



# **Briefing for the Incoming Minister**

**Commerce and Consumer Affairs**

**Digital Economy and Communications**

**November 2020**

**CONFIDENTIAL**

## Foreword from the Chair and Chief Executive

Ngā mihi ki a koe te minita hōu mō tē Komihana Tauhokoko. We look forward to working constructively with you in your new capacity as the responsible Minister for our entity and as the Minister of Commerce and Consumer Affairs, and of Digital Economy and Communications. This briefing note introduces you to our organisation, our role within your Ministerial portfolios, and our relationship to other portfolios.

As an independent Crown entity, we act in a spirit of service to everyone in our communities and we do not take for granted the trust that New Zealanders place in us to protect and promote their interests. Through our work we help to enable consumers and businesses to participate with greater confidence in more innovative and productive markets. Consumers then benefit from a better selection of goods and services at more affordable prices.

In recent years, rapid growth in our regulatory responsibilities has coincided with increased expectations. The growth in our functions, powers and duties has seen us move from a small to a medium sized organisation in a relatively short period of time. We now have around 250 staff, up from 180 five years ago. We expect these numbers to continue to climb as we implement new responsibilities including those in the fuel industry.

Further funding for our work was announced at Budget 2020. This funding has enabled us to start making the changes necessary to ensure that we can meet expectations now and in the future. For example, we are now better placed to continue to deliver robust market studies such as those that have been signalled into supermarkets and building supplies.

In addition to the timely initiation of the next market study,

In this briefing, we provide further detail about these matters and we have also highlighted upcoming areas of our work that may attract public attention. Aside from the next market study, one area of particular focus is likely to be our draft decision on 12 November on a proposal by Aurora Energy. This proposal relates to electricity prices in Dunedin, Central Otago, and Queenstown Lakes. If there are any topics in this briefing that you would like to explore in more detail, then we would be happy to provide further information or discuss with you in person.

We trust you find this information helpful and have enclosed supporting information including factsheets relating to our draft decision for Aurora Energy, an advance copy of our organisation priorities (in confidence), our recently published complaints snapshot, and a copy of our latest accountability documents. We look forward to sharing our new Annual Report with you shortly.

Anna Rawlings  
Chair

Adrienne Meikle  
Chief Executive

## Contents

<a href="#">Commission by the numbers</a> .....	1
<a href="#">Our contribution to New Zealanders</a> .....	2
<a href="#">Relationship to Ministerial portfolios and role of Commission Board</a> .....	5
<a href="#">Part of the public sector that serves New Zealanders</a> .....	8
<a href="#">Our financial story</a> .....	11
<a href="#">Our contribution to economic recovery</a> .....	14
<a href="#">High profile work coming up in your portfolios</a> .....	17
<a href="#">Market studies, Aurora Energy, and other Commerce Act priorities</a> .....	19
<a href="#">Fair trading and consumer credit priorities</a> .....	24
<a href="#">Priorities under the Telecommunications Act</a> .....	26
<a href="#">Energy and Resources—Fuel Industry Act 2020</a> .....	31
<a href="#">Attachment A: Commission Members and Associate Members</a> .....	32
<a href="#">Attachment B: Key contacts</a> .....	35
<a href="#">Attachment C: Other key accountability documents</a> .....	37

# Commission by the numbers

1 July 2019 – 30 June 2020



Refunds or compensation for affected consumers achieved in court or by settlement

**\$49.9 million**



**75** product safety inspection visits



**277,127** website users


**1,315,190** website page views

Media queries

**596**

Media releases

**134**



Fair trading, product safety and consumer credit matters completed

**517**

Official Information Act requests responded to

**186**



Penalties obtained for breaches of the Acts we enforce

**\$3.2 million**



Complaints received

**9,892**



Annual expenditure

**\$53.8 million**

## Our contribution to New Zealanders

1. The Commerce Commission is New Zealand’s competition, consumer and economic regulatory agency. Our vision is to make New Zealanders better off.

Figure 1: Achieving our vision



2. New Zealanders are better off when markets work well and consumers and businesses are confident. Our strategic objectives reinforce each other. Well-functioning markets help to provide confidence for consumers and businesses to participate in them. At the same time, the more confidence participants have, the better markets are likely to function.

Figure 2: Our strategic objectives



## Legislated responsibilities

3. We can contribute to making New Zealanders better off because we have been entrusted with specific responsibilities under legislation.

**Figure 3: Our responsibilities under legislation**



4. In recent years, our regulatory responsibilities have grown as each piece of legislation that we are responsible for has either been amended or reviewed, and additional legislation has been introduced. For example:
  - The Commerce Act 1986 has been amended to give us powers to undertake market studies to improve understanding about markets and identify ways to stimulate competition.
  - The Credit Contracts and Consumer Finance Act 2003 has been amended twice in the past six years to address lending practices, including irresponsible lending and the provision of high-cost short term loans, which often affect vulnerable consumers.
  - The Telecommunications Act 2001 has been amended to address retail service quality and introduce a new regulatory regime for fibre broadband.
  
5. The Government's expectations for our work have increased alongside growth in our regulatory responsibilities. These expectations have been conveyed to us in the last 12 months through:
  - the annual letter of expectations from the previous Minister of Commerce and Consumer Affairs, Honourable Kris Faafoi
  - the letter of expectations from the Minister of Commerce and Consumer Affairs following the Electricity Price Review
  - the enduring letter of expectations from the Minister of Finance and the Minister of State Services.

## **Relationship to Ministerial portfolios and role of Commission Board**

6. Under the Crown Entities Act 2004, you are responsible for the Crown's interests in, and relationship with, the Commerce Commission as an independent Crown entity. The Ministry of Business, Innovation and Employment (MBIE) is responsible on your behalf for monitoring our performance.

## **Relationship to Ministerial portfolios**

7. The following Ministerial responsibilities and interests related to our work are shown in Figure 4:
  - You, as the Minister for Commerce and Consumer Affairs, are responsible for our activities under the Commerce Act 1986, Fair Trading Act 1986, and Credit Contracts and Consumer Finance Act 2003.
  - You, as the Minister for the Digital Economy and Communications, are responsible for our activities under the Telecommunications Act 2001.
  - The Minister for Energy and Resources is responsible for our work under the Fuel Industry Act 2020 and has an on-going interest in our work with electricity and gas networks under Part 4 of the Commerce Act 1986.
  - The Minister of Agriculture is responsible for our monitoring role under the Dairy Industry Restructuring Act 2001.
  - The Minister of Finance has an interest in our work under the Credit Contracts and Consumer Finance Act 2003 through our membership of the Council of Financial Regulators.
  - The Minister for Infrastructure has an on-going interest in our work with infrastructure industries under Part 4 of the Commerce Act 1986, the Telecommunications Act 2001, and the Fuel Industry Act 2020.
  - The Minister for Transport has an on-going interest in our work with airports under Part 4 of the Commerce Act 1986, and in our work under the Fuel Industry Act 2020.
  - The Minister for Broadcasting and Media has an on-going in our specific responsibilities relating to broadcasting under the Telecommunications Act 2001.



8. From time to time our work may intersect with Ministerial portfolios outside of these on-going relationships, including when competition or consumer issues arise in particular sectors. For example, the Minister of Energy and Resources had an interest in our fuel market study during the study, and before the Fuel Industry Act 2020 was enacted.

