



Governance Manual

December 2025



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Scope of the Governance Manual

The purpose of this Manual is to provide an overview of the statutory powers of the Commerce Commission | Te Komihana Tauhokohoko (the Commission) and outline the governance principles which underpin the Board's performance and conduct.

Governance refers to the systems and processes that are used to direct and manage the operations of an organisation to achieve its objectives. This Manual aims to provide Board Members with the relevant knowledge, information, and reference material to be part of a skilled and committed Board, to ensure a clear organisational understanding of governance and to facilitate best practice governance within the Commission. The Manual sets out guiding principles and includes references to publications which will assist Board Members expand their knowledge of aspects of governance.

Definitions

Commerce

Commission /

The organisation as a whole (including members and staff).

The Commission

Full members /

The Board

Full members, appointed as per section 9 of the Commerce Act 1986 by the Governor-General on the advice of the Minister.

As a collective, full members make up the Board of the Commission.

Associate members

Associate members appointed as per section 11 of the Commerce Act 1986 by the Minister for specified classes of matters.

Members

The collective group of full members and associate members – distinct from the Board.

Named officers

Members whose roles are established by statute – the Chair, Deputy Chair, Telecommunications Commissioner, Grocery Commissioner.

Version history

Date	Notes	Version
20 September 2024	Revamped version approved by the Board	1.0
11 September 2025	Updated version submitted to the Board	1.1
6 November 2025	Updated version published	2.0
9 December 2025	Section added on Member Availability (Chapter Nine)	3.0

Chapter One – Relevant Legislation and Standards

This section describes the legislative environment in which the Commission operates and provides guidance on how it will ensure compliance, as well as other standards that will guide the Board in how it operates.

Commission-specific Legislation

The Commission is established under [Part 1 of the Commerce Act 1986](#) and is an Independent Crown Entity under the Crown Entities Act 2004

The Commission has enforcement and regulatory control responsibilities under several general and specific regulatory regimes set out in the following Acts:

1. [Commerce Act 1986](#) - Promotes competition in markets for the long-term benefit of consumers within New Zealand.
2. [Fair Trading Act 1986](#) – Promotes fair competition, making sure consumers get accurate information before buying products and services and promotes product safety.
3. [Dairy Industry Restructuring Act 2001](#) – Promotes the efficient operation of dairy markets in New Zealand by regulating the activities of Fonterra to ensure New Zealand markets for dairy goods and services are contestable.
4. [Telecommunications Act 2001](#) – Regulates the supply of telecommunications services in New Zealand.
5. [Credit Contracts and Consumer Finance Act 2003](#) - Protects the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land.
6. [Fuel Industry Act 2020](#) – Promotes competition in engine fuel markets for the long-term benefit of end users of engine fuel products.
7. [Retail Payment System Act 2022](#) – Monitor the retail payment system and regulate designated retail payment networks.
8. [Grocery Industry Competition Act 2023](#) - Promotes competition and efficiency in the grocery industry for the long-term benefit of consumers.
9. [Local Government \(Water Services\) \(Repeals and Amendments\) Act 2025](#) – Sets out the Commission’s role as the economic regulator of water services.

Crown Entities Act 2004

The Commission is an independent crown entity for the purposes of the [Crown Entities Act 2004](#).

The Crown Entities Act provides a framework for the establishment, governance and operation of Crown entities. It clarifies the accountability relationships between entities, their board members, responsible ministers and the House of Representatives.

Amongst other things, the Crown Entities Act contains provisions on the appointment/removal of members, members' collective and individual duties, conflicts of interest, appointment of Committee's, the Board's ability to delegate its functions or powers and the Commission's obligation to prepare a Statement of Intent, Statement of Performance Expectations and Annual Report.

Other obligations

Employment

Employment legislation applies to the Commission as an employer in respect of such matters as leave entitlements, employment relations and health and safety (see [Chapter Eleven – Acting as an Employer](#)).

Management, protection and disclosure of information

Applicable legislation in this area includes:

1. [Official Information Act 1982](#): Official information is generally required to be released on request unless there are clear grounds to withhold it under the Act. Board minutes are among the documents that can be requested under the Act.
2. [Privacy Act 2020](#): governs how organisations (public and private) can collect, store, use and share personal information.
3. [Public Records Act 2005](#) and the [National Library of New Zealand \(Te Puna Mātauranga o Aotearoa\) Act 2003](#): These Acts relate to the creation and maintenance of government records of long-term value and the provision of public documents to the National Library for the preservation of New Zealand's documentary heritage.

Protected disclosures

The [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#) facilitates the disclosure and investigation of the serious wrongdoing in the workplace (also known as whistleblowing) and provides protection for employees/workers who report concerns. The Commission is required to have appropriate internal procedures in operation for receiving and dealing with information about serious wrongdoing in or by the Commission.

Public Service

The [Public Service Act 2020](#) codifies public service principles of:

1. Political neutrality.
2. Free and frank advice given to Ministers.
3. Merit-based appointments.
4. Open government.
5. Stewardship, including the promotion of long-term capability and institutional knowledge.

The Public Service Act also contains the following public service values:

1. Impartial: treat all people fairly, without personal favour or bias.
2. Accountable: take responsibility and answer for its work, actions, and decisions.
3. Trustworthy: act with integrity and be open and transparent.
4. Respectful: treat all people with dignity and compassion and act with humility.
5. Responsible: understand and meet people's needs and aspirations.

These values are given effect through [minimum standards](#) issued by the Public Service Commissioner. The Commission is strongly encouraged to have regard to these standards.

The Public Service Commissioner may vary the application of any minimum standards to the Board, after consultation with the Board.

Directions to support a whole of government approach

The Minister for the Public Service and the Minister of Finance may jointly direct Crown entities to support a [whole of government approach](#) by complying with specified requirements for any of the following purposes:

1. to improve (directly or indirectly) public services.
2. To secure economies or efficiencies.
3. to develop expertise and capability.
4. To ensure business continuity.
5. to manage risks to the government's financial position.

The direction cannot relate to a statutorily independent function or change the way in which such functions are carried out.

Crown entities must "give effect" to the direction as soon as it comes into force (except where to do so would impact on the entity's independent statutory functions). They must disclose in their Annual Report that they have been given a direction in writing that year and whether previous directions remain in force.

The process to be followed by Ministers and the initiating department are [set out by the Cabinet Office](#).

Information requests from the Minister for the Public Service

The Board must supply any information requested by the Minister for the Public Service for the purpose of assessing the capability and performance of the public services.

Commission Values

In 2023 the Commission adopted a Values Framework, to inform what is at the heart of the Commission, and shape how we approach our work, each other, and those we work for. They are outlined in [Appendix A](#).

Members are expected to model these values in their work, and work to facilitate an environment in which Commission staff are also able to model these values.

Chapter Two – Functions and Powers

This section sets out the functions and powers of the Commission.

Full members have two distinct roles with different duties – a governance role and a statutory decision-making role. Associate members primarily have a statutory decision-making role.

Members have duties under the Crown Entities Act: these are collective duties owed to the Minister and individual duties (a mix of common law duties and duties similar to those in the Companies Act) owed to the Minister and the Commission. The governance role of full members is discussed, followed by discussion of members’ statutory decision-making role.

Commerce Commission

The Commission is an independent Crown entity established under Part 1 of the Commerce Act 1986. It is a body corporate and is, accordingly, a legal entity separate from its members, office holders, employees and the Crown.

Structure

The Board must have no less than four, and no more than eight full members. The [Commerce Act](#) states that the Board must have the following:

1. at least one member must be “a barrister and solicitor of at least 5 years’ standing.”
2. one member must be appointed Telecommunications Commissioner.
3. one member must be appointed Grocery Commissioner.

A Commissioner is a ‘Member’ and members of the Commission are the ‘Board’ for the purposes of the Crown Entities Act.¹

Associate Members

As outlined in [section 11](#) of the Commerce Act there may also be associate members appointed:

1. Associate members are appointed by the responsible Minister “in relation to a matter or a class of matters to be specified in that member’s notice of appointment”.
2. An associate member may vote and attendance counted for the purposes of quorum only at a meeting relating to that matter or class of matters (or matters incidental to them) for which they have been appointed by the Minister and assigned to by the Board.
3. Subject to the above, an associate member shall be deemed to be a member for only the purposes of the performance or exercise of any function, duty, or power in relation to matters that have been appointed for by the Minister and assigned to by the Chair.
4. The Minister may appoint as many associate members as they see fit.

¹ Section 8A(3) of the Commerce Act: Members of the Commission are the Board for the purposes of the Crown Entities Act 2004.

Associate members are therefore “members” for limited purposes, that is in respect of matters set out in an associate member’s notice of appointment (such as the Fair Trading Act or Commerce Act, for example). Where an associate member is acting within the terms of their appointment, they will be able to participate in meetings, discussions and voting just as any other member, and their attendance will count for quorum purposes. They will be able to be a member of a division or committee, within the scope of their appointment.

An associate member’s role is therefore restricted to those specialisations prescribed in their notice of appointment. It is important to ensure that associate members involvement in the Commission’s work does not stray beyond what is specified in that notice. Consequently, while associate members will be invited to attend Board meetings from time-to-time, where decisions on pure organisational issues or issues outside their specified areas of work are being made, associate members should not be counted for the purposes of quorum or voting.

Employment status of members

As statutory officers, members are appointed by the Crown (Governor-General in the case of members, or Minister in the case of associate members). However, the Crown does not act in the role of an employer as envisaged by the [Employment Relations Act 2000](#). And while terms of appointment may be negotiated between members and MBIE as the Commission’s monitor, those terms do not constitute an employment agreement or give rise to any employment relationship.

As members are not employees, they have no ability to access employment-related rights such as personal grievance rights.

However, terms of appointment can agree such things as annual leave arrangements, provision for parental leave, sick leave arrangements and period of appointment. It can also include expectations associated with the appointment, such as the maintenance of appropriate ethical standards and conduct, including avoidance of conflicts of interest and maintaining political neutrality.

More information on the employment status of statutory officers, including the payment of earner liabilities (such as income tax) is available from the [Remuneration Authority](#).

The Board’s Governance Functions

The Board is the governing body of the Commission with authority to exercise the powers and perform the Commission’s functions. All decisions relating to the Commission’s operation must be made by the Board, or under its authority.

Under the [Crown Entities Act](#) the functions of a statutory entity are:

1. the functions set out in the entity’s establishing legislation.
2. any functions that the Minister has added in accordance with the establishing legislation.
3. any functions that are incidental or related to, or consequential on, the entity’s functions.

The Crown Entities Act contains several safeguards for the independence of entities in carrying out their functions and other business:

1. [Section 105](#) provides that a Minister may not direct an independent Crown entity to have regard to or give effect to a Government policy unless the establishing legislation specifically provides for it.
2. [Section 113](#) provides that a Minister may not:
 - direct a Crown entity or member, employee or office holder of a Crown entity in relation to a statutorily independent function; or
 - require the performance or non-performance of a particular act or the bringing about of a particular result in respect of a particular person or persons.

The Board's Statutory Functions

In addition to the Board's governance responsibilities, the Board also has the responsibility of overseeing and implementing the Commission's statutory decision-making powers under the relevant Acts, in accordance with best practice principles. All decisions relating to the Commission's operation must be made by the Board, or under its authority.

In practice, many of the Board's statutory powers are exercised by Committees established by the Board in accordance with the Crown Entities Act (see [Chapter Nine – Board Committees](#)).

As discussed, the Commission has enforcement and regulatory control responsibilities under several pieces of legislation. The relevant legislation is discussed below – the Commission's powers and functions in relation to the legislation are outlined in [Appendix B](#).

Commerce Act 1986

The Commerce Act promotes competition by prohibiting anti-competitive arrangements and the misuse of market power. The Commission is empowered to authorise anti-competitive arrangements if there is public benefit in the arrangement. The Commerce Act prohibits mergers and acquisitions that substantially lessen competition. The Commission may allow mergers that do not substantially lessen competition or authorise a merger if there is public benefit in the transaction.

Much of the Commission's regulatory work relates to development and implementation of arrangements under Part 4 of the Commerce Act. Part 4 sets out a regulatory regime to allow for regulatory control in markets where there is limited competition, and regulation for electricity lines businesses, gas distribution and airports.

Part 4 of the Commerce Act also sets out the Commission's role to establish an economic regulation regime for water services for territorial authorities across New Zealand. The Commission's primary functions are making determinations specifying how regulation applies in relation to water services, making input methodologies determinations in relation to water services, making recommendations for further regulation or deregulation in relation to water services, and issuing guidance to the water services industry about service quality codes, and making service quality codes.

Fair Trading Act 1986

The purpose of the Fair Trading Act is to encourage competition and protect consumers from misleading and deceptive conduct and unfair trading practices. The Commission enforces the Act and may investigate unfair, false, or misleading trade practices and non-compliance with product or services safety standards. If the Commission considers that there has been a breach of the Act, the Commission may take enforcement action including prosecution.

Telecommunications Act 2001

The Commission promotes competition (or outcomes consistent with competition) and transparency in telecommunications markets for the benefit of consumers.

Its primary functions include regulating certain fixed-line and mobile services by setting the price and/or access terms for those services, regulating fibre network owners and others who have built networks with Crown funding through price-quality, information disclosure and other regulation, and monitoring and reporting on competition, performance, and developments in telecommunications markets. It is also responsible for various other tasks including allocating the exact amount telecommunications providers must pay in industry development levies each year.

Dairy Industry Restructuring Act 2001

The Commission reviews and publicly reports on the extent to which Fonterra's milk price setting processes and calculations provide incentives for Fonterra to operate efficiently and are consistent with contestability in the market for purchasing farmers' milk (Milk Price Manual and base milk price reviews). The Commission is able to issue binding directions to Fonterra on matters arising from these reviews from 1 June 2023. It also makes determinations on disputes with Fonterra about the application of subpart 5 of Part 2 of the Dairy Industry Restructuring Act (DIRA) 2001 and the Dairy Industry Restructuring (Raw Milk) Regulations 2001. The Commission has a statutory investigation and enforcement role.

Credit Contracts and Consumer Finance Act 2003

The purpose of the Credit Contracts and Consumer Finance Act is to regulate all forms of consumer credit – including personal loans, hire purchases, credit cards, long term leases and mortgages. If the Commission considers that there has been a breach of the Act, the Commission may take enforcement action including prosecution. In addition, the Commission operates a certification system for credit providers.

Fuel Industry Act 2020

The purpose of the Fuel Industry Act is to promote competition in engine fuel markets for the long-term benefit of consumers. The Commission's key roles are to monitor and enforce the requirements of the Act and Regulations, and to analyse information disclosed under the Act to monitor the competitive performance of fuel markets.

Retail Payment System Act 2022

The purpose of the Retail Payment System Act is to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers. The Commission regulates certain fees in the Visa and Mastercard networks and monitors competition and efficiency in the broader retail payment system. The Commission has the power to regulate designated networks and can recommend that retail payment networks be designated. It can also issue merchant surcharging standards and has a statutory monitoring and enforcement role.

Grocery Industry Competition Act 2023

The purpose of the Grocery Industry Competition Act is to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand.

The Commission's primary functions are to monitor competition and efficiency in the grocery industry; carry out inquiries, reviews and studies in connection with the grocery industry; act as a regulator of the grocery industry; to make available (or co-operate in making available) information in connection with the grocery industry; to co-operate with any other law enforcement, regulatory agency or overseas regulator as required; and to keep under review the law and practices under this Act.

In undertaking its monitoring and reporting functions, the Commission's objective includes to understand the current and emerging (or likely future) trends relating to the grocery industry and its participants; promote transparency on, and about, that industry and about the way it is being regulated; supporting participants to understand and comply with the industry's regulation; contribute to a trading environment in which businesses compete effectively and consumers and businesses participate confidently; and improving awareness.

Powers of the Board

The Crown Entities Act divides powers of entities into statutory powers and natural powers.

1. [Section 16](#) provides that a statutory entity may do anything authorised by the Crown Entities Act or the entity's establishing Act.
2. [Section 17](#) provides that Boards of entities have all the powers of a natural person of full age and capacity. Boards may only act for the purpose of performing the statutory functions of the entity.

Chapter Three – Key Relationships

This section sets out the Commission’s stakeholders, the Board’s key relationships with them and the protocols under which it agrees to manage those relationships.

There are a wide range of people and entities that are affected by the Commission’s activities or who affect the Commission’s functions.

The Board’s key relationships though, are with:

1. the responsible Minister (the Minister of Commerce and Consumer Affairs primarily).
1. the monitoring department (the Ministry for Business, Innovation and Employment).
2. Parliament (via the Economic Development, Science & Innovation Committee primarily).
3. the Chief Executive and staff.

The Public Service Commission has developed “[The Foundations of Good Practice: Guidelines for Crown Entity Monitoring](#)” to provide guidance and support to assist both monitors and boards to meet the government’s expectations under the Crown Entities Act. The guidelines include the “It Takes Three” framework - which is intended to assist the three parties in the crown entity system (Ministers, entities and monitoring departments) understand their roles and responsibilities within the system. The four principles of “It Takes Three” framework are:

Principle 1: clear roles and responsibilities	<p>All parties fulfil their critical roles and responsibilities so that they:</p> <ul style="list-style-type: none">• have a shared understanding of their roles and responsibilities between the parties, in line with relevant legislation• meet all statutory accountabilities, and• adhere to the "no surprises" convention
Principle 2: strategic alignment	<p>Policies are strategically aligned so that:</p> <ul style="list-style-type: none">• relevant agencies are driven by the same principles and contribute toward the same outcomes, and• there is cross-government engagement with Crown entities and other parts of the relevant sector.
Principle 3: efficient and effective monitoring	<p>A customised approach, proportional to the profile of each organisation, is taken to:</p> <ul style="list-style-type: none">• performance monitoring• data collection• assessing and managing risk, and• resource management• enhance entity performance.
Principle 4: trusted engagement	<p>The parties commit to good practice to ensure their relationships are trusting and productive.</p>

The Minister

The responsible Minister

The Minister of Commerce and Consumer Affairs is the Commission's primary Minister – responsible for the Crown interests in, and relationship with, the Commission as an independent Crown entity. The Minister (or Prime Minister) may choose to delegate responsibility for the Commission to another Minister from time to time.

The role of the responsible Minister is to:

1. oversee and manage the Crown's interest in, and relationship with, the Commission.
2. exercise any statutory responsibilities given to the Minister.

The Minister will also be responsible for:

1. facilitating the member appointment process (and removal process if necessary).
2. answering questions about the Commission's performance and operations in the House of Representatives.

The Minister may not delegate any power provided to them by the Crown Entities Act, except for the power to request information under [section 133](#) (which may be delegated to the Secretary for Business, Innovation and Employment).

Other ministerial responsibilities and interests

Ministers with responsibilities for / interest in the Commission's work are outlined below:

1. The Minister for Commerce and Consumer Affairs is responsible for our work under the Commerce Act 1986, Fair Trading Act 1986, Credit Contracts and Consumer Finance Act 2003, Retail Payment System Act 2022 and Grocery Industry Competition Act 2023.
2. The Minister for Media and Communications is responsible for our work under the Telecommunications Act 2001
3. The Minister of Energy is responsible for our work under the Fuel Industry Act 2020 and has an on-going interest in our work with electricity and gas networks under Part 4 of the Commerce Act 1986
4. The Minister of Agriculture is responsible for our role under the Dairy Industry Restructuring Act 2001
5. The Minister of Finance has an interest in our work under the Credit Contracts and Consumer Finance Act 2003 through our membership of the Council of Financial Regulators, and our work under the Retail Payment System Act 2022
6. The Minister for Infrastructure has an on-going interest in our work with infrastructure industries under Part 4 of the Commerce Act 1986, the Telecommunications Act 2001, and the Fuel Industry Act 2020.
7. The Minister of Transport has an on-going interest in our work with airports under Part 4 of the Commerce Act 1986, and in our work under the Fuel Industry Act 2020.

8. The Minister of Local Government has an on-going interest in our work with local government water service suppliers under Part 4 of the Commerce Act 1986.

Commission independence

The [Commerce Act](#) provides a formal and transparent mechanism for the Minister to communicate to the Commission the economic policies of the Government. This mechanism also applies for the [Retail Payment System Act](#).

The Commission must have regard to such statements but must form its own views as to the actions or decisions that are appropriate in each case, consistent with the relevant legislation.

The [Telecommunications Act](#) and the [Grocery Industry Competition Act 2023](#) provide an equivalent mechanism for the Commission to have regard to the economic policies of the Government in the context of telecommunications and grocery industry regulation.

Apart from the requirement to have regard to such statements, under the [Commerce Act](#) and [Crown Entities Act](#), the Commission must act independently in performing its statutory functions and duties and in exercising its statutory powers. The Commission in turn recognises that it is a government agency and as such is accountable to the Responsible Ministers for the efficient and effective delivery of its functions.

Directions to support a whole of government approach

Under the [Crown Entities Act](#), the Commission can be directed to support a whole of Government approach by complying with specified requirements for any of the following purposes:

1. to improve (directly or indirectly) public services.
2. to secure economies or efficiencies.
3. to develop expertise and capability.
4. to ensure business continuity.
5. to manage risks to the Government's financial position.

Any such direction is given by both the Minister for the Public Service and the Minister of Finance.²

Guidance in working with the Minister

To ensure the Minister can discharge their oversight responsibilities in relation to the Commission the Commission will:

1. notify the Minister immediately of any matter that may arouse media, public or parliamentary attention or questions (this is the “no surprises” convention referred to at paragraph 4 above).
2. work with the Minister in the development of its planning and reporting documents.

² <https://www.publicservice.govt.nz/system/crown-entities/all-of-government-requirements-and-expectations-on-statutory-crown-entities>

3. provide the Minister with a copy of any reports supplied to Parliament or publicly released.
4. brief the Minister on major projects or events where appropriate.
5. regularly report to the Minister on business as usual.

The Board, primarily through the Chair, will endeavour to build and maintain a constructive ongoing relationship with the Minister (see [Chapter Five – Role of Named Officers](#)).

The Monitor

The Ministry of Business, Innovation and Employment is the Commission’s monitoring department (“the monitor”) this is one of three relationships we have with MBIE.

The other relationships are as the operational and regulatory agency to MBIE’s policy role and as joint stewards of critical parts of the economic regulation system. The [monitor’s role](#) is to assist the Minister to carry out their statutory role, and perform or exercise any or all of the following functions, duties or powers:

1. administer appropriations and legislation.
2. tender advice to Ministers.
3. facilitate timely Appointments.
4. perform any other functions duties or powers under legislation that may or must be performed or exercised by the monitor.

The Minister may also direct another agent, such as Ministerial office staff, to assist them to discharge their responsibilities.

Ministers usually expect the following support services from their departments in respect of the entities for which they are responsible:

1. Provide critical review of the draft Statement of Intent and Statement of Performance Expectations.
2. Undertake negotiation of any protocols (e.g. relationship protocols) as required by the Minister.
3. Transmit information about relevant decisions and/or changes in policy by the Government, relevant government processes (especially the Budget), and relevant Government expectations.
4. Monitoring, including advising on legislative compliance and identifying any emerging governance or performance issues.
5. Provide briefings to support Ministers' engagement on strategic matters.
6. Undertake management of all processes relating to members, including appointments, re-appointments, assisting the induction and training of new members, and ensuring compliance with Cabinet expectations and processes in respect of these matters.

The Ministry of Business, Innovation and Employment has published [guidance](#) on their role as monitor for the Crown entities they are responsible for. The guidance provides information on:

1. the legislative reporting and accountability requirements for Crown entities.
2. the Ministry's monitoring arrangements for Crown entities.
3. the way the Ministry monitors the performance of Crown entities and manages the appointment processes on behalf of Ministers.

The Public Service Commission has also published [guidance](#) for departments on how to monitor a Crown entity.

Select Committee

The [Economic Development, Science and Innovation Committee](#) is one of the House's select committees and the committee that looks at (amongst other things) commerce and consumer protection and trading standards. It is the committee the Commission regularly works with.

The most regular contact the Commission has with select committees is during financial reviews, inquiries, and when making submissions on Bills. Members should be particularly aware of:

1. **Examination of the Estimates:** The Estimates are the Government's request for appropriations/authorisation for the allocation of resources, tabled on Budget Day. Commission representatives do not attend the Economic Development, Science and Innovation select committee when it examines the Estimates, but the Minister and the Commission's monitoring ministry may be questioned about the intended activities and expenditure of the Commission.
2. **Financial Review:** The financial review is of the Commission's performance in the previous financial year and of its current operations. The select committee will provide written questions for answer, but if the Commission is asked to appear, further questions may be asked on the day.

Members and staff who appear before a select committee for these matters do so in support of ministerial accountability. Generally, the Chair, certain Commissioners and certain members of the Commission's Senior Leadership Team will represent the Commission at select committee hearings, although this is a matter for the Board to decide.

Representatives of the Commission appearing before select committees have an obligation to manage risks and ensure there are "no surprises" for the Minister. This applies even when they appear on matters which do not involve ministerial accountability, such as when exercising an independent statutory responsibility or appearing in a personal capacity. Members and staff who wish (or are invited) to make a submission to a select committee on a Bill on behalf of the Commission are expected to discuss the matter in advance with the Minister.

Members attending select committee meetings need to be familiar with the protocols which need to be observed by officials, as outlined in advice from the Public Service Commission.

Other stakeholders

Public sector

The Auditor-General is the auditor of the Commission. The Auditor-General has appointed Audit New Zealand to audit the Commission on their behalf. Audit New Zealand also identify key business risks facing the Commission, follow up on recommendations made the previous year and review the financial statements and the statement of service performance which are included in the Commission's Annual Report.

The Commission also has key working relationships with other domestic public sector organisations both directly and through various groups and forums focused on sector-specific issues. For example, we participate in and promote the Government Regulatory Practice Initiative, and we are a member of the [Council of Financial Regulators](#) and the Council of Energy Regulators.

Some of our relationships are formalised through memoranda of understanding that govern how we work together for example with [Land Information New Zealand](#) and the [Reserve Bank of New Zealand](#).

Wider environment

The Commission recognises that its ability to achieve its outcomes is greatly assisted by a good understanding among New Zealanders of the benefits of competition and the benefits of targeted regulation. Accordingly, the Commission recognises a responsibility to keep New Zealanders well-informed about its activities. The Commission regularly asks a range of stakeholders for input on the Commission's strategic direction, issues specific engagement strategies and surveys consumers and small-to-medium sized businesses. The Commission undertakes these tasks with a view to better understanding perceptions of the Commission and to provide stakeholders with a formal opportunity to input into the Commission's work.

Chapter Four – General Board and Member Duties

This section describes the statutory responsibilities of both the Board collectively and of members individually.

Members hold positions of trust. Collective and individual responsibility and accountability are fundamental to the integrity of the Board. Members' [collective](#) and [individual](#) duties are set out in the Crown Entities Act. Members' duties are constant and relevant to all actions undertaken by the Board or individual members.

Members' duties under the Crown Entities Act are different to those owed by trustees³ or company directors.⁴ The collective duties of a Crown entity are the Board's public duties which reflect that the Board and the entity are part of the Public Service.

Collective duties

The collective duties of Crown entity Boards,⁵ as set out in the [Crown Entities Act](#), are to:

1. act consistently with the Commission's objectives, functions and current Statement of Intent and Statement of Performance Expectations.
2. perform their functions efficiently and effectively, consistent with the spirit of service to the public, and in collaboration with other public entities where practicable.
3. operate in a financially responsible manner.
4. ensure that the entity complies with the Crown Entities Act requirements relating to its subsidiaries and other interests.

The collective duties of the Board and its members are duties owed to the Minister.

Should the Board not comply with any of the collective duties, all or any of the members may be removed from office. However, an individual member is not liable (apart from the possibility of removal) under the [Crown Entities Act](#) for a breach of a collective duty, although members still retain liability under any other law for the act/omission.

³ Under trust law, trustees hold all of the assets and liabilities in their own names subject to the rights of beneficiaries. Under trust law, trustees therefore owe fiduciary or obligations of trust to beneficiaries.

⁴ The general duties of directors are set out in the Companies Act and include a duty to act in good faith and in the best interests of the company; to exercise director's powers for a proper purpose etc.

⁵ As noted in an Associate Member's appointment letter, the collective duties of the Board apply to an Associate Member when the Board is dealing with matters that are within the scope of the Associate Member's Notice of Appointment.

Individual duties

The individual member duties are a mix of common law duties and duties similar to those in the [Companies Act 1993](#).

The individual duties of members when acting in that role, are to:

1. comply with the [Crown Entities Act](#) and the entity's [enabling legislation](#).
2. act with honesty and integrity.
3. act in good faith and not at the expense of the entity's interests.
4. act with reasonable care, diligence, and skill.
5. avoid disclosing information, except in accordance with the entity's functions as permitted or required by law.

The individual duties of members are duties owed to the Minister and to the Commission.

Should a member not comply with any of their individual duties, they may be removed from office and the Commission may bring an action against the member for breach of any individual duty under the [Crown Entities Act](#).

General responsibilities of members

Best practice governance boards ensure they are exhibiting certain behaviours to undertake their Board role effectively and in accordance with the highest ethical and professional standards. [Appendix C](#) provides a list of factors that the Commission considers appropriate for all members involved in governance of our Board or of Divisions or Committees of the Board.

Responsibilities of external members of Committees

The Board may, from time to time, appoint Commission staff members or persons external to the Commission as members of Committees established by the Board – known as external members of Committees. While discharging their responsibilities as a member of the Committee – the following provisions of the Crown Entities Act apply:

1. [Sections 43, 47, 48, 57, 77, 118, 120 to 126, 135, 152\(1\)\(e\), \(f\), and \(2\), 189, and 190](#) apply to each member of a committee who is not a member of the board with necessary modifications (such as to Commission employees who may be members of committees). These sections refer to matters such as remuneration, expenses, employment requirements, liabilities and insurance.
2. [Sections 62 to 72](#), relating to the declaring of conflicts of interest, apply to each member of a committee who is not a member of the board as if the committee member were a board member and as if the disclosure must be made to both the committee and the board, and with other necessary modifications.

Further guidance

At a minimum, members must be familiar with their duties and the consequences of breaching those duties. This knowledge will form the part of their induction, and the Office of the Board and Chief Executive will inform members of any updated requirements.

Guidance about standards of conduct in general is set out in the Public Service Commission's [code of conduct for crown entity board members](#) and in the [Commission's Code of Conduct](#) and He Kawa. Members will comply with the standards set out in the code of conduct for Crown entity board members and have agreed to adhere to the principles and expectations outlined in the Commission Code of Conduct. He kawa is Board approved and is relevant for everyone at the Commission.

Although the board may delegate some of its functions, the board remains responsible for carrying out the Commission's functions and exercising its powers ([see Chapter Ten – Delegations](#)). It must therefore maintain effective governance oversight of all functions and powers of the Commission, whether exercised by the board or by a delegate, to ensure their collective and individual responsibilities are being met.

Chapter Five – Role of the Board’s Named Officers

This section outlines the roles and responsibilities of the Board’s named officers - the Chair, Deputy Chair, Telecommunications Commissioner and Grocery Commissioner.

Role of the Chair

The Chair’s role includes:

1. providing effective leadership and direction to members and the Commission as a whole.
2. ensuring effective accountability and governance of the entity.
3. developing and maintaining sound relationships with Ministers, including:
 - leading any formal Commission discussions with Ministers, particularly on funding and planning cycles, including the SOI and letter of expectations.
 - signing off on formal governance documents, generally in conjunction with the Deputy Chair.
 - acting as spokesperson for the Board in ensuring the Minister and other key stakeholders are aware of the Board’s view and activities, and that the Minister’s views are communicated to the Board.
 - ensuring the Minister is kept informed under the “no surprises” obligation.
4. chairing Board meetings and giving directions regarding the procedure to be followed at any meeting of the Commission (as per [the Commerce Act](#)), including:
 - setting the annual board agenda.
 - setting meeting agendas.
 - ensuring there is sufficient time to cover issues.
 - the Board receives the information it requires.
 - ensuring all members contribute.
 - assisting discussions towards a consensus view.
 - summing up the view of the Board to be clear what has been agreed.
5. providing motivation, guidance and support to other members to ensure they contribute effectively to the governance of the Commission.
6. taking the lead in ensuring Commission staff provides comprehensive tailored induction for new members.
7. ensuring that the development needs of individual members are identified and addressed and, where necessary, addressing underperformance by members.
8. ensuring that an annual performance evaluation is conducted of the Board as a whole, as well as of the Chair and members individually.
9. participating in the recruitment process for new members.
10. nominating members to represent the Commission at any conference held under the [Commerce Act](#).

11. certifying as correct any material incorporated by reference in a Commerce Act Part 4 determination ([Schedule 5, clause 3 of the Commerce Act](#)).
12. overseeing the employment of the Chief Executive including representing the Board in formal assessments of the Chief Executive's performance and in the required discussions with the Public Service Commission, in respect of the Chief Executive's terms and conditions of employment, at the time of their appointment (as outlined in the [Crown Entities Act](#)).
13. providing guidance and support to the Chief Executive to ensure the entity is being managed effectively.
14. making statements to the media on behalf of the Board, as delegated.
15. ensuring that appropriate interest registers and other processes are in place to manage any potential conflicts of interest, and that, where appropriate, dispensation is given to act despite being interested in a matter.
16. on behalf of the Board signing agreements, notices, contracts and other documentation.
17. ensuring that the Commission's Board avoids non-compliance with the collective duties imposed by the [Crown Entities Act](#) on the Board.

Where the Chair is unavailable, absent, or conflicted the Deputy Chair will fulfil these roles (as outlined below). A Chair may also delegate elements of these roles to the Deputy Chair and / or from time to time, to other full members.

Role of the Deputy Chair

The principal role of the Deputy Chair is to act in situations where the Chair is unavailable, absent, or conflicted. At such times and as provided by the [Crown Entities Act](#), the Deputy Chair has and may exercise all of the functions and powers of the Chair in relation to a matter, including signing Commission decisions / agreements. This power exists at any time and does not require specific delegation.

Under the [Crown Entities Act](#), where the Chair is unavailable or interested in a matter and where there is no Deputy Chair, or the Deputy Chair is also unavailable or interested in a matter the Board may, by resolution, appoint a temporary Deputy Chair who may exercise all the functions and powers of the Chair.

Role of the Telecommunications Commissioner

The [Telecommunications Act 2001](#) establishes the position of Telecommunications Commissioner as a member of the Commission and sets out the Commissioner's functions. The Telecommunications Commissioner has statutory decision-making responsibilities and participates fully in the governance and wider work of the Commission along with other members.

While the [Telecommunications Act 2001](#) provides that the Telecommunications Commissioner may carry out some functions alone, the Telecommunications Commissioner has elected to carry out all Telecommunications Act functions in conjunction with the committee designated by the Board for telecommunications matters. If the Telecommunications Commissioner elects to reserve some functions for themselves, this should be done in discussion with the Chair of the Commission.

There are also [certain functions](#) that can only be performed by the Telecommunications Commissioner with at least two other Members of the Commission - multi-network determinations (for example, number portability), liability allocation determinations, TSO decisions, decisions on the price of regulated services where a review is sought of the original Commission decision, and determinations in respect of fibre fixed line access services. Finally, where the Commissioner makes a recommendation to the Minister on the scope of regulation, the report must include the views of at least two other members of the Commission.

If there is no Telecommunications Commissioner or if the Commissioner is for any reason unable to perform the functions of the Commission, those functions must be performed by the Chair of the Commission.

Role of the Grocery Commissioner

The [Grocery Industry Competition Act 2023](#) establishes the role of the Grocery Commissioner to lead the Commission's statutory decision-making under the Act and act as principal spokesperson for the Commission in relation to the grocery sector. They will also have the primary relationship at Commission board level with stakeholders with an interest in the grocery industry. As a member of the Commission board, the Commissioner participates fully in the governance of the Commission.

As with the Telecommunications Commissioner above, the [Grocery Industry Competition Act 2023](#) does allow for the Grocery Commissioner to individually exercise some of their functions, powers and duties. However the Grocery Commissioner has elected to carry out all of their Grocery Industry Competition Act functions in conjunction with the committee designated by the Board for grocery matters. If the Grocery Commissioner elects to reserve some functions for themselves, this should be done in discussion with the Chair of the Commission.

If there is no Grocery Commissioner, or the Commissioner is unable to act, the Chair must appoint another member of the Commission to exercise the Commissioners functions, powers and duties in their stead.

Chapter Six – Management of Interests and Conflicts

This section describes the requirements for how members are to manage interests when they overlap with those of the Commission.

Identifying interests

In the public sector, the [Office of the Auditor-General](#) advise that there will be a conflict of interest where a "member's...duties or responsibilities to a public entity could be affected by some other interest or duty that the member may have."

These "other" interests can take various forms. They may be financial or non-financial. They may relate to a member's close family or friends, or to something the member has said or done.

The existence of the interest is not, in itself, what causes the conflict. The key is to identify any overlap between the interests. Also, appearances in this area can be equally as important as reality. It is often this risk of negative public perception that requires management.

Members have the best knowledge of their own affairs and are in the best position to identify an overlap in interests.

The test of whether a disclosed interest amounts to a conflict is whether the other interest creates an incentive to the person to act in a way that may not be in the best interests of the organisation.

When making decisions on disclosing potential conflicts, members should be guided by the concepts of integrity, honesty, transparency, openness, independence, good faith and service to the public. As a general matter, members should err on the side of over-disclosing rather than under-disclosing.

Several factors are relevant when assessing the seriousness of a conflict of interest, including:

1. the type or size of the member's other interest and the extent to which it could specifically affect, or be affected by, the entity's decision or activity.
2. the nature or significance of the decision or activity being carried out by the entity.
3. the nature or extent of the member's current or intended involvement in the entity's decision or activity.

Seriousness is a question of degree. Directness or remoteness are about how closely or specifically two interests concern each other. Significance is about the magnitude of the potential effect of one interest on the other.

Appearances in public sector management can be as important as the reality. Members must therefore also identify interests that could be perceived as conflicting with their responsibility as well as those that will or may conflict.

It will not always be clear whether a conflict exists. The Commission's position is that members should disclose all interests. It will then be open to the Chair whether the situation constitutes a conflict of interests and whether the situation is serious enough to warrant further action.

The [Crown Entities Act](#) places a duty on members not to pursue their own interests at the expense of the interests of the entity. This means that members must perform all aspects of their work for the Commission impartially, by:

1. avoiding any situation where actions they take in an official capacity could be seen to influence or be influenced by a private interest that they, family members or close friends may hold.
2. avoiding situations that could impair their objectivity or create personal bias that would or could reasonably be seen to influence their judgements.

Declaring interests

Upon appointment, members and external committee members must have disclosed in writing the nature and extent of their interests in matters relating to the Commission. Members will also disclose interests as they arise. These disclosures will be entered into the Commission's Interests Portal. Members and external committee members are required to keep their interests up to date via the Portal, and it will be reported at each meeting of the Board.

Failure to disclose an interest is a serious matter. Members and external committee members have a statutory duty not to contravene the Crown Entities Act. If a member does not comply with their individual duties, that member may be removed from office (see [Chapter Fourteen – Board Appointment and Departures](#)).

Managing interests

The Interests Register will be reviewed at each Board meeting (see [Standing Orders](#)) so that the interests may be considered in relation to the business at hand.

Members may excuse themselves from a meeting entirely during discussions on an issue where they have a conflict of interest. The Chair may also ask members to remove themselves and may require that interested members be excluded from receiving agenda items and other information relevant to a disclosed interest.

Members have a collective obligation to be aware of their colleagues' interests. If the Board becomes aware that someone has not disclosed an interest or has been involved in discussions or decisions despite being conflicted (and without specific permission to act despite being interested), the Chair (or Deputy Chair if the Chair is involved in the breach) will investigate the matter and determine the best course of action. The results of any investigation must be notified to the Minister.

Generally speaking, conflicts of interest at the Commission have been managed by members excluding themselves from meetings. However, conflicts can be further managed in various ways. For instance, the member may agree to divest the interest (e.g., selling shares or putting them into a trust arrangement) or to sever the connection that causes the interest (e.g., relinquishing membership of an organisation), or the board may make a mutual decision that the interest affects only a narrow part of the board's operations.

The Board will fully explore the best ways to manage an interest. It will look beyond compliance with legal requirements to whether anything more needs to be done to safeguard the Commission's reputation and effectiveness.

The [Conflicts of Interest Policy for Members](#) outlines the process for members to disclose interests, how interests will be managed, and the process for making any decisions on actual, potential, or perceived conflicts of interest.

Chapter Seven – Gifts and Hospitality

This section offers guidance to govern situations where members are offered gifts or hospitality by a third party, or where members themselves offer gifts or hospitality on behalf of the Commission.

Guidance

The way in which a Board handles gifts and hospitality offered has serious implications for the trust placed in the governance of the entity concerned. When a member is offered gifts or hospitality, careful judgement is needed considering the entity's roles and responsibilities. The perception of influence being sought can be as important as the reality.

The exercise of common sense will usually determine whether an offer of hospitality or a gift should be accepted. Useful tests could be to consider how Parliament, the media, competing suppliers and the wider public might interpret its acceptance; the reasons that may be behind the offer, and how the member would justify accepting what has been offered.

In respect of gifts, members should carefully consider the timing and frequency. For instance:

1. extra vigilance is needed at a time when an entity is negotiating for purchases or services.
2. while a single small gift from an individual or organisation may be acceptable, if offered regularly, it could be seen as an attempt to build up influence with the member.

In respect of hospitality, careful judgement must be exercised. Members should satisfy themselves that it is not too frequent or elaborate, given the nature of the relationship; or it is not part of a pattern of invitations from one particular organisation which, taken together, could be considered excessive.

Practice

Principles

1. Members must not use their official position for private purposes, and should not solicit gifts, benefits or hospitality from external parties under any circumstances.
2. Members must not accept gifts or benefits from anyone, or on behalf of anyone, who could benefit from influencing them or the Commission.
3. Members must not accept cash, or cash equivalent items (i.e. gift vouchers) as gifts or benefits.
4. Any gifts, benefits or hospitality accepted must have a clear benefit to the Commission and should be of nominal value.
5. Members should consider carefully whether the acceptance of gifts, benefits or hospitality from a particular stakeholder would invite criticism of the Commission.
6. In considering hospitality offered by stakeholders, members must consider the context including the timing, the relevance, and whether the Commission's interests will be advanced by having a member present.

Process

If members are satisfied that the acceptance of the gift, benefit or hospitality is in line with the principles outlined above, they may accept it. If members are at all uncertain about the appropriate action to take, they should seek advice from the Chair.

All gifts accepted by members become the property of the Commission. Items worth less than \$50 may be shared with or used by the relevant team within the Commission. Items worth \$50 or more should be surrendered to the Chief Executive, who will determine the appropriate response or final disposal of the item(s).

Hospitality worth less than \$50 may be consumed. If the hospitality offered by the stakeholder is worth more than \$50, members should discuss and seek pre-approval from the Chair prior to the event.

Disclosure

All gifts, benefits and hospitality accepted by members with a value of \$50 or more should be recorded in the Commission's gift register. This can be done by sending the details to the Governance and Executive Services team. Members may also choose to record gifts, benefits and hospitality accepted under \$50, at their discretion. Gifts, benefits and hospitality that have been declined do not need to be recorded.

Koha

Koha is a gift, a gesture of goodwill and good faith and in contemporary practice is often given in the form of money. Koha is not given in exchange for goods or services, it is not stipulated by the recipient nor is there any expectation to receive it, rather it is a measure of respect and acknowledgement of the mana of the recipient and/ or occasion. For Māori, koha is an integral part of tikanga Māori. Other cultures also have practices akin to koha, for example the practices of different Pacific cultures.

The Commission has a Koha Policy, which provides general guidance, including when it might be appropriate to give koha, what an appropriate koha might be and the internal approval process.

The policy also acknowledges there may be instances where an employee feels it is appropriate to give a personal koha as an expression of their individual contribution to the occasion. Staff are not discouraged to do so; however, the Commission will not provide reimbursement in these instances.

Further guidance on giving Koha is provided in the Commission's [Koha Policy](#).

Chapter Eight – Conducting Board Business

This section outlines the Board’s procedures for conducting business and outlines the legal provisions that need to be followed.

Statutory requirements

Information regarding the procedures to be followed for Boards of statutory entities can be found in the [Crown Entities Act](#). Generally, the Board may regulate its own procedure, except as otherwise provided by legislation. A summary of the Crown Entities Act requirements is set out below.

Notice of meetings

1. The Board or Chair must set the times and places of ordinary meetings and give notice of those meetings to all members.
2. The Chair, or any two members, may call a special meeting by giving at least five working days’ notice (or shorter if members agree) of the meeting and business to be transacted at the meeting.
3. Notice of a meeting must be written, state the time and place of the meeting, and may be given by post, delivery or by electronic communication. The notice must be sent to each Member’s current postal or electronic address. Only the business stated in the notice may be transacted at a special meeting.
4. An irregularity in a notice of a meeting is waived if all members either attend the meeting without protesting about the irregularity or do not attend the meeting, but agree before the meeting is held to the waiver of the irregularity

Methods of holding meetings

Meetings may be held by a [quorum](#) of members being assembled together at the time and place appointed, or by means of audio/visual or electronic communication, provided that all members who wish to participate can do so.

Presiding at meetings

1. At a meeting of the Board, the following presides:
 - if there is a chair and if they are present and is not interested in the matter, the chair; or
 - if there is no chair or they are not present or is interested in the matter, the deputy chair; or
 - in any other case, the temporary deputy chair.
2. In the latter two cases that member may exercise all the powers and functions of the chair for the purposes of the meeting.

Voting

1. Each member has one vote.⁶
2. In addition to their general vote, the Chair at a meeting has, in the case of an equality of votes, a casting vote.
3. A resolution of the board is passed if it is agreed to by all members present without dissent or if a majority of the votes cast on it are in favour of it.
4. A member present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless they expressly dissent from or votes against the resolution at the meeting.

Resolutions

A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members who are entitled to vote on the matter⁷ is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted.

Commission-specific requirements

Quorum

The [Commerce Act](#) states that “at any meeting of the Commission the quorum shall be 3 members.” Therefore the quorum for all Board and division meetings is three members.⁸ As discussed in [Chapter Nine – Board Committees and Divisions](#) - the three-member quorum requirement does not apply to any committees established by the Board, unless specified.

No business may be transacted at a meeting if a quorum is not present. Members may discuss issues at an inquorate meeting but no decision on the matter can be reached. To reach a decision, the meeting must be reconvened when not fewer than three members are able to attend. Any issues, material or discussion from the previous meeting must be fully considered before members are asked to make a decision.

There are certain functions where the Telecommunications Commissioner or Grocery Commissioner and no fewer than two other members of the Commission must perform – these are outlined in their respective Acts. Every other function of the Commission under those Acts must be performed by the relevant Commissioner alone or, if so requested by the relevant Commissioner, by the Commissioner and at least two other members of the Commission.

⁶ In the case of associate members, only if the matter falls within their appointment.

⁷ See Member availability below for a definition of members entitled to vote.

⁸ Either full members or associate members where the matter falls within their appointment. Associate members attending a meeting for a matter that falls outside of their appointment do not count towards quorum.

References to a quorum requirement mean members present and participating in a meeting. To be present members need not physically be in the same room, they may join by remote media. Also Board or committee decisions do not always have to be made in a meeting. They may be made by resolution or determination in writing signed or assented to by all members necessary to constitute a quorum.

Publishing dissenting opinions in relation to the Telecommunications Act

Any determinations made under [section 10\(1\)\(a\) of the Telecommunications Act](#) must be made in accordance with the majority view.

The recommendation included in the final report to the Minister under [section 10\(1\)\(b\) of the Telecommunications Act](#) must include the majority view and any dissenting views.

Other Commission-specific procedures

Proxy voting

Members cannot vote by proxy. Members need to act personally by turning their minds to the matter before a meeting and participating in the discussions, deliberations and decisions. In addition, a Member does not have any general ability to pass their own rights and powers as a Member onto someone else. This means that members may not 'vote' before a meeting and then be advised of the outcome, as the Member would not be present at the meeting to participate in the discussion.

Similarly, proxies may not be used in order to make up a quorum requirement that does not otherwise exist.

Dissenting opinions (other than those in relation to the Telecommunications Act)

If a Member disagrees with the majority view of the Board/committee, the meeting minutes will record the Member's different or dissenting vote or view on the matter.

Decisions of the Commission as to governance matters; monitoring and analysis; and investigation and enforcement or other operational and discretionary decisions (where a reasoned decision is not published) are to be treated as collective decision-making matters on which dissenting opinions will not be publicly noted outside of the formal minutes.

In respect of the exercise of the Commission’s quasi-judicial functions⁹ or the exercise of other decision-making powers where the Board/committee Members publicly express a reasoned view, any dissenting opinions will be publicly noted, including written reasons for the dissent if they are provided by the Member.

Collective decision making

As far as possible most decisions are made by consensus.

Minutes

The Board or its committees must ensure that minutes are kept of all proceedings.¹⁰ Minutes should be accurate and objective and provide members with a record of what occurred, including resolutions passed and the action to be taken.

Member availability

A member, upon becoming aware that they may for any reason be unable to attend a particular meeting of the Board or Committee of which they are a member of, or unavailable over a particular period to attend any meetings of the Board or Committees, must notify the Chair and relevant Committee Convenors as soon as possible of such inability or unavailability and, where possible, the period for which the member expects to be unavailable to attend meetings.

Members who have notified their availability are not entitled to take part in formal Commission business for the duration of their unavailability – such as voting on decisions by round robin resolutions. For significant decisions by round robin resolutions, the Board Chair or Committee Convenor may stipulate that a unanimous decision (i.e. assent by all members of the Committee) is required.

Other matters

The Board has adopted a set of “Standing Orders” to provide more detailed guidance on procedures and processes associated with meetings. These Standing Orders apply to the proceedings of all Board meetings, and it is required that all members shall abide by them.

A copy of the Standing Orders is contained at [Appendix D](#) and will be updated from time to time.

⁹ That is, statutory decision-making powers with appeal rights, e.g. merger clearance decisions, IM determinations.

¹⁰ Under s 17 of the Public Records Act, the Commission must create and maintain full and accurate records of its affairs.

Chapter Nine – Board Committees and Divisions

This section sets out the requirements for establishing and managing committees and divisions of the Board.

Committees

Establishment

Under the Crown Entities Act, the Board may establish a committee:

1. to advise it on any matters relating to the Commission’s functions and powers that are referred to the committee by the board; or
2. to perform or exercise any of the Commission’s functions and powers that are delegated to the committee, if the committee includes at least one member of the board and any other person or persons that the board thinks fit.

Committees are established by a resolution of the board, who approve the membership and a terms of reference which will define the committee’s powers, duties, reporting procedures and duration.

The unique feature of committees is that the Board may appoint Commission staff members or experts external to the Commission to them – alongside members.

In 2025, as part of a new way of working, the Board decided to move from a divisional to a committee structure to exercise its statutory powers, functions and duties - in conjunction with a revised approach to delegations (see [Chapter Ten - Delegations](#)).

While the Board reserves the right to create committees on most matters, it has chosen to delegate to the Chair of the Commission the power to establish committees to consider clearance applications under the [Commerce Act](#). It is envisaged that these committees will be established on a case-by-case basis for the consideration of individual applications and will be dissolved once the committee makes a decision on the application.

Membership

The Board has agreed that some committees will have two classes of members – “core” and “other” members.

1. “Core” members will be in attendance at all/most committee meetings and will be actively involved in, and accountable for, all committee matters.
2. “Other” members who have involvement on an as needed basis but to whom we may nevertheless want to grant voting rights

While all committee members will be formally appointed by the Board in the same manner – this distinction recognises that “other” members will only attend certain meetings to offer their specialist expertise – which will be outlined in an annex to the Committee’s Terms of Reference. This may be when particular items are on the committee’s agenda, or at the invitation of the committee.

To ensure clarity of which members have participated in a committee’s decision – “other” members will not have access to committee decision-making papers for matters where they are not involved in the decision. If the “other” members are involved in the decision, they will be provided the necessary papers and must ensure they have read them prior to the meeting. Committees will also ensure clear records are kept of which members attended for each meeting – “other” members should be recorded as an apology if they are not attending the meeting.

