



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



Briefing for the Incoming Minister of Commerce and Consumer Affairs

4 November 2020



MBIE Karakia

Tāwhia tō mana kia mau, kia māia

Ka huri taku aro ki te pae kahurangi,
kei reira te oranga mōku

Mā mahi tahi, ka ora, ka puāwai

Ā mātau mahi katoa, ka pono, ka tika

TIHEI MAURI ORA

TRANSLATION:

Retain and hold fast to your mana, be bold, be brave

*We turn our attention to the future, that's where the
opportunities lie*

By working together we will flourish and achieve greatness

Taking responsibility to commit to doing things right

TIHEI MAURI ORA

MĀIA
BOLD & BRAVE

**PAE
KAHURANGI**
BUILD OUR FUTURE

MAHI TAHI
BETTER TOGETHER

**PONO
ME TE TIKA**
OWN IT

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1. Portfolio overview

Purpose

1. This briefing provides you with information about the Commerce and Consumer Affairs portfolio. It provides an overview of key issues affecting the portfolio and the key pieces of work currently underway. Further briefings will be provided to you, focussing on specific topics in depth. We look forward to discussing these and supporting you to implement your priorities for the portfolio.

The Commerce and Consumer Affairs portfolio

2. The Commerce and Consumer Affairs portfolio is a key contributor to New Zealand's economy and raising living standards for all New Zealanders. The portfolio has an important role in the economic and social recovery of New Zealand in countering the impacts from COVID-19.
3. As Minister of Commerce and Consumer Affairs, you can influence the environment in which businesses and consumers operate. This includes setting expectations and influencing the regulatory framework and policies that allow businesses to innovate, invest and trade, and consumers to purchase with confidence.
4. The portfolio comprises the following six broad regulatory systems:
 - Corporate law and governance
 - Financial markets
 - Competition
 - Consumer
 - Intellectual property
 - Trade and international.

Policy and operational functions

5. Your policy role includes developing, setting and reviewing the rules that govern the way in which consumers and businesses interact in markets. This includes driving legislative and regulatory change, and ensuring that a commerce and consumer perspective is brought to initiatives led by other portfolios. A comprehensive list of policy linkages is provided in Chapter 3.
6. The Ministry of Business, Innovation and Employment (MBIE) has a number of operational functions that come under your portfolio. These functions put into effect legislation and policy that you have responsibility for:
 - **Companies Office:** maintains registers including the companies register and personal property securities register, along with enforcing the Companies Act 1993 and other legislation.

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- **Consumer Protection:** consumer information and programmes, including product safety.
 - **Insolvency and Trustee Service:** administers all bankruptcies and other personal insolvency processes, and some company liquidations.
 - **Intellectual Property Office of New Zealand (or IPONZ):** grants and maintains registers of patents, trademarks, designs, plant variety rights and geographical indications.
 - **Standards New Zealand:** manages the development of New Zealand standards, the adoption of international standards and enables New Zealanders to access standards.
 - **Trade remedies:** investigating claims by New Zealand industry that goods being imported into New Zealand are dumped or subsidised, and imposing duties when warranted.
 - **Trading Standards:** fuel quality, accuracy of measurements used for business, auctioneers, and the motor vehicle traders register.
7. You also have Ministerial responsibilities over the functioning and governance of six Crown entities and a number of statutory bodies, the largest being the Commerce Commission and the Financial Markets Authority (FMA). These responsibilities can include setting expectations, monitoring performance and making appointments. The objectives, functions and board membership of these bodies are discussed in Annex 1.

Key issues affecting the portfolio

8. The primary focus of the portfolio is on businesses and consumers and how they interact in markets. It seeks to ensure that outcomes for consumers are fair, while supporting an innovative and competitive environment for businesses to operate in.
9. The portfolio supports businesses and consumers through settings that:
- encourage fair competition (competition policy) and provide intellectual property protection for innovation (intellectual property policy);
 - support effective governance of corporate entities throughout the corporate lifecycle, including fair and equitable insolvency processes (corporate governance policy);
 - aim to ensure consumers and investors can buy financial products and services, including insurance and KiwiSaver, with confidence (financial markets policy);
 - provide consumers with protection from unfair practices when purchasing products or services and regulate the sale of unsafe goods (consumer policy);
 - promote effective international regulatory cooperation to make doing business across border easier (trade and international policy).
10. Increasingly, the portfolio is focussing on the interaction between businesses and consumers, particularly in relation to how businesses treat consumers. In line with developments overseas, this means a greater focus on good consumer outcomes (e.g. fair treatment) rather than just on transactional obligations (e.g. disclosure obligations setting out the information businesses are required to disclose to consumers). This involves an increasing focus on

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sectoral and corporate accountability for ensuring that products and services are designed and delivered to optimise good outcomes (rather than assuming all customers are highly skilled, well informed, rational and proactive). Examples include statutory and contractual requirements that:

- companies will ensure that products are suited to an individual customer's situation (e.g. customers are not sold insurance they can't use)
 - businesses use nudges and default settings to support optimal customer decision-making (e.g. the member engagement requirements for KiwiSaver default providers).
11. An increased focus on lifting the financial capability of New Zealanders via education, online tools and services is likely to also be necessary if the portfolio is to make the greatest contribution it can to their financial wellbeing.
 12. Regulatory regimes have been adapting to a changing world and changing priorities. For example, there has been significant reform of the financial markets system following the global financial crisis in 2007/08.
 13. We consider there are two key issues presenting both opportunities and challenges to the CCA portfolio in the coming years: COVID-19 and digitalisation.

COVID-19

14. COVID-19 has put significant extra financial pressure on both businesses and individuals. And there remains a high level of uncertainty about the course of the pandemic and its impact on New Zealand. However, there is also a view that looks at this shock as an opportunity to (as the OECD puts it) 'build back better'. How can New Zealand transition to a more productive, sustainable, inclusive and resilient economy and society? And what is the role of the CCA portfolio in this transition?
15. CCA played a significant role in the immediate response to COVID-19 (e.g. the business debt hibernation scheme, other changes to corporate governance settings to support otherwise viable businesses to stay afloat when impacted by COVID-19, and changes to competition settings to permit more flexibility in how businesses work together to respond to COVID-19).
16. As we move beyond the immediate response, it is important to consider the longer term goals for New Zealand's economic and social recovery. These can be quite different. For example, the immediate response of seeking to support businesses impacted by COVID-19 would also have had the undesirable effect of keeping some otherwise insolvent businesses afloat. It will be important that future regulatory settings (e.g. in insolvency policy) are designed to support those business and consumer outcomes that contribute to New Zealand's longer term goals.
17. COVID-19 also has the effect of acting as an accelerator of other trends (and so of the opportunities and challenges those trends present). Relevant to the CCA portfolio, it is accelerating the pace of change in relation to digital technologies (discussed below).
18. There appears to be an increase in protectionism and mistrust in multi-lateral institutions. While this trend was already underway (with the imposition of tariff and non-tariff trade barriers in many jurisdictions, on both goods and digital trade), COVID-19 risks exacerbating it. New Zealand may have to respond with more nimble and informal engagement with our

trading partners to build resilience, alongside the usual formal mechanisms of rule-setting institutions and free trade agreements.

Digitalisation

19. Digitalisation refers broadly to the significant and ongoing development of digital technologies (e.g. digital platforms, blockchain, artificial intelligence, 3-D printing) and the products and services that this gives rise to. Digital products and services also flow easily across borders. This provides opportunities for New Zealand businesses to change the way they operate; interact with consumers; reach new markets; and provide new products and services to consumers.
20. We are seeing business models changing, with a strong growth in businesses that provide platforms for businesses to connect with customers (such as Trade Me and Amazon) and a greater focus on data (such as Google and Facebook). Combined with the general reduction of trade barriers over recent years (though, as we note below, we are seeing something of an uptick in protectionist policies again), we are also seeing New Zealand businesses more able to connect and participate in overseas markets.
21. Businesses that can adapt to, and take advantage of, these new technologies will have higher productivity and be better placed for the future. The CCA portfolio can play a role supporting these businesses to thrive by providing a regulatory environment that supports innovation and competition, and easier access to overseas markets. This will drive better outcomes for consumers while also supporting the wider goals of a more productive, resilient economy.
22. These same trends also present opportunities and challenges for consumers. These developments provide consumers with an increasing choice of new products and services that can be sourced from almost anywhere in the world. However, this can make it harder for consumers to protect their interests, for example when seeking redress in relation to cross-border transactions. And while the increasingly sophisticated use of consumer data can benefit consumers (for example, in terms of the products and services that are offered), it can also present challenges with respect to consumers' control over that data.

What do these mean for the CCA portfolio?

Financial wellbeing

23. A crucial consideration for the portfolio in the coming years is going to be the impact of financial pressures and digitalisation on consumers and their financial wellbeing. These issues are not new, but are being exacerbated by COVID-19. Recent work in the portfolio includes regulating credit contracts, regulating financial service providers, reviewing insurance contract law, reviewing the conduct of financial institutions and reviewing the settings for KiwiSaver default providers.
24. These interventions, however, have focussed more on influencing the conduct of third parties rather than New Zealanders themselves. With an increase in debt problems, financial worries and personal insolvency as a result of COVID-19, there is a need to take advantage of the full suite of levers available in the portfolio (and across portfolios where necessary) to more directly influence individuals' financial capability and wellbeing. KiwiSaver, consumer

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protections, influencing financial service providers, improving digital connectivity and affordability¹ and the insolvency regime all play an integral role in:

- improving financial wellbeing and resilience (e.g. through changes to KiwiSaver, better provision of information, introducing a Consumer Data Right to facilitate access to consumer data leading to better targeted products and services)
- avoiding debt becoming problem debt (e.g. implementing the newly strengthened credit contract protections, and provision of new tools and services via the Commission for Financial Capability to support at-risk consumers)
- dealing with problem debt once it arises (e.g. reforming the personal insolvency regime – this is comparatively punitive in New Zealand and has not been reviewed since 2006).

Regulatory Stewardship

25. While not a trend or issue in the same way as the others, considering the portfolio from a regulatory stewardship point of view provides important context. There has been significant regulatory reform in recent years, particularly in the financial markets and consumer policy areas. Future work will need to take this into account and strike an appropriate balance between letting these changes bed in (supported by effective monitoring and evaluation) and further changes, and also between regulatory and non-regulatory approaches to achieving desired outcomes.

