



## COVERSHEET

<b>Minister</b>	Hon Scott Simpson	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Changes to improve competition settings	<b>Date to be published</b>	16 September 2025

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
June 2025	Commerce Act Review – Changes to improve competition settings	Office of the Minister of Commerce and Consumer Affairs
25 June 2025	Commerce Act Review – Changes to improve competition settings ECO-25-MIN-0098 Minute	Cabinet Office
August 2025	Commerce Act Review – Further changes to improve competition settings	Office of the Minister of Commerce and Consumer Affairs
20 August 2025	Commerce Act Review – Further changes to improve competition settings ECO-25-MIN-0134 Minute	Cabinet Office
20 August 2025	Regulatory Impact Statement – Targeted review of the Commerce Act 1986	MBIE
August 2025	Commerce Commission Governance and Effectiveness	Office of the Minister of Commerce and Consumer Affairs
20 August 2025	Commerce Commission Governance and Effectiveness ECO-25-MIN-0133 Minute	Cabinet Office
13 June 2025	Governance and Effectiveness Review of the Commerce Commission – Final Recommendations Report	Dame Paula Rebstock, Professor Allan Fels AO, David Hunt
June 2025	Commerce Commission – Response to the Governance and Effectiveness Review	Commerce Commission

### Information redacted

**YES / NO** (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of confidential advice to Government.

## **In Confidence**

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

## **Commerce Commission Governance and Effectiveness**

### **Proposal**

1. This paper reports on the findings and recommendations of the Governance and Effectiveness Review of the Commerce Commission (the Commission) and seeks agreement in principle to reform the Commission's governance arrangements.
2. The companion paper *Commerce Act Review: Further Changes to Improve Competition Settings* recommends reforms to New Zealand's competition law set out in the Commerce Act 1986. Together, the two papers support a more modern, capable, and responsive competition regime.


### **Relation to government priorities**

3. This paper relates to the Government's priority to deliver better public services and supports the Going for Growth action of improving competition settings to boost productivity and living standards.

### **Executive Summary**

4. I have received the report (Final Report) of the independent review of the governance and effectiveness of the Commission, led by Dame Paula Rebstock. The Final Report includes 32 structural and non-structural recommendations, including legislative amendments. While the Commission is performing well in many respects, the review finds the current governance model, where the Commissioners have dual responsibilities for both governance and regulatory decision-making, is not best practice for a modern Crown entity.
5. In practice, the Commissioners' near full-time role in regulatory decision-making means there is no 'outside-in' perspective on the board or flexible means to draw on commercial nous and savvy to address organisational issues.
6. The model limits the ability of the board to focus on governance and strategy matters, such as ensuring the Commission is focused on the issues that have the most impact for competition and consumers.
7. This dual role restricts the board's ability to scale up to take on new regulatory responsibilities. The addition of new functions over recent years has further highlighted the weaknesses of the current model.
8. I accept these findings and agree that structural change is required to address these challenges. I recommend pursuing option 2 in the Final Report, which separates out

the governance and statutory decision-making roles of the board and introduces more commercial expertise to the Commission's decision-making by:

- 8.1. establishing a new board as the governing authority for the Commission, which will include a majority of part-time members;
  - 8.2. delegation of regulatory decisions to either Committees or the Commission chief executive (and on to Commission staff), as appropriate; and
  - 8.3. membership of Committees primarily being drawn from a panel of individuals with relevant expertise and experience (including commercial nous).
9. This option is based on the models employed by the United Kingdom's Competition and Markets Authority and the Reserve Bank of New Zealand. I seek agreement in principle to implement this structural change, subject to further work by officials identifying the necessary legislative changes and an implementation plan to manage the transition.
10.  Confidential advice to Government
11. I also seek agreement to some minor non-structural changes to the Commission's operating model, including requiring the Commission to prepare and publish an annual State of Competition Report.

## Background

12. At its meeting of 25 September 2024, the Cabinet Economic Policy Committee agreed to progress a review of the Commission's board performance and governance arrangements to ensure the Commission has the right expertise and governance arrangements to make effective and timely decisions. [ECO-24-MIN-0206]. An overview of the current governance arrangements is in Annex 1.
13. The review was led by Dame Paula Rebstock, supported by Professor Allan Fels AO and David Hunt. The Final Report was delivered on 13 June 2025. The Final Report sets out the review findings and outlines 32 recommendations, the majority of which are directed at the Commission to implement.
14. Annex 2 outlines the three structural options considered by the reviewers. A full list of the recommendations in the Final Report, the Commission's response and the proposed Government response are outlined in Annex 3.
15. The Commission largely endorses the findings of the review and its response sets out how it proposes to address the recommendations directed to it. The Commission does not support the structural changes recommended in the Final Report or the case for legislative change. It supports option 1 (a new Governance and Strategy Committee to advise the board); however, I consider that this will not go far enough

to address the issues identified. This paper seeks agreement on a Government response to the review.

## **Review findings and principles to guide reform**

### *The operating environment for the Commission is challenging and ever-changing*

16. Competition plays a critical role in driving economic growth. The Commission's mandate to promote competition for the long-term benefit of consumers is enduring, and its independence in applying competition law is a strength of the regime.
17. However, the Commission's operating environment is ever-changing, including significant technological advances and trade and supply chain challenges. This points to the need for a competition agency that invests in forward-looking work to foresee, understand and be able to respond to current and emerging issues.

### *The current dual responsibility model challenges the Commission's governance and performance and the reviewers found that structural changes are needed*

18. The Commission is a strong and trusted organisation. In recognition of this, successive governments have given the Commission additional regulatory responsibilities. However, this expansion of regulatory mandate has put the current model, where the Commissioners have dual responsibilities for both governance and regulatory decision-making, under strain.
19. Recent measures to address this include:
  - 19.1. increasing the number of Commissioners, each appointed for their expertise in regulatory decision-making, and moving them to full-time or close to full-time;
  - 19.2. increasing the number of Divisions, being groups of three or more Commissioners with responsibility for the Commission's functions under different regulatory regimes; and
  - 19.3. designating individual Commissioners as convenors or named Commissioners to lead areas of work, with named Commissioners (eg the Grocery Commissioner) having statutory independence from the Commission board for some functions under the relevant sector legislation.
20. These measures have freed up the Commission Chair's time but have led to other issues, including fragmentation and silos in the organisation. In summary, the reviewers found:
  - 20.1. **The governance function of the Board is weak** – There is no strong 'outside-in' perspective at the governance table to lift the Commission's focus and oversee the Commission's engagement, impact and performance. Commissioners' focus is inevitably drawn to their regulatory decision-making roles. Compartmentalisation of regulatory decision-making in multiple Divisions, along with named Commissioners, makes it difficult for the Commission board to act as organisation-wide governors. The reviewers identified the lack of a 'whole of commission' approach, and Commissioners

on the board having an insufficient challenger role to hold each other to account for key regulatory decisions.

- 20.2. **Individual Commissioners and Divisions are too heavily involved in regulatory decision-making** – Commissioners have too many touch points in regulatory processes, often dealing directly with Commission staff in their respective regulatory areas, further creating silos. There are low levels of delegation to staff, making access to Commissioners a bottleneck. The Division structure does not easily allow for bringing additional external expertise to decision-making. These matters directly impact the timeliness, efficiency and quality of decision-making.
- 20.3. **There are gaps in Commission capability and functional leadership in core areas** –There is under-investment in data and digital systems relative to the Commission’s overseas peers. There is also insufficient functional leadership for economics and competition at the senior executive table, increasing the burden on Commissioners with that expertise. New regulatory functions, often funded by dedicated appropriations or levies, have led to dedicated teams with staff having limited mobility to other areas within the Commission. The lack of delegation has weakened the role of Commission staff in decision-making and in maintaining the institutional memory and deep expertise, which is the foundation of the institution as Commissioners come and go.
21. The reviewers consider that these challenges are a function of the Commission’s structure. If, in the future, the Commission’s regulatory mandate was to expand further, the challenges of the current model would be amplified. If the right structure is in place for governance and decision-making, the other organisational challenges are more likely to be addressed.

*The reviewers set out principles to guide choices about reform*

22. Changes about reform should:
- 22.1. promote a ‘whole of commission’ approach and organisational coherence;
  - 22.2. promote confidence and assurance in the Commission as an institution;
  - 22.3. provide transparency and certainty;
  - 22.4. maintain the Commission’s independence of statutory decision-making;
  - 22.5. ensure accountability for outcomes;
  - 22.6. provide for pace and flexibility;
  - 22.7. build capacity and capability in the Commission;
  - 22.8. deliver value for money, efficiency, affordability, sustainability, be fit for purpose and be future proofed; and

- 22.9. be practicable – being able to be implemented and have a low risk of unintended consequences.

### **I propose to pursue structural changes**

23. The reviewers considered three options to strengthen the governance function of the board (refer to Annex 2 for more detail on the options).

#### *I recommend adopting option 2 (ie the new board as the governing body)*

24. I propose to move forward with option 2, which involves establishing a new board as the governing body of the Commission. This board would oversee, but not participate in, certain independent regulatory decisions, delegating those instead to specialist committees or the chief executive. The model requires legislative change and is based on governance structures used by the United Kingdom's Competition and Markets Authority and the Reserve Bank of New Zealand.
25. Option 2 would move the Commission to a traditional board governance model and is the first-best option if we were starting with a new agency. A strong governance board that understands the Commission's regulatory mandate and its role in promoting economic growth is more likely to focus on a clear strategy and performance to deliver better outcomes for New Zealanders.
26. I note the reviewers had some concerns that option 2 would separate organisational and regulatory governance (although this would be partial rather than complete as two members of the panel would sit on the board). It could also increase the risk of regulatory decisions in committees being less consistent across sectors and over time. I consider that these risks are manageable through clearly defining the relationship between the board and regulatory committees consistent with a 'whole of a commission' approach.
27. If agreed, officials will be directed to further develop option 2, identifying the necessary legislative changes and creating an implementation plan to manage the transition within baselines. This proposal should be developed consistent with the principles to guide reform outlined above. It will include:
- 27.1. modifying the mechanism for Associate Commissioners in the Commerce Act so that it is consistent with the new panel to be established for certain regulatory decision-making matters; and
  - 27.2. repealing the Division mechanism in the Commerce Act and replacing it with a modified Committee mechanism (as provided in the Crown Entities Act 2004) for regulatory decision-making, along with any additional measures desirable to support this.

#### *I propose to transition the current Chair across to the new oversight board*

28. To help facilitate a smooth transition and facilitate stability, I propose to transition the current Commission chair, Dr John Small, across to the new oversight board for the remainder of his term which expires in July 2030. A continuance in leadership will

help preserve the Commission's authority over the transition period and promote certainty for the business community.

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29.

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**I also propose a number of non-structural changes**

30. The majority of recommendations in the Final Report relate to non-structural changes relating to the operation of the Commission. Examples include:
  - 30.1. updating the roles and responsibilities of the board, individual Commissioners, and Committees;
  - 30.2. updating the board's delegation framework to ensure it fully reflects the subsidiarity principle, where decisions are taken at the lowest practical level and closest to sources of relevant information and expertise;
  - 30.3. reviewing its prioritisation process on a 'whole of Commission' basis;
  - 30.4. reviewing its risk appetite to provide clearer guidance to decision-makers;
  - 30.5. updating its Workforce Strategy and processes, with a particular focus on delegations, role clarity, recruitment strategy, assurance processes, staff training, performance monitoring, and succession planning; and
  - 30.6. ensuring the economics function at the Commission has a voice at the executive table and can provide the breadth and depth of economic expertise required for competition and economic regulation. The Final Report highlighted a significant shortfall in this economics function across the organisation. It is something I am especially interested in addressing, as the Commission is the 'Economic Regulator' for a number of jurisdictions.
31. The Commission has agreed to implement these measures. These matters fall within the remit of the new board, which should be accountable for its delivery.
32. There are, however, a few recommendations for non-structural change that should be addressed in the Government response. I propose to:
  - 32.1. Build a requirement into the Commerce Act 1986 for the Commission to prepare and publish an annual State of Competition in New Zealand report and consider how it can use this report to proactively engage with the government and MBIE on those matters.

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32.2. Note the reviewers endorsed the outcomes of the review of the Commerce Act relating to new statutory timeframes for merger reviews and strengthening the Commission's powers to manage confidential information. The first of these matters is addressed in the first paper of the two before this Committee. The latter issue was addressed earlier [ECO-25-MIN-0098].

### **I have also asked MBIE to monitor funding arrangements**

33. The reviewers also made two recommendations relating to the Commission's funding arrangements. These included:

33.1. Reviewing the Commission's appropriation structure and funding mix to ensure it provides flexibility to the Commission to deploy resources to the highest value use. There was concern that 'buckets' of dedicated funding (including levy funding) were overly restrictive.

33.2.

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34. I have requested MBIE to monitor the Commission's funding arrangements to identify opportunities for greater flexibility in the apportionment of funds, with an initial focus on reviewing the Commission's litigation fund. Levy funding is not of itself a barrier to the efficient operation of the Commission, if well-designed with in-built flexibility to support the efficient operation of the Commission and accountability to levy payers.