Subject to the Board’s approval, the Chair of the Commission will be appointed as an “other” member of any committee that they are not a “core” member of. This allows the Chair to be brought in where a matter has significant implications for the Commission or carries significant reputational risk. The framework outlined above for “other” committee members applies to the Chair as well.

Operation

To ensure the Board remains informed of committee work programme and milestones, Convenors will report to the Board regularly and provide a ‘no surprises’ heads-up to the Chair on matters of strategic importance to the organisation.

The focus of committees is on matters of committee-level strategy and governance, and matters of high strategic significance or risk, rather than routine or day-to-day decision-making.

Committees are expected to:

1. approve their priorities and work programme.
2. make decisions or decide to delegate decisions.
3. provide expert input, advice and review of work where appropriate.

Some committees have overlapping jurisdictions. In these cases the relevant members will consult with each other when considering a matter of potentially overlapping jurisdictions.

Role of Associate Members on Committees

If Associate Members are appointed to a committee, then it is good practice that the Committee’s functions and powers are contained in their notice of appointment as an Associate Member. If they are not so listed, then Associate Members may still be appointed to the Committee; however, it will be in the capacity of an external member and not as part of their Associate Member role.

The role of Convenor

When appointing members to a Committee, the Board will designate one of those members as Convenor of the Committee. Convenors are expected to lead the Committee, this includes:

1. Lead each meeting of the Committee, ensuring the agenda is efficiently progressed, conversations in the meeting are focused and balanced and guide the Committee towards decision making

2. Ensure the Board is kept informed in a timely manner of material risks which may affect the Commission, or of matters which might impact (adversely or positively) on the reputation of the Commission
3. Liaise with the GM to ensure an effective and efficient agenda is set that meets the needs of the Committee and who needs to be in attendance, including whether other Commissioners/Chair need to be in attendance
4. Work with other Committee Convenors to meet the "no surprises" expectation for Enforcement Committee by identifying and tracking any Enforcement matters that may require decisions by the Enforcement Committee
5. Lead and facilitate (with support from the GM (or nominated delegate), and input from other members) the process of reporting to the Board on the Committee's work programme, progress, and results
6. To invite the chair to attend as needed, with an expectation that the Chair will be invited to attend when a matter involving significant risk to the Commission is to be considered
7. Provide feedback on the performance of the relevant GM(s) to the Chief Executive, via mechanisms agreed with the Chief Executive.

If a Committee Convenor is absent, the Committee will appoint one of their own as Convenor for that meeting, and they must be a Commissioner or Associate Commissioner.

Convenors are accountable to the Commission Board for their role as convenor and are responsible for acting with the mandate of the Committee. The accountability of convenors to the Board is a vital mechanism for ensuring that the Board can fulfil its collective duties set out in the [Crown Entities Act](#).

Further guidance

In September 2025 the Chair of the Commission issued a Letter of Expectations to Committee Convenors, that is available at [Appendix E](#).

Divisions

Divisions can be established by the Chair under the [Commerce Act](#). As at 2025 the Chair's power to appoint divisions remains live, though the Board has expressed the preference and given effect to committees as a preferred decision-making body in the Commission as part of its new ways of working. The exception to this arrangement is consideration of authorisations under the [Commerce Act](#). As these cannot be delegated from the Board – they will still be considered under individual divisions established under the Commerce Act.

A division is a subset of members whose work can be prescribed specifically (for example, to make a particular decision about a particular matter) or generally. When a division acts, the Commission "is deemed to consist of the division". In other words, the division is legally regarded as acting as the Commission. However, as discussed elsewhere, the Board remains responsible for the actions of the division.

Divisions are established at the discretion of the Chair and are brought into effect or amended by the Chair signing a Direction of Establishment for a division, which will include a Terms of Reference for the division. As noted above, the Commission is currently choosing to exercise its powers and functions through a committee structure rather than divisions.

Differences between Committees and Divisions

In practice, a Board committee may seem very similar to a division. The differences are subtle. They primarily are that a committee is established by the Board, not the Chair; The Board determines a committee's membership and mandate; and the three member quorum requirement set out in the [Commerce Act](#), does not apply to committee meetings (The terms of reference for each committee will set out the number of members required for a quorum).

Chapter Ten - Delegations

This section sets out the requirements for delegation of the Board’s authority, and the process to be used for future delegations.

Overview of Delegations

The Board is the governing body of the Commission, with authority to exercise the powers and perform the Commission’s functions. All decisions relating to the Commission’s operation must be made by the Board, or under its authority. The Commission’s power to delegate is set out in the [Crown Entities Act](#), subject to matters expressly set out in legislation governing the Commission. The Board can delegate decision making to committees, the Chief Executive, management, and other Commission staff.

To whom can the Board delegate?

The Board may delegate (including the ability to sub delegate) almost any function or power of the Commission under any Act, by notice in writing, to:

1. a member or associate member.
2. a Board committee that includes at least one member or associate member.
3. the Chief Executive or an employee of the Commission.
4. any other person or persons approved by the Minister.

The Board must not delegate the “general power of delegation”. This is not a prohibition on sub-delegation. It means the Board may not divest itself of the ability to delegate functions of the Board that have not already been delegated.¹¹ The chain of delegation must commence with the delegation of a particular function or power by the Board. Once that has been done, sub-delegation of specific functions and powers by a person who has received a delegation of them from the Board is permitted but requires the Board’s prior written consent.¹²

Telecommunications Commissioner and Grocery Commissioner

Under the [Telecommunications Act](#) and [Grocery Industry Competition Act](#) certain decisions must be made by the Telecommunications Commissioner or the Grocery Commissioner and at least two other members. All other Commission functions under these Acts may be performed by the respective Commissioner alone or on request with the assistance of at least two other members. As noted previously both Commissioners have chosen to not perform any functions under their respective Acts alone.

¹¹ In other words, the Board cannot say to someone else “would you grant all of our delegations for us, please”.

¹² Such consent need not necessarily be sought each time a sub-delegation is about to be issued. It could instead be “pre-approved”, by containing the consent within the main delegation if the Board so wished.

The Telecommunications Commissioner or Grocery Commissioner's consent must be obtained for any delegation under the [Crown Entities Act](#) of a function or power of the Commission that they would normally perform.

What powers cannot be delegated?

Commerce Act

Under the [Commerce Act](#) the Board may not delegate its powers to grant, revoke or vary an authorisation under the Act.

Grocery Industry Competition Act

The [Grocery Industry Competition Act](#) provides that the Grocery Commissioner and Chair of the Commission's consent must be first obtained for any delegation under the [Crown Entities Act](#), of a function or power of the Commission that would normally be performed or exercised by the Grocery Commissioner.

Telecommunications Act

The [Telecommunications Act](#) provides that the Telecommunications Commissioner's consent must be first obtained for any delegation under the [Crown Entities Act](#), of a function or power of the Commission that would normally be performed or exercised by the Telecommunications Commissioner.¹³

The [Telecommunications Act](#) makes it clear that the functions and powers under the Act *are* capable of delegation by the Board despite the specific wording contained in section 10 of the Act regarding how Commission decisions are made.

Other Acts

There are no restrictions on delegations in the other Acts under which the Commission has functions or powers, and the Board or a division may therefore delegate any function or power of the Commission under these Acts.

¹³ In practice the Telecommunications Commissioner delegates the performance of the reserved functions of the Telecommunications Act and the division delegates the performance of the Further division Functions, i.e., once the Telecommunications Commissioner has requested, and the Chair of the Commission has agreed, that the Telecommunications division will also be available to perform certain other functions as requested by the Telecommunications Commissioner pursuant to section 10(1)(c)(ii) of the Act (Further division Functions), then the Telecommunications Commissioner can no longer delegate the performance of the Further division Functions on their own.

How are Powers delegated?

Under the [Crown Entities Act](#), it is the Board rather than individual members, that delegate functions and powers. Functions or powers cannot be delegated unless the Board has authorised the delegation by resolution and in line with its delegations principles and policy. It is also critical to ensure written notice is supplied to the delegate in some form, as a record of the delegation and to ensure the delegate is clear on the boundaries of the delegation.

A delegation can be revoked in the same way or by any other method provided in the delegation itself. The Board can impose conditions on a delegate, such as limiting the duration of the delegation, requiring the disclosure of interests or requiring regular reports.

A delegate may delegate their functions and powers only with the prior written consent of the Board and subject to the same conditions that are attached to the delegate's exercise of those functions and powers.

More information on the delegations process is available in the Commission's [delegation policy](#).

Effect of delegation

The Board can still exercise the functions and powers delegated to a delegate.¹⁴ Rules of procedure under the [Crown Entities Act](#) and the [Commerce Act](#) (such as quorum requirements, divisions and assent to determinations) do not apply to delegates, provided the delegation is properly made.

Normal administrative law rules apply in the case of delegations. That includes that the decision-maker must be fully informed, make an independent decision and take into account all relevant considerations.

When delegating functions and duties, the Board does not relinquish its responsibility for those matters (rather, the Board accepts responsibility for the decisions made).

¹⁴ In practice, however, the general expectation – taking into account good management practice – is that the Board would not, in effect, override the delegation that they themselves had agreed to. Were they to do this, particularly on a routine basis, delegations could easily become confused and weaken the responsibility of delegation holders.

Divisions

When a division is established, the division is the Commission for that purpose.

The Chair may direct the Commission to sit in divisions to exercise any powers of the Commission in relation to a matter or class of matter. When the Chair directs that the powers of the Commission under any Act in relation to any matter or class of matter are to be exercised by a division, the division is the Commission for that purpose.¹⁵

As noted above, a division may delegate almost any function or power of the Commission under any Act, by notice in writing. However, all decisions, including those of divisions, remain the responsibility of the Board. Consequently, divisions should ensure the Board is kept informed of the division's work programme. As referred to above this includes leading and facilitating reporting from the division to the Board.

¹⁵ As noted previously, divisions themselves are not, technically under the law, a delegation. Practically speaking, however, they could be thought of as delegations, with a division acting as the Commission and with the Board remaining responsible for the division's decisions.

Chapter Eleven – Acting as an Employer

This section describes the Commission’s employment obligations set out in legislation and in government standards applying to the public sector; and provides guidance on the development of organisational policies and procedures applying to staff.

Employment of the Commission’s Chief Executive

The employment of a chief executive is one of the most important things that a board does. The board should ensure that a robust process is followed in preparing the position description, seeking suitable candidates, and selecting the chief executive.

Under the [Crown Entities Act](#), an entity that employs a chief executive must consult with the Public Service Commissioner (via the Chair) before agreeing to or subsequently amending the terms and conditions of employment, including remuneration. The board must have regard to any recommendation that the Commissioner makes to it. If the proposed terms and conditions do not comply with the Commissioner's guidance, the entity must consult the responsible Minister and have regard to any recommendations made by that Minister.

Performance Management

Good practice in relation to chief executive performance management includes:

1. the board defining the performance expectations of the chief executive (including stretch targets), and the criteria against which the chief executive's performance will be measured.
2. ongoing and constructive discussions between the Chair and the Chief Executive.
3. addressing problems early, for instance by the chair communicating and discussing non-performance concerns.
4. a formal performance evaluation process, managed by the Chair.

Statutory requirements as an employer

Crown Entities Act 2004

The Commission must operate in a way that complies with the principle of being a good employer. These principles comprise:

1. good and safe working conditions.
2. an equal opportunities programme.
3. impartial selection of suitably qualified people for appointment.
4. recognition of:
 - the aims and aspirations of Māori.
 - the employment requirements of Māori.
 - the need for involvement of Māori as employees of the entity.
5. opportunities for the enhancement of the abilities of individual employees.

6. recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups.
7. recognition of the employment requirements of women.
8. recognition of the employment requirements of persons with disabilities.

The Governor-General may require the Commission to not agree to terms and conditions of employment in a collective agreement, or an amendment to the terms and conditions without consulting the Public Service Commissioner and having regard to their recommendations.

Public Service Act 2020

Under the [Public Service Act](#), the Public Service Commissioner may:

1. set minimum standards of integrity and conduct (including a code of conduct that applies to the staff of Crown entities)
2. provide advice and guidance on matters, or at times, that affect the integrity and conduct of those within the Public Sector (such as on the interpretation of relevant standards and on the application of a code of conduct in specific cases).

Another of the Public Service Commissioner's roles is to "oversee workforce and personnel matters" in the Public Service. This includes providing advice and guidance to the public services on workforce matters.

The Public Service Commissioner is also responsible for developing and implementing a strategy for the development of senior leadership and management capability in the State Service (e.g. flexible deployment of individuals to developmental roles in the Public Service). The Public Service Commissioner may promote the strategy to other agencies in the public service, such as the Commission, and may invite employees in the Public Service to participate in initiatives under the strategy (with the agreement of the relevant chief executives).

The [Public Service Act](#) also applies to the Commission for the purposes of superannuation schemes for its officers and employees, including contributions to superannuation schemes and any scheme(s) the Commission decides to establish.

Other employment legislation

A substantial amount of employment-related legislation applies to the Commission. The primary piece of legislation is the [Employment Relations Act 2000](#); others provide for employment rights such as leave, wages and wage protection, and accident compensation.

The Board's role in relation to this legislation is to monitor compliance with the law through management reports. As part of their delegation to the Chief Executive of the day-to-day management of the Commission, the Chief Executive is responsible for the operational management and ensuring the Commission is meeting its legal compliance with the legislation.

Management will report general information on legislative compliance to the Board as a matter of course. Management will also undertake more detailed exception reporting (i.e. any alleged breaches of employment law and the steps being taken to address them) and reporting on significant employment-related matters (e.g. capacity reviews).

Health, Safety and Wellness

The Board accepts it has a positive duty in relation to health and safety at the Commission. Effective leadership at Board level will drive health and safety at the Commission. Failure to manage health and safety risk effectively has both a human and a business cost.

The Board will act in accordance with [the Health and Safety Guide: Good Governance for Directors 2024](#) which was developed by Worksafe New Zealand and the Institute of Directors.

A court may (but is not compelled to) take the guide into account when considering the liability of directors.

The guide notes that the [Health and Safety at Work Act 2015](#) requires directors to take ultimate responsibility for the health and safety of their entity. Directors must have knowledge of and commitment to health and safety, but contrary to some beliefs, are not expected to be experts to meet the expectations of the Act.

The guide also notes that the principles underpinning health and safety governance are no different than any other aspect of a governance role. Good health and safety governance is about having a demonstrable plan and a pro-active approach to making the workplace as safe as it can be.

The guide explains that directorship in health and safety is not about responsibility for the day-to-day granular operations of the entity. It is about ensuring appropriate systems and processes are in place to support health and safety and, critically, that there is proper resourcing and verification of health and safety at the board table.

The guide includes the following advice for Directors:

1. Managing the Commission's health and safety risk is just as important as managing financial and reputational risk and it should receive the same focus.
2. The directors' duty in relation to health and safety may be expressed generally as exercising "due diligence."
3. Aspire to move beyond compliance to "best practice."
4. Boards should create a strong reporting culture that welcomes 'bad news' and responds to it appropriately. Directors must never turn a blind eye to undesirable information.
5. Take decisive action if everything is not as it should be, or you need more information.
6. As well as identifying areas for improvement, recognise and celebrate good organisational performance.

Each “key element” is also augmented by set of Baseline Actions and Recommended Practice for Directors, and a series of diagnostic questions provides an additional tool for the Board to determine whether the Commission’s practices are consistent with its values, goals and approved system.

Relevant government expectations

The Public Service Commissioner has issued a [code of conduct \(Standards of Integrity and Conduct\)](#) which applies by law to all staff (but not members) of the Commission. It must be reflected in each of the Commission’s internal policies.

The Public Service Commissioner has also issued [Political Neutrality Guidance](#) which sets out the obligations of staff in that area.

The Equal Opportunities Commissioner at the [Human Rights Commission](#) has responsibility for issuing good employer and EEO guidance to Crown entities. The Human Rights Commission also undertakes an annual review of how Crown entities are reporting on their [good employer obligations](#).

The [government’s expectations for pay and employment conditions in the State sector](#) apply to all Crown entities. Accordingly, the Commission must take several factors into account when setting pay and employment conditions, including:

1. fiscal sustainability and value for money.
2. contributing to the achievement of the Commission’s strategic business outcomes.
3. fairness to employees and taxpayers.
4. enhancing productivity and fostering continuous improvement.

Further guidance

Crown entities have numerous obligations as employers. The Board has generally delegated the responsibility for management of the Commission and the employment of staff to the Chief Executive (see [Chapter Ten – Delegations](#)). However, the Board retains the responsibility for the Commission meeting its obligations.

A number of policies and procedures need to be maintained in respect of Commission employees, including a [Code of Conduct](#). The Board will ensure that the policies are developed and maintained in accordance with the relevant legislation and government expectations.

Chapter Twelve – Planning & Reporting

This section sets out the Commission’s requirements for key planning and reporting documents.

Context

As an independent Crown entity, the Commission needs to account for its performance to Government as required by the Crown Entities act. It does this through the development of a suite of accountability documents (the Statement of Intent (SOI), the Statement of Performance Expectations (SPE), and the Annual Report)

An essential element of the Board’s leadership role is its responsibility to review and approve the SOI, SPE and Annual Report. The SOI focuses on articulating the Commission’s strategic direction over a three-to-four-year period, whereas the SPE focuses on annual performance expectations. Accompanying this review and approval process is an ongoing responsibility to identify organisation priorities and monitor progress against the strategic direction, outcomes and impacts in the SOI and annual performance expectations in the SPE. The Annual Report reports progress against the SOI and SPE.

Letter of Expectations

The Minister’s expectations for the Commission’s strategic direction and specific priorities are conveyed in an annual Letter of Expectations (LOE). A LOE from the Minister responsible for the Commission can be conveyed at any time but normally coincides with the development of the SOI and SPE as both documents must reflect the content of the LOE. The Minister may also issue a LOE on the appointment of a new Chair.

Where consistent with the Commission’s role as an independent Crown entity, the Commission will aim to meet the expectations of the Minister as set out in the annual LOE. Where the content of any LOE conflicts with the Commission’s role, the Chair will discuss these matters with the Minister.

An [Enduring Letter of Expectations](#) to Crown entities is issued periodically. It sets out the ongoing expectations that the Minister of Finance and the Minister for the Public Service have of all statutory Crown entities. These expectations include value for money, demonstrating performance, and engagement with Ministers and monitoring departments. An enduring letter remains ‘in force’ until it is replaced.

Statement of Intent (SOI) and Statement of Performance Expectations (SPE)

The Commission has been provided with a mandate and funding by the New Zealand public. The purpose of publishing and presentation an SOI is to promote the public accountability of the Commission by:

1. Enabling the Crown to participate in the process of setting the Commission's strategic intentions and medium-term undertakings;
2. Setting out for the House of Representatives (the House) those intentions and undertakings; and
3. Providing a base against which the Commission's actual performance can later be assessed.

The purpose of the SPE is to:

1. Enable the Commission's responsible Minister to participate in setting the Commission's annual performance expectations;
2. Enable parliament to be informed of those expectations; and
3. Provide a base against which the Commission's actual performance can be assessed.

The SOI sets out the Commission's strategic intentions and medium-term undertakings over a three-to-four-year period, the SPE sets out the Commission's annual performance expectations. Both documents provide a base against which the Commission's performance can be assessed – over the medium-term (SOI), and short-term (SPE). In effect, the SOI and SPE form the centrepiece of the accountability relationship between the Commission and Government.

The SOI flows out of the Commission's strategic planning process and through it the Board expresses its strategic thinking and future intentions. The SPE is developed at the same time as the SOI (where an SOI is required) and both are prepared under the direction of the Board, signed off by the Board, and tabled by the responsible Minister in Parliament. The SOI and SPE also reflect engagement with the responsible Minister and monitoring departments through the planning process and have regard to the annual LOE.

The [Crown Entities Act](#) specifies what an SOI must contain. An SOI must explain the nature and scope of the Commission's functions and intended operations, and how we intend to manage them to meet our strategic intentions. The SOI must also explain how the Commission intends to assess its performance and manage organisational health and capability. The Crown Entities Act requires the Commission to focus on what is most meaningful and useful for external reporting in the SOI. The Crown Entities Act requires the Commission to assess and describe its performance.

The [Crown Entities Act](#) also specifies what an SPE must contain. An SPE must identify each reportable class of outputs for the financial year and must contain forecast financial statements prepared in accordance with generally accepted accounting practice. The SPE must include an explanation of what our outputs are intended to achieve, identify the expected revenue and proposed expenses for these outputs, and explain how output performance will be assessed. The [Minister of Finance](#) may exempt one or more classes of outputs from an SPE for one or more financial years or until further notice.

Ministers may participate in determining the content of the both the SOI and SPE. Minister involvement can include any of the following:

1. agreeing with the Commission on any additional information to be incorporated;
2. specifying the form in which any information must be presented;
3. making comment on a draft; and
4. directing amendment in relation to information in the final document.

An SOI is in force from the later of:

1. the date on which the final SOI is provided to the responsible Minister; or
2. the first day of the period to which the SOI relates.

The SOI remains in place until a new SOI is in force, despite the end of any financial year to which it relates.

The Commission may amend its SOI or SPE or provide a new SOI or SPE in the case of false or misleading information or significantly altered intentions and undertakings. The amendments must be published on the Commission's website and presented to the House by the Minister.

Annual Report

The Annual Report is one of the most important means by which the Commission discharges its accountability to Parliament and the public. It is a key resource for financial review of performance and current operations, which select committees conduct each year.

The Annual Report must provide the information to enable an informed assessment to be made of the Commission's operations and performance for that financial year, including an assessment against the intentions as set out in the SOI and the annual performance expectations as set out in the SPE. The statute sets out specific information that must be included, for instance annual financial statements, a statement of performance, any direction given by a Minister in writing and the total value of the remuneration paid to each member during the financial year.

The Auditor-General is the Commission's auditor, but the Auditor-General generally appoints Audit New Zealand to act on their behalf. The auditor is required to audit the annual financial statements, statement of performance, the annual report, and any other required or agreed information.

The Commission must provide its annual report to the Minister within 15 working days of receipt of the audit report. The Minister will then present the report to Parliament within 5 working days of receiving it.

Other Board – Minister communication

Other methods of communication between the Board, the Minister and monitoring department (MBIE) are set out through established practice (see [Chapter Three – Key Relationships](#)).

MBIE monitors the performance of the Commission, with a focus on the viability of the Commission (e.g. financial stability and capability/resourcing), whether it is achieving its purpose, and its ability to deliver services effectively and efficiently. The Commission and MBIE meet on a quarterly basis to discuss performance and how we are tracking against our set expectations. The Commission also uses this meeting to discuss any issues of concern that the Minister needs to know about, through a ‘no surprises’ convention.

The Commission also engages with the Minister of Commerce and Consumer Affairs and Minister for Media and Communications on a regular basis. Meetings with the Minister will be attended by the Chair with the support of the Chief Executive, other staff and members where appropriate.

The Commission also participates in Select Committee Financial Reviews, which are a central part of Parliament’s work. The responsible Minister expects the Board and management to familiarise themselves with the Standing Orders of the House of Representatives before appearing in front of select committees.

Chapter Thirteen – Board & Member Performance Evaluation

This section sets out how the board will conduct its evaluation of its own performance as a collective and the performance of individual members.

Evaluating the performance of the board and its members allows them, led by the Chair, to take stock and reflect on both these aspects of performance. The knowledge gained from the evaluation is a means to continually improve the effectiveness of the leadership and governance of the Commission.

The Board should assess its own performance in relation to the board's key responsibilities, which include:

8. managing the relationship with Ministers.
1. strategic planning.
2. discharging the Board's legal and ethical obligations.
9. monitoring the Commission's performance.
3. evaluating the performance of the Chief Executive.
10. managing relationships with stakeholders.

The primary responsibility for the effective performance of the board rests with the Chair. It is the Chair's role to offer appropriate feedback to the board and to individual members, and to provide assurance to the monitoring department that a process for performance evaluation is in place and that it is undertaken.

Collective review of Board performance

The Board will undertake a process to review its own overall performance on an annual basis. The Chair will decide and run this process, with the support of the Office of the Board and Chief Executive. This may involve the engagement of external resource to support this process – or it may be managed internally.

The Board will report a summary of the results of the collective review and proposed next steps to the Minister of Commerce and Consumer Affairs, as part of the monitoring reporting the Commission does.

Individual review of Board member performance

As part of the collective review of Board Performance, individual member performance will be assessed. The Chair will decide and run this process, with the support of the Office of the Board and Chief Executive.

Chapter Fourteen – Member Appointments and Departures

This section describes:

11. member appointment and reappointment.
12. member resignation.
13. member removal.
14. no compensation for loss of office.

Appointment

The [Commerce Act](#) provides for the appointment of members and associate members, the appointment procedures and the necessary qualifications of the members.

Full Members

The Governor-General appoints full members, on the recommendation of the Minister, for a term of up to five years (renewable). The Board must have no less than four, and no more than eight full members, with the following requirements:

1. One full member must be a Barrister and Solicitor of at least five years' standing.
2. One full member must also be appointed by the Governor-General as Telecommunications Commissioner under the [Telecommunications Act 2001](#).
3. One full member must also be appointed by the Governor-General as Grocery Commissioner under the [Grocery Industry Competition Act 2023](#).

The Minister of Commerce and Consumer Affairs recommends to the Governor-General a person for appointment as a full member. Under [the Commerce Act](#) the Minister must not recommend a person for appointment unless, in the Minister's opinion:

1. that person is qualified for appointment, having regard to the functions of the Commission, by virtue of that person's knowledge of or experience in industry, commerce, economics, law, accountancy, public administration, or consumer affairs; and
2. in the case of a member who is a Barrister or Solicitor, the Minister has first consulted with the Attorney-General.

Before a person is appointed as a member, the person must consent in writing, certify that they are not disqualified from being a member, and disclose to the Minister of Commerce and Consumer Affairs the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the statutory entity.

Associate Members

Associate members may also be appointed – they are appointed by the Minister of Commerce and Consumer Affairs. As outlined previously an associate member is only deemed to be a member of the Board for the matters they have been appointed for and may only attend and vote at a meeting relating to the matter or class of matters specified in that member’s notice of appointment. As discussed elsewhere, associate members are not considered to be members of the Board.