**Figure 4: On-going relationships with Ministerial portfolios**

Ministerial Portfolio ↓	Legislation						
	Commerce Act 1986 (Parts 2 & 3)	Commerce Act 1986 (Part 4)	Fair Trading Act 1986	Credit Contracts and Consumer Finance Act 2003	Telecommunications Act 2001	Fuel Industry Act 2020	Dairy Industry Restructuring Act 2001
Commerce & Consumer Affairs	Responsible	Responsible	Responsible	Responsible	Interest	Interest	Interest
Digital Economy & Communications					Responsible		
Energy & Resources		Interest				Responsible	
Agriculture							Responsible
Finance				Interest			
Infrastructure		Interest			Interest	Interest	
Transport		Interest				Interest	
Broadcasting & Media					Interest		

### Status of the Commission as an independent Crown entity

9. The status of the Commission as an independent Crown entity supports the impartial application of legislation enacted by Parliament. However, although we are independent, we are not alone in the system of government that serves New Zealanders.
10. In performing our role, we have regard to Government priorities and expectations. We aim to be as open and transparent as possible. We endeavour to bring any matters of significance within your portfolio responsibilities to your attention promptly, particularly where these matters may be controversial or may become the subject of public debate or commentary.

## Regular reporting and meetings

In the past we have found regular reporting and quarterly meetings to be a helpful way of maintaining open communication. Please let us know how frequently you would like to meet.

## Role of the Commission Board in governance and decision-making

11. The Commission's Board is responsible for governing the entity and exercising its statutory powers and functions.<sup>1</sup> The Board's actions must be consistent with the Crown entity's objectives, functions, Statement of Intent, and Statement of Performance Expectations.
12. The Board has a strong focus on:
  - clearly setting the direction of the Commission
  - ensuring that the Commission achieves its objectives, as expressed in legislation and/or the entity's Statement of Intent
  - managing any risks to the Crown.
13. The Board is made up of Commission Members. It is supported by Associate Members that are appointed in relation to the exercise of specific powers and functions, but are not responsible for the governance of the Commission. Attachment A provides further information about the current six Members and four Associate Members of the Commission.
14. The maximum number of Commission Members is set in the Commerce Act 1986. A Bill is due to be introduced from within your portfolio early in 2021, as Parliamentary scheduling allows, for the cap on the number of Commission Members to be increased from 6 to 8 to reflect growth in the Commission's regulatory responsibilities. This Bill also proposes a number of other changes including amendments to laws relating to the misuse of market power (under s 36 of the Commerce Act 1986).
15. The Board delegates the day-to-day management of the Commission to the Chief Executive. Our Chief Executive, with support of the senior leadership team, is the key point of accountability between the Board and the organisation.

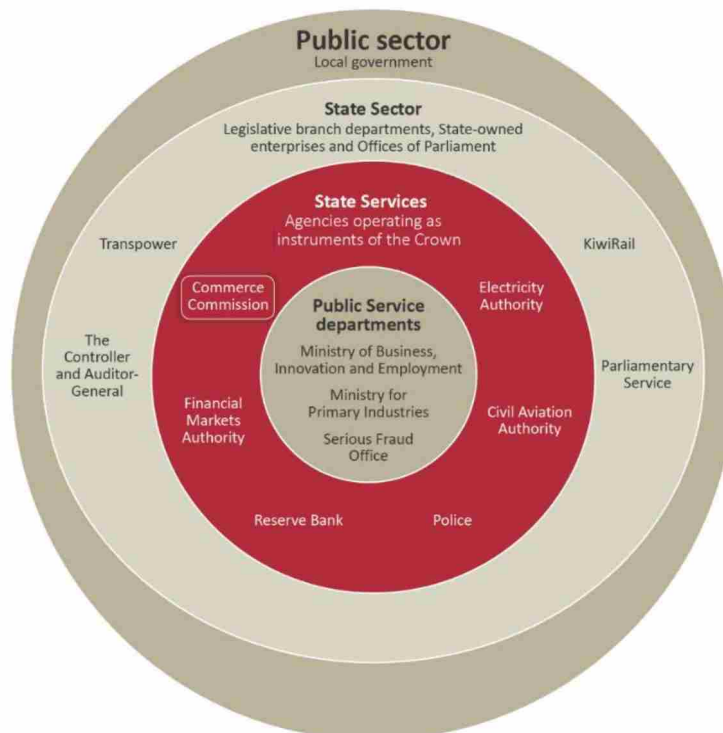
---

<sup>1</sup> Powers and functions may be delegated in accordance with section 73 of the Crown Entities Act.

## Part of the public sector that serves New Zealanders

16. As an independent Crown entity, the Commission is part of New Zealand's state services which sits within the wider public sector.

Figure 5: Public sector map



17. The expectation that public sector organisations such as ours work collectively and collaboratively with others to improve living standards for New Zealanders has been growing for some time. Part of the motivation for the Public Service Act 2020, for example, was to make the public sector more joined-up and citizen-focused.
18. We work with a range of organisations including consumer and user groups, consumer advocacy and advice agencies, other government entities, as well as the Ministers and ministries which oversee policy across our competition, consumer protection and regulatory workstreams.

**Figure 6: Who we work with**



19. Within New Zealand, we are a member of a number of multi-agency networks which help to ensure consistency and knowledge sharing across the public sector. These include the Council of Financial Regulators, Council of Energy Regulators, Government Regulatory Practice Initiative (G-REG), Independent Crown Entities Forum, and the Consumer Protection Partnership Forum.

### **Our role on the Council for Financial Regulators**

The Council of Financial Regulators (CoFR) contributes to maximizing New Zealand's sustainable economic well-being through responsive and coordinated financial system regulation. Members of CoFR are the Reserve Bank of New Zealand, the Financial Markets Authority (FMA), the Commerce Commission, Treasury and MBIE.

The Commission contributes by working closely with other CoFR agencies to coordinate our work and increase efficiency across the financial system, including identifying and monitoring important issues such as barriers to entry and regulatory change. We also develop a collective view on longer-term strategic priorities for the financial system and ensure there is proper balance between consumer protection and economic growth.

This year CoFR launched a number of workstreams to focus coordination of CoFR agencies' work in certain areas. The Commission currently chairs the Financial Inclusion and Consumer Engagement workstream.

20. In addition, as well as being our monitoring department, we work with the Ministry of Business, Innovation, and Employment in different portfolio areas including telecommunications, energy, competition and consumer policy. We also work closely with the Electricity Authority (EA), the FMA and Serious Fraud Office, to ensure we collectively deliver better outcomes for consumers without duplication or inconsistency.

#### **Our role with the Electricity Authority in the electricity sector**

The Commission works proactively with the EA given our common interests in relation to the electricity industry.

