



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



Briefing for the Incoming Minister of Commerce and Consumer Affairs

26 October 2017

Contents

1. Portfolio overview	3
Purpose	3
The Commerce and Consumer Affairs portfolio	3
Policy and operational functions.....	3
Emerging themes	4
Summary of each regime within the portfolio.....	5
Corporate law and governance	5
Financial markets.....	5
Competition.....	6
Consumer	7
Intellectual property.....	9
Trade and regulatory cooperation	10
2. Portfolio responsibilities	12
Policy and operational functions.....	12
Legislation	14
3. Major links with other portfolios.....	16
4. Key MBIE contacts	17
5. Recommended focus for the first 100 days	18
Key decisions and appointments	18
Upcoming events to be aware of	20
Annex 1: Crown entities and other bodies	21
Annex 2: Legislation under the portfolio	30

1. Portfolio overview

Purpose

1. This briefing provides you with information about the Commerce and Consumer Affairs portfolio. Further briefings will be provided to you focusing on specific topics in depth, guided by your priorities.

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.
3. As Minister of Commerce and Consumer Affairs, you can influence the environment in which businesses and consumers operate. This is through setting 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 regulatory regimes:
 - Corporate law and governance.
 - Financial markets.
 - Competition.
 - Consumer.
 - Intellectual property.
 - Trade and international regulatory cooperation.

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.
 - **Consumer Protection:** consumer information and programmes.
 - **Insolvency and Trustee Service:** administers all bankruptcies and other personal insolvency processes, and some company liquidations.

COMMERCE AND CONSUMER AFFAIRS

- **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:** product safety, 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 and functions of these bodies are discussed in Annex 1.

Emerging themes

8. Regulatory regimes need to adapt to a changing world and changing priorities. Emerging themes that will provide both opportunities and challenges to your portfolio are:
- **Digital technologies** – These have already enabled major developments in how people get around, how they work and how they shop. There will be ongoing implications for consumers and how firms operate and compete. For example, firms are finding new ways to provide financial services and use financial information, transforming the way people bank, borrow and insure themselves and their businesses. Business models are 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).
 - **Internationalisation of economic activity** – Trade barriers have been gradually reduced in recent decades, and digital products and services can flow easily across borders. These trends reduce the effective distance between New Zealand and key markets, creating opportunities for New Zealand businesses to grow to meet the needs of overseas markets. These trends also challenge existing ideas about how intellectual property and consumer information should be protected, distributed and used around the world.
 - **Consumer impacts** – The growth in digital and international products and services has meant that New Zealand consumers have access to a wider range of internationally integrated products and services. However, these trends are also posing new challenges for consumers' interests, such as redress with cross-border transactions.

Summary of each regime within the portfolio

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

Corporate law and governance

10. The corporate law and governance regime sets the rules relating to the establishment, management and closure of companies and other types of entities. MBIE is responsible for the policy and operational areas of the corporate governance regime. Operational areas include:
- *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 for 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 restrained criminal proceeds.
11. MBIE is focusing on:
- *Reviewing the corporate insolvency regime.* A working group was established in 2015 to advise on various aspects of corporate insolvency law. Cabinet agreed for legislation to be prepared to implement the working group's recommendations to introduce a licensing system for insolvency practitioners (i.e. liquidators, administrators and receivers) and make other changes to improve the integrity of the corporate insolvency regime. MBIE is also considering the working group's recommendations on voidable transactions, Ponzi schemes and other corporate insolvency matters.
 - *Reviewing access to "beneficial ownership" information.* This review focuses 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.

Financial markets

12. The financial markets regulatory regime aims for a fair, efficient and transparent way for business, investors and consumers to trade in financial assets.

COMMERCE AND CONSUMER AFFAIRS

13. The global financial crisis and the collapse of numerous finance companies in New Zealand highlighted failures in the then regulation of financial markets and raised questions about whether regulators had the necessary monitoring and enforcement powers to ensure businesses complied with regulation. In response, the regulation of conduct in the financial markets has been overhauled.
14. MBIE is focusing on:
 - *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 passage of the Financial Services Legislation Amendment Bill, which was introduced in August 2017.
 - *Improving financial capability.* Improving levels of financial capability will help the wellbeing of vulnerable New Zealanders, reduce hardship, and increase investment and participation in financial markets. This work includes improvements to the information investors will receive in their KiwiSaver annual statements.
 - *Fintech.* 'Fintech' describes the use of technology to provide new or improved financial products and services. Fintech innovations include robo-advice (computer-generated financial advice), payment apps, peer-to-peer lending platforms and digital currencies such as bitcoin. MBIE is considering what the Government's role in fintech should be, whether our regulatory settings are right, and what risks and opportunities we need to prepare for.
 - *Ensuring the recent reforms operate effectively.* The recent changes to the regulatory regime are very significant and complex in nature. Many minor or technical issues with the legislation or regulation are arising that require continual regulatory improvements.
15. The potential for new financial products and services to be delivered online raises new issues for consumers. Many of these services will improve the consumer experience. However, how well-informed are consumers when it comes to new products and services delivered over the internet (such as financial advice)? Are appropriate safeguards in place?
16. A further question arises as more New Zealanders are saving for their retirement. Is there more that can be done to increase the financial capability of New Zealanders, so that they can make good choices about their savings, particularly savings for retirement?

Competition

17. This regime is focused 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).
18. While competitive markets will often lead to desirable consumer outcomes, direct regulatory intervention may be required in markets where this is little or no competition. In this context, this regime oversees the regulation of the three main airports (Auckland, Wellington and Christchurch), gas pipelines and electricity transmission and distribution businesses with respect to their monopoly functions.

COMMERCE AND CONSUMER AFFAIRS

19. The Commerce Act 1986 underpins the competition regime 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.
20. MBIE is focusing on:
 - *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 empower the Commerce Commission to undertake market studies. This will be a critical addition to the competition toolkit that will support a greater emphasis on lifting the level of competition in specific sectors of the economy. MBIE is also considering issues relating to the misuse of market power.
21. 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 some new challenges for competition law. For example, competition law places obligations on businesses to ensure that their conduct does not have anticompetitive effects. The potential for algorithms and artificial intelligence to set prices for goods could enable collusion and make liability for those actions unclear. We are considering this issue for the New Zealand competition regime alongside work done by international forums, such as the OECD.

Consumer

22. The consumer regime focuses 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 regime also provides protections and remedies when buying through private sales, business-to-business transactions, and auctions.
23. Economy-wide consumer protection provisions in the Fair Trading Act 1986 and Consumer Guarantees Act 1993 work alongside a wide range of sector or issue specific provisions covering insurance, motor vehicles, and consumer credit contracts (which you are responsible for). The Fair Trading Act protects against misleading and deceptive conduct and the Consumer Guarantees Act provides minimum guarantees with all sales of consumer goods and services.
24. As well as maintaining the overall consumer regime, 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

COMMERCE AND CONSUMER AFFAIRS

for the measurement system used for trade. MBIE is also responsible for the occupational licencing for auctioneers and motor vehicle traders.

25. 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.
26. The Commerce Commission enforces the Fair Trading Act and 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.
27. MBIE is focusing on:
 - *Evaluating recent reforms to consumer protection and credit contracts legislation.* While MBIE has not yet drawn definitive conclusions, there are signs that some of the new legislative provisions are having a positive impact on areas that have historically been the source of significant consumer detriment, such as mobile traders.
 - *Informing and educating consumers and businesses.* MBIE recently launched the first phase of a new consumer information programme to educate New Zealand businesses and consumers about their rights under the Consumer Guarantees Act. A three-year work programme is underway to re-develop the *consumerprotection.govt.nz* site as a consumer protection portal covering a variety of topics, which will provide better advice to consumers and businesses on their rights and obligations.
 - *Modernising insurance contract law.* Insurance protects consumers from significant harm, encourages innovation by enabling businesses to transfer risk and unlocks capital by reducing the risk of lending. However, New Zealand's insurance contract law regarding conduct is fragmented and outdated (there are six pieces of legislation governing insurance contracts, two of which date back to 1908) and there are a number of potential problem areas that need to be examined. MBIE is considering the scope of what a review of insurance contract law might cover.
28. 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 consumers can get redress when issues arise from cross-border commerce, potentially through better 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.
29. For example, it is becoming common business practice for many internet-based companies (many of which are international in nature such as Facebook and Google) to collect and use consumer information in a variety of ways that were not previously feasible. How well does New Zealand's consumer and privacy regime maintain consumer confidence as use of consumer information develops in this way? The richness of consumer information now being collected also has the potential for businesses to charge dynamic, individualised pricing based

COMMERCE AND CONSUMER AFFAIRS

on their online actions – are these approaches to differential pricing in the best interests of consumers?

30. It may also be timely to look at some broader questions regarding how the government can better promote consumer welfare: Will existing ways of protecting consumers (such as requiring businesses to disclose particular information) remain useful? Would a greater focus on financial capability help consumers make good decisions? And to what extent would greater economic wellbeing for all New Zealanders reduce exploitative business practices?

Intellectual property

31. Intellectual property regulation encourages the creation and dissemination of ideas and knowledge to promote innovation, increase productivity and foster creative expression. MBIE is responsible for the policy and operational areas of the intellectual property regime.
32. 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.
33. MBIE is focusing on:
- *Reviewing the Copyright Act 1994.* The copyright regime is critical to encouraging the provision of, and access to, innovative products and services. Our 2016 study into the creative sector's use of copyright highlighted the vast technological changes that continue to impact the way we create, distribute and consume content. MBIE is taking a close look at the legislation and how it works in the digital age. An issues paper is being developed, intended to be released for consultation [Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]
 - *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 intend to release an issues paper for public consultation [Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]
34. MBIE's initial engagements on the reviews of the Plant Variety Rights Act and the Copyright Act have drawn attention to the need to consider how these regimes treat Māori knowledge, Māori creative works and indigenous species. Stakeholders have raised concerns about whether the intellectual property regime adequately reflects New Zealand's social, cultural and constitutional circumstances. MBIE will need to work closely with Māori and others in the community to better understand the issues and identify potential solutions. A discussion paper is being developed, and it is intended for consultation hui to be held with Māori [Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]
35. While 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. 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 Zealanders overall.

Trade and regulatory cooperation

36. This area comprises a grouping of regulatory instruments all linked with trade. MBIE's activity is shaped by international instruments and institutions, as well as an increasing focus on regulatory coherence and regulatory cooperation with New Zealand's trading partners. This is critical to increasing exports and competition (given New Zealand's small size, the incentive to compete often needs to come from overseas).
37. MBIE is focusing on:
- *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 regulatory cooperation mechanisms by regulators or those designing regulation to help to address this challenge. MBIE is focusing its regulatory cooperation efforts on emerging economies, particularly China and South East Asia, to help reduce regulatory barriers.
 - *Facilitating trade.* New Zealand's small size and distance make international connections particularly important for New Zealand businesses. International connections give productive firms access to larger markets while at the same time exposing unproductive firms to competition. MBIE facilitates trade both through our work on international regulatory cooperation, through the negotiation and implementation of technical barriers to trade chapters in our free trade agreements, and through our responsibility for tariffs policy.
 - *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 recently changed 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.* 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. The standards regime has been reviewed in recent years, leading to significant reforms including Standards NZ being brought 'in house' within MBIE in 2016.
38. The trade and regulatory cooperation area offers opportunities to support other parts of your portfolio, particularly the competition, consumer and intellectual property regimes:
- Trade negotiations can lead to rules that support New Zealand's businesses to innovate and compete in the global market. Reducing trade barriers can encourage domestic businesses to up their game to keep up with international firms vying for a share in the New Zealand market.

COMMERCE AND CONSUMER AFFAIRS

- Greater coherence between domestic and international regulation will give New Zealand businesses more opportunities to participate in international value chains.
- International e-commerce platforms trading in New Zealand will raise questions about the future effectiveness of current competition and consumer settings and how trade arrangements can ensure appropriate protections remain for New Zealand businesses and consumers.

2. Portfolio responsibilities

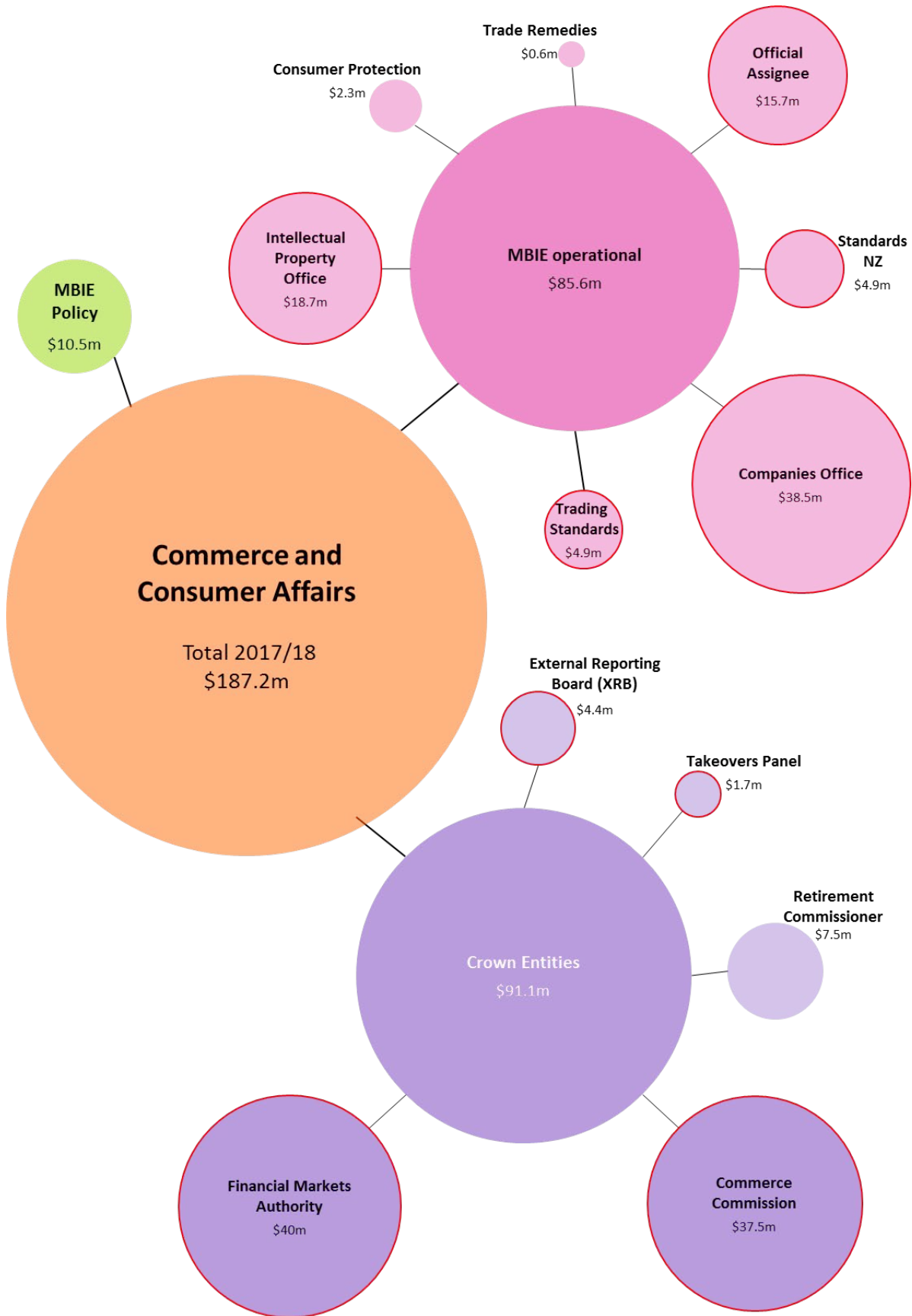
Policy and operational functions

39. The Commerce and Consumer Affairs portfolio is funded under Vote Business, Science and Innovation. The portfolio receives approximately \$187 million in 2017/18 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 diagram on the following page.
40. 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.
41. 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 \$37.5 million from the Commerce and Consumer Affairs portfolio¹ and the Financial Markets Authority receives \$40 million. The role of these Crown entities is discussed further in Annex 1.
42. 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 the diagram on the next page. 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.
43. 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.

¹ The Commerce Commission receives a further \$6.5 million from the Communications portfolio, taking its total appropriated funding in 2017/18 to \$44 million.

COMMERCE AND CONSUMER AFFAIRS

Figure 1: Distribution of 2017/18 Commerce and Consumer Affairs funding



Legislation

44. You are responsible for a large number of 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 • Financial Markets Conduct Act 2013 • Financial Service Providers (Registration and Dispute Resolution) Act 2008 • KiwiSaver Act 2006
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 • Insurance legislation (various)
Intellectual property	<ul style="list-style-type: none"> • Copyright Act 1994 • Patents Act 2013 • Plant Variety Rights Act 1987 • Trade Marks Act 2002
Trade and regulatory cooperation	<ul style="list-style-type: none"> • Trans-Tasman Mutual Recognition Act 1997 • Standards and Accreditation Act 2015 • Tariff Act 1988 • Dumping and Countervailing Duties Act 1988

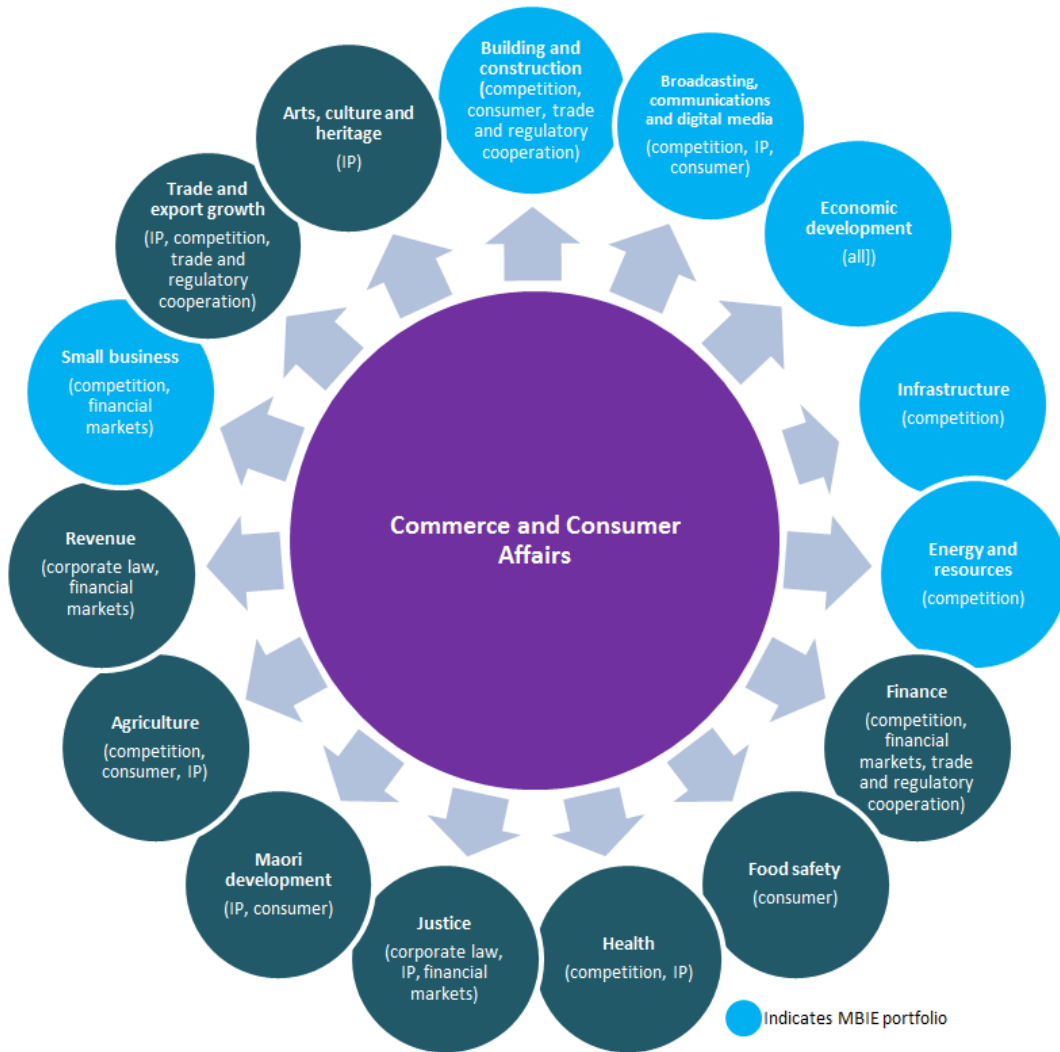
COMMERCE AND CONSUMER AFFAIRS

45. 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.


