

# Terms of Reference

## Enforcement Committee

April 2026



# Contents

<b>Constitution .....</b>	<b>3</b>
<b>Purpose.....</b>	<b>3</b>
<b>Accountabilities.....</b>	<b>3</b>
<b>Functions and Powers .....</b>	<b>4</b>
<b>Membership .....</b>	<b>6</b>
<i>Appointment .....</i>	<i>6</i>
<i>Role of Convenor .....</i>	<i>7</i>
<i>Responsibilities of members .....</i>	<i>8</i>
<b>Procedure.....</b>	<b>8</b>
<i>Meetings .....</i>	<i>8</i>
<i>Quorum.....</i>	<i>8</i>
<i>Attendance.....</i>	<i>8</i>
<i>Reporting.....</i>	<i>9</i>
<i>Administration .....</i>	<i>9</i>
<b>Term of office.....</b>	<b>10</b>
<b>Version Control.....</b>	<b>10</b>
<b>Annex A – Committee Membership .....</b>	<b>11</b>

## Constitution

1. This document sets out the Terms of Reference for a duly constituted committee of the Commerce Commission Board (the Board), established under Schedule 5, clause 14 of the Crown Entities Act 2004.
2. It will be known as the Enforcement Committee (the Committee).

## Purpose

3. To recommend organisational Enforcement Priorities in alignment with Board direction, strategy and priorities and ensure effective oversight and delivery of enforcement functions, powers and duties on behalf of the Commission.

## Accountabilities

4. The Committee will have the following accountabilities:
  - 4.1. giving effect to the strategies set by the Board (such as strategic objectives around pace, timeliness of decision making, thought leadership and being a data and intelligence led organisation);
  - 4.2. ensure effective oversight and delivery of enforcement functions, powers and duties on behalf of the Commission;
  - 4.3. giving effect to the risk appetite set by the Board;
  - 4.4. ensuring that there are robust systems in place to set enforcement and compliance priorities;
  - 4.5. ensuring that it works with other Committees to ensure a coherent "One Commission" approach to enforcement and compliance;
  - 4.6. authorising the exercise of delegated powers and functions, or sub-delegation of delegated powers and functions, by the Chief Executive or individual members of staff, in accordance with requirements set by the Board; and
  - 4.7. identifying functions or powers within its remit that it considers are appropriate to be exercised by persons other than the Board, the Committee or the Chief Executive, and making recommendations to the Board for further delegations by the Board, or approval by the Board of sub-delegation by the Committee.

## Functions and Powers

5. The Board has agreed that the Committee will exercise the Commission's functions and powers in relation to the following enforcement and compliance matters:

### **General**

- 5.1. recommending Annual Enforcement and Compliance priorities to the Board;
- 5.2. identification of any enforcement decision which should be referred to the Board.

### **Parts 2, 3, 3A, 5, 6 and 7 of the Commerce Act 1986, Fair Trading Act 1986, Credit Contracts and Consumer Finance Act 2003 and associated regulations:**

- 5.3. issuing court proceedings, and approving litigation strategy;
- 5.4. approving matters as being eligible for the major litigation fund;
- 5.5. approving the Commission entering into negotiated settlements;
- 5.6. accepting enforceable undertakings;
- 5.7. oversight of appeals or judicial reviews of authorisation or clearance decisions;
- 5.8. issuing warning letters
- 5.9. setting the regulatory strategy for enforcement and compliance for competition, fair trading and credit (including determining the investigative and enforcement and compliance priorities), taking into account:
  - the Annual Enforcement and Compliance Priorities;
  - the SOI;
  - the strategy set by the Board; and
  - other sector strategies
- 5.10. providing input into, and endorsing, material/strategic guidance in relation to the Commerce Act, Fair Trading Act or Credit Contracts and Consumer Finance Act;
- 5.11. identification and scoping of potential competition studies under the Commerce Act and making recommendations to the Board regarding any self-initiated studies;
- 5.12. strategic oversight of any government policy initiatives and proposed legislative changes to the Commerce Act, Fair Trading Act or Credit Contracts and Consumer Finance Act;
- 5.13. monitoring achievement of the SPE measures related to competition, fair trading and credit functions;

- 5.14. identification of any material risks relating to competition, fair trading and credit enforcement and compliance work including reputational, financial and litigation risks;
- 5.15. providing input as required into communications and stakeholder engagement with respect to enforcement and compliance;
- 5.16. in respect of any matters which are sub-delegated to the Chief Executive or individual members of staff, obtaining assurance as to the performance of those functions;
- 5.17. in respect of the Credit Contracts and Consumer Finance Act certification function,
  - considering complex and high-risk certification decisions from, and providing input if necessary to, the Credit Chief Certification Adviser; and
  - approving decision making frameworks, and any material changes to those frameworks;
- 5.18. reporting to the Board on the performance of the Committee's functions and powers in the manner determined by the Board from time to time.

**Parts 4, 4A and 6 of the Commerce Act:**

- 5.19. issuing court proceedings, and approving litigation strategy; and
- 5.20. accepting enforceable undertakings;
- 5.21. issuing warning letters; and
- 5.22. approving the Commission entering into negotiated settlements

**Telecommunications Act 2001:**

- 5.23. issuing court proceedings, and approving litigation strategy;
- 5.24. accepting enforceable undertakings;
- 5.25. issuing warning letters; and
- 5.26. approving the Commission entering into negotiated settlements.

**Grocery Industry Competition Act 2023 and associated regulations:**

- 5.27. issuing court proceedings, and approving litigation strategy;
- 5.28. accepting enforceable undertakings;
- 5.29. issuing warning letters; and
- 5.30. approving the Commission entering into negotiated settlements.

**Retail Payment System Act 2022 and associated regulations:**

- 5.31. issuing court proceedings, and approving litigation strategy;
- 5.32. accepting enforceable undertakings;

- 5.33. issuing warning letters; and
- 5.34. approving the Commission entering into negotiated settlements.

**Fuel Industry Act 2020 and associated regulations:**

- 5.35. issuing court proceedings, and approving litigation strategy;
- 5.36. accepting enforceable undertakings;
- 5.37. issuing warning letters; and
- 5.38. approving the Commission entering into negotiated settlements.

**Dairy Industry Restructuring Act 2001 and associated regulations:**

- 5.39. issuing court proceedings, and approving litigation strategy;
- 5.40. accepting enforceable undertakings;
- 5.41. issuing warning letters; and
- 5.42. approving the Commission entering into negotiated settlements.

- 6. Any reference in these terms of reference to issuing court proceedings includes functions and powers in respect of appeals, or defending appeals of, court judgments in those proceedings.
- 7. For the avoidance of doubt, the Committee has the ability to exercise the functions and powers of the Commission in the above areas. However, the Committee may choose to refer matters within the above remit to the Board on a case-by-case basis.
- 8. In discharging its powers, functions and duties, the Committee will have regard to the risk appetite and strategic direction set by the Board for the Commission.

## **Membership**

### **Appointment**

- 9. Members of the Committee shall comprise members appointed by the Board by resolution.
- 10. It shall comprise at least four Committee members, of which at least two must be Commissioners or Associate Commissioners and at least one must be a Commissioner.
- 11. Committee members may be Commissioners, Associate Commissioners, Commission staff or external persons that the Board may wish to appoint.
- 12. Committee membership details are outlined in Annex A which refer to both Core Members and Other Members. Core Members and Other Members are members of this Committee.

13. Regarding the appointment of Associate Commissioners, it is good practice that the Committee's functions and powers are within the member's notice of appointment. If they are not, then Associate Commissioners may still be appointed; however, it will be in the capacity of an external member and not as part of their Associate Commissioner role.
14. Should a Committee member resign or retire during the period in which the Committee is operating, the Board may choose to appoint a replacement member.

## **Role of Convenor**

15. The Board will also appoint a Convenor of the Committee. The Convenor's primary role is to:
  - 15.1. Lead each meeting of the Committee, ensuring the agenda is efficiently progressed and conversations in the meeting are focused and balanced, and guide the Committee towards decision making;
  - 15.2. 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;
  - 15.3. Liaise with the relevant General Manager to ensure an effective and efficient agenda is set that meets the needs of the Committee, and to decide on attendance, including whether other Commissioners/Chair need to be in attendance;
  - 15.4. 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;
  - 15.5. 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;
  - 15.6. 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;
  - 15.7. To invite "other" members of the Committee when their specialisation may be required for Committee matters.
  - 15.8. To invite Convenors of other Committees to attend when matters relating to that Committee are being considered.
  - 15.9. Provide feedback on the performance of the relevant General Manager to the Chief Executive, via mechanisms agreed with the Chief Executive; and
  - 15.10. Be responsible for leading stakeholder engagement for the relevant regulatory system and act as primary spokesperson for the Commission in relation to the subject area of the committee.

16. In the Convenor's absence, members present at a meeting of the Committee will appoint one of their number as Convenor for the meeting.

