



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Commerce (Grocery Sector Covenants) Amendment Bill – Approval for Introduction	Date to be published	6 July 2022

List of documents that have been proactively released

Date	Title	Author
May 2022	Commerce (Grocery Sector Covenants) Amendment Bill – Approval for Introduction	Office of the Minister of Commerce and Consumer Affairs
11 May 2022	Commerce Amendment Bill: Approval for Introduction DEV-22-MIN-0109 Minute	Cabinet Office

Information redacted

YES

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

Some information has been withheld for the reason of Legal professional privilege.



Cabinet Economic Development Committee

Minute of Decision

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Commerce Amendment Bill: Approval for Introduction

Portfolio **Commerce and Consumer Affairs**

On 11 May 2022, the Cabinet Economic Development Committee (DEV):

- 1 **noted** that on 8 March 2022, the Commerce Commission published its final report on the market study into the retail grocery sector;
- 2 **noted** that the Commerce Commission found competition was not working well for consumers in the grocery retail sector, and made several recommendations to improve competition;
- 3 **agreed** to define a grocery retail store as a place at which a material part of the business is selling one or more of the following categories of basic goods to consumers:
 - 3.1 bread;
 - 3.2 dairy produce;
 - 3.3 eggs or egg products;
 - 3.4 fruit;
 - 3.5 vegetables;
 - 3.6 meat;
 - 3.7 rice;
 - 3.8 sugar;
 - 3.9 manufacturer-packaged food;
 - 3.10 medicine, other than prescription medicine;
- 4 **agreed** to prohibit any of the following covenants in which a designated grocery retailer has an interest, by deeming them to be anti-competitive:
 - 4.1 restrictive covenants that have the purpose, effect, or likely effect impeding the development or use of the land or site as a grocery retail store (restrictive covenants);

- 4.2 exclusivity covenants in lease agreements that have the purpose, effect, or likely effect of impeding other tenants from operating a retail grocery store in competition with the lessee (exclusivity covenants);
- 5 **agreed** that covenants entered into for environmental impact reasons connected with a 'retail fuel site', as defined in section 4 of the Fuel Industry Act 2020, not be prohibited;
- 6 **agreed** that prohibiting the restrictive and exclusivity covenants described above makes any such covenants unenforceable;
- 7 **agreed** that Foodstuffs North Island Limited, Foodstuffs South Island Limited, and Woolworths New Zealand Limited be specified as designated grocery retailers;
- 8 **agreed** that the above list of designated grocery retailers can be added to by Order in Council, on the recommendation of the Minister of Commerce and Consumer Affairs following consultation and a recommendation by the Commerce Commission;
- 9 **noted** that the Commerce (Grocery Sector Covenants) Amendment Bill gives effect to the above decisions by amending the Commerce Act 1986;
- 10 **noted** that the supporting mechanisms in the Commerce Act 1986 will apply to the grocery regime, including authorisations, and the ability for a court to vary contracts that have been deemed unlawful;
- 11 **noted** that the Minister of Commerce and Consumer Affairs intends to report back to DEV on 18 May 2022 with further advice on actions to respond to the Commerce Commission's other recommendations, including legislative changes to be progressed via a further Bill due to be introduced in October 2022;

Legislative implications

- 12 **agreed** that the Commerce (Grocery Sector Covenants) Amendment Bill be granted a category 2 priority on the 2022 Legislation Programme (must be passed in 2022);
- 13 **approved** the Commerce (Grocery Sector Covenants) Amendment Bill [PCO 24707/4.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 14 **authorised** the Minister of Commerce and Consumer Affairs to make any final adjustments to the legislation, including minor policy decisions;
- 15 **agreed** that the Bill be introduced and complete its first reading under urgency as part of Budget night legislation;
- 16 **noted** that the Minister of Commerce and Consumer Affairs will be seeking a shortened Select Committee phase of one month, to enable submissions, but also advance this reform as quickly as possible;
- 17 **agreed** that the Bill be referred to the Economic Development, Science, and Innovation Select Committee.

Janine Harvey
Committee Secretary

Present: (see over)

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Willie Jackson
Hon Michael Wood
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Meka Whaitiri
Hon Phil Twyford
Rino Tirikatene, MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV