



COVERSHEET

Minister	Hon Dr Duncan Webb	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Grocery Industry Competition Bill: Approval for Introduction	Date to be published	1 June 2023

List of documents that have been proactively released

Date	Title	Author
November 2022	Grocery Industry Competition Bill: Approval for Introduction	Office of the Minister of Commerce and Consumer Affairs
10 November 2022	Grocery Industry Competition Bill: Approval for Introduction – Minute of Decision	Cabinet Office
2 November 2022	Post-implementation Review: Commerce (Grocery Sector Covenants) Amendment Bill	MBIE

Information redacted

YES / NO [select one]

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Some information has been withheld for the reasons of free and frank opinions, confidential advice to government and confidentiality.



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Grocery Industry Competition Bill: Approval for Introduction

Portfolio **Commerce and Consumer Affairs**

On 10 November 2022, the Cabinet Legislation Committee:

Additional Policy Matters

- 1 **noted** that in June, July and August 2022, Cabinet made a number of policy decisions to establish a new Grocery Commissioner within the Commerce Commission (the Commission) to regulate the grocery industry [CAB-22-MIN-0186, CAB-22-MIN-0259, CAB-22-MIN-0303];
- 2 **agreed to recommend that Cabinet** rescind and modify the decisions set out in Annex One to the paper under LEG-22-SUB-0193; and instead
- 3 **agree** to the following changes and clarifications in policy intent for inclusion in the Bill:
 - 3.1 rationalisation of civil and criminal penalties;
 - 3.2 adding a tier four penalty for a supplier failing to notify the Commission of an agreement for collective negotiation;
 - 3.3 removing the daily penalties for the wholesale supply regime;
 - 3.4 allowing flexibility to apply different penalty tiers to the Wholesale Code and the Grocery Supply Code with appropriate safeguards;
 - 3.5 making the jurisdiction of the dispute resolution scheme cover any dispute between a supplier or wholesale customer, with an ability to adjust the jurisdiction by regulations if needed;
 - 3.6 the dispute resolution scheme may make binding determinations, but these may not exceed \$5,000,000 in financial value;
 - 3.7 providing appeal rights on points of law in relation to binding determinations of the dispute resolution scheme;
 - 3.8 setting the details of the dispute resolution scheme in scheme rules in the Bill and requiring the scheme and its rules to be approved by the Minister of Commerce and Consumer Affairs (the Minister);

- 3.9 focusing the wholesale backstop regime on the sale of wholesale groceries by the major grocery retailers, and including a 'specified access terms' tool to be modelled on sub-part 2A of Part 2 of the Telecommunications Act 2001;
- 3.10 providing appeal rights to affected parties in relation to administrative powers, while legislative powers are subject to disallowance and not appeal;
- 4 **noted** that in August 2022, Cabinet authorised the Minister to make additional policy decisions and minor or technical changes consistent with the general policy intent, on issues that arise in drafting and passage through the House [CAB-22-MIN-0303];
- 5 **noted** that under this delegated authority, the Minister has made the following changes to:
- 5.1 clarify how the Grocery Commissioner function fits within the Commission's governance structure, modelled on the Telecommunications Commissioner in the Telecommunications Act 2001;
- 5.2 require, as part of the quasi-regulatory regime, that a major grocery retailer must not hinder wholesale customers from developing relationships with suppliers and vice-versa;
- 5.3 clarify that, as part of the wholesale backstop regime, the Minister of Commerce and Consumer Affairs may only seek an Order in Council following an inquiry by the Commission, but is not limited by the recommendations (if any) of that inquiry;

Approval for Introduction

- 6 **noted** the Post-Implementation Review, attached to the submission under LEG-22-SUB-0193, on the policy proposals that were implemented in the Commerce (Grocery Sector Covenants) Amendment Bill;
- 7 **noted** that the Grocery Industry Competition Bill holds a category 4 priority on the 2022 Legislation Programme (to be referred to a select committee in 2022);
- 8 **noted** that the Grocery Industry Competition Bill is intended to promote, for the long-term benefit of consumers in New Zealand, competition and efficiency in the grocery industry;
- 9 **approved** the Grocery Industry Competition Bill [PCO 24452] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 10 **agreed** that the Bill be introduced in mid-November 2022;
- 11 **agreed** that the government propose that the Bill be:
- 11.1 referred to the Economic Development, Science and Innovation Select Committee for consideration for a period of four months;
- 11.2 reported back by 23 March 2023;

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Rebecca Davies
Committee Secretary

Attendance: see over

Present:

Hon Megan Woods
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Michael Wood
Hon Kiri Allan
Hon Dr David Clark
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG