MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

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

List of documents that have been proactively released		
Date	**Title**	**Author**
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)*

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

Governance and Effectiveness Review of the Commerce Commission

Recommendations Report

13 June 2025

Authors:

Dame Paula Rebstock

Professor Allan Fels AO

David Hunt

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Executive summary

1. This report sets out the findings and recommendations of the Governance and Effectiveness Review of the Commerce Commission (**the Review**).

2. During this Review, the Panel has had extensive engagement with the Commerce Commission (**the Commission**), at both Commissioner and staff levels. It also undertook targeted interviews with a broad range of external parties, including consumer and business organisations, competition law practitioners and economists, senior government officials, and other regulators in New Zealand and overseas. A list of those interviewed is included in **Annex 1**.

3. We greatly appreciate the assistance of all parties who participated in the Review, and especially the high level of cooperation and engagement we received from the Commission. We also acknowledge the excellent work of the secretariat who supported the Panel.

4. This report sets out the views of the Review Panel and should not be construed as reflecting the position of any other person or organisation.

Context for the Review

5. The Commission plays a critical role as an independent regulator in New Zealand. It protects competition across the economy and promotes informed and confident participation by consumers.

6. Since 2017, the Commission's role has substantially expanded with responsibilities added in a range of sectors, and economic regulation of water services is due to commence shortly.

7. The Commission's growing mandate has been accompanied by increased resourcing. In 2018/19, the Commission's annual revenue was $42.7 million (excluding the litigation fund) with budgeted FTEs of 233. By 2023/24, the Commission's revenue had more than doubled to $101.7 million (excluding the litigation fund) with 497 budgeted FTEs, although it has subsequently scaled back. Savings initiatives in Budget 2024 and the transfer of credit functions to the Financial Markets Authority have lowered projected revenues in future years.

Key findings

8. The Commission is a strong organisation that is performing well in many respects. The Commission possesses a clear purpose, strong culture, deep experience and expertise amongst Commissioners and staff, highly developed regulatory procedures, and a strong degree of public trust and confidence, all backed by its statutory independence.

9. However, there are opportunities for improvement in key areas. The key issues addressed include:

    a. The Commission tends to operate in Division silos,

    b. Named Commissioners are an anomaly of the New Zealand approach,

    c. Access to Commissioners is a significant constraint,

d. A strengthened whole of Commission approach is essential to strategic leadership and coherence,

e. The governance function of the Commission needs strengthening,

f. Insufficient role and responsibility clarity,

g. Low and inconsistent delegations to staff,

h. Gold standard approach contributes to timeliness concerns,

i. Insufficient or inadequate prioritisation,

j. Inflexible funding negatively impacts a whole of Commission approach,

k. Insufficient flexible access to industry and consumer expertise,

l. Inadequate data analytics, financial and forensic capability and market intelligence,

m. Under-strengthened economics function, and

n. Poor information management and communications.

10. In essence, we see an opportunity for the organisation to adopt a 'commission as a whole' approach to its work. This means decisions would be driven, as far as possible, by an overall integrated philosophy, culture, set of principles, objectives, public communication approaches, and priorities set by the Commission operating as a whole. When decision making is delegated, its exercise would be driven 'from above' with appropriate guiding principles, processes and procedures, accountability and various checks and balances.

11. At present there are components of a 'commission as a whole' type of model, but it is not fully fledged. A significant number of decisions are assigned to parts of the Commission – sometimes committees, most often divisions, sometimes nominated or 'named' commissioners and sometimes to staff.

12. We consider that shifting to a fuller 'commission as a whole approach' would allow the organisation to be more effective at identifying emerging issues and priorities across its mandate, matching resources to those priorities, and monitoring outcomes to make any course adjustments as required.

13. We expect that a shift in the Commission's model toward a 'commission as a whole' approach would yield an efficiency and fiscal dividend.

Key structural recommendations

14. In our view many of the Commission's challenges stem from structural elements embedded within its current organisational design. Put simply, the challenges are not personality-driven or a reflection on current Commissioners. On the contrary, we understand the Commission's board largely shares our diagnosis of the challenges and has been working hard to address them but with mixed success. We think progress has been held back by two structural elements within current governance arrangements.

15. First, there is no strong 'outside in' perspective at the governance table. In many organisations this comes from board members who hold governance roles on multiple organisations and can therefore draw on a range of perspectives. In the Commission's case, that source of external perspective and critical review has been reduced over time because Commissioner roles have increasingly become full (or close to full) time roles as the organisation's mandate expanded.

16. Second, the compartmentalisation of statutory decision-making authority across many divisions, together with the provisions relating to named Commissioners makes it harder for Commissioners to act as organisation-wide governors. This point was brought home in discussions with overseas regulators that do not have the fragmentation of statutory decision-making powers that exist within the Commission.

17. We considered a spectrum of structural options to address the challenges we have identified. The options range from creating a Governance and Strategy Committee with an external member through to establishing a separate Governance Board for the organisation (similar to the United Kingdom approach).

18. Each of the options has strengths and weakness. On balance, we recommend that the Commission board retain the full governance function, but that fragmentation of decision-making authority across the Commission is addressed, and that a strong 'outside in' view is introduced via a new board Governance and Strategy Committee to be chaired by a second Deputy Commissioner.

19. In specific terms, the structural changes would include:

    a. Appointment of an additional (part-time) Deputy Commissioner with an exclusive focus on organisational governance issues.

    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.

    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).

    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.

    e. Discontinue the named Commissioner mechanism (except for telecommunications as excluded from the Review terms of reference) to promote strong collective accountability of the Commission board.

Key non-structural recommendations

20. We are also recommending a range of other actions that would be enabled by, or would reinforce, the structural change recommendations set out above. These non-structural recommendations include:

a. 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.

b. 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.

c. 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, novelty, precedence setting and the need for policy, strategy and operational cohesion.

d. The Commission should review its prioritisation process in response to the change in the Commission's governance and operating model.

e. Committees should report regularly to the Commission Board on their performance against the Commission's agreed priorities.

f. 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.

g. 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.

h. 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.

i. The Commission should consult on and produce Market Regulation Guidelines.

j. The Commission should develop a corresponding engagement model for the Commission as a whole as part of implementing a new governance and operating model.

k. The Commission should consider establishing an independent consultative committee to provide feedback to the Commission on priorities and performance.

l. 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.

m. The Commission should publish an annual State of Competition Report.

n. 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.

o. The Commission should revisit options to improve operational timeliness and efficiency in light of the changes to the structure recommended by this Review.

p. The Government should endorse the new statutory timelines for merger reviews as proposed by MBIE.

q. 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.

r. The Government should amend the law to make it easier for the Commission to withhold information provided by third parties, where release of such information is likely to hinder competition.

s. 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.

t. The Commission should consider lifting capability of its dedicated resource for dealing with Official Information Act requests and general information management purposes.

u. The Commission should increase the focus on lifting its capabilities in the digital and data analytics areas.

v. 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.

w. 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.

x. 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.

y. The Commission should report to the Government on the fiscal savings available from the structural, governance and operating model changes recommended from this Review.

z. 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.

aa. 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.

bb. The Government should enact changes to Part 1 of the Commerce Act to underpin the move to a stronger whole of Commission approach.

cc. 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.

21. We outline a roadmap for change for the Government and Commission. A full list of all recommendations can be found at page 54.

Introduction

1. This Recommendations Report sets out the key themes that arose from our review and our final recommendations to strengthen the governance and effectiveness of the Commerce Commission (**the Commission**) to meet current and future challenges and deliver ongoing benefits for New Zealanders.

2. The Report firstly describes the Commission, the terms of reference for the review, the process that we followed, and the context for the review. We then discuss the key themes and insights from our Review, describing the Commission's strengths and areas for improvement.

3. Before outlining our main recommendations, we briefly describe insights from other regulatory regimes, key principles for governance and effectiveness, and our focus on the importance of a 'whole of Commission' approach.

4. The remainder of the Report sets out key findings and recommendations. These are split into structural changes largely related to governance arrangements, and non-structural changes related to the Commission's operating model. These set out the case for governance and organisational change, including suggested legislative amendments to support this change. We also set the foundations for assessing the Commission's funding arrangements to support the Government's focus on fiscal sustainability.

5. Our conclusions and a summary of recommendations are outlined at the end of the Report.

Background

The Commission

6. The Commission is New Zealand's competition, fair trading, and economic regulatory authority. The Commission is an independent Crown Entity established under section 8 of the Commerce Act 1986. It must act independently in performing its statutory functions and duties, and in exercising its powers, under the legislation it is responsible for, being:

    a. Economy-wide competition and fair trade functions under the Commerce Act 1986 and Fair Trading Act 1986,

    b. Market specific functions under the Credit Contracts and Consumer Finance Act 2003, Dairy Industry Restructuring Act 2001, Fuel Industry Act 2020, Retail Payment System Act 2022, Grocery Industry Competition Act 2023, and, for telecommunications services, the Telecommunications Act 2001, and

    c. Monopoly economic regulation functions under Part 4 of the Commerce Act 1986 for electricity lines, gas pipelines, specified airfield activities, and soon to be water services [1], and Part 6 of the Telecommunications Act 2001 for fibre.

[1] The Commission also has responsibilities for transitional economic regulation of water services under the Local Government (Water Services Preliminary Arrangements) Act 2024.

7. The Commission's overriding goal is to make New Zealanders better off. It aims to do this by contributing to markets working well and supporting consumers and businesses to be confident participants in those markets.

The Commission Board and Associate Members

8. Under Part 1 of the Commerce Act, the Commission consists of four to eight Commissioners,[2] including 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.

9. Commissioners are appointed by the Governor-General and make up the Commission Board for the purposes of the Crown Entities Act 2004.

10. 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, arising under an Act the Commission is required to act independently on.

11. The Commission Board currently consists of seven Commissioners. There are also six Associate Commissioners, including two cross-appointees from the Australian Competition and Consumer Commission (**ACCC**).

Accountability and funding arrangements

12. Under the Crown Entities Act, Commissioners are accountable for the performance of their duties as Members to the responsible Minister, the Minister of Commerce and Consumer Affairs, Hon Scott Simpson.[3]

13. While recognising the Commission's statutory independence, the role of the responsible Minister is to oversee and manage the Crown's interests in the Commission, and its accountability to Parliament. The Ministry of Business, Innovation and Employment (**MBIE**) is the Commission's monitor and assists the Minister in carrying out his role.

14. 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. Total appropriations for the Commission in the 2024/25 financial year were $99.780 million (including the litigation fund).

The Review

15. In December 2024, we were commissioned by MBIE, at the request of the Minister of Commerce and Consumer Affairs (then Hon Andrew Bayly), to conduct a Review of the Governance and Effectiveness of the Commission (**the Review**).

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[2] Referred to as 'Members' in the relevant legislation.

[3] The Telecommunications Commissioner is also accountable to the Minister for Media and Communications.

Scope of the Review

16. The Terms of Reference for the Review draw on some elements of the Public Service Commission's Agency Capability Model (previously the Performance Improvement Framework), but with a narrower focus on the Commission's governance and decision-making processes, and its operating model.[4]

17. We are asked to focus on:

    a. The Commission's capability to apply commercial nous and savvy to its engagements, investigations and decision-making,

    b. Whether the convention for the Board to operate in Divisions achieves the best outcomes including supporting Board accountability and collegiality,

    c. How to ensure the Board has the capacity to develop and deliver an overarching strategy, informed by a clear mission statement,

    d. Ensuring the Commission has a clear measurable basis for prioritising its resources and activity, informed by its strategy, and

    e. Whether there are opportunities for the Commission to operate more efficiently and effectively to deliver value for money.

18. Without limiting the above, we are also asked to consider:

    a. International experience with similar agencies and the small, remote economic nature of New Zealand,

    b. Timeliness of the Commission's decision-making, and its action-orientation,

    c. Transparency of statutory decisions and strategy (including case prioritisation), and

    d. Management of commercially sensitive information.

19. Views are also invited (if any) on whether the Commission's current role and purpose are well positioned to meet future challenges.

20. Two matters were excluded from the scope of the Review:

    a. The position of the Telecommunications Commissioner, unless requested by the Minister for Media and Communications (and no request was received), and

    b. Any recommendations that are inconsistent with existing legal or contractual obligations relating to any individual, be they member or associate member, Commission chief executive or staff. However, MBIE subsequently revised this, and invited us to comment freely on the structure of the Commission.

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[4] The Terms of Reference are available on the MBIE website: https://www.mbie.govt.nz/dmsdocument/29923-terms-of-reference-governance-and-effectiveness-review-of-the-commerce-commission-pdf

Process of the Review

21. The Review has been conducted consistent with the principles in the Terms of Reference, drawing on existing material provided by the Commission and our desk research, plus internal and external interviews.

22. We would like to record the very high level of engagement and cooperation we have received from the Commission, at both Commissioner and staff levels. That cooperation has greatly assisted the Review Panel with its work.

23. We carried out 60 interviews, including:

    a. Eleven Commissioners and Associate Commissioners,[5]

    b. The Commission Chief Executive and six of the senior leadership team,

    c. Commission staff (15 interviews, with a total of 41 staff),

    d. The independent chair of the Audit and Risk Committee,

    e. Senior officials from four government departments – Treasury, MBIE, Public Service Commission and DPMC,

    f. The chair and chief executive or senior staff member of three domestic regulators – The Reserve Bank, Financial Markets Authority (**FMA**) and Electricity Authority,

    g. Four overseas competition regulators – the Australian Competition and Consumer Commission (**ACCC**), UK Competition & Markets Authority, Canadian Competition Bureau and Irish Competition and Consumer Protection Commission, and

    h. A range of external parties that could assist us with the review, including ex-Commission staff, a senior member of the judiciary, Consumer NZ, New Zealand Initiative, some regulated parties, Business NZ, and three panels of experienced competition law and economics practitioners.

24. A list of those interviewed is included in **Annex 1**. The Review Panel acknowledges all the contributions that submitters and interviewees have made to this process.

25. We received over 150 documents, including over 100 documents from the Commission alone. These included an initial pack and overview document from the Commission entitled *2024 Governance and Effectiveness Review, Introduction to the Commerce Commission*, November 2024, and supplementary material on request.

26. A list of the documents provided by the Commission is included in **Annex 2**.

27. On 30 April the Review Panel provided the Minister of Commerce and Consumer Affairs with an Issues Paper. This paper set out the key issues that had surfaced through the initial phase of our investigations. In addition, the Issues Paper outlined the options that were under active consideration at that stage. We also provided the Issues Paper to MBIE and the Commission. Subsequently, the Review Panel consulted further with the

[5] Interviews with the ACCC cross-appointees to the Commission are counted separately.

Commission, MBIE and the Minister, before finalising this final Recommendations Report on the Governance and Effectiveness Review of the Commerce Commission.

Products of the Review

28. The Issues Paper constituted the interim report. The outcome of the Review is this Recommendations Report to the Minister of Commerce and Consumer Affairs. This final report includes our assessment of:

    a. The Commission's governance and decision-making processes, and its ability to develop and deliver on strategy that meets the Government's expectations and has a positive impact for New Zealanders, and

    b. The Commission's organisational capabilities and areas where it can improve.

29. Consistent with the Terms of Reference, this final report seeks to set the foundation for assessing:

    a. The case for organisational or governance change, including any legislative amendments that may be desirable to support this, and

    b. The Commission's level and mix of resources in the context of the Government focus on fiscal sustainability and value for money.

Context for the Review

Role of competition in economic strategy

30. Competition is a process of rivalry between businesses to win customers and/or increase profits. Competition can include two or more businesses collaborating to innovate or jointly produce more, cheaper or better goods and services for customers than they otherwise could alone. Through the process of rivalry, competition can also be consistent with one business winning the contest and having short-term market power before other businesses innovate or invest to take the advantage away.

