



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



# Commerce and Consumer Affairs Portfolio

## Briefing for the Incoming Minister

7 October 2014

**This document has been proactively released.  
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# 1. Portfolio overview

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## The Commerce and Consumer Affairs portfolio

The Government is committed to growing New Zealand's economy and raising living standards for all New Zealanders. Ultimately, this depends on improving the competitiveness and performance of businesses and key sectors, and ensuring that consumers are confident and have choice.

As Minister of Commerce and Consumer Affairs, you can influence the environment in which businesses and consumers operate. This is through setting and influencing the regulatory settings and policies that allow businesses to innovate, invest and trade, and consumers to purchase with confidence. Consumers who are aware of their rights and have avenues for redress will feel empowered to make confident choices, and will demand higher quality products and better prices. When businesses vigorously compete and provide fair and accurate information, consumers benefit from better prices, quality and choice.

The portfolio focuses on the following areas:

- Corporate law and governance: promoting better-performing businesses and investor confidence by setting rules and incentives for how firms are structured and managed.
- Financial markets: promoting investment in New Zealand businesses by promoting fair, efficient and transparent financial markets in New Zealand, and improving opportunities for companies looking to raise capital.
- Competition policy: creating an environment which encourages firms to compete vigorously, and creates incentives for them to innovate, reduce costs and take risks.
- Consumer policy: promoting consumer confidence and participation by ensuring that consumers have access to information to assist decision-making, the rights of consumers are protected, and consumers have access to redress when transactions go wrong.
- Intellectual property: ensuring the intellectual property regime maximises the creation and dissemination of ideas and knowledge to facilitate innovation, increase productivity and foster creative expression.
- Trade policy and international regulatory cooperation: encouraging the internationalisation of New Zealand firms by reducing regulatory barriers to trade and improving consistency between domestic regulations and those of our key markets. This is critical to driving innovation and competition (given New Zealand's small size, competitive drivers often need to come from overseas).

The portfolio has a significant operational role as well as a broad policy focus:

- The policy role includes developing, setting and reviewing the rules that govern the way in which consumers and businesses interact in markets. It also includes ensuring that a commerce and consumer perspective is brought to bear to policy initiatives led by other portfolios.
- The operational role includes the development and delivery of consumer information and programmes, and compliance and enforcement activities to support product safety and ensure the accuracy of measurements used for trade. It provides a wide range of operational systems necessary to support regulatory regimes, such as administering company registrations and enforcing financial markets regulations.

## **Fundamental reforms recently made and being implemented**

Over the past decade, the Commerce and Consumer Affairs portfolio (previously two portfolios) has focused on ensuring that New Zealand businesses have low compliance costs and certainty of their obligations, investors and firms raising capital have confidence in financial markets, and consumer protections are up-to-date and enduring. Highlights of recent reforms include:

- Restoring investor confidence: the Financial Markets Conduct Act 2013 is aimed at improving financial market conduct and restoring investor confidence in New Zealand's financial markets. The new law provides better information and protections for investors and clearer rules and options for companies looking to raise capital.
- Minimising compliance costs: the portfolio has continued to reduce the cost of doing business. For example, the Financial Reporting Act 2013 reduces the financial reporting obligations of medium sized companies.
- Improving consumer confidence: New Zealand's consumer and credit laws have been updated across the board to keep pace with the way businesses and consumers trade with each other. The reforms strengthen consumer rights, simplify business compliance, make consumer legislation more accessible and understandable for consumers and businesses, and protect the most vulnerable consumers.

## **Delivering on your portfolio commitments**

MBIE would welcome a discussion with you on how we can assist you to deliver your priorities for your Commerce and Consumer Affairs portfolio. The information below is intended to assist with that discussion.

### *Complete the implementation of the Financial Markets Conduct Act*

Following the substantial financial market reforms, MBIE has a significant programme of work underway to develop and implement the operational systems necessary to support them. The remaining Financial Markets Conduct Act changes will be implemented from 1 December 2014, including new disclosure requirements and the go-live of the online registers of financial products. Further detail is included in the section: Recommended focus for the first 100 days.

### *Ensure competition rules protect consumers and encourage innovation*

The Commerce (Cartels and Other Matters) Amendment Bill, currently partway through its second reading, aims to better enable pro-competitive collaboration which will assist New Zealand businesses to innovate and tap into overseas markets. Further detail is included in the section: Recommended focus for the first 100 days.

Your pre-election policy plan proposed a review of the misuse of market power prohibition in the Commerce Act. Commentators have questioned whether this provision is working as intended. In addition, Australia is undertaking a broad ranging review of its competition policy which raises issues of relevance to New Zealand. We will brief you on the potential scope and plan for this review, including the recent draft recommendations from the Australian competition review.

### *Develop a responsible lending code*

One of the central features required to implement the consumer credit law reforms is the development of a Responsible Lending Code. The Code will provide guidance to lenders on how to

comply with responsible lending obligations in the amended Credit Contracts and Consumer Finance Act 2003, and will be important in addressing areas of potential detriment in the consumer credit market, especially for vulnerable consumers. Further detail is included in the section: Recommended focus for the first 100 days.

#### *Deliver regulations to implement credit law reforms*

MBIE is working on a number of regulations that all need to be in place to implement key elements of the consumer credit law reforms, for example regulations for prescribed information that creditors are required to make public about the costs of borrowing.

The timeframes for implementation of the Code and regulations are tight and we recommend that the Code and most of the regulations be in place by March 2015. This will provide time to affected parties to make adjustments if necessary, prior to the relevant provisions coming into force on 6 July 2015. Further detail is included in the section: Recommended focus for the first 100 days.

#### *Continue to inform and protect consumers*

The upcoming review (required by law) of the Financial Advisers Act provides an opportunity to ensure that it is working to give consumers confidence and hold financial advisers accountable. Concerns have been raised about the regulation of financial advisers and financial service providers. We will brief you on the potential scope and plan for this review.

Your pre-election policy plan also proposes to promote financial literacy and savings advice in schools and work-places. This will improve personal and whanau well-being, protect consumers from costly credit and encourage investment in firms. We will brief you on the potential scope and plan for this work.

MBIE and the Commerce Commission are working together to bed in consumer law reforms through on-going and targeted communications to businesses and consumers and working on advice, information and education programmes for consumer credit law reforms. MBIE is working with the Commerce Commission to leverage combined channels and resourcing to inform both the general public as well as 'hard-to-reach' and vulnerable consumers about these reforms.

#### *Improve regulations that govern business*

The Accounting Infrastructure Reform Bill, currently awaiting Committee of the Whole stage, implements a series of reforms in relation to the regulation of the provision of accounting and auditing services in New Zealand. Further detail is included in the section: Recommended focus for the first 100 days.

The Standards and Accreditation Bill, currently awaiting its first reading, will establish a new model for the delivery of New Zealand Standards to ensure that they are authoritative, fit-for-purpose, internationally-aligned and readily accessible to both industry sectors and regulators. Under this new model, the delivery of New Zealand Standards will move to MBIE from the Standards Council. Further detail is included in the section: Recommended focus for the first 100 days.

#### *Extend the use of the NZ Business Number*

The NZ Business Number (NZBN) is being expanded so that all key government agencies that work regularly with businesses will be required to recognise and use the number by the end of 2017. An

exposure draft of the NZBN Bill was released in August. Further detail is included in the section: Recommended focus for the first 100 days.

*Progress New Zealand's Commitments to a Single Economic Market*

Your pre-election policy plan proposes to further progress a Single Economic Market with Australia to enable businesses, consumers and investors to operate on both sides of the Tasman in a seamless regulatory environment. Current areas of interest for us are the Australian reviews of its financial system and competition policy. You have an early opportunity to continue to promote trans-Tasman business through the Australia New Zealand Leadership Forum, to be held in Auckland in February 2015.

## 2. Portfolio responsibilities

The portfolio is funded under Vote Commerce and Consumer Affairs. This Vote is approximately \$150 million in 2014/15. Further detail on the total outputs for the portfolio is provided in Annex 1.

Key Commerce Responsibilities				
Competition policy	Financial markets	Corporate law	Intellectual property	Trade policy and international regulatory cooperation
<p>MBIE: Responsible for policy advice across all the functions. We also provide a range of operational systems necessary to support the regulatory regimes such as administering company registrations and insolvencies, registering intellectual property rights, and compliance and enforcement activities.</p> <p>Approximately \$57 million has been allocated to MBIE in 2014/15 for matters relating to the protection of intellectual property rights, administration of bankruptcies and liquidations, and the registration and provision of statutory information from business registers.</p> <p>Approximately \$10.5 million is allocated to MBIE for policy advice for 2014/15.</p> <p>Crown entities and statutory and advisory bodies: Responsible for registration, monitoring, education and advice, compliance and enforcement activities, and delivery of New Zealand Standards and accreditation services across the portfolio.</p> <p>Approximately \$75 million is allocated to Crown entities under the portfolio for 2014/15.</p>				

Key Consumer Affairs Responsibilities		
Promoting consumer confidence	Providing good, clear information to assist consumer decision-making	Providing access to redress when consumer transactions go wrong
<p>MBIE: Responsible for policy advice, the development and delivery of consumer information and programmes, and compliance and enforcement activities to support product safety and ensure the accuracy of measurements used for trade.</p> <p>MBIE is funded approximately \$2.3 million in 2014/15 to provide advice and information to consumers and businesses about consumer laws, their obligations and rights, and methods of redress.</p> <p>MBIE is funded approximately \$4 million in 2014/15 for measurement and product safety compliance and enforcement.</p> <p>Approximately \$1.2 million is allocated to MBIE for policy advice for 2014/15.</p> <p>Crown entities: The Commerce Commission is responsible for enforcing the <i>Fair Trading Act 1986 and the Credit Contracts and Consumer Finance Act 2003</i>. The Commission is also statutorily responsible for the dissemination of information and guidance to consumers and businesses.</p> <p>You are responsible for the appointment of consumer representatives to a number of statutory and advisory bodies.</p>		

## Crown entities and statutory/advisory bodies

The roles and responsibilities of Crown entity boards, responsible Ministers and monitoring agencies are set out in the Crown Entities Act 2004, and in guidance material issued by the State Services Commission. Responsible Ministers are generally responsible for the oversight and management of the Crown's interests in, and relationships with Crown entities and for managing any issues of concern or risks to the Crown arising from the activities of those entities. They are answerable to Parliament for the performance of entities.

You are responsible for the following Crown entities:

- **Commerce Commission** (approximately \$35 million<sup>1</sup> in 2014/15) – responsible for promoting competition, protecting consumers, and regulating specified markets in which competition is limited.
- **Commission for Financial Literacy and Retirement Income (CFLRI)** (approximately \$6 million in 2014/15) – responsible for financial education and regular reviews of retirement income policy.
- **External Reporting Board (XRB)** (approximately \$4.5 million in 2014/15) – responsible for setting the strategy for financial reporting in New Zealand, and issuing financial reporting standards and auditing and assurance standards.
- **Financial Markets Authority (FMA)** (approximately \$28 million in 2014/15) – responsible for promoting the development of fair, efficient and transparent financial markets in New Zealand.
- **Takeovers Panel** (approximately \$1.5 million in 2014/15) – responsible for promoting equitable and transparent mergers and acquisitions by enforcing the Takeovers Code and recommending changes to takeovers laws.
- **Standards Council** (user-funded only) – operates through its commercial arm Standards New Zealand; responsible for adopting international standards, and developing and providing access to New Zealand Standards.
- **Testing Laboratory Registration Council** (user-funded only) – operates through its commercial arm International Accreditation New Zealand; responsible for providing independent third-party recognition of competence by accrediting laboratories, inspection bodies and radiology practices, and providing management system certification.

You are also responsible for appointments to the following bodies which are not Crown entities but have been established under statute (or by international Treaty in the case of the Joint Accreditation System of Australia and New Zealand):

- **Cease and Desist Commissioners** – able to make orders to restrain anticompetitive behaviour or require a person to act in order to restore competition. This function is provided for in the Commerce Act.
- **Copyright Tribunal** – responsible for hearing disputes about copyright licensing schemes and applications about file sharing infringements under the Copyright Act 1994.
- **Joint Accreditation System of Australia and New Zealand (JAS-ANZ) Governing Board** – ensures the performance and operation of a joint mechanism between Australia and New Zealand for accrediting conformity assessment bodies.

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<sup>1</sup> This does not include funding the Commerce Commission receives from Vote Communications.



- **Pool of lay members of the High Court under the Commerce Act** (you are consulted on this by the Attorney-General) - the role of lay members is essentially an advisory one; they ensure that the expert evidence on complex competition issues is properly tested and understood by the court in its judgment.
- **Temporary Safeguard Authorities** - two Authorities are appointed under the Temporary Safeguard Authorities Act 1987 to investigate whether urgent temporary safeguard action is required when an unforeseen surge in imports of a good have caused, or threaten to cause, serious injury to a New Zealand industry.

You are also responsible for the appointment of consumer representatives to the following self-regulatory bodies:

- **Banking Ombudsman Scheme Board** – provides an independent dispute resolution service that considers and investigates consumers’ complaints about banks and non-bank financial service providers.
- **Electricity and Gas Complaints Commissioner Scheme Board** – considers consumer complaints relating to electricity and gas distributors and retailers.
- **Telecommunications Dispute Resolution Scheme Council** – provides a forum for consumers and small businesses to take their disputes against telecommunications providers for dispute resolution at no cost.

The **Insurance and Savings Ombudsman (ISO) Commission** consults you on candidates but makes the final appointment decisions. It deals with complaints about personal insurance and savings products.

You have joint responsibility with the Minister of Justice for the appointment of adjudicators and you are required to maintain a panel of assessors for the purpose of each hearing of the **Motor Vehicle Disputes Tribunal**, which resolves disputes between consumers and motor vehicle traders.

Further detail on the core functions of these Crown entities, and the statutory/ advisory/regulatory bodies is in Annex 2. Further detail on the role of Ministers and the monitoring requirements that relate to the Crown entities mentioned above will be provided separately.





## Legislative responsibility




You are responsible for a number of Acts, of which the most significant are:

Area	Act
Competition policy	Commerce Act 1986
Consumer policy	Auctioneers Act 2013 Consumer Guarantees Act 1993 Credit Contracts and Consumer Finance Act 2003 Credit (Repossession) Act 1997 (to be repealed in June 2015 when updated repossession rules come into full effect under the amended Credit Contracts and Consumer Finance Act 2003) Electricity Industry Act 2010 [Part 4, Subpart 1 only] Fair Trading Act 1986 Motor Vehicle Sales Act 2003 Weights and Measures Act 1987
Intellectual property	Copyright Act 1994 Designs Act 1953 Patents Act 2013 Plant Variety Rights Act 1987 Trade Marks Act 2002
Corporate law and governance	Companies Act 1993 Financial Reporting Act 2013 Incorporated Societies Act 1908 Insolvency Act 2006 Personal Property Securities Act 1999
Financial markets	Financial Advisers Act 2008 Financial Markets Authority Act 2011 Financial Markets Conduct Act 2013 Financial Service Providers (Registration and Dispute Resolution) Act 2008 KiwiSaver Act 2006
Standards and conformance	Standards Act 1988 Testing Laboratory Registration Act 1972
Trade with Australia	Trans-Tasman Mutual Recognition Act 1997
Tariffs policy	Tariff Act 1988
Trade remedies	Dumping and Countervailing Duties Act 1988 Temporary Safeguard Authorities Act 1987

A full list of these Acts and further detail about their purpose is provided in Annex 3.

**Key MBIE officials**

Name	Role	Area	Contact details
<b>David Smol</b>	Chief Executive, Ministry of Business, Innovation and Employment	All	
<b>Cath Atkins</b>	Acting Deputy Chief Executive Labour and Commercial Environment Group  Executive Director: <b>Richard Hawke</b>	Commercial and consumer environment Trade and international environment Labour policy Labour inspectorate.	
<b>Iain Cossar</b>	General Manager Commercial and Consumer Environment Branch  Directors: <b>Brad Ward</b> and <b>Rory McLeod</b> Managers: <b>James Hartley</b> (financial markets); <b>Melanie Porter</b> (competition and consumer); <b>Iain Southall</b> (intellectual property and corporate law)	Advice on competition, consumer, corporate law and governance, financial markets, intellectual property policies.  Key relationship with Crown entities and statutory bodies	
<b>Mark Steel</b>	General Manager Trade and International Environment Branch  Director: <b>Peter Mumford</b> Managers: <b>Carmen Mak</b> , (trade and regulatory cooperation); <b>Scott McHardy</b> (international strategy and partnerships)	Advice on standards and conformance, trade remedies, tariff policy, international regulatory cooperation, technical barriers to trade.  Trade remedies investigations.  Key relationships with standards and conformance Crown entities and JAS-ANZ.	
<b>Greg Patchell</b>	Deputy Chief Executive Market Services Group	Provision of information, advice and resolution services to businesses, workers and consumers.	

Name	Role	Area	Contact details
<b>Mandy McDonald</b>	<p>General Manager Business Integrity Services</p> <p>Managers: <b>Lawrence Wells</b> (Business Registries); <b>Ingrid Bayliss</b> (Intellectual Property Office); <b>Robyn Cox</b> (Insolvency and Trustee Service); <b>Liz Thomson</b> (criminal proceeds, integrity and enforcement)</p>	<p>Holds the statutory appointments of Registrar of Companies, Official Assignee, Commissioner of Patents, Commissioner of Trade Marks, Commissioner of Designs, Commissioner of Plant Variety Rights and several other positions.</p> <p>All issues relating to the Companies Office, Intellectual Property Office, Insolvency and Trustee Service, and criminal proceeds, integrity and enforcement.</p>	
<b>Ross van der Schyff</b>	<p>Acting General Manager Client Advice, Services and Education</p> <p>Managers: <b>Dahna Bond</b> (advice, information and education); <b>Alan Bruce</b> (service centre operations)</p>	<p>Implements customer-facing services that help businesses and consumers understand their rights and obligations, including a contact centre, Business.govt.nz and consumer affairs websites.</p>	
<b>Sanjai Raj</b>	<p>General Manager Consumer Protection and Standards</p> <p>Manager: <b>Stephen O'Brien</b> (trading standards)</p>	<p>Implements the regulation of measurements used for trade and consumer product safety, and administers the registration of auctioneers and motor vehicle traders.</p>	

### 3. Links to other portfolios

The Commerce and Consumer Affairs portfolio is closely linked to the following portfolios:

Portfolio	Link with the Commerce and Consumer Affairs portfolio
Arts, Culture and Heritage	Matters relating to the creative sector and intellectual property settings (mainly copyright issues).
Broadcasting	Matters relating to competition policy and copyright issues.
Building and Housing	Linkages between the residential construction sector market study, building standards and competition policy. There are also links to KiwiSaver through the HomeStart package for the purchase of a first home.
Communications	Linkages between competition policy and the Telecommunications Act Review. Input into the expectations of the Commerce Commission which receives additional funding from this portfolio to implement, monitor and enforce telecommunications regulation.  The appointment of consumer representatives to dispute resolution services in the electricity, gas and telecommunications sectors.
Customs	Linkages in relation to administration of tariffs and trade remedies.
Disability Issues	Whether to accede to the Marrakesh Treaty to facilitate access to published works for persons, who are blind, visually impaired or otherwise print disabled.
Economic Development	As ownership Minister for MBIE, the Economic Development Minister has overview of the regulatory systems performance work programme and whole-of-Ministry initiatives, including the Regulatory Systems Bill and the New Zealand Business Number.  This portfolio also includes policy to assist business development, sectors and regions, which could, for example, raise competition or financial markets policy issues.  The Economic Development portfolio also includes responsibility for ICT. There are linkages between competition policy and intellectual property and the growth of the ICT sector.
Energy and Resources	Linkages between competition policy and the regulation of resources and energy matters, particularly gas and electricity (Part 4 of the Commerce Act).  The appointment of consumer representatives to dispute resolution services in the electricity, gas and telecommunications sectors.
Environment	Makes use of the Imports and Exports (Restrictions) Act 1988 for which you are the responsible Minister.

<b>Portfolio</b>	<b>Link with the Commerce and Consumer Affairs portfolio</b>
<b>Finance</b>	<p>Interest in competition policy, including the review of the misuse of market power prohibition in the Commerce Act. The Finance portfolio takes a strong interest in the regulation of the capital markets. It is also responsible for elements of KiwiSaver, particularly relating to Government subsidies.</p> <p>The Finance portfolio takes a strong interest in consumer wellbeing, in particular the wellbeing of vulnerable New Zealanders. In addition to an interest in consumer and credit contract law reforms, the Finance portfolio takes a consumer perspective when considering matters relating to competition, financial markets and trade policy.</p> <p>Under Part 3 of the Financial Service Providers (Registration and Dispute Resolution) Act, the Minister of Consumer Affairs approves financial services dispute resolution schemes in consultation with the Ministers of Commerce and Finance.</p>
<b>Food Safety</b>	<p>Consumer information labelling e.g. country of origin and voluntary health star food labelling.</p> <p>The Commerce and Consumer Affairs portfolio will also contribute to any work initiated through the food safety portfolio that looks to introduce a voluntary health star rating front-of-pack food labelling system to make it simpler for consumers to make informed and healthy food choices.</p>
<b>Justice</b>	<p>The Justice portfolio is responsible for some core commercial legislation, including contract law and aspects of insurance law. Justice also has a strong interest in liability settings, which are a core feature of the commerce regulatory environment. There are also important links in relation to trust law, and anti-money laundering and countering the financing of terrorism.</p> <p>Joint responsibility with the Minister of Justice for the appointment of adjudicators to the Motor Vehicle Disputes Tribunal.</p>
<b>Māori Development</b>	<p>World Intellectual Property Organisation negotiations relating to the protection of traditional knowledge, traditional cultural expressions and genetic resources. There are also links in relation to the governance processes, systems and controls that aim to safeguard and grow Māori assets.</p> <p>An interest in the consumer law and credit contract reforms and the provision of education and advice about these to Maori communities.</p>
<b>Pacific Peoples</b>	<p>An interest in the consumer law and credit contract reforms and the provision of education and advice about these to Pacific Island communities.</p>
<b>Primary Industries</b>	<p>Linkages with competition, dairy matters and technical barriers to trade. The Ministry of Primary Industries also has an interest in whether to implement the Geographical Indications (Wines and Spirits) Registration Act 2006.</p>
<b>Regulatory Reform</b>	<p>Much of the change within the Commerce and Consumer Affairs portfolio involves significant regulatory reform</p>
<b>Revenue</b>	<p>The Revenue portfolio is responsible for operational aspects of KiwiSaver member contributions.</p>
<b>Science and Innovation</b>	<p>Linkages with competition policy and intellectual property settings.</p>
<b>Tertiary Education, Skills and Employment</b>	<p>Linkages with competition policy such as the regulation of occupations.</p>

Portfolio	Link with the Commerce and Consumer Affairs portfolio
Trade	Linkages with the Single Economic Market (SEM) with Australia, FTA negotiations and trade policy, tariff policy, technical barriers to trade, trade remedies, OECD and international regulatory cooperation, standards and conformance, and the Trans-Tasman Mutual Recognition Arrangement.
Transport	Linkages with competition and economic regulation policy. Specific linkages to airport regulation (Part 4 of the Commerce Act), competition regime for international shipping (contained in the Cartel Bill) and the competition regime for civil aviation.

## 4. Recommended focus for the first 100 days

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There is a significant amount of policy and legislative implementation work underway. Much of this will require your attention within the first 100 days of you taking responsibility for the Commerce and Consumer Affairs portfolio. Much of it is linked to the Government's pre-election priorities.

Listed below are details of the legislative programme, pending policy decisions, appointment decisions, and upcoming meetings, events, publications and announcements. Of particular importance is the:

- finalisation of implementation regulations for the Financial Markets Conduct Act so they are in place by 1 December 2014 when the Act is brought into force, subject to transitional arrangements in relation to some matters.
- reinstatement of Bills that were in the House at the time the 50th Parliament was dissolved on 14 August 2014 by the 51st Parliament if they are to proceed.
- progress on the Responsible Lending Code and implementation regulations for the amended Credit Contracts and Consumer Finance Act 2003, so the code can be issued in March 2015 and all regulations are in place by 6 June 2015 when all provisions in the Act come into force.

This is intended to be an overview of items that will require your attention during the first 100 days. Officials are able to provide further detail on any of these items.

### Legislative programme

#### *Legislation in the House*

Under the portfolio, there were five Bills in the House at the time the 50th Parliament was dissolved. In addition, four Bills are either being drafted by the Parliamentary Counsel Office (PCO) or drafting instructions are being prepared to send to PCO.

Bill	Purpose	Status	Area
Accounting Infrastructure Reform Bill	Implements a series of reforms in relation to the regulation of the provision of accounting and auditing services in New Zealand. It will, among other things, enable the New Zealand Institute of Chartered Accountants (NZICA) to merge with its Australian counterpart, the Institute of Chartered Accountants Australia, to form the "Chartered Accountants Australia and New Zealand".	Awaiting Committee of the Whole House stage.	Corporate law and governance
Commerce (Cartels and Other Matters) Amendment Bill	Amends the Commerce Act 1986 to clarify the prohibition against cartel behaviour, and introduce a new clearance system for collaborative activities.  It also strengthens the regulation of competition in international shipping by moving this sector from the Shipping Act 1987 to the generic competition regime under the Commerce Act.	Awaiting completion of second reading.	Competition policy



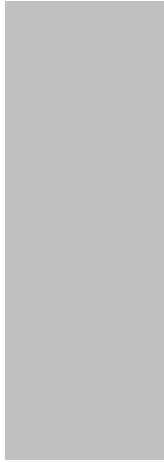
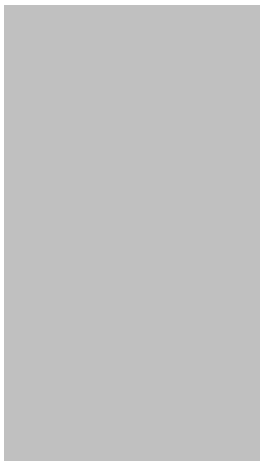









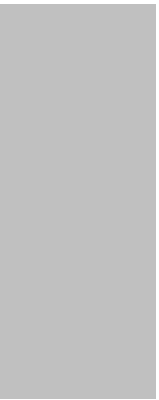


Bill	Purpose	Status	Area
Standards and Accreditation Bill	<p>Establishes an independent Standards Approval Board responsible for approving New Zealand standards, transfers the standards development function to a new standards statutory officer in MBIE, and disestablishes the Standards Council. It also amends institutional arrangements for the Testing Laboratory Registration Council.</p> <p>The new arrangements are intended to ensure that New Zealand's standards system is financially viable, well-functioning and meets the needs of business, regulators and consumers.</p>	Bill has been introduced. Awaiting first reading.	Trade policy and international regulatory cooperation
Trade (Safeguard Measures) Bill	<p>Safeguard inquiries examine whether a domestic manufacturer has been seriously injured by a sudden surge in imported goods and, if so, whether a temporary safeguard measure (usually in the form of a duty) should be imposed on such imports to allow the industry time to adjust to import competition. This Bill will ensure that safeguard inquiries are consistent with the requirements of the WTO Agreement on Safeguards, and are more closely aligned with the administration and implementation of remedies against the importation of dumped and subsidised goods.</p>	Awaiting completion of third reading.	Trade policy and international regulatory cooperation
Insolvency Practitioners Bill	<p>Introduces a registration scheme for insolvency practitioners and provides a mechanism to deal with practitioners who fail to comply with their duties under the Companies Act 1993 and the Receiverships Act 1993.</p>	Awaiting Committee of the Whole House stage. PCO have instructions to amend the Bill.	Corporate law and governance






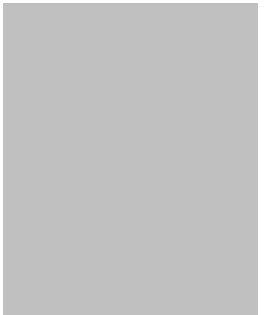







**Legislation not introduced into the House**

Bill	Purpose	Status	Area
New Zealand Business Number Bill (this is being led by the Minister for Economic Development)	Provides for the allocation of a New Zealand business number (NZBN) as a unique identifier for all businesses (registered companies, sole traders, partnerships, trusts and not for profit entities), government agencies and commercial entities in New Zealand.	Exposure draft released in August. Cabinet previously agreed that the Bill would be introduced soon after the resumption of Parliament.	Corporate law and governance
Regulatory Systems Bill (this is being led by the Minister for Economic Development)	Omnibus bill to improve regulatory systems administered by MBIE. Cabinet has already agreed to make various changes. More than half of the changes are to portfolio Acts comprising amendments to competition, company, credit union, building society, insolvency, financial markets and financial services laws.	Drafting instructions are being prepared.	Corporate law and governance, financial markets and competition law
Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Bill	Provides for patent attorneys in Australia and New Zealand to be regulated under a single trans-Tasman registration regime, and contains amendments to support the implementation of a single patent application and examination process with Australia.  The swift progression of this Bill would reinforce our commitment to the Single Economic Market Agenda with Australia.	Bill is being finalised for introduction.	Intellectual property
Incorporated Societies Bill	Implements the Government's response to the Law Commission report on incorporated societies by improving the quality of society governance.	Drafting instructions are with PCO.	Corporate law and governance

**Pending policy decisions and actions in chronological order**

Decision/Action	Reason	Timing	Area
Financial Markets Conduct Phase 2 - Disclosure Regulations LEG Paper	Implement remaining regulations relating to the implementation of the Financial Markets Conduct Act.  Policy decisions on these regulations were made in August.  Regulations to be in place by 1 December.		Financial markets
Financial Markets Conduct Regulations – Fees LEG Paper	Implement new fees for requirements under the Financial Markets Conduct Act, including for the online register.  Regulations to be in place by 1 December.		Financial markets
Credit Contracts and Consumer Finance Regulations – Discussion paper Cabinet paper	To seek feedback on the following regulations: <ul style="list-style-type: none"> <li>• Model disclosure forms</li> <li>• Information that creditors are required to make public about the costs of borrowing</li> <li>• Minimum repayment warnings on credit card statements</li> <li>• Prescribed formulae for proportionate rebate for repayment waivers or extended warranties upon repayment.</li> </ul> Regulations need to be in place by 6 June 2015. However, we recommend that the regulations be in place by March to allow for a three month transition period.		Credit Contracts and Consumer Finance Regulations – Discussion paper Cabinet paper
			


Decision/Action	Reason	Timing	Area
			
Set separate rates of anti-dumping duty for exports of canned peaches from South Africa by Rhodes Food Group (Pty) Ltd	<p>Rhodes, a South African manufacturer of canned peaches, has requested a reassessment of the rates of duty for it to export canned peaches to New Zealand.</p> <p>This reassessment has been underway since April 2014 and a decision by you on the rates needs to be made to comply with the statutory time limits under the Dumping and Countervailing Duties Act 1988.</p>		Trade policy and international regulatory cooperation
Release of the draft Responsible Lending Code for public consultation Cabinet paper	<p>The Responsible Lending Code will show lenders how they can meet their lender responsibility principles under the Credit Contracts and Consumer Finance Act (CCCFA).</p> <p>We sought feedback through a public consultation process in July this year on what guidance should be included in the Code. This feedback is informing the development of a draft code which requires public consultation.</p> <p>The final Code must be issued by you by 6 June 2015; however we recommend it be issued by 6 March 2015 to allow for a three-month transition period.</p>		Release of the draft Responsible Lending Code for public consultation Cabinet paper
Briefing report to you and the Minister of Building and Housing on the Law Commission's report on the "Liability of Multiple Defendants"	<p>The Ministry of Justice is leading the Government response on the primary issue (whether joint and several liability should be retained). We have responsibility for the recommendations relating to auditors, most notably a recommendation to establish liability caps for issuer, financial sector and other significant audits.</p>		Corporate law and governance
Credit Contracts and Consumer Finance Act Regulations LEG paper	<p>To agree regulations on the licensing requirements for credit repossession agents. Regulations should be made in a timely manner to support the credit repossession agents register going live on 6 June 2015.</p> <p>If required, approval will also be sought to consult on revised application fees, with Cabinet policy and legislation decisions by April 2015.</p>		Credit Contracts and Consumer Finance Act Regulations LEG paper

Decision/Action	Reason	Timing	Area
<p>Credit Contracts and Consumer Finance Regulations LEG paper</p>	<p>To agree regulations for:</p> <ul style="list-style-type: none"> <li>Exemption for voluntary targeted rates schemes offered by local councils from the continuing disclosure provisions in the CCCFA</li> <li>Exemption for pawnbrokers from Part 2 of the CCCFA</li> <li>Securitisation arrangements.</li> </ul> <p>Regulations need to be in place by 6 June 2015.</p>		<p>Credit Contracts and Consumer Finance Regulations LEG paper</p>
			
			
<p>Report to Ministers (Finance, Primary Industries and Commerce and Consumer Affairs) on the review of Commerce Commission baseline funding for work relating to the Dairy Industry Restructuring Act</p>	<p>This work is related to the proposed review of the state of competition in the dairy industry which is expected to start by June 2015.</p>		<p>Competition policy</p>
<p>Report back (with the Minister of Building and Housing) on the wider residential construction sector market study, </p> 	<p>Cabinet required report back on the final recommendations.</p>		<p>Competition policy</p>


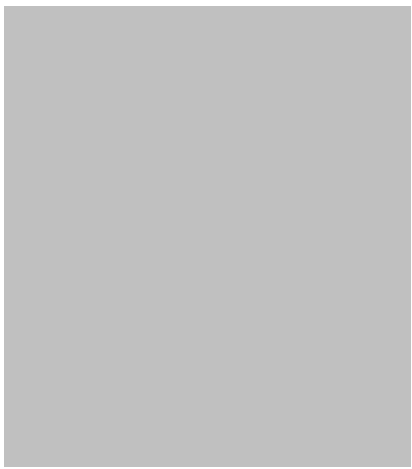










Decision/Action	Reason	Timing	Area
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

### Appointment decisions

Decision/Action	Reason	Timing	Area
Note the appointments to the Patents Maori Advisory Committee	A five-member Patents Maori Advisory Committee has been established under the Patents Act 2013. Although the appointment decisions are to be made within the Ministry, we will advise you of the membership of this newly-created body.	[REDACTED]	Intellectual property
Comprehensive briefing on several proposed appointments	To seek your approval to prepare APH papers for a range of appointments, which are detailed below.	[REDACTED]	Several
Seek APH and Cabinet support for you to recommend to the Governor-General, the appointment of a new Chair of the Financial Markets Authority	To succeed the current chair, Simon Allen. Mr Allen will remain as chairperson of the Financial Markets Authority until his successor is appointed.	[REDACTED]	Financial markets
Seek APH and Cabinet support for you to appoint one consumer representative on the Council of the Telecommunications Dispute Resolution Scheme (TDRS)	The Minister appoints one board member on the TDRS as a consumer representative. The term of the incumbent, Paul Elenio, will expire on 30 November 2014. He cannot continue past the term expiry.	[REDACTED]	Consumer policy
Seek APH and Cabinet support for you to recommend to the Governor-General, the appointment of two new members of the XRB	To fill two vacancies.	[REDACTED]	Corporate law and governance



Decision/Action	Reason	Timing	Area
Seek APH and Cabinet support for you to appoint an associate member of the Commerce Commission	To appoint a new associate member to act on matters relating to competition and consumer law.		Competition policy
Seek APH and Cabinet support for you to appoint two consumer representatives and their alternates on the Electricity and Gas Complaints Commissioner (EGCC) Scheme Board	The Minister appoints two board members (and their two alternates) on the EGCC Scheme Board as consumer representatives. Board members (and their alternates) cannot continue past their term expiry. Incumbents have terms that will end in February 2015 and August 2015.		Consumer policy
Jointly with the Minister of Justice, seek APH and Cabinet support to recommend to Governor-General, appointment of one adjudicator on the Motor Vehicle Disputes Tribunal	To fill a vacancy.		Consumer policy
Seek APH and Cabinet support for you to appoint an Australian representative on the Commerce Commission (under a cross-appointment agreement)	To continue the cross-appointment arrangement between the Commerce Commission and the Australian Competition and Consumer Commission started in 2010.  The term of the incumbent, Dr Jill Walker, expired on 30 November 2013. The Commerce Act and Crown Entities Act allow her to continue in the role until she is reappointed or replaced.		Competition policy