Summary of each system within the portfolio

26. The remainder of this chapter provides further detail about each of the six regulatory systems that make up the Commerce and Consumer Affairs Portfolio:
- What the system is about
 - Key policy work underway
 - How the system is being impacted by emerging themes (where relevant).

Corporate law and governance

27. The corporate law and governance system sets the rules relating to the establishment, management and closure of companies and other types of entities. This system contains the key legal “infrastructure” for the creation, operation and dissolution of entities that many other regimes rely on or build from. While the specific activities carried out by entities are in many cases regulated by other regulatory systems those regulatory systems rely on the robustness of the corporate governance system, which establishes the overarching obligations of entities and their members. For this reason corporate law and governance system can often overlap with other policy areas.
28. MBIE is responsible for the policy and operational areas of the corporate governance system. Operational areas include:

¹ This particular issue falls within the Digital Economy and Communications portfolio.

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- *The Companies Office*, which is responsible for the registration of many types of entities, including companies, incorporated societies and limited partnerships, and for the public enforcement of the legislation that those entities operate under. It operates registers for some regulated occupations, such as auditors and financial service providers, and some registers outside of your portfolio including charitable trusts, retirement villages and the New Zealand Business Number.
- *The Insolvency and Trustee Service (the Official Assignee's Office)*, which administers all personal insolvencies (i.e. bankruptcies, no asset procedures and summary instalment orders) and some liquidations under the Companies Act 1993. The Official Assignee is also responsible, through the Criminal Proceeds Management Unit, for the custody and control of forfeited or retained criminal proceeds.

29. MBIE is focusing on:

- *Reviewing access to "beneficial ownership" information.* This review focusses on whether there is a need for improved access to information about persons who directly or indirectly exercise control over companies and limited partnerships. Identifying beneficial owners can be crucial information for law enforcement to "follow the money" under anti-money laundering, terrorism financing and other regimes that relate to suspect assets held by corporate vehicles. Beneficial ownership information can also be useful to regulators like the Overseas Investment Office and the wider intelligence community.
- *Climate-related financial disclosures.* MBIE is working with the Ministry for the Environment on legislation requiring listed issuers and large banks, insurers and managed investment schemes to report on the impacts of climate change on their businesses. The objective of this legislation is to move to a position where the effects of climate change become routinely considered in business and investment decisions. It requires businesses to measure and report clear, comparable, consistent, timely and decision-useful information about their risks and opportunities arising from climate change.

Financial markets

30. The financial markets system focusses on promoting confident and informed participation of businesses, investors and consumers in financial markets, and the settings for well-functioning financial markets generally.
31. New Zealand's financial markets regulatory settings have been overhauled since the Global Financial Crisis, with the introduction of the Financial Markets Conduct Act 2013, the establishment of the Financial Markets Authority as regulator, and ongoing reforms.
32. MBIE's role in the system is to provide policy advice on a range of issues relating to the financial markets conduct regulatory system, including:
- a. the Financial Markets Conduct Act
 - b. regulation of financial advice

- c. regulation of the conduct of banks and insurers
 - d. insurance contract law
 - e. the KiwiSaver Act 2006 – specifically the governance of KiwiSaver schemes and the scheme rules that apply to all KiwiSaver schemes.
33. MBIE is also the monitoring agency for the Financial Markets Authority and the Commission for Financial Capability, which both play key roles in the financial markets regulatory system, outlined below.
34. MBIE is focussing on:
- *Improving the conduct of financial institutions.* Recent reviews have found that large financial institutions like banks and insurers have not paid due regard to, or had systems to support, good outcomes for consumers. This work involves introduction of a new licensing regime for these institutions through the passage of the Financial Markets (Conduct of Institutions) Amendment Bill and supporting regulations to ensure consumers are treated fairly.
 - *Improving financial wellbeing of New Zealanders,* to reduce hardship and problem debt, increase savings, and increased investment and participation in financial markets. This work includes reviewing the arrangements for KiwiSaver default providers.
 - *Reviewing KiwiSaver default providers.* Providers of default KiwiSaver funds are reviewed every seven years, and the terms for current providers are set to expire on 1 December 2021. Ahead of this, MBIE and the Treasury reviewed the settings for default funds and have set new requirements for funds aimed at providing better outcomes for default members. A Request for Proposals has been released to the market and we are expecting responses before the end of the year. We will then enter an evaluation process in 2021, with the aim to select and appoint new default providers by May 2021.
 - *A new regulatory regime for financial advice.* Financial advice includes the recommendations given by people who work in banks, and by mortgage, insurance and investment brokers, and those who create investment plans. This work will involve supporting the implementation of the Financial Services Legislation Amendment Act 2019, which will come into force in March 2021.
 - *Modernising insurance contract law.* Insurance helps consumers and businesses cope with unforeseen events. However, New Zealand’s insurance contract law is fragmented and outdated, and a number of problem areas need to be addressed to facilitate more efficient insurance markets that better meet parties’ expectations. Cabinet agreed in late 2019 to reform New Zealand’s insurance contract law. We have begun work on an exposure draft Bill to give effect to Cabinet’s decisions.
35. COVID-19 has raised questions about the financial resilience and capability of New Zealanders. Are consumers financially prepared for further economic shocks or a prolonged downturn? How well-informed are consumers about the range of products and services that are available to them?

36. A further question arises as fewer New Zealanders are expected to own their own home in retirement and so will be more reliant on saving for their retirement. Are KiwiSaver settings delivering the best outcomes for New Zealanders to enable them to make good choices about their plans for retirement?

Competition

37. This system is focussed on the protection and promotion of competition. Effective competition from domestic and international firms gives New Zealand businesses an incentive to increase their efficiency and innovate, and can lead to improvements in productivity and consumer wellbeing (such as better quality products and services, and/or lower prices).
38. While competitive markets will often lead to desirable consumer outcomes, direct regulatory intervention may be required in markets where there is little or no competition. In this context, this system oversees the economic regulation of aeronautical services at the three main airports (Auckland, Wellington and Christchurch), gas pipelines and electricity transmission and distribution businesses with respect to their monopoly functions.
39. The Commerce Act 1986 underpins the competition system in New Zealand. The Act is maintained by MBIE and enforced by the Commerce Commission. MBIE also actively promotes competition by advising on government proposals that may affect competition (such as amendments to the way occupations are regulated) and considering where there are parts of the economy where competition may not be working particularly well.
40. In 2018, the Commerce Commission gained the ability to undertake market studies to determine whether there are any factors that may be impeding competition in a market. The first market study into the retail fuel sector was completed in December 2019 with the publication of the Commerce Commission's final report. The final report made a number of recommendations aimed at improving competition and performance of retail fuel markets for consumers. The previous Government accepted the report's findings and addressed some of the recommendations by passing, in mid-2020, the Fuel Industry Act to improve competition in the retail fuel market. We are continuing to support work on regulations under that Act to provide for its implementation.
41. MBIE is focussing on:
- *Merchant service fees.* We are ready to advance this Government priority and would welcome a discussion on timing and the relationship with our work on a consumer data right given that payment systems are complex two sided markets that are rapidly evolving in the face of substantial technological disruption. Advancing work in this area will require contributions from a range of agencies including MBIE, Treasury, the Reserve Bank, and the Commerce Commission. The Ministers of Finance and Small Business are also likely to have a strong interest in this work.
 - *Advancing market studies into the supermarkets and building supplies sectors.* We are preparing to advance your priority to refer market studies into the supermarkets and building supplies sectors to the Commerce Commission. The Commerce Commission has resourcing to undertake one study at a time. Our preliminary view is that a supermarkets study will take approximately 16 months, concluding in May 2022, with

the building supplies study to commence in June 2022. More generally, we believe there is also an opportunity to look at further integrating market studies into the competition regulatory system. This could be done by assessing alternative mechanisms to implement any pro-competitive measures recommended by the Commerce Commission in market studies. One such mechanism would be industry codes that could be made in regulations.

- *Identifying barriers to competition and opportunities to promote competition in specific sectors across the economy.* Generic competition law is unlikely to be sufficient to maximise competition but it is an important foundation. It is therefore important to look beyond generic competition law and consider how competition can be lifted in different industries to get better outcomes for New Zealanders. This will require significant collaboration across portfolios and with specific industries. Focus areas so far have been petrol markets and retail payments (EFTPOS, debit and credit cards).
 - *Maintaining the effectiveness of New Zealand's competition laws.* A bill is being drafted to address issues relating to the misuse of market power. The bill will also remove exemptions in the Commerce Act relating to intellectual property, and give the Commerce Commission information sharing powers, among other matters.
 - *Three waters reform.* Economic regulation is likely to have an important part to play in securing better consumer outcomes as part of the reforms being made to the delivery and regulation of drinking water, wastewater, and stormwater.
42. Digital technology is enabling new modes of doing business. In general, digital technology promotes competition through such things as enabling businesses to better connect with consumers, but it also raises new challenges for competition law and enforcement. The growth of strategically important digital platforms, such as Google and Facebook, has focussed attention on the intersection between competition law and other laws such as fair trading, privacy, and consumer protection. Global responses led by major overseas economies are likely to be forthcoming. The challenge for New Zealand authorities is to keep capability in assessing competition impacts in fast moving digital markets and to be in a position to take advantage of, or learn from, any international developments as appropriate. We, along with the Commerce Commission, are continuing to monitor developments with digital technologies and their implications for New Zealand's competition law and enforcement.

Consumer

43. The consumer system focusses on the interactions that businesses and consumers have before, during, and after the sale of a good or service, by providing important consumer protections and business obligations. The system also provides protections and remedies when buying through private sales, business-to-business transactions, and auctions.
44. Economy-wide consumer protection provisions in the Fair Trading Act 1986 and Consumer Guarantees Act 1993 work alongside sector or issue specific provisions covering motor vehicles and consumer credit contracts (which you are responsible for). The Fair Trading Act protects against misleading and deceptive conduct and the sale of unsafe goods, and the Consumer Guarantees Act provides minimum guarantees with all sales of consumer goods and services.