31. Competition plays a critical role in driving economic growth. It incentivises businesses to be responsive to the needs of their customers and to innovate or invest to reduce costs, enhance quality or increase the quantity or range of goods and services supplied. Over time, this process promotes the efficient allocation of resources, both within a business and between businesses, resulting in the highest value resource use.

32. Competition also improves consumer welfare. It provides consumers with more affordable goods or services and gives consumers greater choice to improve their living standards. Consumer policy complements competition, by promoting informed and confident consumers, and providing that competition is on a fair basis. Economic regulation in markets where there is no or limited competition can also promote outcomes consistent with competition and the long-term interests of consumers.

33. Competitive markets are generally associated with higher levels of output than non-competitive markets, and this usually relates to higher levels of labour input and more sustainable jobs. Competition and choice improve the resilience of an economy. Strong domestic competition also helps New Zealand businesses to compete on the international stage by driving productivity improvement within their businesses.

34. The Commission is fundamental to protecting competition in New Zealand by preventing and/or addressing anticompetitive behaviour in markets. It also supports fair trading and quality economic regulation. However, achieving this in a small distant economy can be challenging. For example, in a small economy like New Zealand, measures of market concentration (the number and size of firms) is not necessarily the best indicator of whether competition is operating as it should. A more complex competition analysis is required. International connections and trade are critical, but distance means that imports may be less competitive. Having a world-class competition agency for a New Zealand population equal to a large Australian city means that the Commission must work in a smart way. This includes collaborating with overseas competition agencies to address harms arising outside New Zealand that impact on our markets.

Changes in regulatory and competitive landscape

35. Competition policy operates in an ever-changing economic environment. Whilst the concepts and principles of competition law and policy have proved broadly adaptable as markets have changed, nevertheless the application of competition law and policy to changes in the economy presents significant challenges. The changes need to be understood, and their economic, legal and regulatory implications analysed.

36. Some of the changes include:

    a. **Technological changes**: e.g. digital platforms, the rise of big data, and artificial intelligence. The rise of digital platforms – although a stimulus to competition in many parts of the economy - has given rise to new areas of market power and to challenges in understanding, in economic and in commercial terms, how they function, what their effects are, and what form any appropriate remedies should take. New technology also brings opportunities and benefits for competition authorities, e.g. new and better ways of investigating markets such as AI tools.

    b. A combination of **increasing globalisation and rising protectionism**: every year there has been more international trade, investment, technology diffusion, communication, and movements of labour. On the whole, this tends to generate more competition in domestic markets. On the other hand, protectionism is also on the rise in many countries – it can create market power in protected sectors.

    c. The **shift to a low emissions economy**: one of the challenges is demand on competition bodies to allow collaboration between competitors to achieve climate change related outcomes. Government interventions can also generate anticompetitive side-effects e.g. standards that limit entry, subsidies that distort markets and policies that create monopolies. This shift presents new issues for competition policy.

    d. A **shift from agriculture and manufacturing dominance to a more service-based economy**: one effect is that productivity growth may be more limited than in traditional sectors such as manufacturing and agriculture due to the limited scope for capital/labour substitution. In the services sector there is a greater role for care (childcare, aged care, health care etc.). Care is often delivered by governments, the private sector and NGOs in a quasi-market setting. The rise of the care economy presents many special challenges - the market puts a premium on quality and safety of care.

e. **Cost of living concerns**: there are public demands for close attention to rising prices, intensifying demands for their investigation by competition bodies. The recent almost universal interest in supermarkets is an example.

f. **New policy matters**: e.g. noncompete clauses, land banking, sophisticated AI/data driven segmentation and marketing, switching problems, methods of addressing asymmetric information, bargaining power imbalances (such as between retailers and suppliers) all require special analysis. There are also new demands on competition bodies, e.g. market studies, economic regulation.

37. Those changes and the general growth of the size of the New Zealand economy have led to an increase in the size and range of activities of the Commission, presenting organisational challenges.

38. These changes point to the need for investment in forward-looking work by competition bodies so that they foresee and understand the coming changes and are prepared to take them into account as they affect competition decisions.

39. Another feature of the environment is that the Commission is an independent body. That is well established and there are no signs it is under near-term threat. But there needs to be awareness of the serious challenges occurring in some parts of the world, such as the USA, Mexico and even the UK, of substantial threats to the independence of competition bodies.

Change and evolution of Commission's roles and functions

Expansion of regulatory mandate

40. Since 2017, the legislation administered by the Commission has been substantially amended and new legislation has been passed conferring new regulatory responsibilities for the Commission, as outlined in Table 1 below.

Table 1: New legislation and major amendments to Commission functions

2017	Reform of the cartels regime in the Commerce Act.
2018	Conferring a power on the Commission to conduct competition (market) studies. To date, four studies have been completed into the retail fuel, retail groceries, residential building supplies and personal banking sectors. The Telecommunications (New Regulatory Framework) Amendment Act 2018 was also passed introducing economic regulation of Chorus, as well as Retail Service Quality obligations.
2019	Passing the Credit Contracts Legislation Amendment Act 2019 to strengthen responsible lending provisions and amending the Commerce Act to introduce a criminal offence for cartel conduct (which came into effect in 2021).
2020	Passage of the Fuel Industry Act to introduce a new monitoring and oversight regime for land transport engine fuel. Reforms were also made to obligations on Fonterra for open entry and exit under the Dairy Industry Restructuring Act.
2021	Substantial amendments to the Fair Trading Act to prohibit unconscionable conduct and extend the protections against unfair contract terms to small trade contracts.
2022	Passage of the Retail Payment System Act to introduce a new monitoring and regulatory regime for retail payments, including capping interchange fees in the Visa

	and Mastercard networks. As an initial outcome of the retail groceries study, the Commerce Act was also amended to strengthen the prohibition against anticompetitive land covenants in the grocery sector.
2023	Passage of the Grocery Industry Competition Act to introduce a new regulatory regime for designated grocery retailers, and amendments to the Fuel Industry Act to create a regulatory backstop for the wholesale regime. In 2023, the amendments in the Commerce Act to the prohibition against misuse of substantial market power and the repeal of the exemption for intellectual property came into effect. The Commission successfully initiated its first cartel-related criminal prosecution.
2024	The initial phases of the new economic regulation regime for local government water services were introduced with the passage of the Local Government (Water Services Preliminary Arrangements) Act.
2025	The enduring economic regulatory regime for local government water services is on track to be passed this year. Reforms of credit regulation are being considered by Parliament, which among other things will transfer responsibility under the Credit Contracts and Consumer Finance Act from the Commission to the FMA.

Further changes to the regulatory mandate are on the horizon

41. In parallel with our work, MBIE is currently leading a review of the Commerce Act which is covering a range of issues. These include a review of:

    a. The merger settings to ensure the Commission has the tools required to prevent mergers that create competition concerns,

    b. The provisions relating to anticompetitive collusion to keep pace with market developments and provide more certainty to businesses on what constitutes anticompetitive conduct, and

    c. The merits of providing the Minister with an industry rule-making power as a tool to remedy a market failure.

42. Among other things, that MBIE review may recommend changes to the merger test, new powers for non-notified mergers and the ability to accept behavioural undertakings, new statutory timeframes for merger review and new powers to protect confidential information.

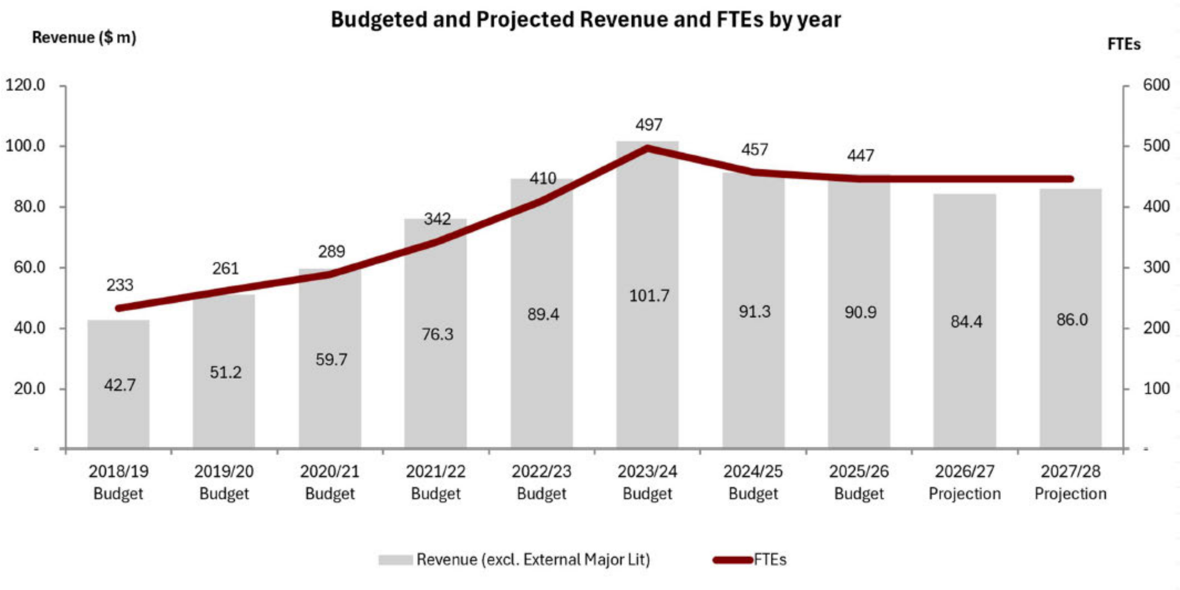
43. A review of the Dairy Industry Restructuring Act is to commence in mid-2025 and the Minister has signalled his intention to review the Fair Trading Act in 2026. The Ministry for Regulation is now undertaking a review of the regulation of the telecommunications sector.

Growth of revenue and FTEs

44. The Commission's expanded regulatory mandate has been accompanied by increased funding and resourcing. In 2018/19, the Commission's annual revenue was $42.7 million (excluding the litigation fund) with budgeted FTEs of 233. By 2023/24, the Commission had more than doubled, with annual revenue of $101.7 million (excluding the litigation fund) and 497 budgeted FTEs. Savings initiatives in Budget 2024 has resulted in some reductions (as set out in the Figure 1 below).

45. Future revenue is forecast to decline further in 2025/26, with the transfer of credit functions to the FMA, partially offset with new funding for economic regulation of water services. The final impact on revenue and FTEs of the credit function transfer will be finalised once the empowering legislation is passed.

Figure 1:



Source: Commerce Commission

Expansion of roles and responsibilities has been accompanied by frequent reviews of varying scope since 2015

46. The Commission provided us with an overview of reviews of the Commission, both external and internal, that have been undertaken since 2015. These are listed in **Annex 3.**

47. The Commission should be commended for incrementally examining its operating model and practices to identify ways to improve organisational effectiveness. However, the relative frequency of recent reviews does raise a question about whether the changes to date have fully addressed the underlying concerns.

Key themes of this Review

48. We previously provided an Issues Paper to the Minister that set out an overview of the draft findings and possible next steps to strengthen the governance and effectiveness of the Commission to meet current and future challenges and deliver ongoing benefits for New Zealanders. We then engaged with the Minister, MBIE and the Commission on that Issues Paper.

49. Subsequent to that consultation and after receiving further submissions and undertaking additional interviews, we set out below the key themes that emerged from the Review which have shaped our final recommendations in this paper.

Theme 1: Key strengths of the Commission need to be retained

50. At the outset, we want to record our view that the Commission is a strong organisation that is performing well in many respects. Our goal is to identify ways for the Commission

to be even more effective in the future. Accordingly, throughout this Review we have been mindful of the need to identify the aspects of the Commission's current governance and operating model that underpin the quality and effectiveness of its activities and impacts. It is vital that these strengths are retained and built upon going forward by any recommendations ultimately accepted from this Review.

51. The strengths we canvassed in the Issues Paper and are summarised as follow:

a. **Clarity of purpose***:* the Commission is widely recognised for its clarity of purpose both externally by the public and stakeholders, and internally amongst its staff and management.

b. **Statutory independence***:* the Commission is backed by strong and clear legislation that grants it a high degree of independence when carrying out its statutory functions.

c. **Organisational culture***:* the Commission's culture has been consistently described by internal and external stakeholders as collaborative and collegial, committed to doing the right things for consumers and professional and highly competent. There is clear alignment between the culture and purpose of the Commission.

d. **Capability and capacity***:* while the Commission has a broader remit than similar competition authorities*,* this has allowed the Commission to develop deep multidisciplinary subject matter expertise in a small and distant economy.

e. **Highly developed regulatory procedures**: across many of its longstanding functions the Commission is recognised for its highly developed and honed regulatory procedures.

f. **Maturity of industry specific regulatory regimes**: some of the industry specific regimes have been in place for long enough to have been tested in practice and through the courts, which creates a degree of certainty, transparency and predictability for businesses and consumers.

g. **Public trust and confidence and credibility**: the Commission has earned a strong level of public trust and confidence, and respective governments have recognised this credibility by reaching to the Commission to address emerging areas of market concern and potential consumer harm.

h. **Trialling new ways of working**: Under the current Chair, a wide array of improvements to the Commission's governance and operating model have been planned, initiated, or implemented. This provides a solid base to build from.

Theme 2: The Commission tends to operate in siloes

52. As functions of the Commission have expanded, the number of Divisions has grown, this has led to a more fragmented and siloed organisation. There are a wide range of consequences of this fragmentation, including:

a. Commissioners are recruited for technical knowledge, which results in technical decision making at Divisions,

b. It is increasingly difficult for the Commission to tie disparate parts of the organisation together and make trade-offs, in the face of resource constraints and increased expectations,

c. One part of the Commission often does not know what other parts are doing – industry knowledge is not always shared across branches and Divisions, and

d. The organisation is not necessarily consistent at case screening and prioritising across the Commission as a whole.

Theme 3: Named Sector Commissioners are an anomaly of the New Zealand approach

53. The practise of having designated 'sector Commissioners' for various functions is an anomaly of the New Zealand system. It arose when the Commission was given industry specific responsibility, though this initially happened with telecommunications but not Part IV regulation covering energy network businesses and specified airport services. There is no doubt it has the benefit of lifting the focus on a particular matter of consumer harm. While all similar competition authorities also recruit Commissioners for expertise, most do so within a Commission as a whole model. While the impact of this has varied through time, there are a wide range of possible consequences:

    a. With named Commissioners, decision-making may become very personality dependent, and this puts a lot of personal pressure on named Commissioners,

    b. Named Commissioners may feel pressure to be more hands on, and other Commissioners on those Divisions may be less influential to decisions. Non-named Commissioners on Divisions may be more likely to operate as peer reviewers than co-decision makers and therefore the benefit of a panel of decision makers is weakened,

    c. It may lead to a shorter-term focus, rather than a focus on the longer-term interest of consumers, because of perceived political pressure to 'show results',

    d. It may lead to inefficient resource allocation within the Commission, for example unduly detailed reasoning in decisions because of perceived reputation risk for the named Commissioner, and

    e. It may make it more difficult to effect a change in strategic priorities and risk appetite at board level, and to prioritise or effect changes to the Commission's operating model (including roles and responsibilities and delegations).

Theme 4: Access to Commissioners is a significant constraint

54. Workloads of Commissioners are heavy, and they are working across several Divisions. With new responsibilities coming, the juggernaut will only get worse, even if new Commissioners are appointed. This is due to two factors:

    a. We heard that it is very hard for the Commission to move away from a 'gold standard' one-size-fits-all approach in its way of working, regardless of risk, novelty or impact on the competitive landscape or consumers, and

b. Amongst regulators in New Zealand and competition regulators abroad, the Commission has a very low degree of delegation to staff. This creates a strong headwind that impedes efficiency. While practice is inconsistent across the Commission, we often heard that most steps of an investigation or matter must go to a Division to advance.

