



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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Commerce and Consumer Affairs Portfolio

Briefing for the Incoming Minister

20 December 2016

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1. Portfolio overview

The Commerce and Consumer Affairs portfolio

The Government is committed to growing New Zealand's economy and raising living standards for all New Zealanders. Ultimately, this depends on improving the competitiveness and performance of businesses and key sectors, and ensuring that consumers are confident and have choice.

As Minister of Commerce and Consumer Affairs, you can influence the environment in which businesses and consumers operate. This is through setting and influencing the regulatory settings and policies that allow businesses to innovate, invest and trade, and consumers to purchase with confidence. Consumers who are aware of their rights and have avenues for redress will feel empowered to make confident choices, and will demand higher quality products and better prices. When businesses vigorously compete and provide fair and accurate information, consumers benefit from better prices, quality and choice.

The portfolio focuses on the following areas:

- **Corporate law and governance:** promoting better-performing businesses and investor confidence by setting rules and incentives for how firms are structured and managed.
- **Financial markets:** promoting investment in New Zealand businesses by promoting fair, efficient and transparent financial markets in New Zealand, and improving opportunities for companies looking to raise capital.
- **Competition policy:** creating an environment which encourages firms to compete vigorously, creating incentives for them to innovate, lower prices and deliver better quality goods and services that increase productivity and consumer welfare.
- **Consumer policy:** promoting consumer confidence and participation by ensuring that consumers have access to information to assist decision-making, consumers are protected from high levels of detriment, and consumers have access to redress when transactions go wrong.
- **Intellectual property:** ensuring the intellectual property regime maximises the creation and dissemination of ideas and knowledge to facilitate innovation, increase productivity and foster creative expression.
- **Trade policy and international regulatory cooperation:** encouraging the internationalisation of New Zealand firms by reducing regulatory barriers to trade and improving consistency between domestic regulations and those of our key markets. This is critical to driving innovation and competition (given New Zealand's small size, competitive drivers often need to come from overseas).

The portfolio has a significant operational role as well as a broad policy focus:

- The policy role includes developing, setting and reviewing the rules that govern the way in which consumers and businesses interact in markets. It also includes ensuring that a commerce and consumer perspective is brought to bear to policy initiatives led by other portfolios.
- The operational role includes the development and delivery of consumer information and programmes, compliance and enforcement activities to support product safety and fuel quality monitoring, ensure the accuracy of measurements used for trade. It provides a wide range of operational systems necessary to support regulatory regimes, such as administering company registrations and enforcing financial markets regulations. The operational role also manages the development of New Zealand standards and adoption of international standards, as well as enabling access to standards for New Zealanders.

Over the past decade, the Commerce and Consumer Affairs portfolio (two portfolios prior to 2014) has focused on ensuring that New Zealand businesses have low compliance costs and certainty of their obligations, investors and firms raising capital have confidence in financial markets, and consumer protections are up-to-date and enduring.

Delivering on your portfolio priorities

MBIE would welcome a discussion with you on how we can assist you to deliver your priorities for your Commerce and Consumer Affairs portfolio. The information below provides a high-level overview of the current priorities and is intended to assist with that discussion.

Financial markets

Consolidating financial market reforms

The current financial markets work programme is dominated by the review of the legislation that regulates financial advice. In July and November this year, Cabinet agreed to a comprehensive package of changes to these Acts to improve access to high-quality advice. PCO is currently drafting a Bill to give effect to Cabinet's decisions.

The Financial Markets Conduct Act 2013, which came fully into force on 1 December 2016, is aimed at improving financial market conduct and restoring investor confidence. Given the significant scope and complexity of the Act, technical issues are emerging as participants begin operating under the new regime. We will continue to monitor implementation and respond to issues as they arise.

Improving financial capability

Improving levels of financial capability will help the wellbeing of communities, reduce hardship, increase investment and participation in financial markets and grow the economy.

In December 2016 the Minister of Commerce and Consumer Affairs announced changes to improve KiwiSaver annual statements. The key change is that providers will be required to include total fees, in dollars, in KiwiSaver members' annual statements. Another possible improvement to annual statements is the inclusion of personalised savings projections to give each KiwiSaver member an indication of what they are on track to receive at retirement.

The Commission for Financial Capability (CFFC) provides financial planning and savings resources, and financial education programmes in schools, communities and workplaces around New Zealand. MBIE has submitted a bid on behalf of the Minister of Commerce and Consumer Affairs for Budget 2017 which, if successful, will increase the CFFC's baseline appropriation in order to increase the reach of its school and community-based financial education programmes.

The Retirement Commissioner who leads the CFFC has a statutory obligation to conduct a review of New Zealand's retirement income policies every three years. She has just completed the latest review in December 2016. Amongst other things, the review recommends making changes to KiwiSaver contribution rates and raising the entitlement age for superannuation from 65 to 67. These recommendations will be considered in 2017.

Other ongoing priorities

MBIE is undertaking a review of how a bankrupt person's retirement savings should be treated and whether those funds should be made available to repay creditors. Currently some bankrupts are able to retain their retirement savings while others are required to pay these funds to the Official Assignee.

Over 2016 reviews were undertaken of the FMA's funding needs, the structure of the FMA levy, a new option for the XRB levy, and changes to some Companies Office fees. In October 2016, Cabinet approved \$9.8 million in additional funding for the FMA, to be fully industry funded via the FMA levy, and \$5.3 million in additional funding for the Companies Office. Regulations to implement the changes will be drafted in the first quarter of 2017, with changes to levies and new funding implemented from 1 July 2017.

Competition policy

Identifying barriers to competition and opportunities to promote competition in specific sectors

The greatest opportunities to lift competition are likely to be sector-specific. New Zealand's competition laws and institutions are well regarded internationally. However, New Zealand's small domestic economy and distance from large international markets means that competition can tend to be less intense than elsewhere. This means that we need more than just world class competition laws and institutions – it is also important to look beyond competition law and consider areas to lift competition in specific sectors of the economy. Many of the current competition projects are focused on identifying and minimising barriers to competition in specific parts of the economy.

For instance, concerns have been raised by retailers about the costs they bear to process retail transactions. MBIE is currently consulting on an issues paper regarding the retail payment system (EFTPOS, debit and credit cards).

MBIE regularly engages with other agencies on their regulatory reviews to ensure that consideration is given to the impact of regulation on competition. For instance, MBIE has engaged with the Ministry of Transport on the small passenger services review and with the Ministry of Health on the review of regulation relating to pharmacy ownership.

We have commenced or are scoping a series of forward-looking projects to drill into how competition is functioning in various parts of the economy. Examples include measuring and monitoring competition in New Zealand and consideration of the impact of search and switching costs on the competition process. This work programme is still shaping up and will be affected by whether or not a market studies power is given to the Commerce Commission.

Maintaining the effectiveness of New Zealand's competition laws and institutions

To maximise the benefits from competition we need to ensure that our competition laws and institutions remain at the leading edge of international best practice.

The Commerce (Cartels and Other Matters) Amendment Bill is currently awaiting the Committee of the Whole stage. The Bill will retarget the prohibition against cartel conduct (e.g. price fixing) and better provide for procompetitive collaborative arrangements, including enabling firms to apply to the Commerce Commission for clearance for collaborative activities. The Bill also transitions competition oversight of international shipping from the Shipping Act 1987 to the Commerce Act regime.

The Targeted Review of the Commerce Act has been canvassing the prohibition on the misuse of market power (section 36 of the Commerce Act); alternative enforcement mechanisms (e.g. the cease and desist regime); and whether to include a market studies power in the Commerce Act. Following consultation, officials have provided policy advice, with policy decisions yet to be made. Australia has recently reviewed their equivalent misuse of market power provision and introduced a Bill to change their provision.

Business Law

Ensuring our intellectual property settings keep pace with technological and market developments and support innovation

Intellectual property settings are important to fostering innovation. Without protection of ideas or creative works, businesses and individuals would be less incentivised to invest in new products and services.

A major focus over 2016 has been implementation of the IP-related requirements of the Trans-Pacific Partnership Agreement (TPP). This government priority has involved in-depth consideration of a range of IP settings and engagement with stakeholders. Despite the uncertainty over the future of TPP this work provides a sound foundation as we set about reviewing critical IP settings to ensure they are fit for purpose for New Zealand.

A MBIE-led report on the role of copyright and designs in the creative sector was released on 15 December 2016. The report details how the creative sector uses the copyright and designs regimes in practice. [Section 9 \(2\)\(f\)\(iv\)](#)

The *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind Visually Impaired or Otherwise Print Disabled* provides an international legal framework for copyright exceptions to improve visually-impaired people's access to copyright works in accessible formats (such as braille, audio or large print books). There has been public consultation on whether New Zealand should accede to the Treaty and in particular the potential costs and benefits of making the necessary legislative amendments to join the Treaty. Officials are currently preparing a National Interest Analysis for consideration by Cabinet.

In August 2016, Cabinet agreed to commence a review of the Plant Variety Rights Act 1987. While TPP has been a driver for this work, the review is long overdue and remains a priority despite uncertainty over the future of TPP. The review will commence in the first quarter of 2017 with a series of technical, targeted workshops with key industry stakeholders and Māori/iwi experts. This initial engagement will inform the development of substantive proposals for public consultation.