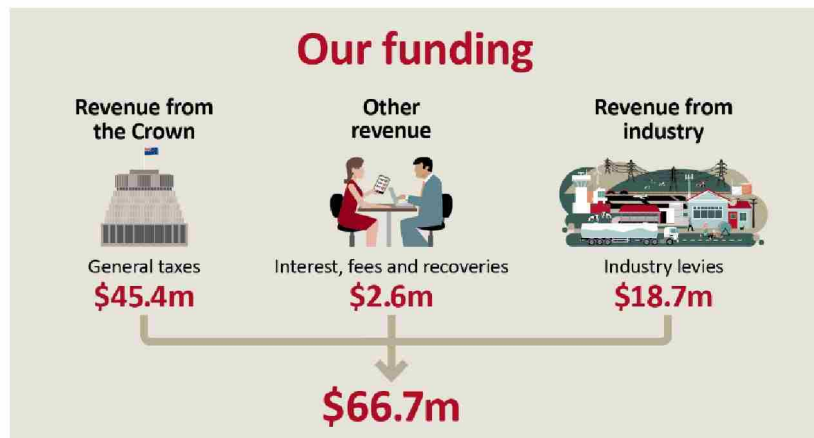
We have had a Memorandum of Understanding with the EA since 2010 setting out how we coordinate our respective roles under the Electricity Industry Act 2010 and the Commerce Act 1986, and as regulatory agencies we work closely on different issues across the electricity sector, including in relation to consumer engagement, the impact of COVID-19, and the competition effects of other activities undertaken by electricity distribution networks.

We have regular engagement at the Board level and have been actively involved in the EA's Innovation and Participation Advisory Group. This group is focused on issues specifically related to new technologies and business models, and consumer participation.

## Our financial story

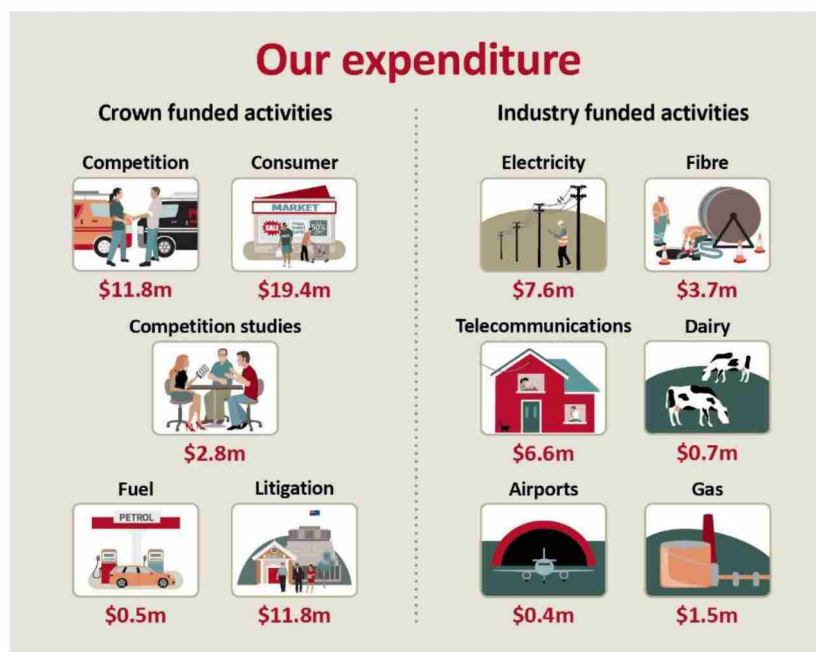
21. Our appropriations are funded from the Commerce and Consumer Affairs and Communications portfolios under the Vote Business, Science and Innovation. A snapshot of our budgeted funding for 2020/21 shows that our activities are funded through a combination of revenue from the Crown (general taxes) and industry levies.

Figure 7: Our budgeted funding for 2020/21



22. Our budgeted expenditure for each output class in 2020/21 is shown below. Industry funded activities are funded from levies on businesses (rather than the Crown), which limits which activities these funds can be used on.

Figure 8: Our budgeted expenditure for 2020/21



23. PWC (on behalf of MBIE) recently completed a review of our funding and found that the Commission was performing well and making efficient and effective use of its resources. PWC also concluded that additional funding was now required to strengthen the impact of the Commission through a mix of Crown funding and industry levies.

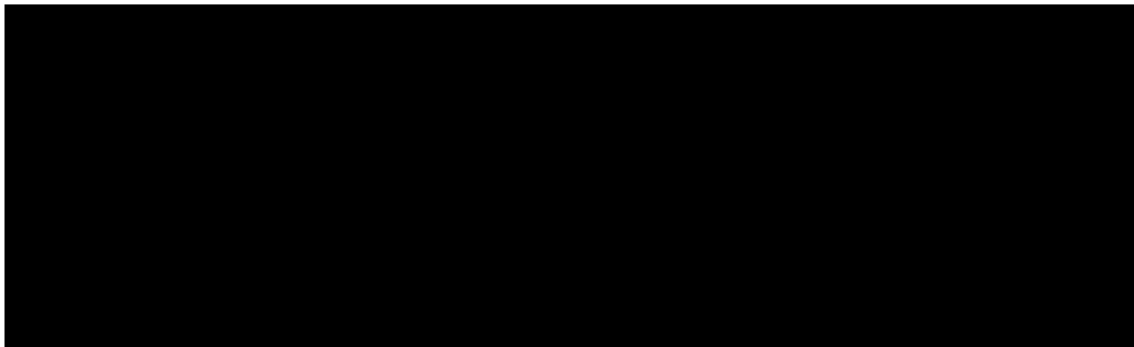
**Budget 2020** [REDACTED]

24. Due to rapid growth in our regulatory responsibilities and increased Government expectations, the Commission's Budget 2020 bid signalled cost pressures needed to be addressed [REDACTED]. The new Crown funding started with an additional \$7m this year, rising by to a total Crown funding increase of \$13.9m by 2023/24.

25. The increased Crown funding has enabled the Commission to start making the investments necessary to continue to be successful into the future. Areas of focus this year include:

- increasing the number of people in competition and consumer credit roles
- building a more modern, resilient, and data-driven organisation
- continuing to evolve our engagement with consumers and businesses to connect with the people impacted by our work, and hear what matters to them
- expanding our presence in Auckland to be closer to a diverse labour market and key stakeholders, particularly those in the credit sector
- supporting strategy and governance.

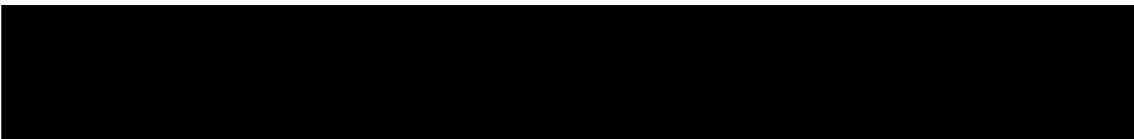
26.



27.



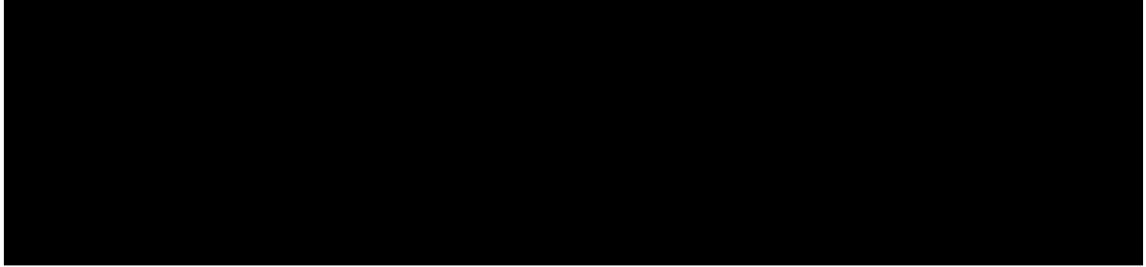
28.



**Fuel regulatory regime**

29. In August 2020, the Fuel Industry Act 2020 was enacted to promote competition in engine fuel markets for the long-term benefit of end users of fuel products. The Act introduces a number of regulatory interventions to address shortcomings in competition identified by the Commission during its 2019 market study.

30.





## **Our contribution to economic recovery**

31. All of our work supports economic recovery because New Zealanders are better off when markets work well, and consumers and businesses are confident market participants. However, some aspects of our work may be more significant than others as New Zealand recovers from the impact of COVID-19.
32. Here we summarise some of the main competition, consumer and regulatory issues associated with COVID-19, before outlining the main ways in which our work will contribute to economic recovery. Increased funding was provided at Budget 2020 to support us in carrying out this work.

### **COVID-19 has brought greater uncertainty to the future shape of markets**

33. With a large number of businesses expected to face financial hardship, the difficulties may be particularly acute for small and medium sized enterprises. Small and medium sized enterprises play a key role in competitive markets by driving innovation and challenging larger incumbents. More general commercial impacts may lead to long-term changes to the structure of markets (including through mergers) and increase the likelihood of anti-competitive conduct such as cartels.
34. Financial hardship faced by businesses may also translate into increasing numbers of consumers that are unemployed and potentially vulnerable to anti-competitive or misleading business practices, and irresponsible lending. Some people may need credit for the first time. Others may need additional credit, or variations to existing credit facilities that increase their indebtedness.
35. There are also challenges associated with addressing investment requirements in infrastructure industries at a time when the affordability of essential services is increasingly important for consumers. This could create risks to infrastructure performance which would have implications for our work in these sectors.

### **Key contributions to economic recovery**

36. The way competitive markets perform could have a particularly significant long-term effect on economic recovery. Competition between businesses is critical because it contributes to:
  - more affordably priced goods and services at the quality that consumers demand
  - stronger incentives for businesses to innovate and make efficient use of resources
  - higher productivity jobs for New Zealanders.

37. In 2020/21 we will be helping to safeguard the integrity of competitive markets in response to COVID-19, including:
- working with other Government agencies to ensure competition considerations feature where appropriate in policy development, regulatory initiatives, and procurement
  - using the new fast track process to consider authorisation for businesses that want to work together in the public interest
  - reviewing mergers and acquisitions that occur in response to changing circumstances, given failing firms and increased concentration could affect sectors for years to come
  - educating industry about their obligations under competition law, including the boundaries between lawful collaboration and harmful collusion
  - taking enforcement action against businesses that unlawfully reduce or remove competition, which can harm consumers and undermine economic recovery
  - building our understanding about the impact of recent events on competition, including identifying the markets most affected
  - in infrastructure industries subject to sector-specific regulatory regimes, protecting and promoting competition where it is beneficial to consumers, including:
    - in the electricity industry, helping to enable competition in the supply of new technologies that support electrification of the economy
    - in the fuel industry, starting to work towards more competitive wholesale prices for petrol and diesel
    - in telecommunications, supporting requirements for service quality to reflect consumer demands.
38. In addition, economic recovery will be supported by enabling consumers to make well informed purchasing and borrowing decisions. Our existing responsibilities in the consumer credit sector may be more significant than ever for borrowers and lenders. New protections create barriers to entry to the lending sector through certification requirements, offer the ability for stronger scrutiny of lending conduct, and contribute to a safer borrowing environment. Our fair trading work to detect and deter conduct which misleads or harms business and consumers will also be important in this environment.

39. On-going focus on the performance of infrastructure used in the supply of essential services will be critical in response to concerns about affordability and reliability. Strong and sustainable infrastructure is also required to enable societal changes – such as remote working and electric vehicles – that will support the transition to a low carbon economy.

## High profile work coming up in your portfolios

40. The performance of markets is coming under increased public scrutiny in the context of economic recovery, particularly markets that are essential to everyday life and to the economy. Here we have identified areas relating to our work that are most likely to be the focus of public interest before Christmas.

**Figure 9: Calendar of key publications/events before Christmas**

Date	Sector	Publication / Event	Profile	Page
12 November	Electricity	Commerce Commission Draft Decision on price increases proposed by electricity distribution network Aurora Energy in Dunedin, Central Otago and Queenstown Lakes	Regional	20
17 November	Telecommunications	Commerce Commission Final Decision on 111 Contact Code	Sector	27
16 November	Groceries	Cabinet discussion of Terms of Reference for proposed market study into groceries	National	19
Mid-Late November	Fibre broadband	Latest date for appeals against our final decision on regulatory rules ('input methodologies') applying to new regime for fibre broadband services	Sector	25
10 December	Telecommunications	Commerce Commission Final Decision on Copper Withdrawal Code	Sector	27

41. Other issues will inevitably arise related to our work and we will brief you on those at the time. A common challenge that we face is that public perception about our role can differ to what is permitted under legislation. For example, during Alert Level 4 there were concerns raised about the prices charged by certain supermarkets for particular products. Although the reasons provided for any price increases cannot be false or misleading, high prices are not illegal under the Fair Trading Act 1986. In cases such as these we help to ensure that matters arising are referred to, or worked through with, other responsible agencies.<sup>2</sup>

<sup>2</sup> In the example provided, the 'Price Watch' website was created by MBIE to provide consumers with a single port of call for price related complaints, and those that related to the Fair Trading Act 1986 were passed to us to consider.

42. Commissioners and staff are frequently in the media talking about our work, particularly our decisions and enforcement outcomes. We issue between 130-150 media releases a year across all of our areas of responsibility. We also answer a wide range of questions about our work and whether we have had complaints about specific issues and traders. At current volumes we expect to answer around 700 media queries this year.

## **Market studies, Aurora Energy, and other Commerce Act priorities**

43. Under the Commerce Act 1986, we have responsibilities to promote the long-term interests of consumers by:
- protecting competition including preventing businesses from unlawfully acquiring significant market power (eg, through mergers with, or agreements not to compete with, their rivals), and from unlawfully misusing market power by acting anti-competitively
  - promoting competition by using powers to undertake competition studies to assess whether - and, if so, how - competition could be improved in other markets in the economy
  - providing economic regulation of monopoly infrastructure, including energy networks and New Zealand's three main airports, which involves shining a light of infrastructure performance, and setting revenue limits and quality standards for certain services.

Within this work the most high profile matters in the coming weeks are likely to be the initiation of the next market study, and our draft decision on 12 November on a proposal by Aurora Energy. Information on these topics is included below along with background material on other matters you may be interested in.

### **Market studies into grocery products and building supplies**

44. In 2018 the Commission was given the power to carry out market studies under the Commerce Act 1986. Such studies can be initiated by you, as the Minister of Commerce and Consumer Affairs, or the Commission.
45. We understand Cabinet will be discussing the Terms of Reference for a proposed study into the market for grocery products on 16 November.
46. A study is a significant piece of work for the Commission – a detailed analysis of whether competition in a market is or is not working or could be enhanced. At the conclusion of a study the Commission may make recommendations to Government, business or consumers as to what could occur to make the relevant market work more competitively. Work of this nature requires a detailed evidence base and requires significant work from the sector involved – but can clarify assumptions about a market and deliver long-term productivity benefits to both business and consumers.

47. Since the publication of our fuel market study in December 2019, we have been preparing for our next market study. This work has involved:
- investing in the setup of the function (learning from our first study and developing our internal processes)
  - gathering information including from MBIE, Treasury, and the Productivity Commission to identify issues which may be relevant for a market study
  - preparing an approach for developing a pipeline of matters for self-initiation of a market study, and commencing development of that pipeline, to ensure we were prepared if the Government did not seek to initiate one.
48. We have also been engaging with MBIE on possible Government-initiated matters for a market study and are well placed to initiate a study prior to Christmas in the grocery sector.

#### **Electricity—Our draft decision on network price increases proposed by Aurora Energy**

49. On 12 November 2020, we are publishing a draft decision in response to a proposal by Aurora Energy that would enable the business to significantly increase network prices for electricity consumers in Dunedin, Central Otago and Queenstown Lakes. Aurora Energy is owned by Dunedin City Council through the company Dunedin City Holdings.
50. We would welcome the opportunity to discuss the impact of our decision with you and the Minister of Energy and Resources before publication on 12 November. We have also prepared factsheets on the proposal which have been enclosed with this briefing.
51. Aurora Energy is among a number of electricity distributors that are currently subject to a 'default' revenue limit and quality standard (known as the DPP) that was set in a 'relatively low-cost way', as required by Part 4 of the Commerce Act 1986. All electricity distribution networks on a default path, including Aurora Energy, have the option of applying for alternative requirements to meet their circumstances—this is known as a 'customised price-quality path' (or CPP).
52. In March 2020, Aurora Energy was penalised almost \$5 million by the High Court for breaching its network quality standards between 2016 and 2019 in proceedings brought by the Commerce Commission. Aurora Energy admitted to under-investing in its network, leading to a significant proportion of its equipment being in a deteriorated state, resulting in an increasing level of power outages. The business has recently been restructured and a new Board and executive has been appointed.

53. As part of its 10 year plan to restore the network, Aurora Energy has applied to the Commission for a CPP which would allow it to charge its customers more to fund a \$383 million three-year investment plan (which rises to \$609 million over five years) starting on 1 April 2021. Its plan is designed to make its electricity lines network safer and stabilise the reliability of its network around current levels to prevent further deterioration. The proposal is more than double the allowances we set Aurora Energy for previous comparable periods.
54. We expect our draft decision will attract a significant amount of attention as a result of the size of the implied pricing change, particularly in the context of COVID-19 and in relation to the effect on low-income households.
55. The decision we are required to make relates solely to the amount of revenue that Aurora Energy can recover from its direct consumers (ie, retailers), rather than the specific prices that Aurora can charge to individuals in different consumer groups including differences between regions. How the revenue is recovered by Aurora is a matter for the EA which oversees pricing methodologies.
56. Through the media and our own direct engagement with consumers, we have heard a lot of anger and frustration amongst consumers, particularly in Central Otago. Factors that contribute to this sentiment include:
- **Lack of trust** – and specifically a lack of trust in Aurora Energy's ability to deliver based on past poor performance, as well as its perceived lack of engagement and ineffective communication with its customers over many years. This sentiment was particularly strong in Central Otago, whose residents said they did not trust Aurora Energy's Board and felt it had prioritised the interests of Dunedin where Aurora Energy's owners (Dunedin City Council) are based.
  - **Price impact** – consumers are now being asked to pay to fix the network and feel like they have already paid enough in the past for maintenance, so they feel they are effectively having to 'pay twice' after years of underinvestment by the business. There are also concerns about Aurora's regional differences in pricing, where residents in Central Otago pay considerably more for lines services than residents in Dunedin.
  - **Level of power outages** – many stakeholders expressed concerns about the reliability and quality of Aurora's lines services. Reliability is considered particularly vital in one of the coldest regions of the country, where heat pumps are the only source of heating for many people due to tightening air-quality regulations.



57. In addition, and clearly outside the scope of our current process, it is evident that a number of people outside Dunedin feel they have not benefitted and are worse off as a result of the reform of electricity markets that took place in the 1990s. Nevertheless, Aurora Energy's customers generally accepted that money needs to be spent on restoring the safety and reliability of the lines network.
58. We will follow our draft decision with further meetings with consumers in Otago and consideration of other consultation responses. We are required to complete our assessment and issue our final decision on Aurora Energy's proposal by 31 March 2020.

#### **Cartel criminalisation—Preparation for new criminal offence to come into force**

59. A priority for us this year is educating businesses and other stakeholders about the introduction of a new criminal offence for competitors who agree not to compete, which will carry a maximum penalty of seven years in prison when it comes into effect in April 2021. This work has included a media campaign and targeted outreach about the law change and what cartel criminalisation means.
60. We have also been preparing for the law change by engaging with other parts of the public sector, including Crown Law and NZ Police, to ensure we are all prepared to work together under the new regime. Related to this we have been engaging with similar international enforcement agencies to better understand the potential impact of criminalisation on how we operate, such as the Australian Competition and Consumer Commission (ACCC), the U.S. Department of Justice, the Competition Bureau Canada, and the U.K. Competition and Markets Authority.

#### **Electricity Price Review—Our response to the findings of the review**

61. In May 2019, an expert panel appointed by the Government completed its investigation into whether the electricity industry delivered a fair and equitable price to consumers. Your predecessor as the Minister of Commerce and Consumer Affairs wrote to us in December to draw our attention to the key findings of the Electricity Price Review and the phased response to its recommendations.
62. One of the key findings in the review was that consumers, particularly households and small businesses, struggle to make their voices heard and exert influence over decisions that affect them in the sector. We are now looking at ways to strengthen the consumer voice and ensure it is heard and have already made some practical changes. This work is closely connected to the evolution of consumer engagement initiatives across all of our work.

63. For example, to inform our assessment of Aurora Energy's proposed price increases, we are trialling new ways of engaging with consumers. We have also introduced new measures to assess the effectiveness of engagement by Transpower New Zealand. In addition, we are starting to leverage the network of consumer representatives that we already engage with through other work. This network includes Aged Concern, Rural Women, and the Salvation Army.
64. Another key finding of the review in relation to our work was that insufficient innovation is taking place to meet the challenges of new technology, electrification and decarbonisation. We have since incorporated mechanisms to encourage innovation by electricity networks in the five-year revenue limits and quality standards that we set in November 2019, including a \$6m allowance for investment in innovation.
65. We do not have a statutory mandate in our legislation to promote the Government's climate change objectives, with the exception of an obligation to promote incentives for energy efficiency when regulating electricity lines businesses. Nonetheless, the choice of projects we progress, and the decisions we make within our work, can both meet our statutory requirements and contribute to the Government's objective of decarbonisation, in particular by supporting greater electrification of the economy.
66. The review also considered improvements to future-proof the sector and its governance structures. Consistent with Ministerial expectations, we have continued to work with government officials and other agencies on these matters, including: the establishment of the Consumer Advocacy Council, changes to the Electricity Industry Act, proposals to strengthen our powers under Part 4 of the Commerce Act, cross-appointments between the Commission and the EA, and the proposed review of energy sector policy and regulatory institutions.