Theme 5: A strengthened whole of Commission approach is essential to strategic leadership and coherence

55. The Review has uncovered a concern that there is a need for the Commission as a whole to be clearer about its overarching strategic direction, what it is trying to achieve, for what market outcomes. The Commission also needs to flow that philosophy into its operating model. Currently, there is not seen to be a sufficiently strong institutional central point with primary responsibility for thought leadership. This central point would also have an eye to the future and the ability to assess the current state of competition in New Zealand. Consequently, the Commission is not seen as being a sufficiently strong champion of the benefits of competition and the long-term interest of consumers.

Theme 6: The governance function of the Commission needs strengthening

56. Commissioners are generally appointed for their expertise in particular industries, competition law and economics, not for governance experience. A key function for governors is to stand back and take an 'outside in' view of an organisation. This may also be also referred to as applying commercial nous and savvy to organisational issues.

57. Taking that 'outside in' perspective, a key role of the governors of the Commission is to set the strategic direction and risk appetite for the organisation and empower the organisation to work within it. For some time, stakeholders have identified that an undue focus on legal risk has dampened the focus on the economic fundamentals of competition regulation, contributing to a Commission that is overly reactive rather than proactive and not sufficiently fit for emerging and future challenges. Despite the recently revised risk appetite statement being set, we heard many parties say that the risk appetite applied in practice across Divisions is variable and that this has limited the Commission's ability to clarify the boundaries of the law and identify areas where the law needs to be strengthened.

58. The role of governors in selecting and supporting the development of the executive, especially the Chief Executive, and maximising the capability of its core resource, its people, is also essential to the institutional depth and memory of the Commission.

Theme 7: Insufficient role and responsibility clarity

59. Changes over time in the responsibilities of the Commission and in its empowering legislation has resulted in insufficient role and responsibility clarity. The Commission has tried to deal with ambiguities, for example between named sector Commissioners and general Commerce Act governance provisions in its various authorising legislation, through soft measures, such as its governance manual, formal delegations from the Chair to convenors and other measures. Nevertheless, this has created ongoing challenges not just for Commission stakeholders, but also the Commission itself.

Theme 8: Low and inconsistent delegations to staff

60. It has been consistently relayed to the Review that there is very low delegation to staff in practice, and roles and responsibilities lack clarity and vary depending on the preferences of Convenors and individual Commissioners. While practice is inconsistent across the Commission, we heard often that relatively little of substance is delegated from Divisions so most steps need to come back to Divisions for progress to be made. Since most decisions are taken in Divisions, the executive leadership function is not tightly coupled to substantive decisions.

61. While the Convenor model was intended to clarify roles and keep processes moving through less dependency on the Chair of the Commission, we heard that there has been variable success depending on the individual Convenors. We heard that in practice the Convenor is practically the CEO of their silo rather than the CEO or General Manager of the Branch.

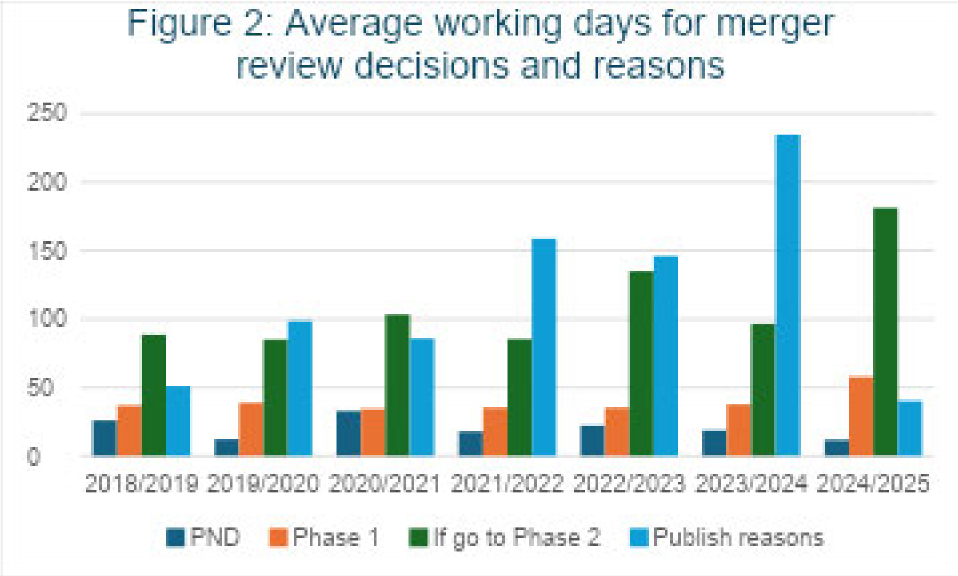
62. Consequently, even simple tasks have too many touchpoints, for example, publishing something on a website. Ultimately, we heard it can lead to double or triple handling of each step of an investigation and/or decision. The result is inefficiency, timeliness problems, reduced effectiveness, and inconsistent practice across Divisions and Branches.

63. We heard that a lack of effective delegations also impacts the development of career paths, staff retention and staff satisfaction and ownership of their work. Lack of appropriate delegation to staff can reduce supervision of staff at management level because accountability is to the Division members, which then becomes a vicious cycle where Divisions then do not have confidence to delegate even simple, low risk activity to management.

64. Finally, we have heard that changes in the governance and operating model that result in greater delegation to staff will necessitate strengthening of the executive leadership team who will need to take on more responsibility for the substantive operating processes that underpin decision making of the Commission. Currently, most substantive matters are delegated from Divisions to General Managers. This contrasts with a more typical delegations framework from the Board to the CEO, with delegations from the CEO to other members of the executive team and through the layers of the organisation.

Theme 9: Gold standard approach contributes to timeliness concerns

65. Often the Commission is seen to apply the gold standard to all decisions made, driven by reputation concerns and legal risk aversion. Consequently, there can be an unnecessary level of detail in decisions and briefings. Likewise, the desire to only publish documents that meet an extremely high standard may mean lower priority matters get unduly delayed, such as written reasons for merger approvals. Figure 2 below shows that complex mergers are taking longer to be decided than in the past, and written reasons for cleared mergers are not released for long periods after the decision is made.



Key: PND – pre-notification discussions, Phase 1 – is decisions made with no Statement of Issues published, if go to Phase 2 – is total days for decision if Statement of Issues published, Publish Reasons – is number of days after decision-made till reasons published.

66. Ultimately, the result can be rework, loss of reputation, lack of market transparency and increased uncertainty and costs due to delayed decision making and action.

Theme 10: Insufficient or inadequate prioritisation

67. We often heard that each branch largely does its own prioritisation separately in its own way. The Commission as a whole may have only a patchy view of the pipeline and timelines of cases, investigations, regulatory investigations and market studies work, making it very difficult to make trade-offs and optimise between different enforcement tools and regulatory options.

68. Some matters can develop a life of their own and be slow to stop when it becomes clear there are bigger priorities. We heard that the Commission does not necessarily have a clear view of complaints being opened, closed or put into the holding pen. In the worst case, while staff are highly analytical and engaged, they can be drawn into the detail without a strong theory of harm and become paralysed by detail.

Theme 11: Inflexible funding negatively impacts a whole of Commission approach

69. The funding model for the Commission, with various buckets for discreet activities, some funded by the Crown and some by levies, creates incentives contrary to an agile, well prioritised and strategic approach. The Commission is significantly hampered by its inability to manage funding to target competition concerns on a risk-based approach. Table 2 sets out the different buckets of funding for specific Commission functions or regulatory regimes.

Table 2: Commission appropriations 2024/25

Commission function or regulation-specific appropriations	2024/25
Enforcement of Competition Regulation	11.651
Enforcement of Consumer Regulation	20.211
Liquid Fuels Monitoring and Enforcement	3.064
Grocery Industry Monitoring and Enforcement	7.286
Retail Payment Systems Administration and Enforcement	4.576
Transition and Implementation of Economic Regulation for Water	2.232
Competition (market) Studies	2.587
Litigation Fund – internally-sourced costs	6.112
Litigation Fund – externally-sourced costs	6.500
Enforcement of Dairy Sector Regulation and Monitoring of Milk Price Setting	2.348
Regulation of Electricity Lines Services 2024-2029	11.406
Regulation of Gas Pipelines Services 2024-2029	3.617
Regulation of Specified Airport Services 2024-2029	1.000
Regulation of Telecommunications Services 2022-2025	17.190
Total ($million)	**99.780**

Key: Shaded appropriations are recovered through industry levies

70. There are several consequences of the current funding model:

    a. Recent dedicated appropriations for *ex ante* regulatory regimes favour a focus on remediating noncompetitive markets as opposed to preventing markets from becoming noncompetitive,

    b. Funding that is tied to particular areas of harm raises the risk the Commission's focus becomes politicised, and

    c. Segmented funding pools reinforce siloes across the Commission, and the inability to prioritise across activities, impeding agility in use of resources and a whole of Commission approach.

Theme 12: Insufficient flexible access to industry and consumer expertise

71. As the Commission's responsibilities have grown and anti-competitive practice has evolved, there is a need for more flexible access to higher levels of industry and consumer expertise across a wider area than can be brought in through a set number of Commissioners. This is likely to be further impacted if the Commission is given the power to accept behavioural undertakings in merger reviews, as found by other jurisdictions.

The consequence of this is that it may be difficult to properly frame theories of harm, understand complex pricing and marketing strategies and potential market remedies may be difficult to assess.

Theme 13: Inadequate data analytics, financial, forensic capability and market intelligence

72. Competition authorities need to lift their digital capabilities. This is of critical importance given the growing shift of commerce to digital platforms and the potential for new digitally enabled ways of working to improve regulators' effectiveness.

73. While the Commission has made some progress in the digital arena, it appears to be lagging behind the peer organisations we spoke to in other countries. Similarly, we think there are opportunities for the Commission to be more pro-active and intelligence-led with its work. This should help with prioritisation of resources.

Theme 14: Understrength economics function

74. The economics function sits within a broader corporate services function, without a seat at the senior executive table. We heard that the economic function has lost some of its voice across the Commission. With economic analysis from staff more distant from decision makers, there is more reliance on already over-committed Commissioners for economic input.

75. With the economics function having a less prominent position, some branches do not know how to best utilise economic input. Scarce economic resources are used for drafting and market background, rather than applying economic approaches to matters. Furthermore, we heard that resource constraints have meant there is reduced ability for the economic function to lift its sights and see what is coming and identify cross-cutting issues.

76. Ultimately, we heard there is increased risk that a rigorous approach to economic analysis is not brought to bear, or brought too late, affecting the quality of Commission decisions.

Theme 15: Poor information management and communications

77. We heard that many parties believe the Commission is so focused on its own requirements that it puts less weight on the interests of end users, customers, complainants or targets of investigations. Some parties believe the Commission will not or cannot appropriately protect evidence that is provided, and that release of information will damage their ongoing business relationships and competition. Other parties believe that the media policy is inconsistently applied across the Commission, particularly in new functions.

78. The consequence of these issues is that some parties are unwilling to provide potential information and evidence, resulting in reduced enforcement effectiveness and credibility.

Overall summary of key themes

79. Our review has found that the Commission generally delivers to a high level against its mandate. The Commission operates in a positive environment, and its strengths and success draw to some extent from the fact that its governing legislation is clear and well

defined, creating an environment in which sound decision-making can occur, even though some aspects of the legislation cause challenges as to how the Commission is organised and operates, as we discuss elsewhere in the Report.

80. However, the Commission's governance and operating model has become strained to its limits as the Commission has been given increased responsibilities. Despite substantial growth in its budget and staff levels, there appears to be diminishing returns to this investment within the current operating model. Therefore, we have significant concerns that the current governance and operating model for the Commission is no longer sustainable and fit for the future.

81. We note that the issues underlying these concerns are not new. Previous reviews and Commission papers have raised similar themes. Despite modifications of practices and procedures and efficiency drives, the Commission has been unable to fully address the challenges with the current operating model.

82. Siloes and fragmentation remain a key challenge. This fragmentation has been reinforced by the variation in and ambiguity of roles and responsibilities implicit in the empowering legislation that has set up new functions. Furthermore, funding mechanisms have further hindered a whole of Commission governance framework and accountability, further reinforcing silos and decision making at a Division level. Moves towards a more pro-active and intelligence-led organisation have been slow to emerge.

83. During the review we had several dialogues with the Commission about the need for a step change in the Commission's governance and operating model. Generally, there is considerable agreement on the challenges the Commission faces. There is less consensus about the best option to address those challenges. This is not a surprise since there is much at stake for New Zealand and there are always judgements and trade-offs to be made in the alternatives available for consideration.

Setting the scene for change

Insights from other regulatory regimes

84. During our review, we have spoken to Chairs, commissioners and senior staff of a range of overseas and domestic economic regulators to gain insights on their governance models. We want to acknowledge and thank them for their generous assistance. A few key insights were:

    a. **External perspectives:** There is significant value from including some external perspectives on governance bodies. This guards against governance decisions being made in a 'bubble', with an overly inward focus or not understanding the organisation's wider operating environment and stakeholders.

    b. **Independence of statutory decision-making:** A key strength of the New Zealand regime is the high degree of independence of statutory decision-making. Some overseas competition authorities are increasingly facing political pressures to adopt more nationalistic approaches which may be in tension with their regulatory mandates. The Commission's governance arrangements should continue to guard against this risk.

c. **Functions drive form:** Governance arrangements for regulatory bodies need to reflect the nature and role of the agency. Compared to most other economic regulators that we spoke to, the Commission has a broader range of regulatory functions (e.g. it undertakes quasi-judicial, enforcement, education and compliance, rulemaking, market monitoring and market study activities). Effective governance of these different functions requires some specialist expertise and capability, having regard to the associated risk and level of maturity of the function. However, we were struck that some overseas competition regulators operate with fewer Commissioners than New Zealand. For example, the ACCC currently has six Commissioners, and the Irish Competition and Consumer Protection Commission has three Commissioners.

d. **Clarity of roles:** The Commissioners' role is one of decision maker and governance and operational matters are delegated to management.

Key principles underpinning governance and effectiveness

85. An effective competition and market regulator is essential to ensuring New Zealanders have the long-term benefits of competitive markets and the strong economic performance that competition yields. We have given particular attention to the following principles in making recommendations to improve the governance and effectiveness of the Commission.

86. Inevitably the design and implementation of governance and operating models requires a degree of balance between different principles and trade-offs, informed by good risk assessment.

Recommendation 1: The Review recommends that any changes to the effectiveness and governance of the Commerce Commission are guided by the following principles:

a. Promotes a whole of Commission approach and organisational coherence,

b. Promotes confidence and assurance,

c. Provides transparency and certainty,

d. Maintains independence of decision making,

e. Ensures accountability for outcomes,

f. Provides for pace and flexibility,

g. Builds capacity and capability,

h. Delivers value for money and efficiency, affordability, sustainability and fit for future, and

i. Practicality, being able to be implemented and having a low risk of unintended consequences.

Overarching governance approach

87. To frame our discussion, we start with a brief description of the characteristics of the predominant governance approach found in competition authorities across the developed economies, sometimes referred to as a “whole of Commission” (or “one Commission”) approach.

88. Around the world competition bodies operate in a range of ways. Some operate with one commissioner. Others are established as a commission composed of multiple people: this is the most prevalent system. Increasingly there is discussion about extensions to these models, involving either expressly embedded or separate governance boards.

89. The most common approach to commissions is a ‘whole of Commission’ approach. All decisions whether strategic, operational or managerial, are the responsibility of the commission as a whole. They are driven, as far as possible, by an overall integrated philosophy, culture, set of principles, objectives, public communication approaches, and priorities set by a commission operating as a whole. When decision making is delegated, its exercise is driven ‘from above’ with appropriate guiding principles, processes and procedures, accountability and various checks and balances.

