

25 November 2016

Ruth Dyson MP
Chairperson
Government Administration Select Committee
Private Bag 18041
Wellington 6160

Dear Ms Dyson

Commerce Commission Submission on the Electronic Interactions Reform Bill

1. We welcome the opportunity to submit on the Electronic Interactions Reform Bill. We confine our remarks to provisions relating to the Commerce Act 1986 and the Fair Trading Act 1986 ('the FTA'). We do not wish to be heard on this but are happy to assist the Committee further as required.

Changes to the Commerce Act

Statutory Notices

2. The Commission supports the changes to the Commerce Act proposed in clause 45. These changes will allow the Commission to serve statutory notices by email when issued for the purposes of the Commerce Act, Credit Contracts and Consumer Finance Act 2003 ('the CCCFA') and Telecommunications Act 2001.
3. The Commission can only issue a statutory notice when we consider that it is necessary or desirable for the purposes of carrying out our functions and exercising our powers under the Acts we enforce.
4. Recognising that this is a compulsory and extensive power, we take care when exercising the power and the decision to do so is made by the Commission after receiving appropriate information.
5. Currently, the Commission is required to serve statutory notices on a person by registered post, in person, or by leaving it at his or her usual or last known place of residence or business or any other address specified by him or her. Service by registered post has become problematic due to New Zealand Post's withdrawal of its registered post service, and we support the changes to modernise existing references to registered post to recognise service by post or courier service providing a system of recorded delivery. However, we note that clause 45(2) records at its conclusion that "*...it is sufficient to prove that the letter was properly addressed and posted*". However, given the amendment to include reference to courier services, we suggest that this might further reference provision of the letter to the courier service for delivery. For example, "*...it is sufficient to prove that the letter was properly addressed and posted or provided to the courier service for delivery*".

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6. We also support the addition of the option of service by email. Service by email is not currently contemplated in the Commerce Act and this is out of step with current business practice. The Commission regularly communicates with parties and their legal representatives by email before and following the issue of notices by post.

Compulsory Interviews

7. The Commission supports changes to allow compulsory interviews to be held by audio or audio-visual link. This may allow for more cost effective and timely investigations. We believe the requirement that both the Commission and the party agree to the interview by audio or audio-visual link is a necessary safeguard for both sides.

Changes to the Fair Trading Act

Statutory Notices

8. The Commission supports the changes proposed in clause 62. These changes are similar to proposed changes to the Commerce Act in clause 45 and will allow the Commission to serve statutory notices by email when issued pursuant to the FTA. However, we refer to our comments in paragraph 5 relating to the use of courier services and reiterate them in relation to the proposed amendment to the FTA.

Compulsory Interviews

9. The Commission would like to request changes to the Bill to allow compulsory interviews conducted pursuant to the FTA also to be held by audio or audio-visual link. We suggest language identical to clause 44 of the Bill.
10. This additional change to the FTA would make the changes to the Commerce Act and the FTA consistent in relation to both service of statutory notices and the conduct of compelled interviews.
11. We note that it is not unusual for an investigation to raise issues under both the FTA and the CCCFA. It is therefore important that, as far as possible, the Commission's statutory powers under each Act are consistent.

Conclusion

12. We hope this submission will be useful to your deliberations. If you require further assistance please contact Dáire Queenan, Advocacy Adviser at daire.queenan@comcom.govt.nz or (04) 924 3744.

Yours sincerely



Anna Rawlings
Commissioner