

# 2022 CSA – Strawmen

Design phase output

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# Overview

Together we're continuing the process of transitioning from our existing contract terms for fibre services to a new 2022 CSA. The focus of this transition is on fibre services only. Our longer-term intention is to extend the 2022 CSA contractual framework over time to govern all services we provide.

The transition process is being driven by the requirement to update the existing contract to reflect the new regulatory model from 2022. These regulatory updates are essential to the transition scope.

The understand phase identified prioritised issues which should also form part of the transition scope:

- Priority 1 – change and end-customer relationships; and
- Priority 2 - liability, security and insurance requirements.

We are currently in the design phase of the 2022 CSA transition. This phase is about working together to co-design potential solutions to the key pain points identified and agreeing principles to be used for drafting any changes required to the existing contractual framework.



# Summary of content

We have progressed the transitional scope issues as agreed and as set out in Appendix 1.

## Strawmen

This pack focuses on those issues progressed by way of strawman as follows:

- Regulatory change/price change mechanics; and
- Liability, insurance and security requirements.

The pack provides (i) a high-level summary of the current contractual state, and (ii) a draft future state proposal informed by the understand phase outputs, in relation to these underlying issues.

## Other matters

In addition, the pack addresses regulatory issues regarding Chorus' engagement with end-customers and the possibility of an intact SLA review.

# Future state proposals approach

The future state proposals remain a 'work in progress' and may be changed in early 2021 when we re-open 2022 CSA discussions after the Christmas break. We are publishing the proposals to provide a summary of where we are aligned and where we need further discussion to conclude matters.

We are conscious that all of the proposals to address individual matters comprising the transition scope will eventually need to be considered in the round (i.e. RSPs and Chorus will need to assess for themselves whether there is sufficient 'gain' overall to balance out any perceived 'pain'). We also acknowledge that any proposals agreed in principle will be subject to the usual approval and DFA process for all parties.

# Regulatory changes for 2022

## Overview

The impetus for the timing of this transition process is the implementation of a new regulatory model from 1 January 2022. Some of the key features of the existing contractual terms for fibre services will fall away at implementation including:

- Crown Infrastructure Partners (CIP) involvement in UFB products;
- The Network Infrastructure Project Agreement (NIPA), entered into by CIP and Chorus in relation to the UFB roll-out;
- Price caps relating to all UFB products (i.e. applicable to both Core and Ancillary Charges); and
- 31 December 2019, being the date on which the new regulatory model was originally due to be implemented.

We need to update the existing contract to remove legacy references, ensuring it is fit for purpose under the new regulatory model. These updates are essential to this transition process.

*Note: The existing contractual terms for fibre services apply to all UFB services and was drafted on this basis. The new regulatory model creates a distinct category of fibre services; mandatory services (i.e. anchor and determined) which are subject to different regulatory requirements than other services. We may need to update this high-level proposal once MBIE publishes its final decision relating to these services.*

# Regulatory changes for 2022 cont.

High-level detail of proposal - RSP feedback during the understand phase suggested a preference for Chorus to provide more detail about its view of what changes are required in this regard. On that basis, we've provided a draft high-level proposal for the regulatory changes required for 2022 below:

Clause references		CIP	NIPA	Price caps	Dates
Definitions	CFH, NIP and Price Cap	X	X	X	
End supply	Clause 5.2(d)				X
Charges	Clause 7.1(c)			X	
General disclosure	Clause 15.2	X			
Termination of NIPA	Clause 22.5		X		
Termination	Clause 22.3(b)				X
Agreement changes	Clause 24.1(a)*, (b)* and (d)(ii)	X	X		
Required changes	Clause 24.2(b)*, (c)(i), (c)(ii)*, (c)(iii)	X	X		
NIPA Change Proposals	Clause 24.3	X	X		

