



COVERSHEET

Minister	Hon Scott Simpson	Portfolio	Commerce and Consumer Affairs
Cabinet paper	Reform of Commerce Commission Governance Arrangements	Date to be published	25 November 2025

List of documents that have been proactively released

Date	Title	Author
October 2025	Reform of Commerce Commission Governance Arrangements	Office of the Minister of Commerce and Consumer Affairs
8 October 2025	Reform of Commerce Commission Governance Arrangements ECO-25-MIN-0158 Minute	Cabinet Office

Information redacted

YES

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- Confidential advice to Government
- Constitutional conventions.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Office of the Acting Minister of Commerce and Consumer Affairs (Grocery Sector)

Office of the Minister for Media and Communications

Chair, Cabinet Economic Policy Committee

Reform of Commerce Commission Governance Arrangements

Proposal

1. I am reporting back to the Cabinet Economic Policy Committee (**ECO**), along with the Minister for Media and Communications and the Acting Minister of Commerce and Consumer Affairs (Grocery Sector), on the legislative design and transitional arrangements to give effect to changes to the Commerce Commission's (**the Commission's**) governance arrangements.

Relation to government priorities

2. This paper relates to the Government's priority to deliver better public services and supports the Going for Growth action of improving competition settings.
3. The proposals in this paper are intended to work alongside changes to the Commerce Act 1986 (**the Act**) agreed to by Cabinet, to support a more modern, capable, and responsive competition regime.

Executive Summary

4. The independent Governance and Effectiveness Review of the Commission found that the Commission is performing well in many respects. However, the Commission has outgrown its current governance model, whereby the commissioners have responsibilities for both governance and regulatory decision-making.
5. In August 2025, Cabinet agreed in principle to structural change to strengthen the governance of the Commission by establishing a new board, separate from those involved in the Commission's regulatory decision-making. Regulatory decision-making would be undertaken by regulatory committees established by the board, with a majority of members from a new expert panel.
6. I am reporting back to ECO with the further details required to establish this new governance model. I am seeking decisions on the roles and responsibilities of the new board, panel, and regulatory committees, and their structure. I am also seeking agreement on transitional arrangements for the current commissioners when the new board and panel is established in mid-2027.
7. I am also reporting back, along with the Minister for Media and Communications and the Acting Minister of Commerce and Consumer Affairs (Grocery Sector), on the future of the mechanism for named commissioners in the Grocery Industry Competition Act 2023 and Telecommunications Act 2001.