Associate members may not be appointed as chair, deputy chair, or as a temporary deputy chair under the Crown Entities Act.

Cross appointments with the Australian Competition and Consumer Commission

Under the Single Economic Market Outcomes Framework [agreed](#) between the New Zealand and Australian Governments in 2009, it was agreed that certain members of each country’s competition agency could be cross-appointed to the other country’s competition agency. This would support convergence in the way the two regulators approach similar issues under competition and consumer laws.

Cross-appointees to the Commission are appointed as associate members to the Commission. They are most often allocated to areas that will involve Australian enterprises – such as merger determinations.

Cross-appointees are not expected to attend Board meetings and tend not to have many interactions with the Commission outside the work they are appointed for.

Chair and Deputy Chair

The Governor-General, on the recommendation of the Minister of Commerce and Consumer Affairs, appoints the Chair and Deputy Chair. The Chair and Deputy Chair hold office until:

1. they resign from office.
2. they are removed by the responsible Minister or the Governor-General.
3. they cease to hold office as a member.
4. the term of office expires as specified in the Chair or Deputy Chair’s notice of appointment, (unless the Member continues to hold office as a member in accordance with the [Crown Entities Act](#) or is reappointed for a further term).

Term of office

Members hold office for up to five years or any shorter period stated in the notice of appointment. Despite the expiry of their term, the [Crown Entities Act](#) states that members can remain in office until a successor is appointed. The [Commerce Act](#) also provides that members may remain in office to complete the determination of any matters commenced before the expiration of their term.

While members may be reappointed, they have no automatic right of reappointment. If they wish to seek reappointment, members may be required to participate in further appointment processes (e.g. updated curriculum vitae, an interview).

Further [information and guidance](#) on the appointment and induction process is available from the Public Service Commission.

Post-appointment induction and training

Ministers, boards, and monitoring departments all have responsibilities in relation to the induction of new members.

It is the responsibility of the Chair to provide detailed induction and background in relation to what the board does and how the board and the entity operate. At the Commission this process will be supported by the Office of the Board and Chief Executive.

The Chair will also ensure that members have the capacity and capability to carry out their functions and duties and will identify where training is necessary. Introductory modules are available from the [Public Service Commission](#).

Removal

Members

The Governor General may, at any time for just cause, on the advice of the Minister of Commerce and Consumer Affairs given after consultation with the Attorney-General, remove a member from office. The removal must be made by written notice to the Member, (with a copy to the Board) stating the date on which the removal takes effect.

“Just cause” includes misconduct, inability to perform the functions of the office, neglect of duty and breach of any collective duties of the Board or the individual duties of Members (depending on the seriousness of the breach).

For further information on what qualifies as ‘misconduct’, please see the [Commission Code of Conduct](#).

Chair and Deputy Chair

The Governor General may, on the recommendation of the Minister of Commerce and Consumer Affairs and after consultation with the person concerned, remove the Chair or Deputy Chair from that office by written notice to the person (with a copy to the Board) stating the date on which the removal takes effect.

Resignation

Members

A member may resign from office by written notice to the Minister of Commerce and Consumer Affairs (with a copy to the Board) with the resignation effective on receipt by the Minister or at any later time specified in the notice.

Named Officers

The Chair, Deputy Chair, Grocery Commissioner or Telecommunications Commissioner may, without resigning as a member of the Board, resign from the office they hold by written notice to the Minister of Commerce and Consumer Affairs (with a copy to the Board). The notice must specify the date the resignation takes effect.

Chapter Fifteen – Remuneration and Expenses

This section sets out how remuneration is set for members and how members expenses are managed.

Remuneration

Members' remuneration and expenses are set annually by the Remuneration Authority in accordance with the [Remuneration Authority Act 1977](#).

Generally, the fee paid to a member is applied to their replacement until the next consideration.

Currently the Chair, Deputy Chair, Grocery Commissioner and Telecommunications Commissioner are remunerated as full-time roles – all other positions are remunerated on a daily basis.

The Remuneration Authority reviews fees each financial year. At that time, the Chair can also make submissions to the Authority for a review of any Board fees.

A member is not entitled to any compensation or other payment or benefit relating to their ceasing, for any reason, to hold office as a member.

Expenses

The Commission has several policies and guidance that cover the incurring and reimbursement of expenses and apply to both members and staff. These include:

1. [Credit card usage policy](#)
2. [Expense claims policy](#)
3. [Sensitive expenditure policy](#)

Members should have regard to this guidance when conducting Commission business.

Chapter Sixteen – Liability and Protection from Legal Claims or Proceedings

This section covers the applicable immunities and indemnities for members.

The [Crown Entities Act](#) sets out civil immunity for acts and omissions of Board Members in good faith, in performance or intended performance of the Commission’s functions, and also indemnifies members for such acts or omissions.

It is important for the proper functioning of the Commission that employees and members can exercise their responsibilities without having to be concerned about having to fund the defence of claims about their conduct.

The Commission will ensure that its members or employees do not incur costs in responding to claims brought by third parties for anything that members or employees may do or say or fail to do or say during the operations of the Commission, unless it is shown that they have acted in bad faith. The Commission will pay for the reasonable legal and associated expenses incurred in defending claims.

For further information, please refer to the [Commission’s Indemnity Policy](#).

Appendix A – Commission Values Framework

Our Kaupapa



Manaakitanga
We enhance the mana of others through expressions of generosity, hospitality, respect and care



Kotahitanga
We work together to achieve common goals



Whanaungatanga
We have a sense of belonging through our shared experience of working together



Kaitiakitanga
We are aware of responsibilities as stewards of commerce

Our **kaupapa** is informed in the Te Ao Māori stories of commerce and trade and provide an overarching Te Ao Māori framework for our values and how we work. They provide a holistic approach for Te Komihana Touhokohoko - this means the kaupapa are overlapping and intertwined and guide our values statements

HE KAWA
TAUHOKOHOKO
**OUR VALUES
FRAMEWORK**

Our Values








He toa takitini
Strength in the collective

Rukuhia te wāhi ngaro
Curious, future-focused and courageous

Ma te huruhuru ka rere
Protect, empower and inform

Mauria te pono
Belief in ourselves, our kaupapa, our impact

The **Te Ao Māori concepts** of tika, pono and aroha underpin our values framework and guide the way we work

Te Ao Māori concepts



Tika
To be right or correct to our practice and the way we work



Pono
True or genuine to our tikanga



Aroha
Respect, friendship, concern. Every person respects the rights of others

Appendix B – The Board’s Statutory Functions

Commerce Act

Parts 2, 3 & 5

- deciding whether to commence proceedings under Parts 2 and/or 3 of the Commerce Act.
- undertaking investigations and inquiries.
- determining applications for authorisation of restrictive trade practices/business acquisitions.
- determining applications for clearance.
- taking evidence and requiring information. This may include requiring people to attend a compulsory interview with the Commission under s 98(1)(c).
- providing information about the Commission’s activities in this area.

Part 4

Airports

- determining and implementing information disclosure requirements for specified airport services.
- monitoring and analysing information disclosed in accordance with the information disclosure requirements, including publishing a summary and analysis of that information.
- reporting to the Ministers of Commerce & Consumer Affairs and Transport on how effectively information disclosure regulation under Part 4 is promoting the purpose in s 52A in respect of specified airport services.
- managing proceedings for alleged contraventions of information disclosure regulation.
- responding to proceedings that challenge the Commission’s decisions or the decision-making process in relation to determining information disclosure requirements for specified airport services.

Input Methodologies

- determining, including amending and reviewing, input methodologies relating to regulated electricity lines services, gas pipeline services, and specified airport services.

-
- responding to proceedings that challenge the Commission’s decisions or the decision-making process in relation to determining input methodologies.
 - responding to proceedings that challenge Commission decisions or the decision-making process.
 - undertaking investigations, audits and inquiries.
 - taking evidence and requiring information.
 - providing information about the Commission’s activities in this area.

Energy

- determining how the relevant forms of regulation apply to suppliers of regulated electricity lines and gas pipeline services.
- setting and implementing default/customised price-quality paths for suppliers of regulated electricity lines (as well as Transpower’s individual price-quality path) and gas pipeline services.
- setting out and implementing information disclosure requirements for regulated electricity lines and gas pipeline services.
- approving Transpower’s Grid Upgrade Plans/major capital expenditure proposals.
- monitoring and analysing information disclosed in accordance with the information disclosure requirements, including publishing a summary and analysis of that information.
- managing proceedings for alleged contraventions of the legislation by suppliers of regulated electricity and gas pipeline services, including breaches of default/customised price-quality paths, breaches of the provisional authorization (where applicable) and the authorization in respect of gas pipeline services supplied by Powerco Limited and Vector Limited.
- managing proceedings for alleged contravention of the legislation by suppliers of the regulated electricity lines and gas pipeline services for not applying the input methodologies specified in the s 52P determination setting out how the relevant form of regulation applies to suppliers of those services.
- responding to proceedings that challenge Commission decisions or the decision-making process.
- receiving and approving customised price-quality path proposals from suppliers of regulated electricity lines and gas pipelines services.
- undertaking investigations, audits and inquiries.
- taking evidence and requiring information.

Fuel Industry Act

- analysing information submitted by fuel businesses under the information disclosure requirements and publish reports that shine a light on the competitive performance of fuel markets.
- monitoring and enforcing compliance with requirements relating to terminal gate pricing, wholesale contractual terms, consumer information, and information disclosure.

Telecommunications Act

- section 9A of the Telecommunications Act (sector monitoring and information disclosure).
- section 10A (requiring information for retail service quality purposes).
- Part 2 of the Act (access determinations).
- Part 2AA (Deregulating copper fixed line access services).
- Part 2A (Structural Separation).
- Part 2B (information disclosure).
- Part 3 (TSO excluding liability allocation determinations and TSO cost calculation determinations).
- Part 4AA (services provided using networks developed with Crown funding).
- Part 4A (Enforcement).
- Part 7 (Consumer matters).
- Schedule 1 (Designated Services and Specified Services).
- Schedule 2 (Telecommunications Access Codes).
- Schedule 3 & 3A (procedure for altering regulated services & undertakings).
- any functions or powers related or incidental to the functions and powers listed above.

Part 6

- determining, including amending and reviewing, input methodologies relating to fibre fixed line access services.
- determining, reviewing and amending determinations made in relation to information disclosure regulation and price-quality regulation.
- responding to proceedings that challenge the Commission's decisions or the decision-making process in relation to determining input methodologies, information disclosure regulation or price-quality regulation.
- conducting an anchor services review.
- granting exemptions from the disclosure of confidential information.
- prescribing points of interconnection.
- undertaking investigations, audits and inquiries, and taking evidence and requiring information.
- monitoring and enforcing compliance with information disclosure and price-quality requirements.
- providing information about the Commission's activities in this area, including advice regarding proposed regulations to be made under Part 6.

Dairy Industry Restructuring Act

- determining disputes between Fonterra and other parties in respect of the application of the DIRA or any regulations made under s 115.
- fixing a discount rate in calculating the price of goods or services regulated under s 115 of the DIRA.
- taking enforcement action including seeking pecuniary penalties or an injunction, if a person allegedly contravenes the DIRA or regulations made under s 115.
- requesting information, statements or reports from Fonterra to monitor Fonterra's compliance with any regulations made under s 116 of the DIRA.
- annually reviewing Fonterra's Milk Price Manual and Base Milk Price Calculation (dairy reviews).
- deciding whether to give Fonterra directions in relation to its Milk Price Manual and Base Milk Price Calculation.
- responding to any appeal or judicial review proceedings against a Commission decision determination, or dairy reviews.
- enforcing directions through the High Court, requiring Fonterra to produce existing information, prepare new information, supply expert reports, and provide compliance statements/directors certificates.

Credit Contracts and Consumer Finance Act

- appearing and adducing evidence in private proceedings.
- undertaking investigations and inquiries.
- taking evidence and requiring information.
- monitoring trade practices in credit markets, consumer lease markets, and buy-back transactions.
- taking decisions to commence proceedings under the CCCFA.
- providing information for the guidance of consumers, creditors, lessors, transferees, and other interested persons in relation to promoting compliance with the CCCFA.
- providing information on the Commission's activities.
- Certification of Senior Managers and Directions of Consumer Creditors.

Fair Trading Act

- deciding whether to commence proceedings for alleged contraventions of the Fair Trading Act.
- undertaking investigations and inquiries.
- providing information regarding the Fair Trading Act to traders and consumers.
- obtaining evidence and requiring information.
- providing information about the Commission's activities.

Retail Payment System Act

- deciding whether to recommend to the Minister that a retail payment network be designated.
- deciding whether to issue, amend, or revoke network standards for designated retail payment network.
- deciding whether to issue, amend, or revoke directions about network rules applying to participants of a designated network.

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- deciding whether to issue, amend, or revoke merchant surcharging standards.
 - monitoring and enforcing compliance with network standards, directions, and merchant surcharging standards.

Grocery Industry Competition Act

- monitoring competition and efficiency in the grocery industry.
- carrying out inquiries, reviews and studies in connection with the grocery industry.
- acting as a regulator of the grocery industry.
- providing information in connection with the grocery industry.
- co-operating with other law enforcement, regulatory agency or overseas regulator.
- keeping under review the law and practices under the Act.