### Upcoming meetings, events, publications and announcements

Topic	Reasons	Timing	Area
<b>Meetings</b>			
			
<b>Events</b>			
<p>49<sup>th</sup> International Organisation of Legal Metrology (OIML) meeting</p>	<p>OIML is an international treaty organisation focused on maintaining effective legal metrology (ensuring accuracy of measurements used for trade) infrastructures that facilitate trade, establish mutual confidence and harmonise the level of global consumer protection.</p> <p>New Zealand is hosting the 49th International Committee of Legal Metrology meeting in Auckland. It is anticipated that this meeting will be attended by 150 delegates from over 100 economies.</p> <p>We will seek your views on providing the formal welcome and opening for global delegates for this event.</p>	<p>2-7 November 2014</p>	<p>Consumer policy</p>
			
			



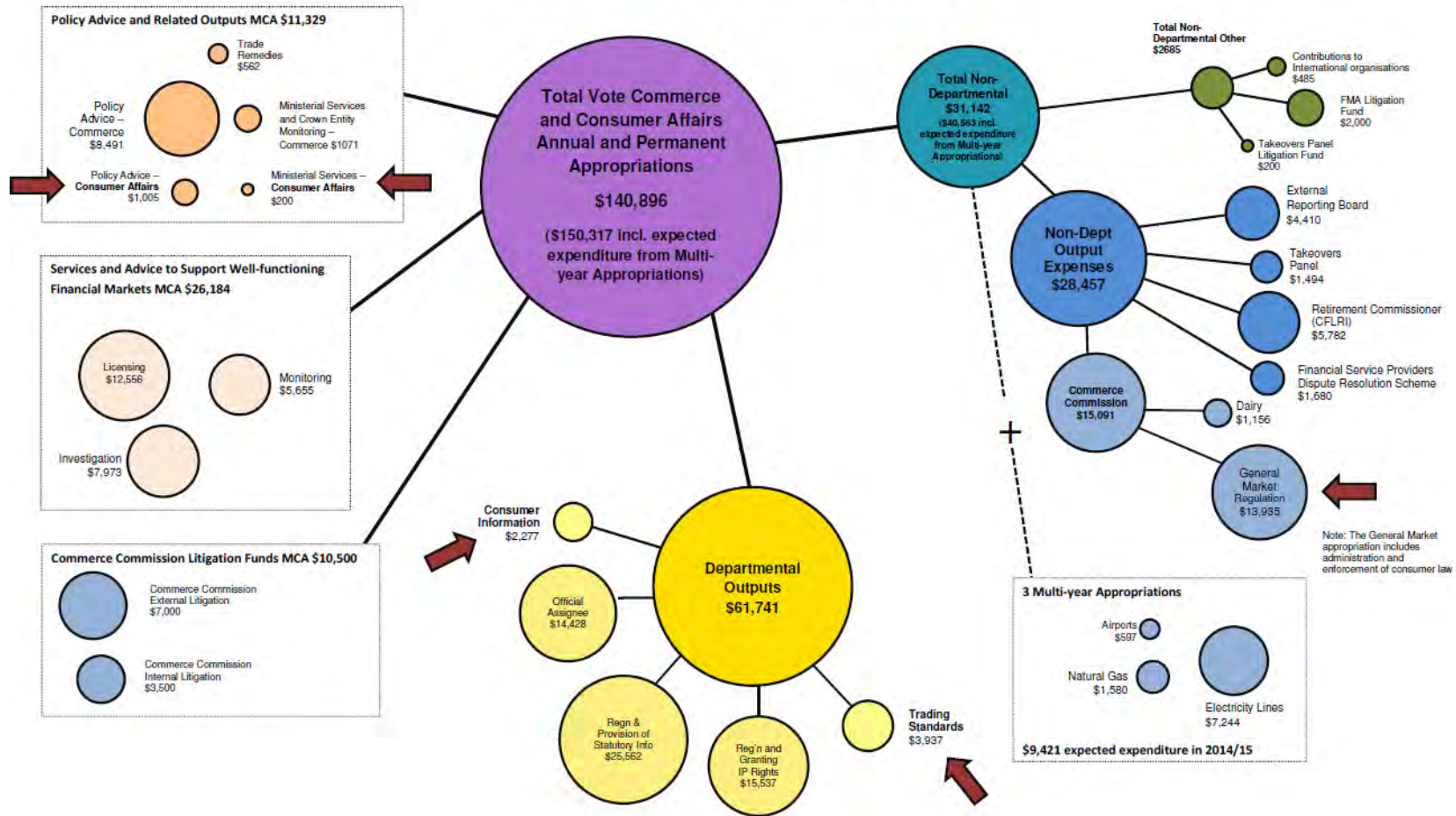
Topic	Reasons	Timing	Area
[Redacted]	[Redacted]	[Redacted]	[Redacted]
<b>Publications/Announcements</b>			
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
Crown entity annual reports	The responsible Minister of a Crown entity must present the entity's annual report to the House of Representatives within five working days after the responsible Minister receives the annual report.	[Redacted]	[Redacted]
Commerce Commission final determination on its further work on the weighted average cost of capital (WACC)	Determination of the WACC percentile to be used in the setting of prices for electricity lines and gas pipeline businesses. This follows on from High Court's comments in the merits review questioning the Commission's adoption of the 75 <sup>th</sup> percentile. [Redacted]	[Redacted]	Competition policy

Topic	Reasons	Timing	Area
KiwiSaver and Superannuation Schemes annual reports	Statutory requirement under the KiwiSaver Act 2006 to submit annual reports to the FMA within five months of the end of a financial year.	November 2014	Financial markets
Commerce Commission final determination for default price-quality paths for electricity distribution	Statutory requirement under Part IV of the Commerce Act to set revenue and quality requirements for electricity distribution businesses for five years. 	28 November 2014	Competition policy
Commerce Commission final determination for Transpower's individual price-quality path	Statutory requirement under Part IV of the Commerce Act to set revenue and quality requirements for Transpower for five years. 	28 November 2014	Competition policy
Commerce Commission draft determination on Unbundled Copper Local Loop (UCLL) /Unbundled Bitstream Access (UBA) final pricing principle	Statutory requirement under the Telecommunications Act. The Minister for Communications and Information Technology has responsibility for the Telecommunications Act. Note that the Minister for Economic Development now has responsibility for ICT.	1 December 2014	Competition policy

# Annex 1: Appropriations under Vote Commerce and Consumer Affairs

## Vote Commerce and Consumer Affairs 2014/15 (\$,000's)

[Note: Consumer Affairs appropriations identified by arrows]



## Annex 2: Portfolio Crown Entities and Statutory Bodies

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### Commerce Commission

Established under the Commerce Act 1986, the Commerce Commission is responsible for promoting competition, protecting consumers, and regulating specified markets in which competition does not exist, or is very limited.

The Commission aims to foster and develop healthy competition among businesses, informed choice by consumers, and sound economic regulation through its enforcement, quasi-judicial and regulatory responsibilities under the Commerce Act 1986, Fair Trading Act 1986, Electricity Industry Reform Act 1998, Dairy Industry Restructuring Act 2001, Telecommunications Act 2001, and Credit Contracts and Consumer Finance Act 2003.

The Commerce Act provides that the Commission must act independently in performing its statutory functions and duties and exercising its powers under the Act.

The Commission's appropriations total \$41 million and are funded under Vote Commerce and Consumer Affairs, and Vote Communications. The Ministers for Primary Industries, Economic Development, Communications, and Energy also have a strong interest in the work of the Commission especially in relation to Part 4 of the Commerce Act (which regulates electricity lines, gas pipelines and airports), and the Telecommunications Act 2001, which is wholly funded by levies on regulated parties; and its work relating to the Dairy Industry Restructuring Act 2001, which is partially Crown-funded.

Chief Executive: Brent Alderton	[REDACTED]
Chair: Dr Mark Berry	[REDACTED]

### Commission for Financial Literacy and Retirement Income (CFLRI)

The Commission was established in 1993 and continues to operate under the New Zealand Superannuation and Retirement Income Act 2001. The Commission is headed by the Retirement Commissioner. Its key activities are providing information education and advice on financial literacy, and carrying out regular reviews of retirement income policy. The Commissioner also has a monitoring role under the Retirement Villages Act 2003. The Commission is funded by a Crown appropriation of \$5.8 million.

Retirement Commissioner: Dianne Maxwell	[REDACTED]
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**External Reporting Board (XRB)**

Established under the Financial Reporting Act 2013, the XRB is responsible for setting the strategy for financial reporting in New Zealand, and issuing financial reporting standards and auditing and assurance standards, including some ethical standards. The XRB also seeks to influence the development of international standards and has cross-membership with the Australian Financial Reporting Council. The External Reporting Board is funded by a Crown appropriation of \$4.4 million.

Chief Executive: Tony Dale	[Redacted]
Chair: Graeme Mitchell	[Redacted]

**Financial Markets Authority (FMA)**

Established in 2011 by the Financial Markets Authority Act 2011, the FMA is New Zealand’s main statutory regulator for the securities and investment industry and discharges statutory functions under a range of Acts including the Financial Markets Conduct Act 2013 and Financial Advisers Act 2008. Its main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets in New Zealand, and a principal purpose is to promote the confident and informed participation of business, investors and consumers in those financial markets.

The FMA is funded through one operating appropriation and a litigation fund to a total of \$28 million, of which around 60 percent is cost recoverable through industry fees and levies.

Chief Executive: Rob Everett	[Redacted]
Chair: Simon Allen	[Redacted]

**Takeovers Panel**

Established under the Takeovers Act 1993, the Panel's key functions are to keep under review the law and practices relating to takeovers of specified companies, recommend changes to takeovers law that the Panel considers necessary, investigate acts or omissions or practices for the purpose of exercising its enforcement powers, and make determinations and orders and applications to the Court in accordance with the Takeovers Act.

The Takeovers Panel is funded by a Crown appropriation of \$1.5 million and a separate litigation fund of \$0.2 million.

Chief Executive: Margaret Bearsley	[Redacted]
Chair: David Jones	[Redacted]

### Standards Council

Established under the Standards Act 1988, the Council adopts international standards, and develops adopts and publishes New Zealand Standards for use through its operational arm Standards New Zealand.

A decision was made in October 2013 to disestablish the Council and replace it with a smaller Standards approval board, and move the standards development function into MBIE under the authority of a new statutory officer. The Standards and Accreditation Bill 2014 has been introduced into Parliament to give effect to this decision.

Acting Chief Executive: Michelle Wessing	[REDACTED]
Chair: John Lumsden	[REDACTED]

### Testing Laboratory Registration Council

Established under the Testing Laboratory Act 1972, the Council provides independent third-party recognition of competence by accrediting laboratories, inspection bodies and radiology practices through its operational arm International Accreditation New Zealand (IANZ). The Council also owns 75 per cent of Telarc SAI Ltd, a certification body, and the New Zealand Quality College, which provides training in technical and quality subjects related to conformity assessment.

The Council's governing board is composed of nine members, with five appointed by the Minister of Commerce and Consumer Affairs and four appointed by the Council itself. It receives no Parliamentary appropriation, operating a user and stakeholder funded not-for-profit business model.

The Standards and Accreditation Bill 2014 amends the institutional arrangements for the Council to strengthen the quality of its governance and decision-making.

Chief Executive of IANZ: Dr Llewelyn Richards	[REDACTED]
Chair: Paul Connell	[REDACTED]

### Other Statutory Bodies

The Minister appoints members of the following bodies:

**Cease and Desist Commissioners** are appointed by the Governor-General at the recommendation of the Minister of Commerce for the sole purpose of hearing cease and desist applications in accordance with sections 74AA to 74C of the Commerce Act 1986. The role was created in 2001 and provides the Commerce Commission with an alternative to seeking interim injunctions from the High Court against anticompetitive behaviour. Cease and Desist Commissioners are able to make orders to restrain anticompetitive behaviour, or to require a person to act in order to restore competition, or the potential for competition in a market.

Commissioners: Hon Sir Bruce Robertson and Michael Behrens QC

**Copyright Tribunal** is a statutory body established under the Copyright Act 1994. The role of the Tribunal is to resolve disputes between licensing bodies, or proposed licensing bodies, and those who hold or seek licences in respect of works of copyright. It also hears applications about file sharing infringements under the Copyright Act 1994. The Tribunal consists of a Chair and two members, who are appointed by the Governor-General at the recommendation of the Minister of Commerce.

Chair: Prof Susy Frankel

**Joint Accreditation System of Australia and New Zealand (JAS-ANZ)** is a trans-Tasman institution established by a Treaty between the governments of Australia and New Zealand, responsible for the accreditation of certification bodies and inspection bodies in Australia and New Zealand.

The Governing Board is a mix of New Zealand and Australian members appointed by the responsible Ministers – the Minister of Commerce for New Zealand and the Minister for Industry for Australia. Out of a total of ten members, six are appointed by the Australian government and three by the New Zealand government. These include one Australian government official, and one New Zealand government official, who is currently an official from MBIE. The Chief Executive of JAS-ANZ is the tenth member. New Zealand and Australia rotate the Chairperson and Vice-Chairperson responsibilities every three years and the appointments must be decided jointly by the Australian and New Zealand Ministers.

Chair: Mike Willing (New Zealander)

Vice-Chair: Justin Roberts-Smith (Australian)

**Temporary Safeguard Authorities** are appointed by the Minister of Commerce under Section 3(1) of the Temporary Safeguard Authorities Act 1987. The Act provides for inquiries to establish whether urgent temporary safeguard action is required to assist New Zealand industries faced with increased imports which are causing, or threatening to cause, serious injury. Authorities are required to be appointed so that they are immediately available to carry out any urgent inquiries and report back to the Minister.

New Zealand's safeguards legislation has been reviewed and the resulting Trade (Safeguard Measures) Bill proposes that, in future, any safeguard enquiries are carried out by MBIE. It is awaiting its third reading.

Authorities: John Gilbert and Neil Plimmer

**The Pool of Lay Members of the High Court under the Commerce Act** is provided for under Section 77 of the Commerce Act. Lay members play a key role in ensuring that the expert evidence on complex competition issues is properly understood by the Court, then tested and assessed after the hearing. The appointment of lay members to particular cases is at the discretion of High Court judges, but once a lay member has been appointed to a case, the lay member becomes a member of the Court for the purposes of that case. The Governor-General appoints lay members on the recommendation of the Attorney-General who must consult with the Chief Justice and the Minister of Commerce before making any appointment recommendation.

There are currently 15 lay members, comprising New Zealand and Australian individuals with expertise in a range of areas such as competition policy, economic regulation, and industrial economics.

## Other Industry Bodies

Consumer access to dispute resolution is an important element of consumer confidence.

The Minister either appoints consumer representatives to the following industry bodies, or is consulted by the industry body about appointments.

The **Electricity and Gas Complaints Commissioner** (EGCC) Scheme is an industry-funded, independent dispute resolution service and is free of charge to complainants. The Minister appoints two consumer representatives (and their alternates) to the Scheme Board.

The EGCC considers and investigates consumer complaints relating to electricity and gas lines or retail companies. While the scheme is funded by member companies, it remains independent of the industry in its investigations and decision-making processes. Participants pay an annual levy determined on the basis of proportional market share and the number of attributed deadlocked complaints. Transpower and any gas lines company that operates gas transmission pipelines pay a fixed annual levy.

Electricity and Gas Complaints Commissioner: Judi Jones

Chair of the EGCC Scheme Board: Hon Heather Roy

Consumer representatives: Nicky Darlow and Linda Cooper (alternate Campbell Roberts)

The **Banking Ombudsman Scheme** Ltd is an industry funded body that considers and investigates consumers' complaints about banks and non-bank deposit takers. The Minister appoints one consumer representative on the Board.

The scheme has 71 member entities. Participants pay an annual levy structured around a fixed fee proportion with the remainder based on number of complaints and disputes a company has received in the previous year. The Board comprises a chair, two representatives of participating banks (appointed by the Council of the NZ Bankers' Association), one consumer representative, and the Executive Director of Consumer NZ (or another person who, in the opinion of the Banking Ombudsman Scheme Ltd, is representative of bank customers).

Banking Ombudsman: Deborah Battell

Chair of the Scheme Board: Miriam Dean

Consumer representative: Mary Holm

The **Insurance and Savings Ombudsman** (ISO) Scheme was established in 1995 to consider and investigate consumers' complaints about participating insurance and savings companies and other financial service providers. The ISO has 2,089 members. The Scheme is overseen by a Commission that includes three consumer representatives who are appointed by the Commission after consulting the Minister.

The ISO is funded by an annual levy on members. Insurance participants' contributions are based on the number of gross written premiums, saving participants pay a flat annual fee and financial service providers pay a fee based on the number of employees.

Insurance and Savings Ombudsman: Karen Stevens

Insurance and Savings Commission: Independent Chair Paula Rebstock

Consumer representatives: Denese Bates, Sir John Hansen, Jo Bransgrove



The **Telecommunications Dispute Resolution Scheme** (TDRS) provides a forum for consumers and small businesses to take their disputes against telecommunications providers for dispute resolution at no cost. The TDRS is able to award compensation against the member telecommunications provider, however membership is not mandatory. Despite membership being voluntary, almost all of the major telecommunications providers have joined the TDRS. The Minister appoints one consumer representative on the Council, which oversees the scheme.

Telecommunications Dispute Resolution Scheme Council: Chair David Russell  
Consumer representative: Paul Elenio

The **Motor Vehicle Disputes Tribunal** is established under section 82 of the Motor Vehicle Sales Act 2003. The Tribunal resolves disputes between consumers and motor vehicle traders. The Tribunal has the jurisdiction to consider claims relating to breaches of the Consumer Guarantees Act 1993, Fair Trading Act 1986, Sale of Goods Act 1908 and Contractual Remedies Act 1979. The Tribunal can hear claims up to a value of \$100,000, or over this amount by agreement of both parties to the complaint.

Each Tribunal must consist of an adjudicator (appointed on the joint recommendation of the Minister of Justice and the Minister of Consumer Affairs) and an assessor appointed by the adjudicator for the purposes of each hearing from a panel maintained by the Minister of Consumer Affairs.

Adjudicator: Chris Cornwell  
Panel of assessors for hearings: Sean Gregory, Stephen Johnson

## **Annex 3: Key Legislation under the Portfolio**

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### **COMPETITION POLICY**

#### **Commerce Act 1986**

The Commerce Act promotes competition for the long term benefit of New Zealand consumers.

The key features of the Act are that it:

- prohibits anticompetitive behaviour, both unilateral and collusive (Part 2)
- prohibits mergers that would substantially lessen competition (Part 3)
- empowers the Minister of Commerce to impose regulatory control on monopolies (Part 4) – this is currently applied to electricity lines businesses, gas pipeline businesses and the three main airport companies.