Clause references		CIP	NIPA	Price caps	Dates
Changes to Core Charges	Clause 24.4(a)* and (c)*	X	X		
Changes to Ancillary Charges	Clause 24.5(a)* and (c)*	X	X		
Price Cap Changes	Clause 24.6			X	
Change Consultation and CMF Approval	Clause 24.8(a)(iii), (a)(iv), (a)(viii), (b)*, (c)(i), (c)(iii), (c)(iv), d(iii), (d)(iv)*	X	X	X	X
CMF – Establishment/role	Clause 25.1(c)(i)* and (c)(ii)*	X		X	
CMF - General	Clause 25.2(a)*	X			
Product Forum	Clause 25.4(a)	X			

Please note:

- Some aspects of the new regulatory model remain under discussion with MBIE/Commerce Commission. This proposal may require amendment once final decisions are made on those matters in 2021.
- Where a clause reference above (i) has no Asterisk, the entire clause will be removed, and (ii) has an Asterisk, only the legacy references within that clause will be removed (i.e. not the whole clause).
- We anticipate there will be some ancillary changes required as a result of removing definitions and whole clauses in some instances – within the general terms and potentially other parts of the contract.
- We expect any proposed changes would take effect no earlier than 1 January 2022.

# Price change mechanics

- The existing contractual terms for fibre services (including those related to price changes) apply to all UFB services and were drafted on this basis. The new regulatory model creates a distinct category of fibre services; mandatory services (i.e. anchor and determined) which are subject to different regulatory requirements than other services.
- We've summarised how we anticipate the new regulatory model will impact price changes for each category:

Mandatory (anchor and determined)	Other
<ul style="list-style-type: none"><li>• CPI adjustments permitted annually.</li><li>• No prescribed date for contractual price changes.</li></ul>	<ul style="list-style-type: none"><li>• Likely to be revenue cap only.</li><li>• No prescribed date for contractual price changes.</li></ul>

- It is important to note price change discussions in the context of the 2022 CSA are part of a broader price strategy discussion occurring internally within Chorus in relation to the RP1 period. Our intention is to provide more information about our thoughts on pricing over the RP1 period in the new year for feedback and consideration by RSPs.
- Some aspects of the new regulatory model remain under discussion with MBIE and ComCom. A final decision on these matters may have an impact on our proposed price strategy and what contractual price change mechanics are appropriate. Any proposal or high-level view provided by us in the new year will be indicative and may require amendment once final decisions are made on those matters in 2021.

# Price change mechanics cont.

On an indicative basis and subject to potential amendment as noted on slide [7], we've used the understand outputs to inform a draft high-level proposal for the 2022 CSA as set out below.

*Note: This proposal relates to price change mechanics only and not the change process in general as it relates to price changes (i.e. consultation and notice periods etc).*

Current state	Proposal
<p>12mth restriction</p> <ul style="list-style-type: none"><li>• Not increase an individual core charge more than once in any 12 month period.</li><li>• Does not apply to ancillary charges.</li><li>• No prescribed date.</li></ul> <p>Price increase possible from:</p> <ul style="list-style-type: none"><li>• 1 October 2021, for those fibre services adjusted by reference to CPI (including 100/20) on 1 October 2020; and</li><li>• at any time, for FibreMax and Hyperfibre where the price has not been increased in the previous 12 months.</li></ul>	<ul style="list-style-type: none"><li>• Status quo – no change.</li><li>• Consider potential alignment of the price cycle for all fibre services once aspects of the new regulatory model currently under discussion with MBIE and ComCom are finalised.</li></ul>

# Liability, security and insurance requirements

Liability provisions, and security and insurance requirements were identified as P2 pain points in the understand phase, with these provisions and requirements appearing to cause pain to a significant group but being somewhat less important than P1 issues.

In summary:

- Market changes over the last decade mean these provisions are no longer fit for purpose - if they ever were in the first place.
- Security and insurance requirements can be challenging for some RSPs to meet – especially smaller RSPs.