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45. As well as maintaining the overall consumer system, MBIE provides information, advice and education to consumers and businesses, monitors and administers consumer product safety (under the Fair Trading Act) and enforces the Weights and Measures Act 1987 which provides for the measurement system used for trade. MBIE is also responsible for the occupational licencing of auctioneers and motor vehicle traders.
46. Other portfolios also provide specific protections to consumers in areas such as building products and food safety. At times, consumer issues may involve other portfolios working closely with you.
47. The Commerce Commission enforces the Fair Trading Act and the Credit Contracts and Consumer Finance Act 2003. The Credit Contracts and Consumer Finance Act aims to protect consumers from irresponsible lending practices and ensure that they are able to make informed borrowing decisions.
48. MBIE is focussing on:
 - *Implementing changes to consumer credit contracts.* Last year amendments to the Credit Contracts and Consumer Finance Act were passed to better protect consumers from harmful lending practices. MBIE is finalising regulations and updating guidance material for lenders. We, along with other government agencies, are also working with the non-profit and financial services and banking sectors on a shared action plan to enable safer credit and financial inclusion.
 - *Consumer data right.* MBIE recently released a discussion paper that seeks feedback on options for establishing a consumer data right in New Zealand. This would give consumers greater choice and control over their data and enable them to securely share data held about them (e.g. by a bank) with trusted third parties (e.g. a budgeting app). This could significantly improve consumer welfare, enable higher levels of innovation and competition, and have significant economic development benefits. A consumer data right is also likely to have a positive impact on competition in retail payment systems markets by enabling innovative new services that can act as a competitive constraint on existing retail payment systems (e.g. Visa/MasterCard debit and credit cards). New competition of this kind could lead to further reductions in merchant service fees charged by providers.
 - *Informing and education consumers and businesses:* MBIE recently launched a multi-year work programme to investment into community-targeted information tools and programmes to support consumers who face vulnerability and disadvantage where a broad reach and digital programme may not be the most appropriate engagement strategy. This programme of work launched in 2019/20 and will continue over the next 2-3 years. The Ministry's broad reach, digital programme on increasing the ability of consumers and businesses to transact with confidence will be maintained.
49. The acceleration of digital technology will present both challenges and opportunities to consumers. On the opportunity side, the increased availability of data, and new ways of using it, has the potential to significantly enhance the consumer experience. Challenges will include ensuring that there are appropriate safeguards and that consumers can get redress when issues arise from cross-border commerce, potentially through better trade agreements and

enhanced cooperation arrangements between regulators. The interface between consumer protection laws and privacy is also a live issue as online services collect more and more information from consumers.

Intellectual property

50. Intellectual property regulation encourages:
- the creation and dissemination of ideas and knowledge to promote innovation, increase productivity and foster creative expression
 - the development of high quality products and services by businesses.
51. MBIE is responsible for the policy and operational areas of the intellectual property system. The Intellectual Property Office of New Zealand (IPONZ) sits within MBIE and is responsible for administering the application, registration and related processes for a number of the intellectual property regimes.
52. MBIE is focussing on:
- *Reviewing the Copyright Act 1994.* Fit for purpose copyright law is important to encouraging the provision of, and access to, culture, knowledge, entertainment and information. The copyright ecosystem has experienced significant technological and market developments since the last review that affect how we create, distribute, consume and use content. The government is reviewing the Copyright Act to ensure it provides a supportive regulatory environment for these activities into the future, in the best interests of New Zealand as a whole. MBIE concluded public consultation on objectives for copyright and issues with the status quo in April 2019. We intend to conduct further consultation on objectives before consulting on potential options for reform in 2021. Obtaining Cabinet approval for this consultation process on objectives is a priority for the review process.
 - *Reviewing the Plant Variety Rights Act 1987.* The plant variety rights regime incentivises plant breeding and the introduction of foreign cultivated varieties by overseas breeders. It provides for the granting of intellectual property rights to people who breed and develop new cultivated plant varieties. We began reviewing the Act in the first quarter of 2017 and obtained policy approvals from Cabinet in November 2019. The timing of the process is driven by a trade commitment to bring the Act into compliance with the International Convention for the Protection of New Varieties of Plants by 30 December 2021. This deadline presents an immediate challenge following delays related to COVID-19. Cabinet decisions on some outstanding policy issues are necessary in order to have a Bill ready for introduction into the House.
 - *Assisting MFAT with the negotiation and implementation of free trade agreements (FTAs).* Free trade agreements commonly include an intellectual property Chapter setting out minimum standards for the protection and enforcement of intellectual property rights that trade partners must provide. Currently, New Zealand is negotiating a number of FTAs including with the EU, United Kingdom, and the Pacific Alliance. You have delegated authority (along with the Minister for Trade and Export Growth and the

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Minister of Agriculture) in relation to the negotiating mandate for the geographical indications provisions in the EU FTA.

53. Our western system of providing private rights in intellectual property fits poorly with Te Ao Māori. There remain ways the intellectual property system inadequately protects the rights and interests of Māori in keeping with the Treaty of Waitangi, notably as identified by the Waitangi Tribunal in its 2011 report *Ko Aoteroa Tēnei* (on Wai 262). On 28 August 2019, the Minister for Māori Development announced the Government's intention (following agreement by Cabinet) to develop a whole-of-government approach to the issues raised by the Wai 262 inquiry. MBIE has a key role to play in this undertaking, which is being led by Te Puni Kōkiri.
54. The review of the Plant Variety Rights Act is a recent example (recently examined and endorsed by the Waitangi Tribunal) of MBIE ensuring an existing intellectual property statute is effective and fit for purpose, including by reflecting our unique social, cultural and constitutional circumstances. The Haka Ka Mate Attribution Act 2014 is an example of a bespoke statute that provides some limited protection for Ngāti Toa Rangatahi as the kaitiaki in respect of that haka. However, there are limits to what protection can be provided for cultural rights and interests in taonga and mātauranga Māori within existing intellectual property statutes. The whole-of-government approach is an opportunity for the government to develop policies on substantive Wai 262 issues that cut across intellectual property statutes in partnership with Māori. A notable example for this portfolio is the Waitangi Tribunal's recommendation that a new system of protection be developed for what it referred to as 'taonga works' and mātauranga Māori, given copyright is poorly suited to facilitating kaitiakitanga in respect of these.
55. Although trade agreements can open up market opportunities, streamline processes and reduce costs, they have the potential to limit our policy and regulatory choices. This is often an issue for intellectual property laws. It is important that our international trade agreements provide the policy space for New Zealand to develop laws which are appropriate for New Zealand's rapidly changing environment and our intellectual property regulatory framework is not traded away merely for enhanced goods market access for our primary products and foodstuffs. There will be consideration about how New Zealand regulations compare to and link to the rest of the world, while ensuring they reflect local circumstances and what is best for New Zealand overall.

Trade and International

56. This area comprises a grouping of regulatory instruments and policy initiatives all linked with trade. MBIE's activity is shaped by international instruments and institutions, as well as an increasing focus on regulatory cooperation with New Zealand's trading partners. This is critical to growing markets and promoting competition, while ensuring our regulatory systems continue to achieve their public policy objectives. The foundation for this work is strong relationships with both domestic and international counterparts. We therefore work closely with counterparts in organisations such as APEC and the OECD.
57. MBIE is focussing on:

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- *International regulatory cooperation.* Differences in regulatory settings or implementation across countries can impose costs and create barriers to trade and investment. MBIE is championing the use of effective regulatory cooperation mechanisms by those designing and implementing regulation to help address this challenge. MBIE is focusing its regulatory cooperation efforts domestically and also on emerging economies, particularly South East Asia, to help reduce regulatory barriers.
 - *Facilitating trade.* New Zealand's small size and distance from key markets make international connections and digital transformation particularly important for all New Zealand businesses and consumers. This has been heightened by the impacts of COVID-19. MBIE facilitates trade and international connections through our work on international regulatory cooperation, technical barriers to trade, and our engagement with regional and international fora.
 - *APEC 2021.* New Zealand is hosting APEC in 2021. MBIE has a strong interest across a range of APEC policy fora. New Zealand has been asked to host the APEC Structural Reform Ministerial Meeting next year. Structural reform touches on issues that are relevant across both the Economic and Regional Development and Commerce portfolios, such as competition and regulatory reform.
 - *Trade remedies.* International trade takes place according to a set of rules designed to ensure that competition is fair to New Zealand producers. The government can impose remedial duties on imports when an investigation has established that they are dumped (sold in New Zealand at a lower price than in their home market) or subsidised. Legislation was changed in 2017 to implement a 'public interest' test to determine whether to apply remedial duties in these circumstances. You have Ministerial responsibility for making determinations on duties, which can occur at various stages of investigations. MBIE has a current caseload that will require Ministerial decisions in the coming months.
 - *Standards and conformance.* An efficient standards and conformance (the process of testing compliance with particular standards) infrastructure helps remove technical barriers to improve trade. Businesses use these tools to support innovation and development, and compete locally and internationally. Governments and consumers rely on standards and conformance to protect public health, quality, safety and the environment.
58. The trade and international area supports other parts of your portfolio, particularly the competition, consumer and intellectual property systems:
- A focus on regulatory cooperation, together with high quality international agreements and strong relationships with key overseas partners, helps to create an environment that facilitates cross-border trade. This supports New Zealand's businesses to innovate and compete in the global market. It also encourages domestic businesses to up their game to keep up with foreign firms vying for a share in the New Zealand market. New Zealand businesses will also have more opportunities to participate in international value chains.
 - Digitalisation, including growth in the use of international e-commerce platforms, raises questions about the future effectiveness of current competition and consumer settings

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and how trade and other arrangements can ensure appropriate protections remain for New Zealand businesses and consumers.

2. Portfolio responsibilities

Policy and operational functions

59. The Commerce and Consumer Affairs portfolio is funded under Vote Business, Science and Innovation. The portfolio receives approximately \$301.1m million in 2020/21 which is spread across departmental funding (for policy and for MBIE to provide services directly) and non-departmental funding (provided via MBIE to Crown entities to provide services). The distribution of this funding is illustrated in the Figure 1 on page 20.
60. You are responsible for six Crown entities:
- Accreditation Council
 - Commerce Commission
 - Commission for Financial Capability (Retirement Commissioner)
 - External Reporting Board
 - Financial Markets Authority
 - Takeovers Panel.
61. Of these, the Commerce Commission and the Financial Markets Authority are the largest, and they have significant coverage across the economy. The Commerce Commission receives funding of \$54.9 million from the Commerce and Consumer Affairs portfolio² and the Financial Markets Authority receives \$57.3 million. The role of these Crown entities is discussed further in Annex 1.
62. You also have responsibility for appointing members, or your input is sought on appointments, for a range of industry bodies and dispute resolution schemes. More details about these other bodies are provided in Annex 1.

MBIE's financial viability

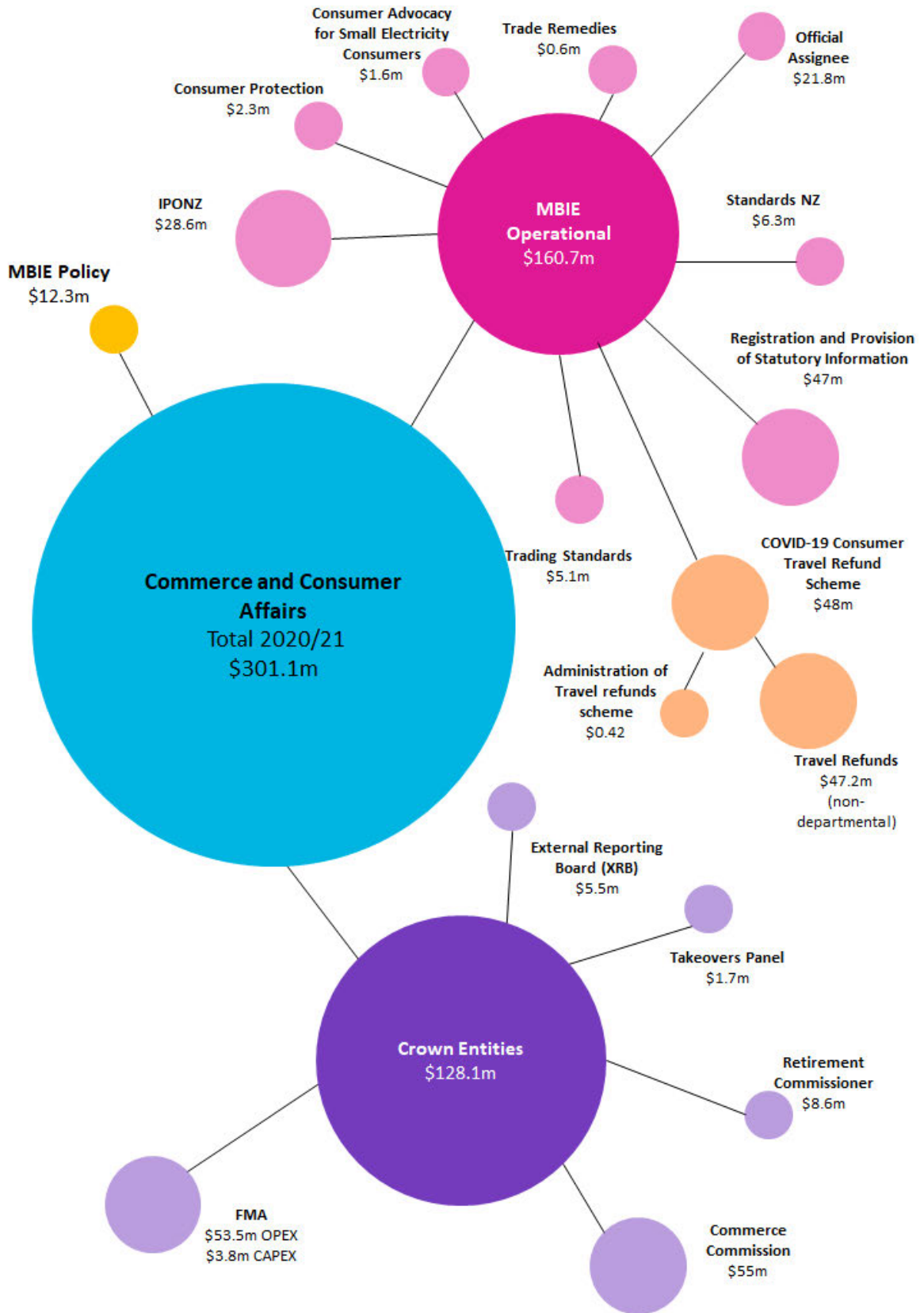
63. Many of the MBIE functions and Crown entities in this portfolio are at least partially funded by third parties including through fees and levies. These are indicated by a red outline in Figure 1 on page 20. As the portfolio Minister, you are responsible for the regulations mandating these levies and fees. The Accreditation Council does not appear on the diagram because it is a self-funded entity operating a user and stakeholder funded not-for-profit business model. You also have joint responsibility with the relevant Australian Federal Government Minister for the Joint Accreditation System of Australia and New Zealand, which is a user funded trans-Tasman government body.

² The Commerce Commission receives a further \$6.25 million from the Communications portfolio for Enforcement of Telecommunications Sector Regulation, taking its total appropriated funding in 2020/21 to \$64.5 million.

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64. Pre-COVID, 50% of MBIE's departmental revenue was from third-party sources. The remainder is Crown revenue. Third-party revenue has dropped to 37% this year, principally as a result of a significant fall in revenue from immigration fees. While revenue has decreased, our workload has remained at similar levels due to regulatory requirements and new activity (border exemptions process for example). In the absence of new Crown funding, the current shortfall will need to be funded through changes in service levels or investment across MBIE.
65. Departmental funding covers a number of portfolios, making a cross-portfolio approach to prioritisation essential. However, there are limits to our ability to re-prioritise as third-party funding can only be used for the purpose that it was collected – for example revenue from the building levy can only be used to fund activities under the Building Act 2004. Uncertainty around our third-party revenue is forecast to remain for the next few years. Looking ahead, a more sustainable funding model, which facilitates greater cross-portfolio prioritisation, will be required to maintain existing services and ensure that MBIE can continue to contribute effectively to the COVID-19 response and recovery.

Figure 1: Distribution of 2020/21 Commerce and Consumer Affairs portfolio funding



Legislation

66. You are responsible for a large number of Acts of Parliament (Acts) across the portfolio. The most significant pieces of legislation in this portfolio are listed below. A full list of these Acts and further details about their purpose is provided in Annex 2.

Area	Act
Corporate law and governance	<ul style="list-style-type: none"> • Companies Act 1993 • Insolvency Act 2006 • Personal Property Securities Act 1999 • Financial Reporting Act 2013
Financial markets	<ul style="list-style-type: none"> • Financial Advisers Act 2008 (to be repealed in March 2021) • Financial Markets Authority Act 2011 • Financial Markets Conduct Act 2013 • Financial Markets Supervisors Act 2011 • Financial Service Providers (Registration and Dispute Resolution) Act 2008 • KiwiSaver Act 2006 • Insurance legislation (various)
Competition	<ul style="list-style-type: none"> • Commerce Act 1986
Consumer	<ul style="list-style-type: none"> • Consumer Guarantees Act 1993 • Credit Contracts and Consumer Finance Act 2003 • Fair Trading Act 1986
Intellectual property	<ul style="list-style-type: none"> • Copyright Act 1994 • Geographical Indications (Wine and Spirits) Registration Act 2006 • Patents Act 2013 • Plant Variety Rights Act 1987 • Trade Marks Act 2002 • Designs Act 1953 • Haka Ka Mate Attribution Act 2014
Trade and international regulatory cooperation	<ul style="list-style-type: none"> • Trans-Tasman Mutual Recognition Act 1997 • Standards and Accreditation Act 2015 • Tariff Act 1988 • Trade (Anti-dumping and Countervailing Duties) Act 1988

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67. MBIE has been working on bills to amend a number of these Acts or enact new legislation. These bills are listed below together with their status in the legislative process, acknowledging that it is the prerogative of the incoming Government to determine whether these bills are reinstated in the legislative programme.








Title of Bill	Purpose	Status
Fair Trading Amendment Bill	To introduce new protections against unfair commercial practices in trade, and strengthen the ability of consumers to require uninvited direct sellers to leave or not enter their property.	In the House – awaiting Second Reading
Financial Markets (Conduct of Institutions) Amendment Bill	To improve the conduct of banks, insurers and non-bank deposit takers by amending the Financial Markets Conduct Act 2013.	In the House – awaiting Second Reading
Member’s Bill - Insurance (Prompt Settlement of Claims for Uninhabitable Residential Property) Bill	To provide for the prompt settlement of insurance claims on uninhabitable residential property.	Being considered by the Governance and Administration Committee
Incorporated Societies Bill	To modernise the Incorporated Societies Act 1908.	Ready for introduction – awaiting Cabinet decision
Insurance Contract Bill	To reform and consolidate insurance contract law.	Not yet introduced – being drafted
Commerce Amendment Bill	To implement changes from a targeted Commerce Act 1986 review on the misuse of market power and other matters.	Not yet introduced – being drafted
Insolvency Law Reform Bill	To improve aspects of insolvency law, notably in relation to voidable transactions and other recoveries, and preferential claims.	Not yet introduced – being drafted
Plant Variety Rights Amendment Bill	To implement outcomes of the review of the Plant Variety Rights Act 1987 and trade obligations to give effect to the International Convention for the Protection of New Varieties of Plants.	Not yet introduced – being drafted
Intellectual Property Laws Amendment Bill	To amend the Patents Act 2013, Trade Marks Act 2002 and Designs Act 1953 to ensure that the legislation is up to date and fit for purpose.	Not yet introduced – being drafted
Regulatory Systems Amendment Bill No 3 [led by Minister for Economic and Regional Development]	To make non-controversial amendments to a number of MBIE’s regulatory systems.	Not yet introduced – being drafted

3. Major links with other portfolios

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





4. Key MBIE contacts

Name	Role	Contact details
Carolyn Tremain 	Chief Executive	04 901 1357 s 9(2)(a) carolyn.tremain@mbie.govt.nz
Chris Bunny 	Deputy Chief Executive – Building, Resources and Markets Group <i>Policy responsibilities except trade and international</i>	04 901 8377 s 9(2)(a) chris.bunny@mbie.govt.nz
James Hartley 	General Manager – Commerce, Consumers and Communications Branch <i>Policy responsibilities except trade and international</i>	04 460 1396 s 9(2)(a) james.hartley@mbie.govt.nz
Paul Stocks 	Deputy Chief Executive – Labour, Science and Enterprise Group <i>Policy responsibility for trade and international</i>	s 9(2)(a) paul.stocks@mbie.govt.nz
Peter Crabtree 	General Manager – Science, Innovation and International Branch <i>Policy responsibility for trade and international</i>	04 901 3907 s 9(2)(a) peter.crabtree@mbie.govt.nz
Suzanne Stew 	Deputy Chief Executive – Te Whakatairanga Service Delivery Group <i>Operational functions</i>	04 474 2926 s 9(2)(a) suzanne.stew@mbie.govt.nz
Sanjai Raj 	General Manager – Market Integrity ³ <i>Operational functions</i>	04 474 2699 s 9(2)(a) sanjai.raj@mbie.govt.nz

³ This position also holds a number of statutory roles, including Official Assignee and Registrar of Companies.