8. Constitutional conventions

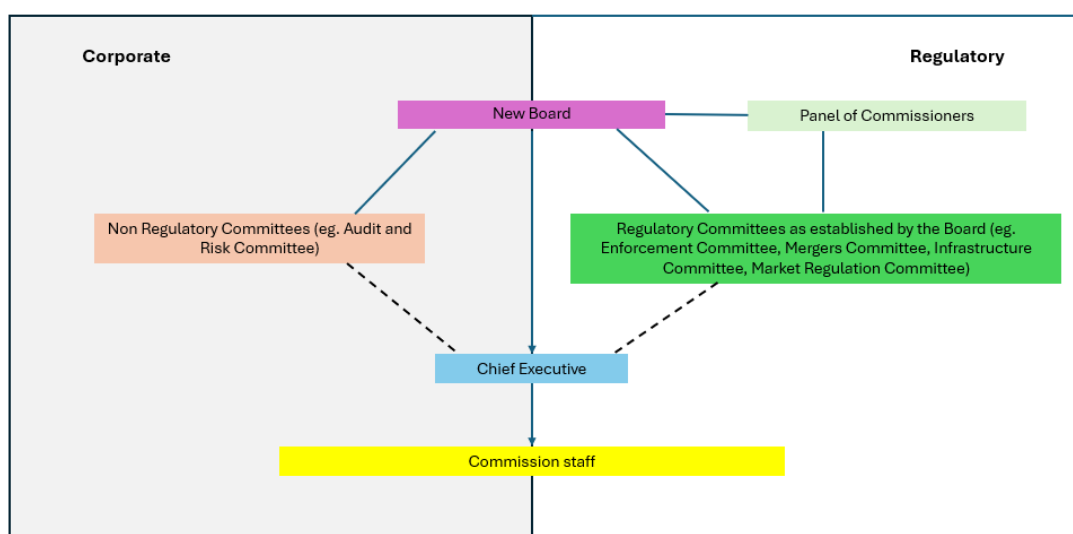
Background

9. On 25 September 2024, ECO agreed to progress a review of the Commission's board performance and governance arrangements to ensure the Commission has the right expertise and governance arrangements to make effective and timely decisions [ECO-24-MIN-0206].
10. The review was led by Dame Paula Rebstock (**the Rebstock Review**), and the Final Report was delivered on 13 June 2025. This found that, while the Commission is performing well in many respects, the current governance model where the commissioners have responsibilities for both governance and regulatory decision-making is not best practice for a modern Crown entity.
11. On 25 August 2025, Cabinet agreed in principle, subject to further work, to progress structural reforms to establish a new board as the Commission's governance body and a specialist panel for key regulatory decisions (referred to as 'Option 2' in the Final Report) [ECO-25-MIN-0133].
12. Cabinet requested that I, along with the Minister for Media and Communications and the Acting Minister of Commerce and Consumer Affairs (Grocery Sector), report back on the necessary legislative changes and an implementation plan to manage the transition, including:
 - 12.1. modifying the mechanism for associate commissioners in the Act so it is consistent with the new panel to be established for regulatory decision-making;
 - 12.2. repealing the division mechanism in the Act and replacing it with a modified committee mechanism (as provided for in the Crown Entities Act 2004) for regulatory decision-making, along with any additional measures desirable to support this;
 - 12.3. the merits of repealing the mechanism for named commissioners in the Grocery Industry Competition Act 2022 and Telecommunications Act 2001 (the sector specific Acts); and
 - 12.4. the appropriate legislative vehicle for the full package of governance reforms.

Overview of structural reform

13. As agreed in August 2025, I propose creating a new board as the governing body of the Commission. This board would oversee, but not participate in, certain independent regulatory decisions – delegating those instead to specialist committees or the chief executive.
14. Alongside the board, a new panel would be established consisting of individuals with the requisite experience and expertise who would be appointed on a part-time basis to regulatory committees for the purposes of decision-making. The model is based on governance structures used by the United Kingdom's Competition and Markets Authority and the Reserve Bank of New Zealand.
15. To do this, I propose changes to the provisions relating to the Commission in the Act. Figure 1 below indicates these key entities in the new model.

Figure 1: Proposed structural model



The new board

The board will have duties consistent with the Crown Entities Act, with one exception

16. Consistent with the Final Report, I recommend that the generic provisions of the Crown Entities Act 2004 relating to independent Crown entities should apply to the new board. For example, the board would have the primary relationship with the responsible Minister and be responsible for strategy, budgets and oversight.
17. The exception is the board would not have a role in regulatory decision-making, which would be reserved for committees with membership drawn from a panel of expert commissioners or otherwise delegated to the Commission chief executive and Commission staff.
18. The board will retain oversight and seek assurance that committees are operationalising the Commission's strategy and priorities when carrying out regulatory decision-making. If desired, the board may receive expert advice on these matters, including by establishing advisory committees. However, the board will not be able to require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a person or class of persons.

Composition of the board

19. I propose that the new board consists of no more than five members.
20. The composition of the board is intended to bring an 'outside-in' governance perspective. I propose that the Act specify that no more than two members of the board shall be panel members, with the remaining members appointed for their knowledge, skills and experience relevant to assisting the Commission achieve its objectives and perform its functions, including governance experience.

I propose the Act require that the chair of the board is not also a member of the panel

21. I propose the chair of the Commission is independent, i.e. not a member of the Commission panel with responsibility for statutory decision-making. This reflects the focus on the Commission being a strategy-driven organisation and is consistent with the recommendations in the Final Report of the Rebstock Review. Confidential advice to Government

The panel

22. The role of the panel is to provide authority in regulatory decision-making. It will do this through its members participating in the regulatory committees.

