 below. Each response to a question has a range from 1 to 10.

Table 7.2 End user satisfaction survey questions

Satisfaction being measured	Question
Pre installation satisfaction	How satisfied were you with the information and advice that you received before the installation?
Appointment satisfaction	How satisfied were you with the appointment setting process?
Installer performance	How satisfied were you with the job the installer did installing your new fibre broadband connection?
Installation satisfaction	Based on your experience overall, how satisfied are you with the process of installing fibre broadband with [access seeker]?
Fibre broadband performance satisfaction	How satisfied are you with the overall performance of your fibre broadband since it was installed?
Likelihood to recommend fibre broadband	How likely would you be to recommend getting fibre broadband installed to people you know?
Coordination between access seeker and regulated provider	How much do you agree or disagree that [access seeker] and [regulated provider] worked well together to ensure everything went smoothly?

Reasons

- 7.149 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.
- 7.150 Regulated providers have a high degree of control over end-user installation experience. Therefore, we have proposed that regulated providers report on an installation end-user survey containing mandatory questions. This will also allow regulated providers and access seekers to add their own questions for focus areas in order to improve customer experience.

²²¹ Chorus "[Submissions on PQID process and approach paper](#)" (14 October 2020), pages 16-22.

- 7.151 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.
- 7.152 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.
- 7.153 Our draft 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.²²²
- 7.154 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.
- 7.155 Customer satisfaction surveys and end-user satisfaction in the product lifecycle was also discussed at the February workshop where it was noted that surveys are an important tool to monitor and improve customer experience.
- 7.156 In making our draft 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."²²³
- 7.157 We have also taken into account 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.²²⁴ The challenge with broad customer surveys is that they cover aspects of service that are outside the control of regulated providers.

²²² Crown Infrastructure Partners "[Quarterly connectivity update](#)" (Q4: to Dec 2020), page 6.

²²³ 2degrees "[Submission on Fibre input methodologies draft decision](#)" (28 January 2020), page 28.

²²⁴ 2degrees, Spark, Vocus and Vodafone "[Submission on Fibre input methodologies – Draft decision](#)" (30 January 2020), page 13.

- 7.158 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.
- 7.159 Our draft 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)).
- 7.160 For the reasons set out above, and in the legal framework from paragraph 7.13, we consider our draft decisions on customer service best give effect to the purposes of ss 186 and 166(2).

Chapter 8 Implementation of the ID Requirements

Commencement, timing and audit and certification requirements

- 8.1 Attachment B contains a summary of commencement, timing, and audit and certification requirements for each disclosure type, specifically:
 - 8.1.1 for Chorus and other regulated providers;
 - 8.1.2 the timing of initial disclosures;
 - 8.1.3 the timing of ongoing disclosures;
 - 8.1.4 to whom information must be disclosed and in what form; and
 - 8.1.5 requirements for audit assurance and director certification.

Changes to IMs

- 8.2 Proposed updates to IMs may affect ID requirements, either directly or indirectly. Proposed IM amendments will be consulted on through a separate process.
- 8.3 Where IM amendments change the definitions of terms used in the IMs, which are referred to in this paper, or Schedules associated with this paper, the updated definition will be used.
- 8.4 When information is to be disclosed in accordance with an IM, and that IM is subsequently amended, the information should be disclosed in accordance with the amended IM.
- 8.5 Where an IM amendment affects information disclosed in the input Schedules associated with the ID determination, we will amend the relevant input Schedules if necessary. This will allow ID to be consistent, and compliant, with the IMs.

Transitional timing of disclosures

- 8.6 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.
- 8.7 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.

- 8.8 For regulated providers with a 31 March or 30 June 2022 year-end, the information required before the start of a disclosure year, including expenditure forecasts, reports on capacity and utilisation, demand and asset management capability are not required to be disclosed for 2022 and may, for the 2023 disclosure year, be provided at the same time as the 2022 year-end disclosures. For Chorus the forecast information required before the start of disclosure year 2022 may be provided within 5 months of the start of disclosure year 2022. We think these extensions will allow regulated providers sufficient time to prepare the required information.

