

Submission

by

**THE
NEW ZEALAND
INITIATIVE**

to the Finance and Expenditure Committee

on the

**Commerce (Commerce Commission Reform)
Amendment Bill**

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1. INTRODUCTION AND SUMMARY

- 1.1 This submission on the Commerce (Commerce Commission Reform) Amendment Bill (**the Bill**) is made by The New Zealand Initiative (**the Initiative**), a Wellington-based think tank supported primarily by major New Zealand businesses. The Initiative undertakes research that contributes to the development of sound public policies in New Zealand, advocating for a competitive, open, and dynamic economy and a free, prosperous, fair, and cohesive society. The views expressed in this submission are those of the author rather than the Initiative's members.
- 1.2 The Initiative has advocated for governance reform of the Commerce Commission (**the Commission**) since 2018. We welcome the Bill. The Initiative has argued for the structural separation of the Commission's governance and regulatory decision-making functions for more than eight years. The Government deserves credit for commissioning and acting on the findings of the Governance and Effectiveness Review of the Commerce Commission (**the Rebstock Review**).¹
- 1.3 Our support for the Bill's architecture does not extend to every design choice within it. Our research shows that three factors have a significant bearing on whether regulatory agencies perform well: internal governance arrangements, the quality of appointments, and external monitoring of their performance. On the first factor, the Bill delivers reform of real substance, though, as we argue below, one specific design choice preserves the core defect the reform is meant to eliminate. A board cannot independently oversee the people who sit on it and vote on its decisions. On the second and third factors, the Bill falls materially short. If those deficiencies are not addressed at the select committee stage, the risk is that structural reform produces a better-looking institution rather than a better-performing one.
- 1.4 In addition, the Bill creates a broad new general functions provision for the Commission in proposed section 11. The National-ACT coalition agreement (**the Coalition Agreement**) committed to reform market studies "to focus on reducing regulatory barriers to new entrants to drive competition."² The Initiative argued in its [February 2026 submission](#) to the Economic Development, Science and Innovation Committee on the companion Commerce (Promoting Competition and Other Matters) Amendment Bill (**the Initiative's February 2026 submission**) that the Commission's market study powers should be confined consistently with that commitment.³ Proposed section 11(1)(b) in this Bill cuts against the same commitment at the functional level and should be narrowed on the same principle.
- 1.5 In summary, the Initiative submits that Parliament should:
- (a) Amend proposed sections 12 and 21 to prohibit any dual membership of the governance board and the Commissioner panel.

¹ Dame Paula Rebstock, Professor Allan Fels AO and David Hunt, *Governance and Effectiveness Review of the Commerce Commission: Recommendations Report* (Wellington: Ministry of Business, Innovation and Employment, 13 June 2025).

² National-ACT Coalition Agreement (24 November 2023), 4.

³ [The New Zealand Initiative, "Submission to the Economic Development, Science and Innovation Committee on the Commerce \(Promoting Competition and Other Matters\) Amendment Bill" \(12 February 2026\).](#)

- (b) Amend proposed sections 15 and 20 to require that at least three members of the commissioner panel have competition economics expertise, any regulatory committee dealing with matters under Parts 2, 3, or 3A of the Commerce Act includes at least two commissioners with that expertise, and the board conducts recruitment and makes a formal recommendation to the Minister before any commissioner is appointed.
- (c) Establish an independent appointment agency to subject governance appointments to New Zealand's regulatory agencies to independent scrutiny against published skills matrices, and amend the Bill to bring appointments to the Commerce Commission within the agency's remit.
- (d) Amend the Bill to require the Ministry of Regulation to conduct periodic reviews of the Commerce Commission's regulatory strategies and performance, reporting to Parliament no less than once every three years, and extend this obligation by corresponding amendments to cover the Financial Markets Authority and the Reserve Bank of New Zealand.
- (e) Amend proposed section 11(1)(b) so that the Commission's review, study, and inquiry function is directed toward identifying whether existing regulatory, policy, and government procurement practices together effect a substantial lessening of competition, consistent with the coalition agreement commitment to focus market studies on reducing regulatory barriers to new entrants.

