

Terms of Reference

Market Regulation Committee

October 2025



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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 Market Regulation Committee (the Committee).

Purpose

3. To set the Commission's strategic direction for the Payments, Fuel and Dairy sectors in alignment with Board direction, strategy and priorities and ensure effective regulatory oversight and performance of the Commission.

Accountabilities

4. This Committee will have the following accountabilities:
 - 4.1. giving effect to Board strategies and priorities;
 - 4.2. set and oversee the delivery of the Payments, Fuel and Dairy strategies and priorities for the Commission, including Fair Trading Act and Commerce Act matters (in consultation with the Enforcement Committee), taking into account:
 - 4.2.1. the Annual Enforcement and Compliance Priorities;
 - 4.2.2. the SOI; and
 - 4.2.3. the strategy set by the Board;
 - 4.3. identifying points of interconnection with other regulator systems by working with other Committees;
 - 4.4. monitor the development of the sector;
 - 4.5. taking strategic regulatory decisions;
 - 4.6. input into framing strategic regulatory matters;
 - 4.7. being involved in initiation/kick off discussions on certain matters;
 - 4.8. monitor timeliness and quality of delegated decision making;

- 4.9. identifying when Committee members should be providing specialist advice to delegated decision makers;
- 4.10. monitoring investigations within its regulatory system, considering outcomes of those investigations and providing enforcement recommendations or observations to the Enforcement Committee; and
- 4.11. 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, it should make such 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 functions and powers of the Commission as follows:
 - 5.1. discharge the Commission's powers, functions and duties under the Retail Payment System Act 2022 (RPSA) and any regulations made under the RPSA including:
 - 5.1.1. monitoring competition and efficiency in the retail payment system;
 - 5.1.2. conducting inquiries, reviews, and studies into any matter relating to the retail payment system in New Zealand;
 - 5.1.3. making available reports, summaries, and information in relation to the retail payment system;
 - 5.1.4. co-operating with and assisting other law enforcement or regulatory agencies that carry out a role in relation to the retail payment system;
 - 5.1.5. recommending that a retail payment network be designated, and recommending a designation order be amended or revoked;
 - 5.1.6. issuing, amending and revoking network standards;
 - 5.1.7. giving, amending and revoking directions about network rules;
 - 5.1.8. responding to any appeal or judicial review proceedings against a Commission decision under the RPSA;
 - 5.1.9. issuing, amending and revoking merchant surcharging standards; and

- 5.1.10.issuing a notice to take corrective action in relation to merchant surcharging standards.
- 5.2. discharge the Commission’s functions, duties and powers under the Fuel Industry Act 2020 (FIA) and any regulations made under the FIA, including:
 - 5.2.1. issuing notices to take corrective action under section 23 of the FIA;
 - 5.2.2. in relation to Subpart 4 (Disclosure of information) of Part 2 of the FIA:
 - 5.2.2.1. specifying manner and form requirements under section 26(1);
 - 5.2.2.2. conducting summary and analysis of information disclosed, and publishing any resulting summary or analysis;
 - 5.2.2.3. responding to any appeal or judicial review proceedings against a Commission decision under the FIA.
 - 5.2.2.4. exchanging information disclosed under subpart 4 of Part 2 of the FIA with the Chief Executive of the Ministry for Business, Innovation and Employment (or any other department of State responsible for the administration of the FIA);
 - 5.2.3. accepting an enforceable undertaking from a person, or bringing proceedings to enforce an undertaking, under sections 74 and 74A of the Commerce Act 1986 (as those provisions apply, with all necessary modifications, in respect of the FIA); and
 - 5.2.4. considering and making representations on proposed legislation affecting the Commission’s activities (including regulations proposed to be made under the FIA).
- 5.3. Discharge the Commission’s functions, duties and powers under the Dairy Industry Restructuring Act 2001(DIRA) and any regulations made under the DIRA, including:
 - 5.3.1. determining disputes between Fonterra and other parties in respect of the application of subpart 5A of DIRA (except section 77A) or any regulations made under section 115 of the DIRA;
 - 5.3.2. requesting information, statements or reports from Fonterra to monitor Fonterra’s compliance with any regulations made under section 116 of the DIRA;