Composition of the panel

I propose there be a maximum of 12 panel members

23. The Final Report proposed the panel comprise no more than eight members, including a chair and deputy chair. This reflected that the board could appoint additional people to sit with panel members on regulatory committees, if desired.
24. I propose that the panel allows for up to 12 members, excluding cross-appointees from other regulators (refer below). This takes into account the wide mandate of the Commission's regulatory functions and the potential for additional new functions to be brought into the Commission.
25. Although there need not be 12 members on the panel at all times, this gives scope in the event the Commission gains new regulatory functions. Panel members would be part of the Commission and have status and protections similar to members of the board under the Crown Entities Act, with any necessary modifications.

I propose that the 12-panel member limit excludes members who are cross-appointees

26. I propose that a class of associate members remain in the composition of the new panel, not subject to the 12-panel member limit, who may be cross-appointed from the Australian Competition and Consumer Commission (**ACCC**) or any other regulatory agency that has an interest in the Commission's functions. This ensures the current cross-appointment arrangement with the Australian government may continue to be given effect.

I propose the Act allows discretion to appoint specialist panel members

27. A new 'specialist commissioner' mechanism would allow the appointment of individuals in relation to a specified class of matters reflecting their expertise or experience, (e.g. in the retail payments sector or for economic regulation of the electricity, gas and airports sectors). The board will appoint any specialist commissioners to regulatory committees when they are dealing with those matters.

I propose that panel member appointments be made by the Minister

28. This differs to the Final Report proposed a two-stage process, with the board conducting the recruitment and recommending candidates to the Minister responsible.
29. I do not consider a two-stage process to be necessary. As a matter of practice, the views of the board chair would be considered in any recruitment. However, appointments are an important mechanism for the government to promote alignment with its objectives and accountability to the public. The Minister responsible for the Commission would consult with Cabinet colleagues, including Ministers with particular interests in the Commission, on panel appointments.
30. Remuneration for panel members will be determined by the Remuneration Authority.

The panel chair will also have a role in promoting a 'one Commission' approach

31. The panel should have a role in ensuring a 'one commission' approach and alignment with the Commission's strategy and priorities. I propose this be exercised through the chair of the panel being empowered to 'call in' significant matters from regulatory committees so that they can be tested by panel members with relevant expertise (for example, members sitting on other regulatory committees considering cases involving similar issues or markets). The objective of the chair's call-in power is to promote consistency of decision-making across regulatory committees. Also, regulatory committees could refer matters up to the panel chair for decision by the full panel or subcommittee.
32. I also propose that the chair of a regulatory committee be empowered to invite one or more panel members who are not appointed to that committee to participate in proceedings on any regulatory matter. However, the invited member would not have voting rights.

Regulatory Committees

I propose the Act be amended to create a special class of regulatory committee

33. The role of the regulatory committees would be to make regulatory decisions, including the exercise of the Commission's statutory powers, functions and duties (for example, merger clearances).
34. The Act already has 'division' provisions, which allow the Chair to direct that the Commission's powers be exercised by separate divisions (a division being a group with authority to make decisions on certain matters, e.g. electricity, gas). The Final Report recommended repealing these and allowing the board to establish decision-making committees based on schedule 5 of the Crown Entities Act, with any necessary modifications to reflect their role, including as outlined below.

Regulatory decisions and statutory powers will be the responsibility of committees

35. I propose committees are responsible for regulatory decisions, including the exercise of statutory powers, functions, and duties on individual cases that impact on the rights of persons or classes of persons, for which regulatory expertise in decision-making is critical. These matters can be further prescribed in the Act and regulations and include:
 - 35.1. **Quasi-judicial decision-making** – where the Commission makes decisions like a judicial body, determining how the law should apply in relation to a person or class of persons based on a set of facts (e.g., merger clearances)
 - 35.2. **Decisions to take enforcement action** – where the Commission exercises discretion to initiate proceedings or explores alternative resolution in any case
 - 35.3. **Law making/rulemaking** – where the Commission makes secondary legislation and/or determines requirements on regulated suppliers

Composition

I propose that each regulatory committee must consist of at least two panel members

36. I propose that each regulatory committee must consist of at least two panel members to ensure panel members have the majority of voting rights for each committee (see below). One of the panel members will also be the chair of the committee. The committee may also include other persons, including Commission staff or external experts appointed by the board.