2. COMMISSION'S GOVERNANCE REFORMS ARE LONG OVERDUE

- 2.1 In 2017, the Initiative surveyed New Zealand's top 200 businesses on the performance of the country's major commercial regulatory agencies, asking them to assess each agency against 23 key performance indicators ranging from commercial expertise and consistency of decision-making to clarity of objectives and external accountability.⁴ The results for the Commerce Commission were alarming. Only 34.4% of respondents agreed that the Commission's actions were motivated by achieving its statutory objectives. Only 6.3% agreed that it understood the commercial realities facing their industries. Only 15.6% agreed that its decision-making was predictable.
- 2.2 In resulting report, *Who Guards the Guards? Regulatory Governance in New Zealand*, we diagnosed the causes of poor regulatory performance across New Zealand's major commercial regulators.⁵ Our analysis identified three factors as critical: internal governance arrangements, external monitoring, and appointment processes. Poor ratings for those three factors were strongly associated with poor regulatory

⁴ Roger Partridge and Amy Thomasson, *Who Guards the Guards? Regulatory Governance in New Zealand* (Wellington: The New Zealand Initiative, 2018) (*Who Guards the Guards*), 33–34.

⁵ *Ibid.*

performance overall. Well-designed internal governance creates the accountability mechanisms through which better decisions are produced; external monitoring provides the independent assessment that internal self-reporting cannot; and appointment processes determine whether the people making or overseeing regulatory decisions have the expertise the functions demand.

- 2.3 For the Commerce Commission, we found the governance problem acute. The Commission operated on a “multi-member commission model” in which its commissioners served simultaneously as governors and as executive decision-makers.⁶ The role was both governance and executive, with neither function performed well. As one survey respondent put it, “The CEO is not working alongside the Commissioners. The actual CEO role is embedded in the Chair role, but the Chair is not acting as a CEO.”⁷ The internal accountability mechanism that is the principal virtue of the board governance model – the accountability of the executive to the board for the exercise of regulatory power – was absent.
- 2.4 The contrast with the Financial Markets Authority (**the FMA**) was instructive. The FMA emerged from the ashes of the Securities Commission following a parliamentary inquiry into the collapse of New Zealand’s finance company sector and a Ministry-initiated review of the Securities Commission’s effectiveness.⁸ That review recommended two changes: separating governance from executive decision-making and improving commercial expertise. The FMA was established with a board governance model in which the board’s primary role was to hold the CEO to account for implementing regulatory strategy. The CEO, not board members, bore primary regulatory decision-making responsibility. The results were reflected in our survey: the FMA consistently outperformed the Commerce Commission across nearly every KPI, with 70.6% of respondents agreeing it was motivated by its statutory objectives and 41.2% agreeing it understood commercial realities.⁹
- 2.5 *Who Guards the Guards* recommended that Parliament reform the Commerce Commission’s governance by replacing the commission model with the board governance model of the FMA, reshaping the commissioner role into a governance function with substantial decision-making power delegated to the CEO and regulatory staff.¹⁰ We made a parallel recommendation for the Reserve Bank of New Zealand (**the RBNZ**) – that the Governor be made accountable to the RBNZ board for the exercise of prudential regulatory policymaking. We also recommended that the Productivity Commission conduct triennial reviews of the Commerce Commission,

⁶ Ibid., 22–23

⁷ Ibid., 55–56.

⁸ Ibid., 41–42. See also Office of the Minister of Commerce, “Creating a Financial Markets Authority and Enhancing KiwiSaver Governance and Reporting” (Wellington: New Zealand Government, 2010).

⁹ *Who Guards the Guards*, op. cit., 35.

¹⁰ Ibid., 79 (Recommendations 1 and 2).

FMA and RBNZ, reporting to Parliament; and that an independent agency be created to ensure all regulatory appointments were subject to independent scrutiny and a standardised process.