90. This approach can be distinguished from one where commission decisions are made (and seen to be made) by individuals or subgroups of individuals, with each adopting different, often inconsistent, approaches. Also, each subgroup is often seen as personally responsible for decisions and without a unified philosophy, approach, culture, or set of governing principles and priorities.

91. For example, sometimes a commission may delegate decisions to individuals or divisions or committees made up of some commissioners. Each such individual or subgroup may make decisions on their own without an approach driven from the top or one that is common to the different parts of the organisation. These divisions may be structured based on separate functions (e.g. investigations, prosecutions, mergers, adjudication, regulation, or economic studies) or they may be divisions on an industry basis.

92. Such systems are prone to a lack of clear principles and practice regarding delegations from a commission to commissioners and to management. This can cause undue fragmentation. This in turn can cause a lack of clarity in strategic direction, prioritisation and resource allocation.

93. Models which do not have a whole of Commission approach are not necessarily objectionable – there may be reasons why the legislature wants decision making to be separate. A model of different parts does not necessarily have a non-unified approach, but it is more likely to.

94. The New Zealand Commission model is broadly speaking a ‘commission as a whole’ type of model but not fully fledged in that regard. A significant number of decisions are assigned to parts of the Commission – sometimes committees, most often divisions, sometimes nominated or ‘named’ commissioners and sometimes to staff.

95. Under the current operating model, Commissioners (individually or as Division or Committee Members) tend to be very heavily engaged in the running of merger applications, regulatory determinations, investigation and enforcement activities and market studies. While there is some decision making by the Commission as a whole

when it sits as a board dealing with governance matters, the majority of statutory decisions are not seen to be coming from a 'whole of Commission' approach. It is not always evident where Commission-wide regulatory strategy questions are framed, debated and driven, and how the Commission's regulatory performance is monitored from within.

Recommendation 2: We recommend 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].

Changes are needed to Commission structure

96. The Review has considered a range of options for the Commission structure to lay the foundation for stronger governance, efficiency and effectiveness at the Commission. Three of those options are set out below:

    a. **Option 1:** Commerce Commission Preferred Structure.

    b. **Option 2:** A New Oversight Board.

    c. **Option 3:** Enhanced Commerce Commission Structure.

97. All three proposals involve a move away from Divisions to Committees and aligning Committees on a functional basis.

98. We see structural changes as being necessary. We take this view because many of the challenges described in the preceding section have been identified by earlier reviews in the last five years. Despite efforts by the Commission to address the challenge via non-structural solutions, many of them remain.

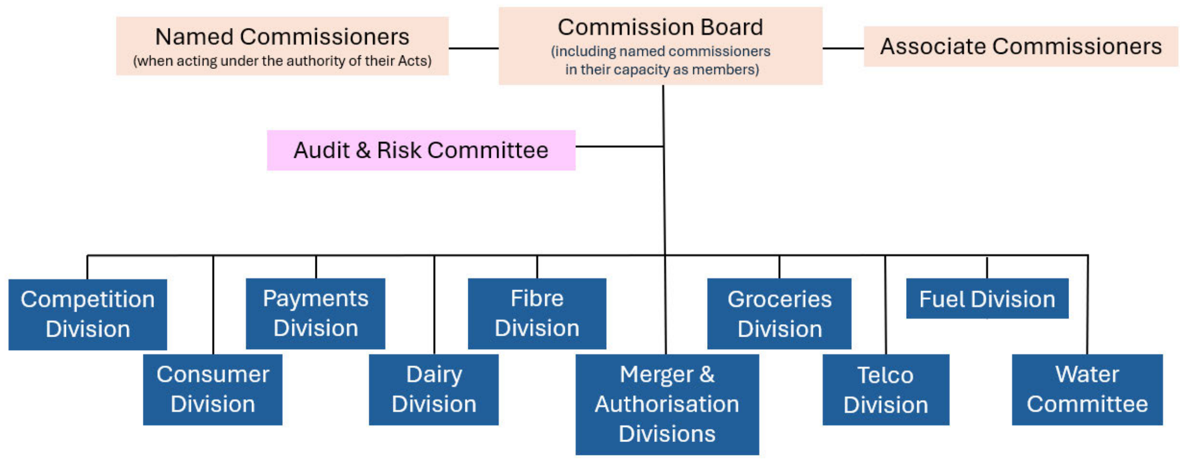
99. We think the structural solutions will address problems at their source and lay the foundation for other non-structural enhancements to the way the Commission works (e.g. funding arrangements) which are discussed in a later section of this report.

100. To set the context for consideration of these structural options, we recap the Commission's current structure.

Commission's current governance structure

101. Figure 3 below sets out the Commission's current governance structure.

Figure 3: The Commission's current structure



102. The full Commissioners currently make up the governance board for the organisation. The Commission board differs from many traditional governance boards in that its members have a dual role:

   a. As the governors of the Commission, and

   b. As expert statutory decision-makers under the legislation the Commission is responsible for.

103. As the governing body under the Crown Entities Act 2004, the functions of the Board include:

   a. Setting and overseeing the Commission's strategic direction,

   b. Setting and/or reviewing organisational and enforcement priorities, plans and budgets, risk appetite, delegations, workforce strategy and performance monitoring and reporting,

   c. Appointing the Commission Chief Executive and delegating to the Chief Executive the executive functions for the organisation, and

   d. Discretion to appoint Committees to either advise it on any matters relating to Commission's functions and powers, or to perform any function of the Commission under delegation from the Board.

104. The Commerce Act includes further provisions specific to the Commission which qualify the generic Crown Entities model. This includes:

   a. Governance matters relating to the appointment of Commissioners and Associate Commissioners (including requisite expertise and experience), the composition of the Board and a limit on the delegation power in relation to authorisation decisions.

   b. Allowing statutory decision-making matters to be decided by Divisions, made up of three or more Commissioners and Associate Commissioners. Unlike Committees, Divisions are set up at the direction of the Chair (rather than the Board), and such Divisions are deemed to be the Commission (rather than acting under delegation).

105. Further specific provisions are outlined in each of the additional regulatory regimes that the Commission administers. This includes the establishment of named Commissioners in the Telecommunications Act 2001 and the Grocery Industry Competition Act 2023, who must also be members of the Commission Board.

106. Currently divisions tend to reflect functions associated with specific pieces of legislation. As new responsibilities have been given to the Commission, there has been a tendency to bolt on new divisions built around new functions.

107. The Board has an Audit and Risk Committee to advise it, with an independent Chair.

108. Finally, the Commission has recently introduced a committee model for Water Regulation. This has allowed the Commission to adopt a more flexible structure and appoint an external water expert to the Committee.

Options we considered

Option 1: Embedded governance and refined operating model

109. We requested that the Commission consider what changes to its structure would better support a whole of Commission approach. In response, the Commission developed a possible option to address key challenges identified during the Review. In essence, the existing 10+ regulatory divisions would be replaced by seven committees to undertake statutory decision-making functions.

110. In addition, a dedicated governance and strategy committee with an external member would be created to advise the Commission Board. This option is summarised in Figure 4 below and the key attributes of this structure are outlined in the following Table 3.

Figure 4: Option 1 - Embedded governance and operating model

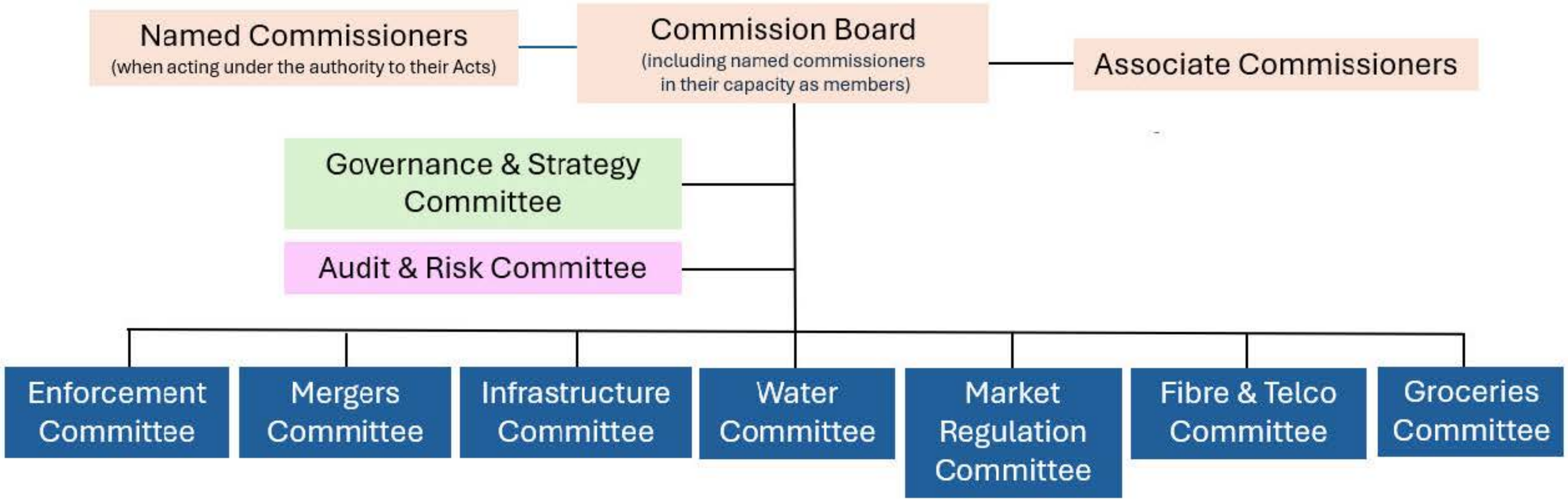


Table 3: Option 1 - Embedded governance and operating model

	Commission Board	Governance & Strategy Committee	Regulatory Committees
Composition	The current 7 members within a cap of 8, includes named sector Commissioners.	Consists of 5 members, including the Chair, Deputy Chair, one Commissioner (to be rotated) and 2 externals.	• Includes 3-4 Part-time Associate Commissioners • Committees must consist of at least 1 Board member but may include Commission staff and externals. • Committees have a minimum of 3 members to make quorum.

	Commission Board	Governance & Strategy Committee	Regulatory Committees
Role	• Governing body of the Commission, with the authority to exercise the powers and perform the functions of the Commission. • Makes or authorises (by delegation) all decisions relating to the operation of the Commission.	• Advisory role to the Board • To accelerate work on strategy and organisational change.	• Decision-making bodies on regulatory strategy and governance within mandate. • Committees operate under delegation from Board and could replace Divisions for all functions. • Convenors continue to lead areas of work.
Who appoints	Governor-General, on recommendation of Minister after consultation at Cabinet (status quo).	Appointed by Board.	Committees established by Board.
Skill mix of members	Status quo (s9 of Commerce Act) – qualified by virtue of that person's knowledge of or experience in industry, commerce, economics, law, accountancy, public administration, or consumer affairs.	Externals to be appointed based on governance experience and commercial nous.	• No conflicts of interest. • For Committees, experts based on relevant experience.
Legislative implications	This option is consistent with existing legislation and no changes are required.		
Financial implications	Low. The single external member of the Governance and Strategy Committee would be part-time as required, and their efforts should reduce the time spent by the Board on those matters and result in cost savings or be cost neutral.		

Option 2: Separate governance board and streamlined operating model

111. An alternative approach is to separate the organisational governance function from the statutory decision-making function. This is not the predominant model among regulators but has been adopted in some cases. For example, the Reserve Bank of New Zealand (**RBNZ**) is governed by a board that includes external members. Statutory decision-making is exercised by persons or committees appointed by (or on the recommendation of) the board. The Competition and Markets Authority in the United Kingdom is another regulator where governance and statutory decision-making have been separated.

112. This model could be applied to the Commission. A new board structure would act as governing body of the Commission for the purposes of the Crown Entities Act. The new Board would not have any statutory decision-making role in relation to specific cases (although retaining oversight). Such decisions would instead be made by Committees, a majority of whose members would be drawn from a panel of Commissioners. The Chair and Deputy Chair of the Panel of Commissioners would be members of the governance board, but it would have an independent chair.

113. To further strengthen a whole of Commission approach, three other structural changes would be made with this option. First, the number of regulatory decision-making bodies would be consolidated from the current 10+ divisions/committee to five committees to promote coordination and knowledge-sharing for similar functions across the Commission. This consolidation would also reinforce greater delegation of operational matters to staff within the Commission. In addition, moving to Committees from Divisions would reinforce the philosophy that decisions are made in the name of the full board – since Committees are subordinate to the Board, whereas Divisions by law are not.

114. Second, the provisions allowing for appointment of Associate Commissioners would be discontinued. These appointments have provided a useful mechanism to augment the Commission with skills, experience or expertise to help with specific issues, and/or assist with succession planning. The associate mechanism has also been useful to allow cross appointments with other regulators such as the ACCC.

115. However, moving to Committees as decision-making bodies (rather than divisions) would allow the benefits of Associate appointments to be obtained in a more flexible way. Furthermore, Committee members could also provide a source for future succession of Commissioners and enable cross appointments with other regulators where this is beneficial.

116. Having made these observations, we envisage that it would be important to have a provision that Commission panel members comprise the majority on any Committee, to maintain public accountability and confidence in statutory decision-making arrangements.

117. Third, to reinforce a whole of Commission approach, the distinction between named sector Commissioners and other Commissioners on the panel would be discontinued (except in relation to the Telecommunications Commissioner which is outside the scope of this review).

118. Option 2 – a new separate governance board is summarised in Figure 5 below. This is followed by Table 4 which describes the key characteristics of this option.

Figure 5: Option 2 - A Separate Governance Board

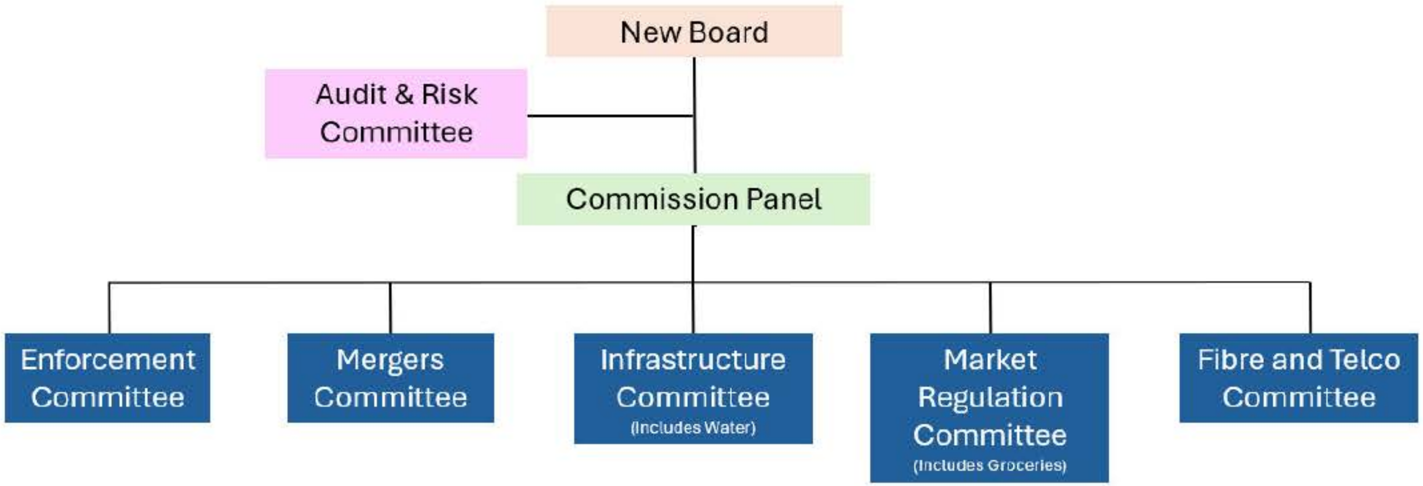


Table 4: Option 2 - A Separate Governance Board

	New Oversight Board	Commission Panel	Regulatory Committees
Composition	• Up to 5 members • Includes Chair and Deputy Chair of Commission Panel and up to 3 externals, 1 of which could act as Chair.	Current 7 members (no named sector Commissioners or associates) up to cap of 8.	• At least majority are Commission Panel members. • May include Commission staff and external experts. • Consolidate Committees to reduce fragmentation across Commission.