The recently passed Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2016 contained amendments implementing a regime to modernise the framework for regulation of patent attorneys with Australia. The work is part of the Government's broader Single Economic Market agenda. The new regime needs to commence on 24 February 2017.

Ensuring corporate governance regulatory settings are fit for purpose

An efficient corporate insolvency system plays a key role in the efficient reallocation of resources and minimisation of market distortions arising from business failure.

In November 2015 an Insolvency Working Group was established to provide the Minister of Commerce and Consumer Affairs with advice and recommendations on the changes to various aspects of corporate insolvency law. MBIE provides secretariat support to the working group. The working group's first report (on insolvency practitioner regulation and voluntary liquidations) was completed in August and the Government accepted almost all the recommendations, including introducing a licensing regime for insolvency practitioners. The working group is now progressing its work on voidable transactions, Ponzi schemes and other matters and is expected to finalise its report in March 2017.

At the May 2016 London Anti-Corruption Summit, New Zealand committed to "exploring the establishment of a public register of company beneficial ownership information." Internationally,

there is a move to make corporate forms more transparent to adequately address the risk of abuse of corporate structures. This has to be balanced with imposing compliance costs on legitimate businesses. Officials have begun developing a work programme to meet this commitment in 2017.

Trade and Regulatory Cooperation

International regulatory cooperation

We have several initiatives underway to support the Government's goal of increasing exports to 40 per cent of GDP by 2025. These include supporting the Ministry of Foreign Affairs and Trade in ongoing Free Trade Agreement (FTA) negotiations, and helping exporters maximise their opportunities in key markets through ongoing regulatory cooperation efforts and implementation of the Technical Barriers to Trade and Trade Remedies chapters of our FTAs.

We are strongly focused on regulatory cooperation with emerging economies, particularly China and South East Asia. These economies are becoming increasingly important places for our firms to trade with and invest in. However, the way these economies regulate can pose significant barriers to New Zealand exports. Our engagement should, over time, help reduce regulatory barriers and also build relationships with key officials in ASEAN, the East Asia Summit and Asia-Pacific Economic Cooperation (APEC). Our work includes co-leading, with Malaysia, an OECD-ASEAN regulatory policy work program aimed at increasing the quality of regulation and promoting regulatory cooperation in ASEAN, and delivering and promoting an international regulatory cooperation toolkit both amongst policy advisors and regulators in New Zealand and in the Asia-Pacific region.

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) is an important arrangement that drives economic integration between Australia and New Zealand. It enables goods and skilled labour to move easily between the two countries, making it a key element in the realisation of a seamless trans-Tasman business environment - a Single Economic Market. Our ongoing focus is on maintaining the benefits of the arrangement and facilitating its implementation by New Zealand regulators. We are working with our Australian counterparts on options for improving the operation of the TTMRA, following the 2015 review by the Australian Productivity Commission.

Facilitating imports

Competition is essential to fostering innovation by New Zealand firms. Increased competitive pressure comes from overseas: both from imports into New Zealand and because highly competitive international markets will force our exporters to innovate and stay ahead of their competition. We facilitate imports through our responsibility for tariffs policy (e.g. we are reviewing options to minimise the impact of import tariffs) and trade remedies (the Trade (Anti-dumping and Countervailing Duties) Amendment Bill currently before Parliament would introduce a public interest test into the dumping and countervailing duties regime).

Trade remedies

International trade takes place according to a set of rules that are designed to ensure that trade results in competition that is fair to New Zealand businesses (manufacturers and importers). When applications for dumping, countervailing or safeguard measures are received, MBIE decides whether or not to investigate. The Minister of Commerce and Consumer Affairs is responsible for making determinations on duties, which can occur at various stages. We have a current caseload that will require Ministerial decisions in the coming months.

Standards

An efficient standards and conformance infrastructure helps remove technical barriers to improve trade. Standards set out agreed specifications for products, processes, performance or service.

Conformance is the process of testing compliance with particular standards. Businesses use standards and conformance to support innovation and development, and compete locally and internationally. Governments and consumers rely on standards and conformance to protect public health, safety and the environment. We are working to ensure that the standards system, following the enactment of the Standards and Accreditation Act 2015, meets the needs of industry, regulators and consumers into the foreseeable future.

2. Portfolio responsibilities

The portfolio is funded under Vote Commerce and Consumer Affairs. This Vote is approximately \$169 million in 2016/17. Further detail on the total outputs for the portfolio is provided in Annex 1.

Key Commerce and Consumer Affairs Responsibilities

Competition policy	Financial markets	Corporate law	Intellectual property	Promoting consumer confidence	Trade policy and international regulatory cooperation
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MBIE: Responsible for policy advice across all the functions. We also provide a range of operational systems necessary to support the regulatory regimes such as administering company registrations and insolvencies, registering intellectual property rights, and compliance and enforcement activities. We are responsible for the development and delivery of consumer information and programmes, and compliance and enforcement activities to support product safety and ensure the accuracy of measurements used for trade.

Approximately \$75 million has been allocated to MBIE in 2016/17 for matters relating to the protection of intellectual property rights, administration of bankruptcies and liquidations, the registration and provision of statutory information from business registers, and advice and information to consumers and businesses about consumer laws.

Approximately \$12 million is allocated to MBIE for policy advice for 2016/17.

Crown entities and statutory and advisory bodies: Responsible for registration, monitoring, education and advice, compliance and enforcement activities, and delivery of New Zealand Standards and accreditation services across the portfolio.

Approximately \$82 million is allocated to Crown entities under the portfolio for 2016/17.

Crown entities and statutory/advisory bodies

The roles and responsibilities of Crown entity boards, responsible Ministers and monitoring agencies are set out in the Crown Entities Act 2004, and in guidance material issued by the State Services Commission. Responsible Ministers are generally responsible for the oversight and management of the Crown's interests in, and relationships with Crown entities and for managing any issues of concern or risks to the Crown arising from the activities of those entities. They are answerable to Parliament for the performance of entities.

You are responsible for the following Crown entities:

- **Commerce Commission** (approximately \$38 million¹ in 2016/17) – responsible for promoting competition, protecting consumers, and regulating specified markets in which competition is limited.
- **Commission for Financial Capability (CFFC)** (approximately \$6 million in 2016/17) – responsible for financial education and regular reviews of retirement income policy.

¹ This does not include funding the Commerce Commission receives from Vote Communications.

- **External Reporting Board (XRB)** (approximately \$4.5 million in 2016/17) – responsible for setting the strategy for financial reporting in New Zealand, and issuing financial reporting standards and auditing and assurance standards.
- **Financial Markets Authority (FMA)** (approximately \$28 million in 2016/17) – responsible for promoting the development of fair, efficient and transparent financial markets in New Zealand.
- **Takeovers Panel** (approximately \$1.5 million in 2016/17) – responsible for promoting equitable and transparent mergers and acquisitions by enforcing the Takeovers Code and recommending changes to takeovers laws.
- **Accreditation Council** (user-funded only) – operates through its commercial arm International Accreditation New Zealand; responsible for providing independent third-party recognition of competence by accrediting laboratories, inspection bodies and radiology practices, and providing management system certification through its subsidiary Telarc SAI Limited.

You are also responsible for appointments to the following bodies which are not Crown entities but have been established under statute (or by international Treaty in the case of the Joint Accreditation System of Australia and New Zealand):

- **Cease and Desist Commissioners** – able to make orders to restrain anticompetitive behaviour or require a person to act in order to restore competition. This function is provided for in the Commerce Act.
- **Copyright Tribunal** – responsible for hearing disputes about copyright licensing schemes and applications about file sharing infringements under the Copyright Act 1994.
- **Joint Accreditation System of Australia and New Zealand (JAS-ANZ) Governing Board** – ensures the performance and operation of a joint mechanism between Australia and New Zealand for accrediting conformity assessment bodies.
- **Standards Approval Board** - approves proposed New Zealand Standards, membership of standards development committees and provides you with advice about standards.
- **Pool of lay members of the High Court under the Commerce Act** (you are consulted on this by the Attorney-General) - the role of lay members is essentially an advisory one; they ensure that the expert evidence on complex competition issues is properly tested and understood by the court in its judgment.
- **Trans-Tasman IP Attorneys Board** – you recommend the appointment of two New Zealand representatives to the relevant Australian Minister who makes the formal appointments.

You are also responsible for the appointment of consumer representatives to the following self-regulatory bodies:

- **Banking Ombudsman Scheme Board** – provides an independent dispute resolution service that considers and investigates consumers' complaints about banks and non-bank financial service providers.
- **Telecommunications Dispute Resolution Scheme Council** – provides a forum for consumers and small businesses to take their disputes against telecommunications providers for dispute resolution at no cost.

The **Insurance and Finance Services Ombudsman (IFSO) Commission** consults you on candidates but makes the final appointment decisions. It deals with complaints about insurance and other financial products.

The **Utilities Disputes Limited Board** informs you of the appointment of a Consumer Director and you have the opportunity to provide advice or counsel. Utilities Disputes Limited considers consumer complaints relating to electricity and gas distributors and retailers.

You have joint responsibility with the Minister of Justice for the appointment of adjudicators and you are required to maintain a panel of assessors for the purpose of each hearing of the **Motor Vehicle Disputes Tribunal**, which resolves disputes between consumers and motor vehicle traders.

Further detail on the core functions of these Crown entities, and the statutory/ advisory/regulatory bodies is in Annex 2. Further detail on the role of Ministers and the monitoring requirements that relate to the Crown entities mentioned above will be provided separately.

Legislative responsibility

You are responsible for a number of Acts, of which the most significant are:

Area	Act
Border control	Imports and Exports (Restrictions) Act 1988
Competition policy	Commerce Act 1986
Consumer policy	Auctioneers Act 2013 Consumer Guarantees Act 1993 Credit Contracts and Consumer Finance Act 2003 Electricity Industry Act 2010 [Part 4, Subpart 1 only] Fair Trading Act 1986 Motor Vehicle Sales Act 2003 Weights and Measures Act 1987
Corporate law and governance	Companies Act 1993 Financial Reporting Act 2013 Incorporated Societies Act 1908 Insolvency Act 2006 Personal Property Securities Act 1999 Auditor Regulation Act 2011 Friendly Societies and Credit Unions Act 1982
Financial markets	Financial Advisers Act 2008 Financial Markets Authority Act 2011 Financial Markets Conduct Act 2013 Financial Service Providers (Registration and Dispute Resolution) Act 2008 KiwiSaver Act 2006
Intellectual property	Copyright Act 1994 Designs Act 1953 Patents Act 2013 Plant Variety Rights Act 1987 Trade Marks Act 2002 Geographical Indications (Wine and Spirits) Registration Act 2006
Standards and conformance	Standards and Accreditation Act 2015
Trade with Australia	Trans-Tasman Mutual Recognition Act 1997
Tariffs policy	Tariff Act 1988
Trade remedies	Dumping and Countervailing Duties Act 1988 Trade (Safeguard Measures) Act 2014

A full list of these Acts and further detail about their purpose is provided in Annex 3.

Key MBIE officials

Name	Role	Contact details
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Name	Role	Contact details
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3. Links to other portfolios

The Commerce and Consumer Affairs portfolio is closely linked to the following portfolios:

Portfolio	Link with the Commerce and Consumer Affairs portfolio
Arts, Culture and Heritage	Matters relating to the creative sector and intellectual property settings (mainly copyright issues).
Building and Construction Social Housing	Linkages between building standards and competition and consumer policy. There are also links to KiwiSaver through the HomeStart package for the purchase of a first home.
Communications	Linkages between competition policy and the Telecommunications Act Review. Input into the expectations of the Commerce Commission which receives additional funding from this portfolio to implement, monitor and enforce telecommunications regulation. The appointment of consumer representatives to dispute resolution services in the telecommunications sectors.
Customs	Linkages in relation to administration of tariffs and trade remedies, as well as other border costs that may affect the cost of importing and subsequently competition with the domestic economy.
Disability Issues	Whether to accede to the Marrakesh Treaty to facilitate access to published works for persons, who are blind, visually impaired or otherwise print disabled.
Economic Development	As ownership Minister for MBIE, the Economic Development Minister has overview of the regulatory systems performance work programme and whole-of-Ministry initiatives, including the Regulatory Systems Bill and the New Zealand Business Number. This portfolio also includes policy to assist business development, sectors and regions, which could, for example, raise competition or financial markets policy issues. The Economic Development portfolio also includes responsibility for ICT. There are linkages between competition policy and intellectual property and the growth of the ICT sector.
Energy and Resources	Linkages between competition policy and the regulation of resources and energy matters, particularly gas and electricity (Part 4 of the Commerce Act).
Environment	Makes use of the Imports and Exports (Restrictions) Act 1988 for which you are the responsible Minister.
Finance	Interest in competition policy, including the review of the misuse of market power prohibition in the Commerce Act. The Finance portfolio takes a strong interest in the regulation of the capital markets. It is also responsible for elements of KiwiSaver, particularly relating to Government subsidies. The Finance portfolio takes a strong interest in consumer wellbeing, in particular the wellbeing of vulnerable New Zealanders. In addition to an interest in consumer and credit contract law reforms, the Finance portfolio takes a consumer perspective when considering matters relating to competition, financial markets and trade policy. Under Part 3 of the Financial Service Providers (Registration and Dispute Resolution) Act, the Minister of Commerce and Consumer Affairs approves financial services dispute resolution schemes in consultation with the Minister of Finance.

Portfolio	Link with the Commerce and Consumer Affairs portfolio
Food Safety	Consumer information labelling e.g. country of origin and voluntary health star food labelling.
Health	Occupational regulation within the health sector can pose barriers to competition.
Justice	The Justice portfolio is responsible for some core commercial legislation, including contract law and aspects of insurance law. Justice also has a strong interest in liability settings, which are a core feature of the commerce regulatory environment. There are also important links in relation to trust law, and anti-money laundering and countering the financing of terrorism. Joint responsibility with the Minister of Justice for the appointment of adjudicators to the Motor Vehicle Disputes Tribunal.
Māori Development	World Intellectual Property Organisation negotiations relating to the protection of traditional knowledge, traditional cultural expressions and genetic resources. There are also links in relation to the governance processes, systems and controls that aim to safeguard and grow Māori assets. An interest in the consumer law and credit contract reforms and the provision of education and advice about these to Māori communities.
Pacific Peoples	An interest in the consumer law and credit contract reforms and the provision of education and advice about these to Pacific Island communities.
Primary Industries	Linkages with competition, dairy matters and technical barriers to trade. The Ministry of Primary Industries also has an interest in the Geographical Indications (Wines and Spirits) Registration Act 2006.
Regulatory Reform	Much of the change within the Commerce and Consumer Affairs portfolio involves significant regulatory reform
Revenue	The Revenue portfolio is responsible for operational aspects of KiwiSaver member contributions.
Science and Innovation	Linkages with competition policy and intellectual property settings.
Small business	Competition within retail payment systems impacts on consumers and small businesses.
Tertiary Education, Skills and Employment	Linkages with competition policy such as the regulation of occupations.
Trade	Linkages with the Single Economic Market (SEM) with Australia, FTA negotiations and trade policy, tariff policy, technical barriers to trade, trade remedies, OECD and international regulatory cooperation, standards and conformance, and the Trans-Tasman Mutual Recognition Arrangement.
Transport	Linkages with competition and economic regulation policy. Specific linkages to airport regulation (Part 4 of the Commerce Act), competition regime for international shipping (contained in the Cartel Bill) and the competition regime for civil aviation. There is also a link with the consumer information notices (CIN) used when second hand cars are sold.

4. Recommended focus for the first 100 days

Pending policy decisions and actions

Topic	Description	Timing	Area
Trans-Tasman Patent Attorney Regime	<p>Amendments implementing a regime to modernise the framework for regulation of patent attorneys with Australia were enacted on 21 November 2016. The regime needs to commence on 24 February 2017.</p> <p>A Commencement Order was considered by LEG on 7 December 2016, but has yet to be confirmed by Cabinet.</p>	Cabinet approval to refer the Commencement Order required by 24 January 2017 to enable the new licensing regime to commence on 24 February 2017.	Intellectual Property
Review of Financial Advisers and Financial Service Providers Acts	PCO is preparing an exposure draft of the Bill to implement policy changes and MBIE is preparing the accompanying consultation material. The release of the exposure draft will require your approval.	<p>We will seek your approval to release the exposure draft in January 2017.</p> <p>Early 2017: Release exposure draft of the Bill for consultation.</p> <p>Mid-2017: Indicative timing for the Bill's introduction and first reading.</p>	Financial Markets
Budget bid for improving levels of financial capability	A Budget bid for improving levels of financial capability was submitted to Treasury on 14 December 2016.	MBIE will be liaising with Treasury on any required changes, which can be made up until 31 January 2017 .	Financial Markets
Section 36 of the Commerce Act and related matters	<p>MBIE has been consulting publicly on potential changes to three aspects of the Commerce Act 1986: (i) section 36 on misuse of market power (ii) giving an agency the power to undertake market studies and (iii) amending alternative enforcement mechanisms such as the cease and desist regime.</p> <p>Regulatory Impact Statements (RISs) for market studies and alternative enforcement have been approved. The RIS on section 36 is still being finalised.</p>	<p>January 2017: Final policy decisions sought.</p> <p>Written advice has been provided to your office on policy decisions on market studies and alternative enforcement. A separate brief on section 36 has also been provided.</p>	Competition Policy
Barriers to competition	A Promoting Competition BGA occasional paper has been drafted. This paper sets out the Government's planned work programme for promoting competition and will require Cabinet approval prior to release. Section 9 (2)(f)(iv)	Release of the BGA occasional paper will require sign-off in January/February in order to seek Cabinet approval late February/early March 2017 (at the same time as approval of announcements regarding section 36 of the Commerce Act and related matters).	Competition Policy