- 2.6 Parliament adopted our internal governance recommendation for the RBNZ. The Reserve Bank of New Zealand Act 2021 established a board governance model for the Bank and created the Monetary Policy Committee as a statutory decision-making body operating at arm's length from the board.¹¹ The Commerce Commission recommendations were not acted upon.
- 2.7 We repeated our survey in 2021 and reported on it in *Reassessing the Regulators*.¹² The Commerce Commission's performance and rankings had not improved. In fact, by every measure, they had deteriorated. Across all regulatory agencies surveyed, respondents gave the lowest ratings of all 23 KPIs to those addressing external monitoring, appointment processes, and internal governance. External accountability was the worst-rated KPI across the entire survey: only 21.8% of respondents agreed that major commercial regulators were readily held to account. For the Commerce Commission specifically, only 10% agreed it was accountable internally. *Reassessing the Regulators* renewed our recommendations made in *Who Guards the Guards*.
- 2.8 The Rebstock Review, led by Dame Paula Rebstock, Professor Allan Fels AO and David Hunt and commissioned by Cabinet in late 2024, considered three options for governance reform. The Review noted Commissioners had been "generally appointed for their expertise in particular industries, competition law and economics, not for governance experience."¹³ The Government adopted Option 2 – a new governance board separated from a Commissioner panel, with regulatory decision-making delegated to committees drawn from the panel. Option 2 is close to the structural separation the Initiative had recommended in 2018. The Bill gives effect to the Government's decision. On internal governance, the direction is right.
- 2.9 Two things are missing, however, and they correspond to the two factors from our analytical framework that the Bill does not adequately address: who gets appointed, and who holds the institution to account from the outside. The submission's first four recommendations are directed at those gaps.

3. THE BILL'S MERITS

- 3.1 The Bill makes real progress in improving the Commission's internal governance. Mandatory delegation of statutory regulatory functions to commissioner committees, the creation of a governance board with a majority of external

¹¹ Reserve Bank of New Zealand Act 2021 (NZ), Part 2, Subpart 4 and Schedule 3.

¹² Roger Partridge, *Reassessing the Regulators: The Good, the Bad and the Commerce Commission* (Wellington: The New Zealand Initiative, 2022) (*Reassessing the Regulators*).

¹³ Rebstock Review, op. cit., 12.

members, the repeal of the division mechanism, and the requirement for a publicly available charter governing committee operations all address structural weaknesses that our research identified eight years ago, and the Rebstock Review confirmed last year. The annual State of Competition Report, drawn from Rebstock Recommendation 16, will at least ensure the Commission is required to articulate and publish an annual state of competitive conditions in the New Zealand economy each year.¹⁴

- 3.2 The concerns raised in this submission is not about the Bill's overall architecture but about specific design choices within it that will determine whether the reformed Commission actually performs better over time. Structural reform is necessary but not sufficient. The FMA has demonstrated that the quality of people appointed to governance and regulatory roles, and the accountability mechanisms around them, determine outcomes more durably than organisational charts.

4. COMMISSIONERS SHOULD NOT SIT ON A GOVERNANCE BOARD THAT OVERSEES THEM

- 4.1 Proposed section 12(2) permits up to two members of the governance board also to be commissioners, and proposed section 21(2)(a) requires the chief commissioner and deputy chief commissioner to be board members.¹⁵ Together, these provisions make the dual membership mandatory, not merely permitted, and permanent, not transitional. Proposed section 21(3) ensures the chief commissioner cannot chair the board, but the chief commissioner and deputy chief commissioner will sit on the board as voting members indefinitely.
- 4.2 The FMA model, which our 2018 report identified as best practice and our 2022 report recommended for the Commerce Commission, does not work this way. The FMA's CEO reports to the board and is accountable to it; the CEO is not a board member. The board's capacity to hold the regulatory executive to account depends on that separation. As we wrote in *Who Guards the Guards*, "the accountability of the CEO to the board for regulatory decision-making" is "a key internal accountability mechanism that is a feature of the FMA's board governance model" that the old Commerce Commission lacked.¹⁶ The Bill recreates that absence in a different form.
- 4.3 The chief commissioner in the reformed Commission is not an ordinary panel member. Proposed section 18 provides that the board can call in a matter before a regulatory committee only if the board's chairperson or the chief commissioner recommends it.¹⁷ The chief commissioner nominates members of any senior regulatory committee constituted following a call-in. The chief commissioner is

¹⁴ Rebstock Review, op. cit., Recommendation 16.

¹⁵ Commerce (Commerce Commission Reform) Amendment Bill 2026 (NZ), cl 5 (proposed ss 12(2) and 21).

¹⁶ *Who Guards the Guards*, op. cit., 55–56.

¹⁷ Commerce (Commerce Commission Reform) Amendment Bill 2026 (NZ), cl 5 (proposed s 18(1)).

effectively the head of the Commission's regulatory executive. Under the Bill, that person simultaneously sits on the governance board charged with holding the regulatory executive to account.

- 4.4 The same analytical case we made in our September 2024 submission to the Finance and Expenditure Committee for removing the RBNZ Governor from the RBNZ board applies here.¹⁸ In that submission, we argued that removing the Governor from the board “aligns with the separation of executive and non-executive roles” and that the current structure, with the Governor as a board member, “compromises the board’s ability to provide independent oversight and challenge management decisions effectively.” The FMA was our comparator: the FMA’s CEO is not a member of the FMA board. The chief commissioner of the reformed Commerce Commission stands in the same structural relationship to the governance board as the FMA CEO stands to the FMA board.
- 4.5 Both the Rebstock Review and the cabinet paper developing Option 2 stated the governance separation principle in plain terms. The Rebstock Review’s description of Option 2 was that the new oversight board would have “no role in regulatory decision-making work of Committees but sets regulatory strategy and monitors performance.”¹⁹ The cabinet paper was equally direct: “the board would not have a role in regulatory decision-making, which would be reserved for committees with membership drawn from a panel of expert commissioners.”²⁰ However, both documents also contemplate, as a practical compromise, that the panel chair and deputy chair would sit on the board as panel representatives. On the Government’s own framing, then, the chief commissioner and deputy chief commissioner – as leaders of the panel – belong on the regulatory side of that separation, not on the board.
- 4.6 Dual membership, however limited, preserves a structural link between the body charged with governance oversight and the very people whose work it is meant to oversee. The FMA model – a wholly non-executive board that governs the regulatory executive without any crossover in membership – demonstrates that complete separation is achievable. A board that permanently includes the head of the regulatory executive is not monitoring that executive’s performance at arm’s length.
- 4.7 The transitional arrangement deepens the concern. Until July 2030, the current chief commissioner serves as both chief commissioner and chairperson of the new board,

¹⁸ Roger Partridge, “Submission to the Finance and Expenditure Committee on the Inquiry into Banking Competition” (Wellington: The New Zealand Initiative, 25 September 2024), Recommendation 5.

¹⁹ Rebstock Review, *op. cit.*, 27 (Table 4: Option 2 – A Separate Governance Board).

²⁰ Minister of Commerce and Consumer Affairs, “Reform of Commerce Commission Governance Arrangements,” Cabinet Paper, *op. cit.*, para 17.

notwithstanding the general prohibition in section 21(3).²¹ This is a direct recreation of the governance/executive concertina that the reform was designed to eliminate. The permanent structure corrects only part of this problem.

4.8 Recommendation: Proposed sections 12, 21 and clause 40 of proposed new Part 8 inserted into Schedule 1AA of the Act should be amended to prohibit any dual membership of the governance board and the Commissioner panel.

5. THE BILL'S APPOINTMENT CRITERIA FOR COMMISSIONERS SHOULD BE IMPROVED

- 5.1 Proposed section 20(2)(a) provides that the Minister must not appoint a commissioner unless, in the Minister's opinion, that person is qualified "by virtue of that person's knowledge of or experience in industry, commerce, economics, law, finance, infrastructure, public administration, or consumer affairs."²² Economics is one of eight equally weighted fields. Infrastructure and public administration are in the same list.
- 5.2 This does not reflect the nature of Commissioners' work. Commissioners exercise the Commerce Commission's statutory decision-making powers. They determine merger clearances. They conduct authorisation assessments. They make input methodology determinations under Part 4 for electricity lines, gas pipelines, and airports. They assess competition in retail payments markets. The analytical core of every one of those functions is competition economics. No other field in the list of qualifying fields comes close.
- 5.3 The evidence from the Bill's own supporting documents reinforces this. Rebstock Recommendation 25, which both the Commission and the Government agreed to accept, states that the economics function must have "a voice at the executive table" and provide "the breadth and depth of economic expertise required for economic regulation."²³ Proposed section 20(2)(a), which treats economics as one field among eight equally weighted alternatives, cannot be reconciled with that commitment.
- 5.4 Three elements matter in framing the expertise requirement so that it is meaningful in practice:
- (a) First, the requirement should operate at both the panel level and the committee level. At panel level, at least three members of the commissioner panel should have competition economics expertise, to ensure that the Commission is institutionally anchored in that discipline. At committee level, any regulatory committee dealing with matters under Parts 2, 3, or 3A of the Commerce Act – covering merger clearance and authorisation, restrictive

²¹ Commerce (Commerce Commission Reform) Amendment Bill 2026, cl 5 (proposed cl 40(2) of proposed new Part 8 inserted into Schedule 1AA of Commerce Act 1986).