Assurance and Certification

- 8.9 The Commission requires that regulated providers provide:
- 8.9.1 director certification for all information provided to the Commission – annually for financial and asset management information and quarterly for quality and pricing information;
 - 8.9.2 an assurance opinion of the quantitative historical information annually, provided by an independent auditor which provides a reasonable level of assurance.
- 8.10 For ID regulation to be effective, the Commission must be able to rely on the accuracy of the disclosed information.
- 8.11 The Act allows the Commission to require information to be verified by audit or certification.²²⁵
- 8.12 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.
- 8.13 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:

²²⁵ Sections 156AV(d) and (e).

- 8.13.1 information disclosed as a result of contractual requirements in UFB agreements between regulated providers and CIP;²²⁶
 - 8.13.2 existing LFC ID requirements under Subpart 3 of Part 4AA;²²⁷ and
 - 8.13.3 ID requirements under Part 4 of the Commerce Act 1986.²²⁸
- 8.14 In determining the verification framework, the Commission considered assurance and certification provided for existing reporting requirements noted in paragraphs 8.13.1 to 8.13.3 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

- 8.15 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):
- 8.15.1 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
 - 8.15.2 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).

²²⁶ For example, those agreed as part of the Network Infrastructure Project Agreements between CIP and each regulated provider www.crowninfrastructure.govt.nz/ufb/who/.

²²⁷ 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).

²²⁸ 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"](#).

Director certification

- 8.16 The Commission requires director certification that all information disclosures are compliant with the Requirements.
- 8.17 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.
- 8.18 This is consistent with the verification requirements used by the Commission for current ID reporting for regulated providers.

Level of assurance and scope

- 8.19 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.²²⁹
- 8.20 The assurance report must be addressed to directors and the Commerce Commission as the intended users of the assurance report.
- 8.21 The assurance report must also state any key audit matters, being those matters that-
- 8.21.1 (a) required significant attention by the independent auditor in carrying out its assurance engagement;
 - 8.21.2 (b) are selected from matters communicated with those charged with governance of the EDB; and
 - 8.21.3 (c) the independent auditor has identified, taking into account:
 - 8.21.3.1 areas of higher assessed risk of material misstatement of audited disclosure information;

²²⁹ The assurance standards required are available at External Reporting Board (XRB), "[ISAE \(NZ\) 3000 \(Revised\)](#)" and "[SAE \(NZ\) 3100 \(Revised\)](#)".

- 8.21.3.2 significant auditor judgements relating to areas in the audited disclosure information that involved significant judgement of the management of the regulated provider; and
 - 8.21.3.3 the effect on the assurance engagement of any significant events or transactions by the regulated provider that occurred during the disclosure year.
- 8.22 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 5a and 4c, we require regulated providers to supply us with information explaining how the allocations have been made pursuant to s 187(1)(c). This helps us to monitor compliance with the cost allocation requirements in the IMs that are incorporated in the ID determination.
- 9.3 These s 187(1)(c) requirements, which are set out in Schedules 4e and 5b, are not ID requirements and the information is not required to be publicly disclosed. This information must be supplied to the Commission with the publicly disclosed information.²³⁰
- 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.

²³⁰ 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 **How the ROI calculation works**

Introduction

- A1 This attachment explains the ROI calculations and choice of thresholds for the disclosure of the monthly ROI calculations.

ROI calculation

- A2 This attachment sets out our approach to calculating the annual ROI which adjusts for intra-year cash flow timing effects and is to be disclosed by regulated providers. The ROI is disclosed on both a vanilla and post-tax basis to be comparable to a vanilla WACC and post-tax WACC respectively.²³¹
- A3 We also explain the reasoning for calculating an ROI using monthly notional cash flows, which must be disclosed by regulated providers should the mid-year ROI not provide an accurate estimate of annual returns.

Internal rate of return (IRR) calculations

- A4 The most accurate assessment of the return on an investment is a cash-based IRR calculation over the lifetime of that investment. The IRR is the discount rate that, when applied to a future stream of net cash flows associated with an investment, equates the present value of those cash flows to the initial cost of the investment.²³²
- A5 Any snapshot returns indicator for a regulated provider is likely to be just an approximation to the IRR. This is because indicators like an ROI often rely on accounting-based rather than cash-based data (eg, they use tax expense rather than tax paid, and/or use accruals), and are almost always assessed over a time period shorter than the economic lifetimes of the investments involved (eg, one year only).
- A6 Over a single year, the IRR can be found by solving for the IRR term in the following expression:

$$\begin{aligned} & \textit{Asset Value at beginning of year} \\ & = \textit{Sum of Discounted Net Cash Flows during year} \\ & \quad + \textit{Discounted Asset Value at end of year} \end{aligned}$$

²³¹ For Chorus an adjustment is required for the benefit of Crown financing to achieve a measure of the return comparable to a vanilla WACC. This is explained in the ROI section in Chapter 4.

²³² For example, refer: Office of Fair Trading, *Assessing Profitability in Competition Policy Analysis*, Economic Discussion Paper 6, A Report Prepared for the OFT by OXERA, OFT657, London, UK, 2003, pages 32-34.

$$= \sum_i \frac{NCF_i}{(1 + IRR)^{p_i}} + AV_1 / (1 + IRR)$$

where:

IRR = internal rate of return

NCF_i = i th net cash flows during the year

p_i = proportion of year elapsed i th net cash flow

AV_1 = asset value at year-end.

- A7 It is evident from the expression above that economic returns can arise from:
- A8 the present value of net cash flows during the year, and/or
- A9 capital gains or losses associated with the economic asset value at the end of the year, which in turn represents the present value of subsequently expected net cash flows.

Intra-year timing of cash flows

- A10 Revenue is actually received, and costs are actually incurred throughout each year. Using an ROI indicator that recognises the associated cash flows as occurring at the end of the year consistently and materially under-estimates supplier returns, due to the time value of money. Consequently, the year-end ROI indicator favours suppliers.
- A11 A more accurate assumption is that cashflows are received or incurred *mid-year*. We considered whether the ROI indicator could be made even more accurate, by using monthly cash flows.
- A12 Arguably, the term credit spread differential allowance could be assumed as occurring mid-year. However, we do not consider this to be material, and therefore, treat it as a year-end value in the monthly cashflows calculation.²³³

²³³ A simplifying assumption for the mid-year calculation is that there is no term credit spread differential allowance.

- A13 The ID Determination provides that the monthly ROI calculation must be disclosed where the specified thresholds for atypical cash flows are met. Nevertheless, if a regulated provider considers that the use of cash flows disclosed on a monthly basis would result in a better estimation of returns than a mid-year timing assumption, it may do so as well.

ROI for regulated providers

- A14 Using the IRR expression in EIO above as a starting point, our proposed annual ROI for regulated providers, comparable to a vanilla WACC, is found by solving for ROI in the following expressing as follows.²³⁴

$$RAB_0 = \frac{Revenue - Opex - (VCA - Adn) - Tax}{(1 + ROI_V)^{0.5}} + \frac{(RAB_1 - \Delta CA) - TCSD}{(1 + ROI_V)}$$

where:

ROI_V = ROI comparable to a vanilla WACC ('vanilla ROI')

RAB_0 = opening RAB value

RAB_1 = closing RAB value--ie opening RAB for the following year

$Revenue$ = operating revenue + other regulated income + wash-up amounts and other adjustments

$Opex$ = operating expenditure during the year

VCA = value of assets commissioned during the year

Adn = value of asset disposals during the year

Tax = regulatory tax allowance for the year

ΔCA = change in RAB over the year due to the application of cost allocation IM

$TCSD$ = term credit spread differential allowance.

²³⁴ In practice, an Excel IRR calculation allows for this. The formula can be presented in terms of the ROI by expressing it as a quadratic equation and by then applying the standard solution to a quadratic equation. However, doing so would add little value to the discussion.

- A15 The equivalent ROI that is comparable to a post-tax WACC is found by subtracting the interest tax shield (in percentage terms) from the vanilla ROI.²³⁵

$$ROI_{PT} = ROI_V - k_d T_c L$$

where:

k_d = cost of debt

T_c = corporate tax rate

L = leverage.

ROI based on monthly notional cash flows

- A16 The use of cash flow items disclosed on a monthly basis may result in a better estimation of returns than a mid-year timing assumption.
- A17 Using the IRR expression above as a starting point, an ROI based on monthly notional cash flows, comparable to a vanilla WACC, is as follows.

$$RAB_o + RWC_o = \sum_{i=1}^{12} \frac{Revenue_i - Opex_i - (VCA - Adn)_i - Tax_i}{(1 + ROI_V)^{\frac{i}{12}}} + \frac{(RAB_1 - LFA - \Delta CA) - TCSD + RWC_1}{(1 + ROI_V)}$$

where:

RWC = revenue-related working capital (ie revenue from previous month).

²³⁵ For Chorus the leverage is adjusted to reflect only that part of debt that is not Crown-funded. The same result of deducting the interest tax shield from the vanilla ROI would be achieved by including the interest tax shield as an end-of-year deduction in the expression in paragraph A14 above.

- A18 For simplicity, revenue, opex and capex reported on an accrual accounting basis are used as the basis for the regulated provider's monthly cash flows. They are therefore referred to as notional cash flows. Apart from the inclusion of these cash flow items on a monthly basis and the treatment of the term credit spread differential allowance, the other key difference between the monthly ROI calculation and the mid-year calculation is the inclusion of revenue-related working capital terms at the beginning and the end of the year. Cash receipts from revenues are assumed to be received at the end of the month they are accrued. A working capital balance representing the revenues from the previous month is included in the opening and closing investment to compensate for the fact that revenues are recognised a month earlier than the cash is actually received.
- A19 This attachment explains our reasoning for selecting the thresholds for when regulated providers must disclose the monthly ROI. The thresholds apply when in the first or last quarter of the disclosure year either:
- A19.1 The value of assets commissioned by the supplier for the quarter exceed 10% of the opening RAB value; or
 - A19.2 the supplier's notional net cash flows for the quarter exceed 40% of the annual notional net cash flows.
- A20 Under some circumstances a monthly ROI can result in a significantly better estimation of returns than using a mid-year ROI. Examples include when asset expenditure during the year is lumpy or revenue is seasonal.
- A21 We have adopted thresholds which were developed in Part 4 based on scenarios for the first and last three months of the disclosure year that would produce a material difference from the range that would approximate the midpoint assumptions used in the annual ROI.²³⁶

²³⁶See *Commerce Commission: [Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper](#)*, 1 October 2012, Attachment E.

Attachment B **Summary of timing, 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 the timing of ongoing disclosures;
 - B1.3 to whom information must be disclosed and in what form; and
 - B1.4 requirements for audit assurance and director certification.

Table B1 Implementation of ID requirements for regulated providers

Disclosures required annually					
Information disclosure	Initial disclosure requirements	Ongoing disclosure requirements	Disclosure to whom	Auditor certification required	Director certification required
Historical financial information	<p>Disclosure required no later than 5 months after the regulated provider's 2022 disclosure year end.</p> <p>Only information from the implementation date should be disclosed.</p>	Annually, 5 months after the regulated provider's disclosure year-end	<p>Public disclosure except for Schedule 2a(i), 4e, 5b</p> <p>Disclosure to the Commission within five working days of publication</p>	Yes	Yes
Forecast financial and quantitative financial information	Chorus, within 5 months of the start of disclosure year 2022. ID-only regulated providers within 5 months after the end of disclosure year 2022.	Annually, before the start of the disclosure year.	<p>Public disclosure</p> <p>Disclosure to the Commission within five working days of publication</p>	No	Yes

Asset management information and self-assessment	Chorus, within 5 months of the start of disclosure year 2022. Other regulated providers within 5 months after the end of disclosure year 2022.	Annually, before the start of the disclosure year.	Public disclosure except for “Forecast cost of assets to be replaced in next 5 years” in Schedules 10 and 10a Disclosure to the Commission within 5 working days of publication	No	Yes
Mandatory explanatory notes Voluntary explanatory notes	Disclosure required no later than 5 months after the regulated provider’s 2022 disclosure year-end (for mandatory explanatory notes only)	Annually, 5 months after the regulated provider’s financial year-end	Disclosure consistent with the Schedule to which the explanatory note is related	Yes (Schedule 14) No (Schedules 14a and 15)	Yes