The Act also established the Commerce Commission as an independent Crown entity responsible for making certain quasi-judicial decisions, and enforcing the Act in the High Court. There is also a right of private action to the courts for most of the prohibitions.

### **CONSUMER POLICY**

#### **Fair Trading Act 1986**

The Fair Trading Act aims to contribute to a trading environment where consumer interests are protected, businesses compete effectively and consumers and businesses participate confidently. The Act attempts to ensure that all trading activities are based on accurate and honest information. It also allows for bans and recalls of unsafe products and the imposition of mandatory standards if necessary. This Act is enforced by the Commerce Commission.

Under Parts 3 and 4 of the Fair Trading Act 1986, the Minister of Consumer Affairs can recommend mandatory standards for products or services, ban unsafe products or order a compulsory recall of an unsafe product. The Minister also has the power to issue a Product Safety Policy Statement to provide information or guidance when needed. These measures are generally used only when attempts to have the product amended or withdrawn voluntarily fail.

The Fair Trading Act was amended in 2013 as part of the Consumer Law Reforms. Key changes include protections against unfair contract terms (due to take effect in March 2015) and unsubstantiated representations, new provisions covering uninvited direct selling, layby sales, unsolicited goods and services, extended warranties and auction conduct, enhanced product safety provisions, stronger Commerce Commission's enforcement powers and increases to the level of penalties. The amended Fair Trading Act governs matters previously set out in the now repealed Door to Door Sales Act 1967, Layby Sales Act 1971 and Unsolicited Goods and Services Act 1975.

#### **Auctioneers Act 2013**

As part of the Consumer Law Reforms, the Auctioneers Act 2013 was passed to replace the Auctioneers Act 1928. The 2013 Act requires persons in the business of conducting auctions to be registered. The Ministry's Trading Standards team within the Consumer Protection and Standards branch is responsible for administration and enforcement activities associated with this registration.

#### **Consumer Guarantees Act 1993**

The Consumer Guarantees Act covers consumer protection in the post-sale period (after a purchase is made). It creates statutory guarantees that are automatically conferred each time a consumer purchases a good or a service from a trader. The Act also provides clear remedies for consumers if a breach of the guarantee occurs. This Act is self-enforcing.

This Act was amended in 2013 as part of the Consumer Law Reforms. A key amendment was the removal of the exemption for auctions and competitive bids, which means that all transactions between a trader and a consumer with respect to consumer goods will be covered by this Act.

### **Credit Contracts and Consumer Finance Act 2003 (CCCFA)**

The CCCFA regulates consumer credit, including home loans, personal loans, credit sales/hire purchase, credit cards, long-term leases and housing buy-back schemes. The CCCFA requires disclosure of key information to the debtor, prohibits unreasonable fees, allows for contracts to be varied in cases of hardship and provides for re-opening of oppressive contracts. It is enforced by the Commerce Commission.

Significant changes to the CCCFA were passed in June 2014, with all changes to take effect by June 2015. Key changes include the introduction of a responsible lending framework and a strengthened disclosure regime – including a requirement to make standard form contract terms and costs of borrowing freely and publicly available.

### **Credit (Repossession) Act 1997**

The Credit (Repossession) Act regulates the repossession of goods under a security agreement. Under changes to consumer credit laws passed in June 2014, the Credit (Repossession) Act will be repealed and updated repossession rules will be incorporated into the CCCFA by June 2015. New repossession rules include a prohibition on use of essential consumer goods (such as beds) as security and a requirement to use licensed repossession agents to carry out any repossession action.

### **Financial Service Providers (Registration and Dispute Resolution) Act 2008**

The Financial Service Providers (Registration and Dispute Resolution) Act requires financial service providers to be registered and to be members of an approved dispute resolution scheme. The Act is under the responsibility of the Minister of Commerce. Under Part 3 of the Act, the Minister of Consumer Affairs approves dispute resolution schemes in consultation with the Minister of Finance. Amendments to this Act were passed in June 2014 to remove the requirement for a reserve scheme and to clarify the registration requirements.

### **Motor Vehicle Sales Act 2003**

The Motor Vehicle Sales Act requires that all motor vehicle traders are registered on the Motor Vehicle Traders Register (including car market operators and vehicle auctioneers). Traders are required to display a Consumer Information Notice (CIN), in the form prescribed under the Fair Trading Act, with all used motor vehicles for sale.

The Motor Vehicle Traders Register is administered by MBIE. Compliance with CIN requirements is enforced by the Commerce Commission.

### **Weights and Measures Act 1987**

The Weights and Measures Act establishes the infrastructure that ensures measurements used for trade are accurate. It provides the system of instruments, metric weights and measures and prescribes their use in the marketplace. It attempts to ensure that goods sold by weight, measure or number are traded fairly and in accordance with internationally recognised standards. This Act is administered and enforced by MBIE. The Act was amended in 2013 as part of the Consumer Law Reforms to cover modern transactions such as self-service check outs.

**Electricity Industry Act 2010 [Part 4, Subpart 1 only]**

The provision requires Transpower and electricity distributors and retailers to be a member of a dispute resolution scheme, unless exempted by the Minister of Consumer Affairs.

**INTELLECTUAL PROPERTY****Copyright Act 1994**

The Copyright Act is designed to promote investment in artistic creativity and intellectual effort by providing exclusive rights to the creators of original works. Copyright comes into existence automatically and applies to original creations such as literary, musical and artistic works, sound recordings, films, broadcasts and computer software. To encourage the use and dissemination of intellectual effort, the duration of copyright protection is limited, generally to 50 years after the creator's death, or 50 years from the time the work is created, or first made publicly available.

**Designs Act 1953**

This Act aims to promote innovation and creativity by creating incentives to develop designs for manufactured articles that have visual appeal, and provides copyright protection for up to 15 years.

**Geographical Indications (Wine and Spirits) Registration Act 2006 (not in force)**

This Act was passed by Parliament in November 2006 but the operative provisions are not yet in force. It will establish a registration system for geographical indications for wines and spirits only, and clarify the relationship between trade mark rights and geographical indications.

**Patents Act 2013**

The Act came into force on 13 September 2014. It modernises the patents system and achieves better alignment with our trading partners' laws. The Act tightens up the criteria for granting patents to ensure that patents are only granted for inventions that are "genuine innovations" – that is, innovations that are new, that are not obvious, and that have an identified "real-world" use. Under the new criteria patent owners will have greater certainty that their patents will be valid and enforceable. The Act also provides a licencing regime for patent attorneys.

This Act will be amended by the Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Bill to implement a single trans-Tasman registration regime for Australian and New Zealand patent attorneys.

**Plant Variety Rights Act 1987**

This Act encourages investment in the development of new plant varieties by providing for the granting of proprietary rights to breeders and developers for 20 or 23 years. The grant of a plant variety right provides the exclusive right to sell and collect any royalties on seed or reproductive material of the variety.

**Trade Marks Act 2002**

Trade marks provide consumers with low cost information about products and their origins. The Trade Marks Act encourages manufacturers to invest in the quality, innovation, and reputation of their brands by providing for the granting of an exclusive right to use a mark in relation to specified goods.

## **FINANCIAL MARKETS**

### **Financial Markets Conduct Act 2013 (FMC Act)**

The FMC Act rewrites the fundamental laws concerning how financial products are governed and sold to investors. It sets out the main purposes of financial market regulation, which are to promote and facilitate the development of fair, efficient, and transparent financial markets in New Zealand, and to promote the confident and informed participation of business, investors and consumers in those financial markets. These purposes match the Financial Market Authority's objective and purposes.

The Act makes comprehensive changes to investment legislation, including the repeal of the following Acts and regulations, and incorporates many of their provisions in the FMC Act progressively from 1 April to 1 December 2014, with a transition period concluding in December 2016.

- Securities Act 1978
- Securities Markets Act 1988
- Securities Transfer Act 1991
- Superannuation Schemes Act 1989
- Unit Trusts Act 1960
- Securities Trustees and Statutory Supervisors Act 2011 (renamed and substantively amended, but not replaced by the FMC Act).

### **Financial Advisers Act 2008**

The Act establishes a licensing regime for providers of financial advice which is administered by the FMA. The objectives of the Act are to promote sound and efficient delivery of financial advice, and encourage public confidence in the professionalism and integrity of financial advisers.

### **Financial Markets Authority (FMA) Act 2011**

The Act establishes the Financial Markets Authority and its principal functions and powers.

### **Financial Service Providers (Registration and Dispute Resolution) Act 2008**

The Act establishes a registration process for all financial service providers to facilitate the identification and monitoring of financial service providers. The Act also establishes a requirement for financial service providers who provide services to retail clients to be members of a consumer dispute resolution scheme, aimed at facilitating the orderly resolution of disputes in the financial sector.

### **KiwiSaver Act 2006**

This Act establishes the KiwiSaver regime. Administration of the Act is shared between the Minister of Commerce and the Minister of Revenue. The Minister of Commerce is responsible for the part of the Act that provides for the registration of KiwiSaver schemes by the FMA. The Minister of Commerce is also jointly responsible with the Minister of Finance for appointing the providers of default schemes.

## CORPORATE LAW AND GOVERNANCE

### Companies Act 1993

This Act describes the basic requirements for incorporating, organising and operating companies. It defines the relationships between companies and their directors, shareholders and creditors, sets out the duties of directors and provides for the protection of shareholders and creditors against the misuse of management powers. It provides procedures for realising and distributing the assets of insolvent companies. It also outlines the powers and duties of the Registrar of Companies, which include registration, inspection and enforcement powers.

The Act was amended earlier in 2014 to:

- require all New Zealand registered companies and limited partnerships to have a director who lives in New Zealand or is a director of a company in a prescribed enforcement country
- give new powers to the Registrar of Companies to better investigate companies
- introduce offences for very serious misconduct by directors that results in serious losses to the company or its creditors
- align the company reconstruction provisions in the Companies Act with the Takeovers Code.

This Act will be amended by the Insolvency Practitioners Bill.

### Financial Reporting Act 2013

This Act defines core terms (e.g. generally accepted accounting practice and other standard requirements (e.g. auditor qualifications)) that are cross-referred to from numerous other enactments. The Act needs to be read together with sector, industry and entity-specific Acts, which determine which entities are reporting entities and whether they are also required to have their financial statements audited and published. The Act also constitutes the XRB as an independent Crown entity and empowers it to issue financial reporting standards and auditing and assurance standards, including some ethical standards.

The Act does not provide the XRB with any enforcement functions. Enforcement is left to other agencies, such as the FMA, the Registrar of Companies (MBIE) and the Department of Internal Affairs.

### Insurance legislation

Most statutes that relate to insurance contract law are currently within the Justice portfolio, although in 1997 Cabinet agreed to give the Ministry the lead responsibility for reviewing insurance contract law: Part 2 of the Life Insurance Act 1908, the Insurance Law Reform Act 1977, the Insurance Law Reform Act 1985, and the Insurance Intermediaries Act 1994.

The Minister of Commerce has responsibility for the **Marine Insurance Act**.

### Insolvency Statutes

The Companies Act 1993 provides the main vehicle for corporate insolvency. Additional statutes are:

- **Corporations (Investigation and Management) Act 1989** - allows the Registrar of Companies to obtain information and investigate the affairs of a corporation to ascertain whether it is in danger of failing. It also provides limited scope for the Governor General, acting on advice from the Minister of Commerce, to place corporations under statutory management.
- **Insolvency Act 2006** - governs personal insolvency. It is administered by the Insolvency and Trustee Service. The Act defines the criteria for entry to bankruptcy, the no-asset procedure (NAP) and summary instalment order (SIO).

- **Insolvency (Cross-border) Act 2006** - cross-border insolvency arises when an entity is placed in a form of insolvency administration in one country but has assets or debts in one or more overseas jurisdictions. This Act implements the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law (UNCITRAL), which promotes cooperation between the courts in different jurisdictions.
- **Receiverships Act 1993** - codifies the common law in relation to receivers, who can be appointed by secured creditors, usually a bank. This Act will be amended by the Insolvency Practitioners Bill.
- **Trustee Companies Management Act 1975** - contains a process for statutory management of trustee companies that is equivalent to the Corporations (Investigation and Management) Act 1989.

### Other Key Corporate Law and Governance Statutes

- **Auditor Regulation Act 2011** - establishes licensing systems for individuals and firms that carry out audits of financial statements prepared by issuers, insurers, banks, other deposit takers and other entities or funds that hold substantial amounts of public money in a fiduciary capacity, such as mutual funds.
- **Friendly Societies and Credit Unions Act 1982** - provides a specific regulatory and governance system that is materially different in many respects to the Incorporated Societies Act 1908. It establishes the Registrar of Friendly Societies and Credit Unions and assigns functions and powers to the Registrar. This Act will be amended through the Regulatory Systems Bill to give credit unions legal status and reduce unnecessary operating and compliance costs.
- **Incorporated Societies Act 1908** - provides for the incorporation of societies, which are not established for the purpose of pecuniary gain. This Act is out-of-date. A new Act based on the Law Commission's report and recommendations will codify best practice for operating an incorporated society, as well as provide greater clarity for officers and members about their rights and obligations.
- **Partnership Act 1908** - defines partnership relationships and sets out the rules for determining when a partnership exists. There is no registration system for partnerships.
- **Limited Partnerships Act 2008** - Internationally, limited partnerships are the preferred structure for venture capital investments and are often used by private equity firms. This Act, combined with related tax law, fits with the international model. The Limited Partnerships Amendment Act 2014 introduced new provisions that will prohibit people who have undertaken serious offending from being general partners. This reflects the existing disqualification criteria in the Companies Act 1993 that prohibit persons who have undertaken serious offending from acting as directors.
- **New Zealand Institute of Chartered Accountants Act 1996** - establishes the New Zealand Institute of Chartered Accountants (NZICA) and a system for self-regulation of its members. This Act will be amended through the Accounting Infrastructure Reform Bill to create "Chartered Accountants Australia and New Zealand" (CAANZ), which merges NZICA with its Australian counterpart.
- **Personal Property Securities Act 1999** - provides uniform rules in relation to the giving and taking of security interests in all forms of personal property other than land and for registration of those interests. Larger ships, aircraft and helicopters are also excluded because there are international registers.
- **Takeovers Act 1993** - establishes the Takeovers Panel and outlines the framework for amending and enforcing the Takeovers Code, and recommending changes to it.
- **Retirement Villages Act 2004** - administered mainly by the Construction and Housing Markets branch in MBIE. However, it confers a number of statutory functions on the Registrar of Retirement Villages, who is currently the Registrar of Companies. These functions include the operation of the register of retirement villages and some enforcement functions.

## **TRADE POLICY AND INTERNATIONAL REGULATORY COOPERATION**

### **Trade with Australia**

#### **Trans-Tasman Mutual Recognition Act 1997**

The Trans-Tasman Mutual Recognition Act 1997 gives effect to the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Under the TTMRA:

- a good that may be sold in Australia or New Zealand may be sold in the other, regardless of differences in standards or other sale-related regulatory requirements
- a person registered to practise an occupation in Australia or New Zealand can practise the equivalent occupation in the other without the need to undergo further testing or examination.

### **Trade Remedies**

#### **Dumping and Countervailing Duties Act 1988**

The Act protects New Zealand industry from material injury caused by dumped or subsidised imports. It allows duties to be imposed on goods sold in New Zealand at less than the normal price in the country of export, or subsidised by an overseas government, if the dumping or subsidy is causing or threatening to cause material injury to an industry in New Zealand or a third country. The Chief Executive of MBIE is responsible for initiating and carrying out investigations.

The Minister:

- makes final determinations on whether there is dumping or subsidisation causing injury
- may impose or terminate antidumping or countervailing duties
- may determine a new rate or amount of antidumping or countervailing duty
- may require a refund of antidumping or countervailing duties in certain circumstances
- terminates investigations in certain circumstances.

The Dumping and Countervailing Duties Act 1988 was amended in May 2014 to provide for the suspension of the application of any new anti-dumping duties to imports of residential construction materials for three years, with effect from 1 June 2014.

#### **Temporary Safeguard Authorities Act 1987**

This Act provides for inquiries to be carried out by Temporary Safeguard Authorities into whether sudden and unforeseen increases in imported goods have caused, or threaten to cause, serious injury to a domestic industry.

The Minister:

- appoints suitable people to act as Authorities and requests them to undertake inquiries
- lays requests for safeguard actions in the House and publishes them in the Gazette
- may cause a statement of government policy to be transmitted to the Authority
- decides whether to recommend to Cabinet that safeguard measures should be imposed.

The Act will be replaced with the Trade (Safeguard Measures) Bill, which proposes to implement a new safeguards regime for New Zealand.



## **Tariff Policy**

### **Tariff Act 1988**

The Tariff Act provides for the administration of the Tariff of New Zealand and the authority to levy, collect and pay import duties in accordance with the rates specified in the Tariff. Following a comprehensive tariff review in 2003, a unilateral tariff reduction programme reduced tariffs over the period 1 July 2006 to 1 July 2009. Tariffs on clothing, footwear, carpet, ambulances and motor-homes are now at 10 percent and tariffs on other dutiable goods are at 5 percent. This approach was reconsidered in 2013 and it was decided that these rates would be held through until at least 30 June 2017.

Tariff concessions are available under Part 2 of the Tariff. The broad scope of goods covered by tariff concessions may be changed by Order in Council. Specific approvals are made by the New Zealand Customs Service. Tariff concessions apply to a wide range of goods, including residential building materials.

### **Imports and Exports (Restrictions) Act 1988**

This Act provides for the prohibition of imports and exports that would be contrary to the public interest. The Minister has the power, consistent with any conditional prohibition order, to require an import or export licence or permit to be presented before goods can enter or leave New Zealand.

## **Standards and Conformance**

### **Standards Act 1988**

The Act provides for the establishment of the Standards Council and describes the legal framework of the organisation, including its governing board and functions. It enables the Council to establish national Standards and work with international organisations in the development of Standards. In practice, the Council undertakes its functions through its operational arm, Standards New Zealand.

### **Testing Laboratory Registration Act 1972**

The Testing Laboratory Registration Act 1972 provides for the establishment of the Testing Laboratory Registration Council. The Act describes the legal framework of the organisation, including the governing board and functions.

The Standards and Accreditation Bill 2014 has been introduced into Parliament to replace both the Standards Act and Testing Laboratory Registration Act.