

Departmental Disclosure Statement

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| Commerce (Commerce Commission Reform) Amendment Bill |
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

11 February 2026

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Part One: General Policy Statement

This Bill amends the Commerce Act 1986 (the **Act**), the Telecommunications Act 2001 and the Grocery Industry Competition Act 2023, consistent with the requirements of Standing Order 267(1)(a). The single broad policy is to enhance the Commerce Commission's (the **Commission's**) governance, decision-making and mandate to enable it to more efficiently and effectively carry out its functions and achieve its objectives.

The Bill gives effect to the Government's response to the independent review of the Commission's governance and effectiveness, led by Dame Paula Rebstock (the **Review**). While the Commission is a strong and trusted organisation, the Review found aspects of its governance and decision-making arrangements are weak.

The Review found that Commissioners are primarily involved in decision-making in relation to the Commission's statutorily independent functions, often in siloed divisions, and at the expense of wider organisational governance and strategy. Currently, there is no strong "outside-in" perspective at the board to lift the Commission's focus and oversee its engagement, impact and performance. In addition, the Commission has low levels of delegation to staff and no flexible means for outside experts to participate in decision-making. This has consequences for the timeliness, efficiency and quality of Commission decision-making.

The Review recommended that structural changes are required to the Commission's governance to strengthen the board's role as the governing body of the Commission and to drive organisational change. While the Commission has taken steps to respond to the findings of the Review, the Government considers that legislative change is required to achieve the full benefits of these reforms. The Bill does this by maintaining the Commission as an independent Crown entity responsible for promoting competition, while—

- specifying the Commission's objectives and its functions under the Acts for which it is responsible;
- establishing a new board as the governing body of the Commission, consistent with the Crown Entities Act 2004;
- requiring the board to delegate the Commission's statutorily independent functions to regulatory committees, whose members must include at least 2 commissioners drawn from a new panel (being a pool of people with expertise and experience relevant to the Commission's regulatory decision-making);
- specifying requirements for the operation of regulatory committees to promote timely, efficient and quality decision-making; and
- phasing out the positions of Telecommunications Commissioner and Grocery Commissioner, and providing for other transitional arrangements.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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| 2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill? | YES |
| <p>MBIE commissioned an independent review of the Commission's governance and effectiveness:</p> <ul style="list-style-type: none"> Governance and Effectiveness Review of the Commerce Commission, Authors: Dame Paula Rebstock, Professor Allan Fels AO, David Hunt, dated 13 June 2025, and available on MBIE's website here: https://www.mbie.govt.nz/dmsdocument/31120-governance-and-effectiveness-review-of-the-commerce-commission-final-recommendations-report-proactiverelease-pdf | |

Relevant international treaties

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| 2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty? | NO |
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Regulatory impact analysis

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| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | NO |
| <p>The proposals relating to the Commission's governance and operating arrangements are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor economic, social, or environmental impacts.</p> | |

Extent of impact analysis available

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| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | NO |
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| 2.5. For the policy to be given effect by this Bill, is there analysis available on: | |
| (a) the size of the potential costs and benefits? | NO |
| (b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth? | NO |
| <p>While there is no analysis available on the potential costs, the Commission has advised that the reforms to its governance and decision-making arrangements will be implemented within baselines.</p> | |

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| 2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by: | |
| (a) the level of effective compliance or non-compliance with applicable obligations or standards? | NO |

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| (b) the nature and level of regulator effort put into encouraging or securing compliance? | NO |
| The reforms relate to machinery of government matters and do not impose compliance obligations or standards on external parties. As the Commission's monitor, MBIE will support the Commission board to ensure that the benefits of the organisational reforms are achieved. | |

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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| 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations? |
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MBIE did not identify any inconsistencies with international obligations. The Bill:

- maintains the Commission and its operational independence under the Commerce Act 1986. This is an obligation under various agreements. For example, the United Kingdom-New Zealand Free Trade Agreement, Article 18.2(4) refers.
<https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/Chapters/Chapter-18-Competition.pdf>
- provides for cross membership between the Commission and the Australian Competition and Consumer Commission, as agreed under the MOU between the Government of New Zealand and the Government of Australia on the Coordination of Business Law. In reaching this view, MBIE consulted the Australian Treasury.

Consistency with the government's Treaty of Waitangi obligations

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| 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi? |
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MBIE did not identify any inconsistencies with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

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| 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990? | YES |
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry of Justice's website at: www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/.

Offences, penalties and court jurisdictions

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| 3.4. Does this Bill create, amend, or remove: | |
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| (a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)? | NO |
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| (b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)? | NO |
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Privacy issues

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| 3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information? | NO |
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External consultation

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| 3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill? | YES |
| <p>In preparing its final report for the independent review of the Commission, the reviewers conducted multiple interviews with commissioners and Commission staff across all levels of the organisation, and considered over 100 Commission documents. In addition, the reviewers conducted targeted interviews with external stakeholders, including senior officials from central government agencies and comparable domestic and overseas regulators, panels of expert legal and economic practitioners, a Court of Appeal judge, former Commission staff and a former chair, and representatives of consumers, business and regulated suppliers. In total, it carried out 60 interviews of 119 people. This consultation informed the policy to be given effect by this Bill.</p> <p>MBIE consulted the Commission on a draft of the Bill.</p> | |

Other testing of proposals

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| 3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete? | YES |
| <p>The Bill will require the Commission board to delegate the Commission's statutory independent decision-making to regulatory committees established by the board. These regulatory committees will be a special class of committee currently provided for in section 14 of Schedule 5 of the Crown Entities Act 2004. As part of its response to the independent review, the Commission has established committees in place of divisions (which are provided for under section 16 of the Commerce Act 1986). MBIE considers the committee mechanism has proven a flexible and cost-effective means to engage additional external expertise in the Commission's decision-making.</p> | |

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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| 4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property? | NO |
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Charges in the nature of a tax

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| 4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax? | NO |
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Retrospective effect

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| 4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively? | NO |
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Strict liability or reversal of the usual burden of proof for offences

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| 4.4. Does this Bill: | |
| (a) create or amend a strict or absolute liability offence? | NO |
| (b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding? | NO |

Civil or criminal immunity

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| 4.5. Does this Bill create or amend a civil or criminal immunity for any person? | YES |
| <p>Clauses 5 (new section 25(2)) and 11 (amending section 106) of the Bill provide that the civil or criminal immunities under section 106 of the Commerce Act 1986 will apply to members of the new board, commissioners on the new panel and members of regulatory committees. Section 106 provides that no civil or criminal proceedings lie against those persons unless it is shown that the person acted in bad faith. These immunities are justified given these individuals will be involved in determinations and decisions affecting significant economic interests of parties, sometimes acting in a quasi-judicial nature. Decisions by the Commission will remain subject to appeals and judicial review, and that is an appropriate check on the exercise of powers and functions by these individuals.</p> <p>The immunity does not apply to proceedings for the following offences under the Crimes Act 1961: espionage; wrongful communication retention, or copying of official information; corruption and bribery of an official; and corrupt use of official information.</p> | |

Significant decision-making powers

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| 4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests? | YES |
| <p>Clause 5 of the Bill (new section 14) reforms the Commission’s decision-making process, which includes the making of determinations and enforcement decisions under commerce legislation. The Commission board must delegate responsibility for making such determinations and decisions to regulatory committees. Regulatory committees must act in accordance with the law and the Commission’s accountability documents, policies and procedures, and will be accountable to the board for their performance. Safeguards include:</p> <ul style="list-style-type: none"> • a charter will ensure that voting on any regulatory committee is controlled by two or more commissioners who have expert knowledge and experience, which may be supplemented by other external expertise if desired (new section 16) • the board may not direct a regulatory committee to require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons (new section 17) • the board may ‘call-in’ a matter from a regulatory committee on the recommendation of the chairperson or the chief commissioner if this is desirable to promote a one-Commission approach or ensure compliance with the law and the Commission’s accountability documents, policies and procedures, and if so, the matter shall be determined by a senior regulatory committee of panel commissioners (new section 18) • determinations by the Commission (including regulatory committees) continue to be subject to appeal and review by the courts (existing section 91 of the Act). <p>These safeguards ensure that determinations and decisions are made by persons with expertise, based on the best information, and subject to oversight and judicial review.</p> | |

Powers to make delegated legislation

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| 4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation? | NO |
| 4.8. Does this Bill create or amend any other powers to make delegated legislation? | NO |

Any other unusual provisions or features

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| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | NO |
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