## Fair trading and consumer credit priorities

67. Tackling consumer harm is vital to ensuring New Zealanders have the confidence to participate in our economy, whether as buyers or sellers of goods and services.
- Under the Fair Trading Act 1986, we help make sure consumers are not misled when buying products and services and enforce rules relating to product safety.
  - Under the Credit Contracts and Consumer Finance Act 2003, we help protect people when they borrow money or buy goods on credit, including through mortgages, credit cards and short or long-term loans.
68. This work helps to establish a level playing field for competition between businesses and enables consumers to make better informed purchasing and borrowing decisions.

We are not currently aware of any issues in these areas that may get significant public or media attention in the immediate future but we are happy to provide briefings if any issues arise in the weeks ahead. Topics of interest within your portfolio are summarised below.

### Consumer credit—Implementing new powers in the credit sector

69. New consumer credit protections were introduced when the Credit Contracts and Consumer Finance Act 2003 was amended in December 2019. The new responsibilities have complemented our existing responsibilities in the credit sector, and will have considerable implications for our role.
70. For example, previously, there were no penalties associated with failure to comply with lender responsibility principles. Now failure to abide by these principles could lead to civil pecuniary penalties, statutory damages, and enforceable undertakings. These changes mean we will be better able to incentivise compliance and take enforcement action in response to irresponsible lending.
71. We are also now responsible for enforcing new limits that have been introduced to cap the fees and interest charged on high-cost consumer credit contracts. Before taking any enforcement cases, we have been working to promote compliance by educating and engaging with lenders about the changes. Enforcing these limits is now a priority for us in 2020/21. Already we have seen that the number of lenders offering contracts of this type has dropped from 28 to 7 – and we are now monitoring to see how lenders’ product offerings and costs of borrowing have changed since the law came into force.

72. In addition, from October 2021, lenders and mobile traders must obtain certification from the Commission that their directors and senior managers are fit and proper persons to hold their respective positions. In February this year, we engaged with stakeholders to seek feedback on the implementation of the new requirements. In June, we provided a summary of the feedback received and our response. We have also started establishing the function and registry ahead of the due date for certification.<sup>3</sup>
73. A number of other changes will enhance our investigation and enforcement of the Credit Contracts and Consumer Finance Act 2003.

#### **Complaints snapshot in 2019/20—Increase in complaints driven by COVID-19 related issues**

74. On 5 November, we released a snapshot of the complaints we received in the year ending 30 June 2020, which has been enclosed alongside this briefing. The latest figures show the Commission received nearly 10,000 complaints over the year – an increase of more than 10%. However, 20% of the complaints we received related to COVID-19 in some way.

#### **Fair trading and consumer credit—Responding to consumer harm including COVID-19 issues**

75. We have established several focus areas for educating and enforcing in response to consumer harms arising or emphasised because of COVID-19. These include:
- false and misleading representations about contractual and statutory rights, and unfair contract terms relied on to reduce consumer rights
  - misrepresentations about goods and services that are in greater demand due to COVID19.
76. This work has involved considering issues related to the travel sector, facemasks and products claiming to cure COVID-19. We are working closely with a range of other agencies such as MBIE, Medsafe, Ministry of Health on these matters.
77. We are also prioritising the prevention of harm from pyramid schemes that rely on the recruitment of others and promise financial rewards that are too good to be true.

---

<sup>3</sup> The due date for certification was pushed back due to the impact of COVID-19.

## Priorities under the Telecommunications Act

78. Reform in 2018 of the Telecommunications Act 2001 was necessary to keep pace with technological change and emerging market trends. Major growth in Ultrafast Broadband (UFB) fibre services and the relative decline in copper services has transformed the sector. At the same time, concerns about retail service quality for consumers have been increasing.
79. The changes to the Telecommunications Act 2001 mean we now have a wider role in the industry. Key features of the amendments are:
- introduction of a new regulatory regime for fibre broadband services
  - transitional arrangements for smoothing the move from copper to fibre and fixed wireless services
  - more regulatory oversight of retail service quality to improve outcomes for consumers.
80. At the same time as implementing these changes, we continue to have significant regulatory obligations under the pre-existing and continuing provisions of the Act.<sup>4</sup> These include roles in promoting competition and transparency in telecommunications markets, and facilitating innovation in downstream markets. For example, we remain responsible for regulating certain fixed line and mobile services by setting the price and/or access terms for those services. We are also responsible for monitoring and reporting on competition, performance and developments in telecommunications markets.

In the weeks ahead, there may be commentary about our recently published decisions on the regulatory rules for fibre – known as input methodologies – and about our final decisions on the consumer codes applying to withdrawal of copper services. Here we provide information about both of these topics as well as an overview of our retail services work.

---

<sup>4</sup> We also remain responsible for determining who contributes to the Telecommunications Development Levy, including the impact of including broadcasting under scope of potential liable parties.

## **A new framework for fibre regulation including determination of input methodologies**

81. The Government's UFB initiative aims to achieve fibre-to-the-premises to 87% of the population (including 1% private fibre) by 2022. Rural areas of New Zealand are covered by the separate Rural Broadband Initiative. These new fibre networks will provide faster and more reliable voice and broadband internet services to consumers. The Government's Crown Infrastructure Partners contracted with four companies to build these fibre networks: Chorus, and three Local Fibre Companies – Northpower Fibre, Ultrafast Fibre and Enable Networks.
82. Under the 2018 amendments, the Commission was set the task of developing a new regime for the regulation of fibre fixed line access services, similar to the approach taken to the regulation of other natural monopolies in the electricity, gas, and airport sectors. Regulation in these areas is designed to counterbalance the incentive of monopoly providers to increase prices and reduce quality contrary to the interests of consumers.
83. Implementing the new regulatory regime for fibre services is a two stage process:
  - The Commission is first required to determine a framework— referred to as “input methodologies” – that set out the upfront rules, requirements and processes that will apply to fibre providers. The purpose of input methodologies is to promote certainty in relation to a range of key matters— including asset valuation, cost allocation, rates of return, and quality—that are traditionally highly contested parts of regulatory decision-making.
  - The Commission must then apply this upfront framework to develop the detailed regulatory requirements that will apply to fibre providers under the regime. These requirements include the maximum revenue that Chorus can earn from its customers and the minimum quality standards it must meet. Additionally, all four fibre service providers will be required to publicly disclose information about their performance, such as on their profitability, revenue, and capital expenditure. This is intended to shine a light on their performance for stakeholders and consumers.
84. We recently completed the first stage of this process—setting the input methodologies framework. Our final decisions on the core input methodologies were published on 13 October. Our final decision on the approach to valuing the financial loss asset for fibre service providers was published on 3 November.

85. We believe that, operating together as an integrated set of arrangements, our input methodologies:

- give fibre providers upfront certainty on the regulatory rules that will be applied to their businesses, while also counterbalancing their incentives to increase profits at the expense of consumers due to the lack of effective competition
- incentivise fibre providers to innovate, invest and improve their efficiency so that consumers receive high quality and affordable broadband services, as would occur in a competitive market.