²² Commerce (Commerce Commission Reform) Amendment Bill 2026 (NZ), cl 5 (proposed s 20(2)(a)).

²³ Rebstock Review, op. cit., Recommendation 25.

trade practices enforcement, and market studies – should include at least two commissioners with that expertise. The committee-level requirement recognises that different regulatory functions demand different expertise, and that competition economics is the analytical core of decisions under Parts 2, 3, and 3A in a way it is not under (for example) the Credit Contracts and Consumer Finance Act.

- (b) Second, the requirement needs to be evidenced rather than left to later interpretation. A Minister otherwise retains full discretion to treat thin claims of expertise as sufficient. The substantive requirement should specify evidence of substantial experience applying competition economics in merger analysis, market regulation, or competition enforcement.
- (c) Third, the requirement should recognise that competition lawyers whose work substantially involves competition economics bring the relevant analytical expertise through long practice on the economics side of competition cases. There are few pure competition economists in New Zealand and the requirement should reflect that practical reality.

- 5.5 We also consider the board’s role in appointment of commissioners should be strengthened. Under proposed section 20(2)(b), the board’s role is merely advisory. The proposed section provides merely that the Minister must “have had regard to any nominations for appointments that may have been provided by the board.”²⁴ The Minister need not follow those nominations, or seek them before deciding, or explain why they were not followed.
- 5.6 The cabinet paper published alongside the Bill acknowledges that the Rebstock Review recommended a two-stage process, with the board conducting recruitment and recommending candidates to the Minister, and explains why the Minister rejected it.²⁵ The stated reason is that “appointments are an important mechanism for the government to promote alignment with its objectives and accountability to the public.”
- 5.7 The government’s objectives for competition regulation are set by Parliament through the Commerce Act and the other statutes the Commission administers. Commissioners who exercise independent statutory decision-making power are not instruments for political alignment; they are the means by which Parliament’s legislative purposes are given effect. The Minister’s stated rationale explains precisely why the two-stage safeguard is needed.

²⁴ Ibid., proposed s 20(2)(b).

²⁵ Minister of Commerce and Consumer Affairs, “Reform of Commerce Commission Governance Arrangements,” Cabinet Paper, op. cit., paras 28-29.

5.8 The Reserve Bank of New Zealand Act 2021 uses the two-stage process the Minister rejected: the RBNZ board recommends external MPC members and the Minister then appoints.²⁶ The Bill departs from both models at precisely the point where those models are most protective of regulatory quality.

5.9 **Recommendation: Proposed section 20(2)(a) should require that at least three members of the commissioner panel have expertise in competition economics – evidenced by substantial experience applying competition economics in merger analysis, market regulation, or competition enforcement, and extending to competition law practitioners whose work substantially involves the discipline. Proposed section 15(1) should be amended to require that any regulatory committee dealing with matters under Parts 2, 3, or 3A of the Commerce Act includes at least two commissioners with that expertise. Proposed section 20(2)(b) should be strengthened so that the board conducts recruitment and makes a formal recommendation to the Minister before any appointment is made, with the Minister required to either follow that recommendation or provide reasons to Parliament for departing from it.**

6. APPOINTMENTS TO THE GOVERNANCE BOARD NEED INDEPENDENT SCRUTINY

6.1 The governance board is responsible for holding the Commission to account for the exercise of regulatory power. A board that lacks relevant expertise cannot discharge that function. The Bill applies standard Crown Entities Act appointment provisions to governance board members. There is no requirement that the expertise of a competition regulator's board be specified, and no independent scrutiny of appointments.

6.2 In *Who Guards the Guards*, we described the FMA's appointment practice: the FMA board identifies skill needs, the chair discusses these with MBIE officials, and both participate in candidate interviews before the board makes recommendations to the Minister.²⁷ The practice is informal, not codified in the Financial Markets Authority Act 2011, and does not involve either independent scrutiny or a published skills matrix. It has nonetheless been more rigorous than the Commerce Commission's.

6.3 Yet, as our survey evidence shows, that has not been enough. In *Reassessing the Regulators*, we documented material declines in the FMA's ratings between our 2017 and 2021 surveys on precisely the metrics that robust appointment processes are meant to support: transparency and robustness of leadership appointment processes fell from 60% to 41.2%, learning from mistakes from 66.7% to 38.5%, and internal

²⁶ Reserve Bank of New Zealand Act 2021 (NZ), Schedule 3, cl 9.

²⁷ *Who Guards the Guards*, op. cit., 30.

accountability from 60% to 33.3%.²⁸ Informal practice is vulnerable to drift, even when the starting point is sound.

- 6.4 The governance board needs two distinct forms of expertise. It needs members with enough understanding of competition economics and regulatory practice to question the Commissioner panel's strategic decisions and hold the chief commissioner to account for the quality of the Commission's regulatory work. It also needs members with governance, commercial, and institutional leadership skills. Both profiles need to be specified, not left to the unguided judgment of successive Ministers.
- 6.5 Good governance structures will count for little if those responsible for governing are not up to the task.²⁹ Both *Who Guards the Guards* and *Reassessing the Regulators* recommended the creation of an independent agency to ensure all regulatory appointments are subject to independent scrutiny and a standardised process, including evaluation of candidates against a published skills matrix.³⁰ The United Kingdom's Commissioner for Public Appointments performs exactly this function across more than 300 public bodies including the UK Competition Markets Authority (the CMA). New Zealand has no equivalent.
- 6.6 **Recommendation: An independent appointment agency should be established to subject governance appointments to New Zealand's regulatory agencies to independent scrutiny against published skills matrices. The Bill should be amended to provide for the agency to scrutinise appointments to the Commerce Commission. For governance board appointments, the agency should oversee the appointment process directly. For commissioner appointments, the governance board should conduct recruitment in accordance with the recommendation at paragraph 5.9, with the agency providing pre-appointment scrutiny against the published skills matrix before the Minister makes the appointment.**

7. GOOD GOVERNANCE REQUIRES BETTER EXTERNAL MONITORING

- 7.1 The external monitoring of regulatory agencies is not working. In its 2014 report, *Regulatory Institutions and Practices*, the Productivity Commission found that external monitoring of regulatory agencies has serious shortcomings, with monitoring overly focused on procedural compliance and insufficiently focused on strategic performance.³¹ It recommended a peer-review process to address the problem. The government did not accept the recommendation.

²⁸ *Reassessing the Regulators*, op. cit., 28–29.

²⁹ *Reassessing the Regulators*, op. cit., 36

³⁰ *Who Guards the Guards*, op. cit., 79 (Recommendation 6); *Reassessing the Regulators*, op. cit., 36 (Recommendation 4).

³¹ New Zealand Productivity Commission, *Regulatory Institutions and Practices* (Wellington: New Zealand Productivity Commission, 2014), 11.

- 7.2 The RBNZ illustrates what follows when effective external monitoring is absent. Parliament adopted the board governance model for the RBNZ following the Initiative's 2018 recommendation. *Reassessing the Regulators* observed a meaningful improvement in the RBNZ's performance ratings in our 2021 survey and suggested the governance reform had contributed to that improvement.³² Since 2021, however, concerns about the RBNZ's prudential regulatory decision-making have mounted, and the board has not demonstrably held the Governor to account for them. As the Initiative and others have long argued, one reason is that the RBNZ board and Financial Policy Committee have lacked the specialist prudential expertise needed to interrogate the executive's regulatory decisions effectively.³³ The other is that no independent external body exists to assess whether the RBNZ is performing its regulatory functions well. The same risk applies to the reformed Commerce Commission.
- 7.3 The Bill does not provide any mechanism for independent periodic review of the Commission's regulatory performance. The annual State of Competition Report introduced by the Bill is the Commission reporting on itself. The Commission's stakeholder survey, conducted annually by TRA on behalf of the Commission from a sample drawn from the Commission's own stakeholder lists, is the Commission's primary evidence of how it is perceived.³⁴ In 2025, that survey reported improvement in communication and engagement. On the two substantive measures, performance in role overall and performance in decision-making both returned to their 2022 levels. Among Infrastructure regulation stakeholders, covering electricity, gas, and airports, performance in role overall fell 8 points and decision-making fell 8 points. The improvement was in how the Commission communicated, not in what it decided.
- 7.4 Our 2012 survey told a different story. The survey measured regulatory performance against 23 key performance indicators ranging from clarity of objectives and commercial understanding to predictability of decision-making and external accountability. On average, only 29.9% of respondents agreed or strongly agreed that the Commission met the KPIs, while 38.5% disagreed or strongly disagreed. The contrast with the FMA was stark: 58.5% of respondents agreed or strongly agreed that the FMA met the KPIs, and only 20.2% disagreed or strongly disagreed.³⁵ The select committee faces two different pictures and no independent basis on which to

³² *Reassessing the Regulators*, op. cit., 35–36.

