Review of anti-competitive land agreements - Submission form

# How to use this form

MBIE is seeking your views on the topics covered in the discussion document “review of anti-competitive land agreements’, which can be found here [[Review of anti-competitive land agreements | Ministry of Business, Innovation & Employment (mbie.govt.nz)](https://www.mbie.govt.nz/have-your-say/review-of-anti-competitive-land-agreements/)].

This document provides template for you to return your submission. All questions are optional, and we have included them to guide your submission. You may answer as many or as few as you wish, and you are also welcome to respond in another format, if that would be more convenient for you.

Please send your written submission (either using this form or another format) to:

* [competition.policy@mbie.govt.nz](mailto:competition.policy@mbie.govt.nz), or
* Competition and Consumer Policy  
  Building, Resources and Markets  
  Ministry of Business, Innovation & Employment  
  PO Box 1473

Wellington 6140  
New Zealand

# Use and release of information

The information provided in submissions will be used by MBIE to inform MBIE’s policy development process and will inform advice to Ministers on the economy-wide review of anti-competitive land agreements. As part of policy development, MBIE may work with other agencies. We may share our analysis of the information we receive, but before doing so we will remove submitter names and contact details as well as any information you indicate to be confidential. We may use the personal information provided to contact you directly if we require clarification of any matters in submissions or to consult with you.

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If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

• indicate that you do not wish us to publish your submission on the front of the submission, or

* clearly mark any confidential information that you do not wish us to publish within the text and provide a separate version excluding the relevant information for publication on our website.

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**Name (first and last name)**

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**Email**

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**Is this an individual submission, or is it on behalf of a group or organisation?**

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**Business name or organisation**

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**Is there any information you would like to be withheld? Please state which question/information you would like to be withheld? If applicable, please also provide a separate version of this form without the sensitive information.**

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# Chapter One: What is competition and how can land agreements lessen this?

**QUESTION 1: Have you ever been deterred or prevented from using a site or property for your business as a result of a land agreement? If so, what did it say and what was the nature of the land agreement?**

**QUESTION 2: What features did you require for the site e.g. access to foot traffic?**

**QUESTION 3: What impact did this have on your business, e.g. did you find another suitable site?**

**QUESTION 4: Is there a sector you consider is more likely to be impacted by difficulty accessing a suitable site?**

**What features of the sector makes you think this and how is this problematic?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 5: Has your ability to compete been impacted by the terms of a land agreement which required you not to do something? If so, please describe what the land agreements required, and the impact on your subsequent choices.**

**Your ability to compete could include: starting a new business, expanding an existing business, offering lower prices, creating or supplying new products or services, or supplying a new customer group.**

**QUESTION 6: Has your ability to compete been impacted by the terms of a land agreement which required you to do something? If so, please describe the requirement, and the impact on your subsequent choices.**

**QUESTION 7: If you have been party to a land agreement, was this in place when you decided to occupy the site or property, or did you agree to it afterwards?**

**QUESTION 8: In this document we mostly talk about the impact land agreements have as a result of restricting access to suitable sites.**

**Are there other impacts land agreements can have on competing businesses, for example restricting your choices around goods or services by preventing you using a certain supplier?**

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**QUESTION 9: Are there other features that you consider could be a ‘risk factor’, where a land agreement may be more likely to impact competition?**

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# Chapter Two: What purposes do land agreements serve and are there alternatives?

**QUESTION 10: We have identified three broad rationales for businesses using land agreements: to recoup an initial investment, to protect ongoing operations, or to protect them from future dispute.**

**Do you agree with these categories?**

**Are there any other rationales for using land agreements that we have not covered here?**

**QUESTION 11: Are you party to an agreement that benefits your business, either by requiring another party to do something, or by requiring them not to do something? If so, please provide details of the agreement (the type of agreement, the purpose of the agreement and its duration).**

**If you have multiple land agreements, please provide the most recent example**

**QUESTION 12: Did the agreement achieve this aim?**

**QUESTION 13: Have you ever used a land agreement to protect your place in the market? If so, how?**

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**QUESTION 14: If you benefit from a land agreement, did you consider any alternative options to the land agreement? If so, what were these and why did you choose the land agreement?**

**QUESTION 15: Are you aware of any competition impacts from the alternatives we suggest? If so, what are these?**

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# Chapter Three: How are land agreements made, and what rules are there around competition?

**QUESTION 16: If you are party to a land agreement, did you record this agreement with LINZ?**

**What type of agreement is it?**

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# Chapter Four: How well is the current system working?