Topic	Description	Timing	Area
Section 99(1A) of the Credit Contracts and Consumer Finance Act	Amendments are being sought to section 99(1A) of the Credit Contracts and Consumer Finance Act 2003 to address concerns that this provision imposes disproportionate liability on lenders for breaches of disclosure obligations. Submissions on a discussion paper closed 9 December 2016.	January/February 2017: policy decisions sought	Consumer Policy
Improvements to the information disclosure regime for major international airports	In the New Year, we will provide you with policy advice on enhancements to the information disclosure regime regulating the three main international airports (Auckland, Wellington and Christchurch). This follows two rounds of public consultation on the effectiveness of the regime in 2014 and 2015/16. Section 9 (2)(f)	Officials will provide you with advice in January/February 2017.	Competition Policy
Consultation on Section 9 (2)(f)(iv) Bill	Section 9 (2)(f)(iv)	January: Officials will provide you with a briefing seeking approval to Section 9 (2)(f)(iv) February: Section 9 (2)(f)(iv)	Competition policy
Changes to Annual Statements for KiwiSaver schemes, superannuation schemes, and workplace savings schemes	Minister Goldsmith announced changes to annual statement requirements on 13 December 2016 to require KiwiSaver providers to disclose fees in dollar terms. These changes will be phased in as follows: <ul style="list-style-type: none"> • First annual statements to include disclosure of fees in percentage form (as per the disclosure in the Quarterly Fund Updates) (June 2017). • Annual statements incorporate all changes (June 2018). 	Aiming to complete draft regulations in February 2017.	Financial Markets
Private Standards Section 9 (2)(f)(iv)	The role of Governments in the development and application of private standards is being considered in international trade discussions. Private standards are product-specific requirements developed by private bodies. MBIE commissioned NZIER to undertake research into the prevalence of private standards in New Zealand to assess the potential impact of any internationally agreed outcomes on New Zealand businesses.	February 2017: Section 9 (2)(f)(iv) We will provide you with background material and advice in advance.	Trade Policy and International Regulatory Cooperation
Retail payment systems	The issues paper " <i>Retail payment systems in New Zealand</i> " is out for public consultation. The deadline for submissions has been extended to 20 January 2017.	March 2017: MBIE will report back to you with a summary of submissions.	Competition Policy
Trade remedies investigations	Ministerial determination on provisional countervailing measures on galvanised steel coil from China. Ministerial determination on the reassessment or termination of anti-dumping duties on preserved peaches from Spain.	March 2017	Trade Policy and International Regulatory Cooperation

Topic	Description	Timing	Area
Insolvency law – Other issues	<p>An Insolvency Working Group to review New Zealand’s corporate insolvency laws was established in December 2015. The working group’s first report (on insolvency practitioner regulation and voluntary liquidations) was completed in August 2016.</p> <p>The working group is progressing its work on voidable transactions, Ponzi schemes and other matters, which will be canvassed in a second report.</p>	<p>Drafting instructions to PCO relating to the first report are underway (followed by drafting and LEG approval for introduction in June 2017).</p> <p>March 2017: The Working Group will provide its second report to you.</p>	Corporate Law and Governance
Budget bid for the New Zealand Business Number (NZBN) programme	The legislation required to implement the NZBN has been passed, and the activities funded by the original business case bid will be completed by end of 2016/2017. The remaining activities to achieve the original business case benefits need to be funded and delivered to meet the requirements of Cabinet, R9 objectives and the NZBN Act 2016. The Minister of Economic Development is leading this budget bid.	March 2017	Corporate Law and Governance
Auditor Liability	The Law Commission in 2014 recommended that auditors and audit firms conducting large or complex audits should be able to participate in a capped liability scheme. The Government directed MBIE to further consider the regulatory impacts of this proposal.	MBIE will provide you with a discussion document on auditor liability at the end of the first quarter of 2017 .	Corporate Law and Governance
Director Identification Numbers	<p>The Insolvency Working Group’s first report recommended introducing identification numbers for directors. Section 9 (2)(f)(iv)</p> <p>There are strong links between the two proposals. Both concern director registration requirements. Section 9 (2)(f)(iv)</p>	MBIE will provide you with a discussion document in the first quarter of 2017 .	Corporate Law and Governance
Copyright and the Creative Sector / Section 9 (2)(f)(iv)	A report on the role of copyright and designs in the creative sector was released on 15 December 2016. Section 9 (2)(f)(iv)	First quarter 2017: MBIE will provide advice on Section 9 (2)(f)(iv)	Intellectual Property

Legislative programme

Bill	Purpose	Status	Area
Insolvency Practitioners Bill - Supplementary Order Paper (SOP)	The SOP will introduce a licensing regime for insolvency practitioners that will introduce minimum standards to entry and monitoring of ongoing compliance with professional and ethical standards.	The Insolvency Practitioners Bill is awaiting the Committee of the Whole Stage. Drafting instructions for the SOP are currently being prepared.	Corporate Law and Governance

Bill	Purpose	Status	Area
Regulatory Systems Amendment Bills (No. 1 and No. 2)	<p>The Regulatory Systems Bills are omnibus Bills to improve regulatory systems administered by MBIE. A substantial proportion of the changes are to Commerce and Consumer Affairs portfolio legislation.</p> <p>The Minister for Economic Development is the lead Minister for these Bills.</p>	<p>The Regulatory Systems (Commercial Matters) Amendment Bill is currently before the Commerce Select Committee. The Departmental Report was presented on 14 December 2016, with a supplementary report being presented in February 2017. The Revision-Tracked version of the Bill is expected to be considered in early 2017.</p> <p>Policy approvals for Regulatory Systems Bill No. 2 were received in December 2016. Drafting instructions for this bill are currently being prepared.</p>	Corporate Law and Governance
Geographical Indications (Wine and Spirits) Registration Amendment Bill	This Bill amends the Geographical Indications (Wine and Spirits) Registration Act 2006.	The Bill received Royal Assent on 25 November 2016. Advice on the regulations and accompanying fees that will enable wine and spirit makers to register the geographical origins of their products will be provided to you in the first quarter of 2017.	Intellectual Property
Trade (Anti-dumping and Countervailing Duties) Amendment Bill	This Bill introduces a public interest test into New Zealand's anti-dumping and countervailing duties regime; it introduces a provision allowing for an anti-dumping and a countervailing duty to be deferred if users of the goods have been significantly impacted by a natural disaster or other emergency; and it makes a number of other minor and technical changes.	The Commerce Committee reported the Bill back to the House on 9 December 2016. Second reading is expected early 2017.	Trade Policy and International Regulatory Cooperation
Commerce (Cartels and Other Matters) Amendment Bill	This Bill amends the Commerce Act 1986 to retarget the prohibition against cartel conduct, better provide for procompetitive collaboration and make various technical amendments to other provisions including extraterritorial jurisdiction, fines for obstruction and appeal rights.	The Bill's second reading was completed on 26 November 2014. Section 9 (2)(f)(iv)	Competition Policy

Bill	Purpose	Status	Area
Electronic Interactions Reform Bill	<p>This Bill is an omnibus Bill that amends a range of legislation to enable digital interactions between individuals, businesses, and government agencies. The Bill includes amendments to Acts within the Commerce and Consumer Affairs portfolio. This includes allowing for the use of audio or video links where persons are required to 'appear before' a government agency (such as in response to a summons) and providing for the sending of notices by email as an alternative to post.</p> <p>The Minister of Internal Affairs is the lead Minister for this Bill.</p>	The Bill was introduced on 21 September 2016 and referred to the Government Administration Committee. Submissions closed on 25 November 2016. The Committee is due to report back by 13 April 2017.	Competition and consumer policy

Appointment decisions

Appointment	Status	Decision/Action	Area
Appointment of a member (consumer representative) to the Telecommunications Dispute Resolution Scheme Governing Council	The term of office of the Ministerial-appointed consumer representative expired on 30 November 2016. MBIE provided advice to the previous Commerce and Consumer Affairs Minister ("Minister") that the incumbent was suitable and eligible to be reappointed. Following consultation with the previous Minister for Communications, the Minister decided not to reappoint for a further term. The decision was communicated in writing to the incumbent and the TDRS. However, further information has since been sent to Ministers by interested stakeholders indicating that it would be worth reconsidering the initial decision.	In light of new information, confirm whether you want to reconsider the decision made by the previous Minister not to reappoint, or continue with the search for a new consumer representative.	Consumer Affairs
External Reporting Board: Appointment of two members and cross-appointment from Australian Financial Reporting Council	Section 9 (2)(f)(iv)	Section 9 (2)(f)(iv)	Corporate Law and Governance

Appointment	Status	Decision/Action	Area
Appointment of a New Zealand patent attorney to the Trans-Tasman IP Attorneys Board	<p data-bbox="600 245 775 272">Section 9 (2)(f)(iv)</p> <p data-bbox="600 357 1265 440">The appointment process needs to be completed preferably by the 24th of February (the date the new Trans-Tasman Patent Attorney Regime commences).</p>	<p data-bbox="1283 245 1845 304">A briefing and Cabinet paper on this appointment will be provided to your office by the end of January 2017.</p>	<p data-bbox="1915 245 2029 304">Intellectual property</p>
Appointment of an adjudicator to the Motor Vehicle Disputes Tribunal	<p data-bbox="600 458 775 485">Section 9 (2)(f)(iv)</p>	<p data-bbox="1283 458 1890 517">Announcement of the appointment in February 2017, to align with the adjudicator's start date.</p> <p data-bbox="1283 564 1890 647">This will be a joint announcement with the Minister of Justice as the Motor Vehicle Sales Act requires a joint appointment recommendation from yourself and the Minister of Justice.</p>	<p data-bbox="1915 458 2018 517">Consumer Affairs</p>
Appointment of members to the Accreditation Council	<p data-bbox="600 670 1245 753">The Council must have 5-7 members. It currently has 5 members. The terms of 4 existing members expire on 30 June 2017. An appointment round will be undertaken in the new year.</p>	<p data-bbox="1283 670 1872 729">We will brief you on the appropriate mix of reappointments and new appointments by the end of February 2017.</p>	<p data-bbox="1915 670 2047 812">Trade Policy and International Regulatory Cooperation</p>
Appointment of three members to the Joint Accreditation System of Australia and New Zealand (JAS-ANZ)	<p data-bbox="600 836 775 863">Section 9 (2)(f)(iv)</p> <p data-bbox="600 954 1245 1066">. We have also commenced advertising for a new member, and will propose a candidate as the New Zealand Government representative on the Board.</p>	<p data-bbox="1283 836 1868 930">Interviews will be held in late January for the new member. Seek APH and Cabinet support to progress the three appointments in March 2017.</p>	<p data-bbox="1915 836 2047 978">Trade Policy and International Regulatory Cooperation</p>

Upcoming meetings, events, publications, workshops and announcements

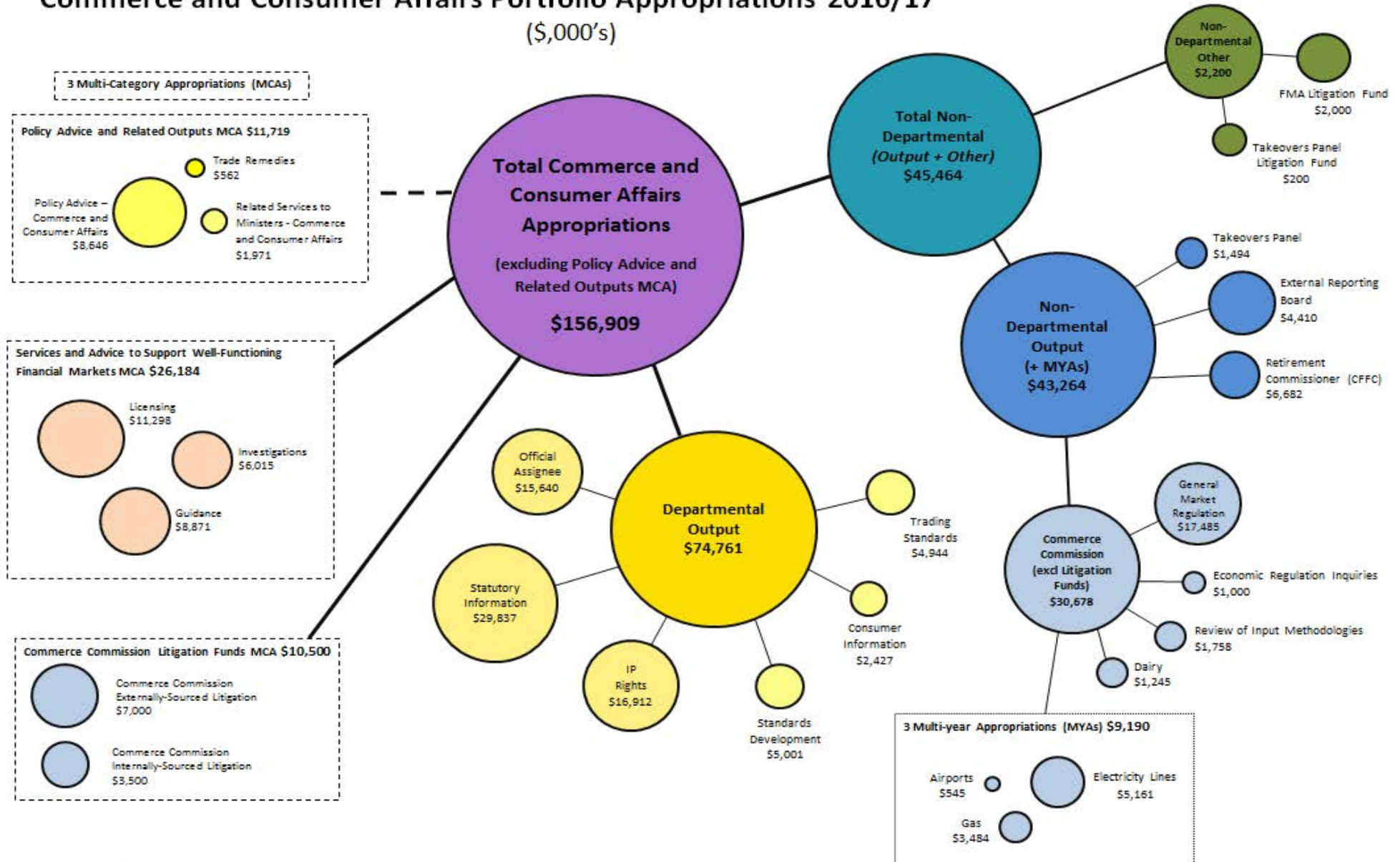
Topic	Description	Timing	Area
Release of the Commerce Commission's final input methodologies (IM) review decision	<p>The Commerce Act requires the Commerce Commission to review IMs. The Commission is set to release its final IM review decisions on 20 December 2016.</p> <p>Given the Commission's independence, it would not be appropriate for you to comment on the specifics of the IM review.</p>	<p>Following the 20 December 2016 announcement, some stakeholders may seek to meet with you to discuss the results of the IM review, and economic regulation more generally. Your MBIE officials and the Commerce Commission are available to support you at any such meetings.</p>	Competition policy
Review of the Plant Variety Rights (PVR) Act: Stage one workshops	<p>In August 2016, Cabinet agreed to commence a review of the PVR Act 1987.</p> <p>Stage one of the review will involve two streams of technical, targeted workshops with key industry stakeholders, and Māori/iwi experts on intellectual property and plant variety rights. These workshops will inform the development of substantive proposals for the second stage of engagement, which will be a formal, public consultation process (the timing of which has yet to be determined).</p>	<p>Workshops are scheduled for late-February 2017.</p>	Intellectual Property
Release of Commerce Commission clearance decision in respect of the proposed merger of Vodafone and Sky in New Zealand.	<p>The Commerce Commission has received clearance applications under the Commerce Act from Vodafone Europe B.V. and Sky Network Television Limited in respect of the proposed merger of Vodafone and Sky in New Zealand.</p> <p>The Commission will assess whether the merger would be likely to substantially lessen competition in a market. If the Commission is satisfied that the merger is not likely to have that effect, then it would clear the merger.</p>	<p>A decision from the Commerce Commission is due on 23 February 2017.</p>	Competition policy

Topic	Description	Timing	Area
<p>Release of Commerce Commission final decision in respect of an application from NZME Limited and Fairfax NZ Limited under the Commerce Act seeking authorisation to merge their media operations in New Zealand.</p>	<p>When the Commission receives an authorisation application, it must first assess whether the merger would be likely to substantially lessen competition in a market. If the Commission is satisfied that the merger is not likely to have that effect, then it would clear the merger. If on the other hand the Commission cannot give clearance, it applies the public benefit test to determine whether to authorise the merger. The Commission must authorise a merger where it is satisfied that the merger will be likely to result in such a benefit to the public that it should be permitted.</p> <p>In its draft decision released on 8 November 2016, the Commission recognised that the merger would achieve net financial benefits through organisational efficiencies. However, while the Commission could not quantify the detriment it saw with respect to quality and plurality of the media, it considered that detriments resulting from increased concentration of media ownership in New Zealand would outweigh the quantified benefit it had calculated. In particular, the potential loss of plurality weighed heavily in the draft decision. On this basis, the Commission proposed to decline the application.</p>	<p>A final decision from the Commerce Commission following submissions on its draft decision and further consultation is due on 15 March 2017.</p>	<p>Competition policy</p>

Annex 1: Appropriations under Vote Commerce and Consumer Affairs

Commerce and Consumer Affairs Portfolio Appropriations 2016/17

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MBIE-MAKO-52055264

Annex 2: Portfolio Crown Entities and Statutory Bodies

Commerce Commission

Established under the Commerce Act 1986, the Commerce Commission is responsible for promoting competition, protecting consumers, and regulating specified markets in which competition does not exist, or is very limited.

The Commission aims to foster and develop healthy competition among businesses, informed choice by consumers, and sound economic regulation through its enforcement, quasi-judicial and regulatory responsibilities under the Commerce Act 1986, Fair Trading Act 1986, Dairy Industry Restructuring Act 2001, Telecommunications Act 2001, and Credit Contracts and Consumer Finance Act 2003.

The Commerce Act provides that the Commission must act independently in performing its statutory functions and duties and exercising its powers under the Act.

The Commission's appropriations total \$44 million and are funded under Vote Commerce and Consumer Affairs, and Vote Communications. The Ministers for Primary Industries, Economic Development, Communications, and of Energy and Resources also have a strong interest in the work of the Commission especially in relation to Part 4 of the Commerce Act (which regulates electricity lines, gas pipelines and specified activities of three airports), and the Telecommunications Act 2001, which is wholly funded by levies on regulated parties; and its work relating to the Dairy Industry Restructuring Act 2001, which is partially Crown-funded.

Chief Executive: Brent Alderton	DDI: Section 9 (2)(a) E: brent.alderton@comcom.govt.nz
Chair: Dr Mark Berry	DDI: Section 9 (2)(a) E: mark.berry@comcom.govt.nz

Commission for Financial Capability (CFFC)

The Commission was established in 1993 and continues to operate under the New Zealand Superannuation and Retirement Income Act 2001. The Commission is headed by the Retirement Commissioner. Its key activities are providing information, education and advice on financial capability, and carrying out regular reviews of retirement income policy. The Commissioner also has a monitoring role under the Retirement Villages Act 2003. The Commission is funded by a Crown appropriation of \$5.8 million.

Retirement Commissioner: Dianne Maxwell	M: Section 9 (2)(a) E: diane.maxwell@cffc.org.nz
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External Reporting Board (XRB)

Established under the Financial Reporting Act 2013, the XRB is responsible for setting the strategy for financial reporting in New Zealand, and issuing financial reporting standards and auditing and assurance standards, including some ethical standards. The XRB also seeks to influence the development of international standards and has cross-membership with the Australian Financial Reporting Council. The External Reporting Board is funded by a Crown appropriation of \$4.4 million.

Chief Executive: Warren Allen	DDI: Section 9 (2)(a) E: warren.allen@xrb.govt.nz
Chair: Graeme Mitchell	M: Section 9 (2)(a)

Financial Markets Authority (FMA)

Established in 2011 by the Financial Markets Authority Act 2011, the FMA is New Zealand's main statutory regulator for the securities and investment industry and discharges statutory functions under a range of Acts including the Financial Markets Conduct Act 2013 and Financial Advisers Act 2008. Its main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets in New Zealand, and a principal function is to promote the confident and informed participation of business, investors and consumers in those financial markets.

The FMA is funded through one operating appropriation and a litigation fund to a total of \$28 million, of which around 60 percent is cost recoverable through industry fees and levies. In October 2016, the Government approved \$9.8 million per annum in additional funding for the FMA, which is to be fully funded through industry levies (bringing its total funding to \$38 million).

Chief Executive: Rob Everett	DDI: Section 9 (2)(a) M: Section 9 (2)(a) E: rob.everett@fma.govt.nz
Chair: Murray Jack	M: Section 9 (2)(a) E: mjack@deloitte.co.nz

Takeovers Panel

Established under the Takeovers Act 1993, the Panel's key functions are to keep under review the law and practices relating to takeovers of specified companies, recommend changes to takeovers law that the Panel considers necessary, investigate acts or omissions or practices for the purpose of exercising its enforcement powers, and make determinations and orders and applications to the Court in accordance with the Takeovers Act.

The Takeovers Panel is funded by a Crown appropriation of \$1.5 million and a separate litigation fund of \$0.2 million.

Chief Executive: Margaret Bearsley	DDI: Section 9 (2)(a) M: Section 9 (2)(a)
Chair: Andy Coupe	aSection 9 (2)(a)

Accreditation Council

Established under the Standards and Accreditation Act 2015, the Council was previously the Testing Laboratory Registration Council. The Council provides independent third-party recognition of competence by accrediting laboratories, inspection bodies and radiology practices through its

operational arm International Accreditation New Zealand (IANZ). The Council also owns 75 per cent of Telarc SAI Ltd, a certification body, and the New Zealand Quality College, which provides training in technical and quality subjects related to conformity assessment.

The Council’s governing board is composed of between five and seven members. It receives no Parliamentary appropriation, operating a user and stakeholder funded not-for-profit business model.

Chief Executive of IANZ: Dr Llewelyn Richards	DDI: Section 9 (2)(a) E: Irichards@ianz.govt.nz
Chair: Paul Connell	DDI: Section 9 (2)(a) E: Section 9 (2)(a)

Other Statutory Bodies

The Minister appoints members of the following bodies:

Cease and Desist Commissioners are appointed by the Governor-General at the recommendation of the Minister of Commerce and Consumer Affairs for the sole purpose of hearing cease and desist applications in accordance with sections 74AA to 74C of the Commerce Act 1986. The role was created in 2001 and provides the Commerce Commission with an alternative to seeking interim injunctions from the High Court against anticompetitive behaviour. Cease and Desist Commissioners are able to make orders to restrain anticompetitive behaviour, or to require a person to act in order to restore competition, or the potential for competition in a market.

Copyright Tribunal is a statutory body established under the Copyright Act 1994. The role of the Tribunal is to resolve disputes between licensing bodies, or proposed licensing bodies, and those who hold or seek licences in respect of works of copyright. It also hears applications about file sharing infringements under the Copyright Act 1994. The Tribunal consists of a Chair and two members, who are appointed by the Governor-General at the recommendation of the Minister of Commerce and Consumer Affairs.

Joint Accreditation System of Australia and New Zealand (JAS-ANZ) is a trans-Tasman institution established by a Treaty between the governments of Australia and New Zealand, responsible for the accreditation of certification bodies and inspection bodies in Australia and New Zealand.

The Governing Board is a mix of New Zealand and Australian members appointed by the responsible Ministers – the Minister of Commerce and Consumer Affairs for New Zealand and the Minister for Industry for Australia. Out of a total of ten members, six are appointed by the Australian government and three by the New Zealand government. These include one Australian government official, and one New Zealand government official, who is currently an official from MBIE. The Chief Executive of JAS-ANZ is the tenth member. New Zealand and Australia rotate the Chairperson and Vice-Chairperson responsibilities every three years and the appointments must be decided jointly by the Australian and New Zealand Ministers.

The Pool of Lay Members of the High Court under the Commerce Act is provided for under Section 77 of the Commerce Act. Lay members play a key role in ensuring that the expert evidence on complex competition issues is properly understood by the Court, then tested and assessed after the hearing. The appointment of lay members to particular cases is at the discretion of High Court judges, but once a lay member has been appointed to a case, the lay member becomes a member of the Court for the purposes of that case. The Governor-General appoints lay members on the recommendation of the Attorney-General who must consult with the Chief Justice and the Minister

of Commerce and Consumer Affairs before making any appointment recommendation.

The current lay members comprise New Zealand and Australian individuals with expertise in a range of areas such as competition policy, economic regulation, and industrial economics.

Standards Approval Board was established by the Standards and Accreditation Act 2015 (the Act), which put in place new arrangements for the development and approval of New Zealand Standards. The Board approves proposed New Zealand Standards, and chairmanship and membership of standards development committees. Under the Act, the Board is an independent statutory board carrying out a statutory decision-making function. It is not a Crown entity and does not have a governance role.

Other Industry Bodies

Consumer access to dispute resolution is an important element of consumer confidence.

The Minister either appoints consumer representatives to the following industry bodies, or is consulted by the industry body about appointments.

Utilities Disputes Limited (formerly the Electricity and Gas Complaints Commissioner (EGCC) Scheme) is an industry-funded, independent dispute resolution service and is free of charge to complainants. The board appoints a Consumer Director and advises the Minister, who may wish to give advice or counsel concerning the appointment.

It considers and investigates consumer complaints relating to electricity and gas lines or retail companies. While the scheme is funded by member companies, it remains independent of the industry in its investigations and decision-making processes. Participants pay an annual levy determined on the basis of proportional market share and the number of attributed deadlocked complaints. Transpower and any gas lines company that operates gas transmission pipelines pay a fixed annual levy.

The **Banking Ombudsman Scheme** Ltd is an industry funded body that considers and investigates consumers' complaints about banks and non-bank deposit takers. The Minister appoints one consumer representative on the Board.

Participants pay an annual levy structured around a fixed fee proportion with the remainder based on number of complaints and disputes a company has received in the previous year. The Board comprises a chair, two representatives of participating banks (appointed by the Council of the NZ Bankers' Association), one consumer representative, and the Executive Director of Consumer NZ (or another person who, in the opinion of the Banking Ombudsman Scheme Ltd, is representative of bank customers).

The **Insurance and Financial Services Ombudsman** (IFSO) Scheme was established in 1995 to consider and investigate consumers' complaints about participating insurance and savings companies and other financial service providers. The Scheme is overseen by a Commission that includes three consumer representatives who are appointed by the Commission after consulting the Minister.

The IFSO is funded by an annual levy on members. Insurance participants' contributions are based on the number of gross written premiums, saving participants pay a flat annual fee and financial service providers pay a fee based on the number of employees.

The **Telecommunications Dispute Resolution Scheme** (TDRS) provides a forum for consumers and small businesses to take their disputes against telecommunications providers for dispute resolution at no cost. The TDRS is able to award compensation against the member telecommunications provider, however membership is not mandatory. Despite membership being voluntary, almost all of the major telecommunications providers have joined the TDRS. The Minister appoints one consumer representative on the Council, which oversees the scheme.

The **Motor Vehicle Disputes Tribunal** is established under section 82 of the Motor Vehicle Sales Act 2003. The Tribunal resolves disputes between consumers and motor vehicle traders. The Tribunal has the jurisdiction to consider claims relating to breaches of the Consumer Guarantees Act 1993, Fair Trading Act 1986, Sale of Goods Act 1908 and Contractual Remedies Act 1979. The Tribunal can hear claims up to a value of \$100,000, or over this amount by agreement of both parties to the complaint.

Each Tribunal must consist of an adjudicator (appointed on the joint recommendation of the Minister of Justice and the Minister of Commerce and Consumer Affairs) and an assessor appointed by the adjudicator for the purposes of each hearing from a panel maintained by the Minister of Commerce and Consumer Affairs.

Annex 3: Key Legislation under the Portfolio

COMPETITION POLICY

Commerce Act 1986

The Commerce Act promotes competition for the long term benefit of New Zealand consumers.