³³ Roger Partridge, "Submission to the Finance and Expenditure Committee on the Inquiry into Banking Competition, op. cit.

³⁴ TRA, *Understanding Stakeholder Perceptions: Commerce Commission Stakeholder Survey 2025* (Wellington: Commerce Commission, 2025), 4.

³⁵ *Reassessing the Regulators*, op. cit., 7 and 24.

assess which is more accurate, because no independent body exists with the mandate, expertise, and independence to make that assessment.

- 7.5 The Initiative has recommended since 2018 that an independent body conduct triennial reviews of the Commerce Commission, FMA and RBNZ, reporting to Parliament on regulatory strategies and performance.³⁶ We proposed the Productivity Commission as the vehicle. Parliament did not act on that recommendation, and the Productivity Commission was disestablished in February 2024. In our September 2024 submission to the Finance and Expenditure Committee on banking competition, we updated the recommendation to identify the Ministry of Regulation as the appropriate vehicle, noting that its whole-of-government perspective and focus on best regulatory practices positioned it to provide the kind of strategic performance assessment that has been lacking.³⁷[^34]
- 7.6 The Ministry of Regulation does not currently have the statutory mandate, specialist expertise, or independence protections to conduct this function. Legislative change is required. The principle is straightforward and has an established model: Australia's Financial Regulator Assessment Authority (**the FRAA**), created by its own statute in 2021 following the Hayne Royal Commission, assesses the effectiveness and capability of the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority and reports to Parliament.³⁸ It is explicitly precluded from commenting on individual enforcement actions or regulatory decisions, assessing overall effectiveness only. Four FRAA reviews have been completed; all recommendations have been accepted by the relevant regulators. Australia's Financial Regulator Assessment Authority does not extend to the Australian Competition and Consumer Commission. The approach proposed here therefore applies a single external assessment body to competition, prudential and financial conduct regulators together – a coherent framework that enables benchmarking and systematic improvement across New Zealand's three major economic regulators.
- 7.7 The Rebstock Review made no recommendation for independent periodic external review. Its Recommendation 30 asked only that MBIE closely monitor the business transformation the Review proposed.³⁹ That is a transitional implementation check, not a standing accountability mechanism for the Commission's regulatory performance. The Bill follows Rebstock's lead and goes no further. The select committee has the opportunity to go further than Rebstock.

³⁶ *Who Guards the Guards*, op. cit., 79 (Recommendation 5); *Reassessing the Regulators*, op. cit., 36 (Recommendation 5).

³⁷ Roger Partridge, "Submission to the Finance and Expenditure Committee on the Inquiry into Banking Competition," op. cit., Recommendation 6.

³⁸ Financial Regulator Assessment Authority Act 2021 (Cth).

³⁹ Rebstock Review, op. cit., Recommendation 30.

7.8 **Recommendation: The Bill should be amended to require the Ministry of Regulation to conduct periodic reviews of the Commerce Commission’s regulatory strategies and performance, reporting to Parliament on its findings no less than once every three years.**

8. PROPOSED SECTION 11 SHOULD BE NARROWED

8.1 The existing Commerce Act does not set out the Commission’s functions in a single general provision. The Commission’s statutory functions are currently conferred by specific provisions scattered across the Commerce Act and its other empowering legislation – for example, section 49 (the Part 3A market studies functions provision), Parts 2 to 4 of the Commerce Act (anti-competitive conduct, mergers, regulated goods and services), and the Fair Trading Act, Grocery Industry Competition Act, and Telecommunications Act.

8.2 Proposed section 11 consolidates these into a comprehensive list of eight functions and adds new functions the Commission has not previously had in statute, including (at paragraph (b)) a broad function to carry out “reviews, studies, and inquiries in relation to competition, markets, and consumer interests” for purposes that include “analysing the state of competition and its own impact” and “making recommendations to the Minister to promote competition in markets, including recommendations for regulation.”⁴⁰

8.3 That function is inconsistent with the National-ACT coalition agreement commitment to “reform market studies introduced by the Commerce Amendment Act 2018 to focus on reducing regulatory barriers to new entrants to drive competition.” The Initiative’s February 2026 submission on the companion Commerce (Promoting Competition and Other Matters) Amendment Bill argued that the Commission’s market study powers should be confined to identifying and recommending the removal of regulatory barriers to entry and expansion, consistent with that commitment.⁴¹ Proposed section 11(1)(b) in this Bill cuts against the same commitment at the functional level.