### **Cost-of-living Implications**

35. The proposals in this paper do not have a direct impact on the cost of living. However, any lift in the Commission's performance as a result of these proposals may increase the impact of its interventions in achieving its goal of making New Zealanders better off.

### **Financial Implications**

36. The proposals in this paper are to be addressed within baselines.

### **Legislative Implications**

37. Legislation is required to implement the structural changes to support option 2 (a new board) and require the Commission to prepare and publish an annual State of Competition report.

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39. The Commerce Act binds the Crown in so far as it engages in trade.

## **Impact Analysis**

### *Regulatory Impact Statement*

40. The Ministry for Regulation has determined that the proposals in this paper relating to the Commerce 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.

### *Climate Implications of Policy Assessment*

41. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

## **Population Implications**

42. The proposals in this paper relate to machinery of government and have no population implications.

## **Human Rights**

43. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## **Use of external resources**

44. MBIE commissioned three reviewers to conduct the review of the governance and effectiveness of the Commission. The reviewers were Dame Paula Rebstock, Professor Allan Fels AO and David Hunt. These reviewers collectively have extensive experience in governance of public and private sector agencies (including the Commission and ACCC), and internationally recognised knowledge of competition law and institutions. An independent review was desirable to promote trust and confidence. The Commission contributed to the reviewers' costs.
45. MBIE is also proposing to commission external legal advice to assist in identifying the legislative implications as part of the further work on option 2.

## **Consultation**

46. The Treasury, the Public Service Commission and the Ministry for Regulation were consulted on this Cabinet paper. The Department of Prime Minister and Cabinet has been informed.

## Communications and proactive release

47. I expect to announce these proposals soon after Cabinet decisions are made.
48. This paper and the Final Report will be published on MBIE's website within 30 working days after announcements have been made, subject to appropriate redactions.

## Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that, on 25 September 2024, the Committee agreed to progress a review of the Commerce Commission's (the Commission's) board performance and governance arrangements to ensure the Commission has the right expertise and governance arrangements to make effective and timely decisions. [ECO-24-MIN-0206];
2. **note** that, on 13 June 2025, the Review of Commission Governance and Effectiveness was completed with the presentation of a Final Report, containing 32 recommendations;
3. **agree** to accept the review's findings as outlined in the Final Report relating to the Commission's strengths and challenges;
4. **note** the Commission supports the recommendations that are within its mandate to lead and is progressing their implementation;

## Structural change

5. **agree** that the Commission's preferred option, involving establishing a new Governance and Strategy Committee to the board (referred to as option 1), is insufficient to be assured of the business transformation and benefits the Government is seeking over the longer term;
6. **agree in principle**, subject to the further work set out in recommendation 7, to structural reforms to establish a new board as the Commission's governance body and a specialist panel for key regulatory decisions (referred to as option 2);
7. **agree** to direct Ministry of Business, Innovation and Employment (MBIE) officials to further develop option 2, identifying the necessary legislative changes and an implementation plan to manage the transition, consistent with the principles to guide reform outlined in this paper, and including:
  - 7.1. modifying the mechanism for Associate Commissioners in the Commerce Act so that it is consistent with the new panel to be established for certain regulatory decision-making matters; and
  - 7.2. repealing the Division mechanism in the Commerce Act and replacing it with a modified Committee mechanism (as provided in the Crown Entities Act) for regulatory decision-making, along with any additional measures desirable to support this.

8. **agree** to transition the current Commission chair, Dr John Small, across to the new oversight board once it is established for the remainder of his term, to July 2030, to facilitate stability;

9.

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### Non-structural change

10. **agree** to require the Commission to prepare and publish an annual State of Competition in New Zealand report and consider how it can use this report to proactively engage with the government and MBIE on those matters;
11. **note** the reviewers endorsed the outcomes of the review of the Commerce Act relating to new statutory timeframes for merger reviews (refer to the companion paper, *Commerce Act review: Further changes to improve competition settings*) and strengthening the Commission's powers to manage confidential information (ECO-25-MIN-0098);
12. **note** that MBIE will monitor the Commission's funding arrangements to identify any unnecessary rigidities in the apportionment of funds, with an initial focus on reviewing the Commission's litigation fund;

### Legislative implications

13. **note** the agreed proposals relating to Part 1 of the Commerce Act may be given effect through the Commerce (Promoting Competition and Other Matters) Amendment Bill, which is a Confidential advice to Government and

14.