Disclosures required quarterly					
Quality information	By 31 March 2022 Only information from the implementation date should be disclosed	Quarterly, end of each quarter (first disclosure of the year on 31 March)	Public disclosure Disclosure to the Commission within five working days of publication	Yes	Yes

Pricing information	By 31 March 2022 Only information from the implementation date should be disclosed	Quarterly, end of each quarter (first disclosure of the year on 31 March)	Public disclosure Disclosure to the Commission within five working days of publication	No	Yes
<i>Continuous disclosures</i>					
Standard and non-standard contracts	Disclosure required before the start of the regulated provider's 2022 disclosure year-end	No later than 20 working days after entering into or amending a standard or non-standard contract	Public disclosure Disclosure to the Commission within five working days of publication	No	Yes

Notes: * 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.

Attachment C Expenditure Categories

The following tables set out the standardised expenditure categories, and their definitions, for both operational and capex, relevant to asset management disclosures.

Table C1 Capital Expenditure Categories

Capex Category	Definition
Access	means relating to access network activities;
Aggregation	means relating to aggregation network activities;
Augmentation	means creating a new address within the existing footprint of a network (infill) and extension work to extend coverage to communities outside the UFB contracts;
Business IT	means systems and applications across IT domains that support business activities.
Complex Installations	means design and build of installations for specific business requirements.
Corporate	means sundry business capital expenditure in relation to corporate functional units;
Extending the Network	means capital expenditure to extend communal infrastructure to new streets or developments, and to infill the network to accommodate address growth.
Field Sustain	means capital expenditure on physical network assets outside of network sites, such as poles, fibre, and terminators.
Installations	means capital expenditure in relation to standard installations and complex installations;
Network & Customer IT	means capital expenditure on systems and platforms across IT domains that support network or customer activities, including product development, customer experience and optimisation, lifecycle, and compliance;
Network Capacity	means capital expenditure on network electronics and associated systems to optimise for capacity growth and lifecycle requirements.
Network Sustain and Enhance	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.
New Property Developments	means capital expenditure on work with developers to extend the fibre network into new developments, such as residential subdivisions or office parks;

Relocations	means capital expenditure in relation to relocation of network assets arising from roading authority work programmes, undergrounding (overhead to underground programmes), and third-party requests;
Resilience	means the ability to keep the network running through adverse events (diversity, robustness or contingency);
Site Sustain	means capital expenditure in relation to network buildings and their power, cooling, and management services;
Standard Installations	means installations that are not complex installations, and associated investment in incentives;
Transport	means capital expenditure on the transport network;
UFB Communal	means an ID regulated provider's contracted commitments with the government under the UFB initiative;

Table C2 Operating Expenditure Categories

Opex 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	means sundry business operating expenditure in relation to corporate functional units including accommodation, insurance, and professional services;
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);
Insurance	means expenditure in relation to a 'contract of insurance' as defined in the Insurance (Prudential Supervision) Act 2010;
Maintenance	means network operating expenditure relating to 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 expenditure	means 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;
Network operations	means operating expenditure in respect of network operations and associated support resources, including management of network electronics alarms, technical support and configuration services, and provision of network electronics equipment repair and return;
Network opex	means the sum of operating expenditure relating to customer operations, product, sales & marketing, maintenance, network operations, operating costs, and other network costs;
Non-network opex	means the sum of operating expenditure relating to asset management, corporate, and technology costs
Network operating costs	means costs arising from leases, electricity, security operations, and fire protection and building compliance;
Other network costs	means costs that relate to network opex which are not included in: <ul style="list-style-type: none"> (a) customer operations; (b) product, sales & marketing; (c) maintenance; (d) network operations; and (e) network operating costs;
Product, Sales & Marketing	means operating expenditure directed at attracting and retaining access seekers, managing RSP relationships, and evolving the regulated provider's product suite;

Research and development

means, in relation to expenditure, expenditure on assets or operating expenditure where the primary driver for the expenditure relates to increasing the efficient provision of regulated FFLAS through-

(a) implementing an original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge or understanding; or

- (b) 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;

Technology

means the non-capitalised costs of operating business IT and network & customer IT systems – including licences, support and maintenance;