8.4 This Bill and its companion together reshape the Commerce Commission. The companion Bill expands the Commission’s procedural powers for market studies under Part 3A. This Bill expands the Commission’s functional mandate at the level of core statutory purpose. The two expansions move in the same direction. Neither is consistent with the coalition commitment.

⁴⁰ Commerce (Commerce Commission Reform) Amendment Bill 2026 (NZ), cl 5 (proposed s 11).

⁴¹ The New Zealand Initiative, "[Submission to the Economic Development, Science and Innovation Committee on the Commerce \(Promoting Competition and Other Matters\) Amendment Bill](#)" (12 February 2026).

8.5 The functional mandate in proposed section 11(1)(b) directs the Commission toward making recommendations for the imposition of regulation. It does not expressly direct the Commission toward identifying and recommending the removal of regulations or changes to non-regulatory government actions that restrict competition. That is a gap, and it matters. The Commission is less expert in the design of regulation, outside of its existing Part 4 functions, than it is in assessing whether restrictions constitute a substantial lessening of competition. The Commission's most valuable contribution to competition in New Zealand is often likely to be the identification of regulatory, policy, and procurement practice barriers that are restricting entry and expansion, not the design of new regulatory frameworks. The Ministry for Regulation could then determine whether alternatives could effect a desirable public purpose with less harm to competition, or whether the harms to competition from any possible regime exceed the benefits sought by the regulatory, policy, or procurement regime. The Commission's functional mandate should reflect that priority.

8.6 **Recommendation 5: Proposed section 11(1)(b) should be amended to direct the Commission's review, study, and inquiry function toward identifying regulatory, policy, and government procurement practices that create substantial barriers to entry and expansion in markets. In any event, proposed section 11(1)(b)(ii) should expressly cover recommendations to identify regulation and non-regulatory public policies that restrict competition.**

9. CONCLUSION

9.1 The Commerce Commission Reform Amendment Bill is the most significant governance reform of the Commission since its establishment. The Initiative supports it. The structural separation of governance and regulatory decision-making, with mandatory delegation to commissioner committees, addresses the core weakness our research identified in 2018. That reform is long overdue, and the Government deserves credit for acting on the Rebstock Review's findings.

9.2 The Bill will not deliver the improved regulatory performance that New Zealand's businesses and consumers need if the people appointed to the reformed structure lack the right expertise and no independent body holds the institution to account from outside. Structural reform creates the conditions for improvement; it does not guarantee it.

9.3 The five recommended amendments are:

- First, remove the chief commissioner and deputy chief commissioner from governance board membership, completing the separation of governance and regulatory functions that the Bill's own design intends.

- Second, require at least three members of the commissioner panel to have competition economics expertise and any regulatory committee dealing with matters under Parts 2, 3, or 3A of the Commerce Act to include at least two commissioners with that expertise, and adopt the two-stage appointment process used for external MPC members under the Reserve Bank of New Zealand Act 2021.
- Third, establish an independent appointment agency to subject governance appointments to New Zealand’s regulatory agencies to independent scrutiny against published skills matrices, addressing the gap in appointment quality that even the FMA’s informal practice has not been able to sustain.
- Fourth, task the Ministry of Regulation with conducting periodic independent reviews of the Commerce Commission, FMA and RBNZ, reporting to Parliament.
- Amend proposed section 11(1)(b) so that the Commission’s review, study, and inquiry function is directed toward identifying whether existing regulatory, policy, and government procurement practices together effect a substantial lessening of competition, consistent with the coalition agreement commitment to focus market studies on reducing regulatory barriers to new entrants.

9.4 Governance structures, once enacted in statute, tend to endure. The Securities Commission model that the FMA replaced had been in place since 1978. Parliament now has a genuine opportunity to set the Commerce Commission on a new trajectory – one that matches the quality of its governance architecture to the quality of its decision-makers and the rigour of its external accountability. Accepting a second-best model at this stage risks entrenching it for another decade or more. The five amendments proposed in this submission are the means of avoiding that outcome.

9.5 The Initiative would be pleased to appear before the Committee to discuss any aspect of this submission.

ENDS