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Authorised for lodgement

Hon Scott Simpson

Minister of Commerce and Consumer Affairs

## Annex 1: Current Commerce Commission governance arrangements

The Commission is New Zealand’s competition, fair trading, and economic regulatory authority. The Commission is an independent Crown entity established under Part 1 of the Commerce Act 1986. It has a range of independent regulatory responsibilities, including:

- economy-wide competition and fair trading functions under the Commerce Act (excluding Part 4) and Fair Trading Act 1986;
- market specific functions that are competition or consumer related under sector-specific legislation relating to the consumer credit, dairy, land transport fuel, retail payments, groceries and telecommunications services sectors; and
- monopoly economic regulation functions under Part 4 of the Commerce Act for electricity lines, gas pipelines, specified airfield activities, and soon to be water services, and under Part 6 of the Telecommunications Act 2001 for fibre.

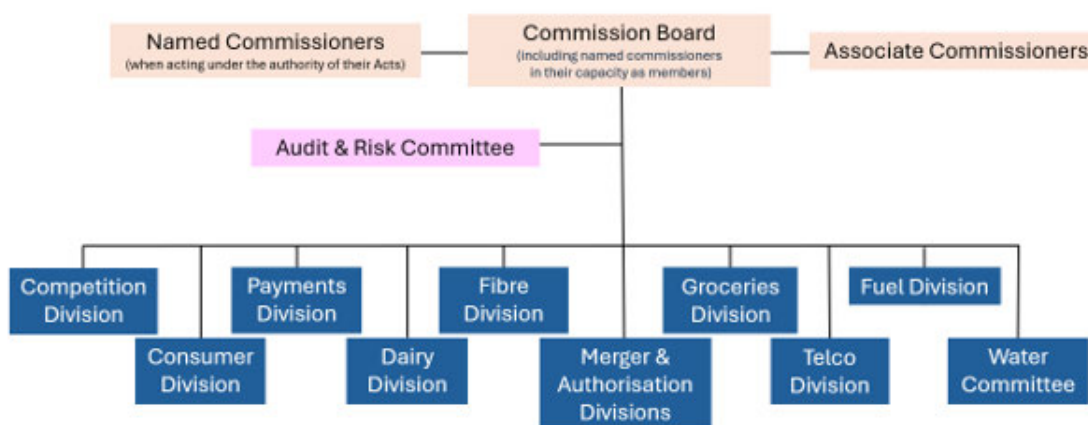
Part 1 of the Commerce Act provides that the Commission consists of four to eight Commissioners appointed by the Governor-General that make up the Commission board for the purposes of the Crown Entities Act 2004. The Commission board must include the Chair, Deputy Chair, Telecommunications Commissioner and Grocery Commissioner. At least one Commissioner must be a barrister or solicitor of at least five years’ standing.

The Commission may also have any number of Associate Commissioners, who are appointed by the Minister of Commerce and Consumer Affairs in relation to a matter or class of matters relating to the Commission’s independent regulatory responsibilities.

The Commission currently consists of seven Commissioners on the board, and six Associate Commissioners, including two cross-appointees from the Australian Competition and Consumer Commission (ACCC).

The Commission is primarily funded through a variety of annual and multi-year appropriations under Vote Business, Science and Innovation, of which approximately 36 per cent is recovered by the Crown through industry levies. Budgeted and projected revenue for the Commission in the 2025/26 financial year is \$91.3 million (excluding the litigation fund).