Appendix C – Factors for General Responsibilities for Board and Committee duties

<i>Responsibility to the entity.</i>	Members need to recognise and always act consistently with their responsibilities to the entity and to Ministers. They should attend induction training and professional education to familiarise and update themselves with their governance responsibilities.
<i>Strategic perspective.</i>	Members need to be able to think conceptually and see the ‘big picture’. They should focus as much as possible, on the strategic goals and overall progress in achieving those rather than on operational detail.
<i>Integrity.</i>	Members must demonstrate the highest ethical standards and integrity in their personal and professional dealings. They should also challenge and report unethical behaviour by other Members.
<i>Intellectual capacity.</i>	Members require the intellectual capacity to understand the issues put before them and make sound decisions on the entity’s plans, priorities and performance.
<i>Independent judgement.</i>	Members need to bring to the Commission objectivity and independent judgement based on sound thought and knowledge. They need to make up their own mind rather than follow the consensus.
<i>Courage.</i>	Members must be prepared to ask the tough questions and be willing to risk rapport with fellow Members in order to take a reasoned, independent position.
<i>Respect.</i>	Members should engage constructively with fellow Members, entity management and others, in a way that respects and gives a fair hearing to their opinions. In order to foster teamwork and engender trust, Members should be willing to reconsider or change their positions after hearing the reasoned viewpoints of others.
<i>Participation.</i>	Members are expected to be fully prepared, punctual and regularly attend meetings. Members are expected to enhance the quality of deliberations by actively asking questions and offering comments that add value to the discussion.
<i>Informed views.</i>	Members are expected to be informed and knowledgeable about the entity’s business and the matters before them. Members should have read their papers before meetings and keep themselves informed about the environment in which the entity operates.

Financial literacy.

Boards monitor financial performance and thus all Members must be financially literate. They should not rely on other Members who have financial qualifications and should undertake training to improve their own financial skills where necessary.

Sector knowledge.

Members need to make themselves familiar with the activities of the entity and sector. This is likely to include attending induction sessions and ongoing background study.

Appendix D – Commerce Commission Board Standing Orders

Introduction

The purpose of these standing orders is to set out the specific parameters for the organisation and running of Commission Board and All Members meetings.

These standing orders only apply to meetings of the Board (which consider items for the Board's approval, discussion or information) and All Members meetings (which are opportunities for members and associate members to connect and update each other on issues).

They do not apply to divisions or committees the Chair or Board may establish.

Meeting preparation

Giving notice of meetings

The statutory requirements regarding giving notice of meetings are set out in [Chapter Eight](#) of the Governance Manual.

As a matter of good practice, the Office of the Board and Chief Executive (in conjunction with the Commission SLT and Chair) should put to the Board in the latter part of the calendar year a proposed workplan and schedule of meetings for the following year, for the Board's adoption. This should include seeking the Board's confirmation of meeting types, cadence and arrangements for All Members meetings.

Notwithstanding the Board's role in adopting the meeting schedule as outlined above, the Chair reserves the right to postpone or cancel any meeting of the Board. In doing so the Chair should ensure that members are informed of any decision as soon as is reasonably practicable.

Development of agendas

The Office of the Board and Chief Executive will prepare an agenda for each board meeting, after consultation with other Commission staff and with reference to the Board's workplan.

The agenda will be provided to the Chair for their approval at least two weeks before the meeting. In approving the agenda, the Chair should have regard to:

1. The date, time and proposed length of the meeting.
2. The proposed agenda items and whether they align with the Board's priorities and expectations.
3. The proposed order of items.

Agendas will only be produced for All Members meetings when there is an item scheduled to be discussed. The agenda is generally not provided to the Chair for approval before issuing.

If any member wishes to place an item on a meeting agenda, they should contact the Chair or Office of the Board and Chief Executive before the agenda is finalised.

For board meetings, the agendas should contain:

1. Schedule of Members Interests.
2. Confirmation of previous minutes.
3. Review Action Point Register.
4. Review Board Workplan.

Once the agenda for a meeting is finalised and distributed, it can only be amended at the agreement of the Chair.

Distribution of papers

For board meetings, papers should be distributed to members at least five working days before the meeting.

For All Members meetings, papers should be distributed three working days before the meeting. This recognises the weekly nature of the meetings, and that the volume of papers for this meeting will be substantially less than for Board meetings.

Papers will be distributed by means of uploading them to the Commission's Board software client (currently Diligent) and making them available to members. If members wish to receive the papers in hardcopy, they should advise the Office of the Board and Chief Executive.

Meeting procedures

Location of meetings

Unless specified otherwise, meetings will be hosted at the Commission offices in Wellington.

Duration of meetings

In approving the agenda for the meeting, the Chair should have regard to the proposed length of the meeting.

For meetings of three hours or longer, a break should be scheduled on a regular basis.

Role of the Chair

As outlined in [Chapter Five](#) of the Governance Manual, part of the Chair's role is chairing meetings of all members.

In the absence of the Chair, the Deputy Chair will chair the meetings. In the absence of both the Chair and Deputy Chair, members will elect a Temporary Deputy Chair who will assume the role of Chair for the meeting.

Requests from the Board to staff

Requests for information or further work from members should be raised at meetings and agreed by the Board.

Staff attendance at Board meetings

On occasion staff members will attend board meetings to present items to the Board. Numbers will be limited for each item and include the relevant General Manager.

When staff are present in Board meetings, members need to be cognisant of the relationship between the Board and staff – especially junior staff. The Board should not direct junior staff, any direction needs to be made to the Chief Executive (or General Managers, acting on behalf of the Chief Executive).

Resolutions of the Board in meetings

In putting a resolution of the Board (for a decision or direction), the Chair should put the question to the Board and provide any member an opportunity to comment or disagree. If no member chooses to do so, the resolution can be considered to have been adopted by the Board.

If any member disagrees with a resolution, they should raise their concerns in the meeting. In such cases a vote may be necessary to test the Board's view on the matter.

If a member still disagrees with a resolution after it has been adopted by the Board, they may request for their view to be reflected in the minutes.

Written resolutions of the Board

The [Crown Entities Act](#) allows for Boards to agree resolutions in writing, outside of Board meetings.

In this case each full member who has not notified their unavailability should provide a written response in the affirmative to the request for a resolution, for the resolution to be adopted.

Minutes

The Board will keep minutes of all its meetings.

A draft set of minutes will be produced within three working days of the meeting and circulated for member's feedback. Members have five working days to provide feedback before they are finalised.

Once finalised, the minutes will then be placed on the next board meeting agenda for confirmation. At that meeting no discussion may arise on the substance of the minutes, except as to their correctness.

Once confirmed by the Board, the minutes will then be signed by the Chair as a true and accurate record. This should be the version made available to others as needed.

Attendance at meetings

Quorum

As outlined in [Chapter Eight](#) of the Governance Manual, the quorum for Board meetings is three members. Members may discuss issues at an inquorate meeting but no decision on the matter can be reached.

Attendance

Full members have the right to attend all Board meetings.

If a member is unable to attend a Board meeting, they will provide their apologies to the Chair and Office of the Board and Chief Executive ahead of the meeting.

The Chief Executive and certain members of the Commission SLT also attend Board meetings but will also not be counted for the purposes of quorum or voting. These staff members attend at the Board's discretion and may be asked to withdraw for certain items.

Secretariat services will be provided by members of the Office of the Board and Chief Executive, who will attend Board meeting to take minutes and manage the meeting logistics.

Means of attendance

While Board meetings will be primarily hosted in the Commission's Wellington offices, members and staff may join the meeting via electronic means. Members who join the meeting electronically will be counted for the purposes of quorum and voting.

Those who attend the meeting via electronic means must ensure their technology is working and of suitable quality.

The Chair must ensure the meeting can be joined electronically, and those joining electronically can participate in the meeting.

Appendix E – Convenor Letter of Expectations from the Chair (September 2025)



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Accountabilities and Expectations for Convenors of Committees

Background

In June 2025 the Commission delivered its response to the Minister of Commerce and Consumer Affairs' Governance and Effectiveness Review of the Commerce Commission. Part of that response committed the Commission to move to a committee structure and more delegated framework to deliver its regulatory responsibilities ("committee model").

This letter sets out the accountabilities and expectations of convenors of committees in this new way of working – recognising the increased role for staff and the importance of Commissioners and staff working closely together to deliver the Commission's goals. These expectations should be read in context of the Commission's Governance Manual.

Accountabilities

In the committee model, committees and convenors will be accountable to the Board for discharging their responsibilities and ensuring the committees act within their mandates – this includes adequate monitoring of delegations that committees may make. The Chair of the Commission will have a role in monitoring the performance of committees and convenors on behalf of the Board.

The Board have agreed that the primary accountabilities of Convenors are:

1. Lead each meeting of the Committee, ensuring the agenda is efficiently progressed, conversations in the meeting are focused and balanced and guide the Committee towards decision making
2. Ensure the Board is kept informed in a timely manner of material risks which may affect the Commission, or of matters which might impact (adversely or positively) on the reputation of the Commission
3. Liaise with the General Manager to ensure an effective and efficient agenda is set that meets the needs of the Committee and who needs to be in attendance, including whether other Commissioners/Chair need to be in attendance

4. Work with other Committee Convenors to meet the "no surprises" expectation for Enforcement Committee by identifying and tracking any Enforcement matters that may require decisions by the Enforcement Committee
5. Lead and facilitate (with support from the General Manager (or nominated delegate), and input from other members) the process of reporting to the Board on the Committee's work programme, progress, and results
6. To invite the chair to attend as needed where he is not already a core member, with an expectation that the Chair will be invited to attend when a matter involving significant risk to the Commission is to be considered
7. Is responsible for leading stakeholder engagement for their regulatory system and act as primary spokesperson for the Commission in relation to the subject area of the committee.
8. Provide feedback on the performance of the relevant General Manager(s) to the Chief Executive, via mechanisms agreed with the Chief Executive.

It is with these accountabilities from the Board in mind, that I set out my expectations of convenors below.

Expectations

A. Decision Making

Under the committee model, some of the Commission's decision-making powers will be delegated to the Chief Executive and may be sub-delegated to general managers. The balance of powers within the committee's mandate will be exercised by committees on behalf of the Board.

The convenor needs to ensure that processes are in place to ensure their committee, and any delegates are acting within their mandates, and that the committee has adequate oversight of the exercise of delegated powers within their committee's scope.

B. Delivery

It is my expectation that convenors will retain the "noses in, fingers out" approach that is central to effective governance. Convenors may set key performance indicators for the general manager and branch to achieve, but the detailed delivery of work should continue to be carried out by branches.

Our governance role will, necessarily, require us to engage in constructive challenge of branches' work. This challenge should be directed towards the relevant general manager of the branch in the first instance. If concerns arise through this process that a branch is unable to deliver on the expectations of a committee, these concerns should be escalated to both me as Chair, and the Chief Executive, to address.

The following overarching principles should guide decisions regarding the exercise and allocation of the Commission's statutory and implicit powers, duties and functions:

1. Committees should focus their attention on matters of committee-level strategy and governance, and matters of high strategic significance or risk, rather than routine or day-to-day decision-making.
2. The committee model envisages that in some cases there should be a presumption in favour of delegating the exercise of a particular power, duty or function to a general manager or other named position if:
 - There are appropriate reporting, assurance and escalation processes in place to ensure accountability; or
 - It is not feasible to develop formal operational policies or procedures, but the committee is satisfied that the risk associated with the exercise of a particular power, duty or function in a specified circumstance is manageable.
3. Allocation of the exercise of a power, duty or function to a general manager or other named position should not be avoided purely on the basis that a member of a committee has a particular interest or expertise in a matter.
4. Committee members can and should set clear expectations about their quality standards for work, and operational policies that accompany allocation of the exercise of a power, duty or function to a general manager or other named position should be clear about the processes that will be put in place to ensure these standards are met.
5. Allocation of the exercise of a power, duty or function to any person other than a committee should be evidenced in writing and comply with the requirements in the Governance Manual and the Crown Entities Act. This allocation is at the discretion of the committee.

C. Role Modelling Values

Convenors will be particularly visible as role models for He Kawa, and it is with this in mind that I stress the importance of adhering to these in your day-to-day work. I have referred above to my expectations of you as part of the governance of the organisation – delivering on the constructive tension we need will be made much easier if we adhere to He Kawa we have agreed.

D. Role of Sector Specific Commissioners

The Telecommunications Commissioner and the Grocery Commissioner have special roles in the Commission when regulating those sectors. While they may carry out some functions alone, other functions must be performed with at least two other Commissioners.

In practice the Commission has given effect to that decision-making structure by convening committees for those sectors and have usually performed most of the functions able to be exercised by the sector-specific Commissioners alone.

The Board's collective duties under the Crown Entities Act apply equally to the Commission's telecommunications and grocery functions, regardless of the decision-making structure. As such, for the sector-specific Commissioners, the primary accountabilities and my expectations remain as outlined above.

Where sector-specific Commissioners elect to perform functions alone, then items 3, 4, 6, and 7 of the primary accountabilities listed above, as well as each of the expectations, would apply with necessary alterations reflecting the absence of committee decision-making.

Yours sincerely

Dr John Small
Chair