*[Note: See slide 19 of the Chorus and RSP Understand outputs pack published on 10 November for more details.]*

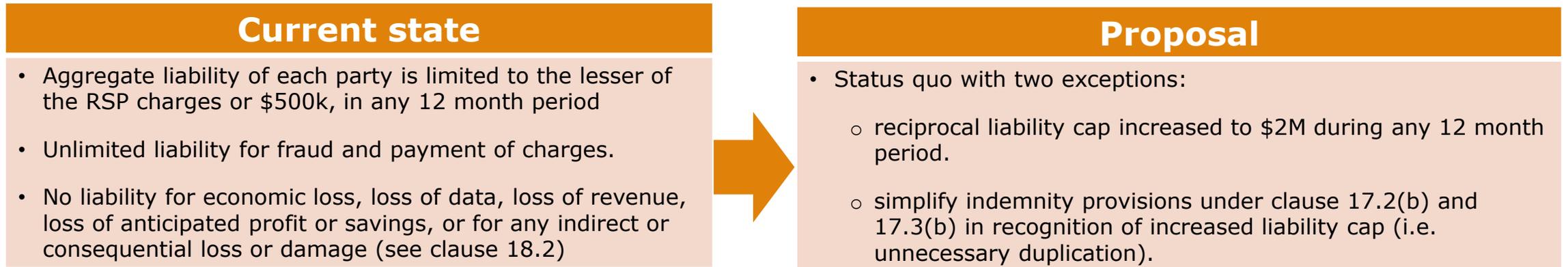
Two of the key outcomes we are trying to achieve via this transition process are:

- Clarity; removal of complexity and ambiguity from the existing contract; and
- An acceptable balance between flexibility and certainty for all parties.

We've been mindful of these aspirations in drafting the proposals for each of these subject areas in addition to the understand phase insights.

# Liability

We've used the understand outputs to inform a draft high-level proposal for the 2022 CSA as set out below.



There may be opportunities to further simplify the liability and indemnity provisions during the drafting phase (i.e. form over substance changes).

# Security requirements

We've been considering the appropriateness of our current contractual security requirements for some time. We published a Customer Update on 14 December outlining a proposed internal policy change in the way we consider security requirements under our contracts (including for fibre services) to address some of the key RSP concerns raised to date and specifically during the understand phase.

We've summarised the proposal below:

## Interim policy approach

### The first \$100k doesn't count toward security provided

- Introducing a threshold of \$100k, with only amounts over that threshold being used to calculate the security provided.
- No security payable if billed less than \$100k over two month period.
- Minimum security payment of \$10,000 once threshold met.
- Threshold approach may not apply if failing to meet contractual obligations (including payment), with full security amount to be provided.

### Expanding acceptable financial metrics to show security is not required

- Financial metrics in addition to credit ratings will be considered by us (on application by an RSP) when deciding whether security is required.
- Designed to indicate a similarly low credit risk for Chorus as an RSP with a required credit rating.
- At Chorus' discretion to determine any additional metrics. Considering - an appropriate debt to EBITDA ratio (3.5 – 4) or an external credit assessment demonstrating credit worthiness

The intention is to trial this approach for 12 months, with a review of its application and any feedback from RSPs near the end of 2021. The aim is to finalise a BAU policy change by the first quarter of calendar year 2022.

# Insurance

We've used the understand outputs to inform a draft high-level proposal for the 2022 CSA as set out below.

Current state	Proposal
<ul style="list-style-type: none"><li>• Sum insured for any one claim no less than \$50M</li><li>• Maintains adequate insurance, including public liability, property damage and business interruption</li><li>• Maintains during term and 2 years following</li></ul>	<ul style="list-style-type: none"><li>• Status quo, with the following changes:<ul style="list-style-type: none"><li>• Sum insured reduces to \$20M [<i>Note: Higher sum insured of up to \$50M may be required where RSP takes specified services (i.e. Central office and POI co-location).</i>]</li><li>• Remove requirement for business interruption insurance</li></ul></li><li>• Evidence to be provided upon transition to 2022 CSA (copy of insurance policies and certificate of currency)</li></ul>

# Chorus' engagement with end-customers

During the understand phase, some RSPs indicated they were concerned about Chorus' activities which they consider to be more like retail type initiatives (i.e. RGW/In-home services). This is a regulatory issue rather than a contractual one and we ring-fenced it from the co-design workshop on end-customer relationships.

At that stage, we indicated we would facilitate a discussion between regulatory SMEs regarding wholesale/retail boundaries (i.e. in relation to Chorus' engagement with end-consumers). Having had an opportunity to reflect on this approach, we think it is preferable to focus on the output from the co-design workshops (change and end-customer relationships) held during the design phase rather than scheduling a regulatory discussion as we head towards the end of the year.

We note that:

- the Business Line Restrictions (BLRs) do not impact the contract framework so have not been considered as part of the regulatory changes required for 2022 on slides 6 and 7;
- the policy behind the BLRs was to ensure Chorus remains a wholesale-only provider; and
- we are comfortable that our activity is consistent with our BLRs.

We don't consider this matter is appropriate for consideration as part of the 2022 CSA transition scope.

# Intact SLA review

Originally we proposed that service levels were out of scope for consideration as part of the transition process as these had been negotiated and implemented only recently (i.e. subsequent review after such a short period seemed unnecessary). RSP feedback from the understand phase indicated that:

- the earlier SLA review looked at installation SLAs, and not intact SLAs; and
- A review of intact SLAs is required as we are increasingly moving from installation to intacts as the most significant source of fibre orders.

This was not an issue which RSPs identified as essential to address as part of the transition process (i.e. categorised as priority 3).

In addition, there are certain interdependencies which will impact appropriate timing:

- Improved fibre intact connection process – we're in the process of implementing some improvements to the way we process fibre intact connections to provide a better end-customer experience and result in less calls to your support teams seeking assistance. These improvements should move from having project status to BAU by the end of FY21; and
- Retail service quality review by the Commerce Commission – currently underway, with a decision expected by the end of 2021.

Our proposal is to consider the merits of reviewing intact SLAs no later than the end of Q1 in calendar year 2022.

# Next steps

We're inviting all retail service providers to attend a feedback session in the week beginning 1 March 2021 to share their thoughts on the future state proposals set out in the design output packs.

In addition, we'd welcome the opportunity to discuss feedback on a one-on-one basis with you during the week prior to the all RSP session (i.e. week beginning 15 February 2021).

Let us know if you'd like (i) to attend this collective session, and/or (ii) us to schedule a bilateral feedback session with you, by emailing us at [2022csa@chorus.co.nz](mailto:2022csa@chorus.co.nz) by Friday 5 February 2021.

When?	What?
Week of 15 Feb 2021	Bilateral feedback sessions between Chorus and individual RSPs regarding design phase outputs
Week of 1 Mar 2021	All RSP feedback session regarding design phase outputs

If you have any questions or feedback regarding anything in this pack or more generally regarding the 2022 CSA transition process, please do so by email to [2022CSA@chorus.co.nz](mailto:2022CSA@chorus.co.nz)

# Appendix 1 – Design approach: workshops and strawmen

Based on feedback received during the understand phase and the nature of the underlying issues, we have progressed the transitional scope issues as agreed and set out below:

Issue	Priority	Design approach
Regulatory change/price change mechanics	1	Strawman
Change	1	Workshop - held on Wed 18 Nov
End-customer relationship	1	Workshop - held on Mon 7 Dec
Liability, insurance and security requirements	2	Strawman
Intact SLA review <sup>1</sup>	3	Strawman
Regulatory issues regarding Chorus' engagement with end-customers <sup>2</sup>	-	Summary approach

Notes to table:

1. Although this was categorised as a P3 issue, we agreed to prepare a summary of how we believed the issue of an intact SLA review might best be progressed as part of this output pack.
2. We believe this is really a regulatory discussion/issue rather than a contractual one. As a result, we proposed ring-fencing this element of the end-customer relationships feedback and did not address it as part of the relevant workshop. Instead, we have prepared a summary explaining how we believe this is best managed.

We have published two design output packs; this strawman pack and a separate workshop pack. You can find the workshop pack on our dedicated webpage: <https://sp.chorus.co.nz/inflight-projects/2022-CSA-transition>