### The Commission’s current structure

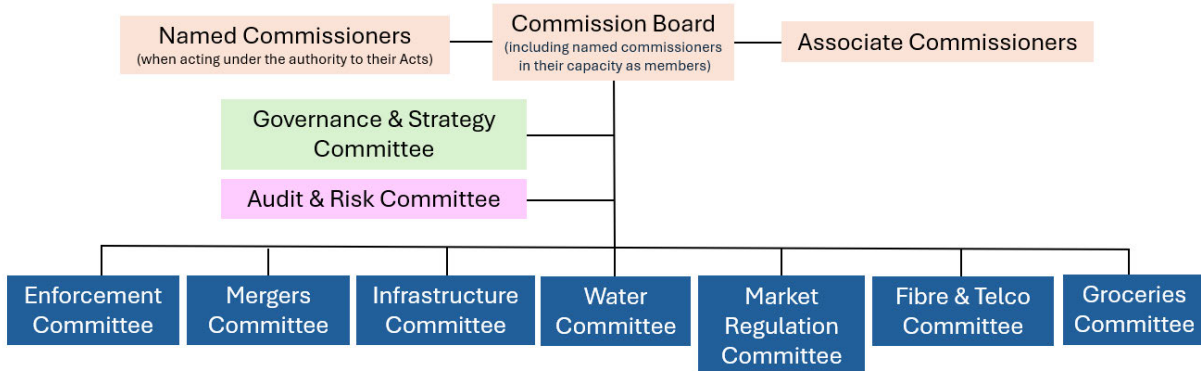


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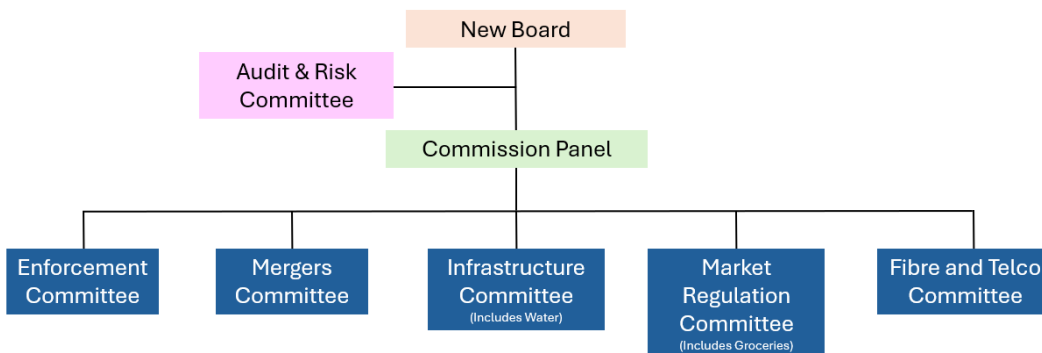
## Annex 2: Commission structure options

### Option 1 – embedded governance and refined operating model (the Commission’s preferred model)



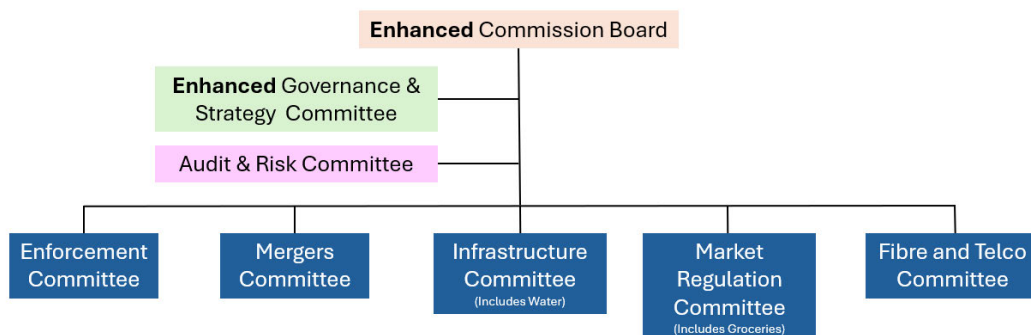
Option 1 involves establishing a new Governance and Strategy Committee to advise the board on strategy, direction, priority setting, governance and performance. This advisory committee would include the Chair, Deputy Chair and one other Commissioner plus two external members, appointed for their governance expertise, who are independent of the Commission’s regulatory decision-making. This option can be implemented within existing legislation and is the least transformative.

### Option 2 – new governance board and streamlined operating model (recommended)



Option 2 involves creating a new board as the governing body of the Commission for the purposes of the Crown Entities Act that would oversee but not be involved in the Commission’s independent regulatory decision-making. Regulatory decision-making would be conducted through delegation to regulatory committees or the Commission chief executive (and on to Commission staff), as appropriate. A new panel would be established, with appointments by the responsible Minister following a recommendation by the board, consisting of individuals with requisite experience and expertise who may be appointed on a part-time basis to regulatory committees for the purposes of decision-making. At least two members of the panel would also be members of the board. This option would require legislative change. Named and Associate Commissioners would transition to the Commission Panel or Committee membership as appropriate.

**Option 3 – enhanced governance and streamlined operating model (recommended by Reviewers)**



Option 3 is a hybrid model between options 1 and 2, with at least one new member on the Commission board who would be part-time and have an independent governance role, not sitting with other Commissioners when making regulatory decisions. This person would have status on the board (eg as a second Deputy Chair) and would chair the new Governance and Strategy Committee. The composition and remit of the Governance and Strategy Committee would also be strengthened by conferring a role for the responsible Minister in determining these matters in association with the board. This option would also require legislative change. Named and Associate Commissioners (other than for cross-appointments) would cease to exist and this expertise would be through membership of Committees as appropriate.

### Annex 3: A summary of recommendations from the Final Report and a proposed response

The **shaded boxes** are decisions to be led by Government. The others are to be led by the Commission.

No	Recommendation	Commission comment	Proposed Government response
1	<p>The Review recommends that any changes to the effectiveness and governance of the Commerce Commission are guided by the following principles:</p> <ul style="list-style-type: none"> <li>• Promotes whole of Commission approach and organisational coherence,</li> <li>• Promotes confidence and assurance,</li> <li>• Provides transparency and certainty,</li> <li>• Maintains independence of decision making,</li> <li>• Ensures accountability for outcomes,</li> <li>• Provides for pace and flexibility,</li> <li>• Builds capacity and capability,</li> <li>• Delivers value for money and efficiency, affordability, sustainability and fit for future, and</li> <li>• Practicality, being able to be implemented and having a low risk of unintended consequences.</li> </ul>	Agree	Agree
2	<p>Strengthening of the whole of Commission approach through changes to the Commission structure, the roles and responsibilities at the Commission, and delegated authorities [as detailed further in recommendations set out below].</p>	Agree	Agree



No	Recommendation	Commission comment	Proposed Government response
3	We recommend that Option 3 be adopted, which would entail: a. Appointment of an additional (part-time) Deputy Commissioner with an exclusive focus on organisational governance issues,	Disagree. Supports Option 1.	Recommend option 2 (establishment of a new board).
	b. Establishment of a Governance and Strategy Committee to advise the Board which would be chaired by the new Deputy Commissioner, and include the Commission Chair plus one other Commissioner and two external members with strong governance and commercial experience,	Agree with modification (ie no new Deputy Chair).	Recommend option 2 (establishment of a new board).
	c. Replace the multiple division structure with a small number of Committees that can include external and executive appointees (with Commissioners to provide a majority),	Agree. Initially reduce to 7 Committees but can be reduced further over time.	Agree. The Division mechanism will be repealed and replaced with a modified mechanism for regulatory Committees, supported by desirable associated changes.
	d. Discontinue the Associate Commissioner mechanism (except for cross-appointments from other regulatory bodies) and instead utilise Committee appointments to obtain the benefits of additional expertise and commercial nous in a more flexible way, and	Decision for Government but see associate commissioner mechanism adds value.	Agree in part. Under option 2, the associate commissioner mechanism will be replaced with a new panel mechanism.
	e. Discontinue the named Commissioner mechanism (except for telecommunications as excluded from the Review terms of reference).	Decision for Government, but supportive of current named Commissioners.	Agree in part. Confidential advice to Government



No	Recommendation	Commission comment	Proposed Government response
4	The Governance and Strategy Committee should, on behalf of the Board, develop an updated statement of roles and responsibilities based on a 'commission as a whole' model.	Agree	Support in part. Roles and responsibilities of the board and panel will be considered in further work on option 2.
5	The Commission should update its delegation framework to ensure it fully reflects the 'subsidiarity principle'. This should be reinforced by legislative change to vest accountability for all statutory decision-making with the board.	Agree. Propose to apply 'subsidiarity' principle alongside assessment of risk/novelty of decision and regime maturity/ life cycle.	Support. This is a matter for the Commission.
6	Once significant efficiencies and improved effectiveness are found through the changes recommended by this Review, the Commission Board should decide what matters it will reserve to itself. Weight should be given to materiality, risk, reputation, novel, precedence setting and the need for policy, strategy and operational cohesion.	Agree	Support. This is a matter for the Commission.
7	The Commission should review its prioritisation process in response to the change in the Commission's governance and operating model.	Agree. Suggest this is supported by more flexibility in appropriation structure and enhanced workforce strategy.	Support. This is a matter for the Commission.
8	Committees should report regularly to the Commission Board on their performance against the Commission agreed priorities.	Agree	Support. This is a matter for the Commission.

No	Recommendation	Commission comment	Proposed Government response
9	The Commission should prioritise development of an updated People Strategy and practices to support the proposed changes to the Commission's governance and operating model, with particular focus on the delegations policy, role clarity, recruitment strategy, assurance processes, staff training, performance monitoring, and succession planning.	Agree.	Support. This is a matter for the Commission.
10	The Commission should review its risk appetite statement to provide clearer guidance to decision makers to reduce the risk of a one size fits all approach being applied to development of Commission work products.	Agree	Support. This is a matter for the Commission.
11	The Commission should more actively monitor the application of the enterprise risk appetite to ensure operational decision-makers are empowered to utilise the risk tolerances where there are expected net benefits from doing so.	Agree	Support. This is a matter for the Commission.
12	The Commission consult on and produce Market Regulation Guidelines.	Agree	Support. This is a matter for the Commission.
13	The Commission should develop a corresponding engagement model for the Commission as a whole as part of implementing a new governance and operating model.	Agree. Developing new stakeholder and communications plan.	Support. This is a matter for the Commission.
14	The Commission should consider establishing an independent consultative committee to provide feedback to the Commission on priorities and performance.	Agree	Support. This is a matter for the Commission.
15	The Commission should publicly report annually on the impact of its work on the long-term interest of consumers and the associated value for money of its interventions.	Agree	Support. This is a matter for the Commission.



No	Recommendation	Commission comment	Proposed Government response
16	The Commission should publish an annual State of Competition Report.	Agree	Agree (legislative change required to set as a function of the Commission).
17	The Commission should consider the potential policy implications that may arise from its annual State of Competition Report and consider how it could proactively engage with MBIE and the Government on those matters.	Agree	Agree (legislative change may be required to functions of the Commission).
18	The Commission should revisit options to improve operational timeliness and efficiency in light of the changes to the structure recommended by this Review.	Agree	Support. This is a matter for the Commission.
19	The Government should endorse the new statutory timelines for merger reviews as proposed by MBIE.	Decision for Government (but supportive).	Agree. To be progressed in Cabinet decisions on review of Commerce Act.
20	Following changes to merger provisions, MBIE should undertake a one year and two-year evaluation of the effectiveness of the policy changes, as well as the efficiency and effectiveness of the Commission's practises under the new merger regime.	Decision for Government (but supportive). Also exploring approaches for independent evaluation.	Agree.
21	<p>We recommend that Government agrees to:</p> <ul style="list-style-type: none"> <li>a. Broaden the Commission's powers to issue confidentiality orders (s100) and increasing penalties for breach of an order,</li> <li>b. Amend how the Official Information Act applies to confidential information supplied to the Commission in the course of its functions, subject to a sunset clause, and</li> <li>c. Introduce a new prohibition against victimisation of parties in relation to making a complaint or providing information to the Commission.</li> </ul>	Decision for Government (but supportive)	Already agreed by Cabinet.

No	Recommendation	Commission comment	Proposed Government response
22	The Commission Board should publish a model media policy, consistent with a 'Commission as a whole' philosophy, including for the use of social media, and allow for a complaints process.	Agree	Support. This is a matter for the Commission.
23	The Commission should consider lifting capability of its dedicated resource for dealing with Official Information Act requests and general information management purposes.	Agree	Support. This is a matter for the Commission.
24	The Commission should increase the focus on lifting its capabilities in the digital and data analytics areas.	Agree	Support. This is a matter for the Commission.
25	The Governance and Strategy Committee should prioritise the review of where the economics function sits in the organisational structure to ensure it has a voice at the executive table and can provide the breadth and depth of economic expertise required for economic regulation.	Agree	Support. This is a matter for the Commission.
26	The Government should review the Commission's funding arrangements to make it easier for the Commission to shift resources to reflect changing priorities and be more pro-active in its work. This implies a relative shift towards Crown funding and away from levy funding is desirable.	Decision for Government (but supportive)	Noted. MBIE is monitoring the Commission's financial health, beginning with a review of the litigation fund.
27	Pecuniary penalties awarded by the Court should continue to be returned to the Crown and not be retained by the Commission to avoid perverse incentives.	Decision for Government	Agree. Review of litigation fund is focused on Commission retention of costs in awards or settlements only.
28	The Commission should report to the Government on the fiscal savings available from the structural, governance and operating model changes recommended from this Review.	Agree	Support. This is a matter for the Commission, but MBIE will monitor.



No	Recommendation	Commission comment	Proposed Government response
29	The Government should invest some of the efficiency dividend into closing the Commission's forecast operating deficit in outyears and in transforming the Commission into an intelligence-led regulator.	Decision for Government (but supportive)	Noted.
30	MBIE should closely monitor the business transformation proposed by the Review to ensure benefits are realised in terms of efficiency, effectiveness and value for money.	Decision for MBIE (but supportive)	Agree.
31	The Government should enact changes to Part 1 of the Commerce Act to underpin the move to a stronger whole of Commission approach.	Decision for Government (does not support)	Agree (as per responses above).
32	The Government should include a statement to support a whole of Commission approach in the amendments to Part 1 of the Commerce Act and create a further collective duty on the board to comply with this statement.	Decision for Government (does not support)	Agree in part. A whole of commission approach will be considered in further work on option 2.