	New Oversight Board	Commission Panel	Regulatory Committees
Role	The Board for the purposes of the Crown Entities Act: • The governing body of the Commission, with the authority to exercise the powers and perform organisational functions of Commission. • Makes or authorises (by delegation) all decisions relating to the operation of the Commission. Exceptions (to be specified in legislation): • No role in regulatory decision-making work of Committees but sets regulatory strategy and monitors performance. • Sets annual budget/plan in conjunction with Minister(s) • Board sets up Committees and appoints their members from the Panel of Commissioners	• To undertake regulatory decision-making through participation on Committees. • 'Panel' members bound by collective and individual duties to Commission and Minister.	• Regulatory decision-making within delegation set by Board. • Clear and consistent delegation policy, and roles and responsibilities.
Who appoints	Governor-General, on recommendation of Minister after consultation at Cabinet.	Same as for Board, but firstly requires a recommendation from the Board to the Minister (i.e. a two-step process).	The Chair of the Commission Panel establishes Committees and appoints members.
Skill mix of members	Chair and Deputy Chair appointed for expertise relevant to regulatory decision-making and governance. Others have wider governance experience and commercial nous.	Based on status quo (s9 of Commerce Act) – qualified by virtue of that person's knowledge of or experience in industry, commerce, economics, law, accountancy, public administration, or consumer affairs.	Non-panel members appointed on merit and expertise to assist Committee.

<table>
<tr><th></th><th>New Oversight Board</th><th>Commission Panel</th><th>Regulatory Committees</th></tr>
<tr><td>Legislative implications</td><td colspan="3">Legislative amendments required to:
• Establish ‘new board’ consistent with Crown Entities Act and specify any customised provisions relating to its role (e.g. carve out regulatory decision-making)
• Establish ‘panel’ as pool of persons to be involved in regulatory decision-making role at Commission. This would likely draw on relevant provisions of Crown Entities Act as if the panel members were members of the Board with any customised provisions as required (e.g. validity of acts, appointment processes, duties, etc).
• Remove the provisions relating to named Commissioners by consequentially amending the Grocery Industry Competition Act and remove the provisions relating to Associate Members.
• Specify relationship between Minister and panel, and Board and panel (e.g. if panel must have regard to a government policy statement transmitted to the Commission).
• Modify rules for procedure of Committees, e.g. decision-making rules for who is Chair of Committee, relative to Chair and Deputy Chair of Panel.</td></tr>
<tr><td>Financial implications</td><td colspan="3">There would be some additional costs for new board members and setting up new operational arrangements (though external board members would be part-time), and there should be some savings from disestablishing associate commissioner roles.</td></tr>
</table>

Option 3: Enhanced governance and streamlined operating model

119. A further alternative is to enhance the governance function of the existing Commission Board structure via a strengthened committee, rather than allocating the function to a new supervisory body (as in Option 2). This option would adopt elements of Option 2 that streamline decision-making processes – including the consolidation of regulatory committees, and discontinuation of named Commissioners (except telecommunications) and Associate Commissioner provisions (except for cross appointments with other regulators).

120. Importantly, the Governance and Strategy Committee would be strengthened by appointing one new Commissioner as an additional Deputy Chair. This Commissioner would be a part-time appointment but would focus exclusively on governance matters. This person would chair the Strategy and Governance Committee of the Board and have a leading role in oversight of organisational development and performance.

121. We summarise this enhanced option in Figure 6 below, followed by Table 5 which sets out the key attributes of this option.

Figure 6: Option 3 – Enhanced embedded governance and operating model

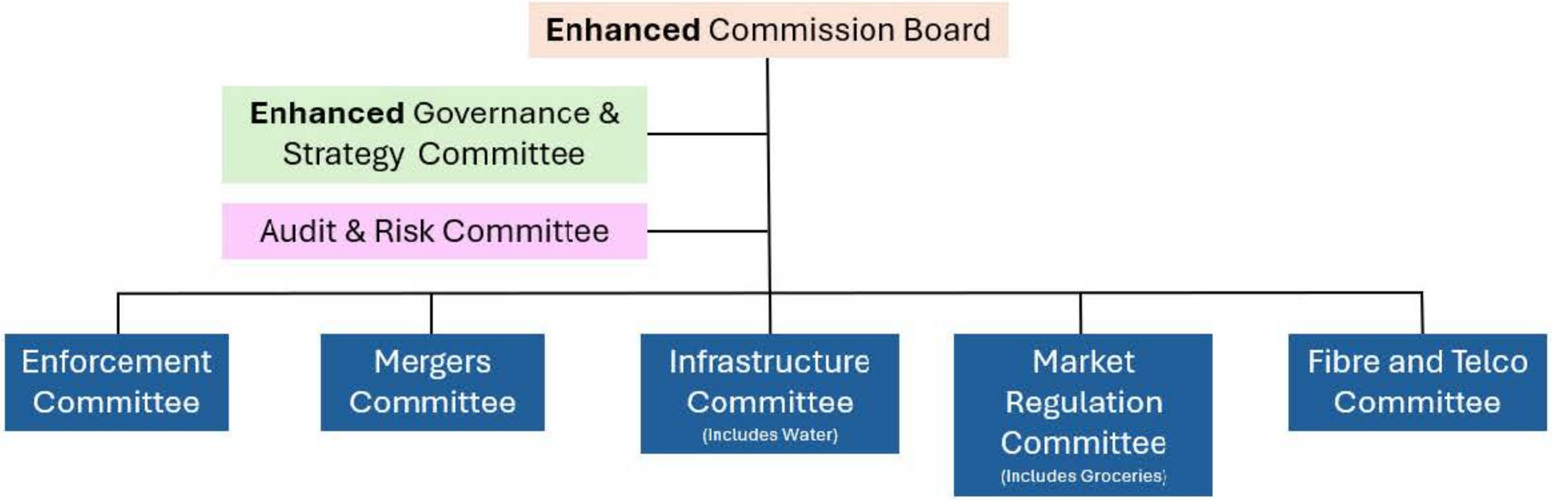


Table 5: Option 3 – Enhanced embedded governance and operating model*

(*Key enhancements from Option 1 in red)

	Commission Board	Governance & Strategy Committee	Regulatory Committees
Composition	The current 7 members within a cap of 8, including named Commissioners. Appoint at least one new member with governance expertise (part time). The new member may be appointed as a second Deputy Chair.	• Consists of 5 members, including the Chair, 1 other Commissioner and three externals (including new second Deputy Chair). • New Deputy Chair (Governance) of Commission would chair Committee	• Committees must consist of majority of Board members but may include 1 other on any matter (Commission staff and externals). • Consolidate Committees to support consistent approach across Commission. Phase out use of Divisions.

	Commission Board	Governance & Strategy Committee	Regulatory Committees
Role	• The governing body of the Commission, with the authority to exercise the powers and perform the functions of the Commission. • Makes or authorises (by delegation) all decisions relating to the operation of the Commission.	• Principal advisor to board and able to make some decisions via delegation where so empowered • To accelerate work on strategy and organisational change.	• Regulatory decision-making within consolidated mandate and under delegation from Board. • Expected to: o Make regulatory decisions (unless further delegated) o Provide expert input, advice and review of work where appropriate.
Who appoints	Governor-General, on recommendation of Minister after consultation at Cabinet (status quo). Includes appointment of new member (governance).	Appointed by Board.	The Board establishes Committees and appoints members.
Skill mix of members	Status quo (s9 of Commerce Act) – qualified by virtue of that person's knowledge of or experience in governance, industry, commerce, economics, law, accountancy, public administration, or consumer affairs. New Deputy Chair (part-time member of Commission) to have governance experience and commercial nous.	Externals to be appointed based on governance experience and commercial nous.	• No conflicts of interest. • Experts based on relevant experience, including commercial nous, business and consumer.
Legislative implications	Most of the additional measures (in red) could be achieved within existing legislation, but this option could be further strengthened by legislative amendments (e.g. such as the creation of a second Deputy Chair).		
Financial implications	Low. The new member of the Board and new external members of the Governance and Strategy Committee would be part-time as required, and their efforts should reduce the time spent by the full Board on those matters. Number of regulatory committees consolidated, with stronger focus on delegation, should result in cost savings.		

Recommended structural changes to Commission

122. We have carefully assessed the merits of the three structural options against the design principles in Recommendation 1. On balance, we favour the package of changes in Option 3 as the preferred way to move forward. The key reasons for this view are set out below.

123. We consider that many of the Commission's challenges arise from structural elements within the organisational design. Put simply, the challenges are not personality-driven and cannot therefore be addressed via simple changes to appointment processes. On the contrary, we note that the Commission's board largely shares our diagnosis of the challenges and has been working diligently for some years to address them. While those efforts have borne fruit in certain areas, much remains to be done, and we think progress is held back by two elements within current governance arrangements.

124. First, there is no strong 'outside in' perspective at the governance table. In many organisations this comes from board members who hold governance roles on multiple organisations and can therefore draw on a range of perspectives. The part-time role of governors on those bodies also means they are less likely to be captured by executives. In the Commission's case, that source of external perspective and critical review has been reduced over time because Commissioner roles have increasingly become full (or close to full) time roles.

125. Second, the compartmentalisation of statutory decision-making across many divisions, together with the provisions relating to named Commissioners makes it harder for Commissioners to act as organisation-wide governors.[6] This point was brought home in discussions with the Chair of an overseas regulator who commented on the dual role of Commissioners as governors and statutory decision-makers. They emphasised the importance of all statutory decisions being made in the name of the organisation, with collective accountability retained for the results, even where a sub-group (such as a committee) was charged with carriage of specific matters for reasons of efficiency.

126. Their view was that fragmentation of statutory decision-making powers among different groups or individuals would undermine collective accountability and impede coherent organisational governance. As an example, they noted that enforcement matters would typically be handled by a sub-committee for reasons of efficiency, but with a clear understanding that the full board retained accountability for final decisions. In practice, this meant the sub-committee decided most enforcement matters, but it would refer 'line-call' recommendations to the board and occasionally these were not endorsed. This approach achieved efficiency while maintaining collective accountability.

127. In light of these observations, we consider that Option 1 would yield some benefits and should be relatively low cost to implement. However, we consider the gains would not be sufficient to overcome the challenges with the existing model. More specifically, there would be only a limited increase in the 'outside in' perspective provided via a single external appointment to the Governance and Strategy Committee. We note that the gravitational pull of statutory decision making on Commissioners is immediate and strong, whereas governance matters are by nature less concrete and time bound.

[6] For more detail on the challenges with existing arrangements and the effect on delegation frameworks see from paragraph 134.

128. Similarly, the use of Committees (rather than Divisions) for regulatory work would assist in reinforcing collective accountability at the Commissioner level. However, there would still be considerable fragmentation across multiple regulatory Committees and the complex accountability arrangements associated with named Commissioners would remain.

129. Turning to Option 2, this would directly address the two key structural challenges with existing arrangements. It would introduce a very strong 'outside in' perspective to organisational governance by virtual of the separate governance board. It would also directly address the fragmentation of regulatory decision-making by further consolidation (relative to Option 1) of Committee structures and via changes to named Commissioner provisions. We see these aspects as being strongly positive in terms of improving organisational governance and effectiveness. Another potentially attractive element is that it could reinforce the independence of the Commission when exercising statutory functions, given that Panel Members would be appointed via a two-stage process.

130. On the other hand, Option 2 also has some drawbacks. It would separate organisational and regulatory governance (although this would be partial rather than complete as the Panel Chair and Deputy would sit on the governance board). While this separation is not necessarily novel for regulatory bodies, it could increase the risk of regulatory decisions becoming less consistent across sectors and over time. The two-tier structure may also make it harder to ensure that regulatory decision-makers have proper regard to statements of Government policy issued under section 26 of the Commerce Act.

131. Finally, adding an oversight body would introduce some new costs, although these may be offset by savings elsewhere. This option would also require more time and resource to implement than the alternatives, including a requirement to make legislative change, and involve more complex transitional issues. In our view, these drawbacks mean that Option 2 should be viewed as a fallback, rather than as a preferred alternative.

132. Option 3 offers the best balance of benefits and costs in our view. It would introduce an effective 'outside-in' perspective via the Governance and Strategy Committee, a majority of whose members would be external from regulatory decision-making functions (including the Committee Chair). Furthermore, the appointment of an additional Deputy Chair Commissioner with a specific governance focus would sharpen that perspective in discussions at the Commission board. This option would also reduce fragmentation of regulatory decision-making processes across the Commission (by moving to five committees and discontinuing named commissioner functions), strengthen collective accountability and promote more cohesive governance processes. Finally, this option has low implementation costs and risks.

Recommendation 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,

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,

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),

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

e. Discontinue the named Commissioner mechanism (except for telecommunications as excluded from the Review terms of reference).

Non-structural changes to Commission

133. The preceding section described *structural changes* that we believe are desirable to improve the governance and effectiveness of the Commission. We believe these changes would need to be supported by *non-structural changes* and these are described in the following sections.

Recommendations on non-structural changes

Strengthen and simplify delegations framework within Commission

134. In most jurisdictions the final accountability for statutory decisions sits with the board. Divisions or committees or executives receive their authority through a clear delegation from the board. Consistent with this, there is a clear duty of accountability back to the board regarding how delegations are exercised.

135. This is the model within the ACCC in Australia. That Commission is permitted seven full members, though it currently operates with just six, despite it having national regulatory responsibilities within an economy that is over six times the size of the New Zealand economy. Yet the ACCC Board still takes the final decision on a wide range of matters, once a recommendation is made from a committee or division. This includes matters such as the commencement of litigation, policy submissions, guidance documents, and all statutory decisions.

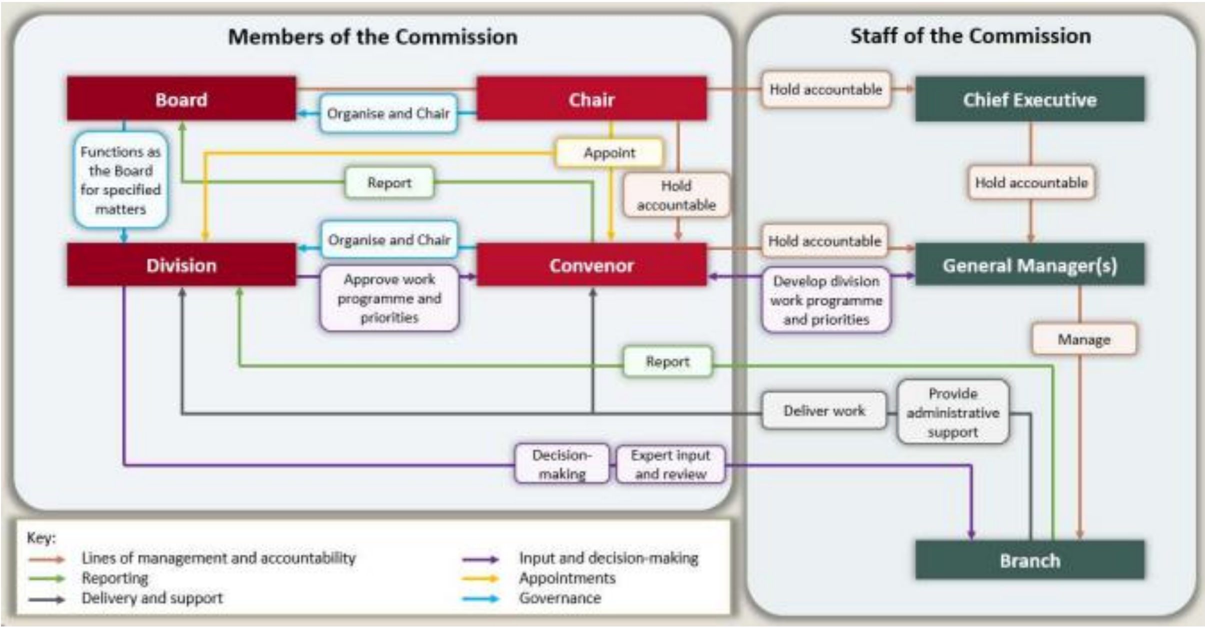
136. We understand the ACCC Board adopts a principle of subsidiarity – delegating power (and responsibility) to the lowest practical level, so decision-making is closest to sources of relevant information and expertise. The Board can still reserve final decisions to itself where risk is high, impact is material, involves precedence, novel or new areas of

jurisdiction, or there is reputation risk at play. In this model the Commission as a whole has a good purview of market critical decisions. These functions are in addition to the corporate governance functions of the Board and the reporting back to the Board of decisions made under delegated authority.