## **Responsibilities of members**

17. In discharging their role as a member of the Committee, all members (including staff members and external members) should act in accordance with the expectations set out in the Commission's Governance Manual, particularly Chapter Four (General Board and Member Duties) and Chapter Nine (Board Committees and Divisions).
18. Committee members who are not Board members will also act in accordance with Schedule 5, clause 15 of the Crown Entities Act 2004 (these sections cover matters such as remuneration, expenses, employment requirements, liabilities and insurance), and any contract or letter of appointment agreed with the Commission in terms of their membership.

## **Procedure**

### **Meetings**

19. The Committee will meet as determined by the Convenor, ensuring sufficient notice is provided to other Committee members.
20. The Committee may undertake any of its roles or functions via email, outside of formal meetings.
21. The Committee may seek independent advice and obtain information if the Convenor of the Committee considers it is necessary. This will generally be arranged through the accountable General Manager.

### **Quorum**

22. The quorum for all meetings of the Committee is three members, of which at least two must be Commissioners or Associate Commissioners.

### **Attendance**

23. Any Committee member who cannot attend a regularly scheduled meeting of the Committee must provide their apologies to the Convenor ahead of the meeting.
24. Any Commissioner who is not a member of the Committee may attend any meeting of the Committee as an observer, so long as they provide sufficient notice to the Convenor and are not otherwise excluded (i.e. in order to manage interests or potential conflicts of interest).

25. The Committee may have in attendance members of staff such as the Chief Executive and other persons as it considers necessary to provide appropriate information and explanations to the Committee. Attendance should be kept at a reasonable level and staff members may be asked to withdraw at the discretion of the Committee.

## **Reporting**

26. To ensure the Board is kept sufficiently informed of the Committee's work programme, priorities and any significant risks, the Committee will provide a report to the Board on a quarterly basis outlining the Committee's work programme highlights, upcoming matters of significance and any risks.
27. Outside of this report, the Convenor should ensure they escalate any matters on an as-required basis to the Board if they have broader implications for the Commission.

## **Administration**

28. Secretariat services, planning, delivery and decision-making support will be provided by the Competition, Fair Trading and Credit (CFTC) Branch, via the General Manager as the accountable General Manager.<sup>1</sup>
29. The accountable General Manager is responsible for ensuring papers are circulated to Committee members in a timely manner and in line with the process and deadlines issued by the Office of the Board and Chief Executive. Any distribution of papers after the stated deadline must be approved by the Convenor.
30. The secretariat will be responsible for preparing the minutes of each meeting, circulating minutes for review, and maintaining the minutes of each meeting as a complete record in accordance with records management requirements. Draft minutes will be circulated to all the Committee members as soon as practicable after each meeting.
31. Aside from the matters outlined in this Terms of Reference and in the Commission's Governance Manual, the Committee may set its own procedure as it sees fit.

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<sup>1</sup> Note that, for the avoidance of doubt, while the accountable General Manager remains the key point of accountability for the Committee, the accountable General Manager may delegate administration and delivery responsibility within their Branch.

## Term of office

32. The Committee will continue to meet under these Terms of Reference until the Board chooses to vary them or dissolve the Committee. The Terms of Reference may be amended, varied or modified at the agreement of the Board.

## Version Control

Date	Version	Author	Comments
30/08/2025	1.0	Gemma Allcock, Senior Governance Adviser	Initial drafting
23/01/2026	2.0	Craig Spanhake, Principal Governance Adviser	Updated membership
1/05/2026	3.0	Craig Spanhake, Principal Governance Adviser	Updated membership

## **Annex A – Committee Membership**

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### **Core Members**

“Core” members will be in attendance at all / most committee meetings and are actively involved in, and accountable for, committee matters.

The “core” members of the Enforcement Committee are:

- Anne Callinan (Convenor)
- Tristan Gilbertson
- Bryan Chapple
- Derek Johnston

### **Other Members**

Other members will have involvement in committee matters on an as needed basis as per their specialist areas outlined below.

It is the responsibility of the Convenor, when setting the agenda with staff, to identify which matters should involve “other” members and ensure they are invited for those items.

If an “other” member (or members) attend for a particular item, that should be clearly noted in the minutes. When attending a meeting “other” members have the same voting rights as “core” members and count towards the meeting quorum.

The “other” member of the Enforcement Committee are:

- Pierre van Heerden (for grocery-related matters)
- Dr John Small (Chair – for complex and strategic decisions or matters that involve significant risk to the Commission)