- 5.3.3. reviewing and reporting on Fonterra's milk price manual under section 150H and section 150I of the DIRA;
 - 5.3.4. reviewing and reporting on Fonterra's base milk price or farmgate milk price calculation under section 150O and section 150P of the DIRA;
 - 5.3.5. giving directions to Fonterra under s 150UA in relation to a matter referred to in a report made under section 150I or section 150P;
 - 5.3.6. providing input into a report required by the Minister of Agriculture under section 147;
 - 5.3.7. stating a case for the opinion of the High Court under section 100A of the Commerce Act; and
 - 5.3.8. responding to any appeal or judicial review proceedings against a Commission decision or determination under the DIRA:
6. Issuing warning letters.
 7. Approving the Commission entering into negotiated settlements.
 8. The Board has agreed to delegate any powers and functions in relation to enforcement proceeding matters to the Enforcement Committee.
 9. 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.
 10. In discharging their 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

11. The Committee shall comprise members appointed by the Board by resolution.
12. It shall be comprised of at least two Committee members, of which at least two will be Commissioners or Associate Commissioners and at least one must be a Commissioner.

13. Committee members may be Commissioners, Associate Commissioners, Commission staff or external persons that the Board may wish to appoint.
14. 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.
15. 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.
16. Should a Committee member resign or retire, the Board may choose to appoint a replacement member.

Role of Convenor

17. The Board will also appoint a Convenor of the Committee. The Convenors primary role is to:
 - 17.1. 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;
 - 17.2. 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;
 - 17.3. 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;
 - 17.4. 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;
 - 17.5. 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;

- 17.6. 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;
 - 17.7. To invite “other” members of the committee when their specialisation may be required for committee matters.
 - 17.8. Provide feedback on the performance of the relevant General Manager(s) to the Chief Executive, via mechanisms agreed with the Chief Executive.
 - 17.9. 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.
18. In the Convenor’s absence, members present at a meeting of the Committee will appoint one Commissioner or Associate Commissioner as Convenor for the meeting.

Responsibilities of members

19. 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).
20. 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.

Voting

21. All matters arising at any committee meeting will be decided by a majority of votes of the Members present and voting. The Convenor will, in the event of an equality of votes, exercise a casting vote.

Procedure

Meetings

22. The Committee will meet as determined by the Convenor, ensuring sufficient notice is provided to other Committee members.
23. The Committee may undertake any of its roles or functions via email, outside of formal meetings.
24. 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

25. The quorum for all meetings of the Committee is two Committee members, of which both must be Commissioners or Associate Commissioners.

Attendance

26. Any Committee member who cannot attend a regularly scheduled meeting of the Committee must provide their apologies to the Convenor ahead of the meeting.
27. 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 Chair and are not otherwise excluded (i.e. in order to manage interests or potential conflicts of interest).
28. 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

29. 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.

30. 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

31. Secretariat services, planning, delivery and decision-making support will be provided by the Market Regulation Branch, via the General Manager as the accountable General Manager.¹
32. 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.
33. 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.
34. 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.

Term of office

35. 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.

¹ 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.

Version control

Date	Version	Author	Comments
30/08/2025	1.0	Gemma Allcock, Senior Governance Adviser	Initial drafting

Annex A – Committee Membership

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 Market Regulation Committee are:

- Bryan Chapple (Convenor)
- Nathan Strong

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” members of the Market Regulation Committee are:

- John Small (Chair – for complex and strategic decisions or matters that involve significant risk to the Commission)
- Anne Callinan (for complex and strategic decisions with a legal perspective)