BRIEFING FOR INCOMING MINISTER OF COMMERCE AND CONSUMER AFFAIRS

<p>Ross van Der Schyff</p> 	<p>General Manager – Business and Consumer⁴</p> <p><i>Operational functions</i></p>	<p>04 901 1633</p> <p>s 9(2)(a)</p> <p>Ross.VanDerSchyff@mbie.govt.nz</p>
<p>Michael Bird</p> 	<p>General Manager – Entity Performance and Investment</p> <p><i>Board Appointments</i></p>	<p>04 901 3929</p> <p>s 9(2)(a)</p> <p>Michael.Bird@mbie.govt.nz</p>

⁴ This position also holds the various statutory Commissioner roles in the intellectual property system.

5. Immediate priorities and deliverables

69. This chapter summarises for you MBIE's recommended focus for the first 100 days in addition to the priorities identified in the cover letter. This has been grouped as follows:
- *Key decisions* – a list of actions that would be required by you to progress key policy work.
 - *Key appointments* – a list of actions that would be required by you to meet statutory requirements relating to appointments.
 - *Upcoming events and announcements* – a list of events that are expected to occur that are relevant to your portfolio.
70. We would also welcome the opportunity to discuss the key elements of the portfolio in greater detail and a forward work programme with you. We have prepared a number of additional pieces of advice to support these conversations.
71. MBIE's Board Appointments and Governance Team intend to provide appointments advice to you and would welcome the opportunity to meet with you at your earliest convenience to discuss upcoming appointments in your portfolio.

Key decisions

Description	Action	Timing
Trade and international		
s 9(2)(f)(iv)		
s 9(2)(f)(iv)		
s 9(2)(f)(iv)		
Competition and Consumer		
Decide on a candidate for the second market study - Commerce Commission received budget funding to commence a new study.	Ministerial approval following consultation with Cabinet.	November 2020
Make regulations to implement aspects of the Credit Contracts Legislation Amendment Act 2019 relating to affordability and suitability.	Cabinet approval to make regulations	November 2020
Update and advice on any issues arising post-launch of the consumer travel reimbursement scheme.	Joint Ministerial decision with Minister of Finance	November 2020

BRIEFING FOR INCOMING MINISTER OF COMMERCE AND CONSUMER AFFAIRS

Description	Action	Timing
Decision on progressing work on merchant service fees.	Ministerial/Cabinet approval required	December 2020
s 9(2)(f)(iv)		
s 9(2)(f)(iv)		
Financial markets		
Decision to approve final regulations to support bringing new financial advice regime into force.	Cabinet approval required	November 2020
Decision to approve regulations to support licensing regime for administrators of financial benchmarks.	Cabinet approval required	November 2020
Corporate Governance		
To provide you with a draft Cabinet Paper seeking authorisation to submit regulations extending the Business Debt Hibernation scheme to the Executive Council.	Cabinet approval required	November 2020
s 9(2)(f)(iv)		

Key appointments

Description	Timing
Chair and Members of the Consumer Advocacy Council	November-December 2020
Motor Vehicles Disputes Tribunal Adjudicator and assessors	December 2020 and February 2021
Copyright Tribunal – appointments (Chairperson and members)	December 2020
Joint Accreditation of Australia and New Zealand – Chair appointment	December 2020
Appointments to the Takeovers Panel	January 2021
External Reporting Board – appointment (to replace the member that resigned)	January/February 2021
Deputy Chair of Commerce Commission – decision required on whether to extend term for a period or seek new appointee	Decision desirable well in advance of warrant expiring in June 2021
Nomination of one or more candidates for appointment as lay members of the High Court on Commerce Act cases.	Nominations by January 2021, as warrants for 4 incumbents expire in April 2021

Upcoming events and announcements

Description	Timing
Consumer Affairs Forum – this is a regular Ministerial forum for discussion and agreement on consumer issues across the Australian states and territories and New Zealand.	6 November 2020

Annex 1: Crown entities and other bodies

1. You have Ministerial responsibilities over the functioning and governance of a number Crown entities and statutory bodies. These responsibilities can include setting expectations, monitoring performance and making or proposing appointments.

Crown entities

Commerce Commission

2. Established under the Commerce Act 1986, the Commerce Commission is responsible for promoting competition and protecting consumers by enforcing competition and consumer law and regulating specified markets in which competition does not exist, or is very limited.
3. The Commission aims to foster and develop healthy competition among businesses, informed choice by consumers, and sound economic regulation through its enforcement, quasi-judicial and regulatory responsibilities under the Commerce Act, Fair Trading Act 1986, Dairy Industry Restructuring Act 2001⁵, Telecommunications Act 2001⁶, Fuel Industry Act 2020⁷, and Credit Contracts and Consumer Finance Act 2003.
4. The Commerce Act provides that the Commission must act independently in performing its statutory functions and duties and exercising its powers under the Act.
5. The Commission's appropriations are funded from the Commerce and Consumer Affairs and Digital Economy and Communications portfolios, amounting to \$64.5m in 2020/21. The Minister of Agriculture, Minister for the Digital Economy and Communications, and Minister of Energy and Resources also have a strong interest in the work of the Commission especially in relation to Part 4 of the Commerce Act (which regulates electricity lines, gas pipelines and specified activities of three airports), and the Telecommunications Act, which is wholly funded by levies on regulated parties; and its work relating to the Dairy Industry Restructuring Act, which is partially Crown-funded.
6. The Commission has six members, with one member appointed as the Telecommunications Commissioner⁸. It also has four associate members, with one cross-appointed from the Australian Competition and Consumer Commission.

⁵ You are the Minister responsible for the appropriation which funds the Commission's dairy activities, but portfolio responsibility for the Dairy Industry Restructuring Act 2001 sits with the Minister of Agriculture.

⁶ The appropriation and portfolio responsibility for the Telecommunications Act 2001 sit with the Minister for the Digital Economy and Communications.

⁷ Parts of the Act will come into force over the next two years.

⁸ The Minister for the Digital Economy and Communications recommends the appointment of the Telecommunications Commissioner.

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Chief Executive: Adrienne Meikle	s 9(2)(a) adrienne.meikle@comcom.govt.nz
Chair: Anna Rawlings	s 9(2)(a) anna.rawlings@comcom.govt.nz

Name	Date of original appointment	Expiry date of present term
Anna Rawlings (Chair)	9/06/2014	31/05/2022
Susan Begg (Deputy Chair)	17/06/2009	15/06/2021
Tristan Gilbertson (Telecommunications Commissioner)	8/06/2020	7/06/2025
Dr Derek Johnston	1/11/2019	31/10/2023
Dr John Small	17/12/2018	7/06/2025
Elisabeth Welson	20/09/2012	31/03/2022
Joseph Liava'a (Associate Member)	8/04/2019	7/04/2022
John Crawford (Associate Member)	19/11/2018	18/11/2021
Vhari McWha (Associate Member)	14/09/2020	13/09/2025
Sarah Court (Associate Member, cross-appointment from the Australian Competition and Consumer Commission)	23/11/2015	30/04/2023

Commission for Financial Capability (Retirement Commissioner)

- The Commission was established in 1993 and continues to operate under the New Zealand Superannuation and Retirement Income Act 2001. The Commission is headed by the Retirement Commissioner. Its key activities are providing information, education and advice on financial capability, and monitoring the effects of retirement income policies including through carrying out regular reviews of retirement income policies. The Commissioner also has a monitoring role under the Retirement Villages Act 2003. The Commission is funded by a Crown appropriation of \$8.6 million.
- Jane Wrightson was appointed as Retirement Commissioner on 10 February 2020. Her present term expires on 9 February 2023.

Retirement Commissioner: Jane Wrightson	s 9(2)(a) jane.wrightson@cffc.govt.nz
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External Reporting Board

- Constituted under the Financial Reporting Act 2013, the External Reporting Board (XRB) is responsible for setting the strategy for financial reporting in New Zealand, and issuing financial reporting, auditing, assurance and ethical standards. The XRB also seeks to influence the development of international standards and has cross-membership with the Australian Financial Reporting Council. The XRB is funded by a Crown appropriation of \$4.4 million.
- The XRB has been provided with one-off funding of \$1.1 million in 2020/21 to commence work on climate-related financial reporting standards. s 9(2)(f)(iv)

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s 9(2)(f)(iv)

11. The Financial Reporting Act provides for the XRB Board to have up to nine members. It has eight members at present, including one member cross-appointed from the Australian Financial Reporting Council.

Chief Executive: April Mackenzie	s 9(2)(a) april.mackenzie@xrb.govt.nz
Chair: Michelle Embling	s 9(2)(a) michelle.j.embling@nz.pwc.com

Name	Date of original appointment	Expiry date of present term
Michele Embling (Chair)	1/07/2011	16/08/2019
Jane Taylor (Deputy Chair)	9/12/2013	8/12/2018
Professor Michael Bradbury	19/12/2016	18/12/2021
William (Bill) Edge (Australian Financial Reporting Council)	19/12/2016	28/07/2019
John Kensington	19/12/2016	18/12/2021
Fergus Welsh	1/02/2015	31/01/2020
Jacqueline (Jackie) Robertson-Cheyne	1/05/2019	30/04/2024
Julia Fink	1/05/2019	30/04/2024

Financial Markets Authority

12. Established in 2011 by the Financial Markets Authority Act 2011, the Financial Markets Authority (FMA) is New Zealand's main statutory regulator for the securities and investment industry and discharges statutory functions under a range of Acts including the Financial Markets Conduct Act 2013 and Financial Advisers Act 2008 (to be repealed in March 2021). Its main objective is to promote and facilitate the development of fair, efficient and transparent financial markets in New Zealand, and a principal function is to promote the confident and informed participation of business, investors and consumers in those financial markets.
13. In April 2020, Cabinet agreed to increase the FMA's appropriation over three years from 2020/21, taking the FMA's funding to approximately \$61 million per annum in 2022/23 and outyears. Approximately \$50 million of this will be collected through levies.
14. The FMA Board currently consists of eight members.

Chief Executive: Rob Everett	s 9(2)(a) rob.everett@fma.govt.nz
Chair: Mark Todd	s 9(2)(a) mark.todd@canfield.co.nz

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Name	Date of original appointment	Expiry date of present term
Mark Todd(Chair)	08/06/2015	30/04/2024
Elizabeth Longworth	12/06/2017	19/07/2023
Ainsley McLaren	26/09/2016	25/09/2021
Vanessa Stoddart	8/06/2016	7/06/2021
Christopher Swasbrook	8/06/2019	7/06/2024
Dr Prasanna Gai	16/04/2018	15/04/2023
Sue Chetwin	09/09/2019	08/09/2022

Takeovers Panel

15. Established under the Takeovers Act 1993, the Panel's key functions are to keep under review the law and practices relating to control-change transactions in the shares of specified companies, recommend changes to takeovers law that the Panel considers necessary, investigate acts or omissions or practices for the purpose of exercising its enforcement powers, and make determinations and orders and applications to the Court in accordance with the Takeovers Act.
16. The Panel is funded by a Crown appropriation of \$1.5 million and a separate litigation fund of \$0.2 million. The Panel has eleven members, with one member cross-appointed from the Australian Takeovers Panel.

Chief Executive: Andrew Hudson	s 9(2)(a) Andrew.Hudson@takeovers.govt.nz
Chair: Andy Coupe	s 9(2)(a) andy@coupe.co.nz

Name	Date of original appointment	Expiry date of present term
Andy Coupe (Chair)	25/09/2008	30/03/2022
Carl Blanchard (Deputy Chair)	24/09/2011	23/08/2021
Anna Buchly	01/02/2019	31/01/2023
Megan Glen	20/05/2019	19/05/2024
Simon Horner	1/02/2011	31/01/2021
Richard Hunt (cross-appointed from the Australian Takeovers Panel)	1/05/2014	29/04/2021
Sacha Judd	13/10/2015	12/10/2020
Tony Pigou	7/01/2013	02/09/2022
Silvana Schenone	1/10/2016	30/09/2021
Nathanael Starrenburg	25/10/2016	24/10/2021

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Martin Stearne	01/02/2019	31/01/2023
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Accreditation Council

17. Established under the Standards and Accreditation Act 2015, the Council was previously the Testing Laboratory Registration Council. The Council provides independent third-party recognition of competence by accrediting laboratories, inspection bodies and radiology practices through its operational arm, International Accreditation New Zealand. The Council also owns Telarc SAI Ltd, a certification body, and the New Zealand Quality College, which provides training in technical and quality subjects related to conformity assessment.
18. The Council is one of two accreditation organisations in New Zealand. While the Council focuses on accrediting laboratories, the other body (the Joint Accreditation System of Australia and New Zealand or JAS-ANZ, discussed below), accredits bodies which certify products and quality management systems. There is some overlap in their business as they both accredit some types of inspection bodies, such as bodies which inspect food safety management systems.
19. The Council's governing board is composed of between five and seven members. It receives no Crown funding. Instead, it operates a user and stakeholder funded not-for-profit business model.

Acting Chief Executive: Fiona Paulin	s 9(2)(a) fpaulin@ianz.govt.nz
Chair: Paul Connell	s 9(2)(a) paulconnellnz@gmail.com

Name	Date of original appointment	Expiry date of present term
Paul Connell (Chair)	1/07/2014	09/08/2021
Dr Graeme Benny	1/06/2017	09/08/2021
Nicole Anderson	01/06/2020	31/05/2023
Jane von Dadelszen	01/06/2020	31/05/2023
Carolyn Harkess	1/06/2017	09/08/2021
Catherine Rose Abel-Pattinson	01/06/2020	31/05/2023

Other bodies you have responsibilities for

20. You have responsibility for appointing members, your input is sought on appointments, or you are consulted on rule changes, for the following bodies.

Advertising Standards Authority (and Advertising Standards Complaints Board)

21. The Advertising Standards Authority (Authority) is an industry body with 14 member organisations representing advertisers, agencies and the media. Its main role is to promote an effective system of voluntary self-regulation with respect to advertising standards, and to ensure legal, decent and honest advertising communications to consumers.

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22. The Authority operates and funds the Advertising Standards Complaints Board (Complaints Board), which hears complaints about advertisement content across all media. The Complaints Board is an independent, nine-member board (with five public members and four industry members).
23. The Minister for the Digital Economy and Communications and the Minister of Commerce and Consumer Affairs are consulted on the appointment of the Chairperson of the Authority. The Minister of Commerce and Consumer Affairs also nominates candidates to be considered for appointment as a public member of the Complaints Board.

Banking Ombudsman Scheme

24. This industry-funded body considers and investigates consumers' complaints about banks and non-bank deposit takers. The Minister of Commerce and Consumer Affairs appoints one consumer representative on the Board. The current consumer representative, Kenina Court, was first appointed on 1 February 2016 and has been reappointed twice. Her term expires on 31 January 2022.

Copyright Tribunal

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

Name	Date of original appointment	Expiry date of present term
Professor Susy Frankel (Chair)	18/08/2008	17/08/2019
Jane Glover (Deputy Chair)	1/08/2012	6/11/2021
Sarah Bacon	31/01/2014	1/02/2019
Peter Dengate Thrush	1/03/2010	28/02/2020
Paul Sumpter	6/07/2004	5/07/2019
Sarah-Jane Weir	27/03/2014	26/03/2019

26. We are currently in the middle of a recruitment process to identify a new Chair and members to recommend for appointment to the Tribunal. The Chair and members whose terms have expired continue to be on the Tribunal until such time as their replacements are appointed.

Film and Video Labelling Body

27. The Film and Video Labelling Body is established under section 72 of the Films, Videos and Publications Classification Act 1993 to issue ratings for unrestricted films and videos. All films supplied to the public must be submitted to the Labelling Body.
28. Under section 74(3) of the Act, the Minister of Internal Affairs appoints community representatives on the recommendation of the Minister of Commerce and Consumer Affairs.

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The Minister of Commerce and Consumer Affairs can only make such a recommendation after consulting with the Minister for Women.

Insurance and Financial Services Ombudsman

29. This industry-funded scheme considers and investigates consumers' complaints about participating insurance and savings companies and other financial service providers. The Minister of Commerce and Consumer Affairs nominates candidates for consideration as consumer representatives on the commission that oversees the scheme.

Joint Accreditation System of Australia and New Zealand (JAS-ANZ)

30. This trans-Tasman institution was established by a Treaty between the Governments of Australia and New Zealand, responsible for the accreditation of certification bodies and inspection bodies in Australia and New Zealand.
31. The Governing Board is a mix of New Zealand and Australian members appointed by the responsible Ministers – the Minister of Commerce and Consumer Affairs for New Zealand, and the Minister for Industry for Australia. Out of a total of ten members, six are appointed by the Australian Government and three by the New Zealand Government. These include one Australian government official, and one New Zealand government official, who is currently an official from MBIE. The Chief Executive of JAS-ANZ is the tenth member. New Zealand and Australia rotate the Chairperson and Vice-Chairperson responsibilities every three years and the appointments must be decided jointly by the Australian and New Zealand Ministers.

Name	Date of original appointment	Expiry date of present term
Howard John Duff (Acting Chairperson)	12/06/2017	11/06/2020
Debra Hall	10/08/2020	09/08/2023
Dr Veronica Jacobsen (NZ official)	12/06/2017	09/08/2023

Motor Vehicle Disputes Tribunal

32. This Tribunal was established under section 82 of the Motor Vehicle Sales Act 2003. The Tribunal resolves disputes between consumers and motor vehicle traders. It has the jurisdiction to consider claims relating to breaches of the Consumer Guarantees Act 1993, Fair Trading Act 1986, and Contract and Commercial Law Act 2017. Each tribunal consists of an adjudicator and an assessor. Adjudicators are appointed by the Governor-General on the joint recommendation of the Minister of Commerce and Consumer Affairs and the Minister of Justice. The Minister of Commerce and Consumer Affairs appoints assessors.

Name	Date of original appointment	Expiry date of present term
Brett Carter (Adjudicator)	15/01/2017	14/02/2022
Jason McHerron (Adjudicator)	1/09/2015	31/08/2020

33. We are currently carrying out a recruitment process to identify a new assessor and will provide you with advice on this in due course. We will also provide you with advice in relation

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to the expiry of Jason McHerron's term as an adjudicator. Mr McHerron continues to be on the Tribunal until such time as he is reappointed or a successor is appointed.

New Zealand Standards Approval Board

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

Name	Date of original appointment	Expiry date of present term
Vaughan Renner (Chair)	1/03/2016	23/04/2022
Vicki Lee	01/24/2020	23/01/2023
Peter Gilbert	1/03/2016	04/04/2021
Richard Merrifield	5/12/2016	16/01/2023
Samantha Sharif	1/03/2016	30/04/2021
Dr Peter Stevens	1/03/2016	30/04/2021
Faye Sumner	1/03/2016	30/04/2021

The Pool of Lay Members of the High Court

35. These members are provided for under section 77 of the Commerce Act 1986. Lay members play a key role in ensuring that the expert evidence on complex competition or economic regulation issues is properly understood by the High Court, then tested and assessed after the hearing. The appointment of lay members to particular cases is at the discretion of High Court judges, but once a lay member has been appointed to a case, the lay member becomes a member of the Court for the purposes of that case. The Governor-General appoints lay members on the recommendation of the Attorney-General who must consult with the Chief Justice and the Minister of Commerce and Consumer Affairs before making any appointment recommendation.
36. The current lay members comprise New Zealand and Australian individuals with expertise in a range of areas such as competition policy, economic regulation, and industrial economics.

Name	Date of original appointment	Expiry date of present term
Professor Martin Richardson	2 July 2001	6 June 2022
Kerrin Vautier	2 July 2001	6 June 2022
Kieran Murray	7 October 2011	6 June 2022
Professor Glenn Boyle	5 March 2009	3 April 2021
Professor Tony van Zijl	5 March 2009	3 April 2021
Patrick Duignan	4 April 2016	3 April 2021

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Dr John Marsden	23 April 2011	6 June 2022
Rodney Shogren	23 April 2011	6 June 2022
Professor Stephen King	28 August 2003	3 April 2021
Dr Darryn Abraham	7 June 2017	6 June 2022
Robin Davey	23 April 2011	6 June 2022

37. A number of these lay members currently reside in Australia. Due to the current restrictions on trans-Tasman travel, we are liaising with the Ministry of Justice and Crown Law to ensure continuity of arrangements.

Trans-Tasman IP Attorneys Board

38. This trans-Tasman body was established under *the Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys*. It is responsible for administering the regulatory and disciplinary regime for Australian and New Zealand patent attorneys and Australian trade mark attorneys. The Board is appointed by the responsible Australian Minister and consists of a Chair⁹, the Director General of IP Australia, the New Zealand Commissioner of Patents, two representatives of the New Zealand patent attorney profession and up to five Australian attorneys (a mixture of patent and trade mark attorneys). The Minister for Commerce and Consumer Affairs makes nominations to the Australian Minister for the two New Zealand patent attorneys representatives on the Board and Chair when it is a New Zealand person.

Name	Date of original appointment	Expiry date of present term
Elizabeth Hopkins (NZ Chair)	15/10/2019	14/10/2022
Ian Finch (NZ patent attorney)	24/02/2017	23/02/2023
Kate Duckworth (NZ patent attorney)	6/07/2018	5/07/2021

Telecommunications Dispute Resolution Scheme

39. This scheme provides a forum for consumers and small businesses to take their disputes against telecommunications providers for resolution at no cost. MBIE appoints one consumer representative to the council that oversees the scheme. The current consumer representative, Deborah Battell, was appointed on 1 January 2018, and was reconfirmed as the consumer representative for a second term of 2 years. Her current term started on 1 March 2020 and will conclude on 28 February 2022.

Utilities Disputes Limited

40. Utilities Disputes Limited administers the mandatory or approved consumer dispute resolution schemes under the Electricity Industry Act 2010 (in respect of distribution and retail operators in the electricity and gas sectors) and under the Telecommunications Act 2001 (in

⁹ The position of Chair rotates between an Australian person and a New Zealand person every three years. Currently the Chair is a New Zealand person.

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respect of broadband shared property access disputes). As set out in statute, the Minister of Commerce and Consumer Affairs is required to approve any rule changes to the scheme.

Annex 2: Legislation under the portfolio

Corporate law and governance

Companies Act 1993

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

Financial Reporting Act 2013

2. This Act defines core terms (e.g. generally accepted accounting practice and other standard requirements (e.g. auditor qualifications)) that are cross-referred to from numerous other enactments. The Act needs to be read together with sector, industry and entity-specific Acts, which determine which entities are reporting entities and whether they are also required to have their financial statements audited and published. The Act also constitutes the External Reporting Board (XRB) as an independent Crown entity and empowers it to issue financial reporting standards and auditing and assurance standards, including some ethical standards.
3. The Act does not provide the XRB with any enforcement functions. Enforcement is left to other agencies, such as the Financial Markets Authority (FMA), the Registrar of Companies (part of MBIE) and the Department of Internal Affairs.

Insolvency statutes

4. The Companies Act 1993 provides the main framework for corporate insolvency (including compromises, voluntary administrations and liquidations). Additional statutes are:
 - **Insolvency Act 2006** – governs personal insolvency. It is administered by the Insolvency and Trustee Service. This Act defines the criteria for entry to bankruptcy, the no-asset procedure (NAP) and debt repayment orders (DRO).
 - **Insolvency (Cross-border) Act 2006** – cross-border insolvency arises when an entity is placed in a form of insolvency administration in one country but has assets or debts in one or more overseas jurisdictions. This Act implements the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law, which promotes cooperation between the courts in different jurisdictions.
 - **Insolvency Practitioners Act 2019** - came into force in September 2020 and provides for the licensing of liquidators, receivers and administrators. The frontline regulation is carried out by professional bodies. The Registrar of Companies is responsible for accrediting professional bodies and monitoring and reporting on the adequacy and effectiveness of those bodies' regulatory systems and processes.
 - **Receiverships Act 1993** – provides for the appointment of a receiver under deeds and agreements between a debtor company and an entity with a security interest over the

assets of the debtor company (e.g. a bank). This Act will be amended by the Insolvency Practitioners Bill (currently in the House).

Other key corporate law and governance statutes

- **Auditor Regulation Act 2011** – provides for licensing of individuals and firms that carry out audits of financial statements prepared by entities that are regulated under the Financial Markets Conduct Act 2013.
- **Building Societies Act 1965** – provides a specific regulatory and governance regime for building societies. The Act establishes the Registrar of Building Societies and assigns functions and powers to the Registrar. A building society is a mutual organisation that offers financial services to its members, traditionally in the areas of mortgage financing and insurance.
- **Co-operative Companies Act 1996** – supplements the Companies Act by providing for the registration of companies whose suppliers or customers are also the company's shareholders. Also includes a part relating to co-operative dairy companies.
- **Corporations (Investigation and Management) Act 1989** – allows the Registrar of Companies and the FMA to declare a corporation to be at risk and give directions to that corporation. It also provides for a statutory manager to be appointed to run the affairs of a corporation that is or may be operating fraudulently or recklessly.
- **Friendly Societies and Credit Unions Act 1982** – provides a specific regulatory and governance regime that is materially different in many respects to the Incorporated Societies Act 1908 (see below). Friendly societies and credit unions are mutual entities. Friendly societies are diverse, ranging from insurers to working men's clubs. All credit unions are non-bank deposit takers.
- **Industrial and Provident Societies Act 1908** – an industrial and provident society is a form of mutual entity, with a primary purpose to operate for the benefit of its members. An industrial and provident society will usually consist of the owners of small businesses who, while continuing to operate independently, become part of this larger entity (e.g. a taxi cooperative) for mutual benefit.
- **Incorporated Societies Act 1908** – provides for the incorporation of societies, which are not established for the purpose of pecuniary gain. This Act is out-of-date. A replacement Incorporated Societies Act has been drafted and can be introduced as soon as Cabinet approves it. The new legislation, which is based on a Law Commission report and recommendations, will codify best practice for operating an incorporated society, as well as providing greater clarity for officers and members about their rights and obligations.
- **Limited Partnerships Act 2008** – internationally, limited partnerships are the preferred structure for venture capital investments and are often used by private equity firms. This Act, combined with related tax law, fits with the international model.
- **New Zealand Institute of Chartered Accountants Act 1996** – constitutes the New Zealand Institute of Chartered Accountants (NZICA) and a system for self-regulation of its members. NZICA merged with its Australian counterpart on 1 January 2015 to form

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Chartered Accountants Australia and New Zealand (CA ANZ). The New Zealand part of CA ANZ is required to regulate its members in accordance with the NZICA Act.

- **Partnership Act 2019** – defines partnership relationships and sets out the rules for determining when a partnership exists. There is no registration system for partnerships.
- **Personal Property Securities Act 1999** – provides uniform rules in relation to the giving and taking of security interests in all forms of personal property other than land and for registration of those interests. Larger ships, aircraft and helicopters are also excluded because there are international registers.
- **Takeovers Act 1993** – establishes the Takeovers Panel and outlines the framework for amending and enforcing the Takeovers Code, and recommending changes to it. The Takeovers Act and Takeovers Code set out the framework for transparent and equitable processes for control-change transactions in the shares of regulated companies.
- **Trustee Companies Management Act 1975** – contains a process for statutory management of trustee companies that is equivalent to the Corporations (Investigation and Management) Act 1989.

Short term COVID-19 insolvency and corporate legislation

- **COVID-19 Response (Further Management Measures) Legislation Act 2020** – Among other things, this Act provides for ‘Business Debt Hibernation’ (BDH) that allows businesses disrupted by COVID-19 to place their existing debts on hold for up to seven months to help them restart trading normally. It also provided a safe harbour in relation to two insolvency-related directors’ duties. The safe harbour provisions ceased on 30 September 2020. The BDH provisions cease on 24 December 2020, and we will be providing you with a draft Cabinet paper recommending that these provisions be extended.
- **COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act 2020** – gives a range of entities relief from certain obligations in their rules and makes it possible for them to use electronic means, including electronic meetings, voting and signatures. The Act will expire on 30 November 2020, unless an Order-in-Council is made extending some or all of it for up to four months.

Financial markets

Financial Markets Conduct Act 2013

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

Financial Advisers Act 2008

6. This Act establishes a licensing regime for providers of financial advice which is administered by the FMA. The Financial Services Legislation Amendment Act 2019 will repeal this Act on 15

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March 2021, and insert new regulation of financial advice into the Financial Markets Conduct Act.

Financial Markets Authority Act 2011

7. This Act establishes the FMA and its principal functions and powers.

Financial Service Providers (Registration and Dispute Resolution) Act 2008

8. This Act establishes a registration process for all financial service providers to facilitate the identification and monitoring of financial service providers. The Act also establishes a requirement for financial service providers who provide services to retail clients to be members of a consumer dispute resolution scheme, aimed at facilitating the orderly resolution of disputes in the financial sector. Under Part 3 of the Act, the Minister of Commerce and Consumer Affairs approves dispute resolution schemes in consultation with the Minister of Finance. The Financial Services Legislation Amendment Bill will also make amendments to this Act to address misuse of the register by offshore entities.

Financial Markets Supervisors Act 2011

9. This Act provides for the licensing and monitoring by the Financial Markets Authority of financial markets supervisors. Supervisors are appointed to look after investors' interests for some types of financial products (e.g. KiwiSaver schemes) and the interests of residents of retirement villages.

KiwiSaver Act 2006

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

Insurance legislation

11. The main pieces of insurance legislation previously sat in the Justice portfolio. In mid-2017, responsibility for legislation relating to insurance contracts was transferred into the Commerce and Consumer Affairs portfolio to sit alongside the business and consumer law functions. This portfolio now includes the following set of insurance legislation:
 - Law Reform Act 1936.
 - Insurance Law Reform Act 1977.
 - Insurance Law Reform Act 1985.
 - Insurance Intermediaries Act 1994.
 - Life Insurance Act 1908.
 - Marine Insurance Act 1908.

Competition

Commerce Act 1986

12. This Act promotes competition for the long term benefit of New Zealand consumers.
13. The key features of the Act are that it:
 - prohibits anticompetitive behaviour, both unilateral and collusive (Part 2)
 - prohibits mergers that would substantially lessen competition (Part 3)
 - empowers the Commerce Commission to conduct competition studies to assess factors that may affect competition in markets and to report its findings, including with recommendations to promote competition if appropriate (Part 3A)
 - empowers the Minister of Commerce and Consumer Affairs to impose regulatory control on monopolies, which is administered by the Commerce Commission (Part 4) – this is currently applied to electricity lines businesses, gas pipeline businesses and the three main international airport companies at Auckland, Wellington, and Christchurch
 - enables businesses to apply to the Commerce Commission for clearance for their merger or collaborative activity to manage legal risk, or for authorisation for their merger or arrangement if it is of such a benefit to the public that it should proceed despite lessening competition (Part 5).
14. The Act also established the Commerce Commission as an independent Crown entity responsible for making certain quasi-judicial decisions, and enforcing the Act in the High Court. There is also a right of private action to the courts for most of the prohibitions.

Short term COVID-19 competition legislation

15. **The COVID-19 Response (Further Management Measures) Legislation Act 2020** amended the Commerce Act 1986 to give the Commerce Commission more discretion to fast track authorisations for business collaborations. In particular, it provides for the Commerce Commission to grant authorisations for cartel conduct, grant interim injunctions for anticompetitive conduct and ability to waive the authorisation filing fee. These provisions are due to expire at the conclusion of the final epidemic preparedness notification.

Consumer

Fair Trading Act 1986

16. This Act aims to contribute to a trading environment where consumer interests are protected, businesses compete effectively and consumers and businesses participate confidently. The Act attempts to ensure that all trading activities are based on accurate and honest information. It also allows for bans and recalls of unsafe products and the imposition of mandatory standards if necessary. The Act is enforced by the Commerce Commission.
17. Under Parts 3 and 4 of the Act, the Minister of Commerce and Consumer Affairs can recommend mandatory standards for products or services, ban unsafe products or order a compulsory recall of an unsafe product. The Minister also has the power to issue a Product

Safety Policy Statement to provide information or guidance when needed. These measures are generally used only when attempts to have the product amended or withdrawn voluntarily fail.

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

Auctioneers Act 2013

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

Consumer Guarantees Act 1993

20. This Act covers consumer protection in the post-sale period (after a purchase is made). It creates statutory guarantees that are automatically conferred each time a consumer purchases a good or service from a trader. The Act also provides clear remedies for consumers if a breach of a guarantee occurs. This Act is self-enforcing.
21. The Act was amended in 2013 as part of the Consumer Law Reforms. A key amendment was the removal of the exemption for auctions and competitive bids, which means that all transactions between a trader and a consumer with respect to consumer goods will be covered by this Act.

Contract and Commercial Law Act 2017 (Parts 3 and 5)

22. This Act brings together a set of provisions governing contracts and commercial transactions. It includes some important protections, such as contractual remedies when buying goods or services through private sales, and redress for the loss or damage of goods during carriage.

Credit Contracts and Consumer Finance Act 2003 (CCCFA)

23. This Act regulates consumer credit, including home loans, personal loans, credit sales/hire purchase, credit cards, long-term leases and housing buy-back schemes. The Act requires disclosure of key information to the debtor, prohibits unreasonable fees, allows for contracts to be varied in cases of hardship and provides for re-opening of oppressive contracts. It is enforced by the Commerce Commission.
24. Significant changes to the CCCFA were passed in June 2014. Key changes include the introduction of a responsible lending framework and a strengthened disclosure regime – including a requirement to make standard form contract terms and costs of borrowing freely and publicly available.

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

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

Motor Vehicle Sales Act 2003

26. This Act requires that all motor vehicle traders are registered on the Motor Vehicle Traders Register (including car market operators and vehicle auctioneers). Traders are required to display a Consumer Information Notice (CIN), in the form prescribed under the Fair Trading Act 1986, with all used motor vehicles for sale.
27. The Motor Vehicle Traders Register is administered by MBIE. Compliance with CIN requirements is enforced by the Commerce Commission.

Weights and Measures Act 1987

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

Intellectual property

Copyright Act 1994

29. This Act seeks to incentivise the creation and dissemination of original creative works. Copyright comes into existence automatically and applies to original creations such as literary works (including software code), musical works, artistic works, sound recordings and films. The Act provides authors with exclusive rights in their works (e.g. the right to copy the work), for a temporary period (which differs depending on the type of work), and subject to certain exceptions (e.g. fair dealing for the purposes of private study). The Act is currently under review.

Designs Act 1953

30. This Act aims to promote innovation and creativity by creating incentives to develop designs for manufactured articles that have visual appeal (industrial designs). The Act establishes a registration regime for original industrial designs. Designs can be registered for up to 15 years.

Geographical Indications (Wine and Spirits) Registration Act 2006

31. A geographical indication is an indication which identifies a good as originating from an area or region where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. This Act provides a registration system for wine and spirits geographical indications.

Haka Ka Mate Attribution Act 2014

32. This Act recognises that the haka ‘Ka Mate’ is a taonga of Ngāti Toa Rangātira. The Act requires that, where Ka Mate is used in a public or commercial context, the authorship of Ka Mate by Ngāti Toa Rangātira chief Te Rauparaha must be acknowledged. This legislation was a result of the Ngāti Toa Rangātira Treaty of Waitangi settlement with the Crown.

Layout Designs Act 1994

33. This Act protects the layout design of semi-conductors and integrated circuits. This Act was passed to meet our obligations as a member of the World Trade Organization.

Patents Act 2013

34. This Act came into force on 13 September 2014. It modernises the patents regime and achieves better alignment with our trading partners’ laws. The Act raised the legislative and technical criteria for granting patents to ensure that patents are only granted for inventions that are “genuine innovations” – that is, innovations that are new, that are not obvious, and that have an identified “real-world” use. Under the new criteria patent owners will have greater certainty that their patents will be valid and enforceable.
35. This Act, in conjunction with the Australian Patents Act 1990, provides a single trans-Tasman registration regime for patent attorneys. Under this trans-Tasman registration regime, only persons registered as patent attorneys may provide advice and assistance for gain related to applying for patents in Australia, New Zealand and elsewhere and on the validity of patents granted. The aim of the registration regime is to ensure innovative businesses in Australia and New Zealand receive high quality advice and services related to the granting of patents.

Plant Variety Rights Act 1987

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

Trade Marks Act 2002

37. A trade mark is a sign capable of distinguishing the goods or services of one enterprise from others operating in the same market. Trade marks provide consumers with information about the quality of products and services, and their origins. This Act encourages enterprises to invest in producing quality goods and services by providing their owners an exclusive right to use a mark in relation to the goods and services for which the trade mark is registered.

Trade and international

Trade (Anti-dumping and Countervailing Duties) Act 1988

38. This Act protects New Zealand industry from material injury caused by dumped or subsidised imports. It allows duties to be imposed on goods sold in New Zealand at less than the normal price in the country of export, or subsidised by an overseas government, if the dumping or subsidy is causing or threatening to cause material injury to an industry in New Zealand or a

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third country. The Chief Executive of MBIE is responsible for initiating and carrying out investigations.

39. The Minister of Commerce and Consumer Affairs:
- makes final determinations on whether there is dumping or subsidisation causing injury
 - may impose or terminate antidumping or countervailing duties
 - may determine a new rate or amount of antidumping or countervailing duty
 - may require a refund of antidumping or countervailing duties in certain circumstances
 - terminates investigations in certain circumstances.
40. The Trade (Anti-dumping and Countervailing Duties) Act 1988 includes a public interest test in trade remedies investigations and reviews as a second step in investigations.

Imports and Exports (Restrictions) Act 1988

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

Standards and Accreditation Act 2015

42. This Act established a new independent statutory board to approve New Zealand Standards and membership of Standards development committees, and an independent Statutory Officer, the New Zealand Standards Executive. It transferred the Standards development function to MBIE to ensure closer alignment with functions such as economic growth, international trade, innovation and health and safety.

Tariff Act 1988

43. This Act provides for the administration of the Tariff of New Zealand and the authority to levy, collect and pay import duties in accordance with the rates specified in the Tariff. Following a comprehensive tariff review in 2003, a unilateral tariff reduction programme reduced tariffs over the period 1 July 2006 to 1 July 2009. Tariffs on clothing, footwear, carpet, ambulances and motor-homes are now at ten percent and tariffs on other dutiable goods are at five percent. This approach was reconsidered in August 2017 and it was decided that these rates would be held for now.
44. Tariff concessions are available under Part 2 of the Tariff Act. The broad scope of goods covered by tariff concessions may be changed by Order in Council. Specific approvals are made by the New Zealand Customs Service. Tariff concessions apply to a wide range of goods, including residential building materials.

Trade (Safeguard) Measures Act 2014

45. This Act repealed the Temporary Safeguard Authorities Act 1987. It puts in place a modernised safeguards regime for New Zealand that is consistent with the World Trade Organisation's safeguard rules. "Safeguards" are emergency measures (usually in the form of a duty) applied at New Zealand's border to provide relief to domestic industry faced with

sudden increases in import volumes. The Act promotes transparent and objective investigative and decision-making processes when New Zealand undertakes a safeguard investigation and imposes safeguard measures.

Trans-Tasman Mutual Recognition Act 1997

46. This Act gives effect to the Trans-Tasman Mutual Recognition Arrangement. Under the Act:

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