137. The role of the full ACCC Board in these matters is not to retrace the work of the recommending committee/division or executive, but to test compliance with strategic priorities, guidelines, risk appetite and general assurance on quality. It is, in effect, an opportunity for Commissioners not hitherto closely involved in a matter to take an 'outside in' view that otherwise might be provided by an independent governance board.

138. While the Commission has sought to adopt a delegations philosophy based on the subsidiarity principle, we do not believe it has been realised in practice. This is illustrated by Figure 7 below which sets out the roles and responsibilities of the Board, divisions and staff of the Commission under the recently introduced convenor model.

Figure 7: Roles and responsibilities in Commerce Commission under convenor model



139. The model is complex and does not place the Board in a governing role. In part this is because legislation makes divisions and named Commissioners the decision-makers in certain circumstances.

140. It is noteworthy that the convenor model anticipated that the possible extension of the 'sector Commissioner' model would create a further dichotomy in the Commission's governance and regulatory model between those functions governed under the Commerce Act and those regulated under a sector Commissioner model. This is particularly the case, given that under legislation, the sector Commissioners are framed as independent statutory decision-makers for some matters, with strong public accountability for the performance of their regulatory system, but no internal accountability in legislation to the Board for that performance (aside from the general collective duties of the Board under sections 49 and 50 of the Crown Entities Act, and the requirement for certain types of determinations to be made with other members).

141. Our understanding is that the Commission sought to use the convenor model to (among other things) strengthen internal accountability mechanisms to maintain coherence across the Commission. However, it has resulted in a complex set of arrangements that do not naturally reflect a subsidiarity principle.

142. Moreover, at the time of its introduction the Commission recognised the convenor model had the following risks:

a. The potential for 'double handling', in that General Managers will need to raise some matters with a convenor first, and then bring that matter back to the full division, potentially slowing decision-making or creating additional work,

b. Increasing the possibility of an individual convenor's preference departing from the Commission's strategic positioning,

c. Regulatory silos developing within the organisation, and

d. Blurring the lines between management and governance.

143. Recognising these risks, the executive of the Commission presented a further paper to the Commission in 2023 that presented options aimed at streamlining Commissioner workloads, including:

a. Delegation options,

b. Policies and Guidance options, and

c. Structural options.

144. The recommendations in this paper, that would have addressed the risks identified by the Commission in the convenor model, are yet to be adequately progressed. Consequently, the issues and themes identified in this Review remain a significant impediment to the governance and effectiveness of the Commission. Revisiting these options in light of an enhanced whole of Commission governance model and new proposed structure would be a timely and essential element in the path forward.

Recommendation 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.

Recommendation 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.

Recommendation 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, novelty, precedence setting and the need for policy, strategy and operational cohesion.

Stronger prioritisation of resources and effort

145. Throughout the review we heard concerns about prioritisation at the Commission. The themes were inconsistencies across the Commission, lack of transparency (internally and externally) about priorities, the insufficiency of prioritisation given the Commission's resources, and whether the priorities were too reactive versus driven by an assessment of competitive detriment.

146. In most organisations priorities are developed through a mixture of top-down and bottom-up processes, as well as being informed by an outside-in view. Once the Commission Board and Executive set the strategic direction, the Committees across the Commission and the executive can recommend priorities to deliver that direction. The Commission Board can then bring a Commission as a whole view to priorities before agreeing priorities and aligning the Commission's resources, plans and budget to deliver against them.

147. It is vital that the Commission as a whole ensures improvements to the Commission's prioritisation to ensure activity is tightly aligned to the Commission's strategic direction and priorities, and calibrated to have maximum beneficial impact on the long-term interests of consumers.

Recommendation 7: The Commission should review its prioritisation process in response to the change in the Commission's governance and operating model.

Recommendation 8: Committees should report regularly to the Commission Board on their performance against the Commission agreed priorities.

Update the Commission's People Strategy

148. Changes to the governance and operating model of the Commission will have wide ranging implications for the capability and capacity required of the executive leadership team and staff. For the proposed structure to work most effectively, a far greater proportion of day-to-day operational matters will need to be delegated to the executive and through them to their teams. This will require an updated people strategy and practices for the Commission.

Recommendation 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.

Review organisational risk appetite statement

149. Two strong themes regarding organisational risk appetite recurred through our engagement with stakeholders. First, many parties believe the Commission has historically placed undue weight on litigation risk, and that this has reduced its effectiveness as a regulator. Second, there is a widespread view that the Commission seeks to achieve a 'gold standard' before it will publish work products, and that this hinders efficiency and timely decision-making.

150. We think both concerns have some weight. However, we also acknowledge the Commission has been working to address these issues. For example, the Commission has revised its risk appetite statement and related policies in recent years.[7] In relation to litigation risk the risk appetite document states: "The Commission will not tolerate speculative litigation with few benefits, but may, for example, selectively explore the "grey area" of the law for precedential value or regulatory effect." This is a reasonable position in our view, and the challenge is therefore how the Commission reflects this stance in its operational decision-making.

151. On the other hand, in our view the current risk appetite statement does not provide particularly clear guidance to reduce the risk of gold plating. For example, it says "The Commission has no tolerance for reputational risk associated with its conduct as an independent public sector organisation" but also states: "the Commission will confidently explore new ways of working to improve its operational effectiveness".

152. We acknowledge enterprise risk appetite statements cannot provide precise guidance for all potential circumstances. However, we consider that current arrangements can be strengthened.

Recommendation 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 the development of Commission work products.

Recommendation 11: The Commission should more actively monitor the application of the enterprise risk framework to ensure operational decision-makers are empowered to utilise the risk tolerances where there are expected net benefits from doing so.

Publish regulatory guidelines

153. The Board of the Commission currently approves key Commission guidelines and policies, consistent with good regulatory practice. These currently cover areas such as investigations into competition and consumer matters, and enforcement responses. It has been raised that the Commission could usefully extend the coverage of guidelines into additional areas.

154. We agree that Market Regulation Guidelines, such as Grocery Wholesale Guidance for the major grocery retailers, could bring more transparency and accountability to market regulation activity and reinforce the Commission's independence in undertaking this activity.

Recommendation 12: The Commission consult on and produce Market Regulation Guidelines.

[7] Risk Management Framework (April 2024), Risk Assessment Framework (April 2024), Risk Appetite Position Statement (June 2024).

Strengthen stakeholder engagement

155. The Commission has well established engagement processes within many of its statutory processes, though we heard that there is a need for this practice to be more transparent and consistent in the area of market studies and market regulation.

156. During the review, we also heard often that the Commission should engage with key stakeholders more deliberately outside the context of immediate enforcement or regulatory matters. This is particularly important to get both consumer and business feedback on priorities, annual plans and budgets and on performance.

157. We are aware that the ACCC has set up a stakeholder forum with an independent chair, the Performance Consultative Committee, that it engages with biannually, made up of senior consumer and business leaders. This allows the ACCC to efficiently gather information from economy wide senior stakeholders, and for stakeholders to hear respective views on Commission priorities and performance.

158. The biannual meetings are scheduled to allow the ACCC to take key themes from the engagement into consideration when setting the Commission's priorities, annual plan and budget. This mechanism helps to build confidence among consumers and the business community about the priority setting and performance improvement processes within the ACCC.

Recommendation 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.

Recommendation 14: The Commission should consider establishing an independent consultative committee to provide feedback to the Commission on priorities and performance.

Publish measures on the impact of Commission work on consumers

159. We are aware that the Commission is considering periodically reporting to the public on the Commission's impact on the long-term interest of consumers and associated public benefits/value for money of its interventions.[8] While these estimates would be necessarily dependent on underlying assumptions, this is potentially a useful accountability tool. It would also serve to ensure the public understands the contribution competition and the Commission makes to New Zealanders prosperity through public investment in Commission activities.

Recommendation 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.

[8] This reporting is also referenced in the Commission's submission to the OECD, *Assessing the Impact of Competition Authorities Activities,* May 2025: https://one.oecd.org/document/DAF/COMP/WP2/WD(2025)13/en/pdf

Publish State of Competition Report

160. We have heard that it would be desirable for the Commission to more systematically assess the competitive landscape, with an eye to emerging competition and consumer anti-competitive practices. Many stakeholders want to see more clearly the Commission's assessment of the strategic context and understand how this impacts the Commission's strategic direction, priorities and resource allocation.

161. It is important that any State of Competition Report also considers emerging anti-competitive conduct and any implications this may have for the Commission's priorities going forward. A State of Competition Report could complement other work by the Commission to improve its accountability to the public (such as the impact measurement work discussed in the preceding recommendation).

Recommendation 16: The Commission should publish an annual State of Competition Report.

Recommendation 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.

Improve decision making timeliness

162. The structural and other changes proposed above to the Commission governance and operating model should aid with timeliness, transparency and effectiveness of Commission activities.

163. Mergers and Authorisations are by their nature particularly time sensitive, and the Review supports the consideration of the options proposed in MBIE's Commerce Act Review, including:

   a. New statutory timeframes for merger review, including a cap on extensions of up to 100 working days (which may only be extended further for specified reasons).

   b. Requiring the Commission to publish written reasons for its merger decisions within set timeframes.

   c. Provide that the 20-working day period for appealing a clearance or authorisation decision runs from the later of the date the Commission makes its decision or the date on which full written reasons are published.

Recommendation 18: The Commission should revisit options to improve operational timeliness and efficiency in light of the changes to the structure recommended by this Review.

Recommendation 19: The Government should endorse the new statutory timelines for merger reviews as proposed by MBIE.

Recommendation 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 practices under the new merger regime.

Strengthen information management arrangements

164. There is a need to build increased trust and confidence that sensitive company information will be appropriately managed. In essence, companies need to know that their sensitive information will never be released and/or misused. MBIE's Commerce Act Review has prioritised changes to support the required outcomes.

Recommendation 21: We recommend that Government agrees to:

a. Broadening the Commission's powers to issue confidentiality orders (s100) and increasing penalties for breach of an order,

b. Amending 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

c. Introducing a new prohibition against victimisation of parties in relation to making a complaint or providing information to the Commission.

165. The Review also heard that the disestablishment of the dedicated Legal Team responsible for OIAs has left a gap in capability for legally focused OIA responses. While having dedicated resources in the Governance and Executive Services Team, the Commission should ensure it has necessary capability to streamline its responses to OIA requests and for general information management.

166. Finally, there was a call for a publicly published model media policy to ensure the Commission is the 'voice of calm reason' on competition, consumer and regulation matters. The policy should clarify the appropriate use of social media, including when a matter is being adjudicated by the Commission, and allow for a complaints process.

Recommendation 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.

Recommendation 23: The Commission should consider lifting capability of its dedicated resource for dealing with Official Information Act requests and general information management purposes.

Invest in digital and data analytics capability

167. Digitalisation[9] is reshaping competitive dynamics across modern economies. In some sectors it is facilitating competition, while in others it is creating scope for new and more sophisticated methods of anti-competitive and/or deceptive conduct.

168. Competition authorities need to keep pace with digitisation to address its opportunities and challenges. Although not all investigations relate to conduct in the digital economy, most evidence is now in digital form. Digitisation also creates a rapidly growing stream of data that can be utilised by competition regulators.

169. Our discussions with overseas competition regulators have highlighted the substantial efforts they have underway to lift digital capability. They are expanding proactive intelligence gathering efforts and modernising their systems to better detect and address anti-competitive activity. Areas of investment include technology, processes and people – especially in the fields of data science, behavioural economics and advanced analytics.

170. The Commission has recognised digitisation as an important issue and utilised some of the time-bound additional funding it received in the 2019 Baseline review to invest more heavily in its digital and data analytics capabilities. The Commission has made good progress in critical foundational areas such as modernising its database infrastructure and improving data governance. The Commission has also started to make greater use of data analytics in certain areas. However, significant work remains to be done – especially in further developing the Commission's expertise and systems to obtain actionable intelligence and insights from data.

171. While the Commission's time-bound Baseline funding boost has come to an end, we believe that further developing digital and data analytics capacity should remain among the highest priorities for the Commission in the next few years – so it can become a leader in gathering, processing, and analysing of data and digital evidence.

172. Making the necessary resource shifts will be challenging in a fiscally constrained environment. Nonetheless, we expect such investment will have the twin benefits of positioning the Commission for the digital economy and unlocking internal efficiency gains (for example through greater use of artificial intelligence). In this context, to speed up the transition we also encourage the Commission to draw more heavily on the experiences of overseas regulators who are further along in the journey to digitisation.

Recommendation 24: The Commission should increase the focus on lifting its capabilities in the digital and data analytics areas.

Strengthen economics function

173. There is a need for the economics function to have a strong voice at the Commission, whether it be presenting to the Board level, the Commission operating as a whole, the Executive, Divisions and Committees and steering committees. Currently there are 26 economic roles out of 450 staff in an organisation whose primary task is economic regulation.

[9] For a fuller discussion of what digitisation means and its implications, see (for example) the OECD's paper at www.oecd.org/en/topics/sub-issues/competition-and-digital-economy.html)

174. It is vital to use this essential capability well if it is to contribute sufficiently to anticipating market developments, identification of theories of harm, quantitative analysis, prioritisation and resource allocation, setting strategic direction and monitoring impact and effectiveness of interventions.

175. In some circumstances early input from economists may be critical to more quickly advancing an enforcement matter, market study, merger or authorisation. In novel or sensitive matters, it will be important to bring systematic economic input and methods closer to decision makers. Strengthening the role of economic analysis should also help the organisation to operate more in a whole of commission mode, given that economic analysis should be a key binding agent for a competition authority.

Recommendation 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.

Funding Implications

176. Tables 6 and 7 below set out the Commission's current forecast funding from 2024/25 to 2028/2029. The Commission is currently funded by a mix of Crown revenue and levies from regulated industries. These are highlighted in the Tables, with levy recovered appropriations in green, and Crown funded in blue.

177. Within the Crown funding category there is a subdivision into different buckets. The Commission's ability to shift its focus and resources with changing priorities is constrained by aspects of the funding arrangements, especially the presence of multiple dedicated funding streams.

178. We are advised that this appropriation structure is a function of three principles:

a. **Accountability**: Maintaining effective accountability to government and other stakeholders (notably levy payers).

b. **Efficient functioning of government:** Ensuring that Ministers can participate in discussions that affect the attainment of the Government's policy objectives, and

c. **Flexibility**: Enabling the Commission to deploy resources to areas of greatest regulatory impact.

179. The Crown has sought to provide flexibility through using a mix of multi-category appropriations (which makes it easier to move funding between categories in any year) and multi-year appropriations (which makes it easier to move funding between years), but this has had mixed success.