The key features of the Act are that it:

- prohibits anticompetitive behaviour, both unilateral and collusive (Part 2)
- prohibits mergers that would substantially lessen competition (Part 3)
- empowers the Minister of Commerce and Consumer Affairs to impose regulatory control on monopolies (Part 4) – this is currently applied to electricity lines businesses, gas pipeline businesses and the three main airport companies.

The Act also established the Commerce Commission as an independent Crown entity responsible for making certain quasi-judicial decisions, and enforcing the Act in the High Court. There is also a right of private action to the courts for most of the prohibitions.

CONSUMER POLICY

Fair Trading Act 1986

The Fair Trading Act aims to contribute to a trading environment where consumer interests are protected, businesses compete effectively and consumers and businesses participate confidently. The Act attempts to ensure that all trading activities are based on accurate and honest information. It also allows for bans and recalls of unsafe products and the imposition of mandatory standards if necessary. This Act is enforced by the Commerce Commission.

Under Parts 3 and 4 of the Fair Trading Act 1986, the Minister of Commerce and Consumer Affairs can recommend mandatory standards for products or services, ban unsafe products or order a compulsory recall of an unsafe product. The Minister also has the power to issue a Product Safety Policy Statement to provide information or guidance when needed. These measures are generally used only when attempts to have the product amended or withdrawn voluntarily fail.

The Fair Trading Act was amended in 2013 as part of the Consumer Law Reforms. Key changes include protections against unfair contract terms (due to take effect in March 2015) and unsubstantiated representations, new provisions covering uninvited direct selling, layby sales, unsolicited goods and services, extended warranties and auction conduct, enhanced product safety provisions, stronger Commerce Commission's enforcement powers and increases to the level of penalties. The amended Fair Trading Act governs matters previously set out in the now repealed Door to Door Sales Act 1967, Layby Sales Act 1971 and Unsolicited Goods and Services Act 1975.

Auctioneers Act 2013

As part of the Consumer Law Reforms, the Auctioneers Act 2013 was passed to replace the Auctioneers Act 1928. The 2013 Act requires persons in the business of conducting auctions to be registered. The Ministry's Trading Standards team within the Consumer Protection and Standards branch is responsible for administration and enforcement activities associated with this registration.

Consumer Guarantees Act 1993

The Consumer Guarantees Act covers consumer protection in the post-sale period (after a purchase is made). It creates statutory guarantees that are automatically conferred each time a consumer purchases a good or a service from a trader. The Act also provides clear remedies for consumers if a breach of the guarantee occurs. This Act is self-enforcing.

This Act was amended in 2013 as part of the Consumer Law Reforms. A key amendment was the removal of the exemption for auctions and competitive bids, which means that all transactions between a trader and a consumer with respect to consumer goods will be covered by this Act.

Credit Contracts and Consumer Finance Act 2003 (CCCFA)

The CCCFA regulates consumer credit, including home loans, personal loans, credit sales/hire purchase, credit cards, long-term leases and housing buy-back schemes. The CCCFA requires disclosure of key information to the debtor, prohibits unreasonable fees, allows for contracts to be varied in cases of hardship and provides for re-opening of oppressive contracts. It is enforced by the Commerce Commission.

Significant changes to the CCCFA were passed in June 2014. Key changes include the introduction of a responsible lending framework and a strengthened disclosure regime – including a requirement to make standard form contract terms and costs of borrowing freely and publicly available.

Financial Service Providers (Registration and Dispute Resolution) Act 2008

The Financial Service Providers (Registration and Dispute Resolution) Act requires financial service providers to be registered and to be members of an approved dispute resolution scheme. The Act is under the responsibility of the Minister of Commerce and Consumer Affairs. Under Part 3 of the Act, the Minister of Commerce and Consumer Affairs approves dispute resolution schemes in consultation with the Minister of Finance. Amendments to this Act were passed in June 2014 to remove the requirement for a reserve scheme and to clarify the registration requirements.

Motor Vehicle Sales Act 2003

The Motor Vehicle Sales Act requires that all motor vehicle traders are registered on the Motor Vehicle Traders Register (including car market operators and vehicle auctioneers). Traders are required to display a Consumer Information Notice (CIN), in the form prescribed under the Fair Trading Act, with all used motor vehicles for sale.

The Motor Vehicle Traders Register is administered by MBIE. Compliance with CIN requirements is enforced by the Commerce Commission.

Weights and Measures Act 1987

The Weights and Measures Act establishes the infrastructure that ensures measurements used for trade are accurate. It provides the system of instruments, metric weights and measures and prescribes their use in the marketplace. It attempts to ensure that goods sold by weight, measure or number are traded fairly and in accordance with internationally recognised standards. This Act is administered and enforced by MBIE. The Act was amended in 2013 as part of the Consumer Law Reforms to cover modern transactions such as self-service check outs.

Electricity Industry Act 2010 [Part 4, Subpart 1 only]

The provision requires Transpower and electricity distributors and retailers to be a member of a dispute resolution scheme, unless exempted by the Minister of Commerce and Consumer Affairs.

CORPORATE LAW AND GOVERNANCE

Companies Act 1993

This Act describes the basic requirements for incorporating, organising and operating companies. It defines the relationships between companies and their directors, shareholders and creditors, sets out the duties of directors and provides for the protection of shareholders and creditors against the misuse of management powers. It provides procedures for realising and distributing the assets of insolvent companies. It also outlines the powers and duties of the Registrar of Companies, which include registration, inspection and enforcement powers.

The Act was amended earlier in 2014 to:

- require all New Zealand registered companies and limited partnerships to have a director who lives in New Zealand or is a director of a company in a prescribed enforcement country
- give new powers to the Registrar of Companies to better investigate companies
- introduce offences for very serious misconduct by directors that results in serious losses to the company or its creditors
- align the company reconstruction provisions in the Companies Act with the Takeovers Code.

This Act will be amended by the Insolvency Practitioners Bill.

Financial Reporting Act 2013

This Act defines core terms (e.g. generally accepted accounting practice and other standard requirements (e.g. auditor qualifications)) that are cross-referred to from numerous other enactments. The Act needs to be read together with sector, industry and entity-specific Acts, which determine which entities are reporting entities and whether they are also required to have their financial statements audited and published. The Act also constitutes the XRB as an independent Crown entity and empowers it to issue financial reporting standards and auditing and assurance standards, including some ethical standards.

The Act does not provide the XRB with any enforcement functions. Enforcement is left to other agencies, such as the FMA, the Registrar of Companies (MBIE) and the Department of Internal Affairs.

Insurance legislation

Responsibility for legislation relating to insurance contracts has sat with the Minister of Justice for many years. Ministers Adams and Goldsmith recently agreed to a transfer of responsibility for this legislation to the Minister of Commerce and Consumer Affairs as this area sits more naturally alongside MBIE's business and consumer law functions than the Minister of Justice's contract law functions. This transfer is awaiting the approval of the Prime Minister. Five Acts will be transferred:

- Law Reform Act 1936
- Insurance Law Reform Act 1977
- Insurance Law Reform Act 1985
- Insurance Intermediaries Act 1994
- Life Insurance Act 1908

Insolvency Statutes

The Companies Act 1993 provides the main vehicle for corporate insolvency. Additional statutes are:

- **Corporations (Investigation and Management) Act 1989** - allows the Registrar of Companies to obtain information and investigate the affairs of a corporation to ascertain whether it is in danger of failing. It also provides limited scope for the Governor General, acting on advice from the Minister of Commerce and Consumer Affairs, to place corporations under statutory management.
- **Insolvency Act 2006** - governs personal insolvency. It is administered by the Insolvency and Trustee Service. The Act defines the criteria for entry to bankruptcy, the no-asset procedure (NAP) and summary instalment order (SIO).
- **Insolvency (Cross-border) Act 2006** - cross-border insolvency arises when an entity is placed in a form of insolvency administration in one country but has assets or debts in one or more

overseas jurisdictions. This Act implements the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law (UNCITRAL), which promotes cooperation between the courts in different jurisdictions.

- **Receiverships Act 1993** - codifies the common law in relation to receivers, who can be appointed by secured creditors, usually a bank. This Act will be amended by the Insolvency Practitioners Bill.
- **Trustee Companies Management Act 1975** - contains a process for statutory management of trustee companies that is equivalent to the Corporations (Investigation and Management) Act 1989.

Other Key Corporate Law and Governance Statutes

- **Auditor Regulation Act 2011** - establishes licensing systems for individuals and firms that carry out audits of financial statements prepared by issuers, insurers, banks, other deposit takers and other entities or funds that hold substantial amounts of public money in a fiduciary capacity, such as mutual funds.
- **Friendly Societies and Credit Unions Act 1982** - provides a specific regulatory and governance system that is materially different in many respects to the Incorporated Societies Act 1908. It establishes the Registrar of Friendly Societies and Credit Unions and assigns functions and powers to the Registrar.
- **Incorporated Societies Act 1908** - provides for the incorporation of societies, which are not established for the purpose of pecuniary gain. This Act is out-of-date. A new Act based on the Law Commission's report and recommendations will codify best practice for operating an incorporated society, as well as provide greater clarity for officers and members about their rights and obligations.
- **Partnership Act 1908** - defines partnership relationships and sets out the rules for determining when a partnership exists. There is no registration system for partnerships.
- **Limited Partnerships Act 2008** - Internationally, limited partnerships are the preferred structure for venture capital investments and are often used by private equity firms. This Act, combined with related tax law, fits with the international model. The Limited Partnerships Amendment Act 2014 introduced new provisions that will prohibit people who have undertaken serious offending from being general partners. This reflects the existing disqualification criteria in the Companies Act 1993 that prohibit persons who have undertaken serious offending from acting as directors.
- **New Zealand Institute of Chartered Accountants Act 1996** - establishes the New Zealand Institute of Chartered Accountants (NZICA) and a system for self-regulation of its members. This Act will be amended through the Accounting Infrastructure Reform Bill to create "Chartered Accountants Australia and New Zealand" (CAANZ), which merges NZICA with its Australian counterpart.
- **Personal Property Securities Act 1999** - provides uniform rules in relation to the giving and taking of security interests in all forms of personal property other than land and for registration of those interests. Larger ships, aircraft and helicopters are also excluded because there are international registers.
- **Takeovers Act 1993** - establishes the Takeovers Panel and outlines the framework for amending and enforcing the Takeovers Code, and recommending changes to it.
- **Retirement Villages Act 2004** - administered mainly by the Construction and Housing Markets branch in MBIE. However, it confers a number of statutory functions on the Registrar of Retirement Villages, who is currently the Registrar of Companies. These functions include the operation of the register of retirement villages and some enforcement functions.

FINANCIAL MARKETS

Financial Markets Conduct Act 2013 (FMC Act)

The FMC Act rewrites the fundamental laws concerning how financial products are governed and sold to investors. It sets out the main purposes of financial market regulation, which are to promote and facilitate the development of fair, efficient, and transparent financial markets in New Zealand, and to promote the confident and informed participation of business, investors and consumers in those financial markets. These purposes match the Financial Market Authority's objective and purposes.

The Act makes comprehensive changes to investment legislation, including the repeal of the following Acts and regulations, and incorporated many of their provisions in the FMC Act progressively from 1 April to 1 December 2014, with a transition period that concluded on 1 December 2016.

- Securities Act 1978
- Securities Markets Act 1988
- Securities Transfer Act 1991
- Superannuation Schemes Act 1989
- Unit Trusts Act 1960
- Securities Trustees and Statutory Supervisors Act 2011 (renamed and substantively amended, but not replaced by the FMC Act).

Financial Advisers Act 2008

The Act establishes a licensing regime for providers of financial advice which is administered by the FMA. The objectives of the Act are to promote sound and efficient delivery of financial advice, and encourage public confidence in the professionalism and integrity of financial advisers.

Financial Markets Authority (FMA) Act 2011

The Act establishes the Financial Markets Authority and its principal functions and powers.

Financial Service Providers (Registration and Dispute Resolution) Act 2008

The Act establishes a registration process for all financial service providers to facilitate the identification and monitoring of financial service providers. The Act also establishes a requirement for financial service providers who provide services to retail clients to be members of a consumer dispute resolution scheme, aimed at facilitating the orderly resolution of disputes in the financial sector.

KiwiSaver Act 2006

This Act establishes the KiwiSaver regime. Administration of the Act is shared between the Minister of Commerce and Consumer Affairs and the Minister of Revenue. The Minister of Commerce and Consumer Affairs is responsible for the part of the Act that provides for the registration of KiwiSaver schemes by the FMA. The Minister of Commerce and Consumer Affairs is also jointly responsible with the Minister of Finance for appointing the providers of default schemes.

INTELLECTUAL PROPERTY

Copyright Act 1994

The Copyright Act is designed to promote investment in artistic creativity and intellectual effort by providing exclusive rights to the creators of original works. Copyright comes into existence automatically and applies to original creations such as literary, musical and artistic works, sound recordings, films, broadcasts and computer software. To encourage the use and dissemination of intellectual effort, the duration of copyright protection is limited, generally to 50 years after the creator's death, or 50 years from the time the work is created, or first made publicly available.

Designs Act 1953

This Act aims to promote innovation and creativity by creating incentives to develop designs for manufactured articles that have visual appeal, and provides copyright protection for up to 15 years.

Geographical Indications (Wine and Spirits) Registration Act 2006 (will come into force mid-2017)

The Geographical Indications (Wine and Spirits) Registration Act 2006 ("the GI Act") will establish a registration system for wine and spirit geographical indications (similar to the trademark registration regime). In December 2014, the government decided that the GI Act would be brought into force, and acknowledged that, before this could happen, some amendment to the GI Act was required to improve the Act's workability and to ensure that the process for registering geographical indications runs smoothly and sustainably. The amendments were contained in the Geographical Indications (Wine and Spirits) Registration Amendment Bill which received Royal assent on 25 November 2016.

Patents Act 2013

The Act came into force on 13 September 2014. It modernises the patents system and achieves better alignment with our trading partners' laws. The Act tightens up the criteria for granting patents to ensure that patents are only granted for inventions that are "genuine innovations" – that is, innovations that are new, that are not obvious, and that have an identified "real-world" use. Under the new criteria patent owners will have greater certainty that their patents will be valid and enforceable. The Act also provides a licencing regime for patent attorneys.

This Act has been amended by the Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Bill Act to implement a single trans-Tasman registration regime for Australian and New Zealand patent attorneys. The Amendments will enter into force on 24 February 2017.

Plant Variety Rights Act 1987

This Act encourages investment in the development of new plant varieties by providing for the granting of proprietary rights to breeders and developers for 20 or 23 years. The grant of a plant variety right provides the exclusive right to sell and collect any royalties on seed or reproductive material of the variety.

Trade Marks Act 2002

Trade marks provide consumers with low cost information about products and their origins. The Trade Marks Act encourages manufacturers to invest in the quality, innovation, and reputation of their brands by providing for the granting of an exclusive right to use a mark in relation to specified goods.

TRADE POLICY AND INTERNATIONAL REGULATORY COOPERATION

Trade with Australia

Trans-Tasman Mutual Recognition Act 1997

The Trans-Tasman Mutual Recognition Act 1997 gives effect to the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Under the TTMRA:

- a good that may be sold in Australia or New Zealand may be sold in the other, regardless of differences in standards or other sale-related regulatory requirements
- a person registered to practise an occupation in Australia or New Zealand can practise the equivalent occupation in the other without the need to undergo further testing or examination.

Trade Remedies

Dumping and Countervailing Duties Act 1988

The Act protects New Zealand industry from material injury caused by dumped or subsidised imports. It allows duties to be imposed on goods sold in New Zealand at less than the normal price in the country of export, or subsidised by an overseas government, if the dumping or subsidy is causing or threatening to cause material injury to an industry in New Zealand or a third country. The Chief Executive of MBIE is responsible for initiating and carrying out investigations.

The Minister:

- makes final determinations on whether there is dumping or subsidisation causing injury
- may impose or terminate antidumping or countervailing duties
- may determine a new rate or amount of antidumping or countervailing duty
- may require a refund of antidumping or countervailing duties in certain circumstances
- terminates investigations in certain circumstances.

The Dumping and Countervailing Duties Act 1988 was amended in May 2014 to provide for the suspension of the application of any new anti-dumping duties to imports of residential construction materials for three years, with effect from 1 June 2014.

Trade (Safeguard) Measures Act 2014

The Trade (Safeguard) Measures Act repealed the Temporary Safeguard Authorities Act 1987. It puts in place a modernised safeguards regime for New Zealand that is consistent with the World Trade Organisation's (WTO) safeguard rules. "Safeguards" are emergency measures (usually in the form of a duty) applied at New Zealand's border to provide relief to domestic industry faced with sudden increases in import volumes. The Act promotes transparent and objective investigative and decision-making processes when New Zealand undertakes a safeguard investigation and imposes safeguard measures.

Tariff Policy

Tariff Act 1988

The Tariff Act provides for the administration of the Tariff of New Zealand and the authority to levy, collect and pay import duties in accordance with the rates specified in the Tariff. Following a comprehensive tariff review in 2003, a unilateral tariff reduction programme reduced tariffs over the period 1 July 2006 to 1 July 2009. Tariffs on clothing, footwear, carpet, ambulances and motor-homes are now at 10 percent and tariffs on other dutiable goods are at 5 percent. This approach was reconsidered in 2013 and it was decided that these rates would be held through until at least 30 June 2017.

Tariff concessions are available under Part 2 of the Tariff. The broad scope of goods covered by tariff concessions may be changed by Order in Council. Specific approvals are made by the New Zealand Customs Service. Tariff concessions apply to a wide range of goods, including residential building materials.

Imports and Exports (Restrictions) Act 1988

This Act provides for prohibiting or restricting imports and exports that would be contrary to the public interest. The Minister has the power, consistent with any conditional prohibition order, to require an import or export licence or permit to be presented before goods can enter or leave New Zealand.

Standards and Conformance

Standards and Accreditation Act 2015

The Act established a new independent statutory board to approve New Zealand Standards and membership of Standards development committees, and an independent Statutory Officer, the New Zealand Standards Executive. It transferred the Standards development function to the Ministry of Business, Innovation and Employment ensuring closer alignment with government objectives such as economic growth, international trade, innovation and health and safety. The Act repealed the Testing Laboratory Registration Act 1972 and incorporated its provisions into the Standards and Accreditation Act.