86. Having set the input methodologies for fibre services, and irrespective of any potential for appeal, we are now moving forward with the final stage of the regulatory process.<sup>5</sup> This involves us using the input methodologies framework to set the detailed regulatory requirements for fibre providers. In this part of the process we will set the maximum allowable revenue, and minimum quality standards, for Chorus, and the information disclosure regime for all fibre providers. This work is due to be completed by the statutory deadline of 1 January 2022.

#### **Transitional arrangements for those moving off copper services**

87. A key element of the policy intention underlying the 2018 amendments is the move to fibre and the progressive withdrawal of copper in the fixed line space. We have been tasked with helping to ensure a smooth transition from one technology to another. Our current work in this area is centred on three key initiatives:

- **Equivalence & Non-discrimination Guidelines**—We recently completed extensive consultation with the industry and issued guidelines on how we will approach equivalence and non-discrimination requirements in a fibre world. We are currently looking into whether the unbundled fibre services that fibre providers have been required to supply from 1 January 2020 comply with these requirements.
- **Copper Withdrawal Code**—We have been consulting on a code that sets out the minimum consumer protection requirements that Chorus must meet before it can withdraw copper in neighbourhoods where fibre services are available.<sup>6</sup>

---

<sup>5</sup> Interested parties are able to appeal to the High Court for a full review of the merits of the input methodologies that have been determined. Appeal must be lodged within 20 working days of our decision.

<sup>6</sup> For example, the code will require that before the copper service can be withdrawn an equivalent fibre service is readily available at no additional cost to the consumer. Chorus will also have to provide information about available fibre services and give adequate notice of the withdrawal.

- **111 Contact Code**—We are developing a code that is intended to ensure that vulnerable consumers, who are more likely to require access to emergency services (such as those with a known medical condition), have access to an appropriate means of contacting the 111 emergency service in the event of a power failure (because the equipment used to provide fibre and fixed line services does not work without electricity).
88. As noted, the Equivalence and Non-discrimination Guidelines have been issued, and are currently being applied to the unbundled fibre service offered by fibre providers.
89. We plan to publish the Copper Withdrawal Code on 10 December 2020. In the course of consultation, some members of the public have expressed concern about the withdrawal of copper services, and we have attempted to explain that the intention of the code is to smooth rather than stop the move to fibre.
90. Our final decision on the 111 contact code is planned for publication on 17 November 2020. Under this code, retail service providers will need to provide vulnerable consumers who only have access to a fixed line phone with a suitable means of contacting the emergency services (such as a mobile phone or a battery back up) in the event of a power cut.

#### **Changes to improve retail service quality for consumers**

91. The number of consumer complaints is an indicator of consumer experience and, over the past year, consumer complaints and enquiries to the industry dispute resolution scheme, the Telecommunications Disputes Resolution Scheme (TDRS), and the Commerce Commission have increased.
92. In 2018, Parliament gave the Commerce Commission new powers and a clear direction to improve consumer outcomes in retail telecommunications markets. The Commission's powers include the ability to review industry retail service quality (RSQ) codes, provide guidelines to the industry on RSQ matters, and create Commission RSQ codes. The Commission must also review industry dispute resolution schemes at least once every three years.
93. The first step completed by the Commission was a review of mobile consumer bills, which concluded that there are transparency and inertia issues that mean consumers could make significant savings if they switched. On 17 September 2020, we published an open letter setting out our expectation that operators address these issues by increasing the usage information available to consumers and implementing



measures to help keep consumers on plans that best reflect their actual requirements.




94. Subsequently, on 29 October 2020, we published an open letter to invite feedback from industry on our efforts to improve RSQ for telecommunications consumers. The two key issues that we have identified for feedback are:
- the key pain points being experienced by fixed and mobile consumers and how they could be remedied
  - how the industry dispute resolution scheme (known as the 'Telecommunications Disputes Resolution' scheme or TDR) could be improved to support RSQ.
95. In the letter, we indicated that we intend to conduct a widespread, statistically significant survey to further understand RSQ issues and cross-check the responses we receive to our open letter and any subsequent workshops. We currently plan to conduct this survey in January 2021. The results of this survey and the feedback we receive on consumer pain points will feed into a consultation on proposed solutions to key consumer pain points which we are planning to conduct around March 2021.
96. We also signalled that we intend to publish Terms of Reference for a review of the TDRS once stakeholder feedback on our open letter had been received. We currently plan to publish the Terms of Reference in February 2021 and will set out proposed next steps in the TDRS review process at that time.

## **Energy and Resources—Fuel Industry Act 2020**

97. Another matter of interest relating specifically to the Energy and Resources portfolio is our work in relation to the Fuel Industry Act 2020. Under the Act the Commission will be responsible for enforcing the provisions of the Act, as well for conducting and publishing analysis to monitor and shine a light on the competitive performance of fuel markets.
98. The first responsibilities we have under the Act are scheduled to start in August 2021. MBIE are responsible for the development of fuel regulations and we are commenting when requested on matters of implementation and enforcement.

## Attachment A: Commission Members and Associate Members

The Governor-General, on the recommendation of the Minister of Commerce and Consumer Affairs, appoints Commissioners for their knowledge of, and experience in, areas relevant to the Commission's interests. The Telecommunications Commissioner is appointed on the recommendation of the Minister of Digital Economy and Communications.

	<p><b>Anna Rawlings</b></p> <p>Chair</p> <p>Anna Rawlings was appointed Chair in June 2019, and has been a Commissioner since June 2014. She was previously a partner in the dispute resolution division of Minter Ellison Rudd Watts, where she specialised in contentious and non-contentious aspects of competition, regulatory and consumer law. Anna holds a BA/LLB (Hons) from the University of Auckland and an LLM from the University of Toronto, where her work focused on law and economics.</p>
	<p><b>Sue Begg</b></p> <p>Deputy Chair</p> <p>Sue Begg was appointed as a Commissioner in June 2009 and Deputy Chair in July 2010. She was also appointed as an Associate Member of the Australian Competition and Consumer Commission from April 2016 to June 2019. Sue is an economist, whose previous roles include director of the consultancy company Impetus Group Limited, Vice-President and head of the economic advisory unit of the investment banking division of Credit Suisse First Boston NZ Limited (and its predecessor companies) and manager of the Macroeconomic Policy section at the Treasury.</p>
	<p><b>Tristan Gilbertson</b></p> <p>Telecommunications Commissioner</p> <p>Tristan Gilbertson was appointed Telecommunications Commissioner in June 2020. He is a corporate and commercial lawyer with extensive international experience in telecommunications law and regulation. His past roles include Legal &amp; Regulatory Director – Asia-Pacific at Vodafone Group Plc, Group General Counsel at Telecom and Group General Counsel of Digicel Group Ltd. Tristan holds a BA/LLB(Hons) from the University of Auckland and has completed the Executive Leadership Development Programme at the Wharton School of the University of Pennsylvania.</p>



### **Dr Derek Johnston**

Commissioner

Derek Johnston was appointed as a Commissioner in November 2019. A commercial lawyer, Derek has extensive experience and knowledge of competition law coupled with significant mergers and transactional experience and familiarity with many of the regulated sectors. His past roles include being the independent Chair of NZX's Regulatory Governance Committee and the Chair of the NZ Markets Disciplinary Tribunal. For many years Derek was a corporate partner with Russell McVeagh and most recently has been practising as a barrister and arbitrator at Thorndon Chambers. Derek holds undergraduate and postgraduate degrees in law from the University of Auckland and a doctorate in law from the University of Toronto.



### **Dr John Small**

Commissioner




Dr John Small was appointed in December 2018 as Associate Commissioner and as a Commissioner in June 2020. John is the Founding Director of economic consultancy firm, Covec, and was also the former Head of the University of Auckland's Economics Department. He has an extensive experience undertaking complex competition analysis in a wide range of sectors, including energy, transport, agriculture, telecommunications, payment systems, and construction. John was also previously a lay member of the High Court of New Zealand, frequently called as an expert witness before courts, tribunals and commissions.



### **Elisabeth Welson**


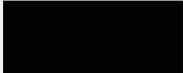

Commissioner

Elisabeth Welson was appointed in September 2012 as Associate Commissioner and as a Commissioner in August 2013. Before joining the Commission, she was a senior commercial partner at Simpson Grierson, where she co-led the competition and regulatory group and headed the energy, natural resources and utilities market group. Elisabeth holds an LLB (Hons) from the University of Auckland and has practised as a Barrister and Solicitor in New Zealand as well as a Solicitor of the Supreme Court of Queensland and Solicitor of the Supreme Court of New South Wales.

	<p><b>John Crawford</b></p> <p>Associate Commissioner</p> <p>John Crawford was appointed as an Associate Commissioner in October 2018. Prior to joining the Commission, John was Chief Executive of Auckland Council Investments. He has also held senior management roles at the Treasury, Department of the Prime Minister and Cabinet, and New Zealand Trade and Enterprise. John has substantial commercial and regulatory experience in key sectors such as electricity, energy and telecommunications. He has undergraduate degrees in Science and Engineering, and also holds an MBA from the University of Auckland.</p>
	<p><b>Joseph Liava'a</b></p> <p>Associate Commissioner</p> <p>Joseph Liava'a was appointed as an Associate Commissioner in April 2019. Prior to joining the Commission, Joseph worked as the Community Liaison Manager for Nirvana Health Group. Before that he was a consumer law adviser for the former Ministry of Consumer Affairs and also worked as a private secretary for the Minister.</p>
	<p><b>Vhari McWha</b></p> <p>Associate Commissioner</p> <p>Vhari McWha was appointed as an Associate Commissioner in September 2020. Vhari is an experienced economist and has advised on public policy and regulation, including competition analysis and market design. She has a background in quantitative analysis, including cost benefit, modelling and forecasting work. Vhari has specific expertise in the energy sector. Prior to joining the Commission, Vhari was a Director at Sapere. Her earlier roles include Deputy Director at the economic consultancy NZIER and Regulatory Affairs Manager at Meridian Energy. Vhari holds an MCom (Hons) in economics from the University of Canterbury.</p>
<p><b>Sarah Court</b></p> <p>Associate Commissioner (ACCC cross-appointment)</p> <p>Sarah Court was cross-appointed from the ACCC as an Associate Commissioner in December 2015. She has been a Commissioner of the ACCC since April 2008. She is a former senior executive lawyer and director with the Australian Government Solicitor. She has extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation. As Chair of the ACCC's Enforcement Committee, Sarah oversees the agency's enforcement and litigation programme. She also sits on the ACCC's Merger Review Committee, Adjudication Committee and the Infrastructure Committee.</p>	

## Attachment B: Key contacts

Contact	Role and contact details	Area
Anna Rawlings	<b>Chair</b>  <a href="mailto:Anna.Rawlings@comcom.govt.nz">Anna.Rawlings@comcom.govt.nz</a>	All
Adrienne Meikle	<b>Chief Executive</b>  <a href="mailto:Adrienne.Meikle@comcom.govt.nz">Adrienne.Meikle@comcom.govt.nz</a>	All
Tristan Gilbertson	<b>Telecommunications Commissioner</b>  <a href="mailto:Tristan.Gilbertson@comcom.govt.nz">Tristan.Gilbertson@comcom.govt.nz</a>	Tristan leads the Commission's implementation, monitoring and enforcement of the Telecommunications Act 2001, which regulates the supply of certain telecommunications services to promote competition in telecommunications markets.
John McLaren	<b>Principal Adviser to the Chief Executive</b>  <a href="mailto:John.McLaren@comcom.govt.nz">John.McLaren@comcom.govt.nz</a>	John provides support to the Chief Executive on organisation strategy and also supports the Board and Senior Leadership Team in the planning and prioritisation of strategic dialogue.
Antonia Horrocks	<b>General Manager</b> Competition and Consumer branch  <a href="mailto:Antonia.Horrocks@comcom.govt.nz">Antonia.Horrocks@comcom.govt.nz</a>	Antonia manages the Commission's Competition and Consumer branch, which is responsible for education, compliance and enforcement under the Fair Trading Act 1986, the Commerce Act 1986 (merger, trade practices, and market studies functions) and the CCCFA.

Contact	Role and contact details	Area
Nick Russ	<p><b>General Manager</b> Regulation branch</p> <p> <a href="mailto:Nick.Russ@comcom.govt.nz">Nick.Russ@comcom.govt.nz</a></p>	Nick manages the Commission's regulatory functions across a number of sectors, including electricity lines, gas pipelines, major airports, telecommunications and dairy.
Geoff Williamson	<p><b>General Manager</b> Organisation Performance branch</p> <p> <a href="mailto:Geoff.Williamson@comcom.govt.nz">Geoff.Williamson@comcom.govt.nz</a></p>	Geoff leads the organisation performance functions.
Diana Price	<p><b>Communications &amp; External Relations Manager</b> Organisation Performance branch</p> <p>021 225 4417  <a href="mailto:Diana.Price@comcom.govt.nz">Diana.Price@comcom.govt.nz</a></p>	Diana leads the Commission's communications and stakeholder engagement activities.

## **Attachment C: Other key accountability documents**

### **Statement of Intent**

Our [Statement of Intent](#) provides insight into the overall direction of the Commission.

Once prepared we will provide a draft Statement of Intent for consideration at least 2 months before the start of the first financial year to which the statement of intent relates.

### **Statement of Performance Expectations**

Our [Statement of Performance Expectations](#) sets up what we plan to deliver in the coming financial year. This includes forecast financial statements and performance targets and shows how we will assess our performance against our strategic objectives. The Statement of Performance Expectations (SPE) accompanies the Statement of Intent and is intended to promote accountability to the public.

Each year we will provide to you draft SPE for consideration at least 2 months before the start of the first financial year to which the statement of intent relates.

### **Annual Report**

Our [Annual Report](#) details performance for the past year and shows progress made against our strategic objectives. It details our performance against our accountability frameworks, as set out in our Statement of Intent, and the performance measures and budgets set out in our SPE.

Our 2020 Annual Report is likely to signed off mid-December 2020.

As responsible Minister you must present the Commission's Annual Report to the House of Representatives within five working days after receiving the Annual Report or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.

### **Priorities**

Our [priorities](#) help us to focus our activity and resources on the areas where we can have the greatest impact.

We review and publish these annually.