Table 6: Commission Forecast Appropriations for the period 2024/25 to 2028/29 (excluding litigation fund)

Forecast Year	Enforcement of General Market Regulation Multi-Category Appropriation					
	Enforcement of Competition Regulation	Enforcement of Consumer Regulation	Grocery Sector Regulation	Liquid Fuels Monitoring Enforcement	Retail Payment System Admin & Enforcement	Transition & Implementation of Economic Regulation for Water
FY2024/25	11,651,000	20,211,000	7,286,000	3,064,000	4,576,000	2,232,000
FY2025/26	12,075,000	18,077,000	7,286,000	3,064,000	4,576,000	

Confidential advice to Government [redacted]

Forecast Year	Multi-Year Appropriations			
	Regulation of Electricity Lines Services 2025-2029	Regulation of Gas Pipelines Services 2024-2029	Regulation of Specified Airport Services 2024-2029	Regulation of Telecommunications Services
FY2024/25	11,406,000	3,617,000	1,000,000	17,190,000
FY2025/26	9,173,000	3,127,000	427,000	14,384,000

Confidential advice to Government [redacted]

Forecast Year	Competition Studies	Enforcement of Dairy Sector Regulation & Monitoring Milk Price	Regulation of Water Services
FY2024/25	2,587,000	2,348,000	0
FY2025/26	1,482,000	2,348,000	6,500,000

Confidential advice to Government [redacted]

Table 7: Confidential advice to Government [redacted]

Forecast Year	Commerce Commission Litigation Fund Multi-Category Appropriation	
	Externally sourced Litigation	Internally sourced Litigation Fund
FY2024/25	6,500,000	6,112,000
FY2025/26	6,262,000	5,670,000

Confidential advice to Government [redacted]

180. The Litigation Fund deserves mention. The Commission has a dedicated multi-category appropriation to fund its litigation activity (e.g. enforcement and appeals) under all the regulatory regimes it is responsible for. The Fund is split into two categories to cover different categories of costs incurred in major litigation:

a. Externally sourced litigation (e.g. external counsel and experts), and

b. Internally sourced litigation (e.g. staff salary and overheads).

181. The Litigation Fund rules require that any end of year surpluses must be returned to the Crown, except for up to $0.5m per annum from the externally sourced category that may top-up a $3 million reserve to cover potential adverse cost awards. Pecuniary penalties awarded by the Court are returned to the Crown.

182. The Litigation Fund is critical to the Commission's ability to initiate and sustain enforcement litigation. In recent years the Commission has underutilised the Crown funding available, resulting in the externally sourced fund being reduced from $8.5 million to $6.5 million in Budget 2023. This low level of litigation costs is because of the low number of Commerce Act enforcement proceedings, particularly for non-cartel cases where a full competition assessment is required (sections 36/27). Indeed, this is one of the themes that emerged through this Review: the Commission is too risk adverse and this has limited its effectiveness in addressing significant anti-competitive conduct and clarifying the current boundaries of competition and consumer law.

183. The Commission has already taken some steps to address its risk appetite and is attributing cases to the Fund that if litigated to the full extent would exceed the appropriation limits. For example, in 2024/25, the Commission is on target to spend $6.5 million and in 2025/26, the fund is $2 million over committed. The Commission has submitted a proposal to MBIE to restructure the Fund. MBIE is also exploring other options, such as allowing the Commission to retain cost awards/settlements in its favour or repurposing the $3 million cost reserve.

Recommendation 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.

Recommendation 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.

Efficiency and Value for Money

184. Based on the assumption that responsibility for the Credit Contracts and Consumer Finance Act 2003 shifts to the FMA and that there is no new money for general markets (commerce and consumer) for the foreseeable future, Confidential advice to Government [redacted]

185. Achieving the overall required savings will necessitate more substantive changes to the Commission's operating model. This includes structural change, greater delegation to management and staff and reductions in the budget for Commissioners. The Commission is beginning to grapple with the implications of this but has yet to cost what savings are possible if wider structural changes are made as discussed in this report. It is impossible for the Review to estimate the likely impact, but the current governance and operating model of the Commission is financially unsustainable within current projected funding envelopes.

186. In our discussions with the Commission about possible recommendations on governance and operating model changes, it has become clear that the existing construct is no longer fit for purpose or the future. While the Review believes changes are required for financial sustainability, they are more importantly required for effectiveness and resilience reasons. It is not unhelpful that the incentive to make changes to improve the effectiveness and resilience of the Commission aligns with the financial need to find a sustainable operating model.

187. There is no doubt from experience that transformation from one operating model to another has some risk, is challenging and requires investment in critical capabilities to smooth the transition. For example, if the Commission is to free-up Commissioner time for strategically important statutory decision making and strategy and governance, then management and staff need to be ready to perform activities previously undertaken by Commissioners. The transition also requires a high level of monitoring and oversight to ensure the required benefits and savings are realised and risks are managed, which itself places a premium on the governance capability of the Board.

188. The Review has considered whether there is an efficiency dividend likely from the enhanced governance and effectiveness changes we are recommending. We believe that

is reasonable to expect efficiency savings. In the initial period we would recommend that this be used to close the current expected deficit and support the acceleration towards an intelligence led organisation through critical investment in data and quantitative analysis.

Recommendation 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.

Recommendation 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.

Recommendation 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.

Legislative implications

189. We have considered whether legislative change to Part 1 of the Commerce Act would be desirable and/or necessary to give effect to the recommendations made above. There are arguments for and against legislative change. There are always risks of unintended consequences of opening-up important legislation such as the Commerce Act.

190. Advantages include the benefit in legislative emphasis on the desirability of a whole of Commission approach. This would signal the need for change and facilitate it to occur more quickly than otherwise. Legislation could also remove obstacles embedded in current practice to a more integrated approach.

Current legislative provisions

191. Part 1 of the Commerce Act supplements the generic provisions of the Crown Entities Act (the latter Act sets out the standard governance and accountability provisions for all Crown entities). Part 1 of the Commerce Act provides that the Crown Entities Act applies to the Commission unless otherwise expressly provided. In addition, for the purposes of the Crown Entities Act:

    a. The Commission is an independent Crown entity, and must act independently in performing its statutory functions, powers and duties, unless expressly provided otherwise in any Act. As a Crown entity, it is outside the core New Zealand public service, but part of the wider public sector and owned by the Crown.

    b. Members of the Commission are the 'board' and must comply with board's collective duties and individual duties as members, for which they are accountable to the responsible Minister.

192. The few remaining provisions in the Commerce Act that are specific to the Commission relate to:

a. Governance matters, including the appointment of members and associate members, the composition of the Board and a limit on the delegation power in relation to authorisation decisions.

b. The Commission's operating model allowing statutory decision-making matters to be decided by Divisions at the direction of the Chair, and where such Divisions are established, they are deemed to be the Commission in relation to the statutory decision-making matter for which they were established.

c. Additional functions of the Commission relating to dissemination of information.

d. Requirements for the Commission to have regard to government policies.

193. Further provisions specific to the Commission are outlined in each of the additional regulatory regimes that the Commission administers. This includes the establishment of named Commissioners in the Telecommunications Act 2001 and the Grocery Industry Competition Act 2023, who must also be members of the Commission board.

194. The Crown Entities Act also provides a general power for the board of Crown entity to delegate any of its functions and powers. The Commission has a few specific exceptions or limitations to this power of delegation:

a. It must not delegate its powers to grant, revoke, or vary an authorisation (s105 of the Commerce Act), and

b. Where an Act specifies that certain activities be undertaken by specific groups within the Commission's membership (e.g. the named sector Commissioners). For example, the Grocery Commissioner's approval must be obtained, either alone or with the Commission Chair, to delegate functions under the Grocery Industry Competition Act 2023.

195. Unlike more recent legislation for comparable economic regulators (e.g. the FMA and RBNZ), the Commerce Act conveys little information about the Commission's role and how it should exercise it.[10] For example, the Reserve Bank of New Zealand 2021 has a clear Bank objective statement, supported by statements on the Bank's functions and powers. These are specified broadly to reflect the concept of a modern responsive regulator that is able to deploy a range of tools to achieve the statutory objective. The Financial Markets Authority Act 2011 is similarly framed, with the associated benefit of consolidating and standardising the FMA's powers and operating provisions, which may then be applied to all the regulatory regimes the FMA is responsible for. Such provisions support a 'whole of agency' approach.

Options to amend Part 1

196. Our earlier discussion of options to strengthen governance arrangements identified areas for legislative change. Our view is that legislative change to Part 1 of the Commerce Act is important to signal legislative intent that a whole of Commission approach is important.

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[10] Searancke, G et al, *Governing the Regulators – applying experience*, Policy Quarterly, Vol 10, Issue 1, February 2014.

While some governance matters are provided for in the Crown Entities Act, those provisions should also be explicitly included in Part 1 of the Commerce Act. Important matters to provide for in legislation are listed below.

a. New statement for Commission: A clear statement to support a whole of Commission approach drawing on the provisions in section 25 of the Crown Entities Act. This has the added benefit of making this intention clear for those unfamiliar with the Crown Entities Act. Board members should have a collective duty to act consistent with this whole of Commission approach.

b. Functions of the Commission: Clear statements on the functions and powers of the Commission would be beneficial. Ideally these functions would be comprehensive and provide guardrails for the Commission's use of its powers.

c. Membership of Commission: The Board of the Commission should continue to consist of no more than eight members. However, the requisite qualifications for appointment of Commissioners should allow for full range of knowledge, skills and experience appropriate to assist the Commission to fulfil its governance role and statutory independent functions.

d. Associate members: The appointment of Associate Commissioners is discretionary and there is flexibility regarding their appointment (e.g. part-time, short terms, and in relation to particular matters). However, a more flexible option to bring additional capability and business and consumer nous is through experts appointed to Committees. The provision for associate members should only be retained for cross appointments from other regulatory bodies, such as the ACCC. As such, this provision should be modified, subject to any appropriate transitional measures for existing appointees.

e. Second Deputy Chair and/or special class of member: An option to embed an independent perspective on the Board is to provide that at least one of the members be appointed in a part-time role and will not sit on any regulatory decision-making committees. This person will provide a 'challenger' perspective on the Board, drawing on their external governance experience. To further strengthen this voice, the legislation may provide that this member is a second Deputy Chair.

f. Named Sector Commissioners: Some sector specific legislation requires named sector Commissioners and confers them statutory authority to act independent of the Board. This should be repealed, subject to any appropriate transitional measures for existing appointees.[11] Authority to act under sector-specific regimes should rest with the Commission Board. The Board may designate one of the Commissioners to have delegated authority to lead particular sectors, either alone or with other Commissioners, if desired.

g. Replace Divisions with strengthened Committees: The Division model undermines the authority of the Board. However, the generic provisions relating to committees in Schedule 5 of the Crown Entities Act are not appropriately specified for the Commission's regulatory decision-making functions. New provisions should be inserted in the Commerce Act to provide that where a committee is delegated

[11] This recommendation does not cover the Telecommunications Commissioner function – we make no recommendation in that regard consistent with the Review's terms of reference.

authority to perform a statutory independent function of the Commission, the committee will consist of at least three Commission members and up to one other person in relation to any matter within the Committee's mandate. There would be no limit on the number persons who could attend in an advisory capacity.

h. A new Governance and Strategy Committee: The Commission has signalled its intention to establish a Governance and Strategy Committee to accelerate the recommendations in this report. This could be strengthened by legislative provisions for the establishment and role of the Committee. For example, a charter and remit could be required to be developed by the Board and approved by the Minister of Commerce and Consumer Affairs that covers these matters.

i. Delegations: To clarify that, while the Commission is accountable for all decisions, certain decisions can be delegated to Committees or staff. To clarify the role of Commissioners is as decision maker and operational matters are to be delegated to management.

197. In our discussion of non-structural options, we also discuss our support for legislative clarification to improve timeliness of statutory decision-making and protection of confidential information. We note with favour:

a. Protections for confidentiality of information and documents outlined in the equivalent FMA and RBNZ statutes (e.g. refer sections 59 and 60 of the Financial Markets Authority Act). Clear statutory provisions with a presumption that the Commission must not publish or disclose any information unless one of the exceptions applies would provide greater trust and confidence to business.

b. The ACCC merger process guidelines which clearly set out when extensions to merger timeframes are permitted.[12]

198. These matters should be progressed in the MBIE Commerce Act review.

Recommendation 31: The Government should enact changes to Part 1 of the Commerce Act to underpin the move to a stronger whole of Commission approach.

Recommendation 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.

Implementation

199. The recommendations cover an ambitious agenda for change. Some of the recommendations are directed at the Government. Others to the Commission Board and executive. It will be important that the different workstreams to give effect to the

[12] ACCC Merger Process: Quick guide for businesses, 27 March 2025, available here: https://www.accc.gov.au/system/files/merger-reform-merger-process-guidelines-simple.pdf

recommendations are coordinated. In addition, we anticipate that it will be necessary to prioritise the implementation of the Review recommendations.

200. A possible roadmap for change is outlined below in the table 8.

Table 8: A roadmap for change

Priority	Workstreams	Recs
Led by the Government		
Short term	• Agree to progress legislative changes to support change • Send letter of expectations to Chair of Commission, including attaching remit for new Governance and Strategy Committee • Recruit new Commissioner to Board	3(a), (d), (e) 19, 21 31, 32
Medium term	• Once legislative changes passed, implement as required. • Ensure Commission accountability documents reflect expectations • Review funding arrangements to promote operational flexibility and effectiveness • Refresh monitoring arrangements with Commission Board	26, 27, 29 30 (initial)
Ongoing or longer term	• Conduct evaluation of legislative changes to governance and effectiveness • MBIE monitor business transformation.	20 30 (ongoing)
Led by the Commission		

Short term	• Collapse number of Divisions with new streamlined function-based Committees
	• Establish Governance and Strategy Committee
	• Agree initial work programme of Governance and Strategy Committee:
	  ○ Roles and responsibilities
	  ○ What strategically important matters should be led by commission as whole or be referred to commission as whole for endorsement
	  ○ Delegations framework
	  ○ Workforce strategy, including strengthening Economics function
	  ○ Prioritisation framework and reporting
	  ○ Risk appetite
	  ○ Measures to assess organisational performance and impact
	• Board to implement priority workstream changes
	• Commission to publish its model media policy on website
		3(b), (c), (d)
		4
		6
		5
		7
		9, 25
		10
		22

Medium term	• Review operational timeliness, efficiency and information management • Review engagement policy, guidelines for stakeholders, and consider establishing a Stakeholder Advisory Committee	18, 23 12, 13, 14

	• Review funding arrangements, linked to reinvestment in building capabilities in digital and data analytics areas	28, 24, 29
Ongoing or longer term	• Function-based Committees to report regularly to Board on performance against priorities • Commission to actively monitor application of risk appetite to regulatory decision-making. • Report annually on impact of the Commission's work • Publish an annual State of Competition Report and consider how to leverage in engagements with Government on policy and regulatory matters.	8 11 15 16, 17

Conclusion

201. The Commission is a quality, high-performing regulator, with a strong degree of public trust and confidence. The Commissioners and Commission staff are passionate about delivering better market outcomes for New Zealanders. A reflection of this high-performance and commitment is that the Commission has been given more and more responsibilities by successive governments and is viewed as a 'safe pair of hands'.

202. The legislation under which the Commission has responsibilities is generally clear and enabling for the Commission to operate efficiently and safeguard the Commission's independence. However, the growth in responsibilities and the size of the Commission has put the traditional 'commission' governance model under strain. This is compounded by the challenging and dynamic environment in which the Commission operates, which makes it more important than ever to have an agency able to understand, anticipate and respond to current and emerging anticompetitive conduct.

203. The underlying tension arises as the dual role of Commissioners as governors and statutory decision-makers is not easily scalable. Recent measures to address this, such as increasing the number of Commissioners and Divisions and designating individual Commissioners as Convenors to lead areas of work, have had partial success but have also had other consequences.

204. These measures have drawn Commissioners deeper into the operations of the agency, and along with funding tied to particular regulatory regimes, it has further fragmented the Commission and reinforced silos. As Commissioners become more involved in their respective areas of statutory decision-making, their capacity to focus on 'whole of Commission' strategic and governance issues, and to hold each other to account, is compromised.

205. The terms of reference for this Review asked us to look at a range of matters, such as the quality of the Commission's engagements with its stakeholders, its ability to develop a clear strategy, its prioritisation framework, and its timeliness and action-orientation. These matters were common themes in our interviews with persons both inside and outside the Commission. We acknowledge the Commission is working to address these matters, including resetting its risk-appetite, adopting an outcomes framework, and setting new enforcement priorities, but we think the pace and direction of change can be improved.

206. This report includes a range of structural and non-structural changes to lift the Commission’s performance, taking it from good to great. In our view, structural change to the Commission’s governance model is required to achieve this. The dual (and largely full-time) role of Commissioners inevitably draws them into statutory decision-making on individual cases. Embedding an ’outside in’ perspective on the Commission board, supported by a new standing Governance and Strategy Committee, will assist the Commission to lift its focus and keep an eye on the horizon and the Commission’s performance and impact.

207. The Commission’s statutory decision-making and performance should also be strengthened by clearly defining roles and responsibilities of the board, committees, individual Commissioners and Commission staff. At its core is what we call a ‘whole of Commission’ approach. Decisions should be made under the authority and oversight of the board, by those with the appropriate expertise and experience, based on quality evidence and analysis, and following transparent, timely and fair processes. To support this, we recommend:

a. The board maintaining appropriate oversight of decision-making, including providing a ‘challenger’ perspective when risky or high-profile decisions are referred to it,

b. Greater delegations from the board based on the principle of subsidiarity,

c. The use of committees for decision-making that can draw on the deep expertise of Commissioners, supplemented on any matter by an expert non-Commissioner member who can bring additional expertise and commercial nous, and

d. Building the capability of the Commission’s workforce, data and intelligence systems and regulatory processes, to carry the institutional memory and deep expertise which are the operational foundations of the Commission.

208. While not always necessary, we have recommended legislative amendments to support these recommendations. We also set the foundations for the Commission and MBIE to look further at the Commission’s funding arrangements and organisational changes to support the Government’s priorities for fiscal sustainability and value for money.

209. We commend this report to MBIE, the Commission and the Minister of Commerce and Consumer Affairs.

Summary of Recommendations

Recommendation 1: The Review recommends that any changes to the effectiveness and governance of the Commerce Commission are guided by the following principles:

a. Promotes whole of Commission approach and organisational coherence,

b. Promotes confidence and assurance,

c. Provides transparency and certainty,

d. Maintains independence of decision making,

e. Ensures accountability for outcomes,

f. Provides for pace and flexibility,

g. Builds capacity and capability,

h. Delivers value for money and efficiency, affordability, sustainability and fit for future, and

i. Practicality, being able to be implemented and having a low risk of unintended consequences.

Recommendation 2: 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].

Recommendation 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,

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,

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),

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

e. Discontinue the named Commissioner mechanism (except for telecommunications as excluded from the Review terms of reference).

Recommendation 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.

Recommendation 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.

Recommendation 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.

Recommendation 7: The Commission should review its prioritisation process in response to the change in the Commission's governance and operating model.

Recommendation 8: Committees should report regularly to the Commission Board on their performance against the Commission agreed priorities.

Recommendation 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.

Recommendation 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.

Recommendation 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.

Recommendation 12: The Commission consult on and produce Market Regulation Guidelines.

Recommendation 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.

Recommendation 14: The Commission should consider establishing an independent consultative committee to provide feedback to the Commission on priorities and performance.

Recommendation 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.

Recommendation 16: The Commission should publish an annual State of Competition Report.

Recommendation 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.

Recommendation 18: The Commission should revisit options to improve operational timeliness and efficiency in light of the changes to the structure recommended by this Review.

Recommendation 19: The Government should endorse the new statutory timelines for merger reviews as proposed by MBIE.

Recommendation 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.

Recommendation 21: We recommend that Government agrees to:

a. Broaden the Commission's powers to issue confidentiality orders (s100) and increasing penalties for breach of an order,

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

c. Introduce a new prohibition against victimisation of parties in relation to making a complaint or providing information to the Commission.

Recommendation 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.

Recommendation 23: The Commission should consider lifting capability of its dedicated resource for dealing with Official Information Act requests and general information management purposes.

Recommendation 24: The Commission should increase the focus on lifting its capabilities in the digital and data analytics areas.

Recommendation 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.

Recommendation 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.

Recommendation 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.

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Recommendation 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.

Recommendation 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.

Recommendation 31: The Government should enact changes to Part 1 of the Commerce Act to underpin the move to a stronger whole of Commission approach.

Recommendation 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.

Annex 1: List of parties or groups interviewed

No.	Individuals or groups interviewed
1	Chair - Dr John Small
10	Each of the Commerce Commissioners and Associate Commissioners – Anne Callinan (Deputy Chair), Pierre van Heerden (Grocery Commissioner), Tristan Gilbertson (Telecommunications Commissioner), Bryan Chapple, Dr Derek Johnston, Vhari McWha, Joseph Liava'a, Loretta Lovell, Nathan Strong, and Rakihia Tau
1	Chief Executive - Adrienne Meikle
6	Each of the Commerce Commission Senior Leadership Team – Nick Russ, Andy Burgess, Vanessa Horne, Andrew Riseley, Anna Moodie, and Raj Krishnan
13	Various individuals or groups of Commerce Commission staff from across the organisation, including the Chief Economist and staff from the economics team, legal branch, competition and mergers teams, fair trading and credit teams, market regulation, infrastructure regulation, data & analytics, market intelligence, and organisational performance and enablement branch.
1	Independent Chair of the Commission Audit and Risk Committee - Warren Allen
1	Electricity Authority - Anna Kominik (Chair) and Sarah Gillies (Chief Executive)
1	Financial Markets Authority - Craig Stobo (Chair) and Samantha Barrass (Chief Executive)
2	Reserve Bank of New Zealand – Professor Neil Quigley (Chair) and Paul Conway (Chief Economist)
1	Ministry of Business, Innovation and Employment - Carolyn Tremain (Chief Executive) and Paul Stocks (Deputy Secretary)
2	Department of Prime Minister and Cabinet (2)
1	Public Services Commission (2)
1	The Treasury (2)
1	Canadian Competition Bureau - Matthew Boswell (Commissioner of Competition) and Mike Hollingworth (Chief of Staff & Associate Deputy Commissioner)
2	Australian Competition and Consumer Commission – Gina Cass-Cottlieb (Chair), Sarah Proudfood (CEO), Lisa Anne Ayres (General Manager, Executive and Governance), Anna Brakey (Commissioner) and Stephen Ridgeway (Associate Commissioner)
1	Irish Competition and Consumer Protection Commission - Brian McHugh (Chair) and Cathal Hanley (Economist)
1	United Kingdom Competition and Markets Authority (2)
1	Consumer NZ – Jon Duffy (Chief Executive)
1	Legal panel #1
1	Legal panel #2
1	Economist panel
1	New Zealand Initiative - Roger Partridge and Eric Crampton
4	Regulated companies and industry associations
1	Habilis – Kent Duston
1	Ex-commission staff (4)
1	Business NZ – Catherine Beard, John Pask
1	Court of Appeal – Hon Justice David Goddard
1	Former Commerce Commission Chair – Dr Mark Berry
60	Total interviews (119 people)

Annex 2: List of documents received from the Commission

	Document title
	Initial Pack
1	2024 Governance and Effectiveness Review – Introduction to the Commerce Commission, November 2024
2	Hitori (History of the Commerce Commission)
3	Briefing to Incoming Minister, Commerce and Consumer Affairs (November 2023)
4	Briefing to Incoming Minister, Media and Communications (May 2024)
5	Annual Report of the Commerce Commission 2023/24
6	2024 Letter of Expectations – Minister of Commerce and Consumer Affairs
7	Governance and decision-making at the Commission – slide deck for Minister
8	2023-2027 Statement of Intent
9	2024-2027 Strategic Priorities
10	2024/25 Enforcement and compliance priority areas
11	Enforcement Response Guidelines (July 2024)
12	Enforcement criteria (webpage)
13	Fair Trading Investigation Prioritisation Framework (October 2023)
14	2024/25 Statement of Performance Expectations
15	Board Presentation: Strategic Finance: Financial forecast for 2024/25 and outyears (November 2024)
16	Board Presentation: Communications & Engagement Strategic Priorities Recommendations to Board (May 2023)
17	2018-2022 People Strategy
18	Senior Leadership Team Compulse Insights Review (August 2024) – employee engagement survey
19	2023-2025 He Rautaki Māori mō Te Komihana Tauhokohoko (Rautaki Māori)
20	Board Presentation: 2024-25 Budget Iteration 4 (June 2024)
21	Risk Management Framework (April 2024)
22	Risk Assessment Framework (April 2024)
23	Risk appetite position statement (June 2024)
24	Evaluation framework (March 2024)
25	Ex-post merger review report (February 2024)
26	Board pack – July to November 2024
27	Proposed 2025 reporting calendar
28	Performance Data Dashboard
29	Performance Improvement Framework Self-Assessment Feedback Report (December 2015)
30	Commerce Commission – Our Vision and Strategy – 2017-2022
31	2017-2022 Statement of Intent
32	2017 Boardworks International – Governance Review Report
33	PWC Baseline Review – Final Report 2019
34	Funding Initiatives Table (November 2024)
35	Martin Jenkins Fit for the Future Final Report (June 2020)
36	Ministerial update – 2019 Baseline Review
37	2020 Fit for the Future Report and Transformation Programme
38	2020 Organisational Design Decisions (November 2020)
39	2020 Proposed new structure and operating model (October 2020)
40	2021 Cabinet paper – Reviews of Commerce Commission Levy Funding under the Telecommunications Act and Part 4 of the Commerce Act

	Document title
41	2021 Discussion Paper: Review of the Commerce Commission's funding for the regulation of Telecommunications and Fibre under the Telecommunications Act 2001
42	2021 Discussion Paper: Review of the Commerce Commission's funding for the regulation of electricity and gas networks under Part 4 of the Commerce Act 1986
43	Proposal for changes to the Economic Regulation Branch (October 2021)
44	Economic Regulation Review Design Decisions (December 2021)
45	2022 Roles and Responsibilities Paper 1 – Commission working arrangements
46	2022 Roles and Responsibilities Paper 2 – Convenor Model
47	2022 Paper 2B (options for change)
48	2022 Roles and Responsibilities – Decision Allocation Principles and Division Policy
49	2022 Draft Division Policy
50	2022 Draft Decision Allocation Principles
51	2022 Project Closure Report
52	2022 Shaping our Direction
53	2022 Shaping our Direction – Companion Document
54	Revision of Governance Manual – 2024 revision
55	2023 Policy Governance Framework
56	Economics Function Review – Proposal for Consultation (August 2022)
57	Economics Function Review – Design Decisions and Revised Proposal on Location (October 2022)
58	Economics Function Review – Decision regarding location (November 2022)
59	Strategic Refresh – 2023 Annual Report
60	Rautaki Māori mō Te Komihana Tauhokohoko
61	Rautaki Māori Action Plan
62	Mahere reo mō Te Komihana Tauhokohoko
63	Commission App (Te Pikitanga)
64	2024 Organisational Change Programme – Consultation Paper
65	Organisational Change Decisions – June 2024
66	2024 Boardworks Governance Review – Report (October 2024)
	Supplementary material
67	Business Process Maturity – Assessment outcomes and work programme
68	Data Governance Policy
69	Data Maturity Assessment – Report for the Commerce Commission – Government Chief Data Steward's Data Maturity Assessment Policy
70	Commerce Commission Data Maturity Assessment – Summary A3
71	Information Services – Bumper SLT session, 2 December 2024
72	Prioritisation Framework – PID, 13 January 2025
73	Commission Board Agendas – Meetings June 2024 to November 2024
74	Commission Board Packs – Meetings June 2024 to November 2024
75	Chief Executive Performance Expectations 2024-25
76	Enterprise Risk Register – October 2024
77	Litigation Fund Savings Initiative – Background
78	Funding options
79	Commerce Act Division – Directions of Establishment and TOR (September 2022)
80	Convenor Letter of Expectations (October 2023)
81	Grocery Division – Directions of Establishment and TOR (2023)
82	Part 4 Division – Directions of Establishment and TOR
83	Support for Divisions and Committees of the Board
84	Commerce Commission Organisation Chart – 31 January 2025

	Document title
85	Quarterly reports to MBIE Monitor for 2023/24
86	Staff Delegation – CCCFA Part 5A Powers and Functions to CCA, 30 July 2024
87	Staff Delegation – CCCFA Part 5A Powers and Functions to CSM, 30 July 2024
88	Staff Delegation – CCCFA section 9CA + 41A, 16 December 2024
89	Staff Delegation – Commerce Act, 20 September 2024
90	Staff Delegation – Commerce Act section 99AA, 16 December 2024
91	Staff Delegation – Fair Trading Act, 20 September 2024
92	ComPulse Insights SLT – August 2023 to November 2024
93	2022-23 Stakeholder Perceptions Report – February 2023
94	2023-24 Stakeholder Perceptions Report – February 2024
95	Merger data – July 2018 to March 2025
96	Memo to Competition Division – Optimisations to Mergers Regime
97	Comments to MBIE on Policy recommendations for the Commerce Act review
98	One Commission Memorandum – 24 March 2025
99	The Role of the Board – 1 April 2025
100	Memo to Competition Division on merger process efficiencies – 23 April 2025
101	Policy recommendations briefing – 23 April 2025
102	Comments on Issues Paper – 12 May 2025
103	Issues Paper with comments – 12 May 2025
104	Delegation – 12 May 2025
105	Associate Commissioners – 12 May 2025
106	Sector Specific Commissioners – 12 May 2025
107	New [Proposed] Structure – 12 May 2025
108	Operational matters – 13 May 2025
	Articles and books
109	Kovacic & Hyman, 2013, Competition Agencies with Complex Policy Portfolios: Divide or Conquer?
110	Kovacic & Hyman, Competition Agency Design: What's on the Menu?
111	Kovacic & Hyman, 2011, How does your Competition Agency measure up?
112	Berry, Institutional Design Issues and Policy Challenges: Reflections from former Chair of the Commerce Commission, Dr Mark Berry
113	Gal, Competition policy for small market economies
114	Hannan & Freeman, 1984, Structural Inertia and Organisational Change
115	Selection of methodology articles profitability and competition metrics and productivity

Annex 3: Reviews of Commerce Commission since 2015

Calendar Year	Review
2015	Commerce Commission Performance Improvement Framework – Self-Assessment
2017	Boardworks Governance Review
2019	PricewaterhouseCoopers Baseline Review
2020	Fit for the Future – Final Report and Transformation Programme
2020	Organisational Decision Decisions (Fit for the Future)
2021	Review of Commerce Commission funding for Telecommunications and Part 4 economic regulation
2021	New structure and operating model live (April)
2021	Economic Regulation Review (December)
2022	Roles and Responsibilities – Commission working arrangements
2022	Enterprise Programme – post Fit for the Future
2022	Shaping our Direction
2020-2023	Economics Function Review
2023	Convenor model implementation (Governance)
2023	Revision of Governance Model
2023	Policy Governance Framework
2023	Strategic Refresh
2023	Values Framework – He Kawa
2024	Visual Identity
2024	Organisational Change Programme
2024	Boardworks Governance Review (October)