**QUESTION 17: Were you aware of the prohibitions around anti-competitive covenants and other agreements in the Commerce Act, prior to reading this document?**

**If not, what would have been the best way for this to have been communicated to you?**

**QUESTION 18: Have you used a template to create a land agreement?**

**If so, what type of agreement was it?**

**If so, did it contain restrictive clauses, and did you include these in your agreement?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 19: Have you removed, or attempted to remove, a registered land agreement?**

**If so, what type of agreement was this?**

**Were you successful in doing so?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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# Chapter Five: Are there changes we can make to improve the current system?

***Criteria: Proposed approach to determining importance***

**QUESTION 20: Do you consider interventions should target:**

* **Existing agreements / Future agreements / Both / Neither**

**QUESTION 21: Do you consider the focus of interventions should be on (please select all that apply):**

* **Prevention / Detection / Compliance / Enforcement**

**QUESTION 22: Do you consider the options outlined to prevent new anti-competitive agreements would achieve this aim:**

* **Increase awareness and understanding of existing rules - Yes / No / Somewhat / Don’t know**
* **Amend agreement templates - Yes / No / Somewhat / Don’t know**
* **Introduce checkpoints in the registration process - Yes / No / Somewhat / Don’t know**

**QUESTION 23: Do you consider the options outlined to detect new anti-competitive agreements would achieve this aim:**

* **Introduce a requirement for new agreements to provide a description of their purpose when they are recorded on the Land Titles Register - Yes / No / Somewhat / Don’t know**
* **Introduce a requirement for certain types of agreements to be reviewed after a period of time - Yes / No / Somewhat / Don’t know**

**QUESTION 24: Do you consider the option outlined to detect existing anti-competitive agreements would achieve this aim:**

* **Introduce a requirement for some businesses to disclose information on agreements - Yes / No / Somewhat / Don’t know**

**QUESTION 25: Do you consider the options outlined to better enable businesses to voluntarily comply would achieve this aim:**

* **Introduce a sunset clause whereby agreements become unenforceable after a certain time - Yes / No / Somewhat / Don’t know**
* **Make it easier for businesses to voluntarily remove covenants - Yes / No / Somewhat / Don’t know**

**QUESTION 26: Do you consider that changing sections 27 and 28 would be more effective at deterring or prohibiting anti-competitive land agreements ? Yes / No / Somewhat / Don’t know**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 27: Do you have any other suggestions for changes we could make to help better prevent anti-competitive land agreements being created and/ or recorded on the Land Titles Register?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 28: If we were to introduce a requirement for certain agreements to be reviewed, which businesses, sectors or types of agreements do you consider it would be best directed towards?**

**How long do you consider a review period should be?**

**QUESTION 29: Do you have any other suggestions for changes we could make to make monitoring and identifying new land agreements easier?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 30: Are there particular businesses or types of agreements that you consider the information disclosure requirement should apply to? If so, what are these?**

**QUESTION 31: Do you have any other suggestions for changes we could make to make monitoring and identifying existing land agreements easier?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 32**: **If we were to introduce a sunset clause for certain types of agreement, do you have a view as to which businesses or sectors, or types of agreements, it should apply to?**

**QUESTION 33**: **Do you consider that there should be a presumption of unenforceability for certain land agreements? If so, which agreements should these be?**

**QUESTION 34**: **Do you consider there should be an automatic removal on application for certain land agreements, if no objection is filed? If so, which agreements should these be?**

**QUESTION 35**: **Do you consider some land agreements should be automatically time bound? If so, which agreements should this apply to?**

**QUESTION 36**: **Are there any other options that you consider would help promote voluntary compliance?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 37: Do you consider changes to sections 27 and 28 of the Commerce Act are needed?**

**QUESTION 38: Do you have any other suggestions for how to make the enforcement of the prohibitions in sections 27 and 28 of the Commerce Act simpler and more effective?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 39: Are there any other risks or potential unintended consequences you would like us to be aware of?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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***Criteria for assessing importance: wider well being***

**QUESTION 40: Do you consider existing provisions in the Commerce Act have the potential to ‘over-capture’ land agreements, by prohibiting land agreements you consider to have necessary purpose?**

**Please provide examples.**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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***Criteria for assessing importance: wider well being***

**QUESTION 41: Do you consider the ability of the Commerce Commission to provide ‘authorisation’ sufficient to mitigate the risk that the Commerce Act could over-capture land agreements?:**

**If not, why not?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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**QUESTION 42: Do you have a view on how we can identify when land agreements are beneficial, and how this can be weighed up against their impact on competition?**

**QUESTION 43: Do you have an example of when an exemption to sections 27, 28 or 30 could be used, and the authorisation process would not be appropriate?**

**QUESTION 44: Do you consider criteria, or a test would be most suited for this type of exemption?**

**QUESTION 45: Do you have a view on what criteria would be appropriate for an exemption?**

**Can you provide examples of agreements that you consider would meet these criteria?**

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| **Please type your submission below. Please indicate the question(s) to which you are responding.** |
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