Title of Bill	Purpose	Status
Insolvency Practitioners Regulation Bill	To increase the integrity of corporate insolvency processes (i.e. liquidations, administrations and receiverships) by introducing a licensing regime for insolvency practitioners	In the House – Supplementary Order Paper being developed
Financial Services Legislation Amendment Bill	To repeal the Financial Advisers Act 2008 and amend the Financial Markets Conduct Act 2013 and Financial Service Providers Act 2008	In the House – introduced on 3 August 2017
Commerce Amendment Bill	To implement changes from a targeted Commerce Act review (including a market studies power)	Not yet introduced – being drafted
Copyright Amendment Bill	To amend the Copyright Act to allow New Zealand to accede to the Marrakesh Treaty	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 – consultation document on the proposed changes is being prepared
Incorporated Societies Bill	To modernise the Incorporated Societies Act 1908	Not yet introduced – further consultation required
Regulatory Systems Amendment Bill No 2 [led by Minister for Economic Development]	To amend a number of MBIE’s regulatory systems	Not yet introduced – being drafted for consultation
Member’s bill – Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill	To improve the Friendly Societies and Credit Unions Act 1982 insofar as it applies to credit unions	Being considered by the Finance and Expenditure Committee; the Minister is to note the initial briefing before it is provided to the Committee
Member’s bill – Consumers’ Right to Know (Country of Origin of Food) Bill	To mandate country of origin labelling for food	Being considered by the Primary Production Committee; Government decision is required on whether the bill should proceed or if the changes should be made instead through existing regulation-making powers under existing Fair Trading Act

3. Major links with other portfolios

46. 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 <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> carolyn.tremain@mbie.govt.nz
Chris Bunny		Deputy Chief Executive – Building, Resources and Markets Group <i>Policy responsibilities except trade and regulatory cooperation</i>	04 901 8377 <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> chris.bunny@mbie.govt.nz
Brad Ward		General Manager – Commerce, Consumers and Communications Branch <i>Policy responsibilities except trade and regulatory cooperation</i>	04 474 2184 <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> bradley.ward@mbie.govt.nz
Paul Stocks		Deputy Chief Executive – Labour, Science and Enterprise Group <i>Policy responsibility for trade and regulatory cooperation</i>	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> paul.stocks@mbie.govt.nz
Peter Crabtree		General Manager – Science, Innovation and International Branch <i>Policy responsibility for trade and regulatory cooperation</i>	04 901 3907 <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> peter.crabtree@mbie.govt.nz
Greg Patchell		Deputy Chief Executive – Market Services Group <i>Operational functions</i>	04 474 2926 <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> greg.patchell@mbie.govt.nz
Sanjai Raj		General Manager – Consumer Protection and Standards Branch <i>Operational functions</i>	04 4742699 <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> sanjai.raj@mbie.govt.nz
Ross van der Schyff		General Manager – Business Integrity Services Branch <i>Operational functions, also the “Official Assignee” (statutory role)</i>	04 901 1633 <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> ross.vanderschyff@mbie.govt.nz

5. Recommended focus for the first 100 days

47. 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 and appointments* – a list of actions that would be required by you to progress key policy work and meet statutory requirements.
- *Upcoming events and announcements* – a list of events that are expected to occur that are relevant to your portfolio.

Key decisions and appointments

Topic	Description	Driver	Timing	Area
Takeovers Code	Decision to release draft regulations for consultation on changes to the Takeovers Code	Ministerial approval required	<i>[Information withheld consistent with s9(2)(f) (iv) of the Official Information Act 1982]</i>	Corporate law
Country of origin food labelling	Decision whether to progress the proposal for country of origin food labelling requirements through the Consumers’ Right to Know (Country of Origin of Food) Bill (member’s bill) or alternatively through existing regulation-making powers under existing Fair Trading Act	Legislation process		Consumer
Marrakesh Treaty	Decision to release a draft bill for consultation on amending the Copyright Act to allow New Zealand to accede to the Marrakesh Treaty. The Marrakesh Treaty is a multilateral treaty that was developed by members of the World Intellectual Property Organization, which is part of the United Nations system	Ministerial approval required		Intellectual property
Financial advice reforms	Decision to release consultation papers on regulations to support the new regime for financial advice and financial service providers	Cabinet approval required		Financial markets
KiwiSaver default provider fees	Decision to approve the outcome of the mid-term KiwiSaver default provider fee review (jointly with Minister of Finance)	Ministerial approval required		Financial markets
Competition policy	Decisions on next steps of a Commerce Amendment Bill to assist with drafting (includes introduction of market studies power)	Ministerial approval required		Competition

COMMERCE AND CONSUMER AFFAIRS

Topic	Description	Driver	Timing	Area
Appointment	Appointment decision for the Telecommunications Dispute Resolution Scheme Governing Council	Ministerial appointment	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>	Consumer
Plant variety rights	Decision to test the issues paper on the review of the Plant Variety Rights Act with key industry and Māori experts (in advance of release)	Ministerial approval required		Intellectual property
New Zealand Business Number	Decision to progress regulations to support the implementation of New Zealand Business Numbers on registers administered by the Companies Office and consumer protection-related registers (with the Minister for Economic Development)	Cabinet approval required		Corporate law
Financial market regulation	Decision to approve minor and technical updates to the Financial Markets Conduct Regulations	Cabinet approval required		Financial markets
KiwiSaver	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>	Cabinet approval required		Financial markets
Regulatory Systems Amendment Bill No 2	Decision to minor additions to the Bill (led by Minister for Economic Development)	Cabinet approval required		Corporate law
Crown entities	Send letters of expectation to Crown entities for the 2018/19 financial year	Statutory requirement		Portfolio
Insolvency	Decisions on recommended changes to the law relating to voidable transactions, Ponzi scheme recoveries and other matters	Ministerial approval required		Corporate law
Financial market regulation	Decisions on aligning New Zealand law with international requirements regarding derivatives contracts (jointly with the Minister of Finance)	Cabinet approval required		Financial markets
Appointment	Appointment of board member to the Financial Markets Authority Board	Board appointment		Financial markets
Appointment	Appointment of associate member to the Commerce Commission, cross-appointed from the Australian Competition and Consumer Commission	Board appointment	Competition	

COMMERCE AND CONSUMER AFFAIRS

Topic	Description	Driver	Timing	Area
Appointment	Appointment/reappointment of members to the Takeovers Panel	Board appointment	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>	Corporate Law
Appointment	Appointment of consumer representative on the Banking Ombudsman Scheme Board	Board appointment		Financial markets
Appointment	Appointment/reappointment of members to the New Zealand Standards Approval Board	Board appointment		Trade and regulatory cooperation
Companies Office	Policy decisions for proposed Approved Information Sharing Agreement between the Companies Office and Inland Revenue (joint decisions are required with the Minister of Revenue)	Cabinet approval required		Corporate law

Upcoming events to be aware of

Event	Timing	Area
First hearing, at the High Court, regarding the Judicial Review brought by New Zealand Steel Ltd of the then Minister's decision not to impose countervailing duties on imports of galvanised steel coil from China	Scheduled to commence on 30 October 2017	Trade and Regulatory Cooperation
Merger appeal of the Commerce Commission's decision regarding NZME and Fairfax is being heard at the High Court	October/November 2017	Competition
<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>	November 2017	Consumer
Release of the Commerce Commission's draft decision on Powerco's application for a Customised Price-Quality Path	November 2017	Competition
<i>[Information withheld consistent with s6(c) of the Official Information Act 1982]</i>	December 2017	Competition
First-reading and referral to select committee of the Financial Services Legislation Amendment Bill	Late 2017	Financial markets

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 enforcing competition law, protecting consumers, 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 2001², Telecommunications Act 2001³, 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 Communications portfolios. The Minister of Agriculture, Minister of Broadcasting, Communications and Digital Media, 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 Commissioner⁴. It also has two associate members, with one cross-appointed from the Australian Competition and Consumer Commission.

Chief Executive: Brent Alderton	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> brent.alderton@comcom.govt.nz
Chair: Dr Mark Berry	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> mark.berry@comcom.govt.nz

² You are the Minister responsible for the appropriation funding the Commission's dairy activities, but portfolio responsibility for the Dairy Industry Restructuring Act 2001 sits with the Minister of Agriculture.

³ The appropriation and portfolio responsibility for the Telecommunications Act 2001 sit with the Minister of Broadcasting, Communications and Digital Media.

⁴ The Minister of Broadcasting, Communications and Digital Media proposes the appointment of the Telecommunications Commissioner.

COMMERCE AND CONSUMER AFFAIRS

Name	Date of original appointment	Expiry date of present term
Dr Mark Berry (Chair)	1/04/2009	31/03/2019
Ms Susan Begg (Deputy Chair)	17/06/2009	16/06/2019
Dr Stephen Gale (Telecommunications Commissioner)	1/07/2010	11/07/2020
Ms Anna Rawlings	9/06/2014	8/06/2019
Dr Jill Walker	1/12/2010	30/11/2020
Ms Elisabeth Welson	20/09/2012	18/08/2018
Ms Sarah Court (associate member, cross-appointment from the Australian Competition and Consumer Commission)	23/11/2015	30/04/2018
Mr Graham Crombie (associate member)	20/07/2015	19/07/2020

Commission for Financial Capability (Retirement Commissioner)

7. 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 carrying out regular reviews of retirement income policy. The Commissioner also has a monitoring role under the Retirement Villages Act 2003. The Commission is funded by a Crown appropriation of \$7.5 million (increasing to \$8.7 million in 2018/2019).
8. Diane Maxwell was appointed on 1 July 2013. Her present term expires on 30 June 2019.

Retirement Commissioner: Diane Maxwell	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> diane.maxwell@cffc.org.nz
--	--

External Reporting Board

9. Established 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 standards and auditing and assurance standards, including some 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 Board is comprised of nine members, with one member cross-appointed from the Australian Financial Reporting Council.

Chief Executive: Warren Allen	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> warren.allen@xrb.govt.nz
Chair: Graeme Mitchell	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>

COMMERCE AND CONSUMER AFFAIRS

Name	Date of original appointment	Expiry date of present term
Mr Graeme Mitchell (Chair)	1/07/2011	28/02/2019
Ms Michele Embling (Deputy Chair)	1/07/2011	16/08/2019
Professor Michael Bradbury	19/12/2016	18/12/2021
Mr Simon Carey	1/07/2011	16/08/2019
Mrs Kimberley Crook	1/02/2015	31/01/2020
Mr William (Bill) Edge (cross-appointment from the Australian Financial Reporting Council)	19/12/2016	28/07/2019
Mr John Kensington	19/12/2016	18/12/2021
Mrs Jane Taylor	9/12/2013	8/12/2018
Mr Fergus Welsh	1/02/2015	31/01/2020

Financial Markets Authority

10. 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. 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.
11. The FMA receives funding of about \$40 million in 2017/18, including \$27 million collected through levies.
12. The FMA Board consists of nine members.

Chief Executive: Rob Everett	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> rob.everett@fma.govt.nz
Chair: Murray Jack	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> mjack@deloitte.co.nz

Name	Date of original appointment	Expiry date of present term
Mr Murray Jack (Chair)	1/05/2011	30/04/2019
Dr Arthur Grimes	1/05/2011	30/11/2017
Ms Mary Holm	1/05/2011	7/06/2019
Ms Elizabeth Longworth	12/06/2017	11/06/2020
Mrs Ainsley McLaren	26/09/2016	25/09/2021
Mr William Stevens	8/06/2015	7/06/2020

COMMERCE AND CONSUMER AFFAIRS

Ms Vanessa Stoddart	8/06/2016	7/06/2021
Mr Campbell Stuart	8/06/2015	7/06/2018
Mr Mark Thomas Todd	8/06/2015	7/06/2020

Takeovers Panel

13. 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.
14. 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	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> Andrew.Hudson@takeovers.govt.nz
Chair: Andy Coupe	andy@coupe.co.nz

Name	Date of original appointment	Expiry date of present term
Mr Andy Coupe (Chair)	25/09/2008	30/03/2022
Mr Carl Blanchard (Deputy Chair)	24/09/2011	23/08/2021
Mr Simon Horner	1/02/2011	31/01/2021
Mr Richard Hunt (cross-appointed from the Australian Takeovers Panel)	1/05/2014	30/04/2018
Ms Sacha Judd	13/10/2015	12/10/2020
Mr Murdo Beattie	25/09/2008	24/09/2018
Mr Tony Pigou	7/01/2013	6/01/2018
Ms Silvana Schenone	1/10/2016	30/09/2021
Mr Nathanael Starrenburg	25/10/2016	24/10/2021
Ms Tina Symmans	3/04/2013	2/04/2018
Mr Roger Wallis	1/02/2011	31/07/2018

Accreditation Council

15. 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.

COMMERCE AND CONSUMER AFFAIRS

16. 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.
17. The Council's governing board is composed of between five and seven members. It receives no Crown funding. Instead, it operates user and stakeholder funded not-for-profit business model.

Chief Executive: Dr Llewelyn Richards	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i> lrichards@ianz.govt.nz
Chair: Paul Connell	<i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>

Name	Date of original appointment	Expiry date of present term
Mr Paul Connell (Chair)	1/07/2014	30/06/2020
Dr Graeme Benny	1/06/2017	31/05/2020
Mr John Boshier	1/07/2014	30/06/2019
Mr Richard (Ru) Collin	1/06/2017	31/05/2019
Ms Carolyn Harkess	1/06/2017	31/05/2020
Mr Peter Steel	1/06/2017	31/05/2019

Other bodies you have responsibilities for

18. 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)

19. 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.
20. 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).
21. The Minister of Broadcasting, Communications and Digital Media 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

22. 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, Mrs Kenina Court, was appointed on 1 February 2016. Her term expires on 31 January 2018.

Cease and Desist Commissioners

23. These Commissioners are appointed by the Governor-General at the recommendation of the Minister of Commerce and Consumer Affairs for the sole purpose of hearing cease and desist applications. This gives the Commerce Commission an alternative to seeking interim injunctions from the High Court against anticompetitive behaviour. The Commerce Amendment Bill, which is currently being drafted, will repeal the Commerce Act's cease and desist regime and these appointments will likely no longer be required in future.

Name	Date of original appointment	Expiry date of present term
Mr Michael Behrens QC	19/08/2013	18/08/2018
Hon Sir James (Bruce) Robertson	19/08/2013	18/08/2018

Copyright Tribunal

24. 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
Ms Jane Glover (Deputy Chair)	1/08/2012	6/11/2021
Mrs Sarah Bacon	31/01/2014	1/02/2019
Mr Peter Dengate Thrush	1/03/2010	28/02/2020
Mr Paul Sumpter	6/07/2004	5/07/2019
Miss Sarah-Jane Weir	27/03/2014	26/03/2019

Film and Video Labelling Body

25. 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.
26. 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. 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

27. 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)

28. 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.
29. 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
Mr Michael Willing (Deputy Chair)	24/06/2004	31/12/2019
Mr Howard Duff	12/06/2017	11/06/2020
Dr Veronica Jacobsen (NZ official)	12/06/2017	11/06/2020

Motor Vehicle Disputes Tribunal

30. This Tribunal was established under section 82 of the Motor Vehicle Sales Act 2003. The Tribunal resolves disputes between consumers and motor vehicle traders. The Tribunal has the jurisdiction to consider claims relating to breaches of the Consumer Guarantees Act 1993, Fair Trading Act 1986, Sale of Goods Act 1908 and Contractual Remedies Act 1979. Each tribunal consists of an adjudicator and an assessor. The Minister of Commerce and Consumer Affairs has a role appointing adjudicators (jointly with the Minister of Justice) and for appointing the panel of assessors.

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

New Zealand Standards Approval Board

31. 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

COMMERCE AND CONSUMER AFFAIRS

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
Mr Vaughan Renner (Chair)	1/03/2016	28/02/2019
Mr John Boshier	1/03/2016	30/04/2018
Mr Peter Gilbert	1/03/2016	30/04/2018
Mr Richard Merrifield	5/12/2016	4/12/2019
Ms Samantha Sharif	1/03/2016	30/04/2018
Dr Peter Stevens	1/03/2016	28/02/2019
Mrs Faye Sumner	1/03/2016	28/02/2019

The Pool of Lay Members of the High Court

32. These members are provided for under section 77 of the Commerce Act. Lay members play a key role in ensuring that the expert evidence on complex competition issues is properly understood by the 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.
33. 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
Dr John Philip Small	28 August 2003	3 April 2021
Professor Glenn Boyle	5 March 2009	3 April 2021
Professor Tony van Zijl	5 March 2009	3 April 2021
Dr John Marsden	23 April 2011	6 June 2022
Rodney Shogren	23 April 2011	6 June 2022
Professor Stephen Peter King	28 August 2003	3 April 2021
Dr Darryn Abraham	7 June 2017	6 June 2022
Robin Davey	23 April 2011	6 June 2022

Trans-Tasman IP Attorneys Board

34. 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 the Australian trade mark attorneys. The Board consists of a Chair, the Director General of IP Australia, the New Zealand Commissioner of Patents, two New Zealand patent attorneys and five Australian attorneys (a mixture of patent and trade mark attorneys). The Minister for Commerce and Consumer Affairs makes nominations for the two New Zealand patent attorneys on the Board.

Name	Date of original appointment	Expiry date of present term
Mr Ian Finch (NZ patent attorney)	24/02/2017	23/02/2020
Mr Greg West-Walker (NZ patent attorney)	24/02/2017	23/02/2020

Telecommunications Dispute Resolution Scheme

35. 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, Mr Paul Elenio, was appointed on 1 December 2012. His term expired on 30 November 2016 and a replacement is being sought. The appointment will be made in consultation with the Minister of Commerce and Consumer Affairs and the Minister of Broadcasting, Communications and Digital Media.

Utilities Disputes Limited

36. 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 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.
2. This Act will be amended by the Insolvency Practitioners Bill (currently in the House).

Financial Reporting Act 2013

3. 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.
4. 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

5. This Companies Act provides the main framework for corporate insolvency (including 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 summary instalment order (SIO).
 - **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.
 - **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). It establishes the Registrar of Friendly Societies and Credit Unions and assigns functions and powers to the Registrar.
- **Industrial and Provident Societies Act 1908** – an industrial and provident society is another form of mutual entity, that is, its primary purpose is 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 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 new Act based on the Law Commission's report and recommendations will codify best practice for operating an incorporated society, as well as provide 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** – establishes the New Zealand Institute of Chartered Accountants (NZICA) and a system for self-regulation of its members. NZICA recently merged with its Australian counterpart to create Chartered Accountants Australia and New Zealand (CAANZ). However, the NZICA Act still applies and the New Zealand part of CAANZ has to regulate its members in accordance with the Act.
- **Partnership Act 1908** – defines partnership relationships and sets out the rules for determining when a partnership exists. There is no registration system for partnerships.

The Parliamentary Counsel Office is leading work on a revision Bill to modernise the drafting of the legislation without changing the substantive effect of the law.

- **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.

Financial markets

Financial Markets Conduct Act 2013

6. 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

7. This Act establishes a licensing regime for providers of financial advice which is administered by the FMA. The Financial Services Legislation Amendment Bill 2017 (currently in the House) will repeal this Act, and insert new regulation of financial advice into the Financial Markets Conduct Act.

Financial Markets Authority Act 2011

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

Financial Service Providers (Registration and Dispute Resolution) Act 2008

9. 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.

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.

Competition

Commerce Act 1986

11. This Act promotes competition for the long term benefit of New Zealand consumers.
12. 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 Minister of Commerce and Consumer Affairs to impose regulatory control on monopolies (Part 4) – this is currently applied to electricity lines businesses, gas pipeline businesses and the three main airport companies.
13. 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.

Consumer

Fair Trading Act 1986

14. 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.
15. Under Parts 3 and 4 of the Fair Trading Act 1986, 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.
16. 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's 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

17. 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

18. 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 a service from a trader. The Act also provides clear remedies for consumers if a breach of the guarantee occurs. This Act is self-enforcing.
19. 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)

20. 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)

21. 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.
22. 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]

23. 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.

Insurance legislation

24. 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 this 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.

Motor Vehicle Sales Act 2003

25. 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, with all used motor vehicles for sale.
26. The Motor Vehicle Traders Register is administered by MBIE. Compliance with CIN requirements is enforced by the Commerce Commission.

Weights and Measures Act 1987

27. 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

28. 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

29. 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 protected for up to 15 years.

Geographical Indications (Wine and Spirits) Registration Act 2006

30. 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 established a registration system for wine and spirit geographical indications.

Haka Ka Mate Attribution Act 2014

31. 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

32. 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

33. 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.

Plant Variety Rights Act 1987

34. 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

35. A trade mark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. 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 regulatory cooperation

Dumping and Countervailing Duties Act 1988

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

37. 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.
38. The Trade (Anti-dumping and Countervailing Duties) Amendment Act received Royal Assent in May 2017. This Act extends the suspension of the application of any new anti-dumping duties on imports of residential construction materials for two further years, to June 2019. The Act also inserts a new Public Interest Test into New Zealand's trade remedies regime, with effect from late November 2017.

Imports and Exports (Restrictions) Act 1988

39. This Act provides for prohibiting or restricting imports and exports that would be contrary to the public interest. The Minister 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

40. 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 the MBIE ensuring closer alignment with functions such as economic growth, international trade, innovation and health and safety.

Tariff Act 1988

41. 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.
42. Tariff concessions are available under Part 2 of the Tariff. 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

43. 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 (WTO) 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

44. 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.