I propose the Act set out voting requirements for committee decisions

37. I propose that regulatory decisions are made by a majority of panel members of a committee. Each panel member would have a vote, and voting rights for non-panel members would be at least one less than voting rights for panel members. This means for a committee of three with two panel members they would have a majority of one. If the regulatory committee considers multiple matters, non-panel members may be different for each matter considered. Other non-panel members could participate in the proceedings but would not have voting rights.

Delegation Principles

38. I recommend the Act set out principles that apply to delegations of responsibilities. These principles will guide ways of working and delegation to ensure the board has assurance and oversight that all Commission decision making is consistent with board strategy and policy and made at the appropriate level. These principles will also empower any regulatory committee to delegate any of those matters to one or more members or the Commission chief executive.
39. These principles will give effect to the Final Report recommendation that decisions are made at the most appropriate level and commissioners are not unduly involved in day-to-day work. Consistent with this, the current limitation on the Commission to delegate authorisation decisions under the Act would also be repealed.

Transitional Arrangements

40. Cabinet has agreed to transition the current Commission chair, Dr John Small, across to the new board once it is established for the remainder of his term, to July 2030, to facilitate stability [ECO-25-MIN-0133].
41. I propose the Act provide for transitioning the current commissioners (including associate commissioners) to the new panel for the remainder of their current warrant terms, with their remuneration to be determined by the Remuneration Authority. I also propose the current deputy chair be transitioned to the new board as a member. This provides certainty to the current commissioners, retains their expertise and experience, promotes stability for the Commission, and minimises disruption to its performance.
42. The Commission currently has two named commissioners (Grocery Commissioner and Telecommunications Commissioner). Moving away from the named Commissioner approach was recommended in the Final Report's finding that having named commissioners at a competition authority did not align with a 'whole of commission' approach and is an anomaly compared to overseas peers.
43. We carefully considered the recommendation to move immediately away from named commissioners. While this approach has benefits, we agreed that the most balanced course is to allow the existing named commissioners to complete their current terms, and related programmes of work, after which the model will transition to one based on regular panel members. This ensures stability and continuity while also positioning the Commission for a stronger, more cohesive governance model in the future. Confidential advice to Government
44. The named commissioner positions have provided visibility and prioritisation in sectors with significant consumer harm. However, when decisions are made individually, this comes at the expense of flexibility and the collective decision-making that is central to the Commission's effectiveness as an economy-wide competition and fair trading authority.

45. We are confident that many of the benefits of the named commissioner approach can be maintained under the panel model. Specialist commissioners will still be able to bring expertise and profile to particular areas, but without the risk of individual decision-making through statutory independence limiting the contribution of diverse viewpoints. This transition reflects our collective judgment that the Commission's long-term effectiveness is best served by a consistent, whole-of-commission approach.

Cost-of-living Implications

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

Financial Implications

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

Confidential advice to Government

48.

Legislative Implications

49. Legislation is required to implement the proposals in this paper.

Constitutional conventions

50.

51.

Impact Analysis

Regulatory Impact Statement

52. The Ministry for Regulation has determined that the proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor economic, social, or environmental impacts.

Climate Implications of Policy Assessment

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

Population Implications

54. There are no population implications.

Human Rights

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

Use of external resources

56. Three reviewers (Dame Paula Rebstock, Professor Allan Fels AO and David Hunt) reviewed the governance and effectiveness of the Commission. They collectively have extensive experience in governance of public and private agencies (including the Commission and ACCC) and eminent knowledge of competition law and institutions. An independent review was desirable to promote trust and confidence. The Commission paid for the reviewers' costs.

Consultation

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

Communications and proactive release

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

Recommendations

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

1. **note** in August 2025, Cabinet agreed in principle to structural reforms to establish a new board as the Commission's governance body and a specialist panel for key regulatory decisions [ECO-25-MIN-0133];

The role of the new board

2. **agree** to establish a new board as the governing body of the Commission for the purposes of the Crown Entities Act 2004, except for the performance of statutory decision-making for certain regulatory matters to be specified in legislation;
3. **note** that, as an independent Crown entity, the Crown Entities Act provides for the board to be appointed by the Governor-General on the recommendation of the responsible Minister;
4. **agree** the new board shall consist of no more than five members, including the chair and deputy chair, and that no more than two shall be members of the panel;
5. **agree** that the chair of the new board must be a non-panel member;

6. **agree** to specify principles in the Commerce Act to guide ways of working and delegation to ensure the board has assurance and oversight that all Commission decision-making is consistent with board strategy and policy, and that decisions are made at the appropriate level;

The role of the Commission panel for statutory decision-making

7. **agree** that the Act should be amended to specify that regulatory committees will be responsible for certain statutory regulatory functions and powers;
8. **agree** the new Board may set requirements for the regulatory committees in relation to statutory decision-making but may not require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a person or class of persons (i.e. that it cannot direct or influence the substance of the decision);
9. **agree** to further promote consistency and coherence of regulatory decision-making across the Commission by providing:
 - 9.1. The chair of the new panel of commissioners may 'call in' a regulatory matter from a regulatory committee (e.g. a matter of significant impact across consumers or sectors of the economy), or the regulatory committee may refer a regulatory matter to the panel, and, if so, the panel, or subcommittee of the panel, shall be able to make that decision;
 - 9.2. The chair of a regulatory committee may invite one or more panel members who are not appointed to that committee to participate in proceedings on any regulatory matter, but where they do so, the invited member does not have voting rights;

The new panel

10. **agree** the Act will provide that the new members of the panel are part of the Commission and have status and protections similar to members of independent Crown entities under the Crown Entities Act, with any necessary modifications;
11. **agree** the panel members will be appointed by the Minister responsible for the Commission, and may have up to 12 members;
12. **agree** that the 12-panel member limit excludes a class of associate members who may be cross-appointed from the Australian Competition and Consumer Commission or any other regulatory agency that has an interest in the Commission's functions;
13. **agree** that the Act will provide discretion to appoint members to the panel in relation to a class of matters given their particular knowledge and experience (i.e. specialist commissioners) and the board must appoint those persons to regulatory committees that are dealing with those matters;

Regulatory committees

14. **agree** to repeal the division mechanism in the Act and replace them with a new class of decision-making committees that are established by the board for the purposes of exercising certain of the Commission's regulatory decision-making functions and powers;
15. **agree** for the Act to include customised provisions for regulatory committees relating to membership and decision-making rules to ensure the Commission's statutory decisions on regulatory matters are controlled by panel members, including:
 - 15.1. the chair of a regulatory committee must be a panel member; and
 - 15.2. external experts or Commission staff may be appointed members of regulatory committees and participate in any proceedings, but non-panel members must collectively have one less vote than panel members in relation to any matter;

Implementation plan

16. **agree** that the legislative provisions to give effect to the structural changes should commence one year after the amendments are passed (expected to be mid-2026) to allow for implementation of the changes and recruitment of the new board and panel members;

Transitional arrangements

17. **agree** the Act should be amended to transition the current commissioners (including associate commissioners) to the new panel (and in the case of the chair and deputy chair to the board) for the remainder of their current warrant terms, with their remuneration to be determined by the Remuneration Authority;

The **Minister of Commerce and Consumer Affairs, Acting Minister of Commerce and Consumer Affairs (Grocery Sector) and the Minister for Media and Communications** recommend that the Committee:

18. **agree** to initially retain the named Commissioners in the relevant sector-specific Acts but remove their statutory authority to act alone in the name of the Commission;
19. Confidential advice to Government

Legislative implications

20. Constitutional conventions
- 21.
22. **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations; and
23. **authorise** the Minister of Commerce and Consumer Affairs to make additional policy decisions and minor or technical changes to the policy decisions in this paper, consistent with the general policy intent, on issues that arise in drafting and passage through the House.

Authorised for lodgement

Hon Scott Simpson

Minister of Commerce and Consumer Affairs

Hon Nicola Willis

Acting Minister of Commerce and Consumer Affairs (Grocery Sector)

Hon Paul Goldsmith

Minister for Media and Communications