



# Annual Report

## 2021





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# Welcome from the Chair and the Chief Executive

## Te kupu maioha a te Heamana me te Kaiwhakahaere Mātāmua

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Tēnā koutou,

Kei te tino harikoa mātou ki te whakatakoto atu i te pūrongo ā-tau mō te tau 2020/21, heoi anō he mihi nui ki a tātau, mā te wāhi ngaro tātau e manaaki.

As New Zealand's competition, fair trading, consumer credit and economic regulatory agency, our overarching objective is to make New Zealanders better off. We work to ensure markets work well, so that consumers and businesses can participate confidently.

Each year we prioritise our efforts so we can focus on work that will have the greatest impact.

This year we carried out a market study looking into whether competition in the grocery sector is working well and, if not, how it can be improved. This important work continues in the current year with consultation and engagement. Our final conclusions and recommendations on how to improve competition in the market are due in March 2022.

In April 2021 cartel conduct became a criminal offence under the Commerce Act. In preparation for the change to criminalisation, we ran advocacy campaigns to make businesses and consumers more aware of what cartel conduct is. We also worked with the Crown Law Office, law firms and international agencies to ensure our cartel leniency programme remained fit for purpose following the change.

We have focused on traders' compliance with requirements to provide fair and accurate price information, and developed a range of online guidance to businesses, resulting in changes to website representations, packaging claims and communications with consumers.

Our work on setting a robust price-quality framework in the electricity sector has created a strong foundation for consistent and predictable price-quality determinations.

Our monitoring work during the year has highlighted consumers' reliance on telecommunications for work, play, and staying in touch with family and friends. But price is not the only thing New Zealanders care about, so we have also progressed our review of telecommunication retail service quality, and will continue to regulate number portability, interconnection with fixed-line phone services, and co-location on cell towers.

Over the year, we have prepared for several instances of law reforms: the fit and proper certification regime which is coming into force for directors and senior managers of consumer credit providers; proposed new responsibilities that strengthen Commerce Act prohibitions against large businesses taking advantage of their market power to reduce competition; and a new regulatory regime under the Fuel Industry Act to stimulate competition in the wholesale market for transport fuel and improve fuel price disclosure to consumers.

In the past year, the Government gave the Commission expanded responsibilities and increased funding. We've used the increased funding to build new functions, such as our role under the Fuel Industry Act, and expertise.

At the same time, we have remained agile to change, ensured that competition is preserved as New Zealand's commercial environment evolves, and engaged with consumers and businesses to understand the evolving regulatory landscape.

Along with our public-facing work, we have taken steps to enhance our culture and operating model, develop our data and analytic capabilities, and leverage our knowledge and expertise. Through increased engagement with Māori we are building our understanding of te ao Māori and what a Māori world view means for our work.

This year we have seen operating model and structural change through an internal programme called Fit for the Future. We have paid greater attention to the distinct, but interrelated, regulatory regimes we operate in (competition, fair trading, credit and economic regulation). This has meant opening the doors of our organisation for greater external engagement, strengthening our leadership, improving accountability and governance, and investing in the capabilities and capacity of our people so we can meet New Zealand's expectations of us.

Throughout 2020/21 with its challenges and change, we have continued to strive to make New Zealanders better off through our actions and deliver public value for New Zealanders in the work we do.



**Anna Rawlings**  
Chair



**Adrienne Meikle**  
Chief Executive

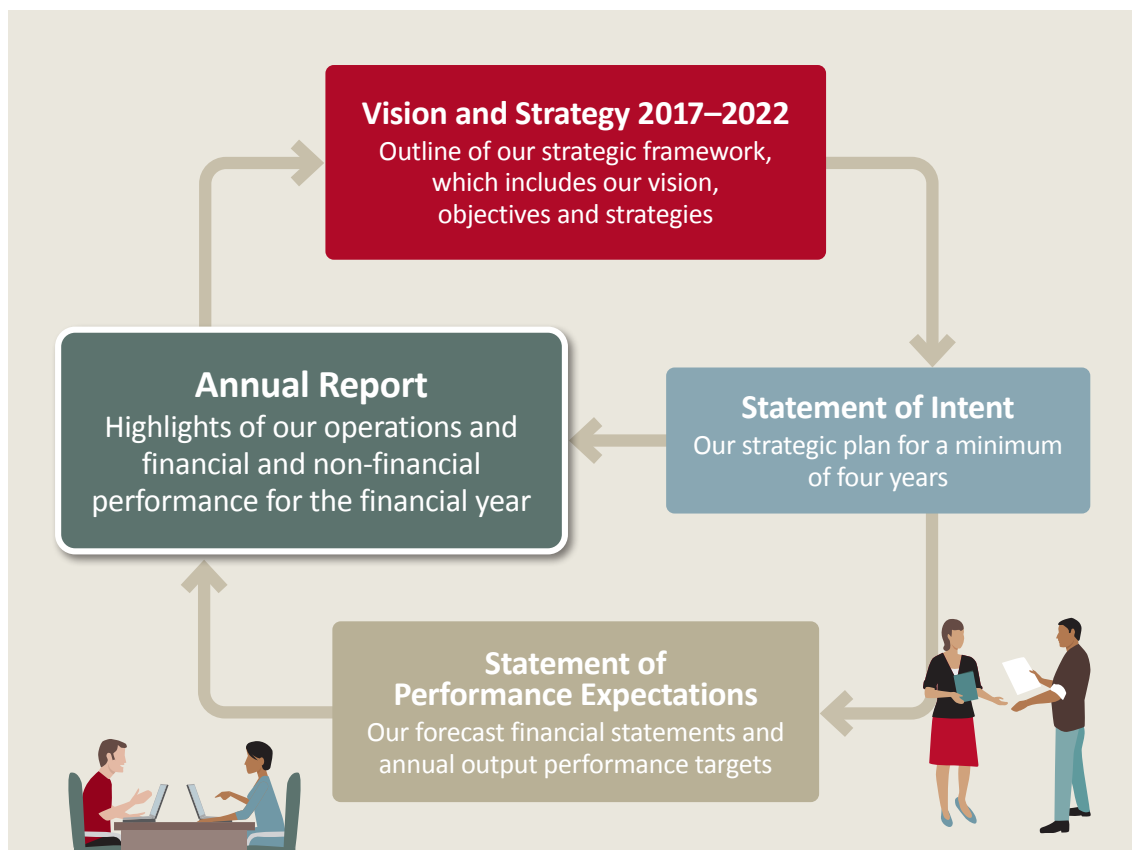


# Overview | Tirohanga Whānui

## Introduction | Kupu Whakataki

The Commerce Commission is New Zealand’s primary competition, fair trading and consumer credit and economic regulatory agency.

Our Annual Report<sup>1</sup> describes our performance over the past year and shows our progress against our strategic objectives. It details our performance against our accountability frameworks – as set out in our Statement of Intent 2020–2024 (SOI) and the performance measures and budgets in our Statement of Performance Expectations 2020/21 (SPE).



1. The Commission’s 2021 Annual Report is in line with the requirements of the Crown Entities Act 2004 and generally accepted accounting practice in New Zealand.

## Strategic framework | Anga Rautaki

Our vision is that New Zealanders are better off. We believe New Zealanders are better off when markets work well, and consumers and businesses are confident market participants. Our strategic framework brings together our vision, strategic objectives, strategies and values.

These make up our current vision and strategy for 2017–22.



The two strategic objectives that underpin our vision reinforce each other. We believe the more confidence consumers and businesses have in participating in markets, the better markets are likely to function; and that well-functioning markets help to ensure that consumers and businesses can participate in those markets with confidence.

To support our strategic objectives, we have three key strategies that drive our approach. Our strategies are to:

- seize opportunities to have the greatest impact
- protect, inform and empower consumers and businesses
- be trusted, influential and high-performing.

The first two determine what we are going to do and how we are going to do it. The third strategy sets out how we must shape our organisation to deliver on the other strategies. We engage our strategies when selecting our priorities across each of our main areas of work so they inform the work that we do to achieve our strategic objectives and our vision.

Our organisation's values form the foundation of our strategic framework. They guide the way we operate to implement our three strategies and how we will achieve our strategic objectives.

## 2021 priorities highlights | Ngā kaupapa tōmua, whakahirahira o 2021

In 2020/21, as we do every year, we identified priority areas to focus our activity and resources on the areas where we can add the greatest value.

Enduring priorities are the areas the Commission will always consider important because of their potential to significantly impact consumers, businesses or markets in Aotearoa New Zealand or because they are a core part of our statutory role.

These include credit issues, product safety and construction cases, cartel and anti-competitive conduct, mergers (including those that are not notified), and market studies. In addition, we always prioritise functions we are required to perform in critical infrastructure industries like Telecommunications and Energy.



### OUR ACHIEVEMENTS AGAINST

## Enduring priorities

Initiated a market study of the groceries sector, which included supplier and consumer surveys. The draft report was published in July 2021.

Published revised guidelines about how we assess applications to authorise agreements or mergers.

Produced guidance to help lenders, industry bodies, and consumer advocates understand the new Credit Contracts and Consumer Finance Act certification regime.

Completed a review of electricity distribution businesses' asset management practices to improve our understanding of this market.

Completed investigations and resolved litigation cases where lenders failed to comply with the Credit Contracts and Consumer Finance Act. As a result, more than \$33 million was returned to approximately 250,000 consumers.

### ACHIEVEMENTS AGAINST

## Organisational responsiveness

Launched our Fit for the Future programme to ensure the Commission can deliver on its vision and meet future challenges.

Implemented a new structure and operating model in April 2021 which provides clear accountability for end-to-end delivery of regulatory outcomes.

Continued to evolve and strengthen our engagement with consumers and businesses to ensure we connect with the people impacted by our work, hear what matters to them, and inform them about their rights and obligations.

Cabinet approved our levy funding proposals for the electricity, gas, telecommunications, and fibre appropriations.



## OUR ACHIEVEMENTS AGAINST

### Focus areas

Informed businesses and consumers about cartel conduct, which became a criminal offence in April 2021.

Issued a final determination of the customised price-quality path for Aurora Energy Limited.

Delivered key consumer protection measures outlined in the amended Telecommunications Act when we published the 111 Contact Code and the Copper Withdrawal Code.

Issued a warning letter and compliance advice to two electricity distribution businesses for contravening network quality standards due to excessive power outages.

Monitored lenders who offer high-cost loans and opened several investigations.

Issued a stop-now letter to the promoter of an alleged crypto-currency pyramid scheme.



## ACHIEVEMENTS AGAINST

### Supporting economic recovery

During the COVID-19 response, we assisted other government agencies to consider the potential competition impacts of their policy decision-making.

Engaged with businesses who wanted to work together to supply consumers with essential goods and services during the COVID-19 pandemic lockdowns.

Reviewed mergers and acquisitions including those that occurred because of changing circumstances, as changes to markets could affect sectors for years to come.

Took a pragmatic approach to enforcement of regulated businesses in the energy, telecommunications, and airport sectors, that were affected by COVID-19.

Continued to improve our understanding of the impact of the COVID-19 pandemic on competition, including engaging with industry associations and businesses to identify the most affected markets.

Engaged with public procurers and provided guidance about avoiding anti-competitive behaviour, like 'bid rigging', to help them achieve effective competition outcomes.

## Being Fit for the Future | Kia rite ai mātou mō te āpōpō

Rapid growth in our regulatory responsibilities in recent years (including additional functions, powers and duties in relation to fibre, market studies, consumer credit and the fuel industry) has coincided with increased expectations from New Zealanders and the Government about what we can deliver.

This has seen us change from a small to a medium-sized organisation in a relatively short period of time. We now have more than 280 staff, up from 180 five years ago. We expect this number to climb as we take up our new responsibilities, including those in relation to the fuel industry and credit certification, and as we strengthen our capability in relation to te ao Māori, data and analytics, and stakeholder engagement.

PwC, on behalf of the Ministry of Business, Innovation and Employment (MBIE), completed a review of our baseline funding in 2019 and found that the Commission was performing well and making efficient and effective use of its resources. However, PwC concluded that the Commission needed additional funding to strengthen its impact.

Alongside an increase in Crown funding approved in Budget 2020, this year the Government approved increases to funding for our activities in sectors that are funded through industry levies, in particular energy and telecommunications.

The Government recognised that investment is required to support our organisational growth and strengthen the impact of our work to make New Zealanders better off.

In 2020/21 we launched our Fit for the Future transformation programme to ensure the Commission is positioned to deliver on our vision and meet future challenges. Fit for the Future has increased our focus on governance and leadership, strengthened our capability and capacity and aligned the organisation's culture with the context we work in and our organisational strategies.

Through the programme we implemented a new structure and operating model which provides clear accountability for end-to-end delivery of regulatory outcomes. It included establishing three new regulatory branches – Competition, Fair Trading and Consumer Credit – which sit alongside our Economic Regulation Branch.

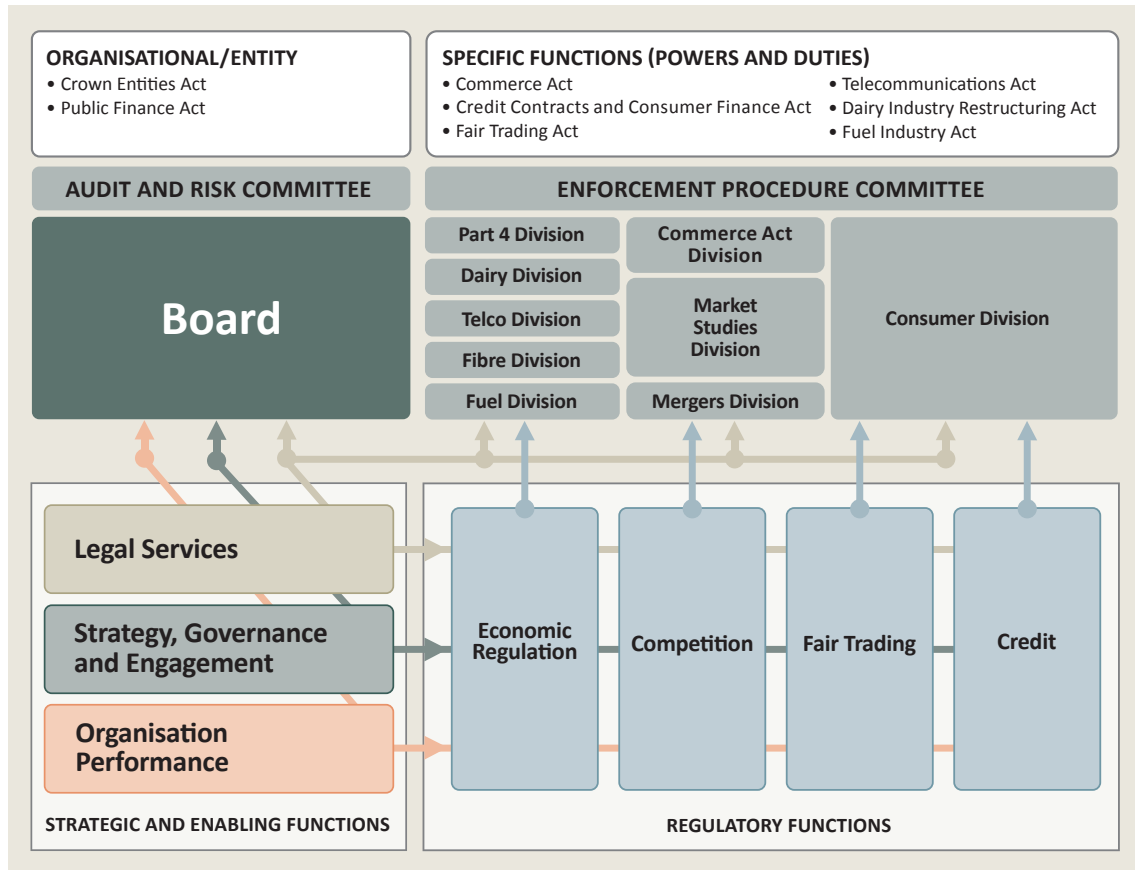
Each branch is responsible for working with Divisions of the Board to set and deliver the regulatory strategy for their areas of responsibility, ensuring the appropriate use of the regulatory tools available.

We have centralised our legal services function, bringing together two separate legal teams. One consolidated team benefits both the organisation and our lawyers and provides more opportunity for our legal staff to expand their legal expertise.

We have also established a Strategy, Governance and Engagement Branch to support the Board, organisational management, strategy setting, and performance reporting. This new branch will provide a more consistent voice and posture for the Commission, a more cohesive approach to contributing to law reform, more effective stakeholder engagement, and better data, analysis and insights to guide our decision making. It will also support the Commission to partner with Māori and bring a greater te ao Māori perspective to our work.

These changes have resulted in a broader Senior Leadership Team comprising our chief executive, the four regulatory general managers, and the general managers for Legal Services, Organisational Performance, and Strategy, Governance and Engagement. This year, the Senior Leadership Team has embedded the new operating model that came out of the Fit for the Future programme, building organisational capability, and making the organisation more adaptive and agile in the way it works.

The graphic below shows the Commission’s updated operating model with the new branches.



Another important initiative during the year was publication of the 2020-2024 Statement of Intent, which better reflects who we are in 2021. It has led to improvements in how we tell our story in the public domain and what that means for our organisational culture and values.

The new funding and our work on our operating model and direction will make us more sustainable and resilient. Our focus areas this year include:

- evolving our engagement with consumers and businesses so we can connect with the people affected by our work and hear what matters to them
- expanding our presence in Auckland to be closer to key stakeholders, particularly those in the credit sector
- building a more resilient and data-driven organisation
- strengthening our strategy and governance.

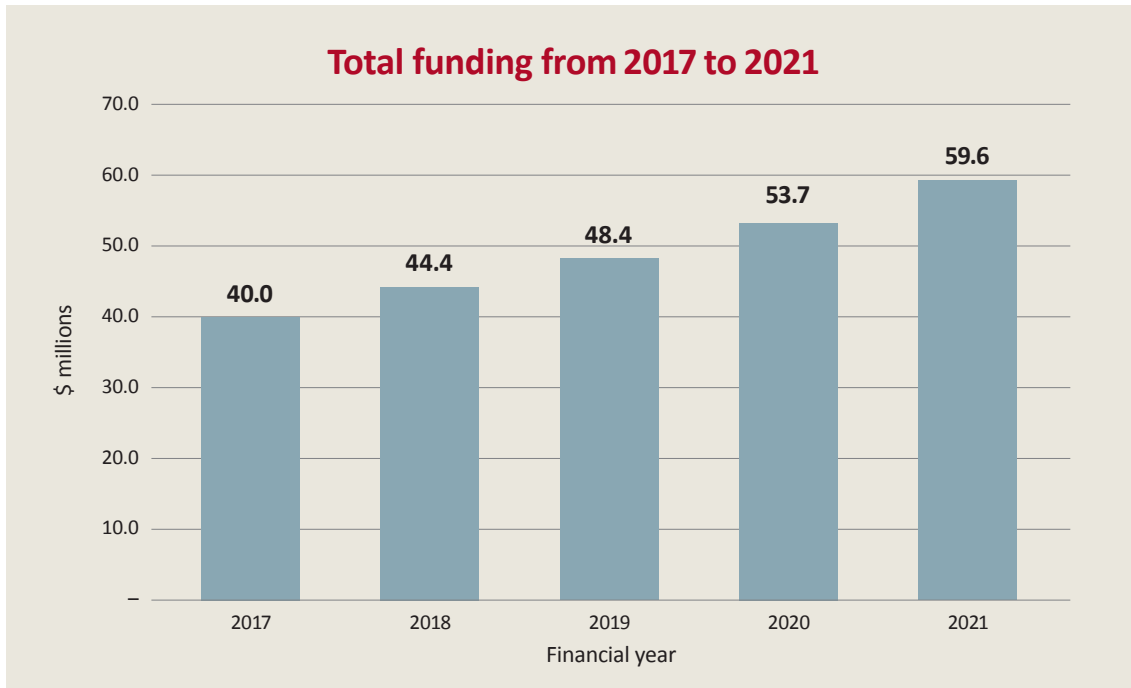


## Our financial story | Te kōrero taha pūtea

The Commission has experienced steady and consistent growth in both revenue and expenditure over 2017–2021, as activities have expanded to meet external demands.

An external review by PwC in 2019 provided the support and formed the basis for a subsequent increase in funding agreed by the Government in 2020. The first phase of this new funding started at \$7.034 million during 2021 (rising to a total Crown funding increase of \$13.9 million by 2024) and enabled the Commission not only to clear its forecast deficit, but to keep making the necessary investments to align capacity and capabilities with expectations.

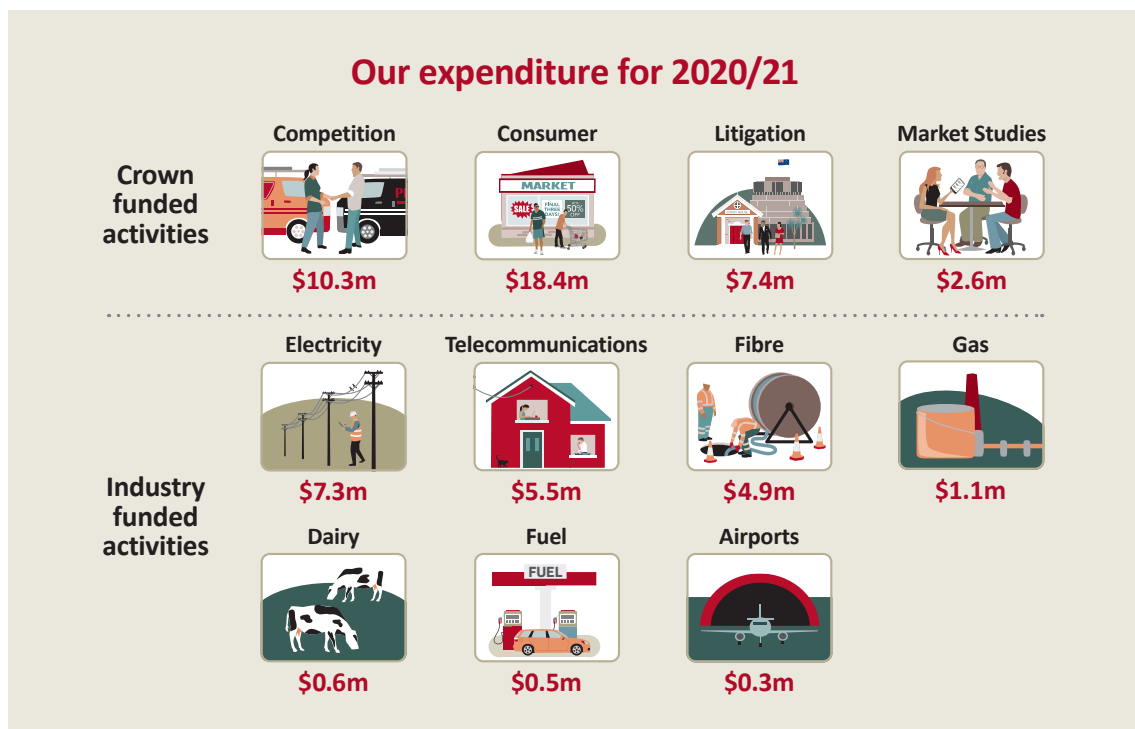
During 2020/21 we invested in the areas that will make us fit for the future.



Our activities are funded through a combination of revenue from the Crown (general taxes) and industry levies. Both revenue from the Crown and revenue from industry are provided to us from appropriations in the Commerce and Consumer Affairs and Communications portfolios under Vote Business, Science and Innovation.



Our expenditure for each output class in 2020/21 is shown below. Industry-funded activities are funded from levies on businesses (rather than being funded by the Crown); this appropriately limits which activities these funds can be used on.



In the 2021/22 financial year our funding and expenditure are budgeted to increase by 42% to \$84.4 million as the Commission scales up to deliver on our responsibilities in the fuel, energy and telecommunications sectors, which are funded from levies.

We provide more details of our financial performance in the 'Our finances' section of the report (page 75).

## Who we are | Ko Wai Mātou

### Our role | Te wāhi ki a mātou

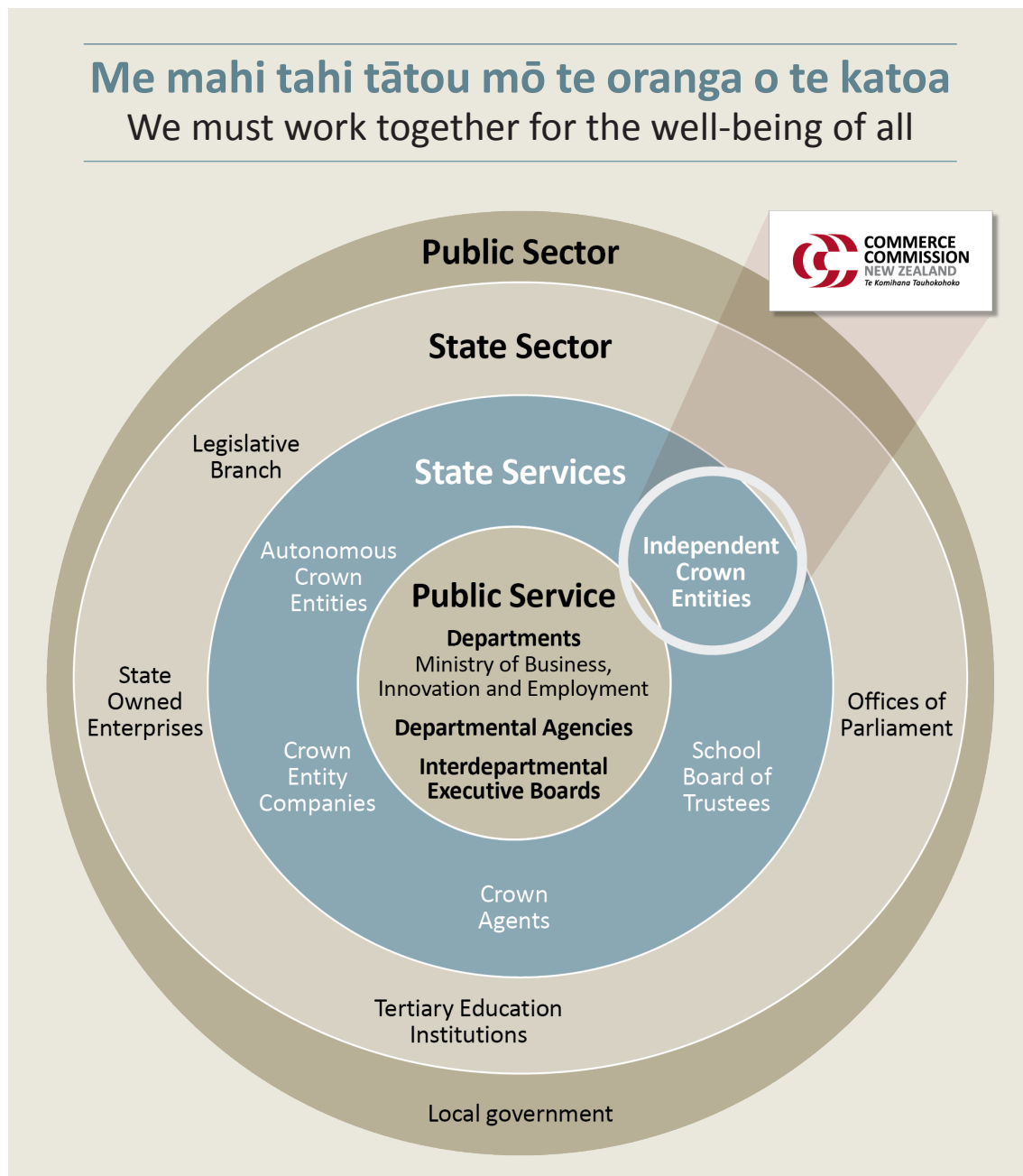
The Commission is New Zealand's competition, fair trading, consumer credit and economic regulatory agency.

We are an independent Crown entity with a Commission structure, meaning we have subject matter expert Commissioners who:

- exercise functions, powers and duties through Divisions (created by the Chair) under the Commerce Act 1986 and other Acts
- also operate as a Board under the Crown Entities Act 2004.

As an independent Crown entity, the Commission is part of New Zealand's state services, which sits within the wider public sector.

### Me mahi tahi tātou mō te ora o te katoa We must work together for the well-being of all



## Legislated responsibilities | Ngā haepapa ā-ture

We have responsibility for enforcing laws relating to competition, fair trading, and consumer credit contracts. We also have regulatory responsibilities in relation to the electricity lines, gas pipelines, telecommunications, dairy, fuel and airport sectors.

The key laws we are responsible for administering and enforcing are outlined below.



### Commerce Act 1986 (Parts 2, 3 and 5)

Prohibits anti-competitive behaviour and acquisitions that substantially lessen competition. It also provides for a clearance and authorisation regime for mergers and restrictive trade practices. Enables the Commission to carry out competition (or market) studies.

### Commerce Act 1986 (Part 4)

Part 4 provides for the regulation of price and quality of goods and services in markets where there is little or no competition, and little or no likelihood of a substantial increase in competition. Sectors that are currently subject to the provisions of Part 4 are electricity distribution and transmission, gas pipelines, and selected airports services.



### Credit Contracts and Consumer Finance Act 2003

Protects the interests of consumers in relation to consumer credit contracts, consumer leases and buy-back transactions of land. It includes provisions relating to disclosure and unforeseen hardship, and sets out rules about interest, payments, credit fees, responsible lending and lender certification.




### Fuel Industry Act 2020

Promotes competition in engine fuel markets for the long-term benefit of fuel users. It establishes a wholesale pricing regime, rules governing wholesale contracts, an information disclosure regime, and requirements for the display of price information at retail fuel sites.





### Fair Trading Act 1986

Prohibits false and misleading behaviour by traders and a range of other unfair business practices. It also requires that consumers are given specified information about certain products and promotes product safety.

### Telecommunications Act 2001

Regulates the supply of certain wholesale telecommunications services and the quality of retail services.



### Dairy Industry Restructuring Act 2001

Promotes the efficient operation of dairy markets in New Zealand by regulating the activities of Fonterra to ensure New Zealand markets for dairy goods and services are contestable.



## New or amended legislative responsibilities

Our regulatory responsibilities have grown significantly in recent years as each piece of legislation that we are responsible for has been amended or reviewed, and new legislation has been introduced.

During the financial year, amendments to the Credit Contracts and Consumer Finance Act 2003 relating to certification of directors and senior managers of consumer credit providers came into force. These are part of a broader suite of reforms to address lending practices, including irresponsible lending and the provision of high-cost short-term loans.

In April 2021, amendments to the Commerce Act took effect, making cartel conduct, including price fixing, market allocation and bid rigging, a criminal offence. Now businesses and individuals can be liable for criminal conviction and could face imprisonment for up to seven years. This is in addition to financial penalties that already existed.

Over the year, we worked with MBIE to develop regulations that put in place new regulatory responsibilities for the Commission under the Fuel Industry Act 2020, following completion of our 2019 retail fuel market study. The new regulatory regime, much of which took effect in August 2021, aims to stimulate competition in the wholesale market and introduces new rules to provide greater contractual freedom for resellers to compare offers and switch between wholesale suppliers.

Other policy and law reform activity the Commission was involved in during 2020/21 included the development of policy on retail payment systems (including credit and debit cards), amendments to the Fair Trading Act 1986 in respect of unconscionable conduct and unfair business-to-business contract terms, and country of origin labelling for single-ingredient and minimally processed foods.

## Strengthening our engagement with consumers and businesses

We continue to evolve and strengthen our engagement with consumers and businesses to hear what matters to them and to inform them of their rights and obligations.

**Grocery retail market study:** Our online consumer survey received over 12,000 responses from consumers across a wide range of demographics. We also researched the impact of various promotional mechanisms on consumer decision making and commissioned qualitative work to inform our understanding of consumers' behaviour when they shop for groceries.

**Cartels:** This year we prepared for the new cartel law and worked to educate businesses about the changes. We ran two media campaigns – on social media and news websites (using videos), and on radio – to make businesses and consumers aware of the potential for criminal liability for cartel conduct. We also ran webinars to educate businesses on the new criminal cartel regime.

**Certification for lenders and mobile traders:** To promote understanding of the new certification regime, the Commission issued guidance and promoted it through our database of 1,500 lenders, industry bodies, and consumer advocates. We also used partner-agency distribution channels and industry websites and newsletters to make the guidance widely available.

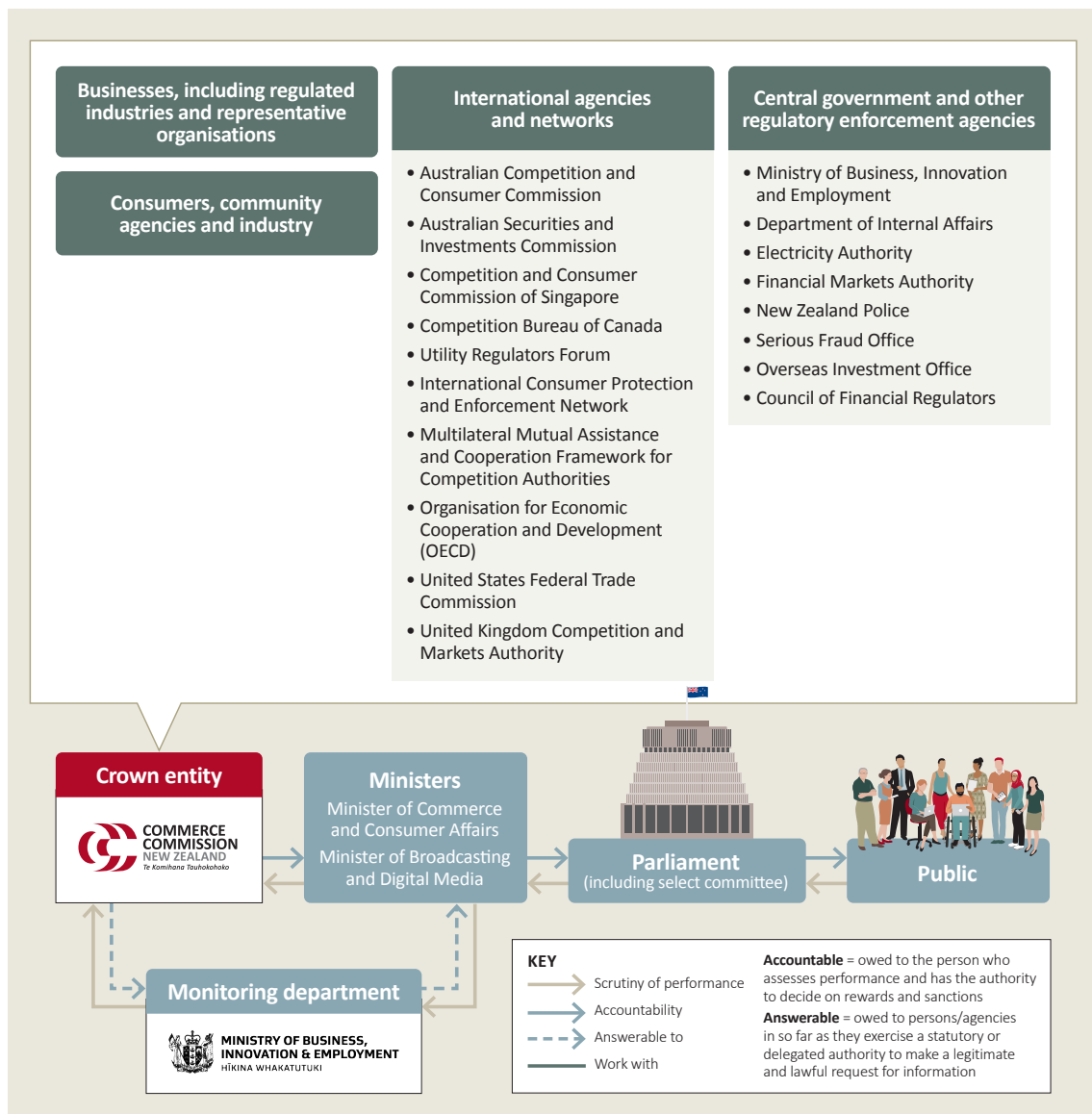
We launched an engagement programme that included contacting lenders who may not understand they need to be certified, and all mobile traders in our database to ensure they understand their obligations under the new certification rules. Specific training on certification was included in lender workshops and webinars, and in webinars for financial mentors and budget advisers.



## Independent but not alone | He tū motuhake, he tū huihui

As members of the public service, we are driven by a spirit of service to the community. Our overarching goal is to make New Zealanders better off. We aim to do this by playing our part in ensuring markets work well and consumers and businesses are confident participants in those markets.

Our independent Crown entity status is essential to our role as a regulator because it enables us to be an impartial promoter and enforcer of the law. As an independent Crown entity, we are not subject to direction from the government in carrying out our enforcement and regulatory activities. However, we are ultimately accountable to the Minister of Commerce and Consumer Affairs and the Minister for the Digital Economy and Communications for our performance. MBIE is our monitoring agency.



We work closely with MBIE because it is responsible for setting the strategy and providing Ministers with policy advice where appropriate.

The Commission helped establish, and now co-chairs, the Independent Crown Entities Forum. We drive consumer credit-related work at the Council of Financial Regulators, and actively participate in and promote the Government Regulatory Practice Initiative.

Internationally, we contribute to ongoing policy work on regulating cartels, which is coordinated by the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network.

Beyond Aotearoa New Zealand, we work and cooperate with the Australian Competition and Consumer Commission and the Utility Regulators Forum, the United States Federal Trade Commission and Department of Justice, the Competition Bureau of Canada, the United Kingdom's Competition and Markets Authority, and other partner agencies in the International Competition Network and the International Consumer Protection and Enforcement Network. In September 2020 we signed the Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities, joining other international competition agencies to enhance cooperation on competition enforcement.

At an operational enforcement level, we learn from, and contribute to, other enforcement and regulatory agencies, both domestic and international. In Aotearoa New Zealand, we work with the Financial Markets Authority, the New Zealand Police, the Consumer Protection team at MBIE, the Electricity Authority, the Civil Aviation Authority, and agencies such as the Ministry of Health, the Ministry for Primary Industries, the Serious Fraud Office, the Overseas Investments Office, and Medsafe.

We have Memoranda of Understanding with the New Zealand Police, Department of Internal Affairs, Electricity Authority and Financial Markets Authority.



# Our contribution to New Zealanders

## Tā Mātou Whai Koha ki Ngā Tāngata o Aotearoa

All our work contributes to our vision that New Zealanders are better off. This vision is underpinned by our strategic objectives that markets work well, and consumers and businesses are confident market participants. Our strategies support our strategic objectives and they drive the work programme across each of our main areas of work. Consistent with those strategies, we prioritised our efforts in 2020/21 to seize opportunities where we can have the greatest impact.

In the following sections, we describe our work and how we assess our impact.

The three main areas of work that the Commission undertakes in collaboration with many other parts of the public sector are:

- promoting competition in markets throughout the economy
- influencing monopoly infrastructure performance for better essential services
- tackling harm, including from unfair trade practices and irresponsible lending.

Before highlighting the key activities we have undertaken in each area, we outline the work we undertook this year to support economic recovery from COVID-19.



## Supporting economic recovery from COVID-19

### Te hāpai ōhanga i ngā pānga mai o kōwheori-19

Our work supports economic recovery by helping markets work well and enhancing consumer and business confidence as market participants. However, some aspects of our work are more significant than others in contributing to New Zealand's response to the COVID-19 pandemic.

The Commission's COVID-19 response has centred on supporting consumers and businesses to participate confidently in markets and enable ongoing supply of essential goods and services.

We received \$2.5 million of additional funding for the 2020/21 financial year to protect and promote competition in markets as part of New Zealand's economic recovery from the impact of COVID-19.

We helped policy makers consider the potential competition impacts of policy decision making during the COVID-19 response, and we have been involved in cross-agency working groups looking at the impact on some sectors, such as shipping supply.

With increased government attention on public infrastructure projects as part of the economic recovery, we engaged with public procurers about the value of effective competition outcomes and provided guidance on avoiding anti-competitive behaviour like bid rigging. In addition, we hosted a webinar and created a dedicated section about competition and procurement on our website.

In response to COVID-19, we increased our engagement with industry associations and professional bodies to understand the impact of the pandemic on competition in their sectors and the key competition issues impacting their members. We followed up with businesses who contacted us last year, during the first Alert Level 4 lockdown, about possible collaboration with competitors on the supply of essential goods and services. We talked with industries about the boundaries between lawful collaboration and harmful collusion.

The higher volume of business and consumer contacts and enquiries we received in the first quarter was partly from COVID-19-related issues such as complaints about flight and accommodation refunds and cancellations, health claims, and slow delivery, or non-delivery of products purchased online.

We reminded businesses about the need to let consumers know how COVID-19 Alert Level changes and supply chain disruptions could affect product delivery. We provided guidance and other information on a COVID-19 webpage. We warned a large retailer that we considered had breached the Fair Trading Act by making unreasonable delivery claims about products.

We issued information and compliance advice to businesses selling face masks they claimed were of a particular type and complied with an international standard. We reminded these businesses that products must comply with any standard or performance claims, and businesses must be able to substantiate those claims.

Strong and sustainable infrastructure is needed to enable businesses and consumers to respond to the impacts of COVID-19, for example, by working remotely. In 2020/21 we looked at the performance of infrastructure used in the supply of essential services.

We have taken a pragmatic approach to enforcement against regulated businesses in the energy, telecommunications and airports sectors that were affected by COVID-19; and we looked at how regulatory processes could be adapted in response to the ongoing impact of COVID-19 on regulated businesses. We extended timeframes for information disclosure by airports and an electricity distribution business, and published an open letter about the treatment of discounts. In response to queries from stakeholders impacted by COVID-19, we published guidance to help electricity distribution businesses navigate and understand the rules that set out a revenue cap and how it works.

## Promoting competition in markets throughout the economy

### Te whakatairanga i te whakataetae puta noa i te ōhanga

We believe competitive markets deliver long-term benefits to the economy. Competition between businesses contributes to:

- more affordably priced goods and services at the quality that consumers demand
- stronger incentives for businesses to innovate and make efficient use of resources
- higher-productivity jobs for New Zealanders.

#### INDICATOR

##### State of competition in Aotearoa New Zealand markets

The World Economic Forum publishes an annual Global Competitiveness Report, which includes Global Competitive Index rankings of over 140 countries across 103 indicators in areas such as institutions, infrastructure, market size and product markets. The Commission uses New Zealand's scores in 'the extent of market dominance' and 'competition in services' as a relevant indicator of markets working well.

The effects of COVID-19 caused the World Economic Forum to pause the comparative country rankings on the Global Competitive Index and instead prepares a report that looked at economic recovery from the pandemic.

The 2020 *Global Competitiveness Report*<sup>2</sup> notes that market concentration has been increasing in advanced economies, with large productivity and profitability gaps between the top companies and all others in each sector.

Historical results reported for Aotearoa New Zealand by the World Economic Forum indicate that the extent of market dominance has marginally decreased from 53.7 out of 100 in 2018/19 to 52.7 in 2019/20 and competition in services has increased from 72.2 out of 100 in 2018/19 to 73.1 out of 100 in 2019/20.



The Commerce Act empowers the Commission to assess whether business acquisitions might substantially lessen competition in relevant markets. Mergers can benefit the Aotearoa New Zealand economy by enabling businesses to compete more effectively through innovation, efficiency or scale. However, some mergers can harm competition to the detriment of consumers if they lead to substantially increased prices or lower-quality goods and services.

2. [TheGlobalCompetitivenessReport2020.pdf](#) page 30.

## CASE STUDY

### Merger enforcement activity

The Commission safeguards competition in markets by reviewing merger and acquisition activity to protect against mergers that substantially lessen competition.

#### *Voluntary merger regime*

Applying for merger approval through our clearance or authorisation regime is voluntary. The regime enables us to approve the right transactions while stopping those that can harm competition. Through our surveillance programme we consider the impact of a merger where businesses do not seek approval. If we believe a merger harms competition, we can take action to address any harm or potential harm.

#### *Clearance applications*

The Commission decided eight clearance applications in 2020/21 (compared to nine in 2019/20), featuring local and international transactions and a broad range of industries. We further developed our relationships with other competition regulators in Australia, the United Kingdom, the United States and the European Union through our work on international transactions.

We considered applications involving industries that directly impact New Zealanders, including the supply of human and animal pharmaceuticals, eggs, building materials (roofing and cement), plastic packaging recycling and manufacture, insurance, and live sports broadcasting. As a condition of granting clearance to mergers in the animal and human pharmaceuticals sectors, we accepted divestments of several pharmaceutical products, including those for the treatment of epileptic seizures and neuropathic pain, and the prevention and treatment of parasites in sheep and dogs.

In 2020/21 the Commission regularly engaged with businesses and consumers to understand how business acquisitions might impact market structures and New Zealanders' access to quality products and services at competitive prices.

We identified several mergers that occurred without clearance by the Commission. As a result, we opened investigations into acquisitions in the building consent software, animal rendering, and industrial gases industries this year.

Enduring  
priorities



Markets work well when businesses understand their responsibilities and competition is not undermined by anti-competitive arrangements.

In 2020/21 we tackled cartel arrangements that reduce or remove competition in markets by, for example, price fixing, output restrictions and market allocation.

## Cartel conduct now a criminal offence

In April 2021 cartel conduct became a criminal offence and individuals engaging in cartel conduct can now be sentenced to up to seven years in prison. This year we prepared for the new law by educating businesses about the changes. We ran two media campaigns – on social media and news websites (using videos), and on radio – to make businesses and consumers aware of the changes.



We also ran webinars for businesses on what cartel conduct is. We had strong engagement from interested parties at the sessions and with material on our website, including video guidance.

Our Cartel Leniency Programme is important to the detection of cartel conduct. If certain conditions are met, a participant in cartel conduct can receive immunity from civil proceedings or criminal prosecution if they are the first to inform the Commission about the cartel and cooperate with our investigation. Before the law change, we worked with the Crown Law Office, law firms and international agencies to ensure that our revised Leniency and Immunity Programme remained fit for purpose in light of the criminalisation of cartel conduct.

### CASE STUDY

#### Enforcement action against cartels

Being confident about shipping goods to and from Aotearoa New Zealand is important for both businesses and consumers. We investigated the conduct of key participants in the international freight forwarding industry. In proceedings currently before the courts, we allege that two companies agreed not to compete for one another's customers, with those proceedings also involving four individuals associated with the companies.

In another case related to freight, the High Court imposed a penalty of \$62,500 against Specialised Container Services (Christchurch) Limited and \$24,000 against its director for an attempt to reach an agreement with a competitor to impose a surcharge for the collection of cargo containers in Christchurch.

We believe that consumers have the confidence to participate in markets when they have access to information that helps them make informed decisions. New Zealanders are active users of digital platforms and rely on search engines such as Google. In 2020/21 we completed an investigation into whether some lenders had agreed to influence the search results for fast loans by not bidding for Google Adwords. Proceedings relating to this case are currently before the courts.

Enduring  
priorities



In addition to this advocacy and enforcement work, we have taken other opportunities to inform and educate businesses and government entities about the Commerce Act. For example, in December 2020 we published revised Authorisation Guidelines, which explain our approach to assessing applications to authorise agreements or mergers in the public interest where those agreements or mergers would otherwise breach competition laws.

## Grocery market study

Some markets may not perform as we would expect if competition were working well for consumers. Our market studies (also called competition studies) examine the factors affecting competition in particular markets. A market study considers whether competition is working well, and, if not, what can be done to improve it.

In November 2020 the Government directed us to conduct a market study into any factors that may affect competition for the supply or acquisition of groceries by retailers in Aotearoa New Zealand. Groceries are an essential purchase for all New Zealanders.

The Commission published a draft report on 29 July 2021 setting out our preliminary findings from the study. Our draft conclusion is that competition is not working well for consumers. The draft report indicated that if competition were more effective, retailers would face stronger pressures to deliver the right prices, quality and range to satisfy various consumer preferences.

During the study, we analysed consumer preferences, behaviour and perceptions. We used a range of research tools, to determine consumer preferences and the impact of pricing and promotional practices on consumer behaviour. These new tools enabled us to cross-check, and build on, the information we collected using more traditional means such as stakeholder interviews and submissions.

### CASE STUDY

#### Engaging with consumers for the New Zealand retail grocery market study

In March 2021 we conducted an online consumer survey hosted on our website. The more than 12,000 responses from consumers across a wide range of demographics gave us insights into where, how and why people shop where they do for groceries and whether this varies by location.

#### *Experimental economics*

We also engaged behavioural economists at the New Zealand Institute for Business Research at the University of Waikato through the Waikato Experimental Economics Lab to conduct research into consumer decision making under complexity. The research was conducted under controlled laboratory conditions using experimental methods which are common practice in the field of behavioural economics. The research helped us to understand the impact of the varying complexity of promotional mechanisms on consumer decision making. We found that more complex or numerous promotional mechanisms can make it harder for consumers to make the best purchasing decision.





### Qualitative research

A third piece of qualitative research work examined consumer shopping behaviour in real-life situations. We commissioned Ipsos to undertake qualitative research to help us understand consumers' behaviour when they shop for groceries. Participants from around the country prepared a 'grocery diary' and attended an interview or focus group.

Our preliminary findings about consumer preferences, behaviour and perceptions have informed some of the possible options and recommendations we have identified in our draft report.

Our final report, to be issued in March 2022 following consultation with stakeholders on our draft report, will set out the final findings of our study and our recommendations to the Minister of Commerce and Consumer Affairs to improve competition in the market.



## INDICATOR

In 2020/21 the Commission engaged Colmar Brunton to conduct our biennial business survey.

	2017	2019	Target	2021
Businesses are confident other businesses are complying with competition and consumer laws	New measure	63%	Maintain or increase confidence	<b>54%</b>

The decrease in confidence is attributable to fewer businesses, particularly in the primary production and distribution industry group, having confidence that other businesses are complying with competition laws in 2020/21 compared to 2018/19.

	2017	2019	Target	2021
Businesses understand their responsibilities under competition and consumer laws	63%	68%	Maintain or increase confidence	<b>63%</b>

Fewer businesses have a good understanding of their responsibilities, particularly under the Commerce Act and the Credit Contracts and Consumer Finance Act compared to the previous survey. In the 2020/21 survey, those operating in the business and finance sector typically more aware of their responsibilities under competition and consumer laws compared to businesses in the manufacturing and primary product industry group.

The Commission will work with businesses to explore new ways to educate them about their obligations under competition and consumer laws.



## **Influencing monopoly infrastructure performance for better essential services** | Te whakaaweawe i tā te hanganga tutukitanga kia pai ake ngā tino ratonga

We regulate the monopoly infrastructure aspects of the supply chain in specific essential services industries, like electricity and gas. In most cases, consumers cannot access these essential services using alternative infrastructure and the providers are therefore a monopoly. We use economic regulatory tools to promote outcomes consistent with those found in competitive markets so that consumers are not disadvantaged by the lack of competition.

Under Part 4 of the Commerce Act, we oversee a stable and predictable regulatory regime that enables investment in critical infrastructure for the long-term benefit of end-users. A stable regime that provides certainty is important to enable investment and innovation. The regime ensures that end-users receive appropriate levels of service quality while service providers make reasonable profits.

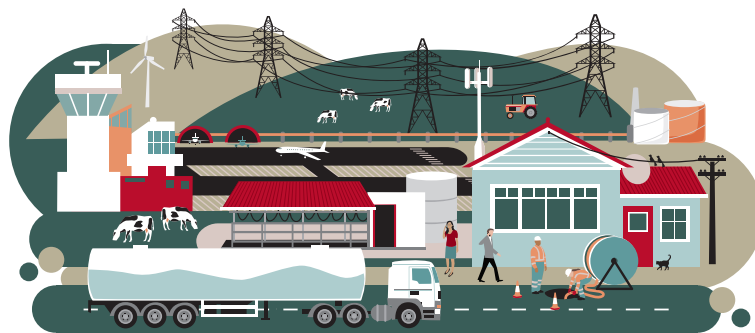
### **A changing operating environment**

The energy sector is going through a period of uncertainty driven by changes in technology, and factors such as the ongoing impact of COVID-19 and climate change policy.

He Pou a Rangi Climate Change Commission's 2021 report *Ināia tonu nei: a low emissions future for Aotearoa* outlines a decarbonisation pathway that may mean an increasingly significant role for electricity and a potential decline in the use of natural gas. The report also signals that significant change in investment levels will be required in the energy sector in the future.

The regulatory rules that we set under Part 4 of the Commerce Act can support the increased electrification of the economy by incentivising investment and innovation. Innovation will be important to ensure the adoption of new technologies, power demand management and successful integration of electric vehicles.

In April 2021, in an open letter to stakeholders, we started an engagement process to improve our understanding of how our regulatory frameworks can remain fit for purpose in light of change, and support the decarbonisation pathway for electricity networks and the wider energy system.



## Electricity networks

Electricity networks connect power generators to homes and businesses across New Zealand.

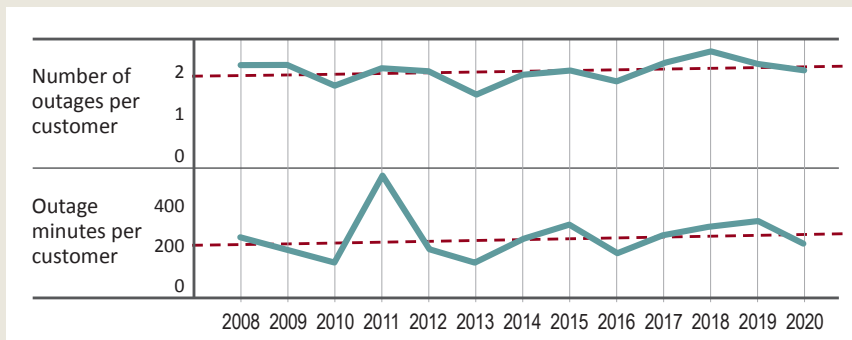
### INDICATOR

#### Regulated suppliers provide strong and sustainable infrastructure

As in previous years, the underlying infrastructure for electricity networks in Aotearoa New Zealand is generally delivering a reliable service to New Zealanders.

The reliability performance (outages) of an electricity network varies from year to year, as performance is impacted by factors within and outside of a network's control. This year we published our Trends in local lines company performance report, which included analysis of the reliability of service that customers receive.

The report found the average number of outages that each customer experiences has remained similar over time – there are more outages in total, but they tend to be smaller in scope, so affect fewer customers. We also found that outages tend to last slightly longer than they used to.



*Source of information:* December 2020 Trends in local lines company performance



Markets work well

#### A focus on asset management and network reliability

One of our enduring priorities is to gain a better understanding of key aspects of supplier performance (such as asset management in the electricity distribution sector) and share those insights with consumers and other industry stakeholders. Information disclosure is an important regulatory tool that incentivises improved performance of regulated businesses by making their performance transparent and visible. For example, through information disclosure regulation we set requirements for Transpower and all distribution businesses to publish information about their performance. Businesses must publish information such as data on prices, measures of quality, financial information, and forecasts of future expenditure (including planned investment in the network).

Electricity distribution businesses are required to make their asset management plans public under Part 4 of the Commerce Act's information disclosure requirements. We use the information from these plans when analysing asset management practices, setting price-quality paths and investigating non-compliance with quality standards.

The Commission publishes summary reports based on our analysis. These reports highlight examples of reporting and practices that electricity distribution businesses may consider when implementing and reporting on their asset management plans.

In July 2021 we completed a review of the asset management practices of electricity distribution businesses and published Reporting of Asset Management Practices by EDBs. The report describes the targeted review of five key areas of electricity distribution businesses' asset management practices that influence outcomes for electricity consumers.

The review encouraged electricity distribution businesses to improve their asset management plans, to acknowledge and explain adverse trends in asset performance and to detail the mitigating actions in their asset management plan disclosures.

During the year, we met with electricity distribution businesses to discuss our expectations relating to asset management. These engagements gave us valuable insights into their current practices and the challenges they face and will guide our assessment of network risks.

In 2020/21 we developed our use of summary and analysis, including publication of updated performance information for regulated local lines companies, and online resources to help consumers and businesses. These include one-page performance summaries that provide high-level statistics on each lines company's performance, and a performance accessibility tool that uses data visualisation software to present financial and asset condition information on each lines company.

## CASE STUDY

### Responding to Aurora Energy's proposal to fix its electricity lines network

In June 2020 Aurora Energy Limited applied for a customised price-quality path to recover \$609 million over five years to pay for necessary maintenance and replacement of assets on its network. The application followed historical breaches where Aurora did not meet required quality standards and performance on the network was declining.

After assessing Aurora's proposal we decided that it had made a case for a step-up in investment in its network. Without a customised price-quality path and the increased revenue it allowed Aurora to recover, its network would have deteriorated, safety incidents would have increased, and its customers would have experienced more and longer outages.

In March 2021 we issued our final decision and determination of the customised price-quality path. The assessment of the proposal was a priority piece of work for 2020/21 and involved targeted engagement with stakeholders and consumers.

In the final decision we:

- authorised Aurora to spend \$563 million over the next five years to address safety and reliability issues on its network (\$46 million less than Aurora had asked for)
- recognised the impact of the scale of price increases on consumers by capping Aurora's annual revenue increases at approximately 10% per year
- amended Aurora's quality standards for unplanned outages to better reflect the state of its network.

In August 2021 we released final decisions on enhanced reporting measures, through new information disclosure requirements designed to give customers and other stakeholders greater visibility of what Aurora is doing to address safety and reliability issues on its network.



## Addressing electricity network non-compliance

We hold networks to account when the level of electricity supply outages exceeds the limits we impose.<sup>3</sup>

We investigate breaches of quality standards when an electricity distribution business either self-reports a breach or we identify a breach through assessing the performance information provided. Compliance investigations involve a range of activities including review of information, independent expert assessments and on-site visits. After this, we may take no further action, issue compliance advice or warning letters, or undertake court proceedings. In deciding what action to take we consider the seriousness of harm, the seriousness of conduct, and the public interest.

In 2020/21 we issued a warning letter and compliance advice letter to two electricity distribution businesses for contravening network quality standards through excessive power outages. Both companies disclosed their contravention of quality standards and have subsequently changed their practices.

We are investigating historical breaches by four networks involving default price-quality paths, to ensure reliability risks are being properly managed.

### INDICATOR

The Commission uses results from the Electricity Authority's biennial consumer survey to measure its contribution to consumer and business confidence in regulated suppliers.

	2017	2019	Target	2021
Consumers are confident that regulated suppliers are providing services at an appropriate price and quality	Refer to Note 1	Refer to Note 1	Maintain or increase confidence	<b>Reliability</b> 64%
				<b>Efficiency</b> 65%

Results for 2020/21 are based on the Electricity Authority's refreshed consumer survey. Consumers were asked to rate statements based on the outcomes they could reasonably expect to see in an electricity market that is competitive, reliable and efficient.

**Note 1:** Results from this survey are not comparable with previous surveys because the questions asked and the scale used have both changed. Previous results can be found in our 2020 Annual Report. The results from this year form the baseline against which progress will now be measured.



3. As regulated monopolies under the Commerce Act, electricity distribution businesses are subject to price-quality regulation. Price paths set limits on the total revenue lines companies can earn, which affects how much consumers pay for lines charges in their electricity bills. Electricity distribution businesses are also subject to quality standards that set annual limits for the average number and duration of power outages that may occur.

## Gas networks

Regulated gas pipeline networks connect wells and storage tanks to homes and businesses across New Zealand. Gas pipelines are subject to price-quality regulation, and the price-quality path will be reset in 2021/22, with the new path to take effect from October 2022.

Gas networks are also subject to information disclosure regulation designed to provide transparency and visibility of the relative performance of individual businesses. Regulated gas pipelines businesses provide us with information as part of their disclosure requirements.

In 2020/21 we published information to help consumers and other interested stakeholders understand the performance of the four gas distribution businesses that we regulate.

The performance information allows consumers to compare gas distributors and provides an overall snapshot of the sector across a range of measures. The published information includes revenue and profitability, capital and operating expenditure, asset condition, and network reliability and service.

### INDICATOR

#### Regulated suppliers provide strong and sustainable infrastructure

Our view is that the operators of gas pipeline businesses are generally delivering strong and sustainable infrastructure for the benefit of New Zealanders.

The decarbonisation pathway<sup>4</sup> will mean a decline in natural gas use, and a potential future role for biogas and hydrogen. The gas industry is actively investigating the development of emerging fuels, such as hydrogen, as an alternative use of existing infrastructure, following the Government's decision to prohibit new offshore oil and gas exploration permits.

We have started engaging with industry to understand how our regulatory frameworks can support the decarbonisation pathway for gas pipelines, and how this may affect our upcoming gas default price-quality path reset process.



4. Discussed in relation to 'A changing operating environment' on page 24.

## Airports

Under Part 4 of the Commerce Act, New Zealand’s three international airports in Auckland, Wellington and Christchurch are subject to information disclosure regulations. Our focus under Part 4 is on reviewing pricing decisions to promote better understanding of airports’ performance.

Given the impact of COVID-19 travel restrictions on the aviation sector, we have exempted airports from some quality reporting (such as passenger surveys) and will assess Wellington International Airport’s price setting in 2022, rather than in 2021 as planned.

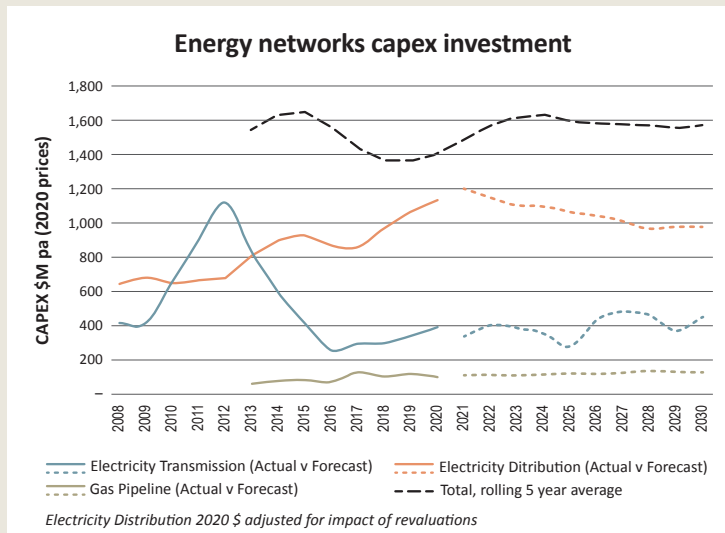
While the full impact of COVID-19 on both international and domestic air traffic is uncertain, there will likely be material impact on revenue for an unknown period. Airports are deferring capital projects and have strict cost management measures in place. Some airports have brought forward maintenance works while volumes are low.

### INDICATOR

#### Regulated suppliers are confident to invest in regulated assets

Based on a high-level assessment of available evidence, our view is that energy networks remain confident about investing in regulated assets, but airport investment is affected by the impact of COVID-19.

The current level of actual and planned investment in the energy networks sector is near or above historical levels, at around \$1.5 billion to \$1.6 billion a year (including the investment approved in Aurora Energy’s customised price-quality path proposal). This suggests the regulatory regime is providing incentives for investment. The impact of decarbonisation<sup>5</sup> is yet to flow through into investment plans for network assets.



We do not currently have updated data about forecast investment for all airports, but large programmes of investment have been deferred because of the impact of COVID-19. It is not clear what the long-term impact of the pandemic will be on airport investment, but the regulations that we administer do not appear to be a barrier to investment or innovation, and similar outcomes are observed in related competitive markets like airlines.



5. Discussed in relation to ‘A changing operating environment’ on page 24.

## Tackling harm from unfair trade practices and irresponsible lending | Te whakatau i ngā raru mai i te tauhokohoko huhunu

Tackling consumer harm helps to ensure New Zealanders have the confidence to participate in the economy as buyers or sellers of goods and services.

### **Better-informed purchasing decisions and mandatory product safety standards**

New Zealanders are better off when they are confident market participants. Consumers have confidence to participate in markets when they have access to information that helps them make informed purchasing decisions, they can assess whether businesses are trading fairly, and they feel the system is working to protect their interests. Our fair trading and product safety work supports consumer decision making and well-functioning markets by helping to make sure consumers are not misled when buying goods and services.

#### *Prioritising work for greatest impact*

We prioritise our efforts by focusing on areas where we can have the greatest impact.

We use a range of tools to encourage compliance with the Fair Trading Act, including investigations and enforcement action, such as prosecution. We also produce a wide range of information to empower consumers to know their rights and how to exercise them, and to inform and educate businesses on their obligations under the Fair Trading Act, including applicable product safety standards. We have visited children's toy suppliers to check compliance with standards and have engaged with consumers in the community to raise awareness of scams.

In response to complaints we have received, we have provided information, education and guidance to businesses, resulting in changes to website representations, packaging claims and communications with consumers. Engaging with businesses in this way can help to prevent ongoing or future non-compliance with fair trading obligations.

Consumer complaints are an important source of intelligence for the Commission. We use complaints to prioritise our work and to identify conduct that requires further investigation. The complaints we receive show us where consumers and businesses need more information and enable us to advise policy makers where the law is or is not working well for consumers or businesses.

The number of people contacting the Commission remained relatively steady throughout 2020/21. A higher volume in the first quarter partly related to COVID-19 issues such as refunds and cancellations for flights and accommodation, health claims, and slow delivery, or non-delivery, of products purchased online.

We engage with other consumer protection and regulatory agencies in Aotearoa New Zealand and overseas, as well as industry bodies and consumer groups. We provide advice to government policy makers about the laws we enforce.

In 2020/21 the Commission submitted on several proposed law changes relating to fair trading, including legislative proposals in relation to sunscreen standards, country of origin labelling for some foods, the introduction of a prohibition against unconscionable conduct, an amendment of the law prohibiting unfair contract terms to extend it to cover standard form small trade contracts.





### *Consumer and business confidence about pricing*

Under the Fair Trading Act, online and in-store representations about price must be clear and accurate and businesses must not mislead consumers about the size, or availability, of any discount or special price. Similarly, advertised savings must represent genuine savings, shelf prices must match checkout prices, and traders should be clear about any exclusions or conditions.

In 2020/21 we undertook compliance and enforcement activity relating to pricing practices. This included:

- proactively advising consumers about unclear pricing practices by issuing advice relating to surcharges over the Easter period and promoted sales events leading up to Christmas and Black Friday
- concluding the prosecution of PAK'nSAVE Mangere, which was fined \$78,000 for misleading customers when promoted special prices were not applied at the checkout
- starting a prosecution of Strandbags relating to claims about significantly discounted or special prices. We did this on the basis that we allege the claims may mislead the public about the size of discounts
- continuing with the prosecution of Bunnings, where we had alleged that its 'lowest prices' bases claims were misleading. Judge Gibson in the Auckland District Court found that the Commission had not proved its case against Bunnings, and dismissed all of the charges that we had filed. However, the judgment provides important clarification of the law relating to pricing claims.

### *Making accurate claims*

Advertising often claims goods and services are cheaper, superior or healthier, or provide particular benefits. In many cases consumers will not have the time, resources or ability to establish for themselves whether such claims are accurate, even when they use the advertised good or service.

Businesses must ensure representations they make are not false or misleading. They must be able to back up their claims with evidence that they have reasonable grounds to make the claims. Consumer confidence is undermined when consumers do not get what they were led to expect from goods or services paid for, and business confidence is undermined when compliant businesses are disadvantaged by the actions of others who do not comply with the Fair Trading Act.

Over the last year, we have concluded several prosecutions involving businesses and individuals that misled customers about the need for the services they provided or the nature of what was provided, or failed to deliver what was paid for.

Fines were imposed on three companies in 2020/21 for breaches of this type: a kitset building company and its director who took payments without reasonable grounds to believe the buildings could be delivered within a reasonable time; a fire safety business and its owner-managers who made false or misleading claims about fire safety requirements and the installation, servicing and maintenance of fire extinguishers; and a heat pump servicing company that falsely advised customers that their heat pumps would stop functioning correctly unless a 'top-up' was performed.

Prosecutions are an important tool for general deterrence and education of other businesses alongside the information we share with businesses, education we engage in, and warnings we issue to businesses for potential breaches of the Fair Trading Act.

In 2020/21 proceedings against the New Zealand Health Food Company concluded with a conviction for marketing its royal jelly supplements as having originated from Aotearoa New Zealand when they did not. This case is particularly important as the Commission prepares for new country of origin regulations for certain foods.

In December 2020 the Commission concluded the prosecution of an egg farmer who falsely labelled ‘caged’ eggs as ‘free range’ eggs. He was sentenced to 12 months’ home detention following conviction under the Crimes Act 1961 for obtaining by deception. Judge Field of the Auckland District Court in sentencing noted that the offending could “discredit an entire industry in the minds of consumers when they can’t be sure what they are buying is in fact the product”.

In 2020/21 we investigated The Safety Warehouse’s ‘cash drop’ promotion and issued a warning to the company in July 2021. We believe promotion of the event on social media and the company’s website was liable to mislead consumers by creating an impression that \$100,000 cash would be given away, when in fact only \$3,600 was given away, along with vouchers for goods and services that looked like \$5 notes.

In February 2021 Home Funding Group was [convicted and fined](#) for falsely claiming to offer a savings scheme to help low-income families buy a home. Rather than operating a savings scheme, the company applied customers’ regular weekly payments as fees for a brokerage and financial coaching service.

### *Pyramid schemes*

One of our priority focus areas has been preventing harm from pyramid schemes. Pyramid schemes are illegal and in recent years they have been more frequently reported to us. Participants pay into the schemes and then lose their contribution plus any additional expected payment. The financial harm can be significant.

In 2020/21 we investigated and assessed information about several pyramid schemes, and engaged with scheme promoters and participants to educate them and give them an opportunity to change their behaviour. Since then we have seen an increase in direct intelligence provided to us about pyramid schemes operating in communities, suggesting our actions have helped to raise awareness. We will do more work in this area because of its widespread potential financial impact on New Zealanders.



## CASE STUDY

### Certified products in the construction industry

Compliance code certifications and approvals issued by independent third parties provide confidence to users and consumers that building products will perform as expected.

A range of businesses and consumers involved in construction rely on certifications and approvals, including architects and engineers, who specify particular products should be used in a building, through to the construction companies that buy materials from wholesalers or retailers, and the building owners, who want confidence that their building is constructed from materials that will perform as expected. They rely on representations made about compliance with applicable standards and codes, because they are unable to directly verify the performance characteristics of building products themselves.

Our work relating to building products informed submissions that we made supporting aspects of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021. The Act creates a stronger CodeMark certification scheme, and requires suppliers of construction products to disclose information relating to installing, using and maintaining products, and to take reasonable steps to ensure the accuracy of the information they disclose.

This year, we concluded several prosecutions relating to misrepresentation of building product performance and compliance with applicable building requirements such as building standards or codes.

In July 2020 Euro Corporation Limited was fined for making false or misleading and unsubstantiated representations relating to its earthquake grade steel mesh products, known as SE615.

In November 2020 a fine of \$1.56 million was set down by the Court of Appeal against Steel and Tube Limited for false claims about concrete reinforcing steel mesh. Steel and Tube pleaded guilty to 24 charges of misleading and false representations in connection with its seismic grade steel mesh products, known as SE62 mesh.

In February 2021 Global Fibre8 Limited was convicted of falsely representing that its wall panel system complied with the New Zealand Building Code because it had CodeMark certification. The CodeMark certificate in fact related only to compliance with the Australian Building Code.

In May 2021 Masons Plastabrick Limited and CertMark International Pty Ltd appeared for sentencing in relation to misleading representations about the air barrier properties of a building wrap product, having both pleaded guilty to charges under the Fair Trading Act. Masons supplied the product and it was certified by CertMark. CertMark is New Zealand's most prominent CodeMark certifier and the first product certifier the Commission has prosecuted.



## Product safety

The Commission administers six product safety standards and eight unsafe goods notices issued by the Minister of Commerce and Consumer Affairs. Our work in this area is an enduring priority because of the potentially significant consequences of unsafe products, especially for children.

### CASE STUDY

#### Monitoring and enforcing product safety standards

In 2020/21 we worked to inform importers, distributors and retailers about their obligations in relation to product safety. When obligations aren't met, we issue warnings and prosecute in the courts.

Our 2020/21 programme of unannounced visits to retailers to identify toys that are not safe for young children resulted in [warnings](#) to four retailers and one importer. Two importers were [prosecuted](#) and non-compliant products were recalled and withdrawn from sale.

Over the year, we warned suppliers of further non-compliant products, including suppliers of hot water bottles, children's nightwear, cots, and bicycles.

In February 2021 a business that imports and retails toys was fined \$48,600 for supplying unsafe toys. We purchased five examples of various toys, which presented choking hazards during subsequent testing. Judge Wharepouri in the Manakau District Court found that the company had not familiarised itself with the applicable product safety standard. The company removed the products from sale and issued a recall for those it had already sold.



Consumers and businesses are confident

### INDICATOR

In 2020/21 MBIE commissioned the biennial national survey<sup>6</sup> of consumers, which the Commission uses to assess our contribution to consumer and business confidence.

	2017	2019	Target	2021
Consumers are confident that competition and consumer laws are being appropriately enforced	40%	30%	Maintain or increase confidence	37%

Consumers' confidence in the enforcement of consumer laws has largely recovered following the decline seen in 2018/19. The survey found that Pacific consumers, consumers with an annual household income between \$25,001 and \$50,000, and men are more likely to agree that the competition laws are adequately enforced. Consumers aged 67 and over are more likely to disagree that competition and consumer laws are being appropriately enforced.



Consumers and businesses are confident

6. <https://www.mbie.govt.nz/dmsdocument/14642-nz-consumer-survey-2020-report-pdf>

## Consumer finance that is safe, transparent and fair

Our work in relation to consumer finance and credit contracts aims to support the integrity of the lending system so that borrowers can be confident that lending markets are safe, transparent and fair.

We support consumer and business confidence by ensuring [lenders behave responsibly](#) and consumers have the [information they need](#) when making decisions to borrow.

The steps we take to provide information, education, engagement, and enforcement action help reduce harm to consumers caused by lenders who provide unsuitable or unaffordable loans, provide insufficient disclosure, or charge excessive loan fees.

We aim to ensure appropriate compensation is paid to affected customers and that lenders change their systems and processes to reduce the likelihood of similar conduct and harm occurring in the future.

### *Information, education and guidance*

The Commission has produced information and educational materials to improve understanding of credit laws, including the new [due diligence obligations](#) for directors and senior managers of lenders. Providing education and guidance helps directors and senior managers ensure that their organisation complies with its duties and obligations under the Credit Contracts and Consumer Finance Act.

As part of our preparation for the start of a new certification regime on 1 October 2021, we produced [guidance about the certification](#) to help existing and new lenders navigate the process. The certification sets a high standard for personal integrity and competence for directors and senior managers involved in consumer lending.

### INDICATOR

The biennial national survey<sup>7</sup> of consumers, which the Commission uses to assess our contribution to consumer and business confidence.

	2017	2019	Target	2021
Consumers are confident when accessing consumer credit <sup>8</sup>	New measure	83%	Maintain or increase confidence	<b>80%</b>

The 2020/21 survey found that consumers generally feel informed and confident when accessing consumer credit. The groups most likely to have entered into a credit contract include Pacific consumers, those aged 27–46 years, Māori consumers, those with an annual household income over \$100,000, and those in paid employment.

The survey found that most consumers feel confident they understood the agreement well enough to make an informed decision to enter into it, and that the lender considered their income and expenses when assessing repayments and ensured they were fully informed about the implications of the contract.



## CASE STUDY

### Certification for lenders and mobile traders

The Commission has created a [certification regime](#) for lenders and some mobile traders, with a view to ensuring their directors and senior managers are ‘fit and proper persons’ to perform their respective roles. The certification regime aims to lift compliance in the lending sector and provide greater protection for borrowers, by imposing standards of personal integrity for people involved in consumer lending.

To support the certification regime, and in [consultation with the public](#), the Commission has developed fit and proper person criteria that take into consideration other similar tests in Aotearoa New Zealand and overseas. The system for certification applications works with the Financial Service Providers Register to ensure a seamless process for applicants.

To ensure a fair, consistent and robust regime for consumer lenders and mobile traders, the Commission has developed an internal system and risk assessment tool for processing applications, along with a decision-making framework for making certification decisions.

In March 2021 the Commission sent [guidance](#) to our database of 1,500 lenders, industry bodies, and consumer advocates to promote understanding of the new certification regime. We used partner-agency distribution channels and industry websites and newsletters to make the guidance widely available.

We also launched an engagement programme that included directly contacting lenders who might not understand that they need to be certified, and all mobile traders in our database to ensure they understand their obligations under the new certification rules. Specific training on the certification provision was included in lender workshops and webinars, and webinars for financial mentors and budget advisers.

The new certification system, process and team went live on 1 June 2021. The certification regime and the Commission’s actions to promote and facilitate it will provide better protection for borrowers from harmful lending practices. It will ensure the senior people overseeing and managing organisations that provide consumer credit meet the required standards of probity and competence.

Focus areas



7. <https://www.mbie.govt.nz/dmsdocument/14642-nz-consumer-survey-2020-report-pdf>

8. This performance measure was incorrectly named in the current SOI as: Regulated suppliers provide strong and sustainable infrastructure that benefits New Zealanders. The target and prior year reporting in the 2020 Annual Report accurately reflects the measure.

## High-cost loans

During the year, high-cost loan rules were introduced to address harms caused by lending to vulnerable borrowers at very high interest rates. We monitored lenders offering [high-cost loans](#) and opened several investigations to assess their compliance with the new rules. Our monitoring and investigations helped to reduce consumer harm by increasing lenders' compliance with new rules relating to high-cost lending.

### CASE STUDY

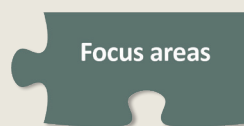
#### High-cost loan project

Monitoring during the year has improved our understanding of lenders who provide high-cost loans, where borrowers are charged interest rates of 50% per annum or more. [New rules](#) specific to high-cost loans applied from May and June 2020, including a cap on interest and fees at 100% of the amount borrowed and restrictions on repeat borrowing.

Our monitoring project followed high-cost lender education initiatives before the law changes, including publishing [high-cost credit guidelines](#) and holding online seminars for lenders. The project involved web-based research and examined sample borrower files for eight high-cost lenders. We found that the number of lenders providing high-cost loans declined from 21 immediately before the law change to six at the end of 2020. We believe there are three high-cost lenders operating as of June 2021. Some lenders have left the credit sector altogether, while others have reduced their loan interest rates below 50% and are therefore no longer classified as high-cost loan providers.

We subsequently [opened investigations](#) into several high-cost lenders, including the three who are still providing high-cost loans, to check their compliance with the new high-cost lending rules. We also opened investigations into two lenders who reduced their interest rates to below 50% but at the same time increased loan fees, to investigate whether they are capturing lost revenue through inappropriately increased fees.

Following our monitoring and investigation activity we have observed improved compliance with the new high-cost rules by those lenders who remain in the industry and provide high-cost credit.



#### *Enforcement and engagement under the Credit Contracts and Consumer Finance Act*

We completed investigations and resolved litigation in several cases where lenders had failed to comply with the Credit Contracts and Consumer Finance Act. As a result, more than \$33 million is being returned to approximately 250,000 consumers. We brought proceedings where lenders charged consumers unreasonable fees, resulting in compensation being paid to borrowers and a reduction in loan fees.

We engaged with banks in relation to the Credit Contracts and Consumer Finance Act, meeting regularly at senior levels with major banks and investigating potential failures to comply with consumer credit laws.

We completed four investigations into non-compliance with responsible lending, disclosure and fees obligations following errors that the banks reported to the Commission.

In August 2020 Kiwibank settled with the Commission after self-reporting that it failed to have robust home loan variation disclosure policies, procedures and systems in place. Kiwibank admitted it failed to act with the care, diligence and skill of a responsible lender, and agreed to pay more than \$5.2 million to more than 48,000 borrowers.

In December 2020 the Commission warned the Bank of New Zealand over likely responsible lending breaches and failures to provide timely and accurate information to almost 12,000 borrowers who had home loans, personal loans, or credit cards. BNZ self-reported the errors to the Commission.

In February 2021 ASB Bank agreed to a settlement with the Commission and pay \$8.1 million to affected borrowers. ASB Bank self-reported its breaches of lender responsibilities under the Credit Contracts and Consumer Finance Act after not adequately informing more than 73,000 customers about changes to their loans.

In June 2021 the Commission warned ASB Bank over likely responsible lending failures which resulted in borrowers being overcharged fees when they repaid their home loans early. ASB self-reported this error to the Commission and provided enforceable undertakings under which it agreed to pay \$8.9 million to affected consumers.

## CASE STUDY

### Enforcement action against unreasonable fees

During the year the Commission worked to resolve three cases that resulted in lenders reducing their fees and returning approximately \$10 million of overcharged fees to consumers.

These are the latest results from our fees-related work since the 2016 Supreme Court's ruling in the [Sportzone/MTF case](#) about the approach lenders should take when setting and charging fees.

These settlements not only ensure that borrowers do not suffer harm by being charged excessive fees, but also support competition in credit markets by ensuring that lenders compete on interest rates rather than profiting from unreasonable fees. It is important work because borrowers and competing lenders cannot readily identify if fees are unreasonable and unlawful.

During 2020/21 we worked on the largest of the three cases, which was resolved in August 2021, when [Harmony entered into a settlement agreement](#) with the Commission admitting that it charged unreasonable fees of up to \$1,500. The settlement ended proceedings originally filed in 2017. Harmony undertook to reduce its establishment fee to no more than \$165 for the next five years and to refund \$7 million to approximately 37,000 borrowers who had been overcharged since Harmony started trading in 2014.

In March 2021 the Commission entered into a [settlement agreement with UDC Finance](#), which acknowledged that it had charged unreasonable default fees and agreed to compensate borrowers. This settlement resolved proceedings filed in 2019.

In July 2020 we [settled with Moola.co.nz](#), with Moola.co.nz acknowledging our view that some of the credit and default fees it had charged were unreasonable. As part of the settlement Moola.co.nz agreed to refund a total of \$2.8 million to borrowers.





## Our work in the telecommunications industry

### Te mahi i roto i te ahumahi torotoro waea

Telecommunication services support New Zealanders in all aspects of their lives, and the ongoing impact of the COVID-19 pandemic means they are more important than ever to social and economic well-being.

The telecommunications industry provides a good illustration of the convergence of the Commission's infrastructure, competition and consumer work. Under the Telecommunications Act 2001, our role spans industry-specific regulation to promote competition and influence the performance of monopoly network infrastructure, along with a role in improving retail service quality and making information available in a way that informs consumer choice. In parallel, our role under the Fair Trading Act extends to advocacy and enforcement action relating to trade practices of telecommunications providers.

Our [2020 Annual Monitoring Report](#) highlights an ongoing reliance on telecommunications for work, play, and connecting with family and friends. The results show increasing data consumption across both fixed broadband and mobile, the accelerating migration from copper broadband connections to fibre and other access technologies, and increasing uptake of 'endless' or 'unlimited' mobile bundles. The report also shows that investment in the industry has continued during a period of regulatory transition.

Over the past year, telecommunications infrastructure has remained strong and investment levels have been maintained, providing for growth and resilience overall.

#### INDICATOR

##### Regulated suppliers provide strong and sustainable infrastructure

In 2020/21 we consider that suppliers of telecommunications networks (whether regulated or not) have generally delivered strong and sustainable infrastructure for the benefit of New Zealanders.

- **Fixed broadband usage:** In our 2020 Annual Telecommunications Monitoring Report, we saw average monthly usage increase by 77GB to 284GB across all fixed broadband connections. This usage represents a growth rate of 37% compared to our 2019 monitoring report, with the annual rate of growth in usage having increased from 15% in 2019.
- **Fixed broadband speed:** Aotearoa New Zealand ranked 12th in the OECD in our 2020 monitoring report, with average fixed broadband download speeds of almost 67Mbps. New Zealand's average fixed broadband download speeds exceeded those of Australia, Japan and the OECD average of 53Mbps.
- **Mobile broadband usage:** The average amount of mobile data consumed per connection is now 3.29GB per month. However, the rate of usage growth eased, with 20% growth in our 2020 monitoring report compared to 35% in our 2019 report.
- **Fixed wireless connections:** Fixed wireless connections have increased to 221,000, up 16% from last year. In our 2020 monitoring report, Aotearoa New Zealand ranked third highest among OECD countries for fixed wireless broadband connections, with 4.5 subscriptions per 100 people.
- **Copper transition:** We continue to see New Zealanders swapping from copper broadband connections to fibre and other new technologies, with copper connections dropping to 28% of total broadband connections. In addition, residential landline phones are declining in popularity, with more than half of household fixed-line connections now purchased with no voice service.

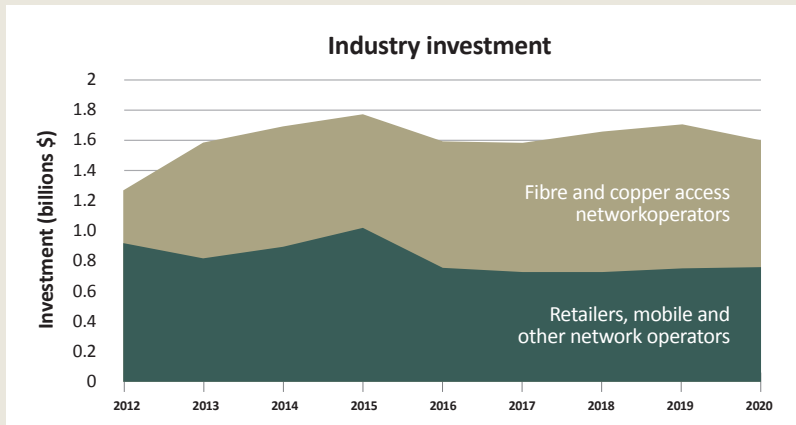


## INDICATOR

### Regulated suppliers are confident to invest in regulated assets

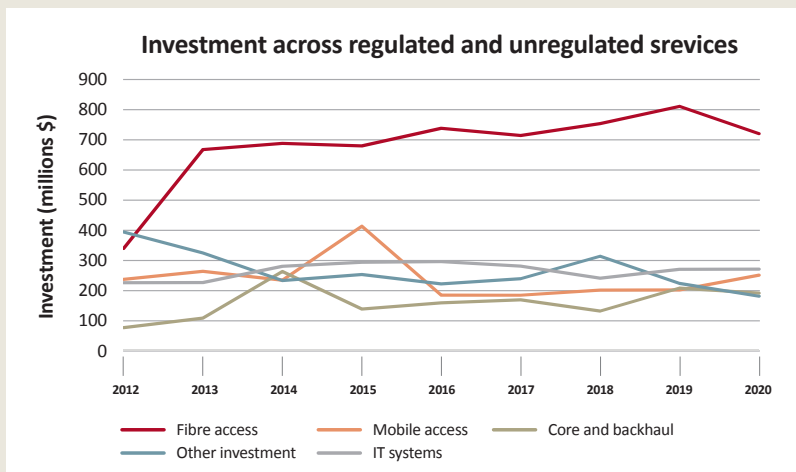
Our high-level assessment indicates that telecommunications providers of regulated services and in particular fixed fibre services (broadband) remain confident in investing under the regulatory regime.

In recent years, telecommunications industry investment has been led by Chorus and the local fibre companies, as shown below. However, with the ultra-fast broadband build now 93% complete, investment by Chorus and local fibre companies has dropped. This drop has led to overall investment decreasing 6% to \$1.61 billion in 2020.



**Source of information:** Commerce Commission Annual Telecommunications Monitoring Report 2020

The graph below shows investment across both regulated and unregulated services broken down by component.



**Source of information:** Commerce Commission Annual Telecommunications Monitoring Report 2020

In 2020 investment in the fibre access network decreased 11% to \$718 million, while investment in the mobile access network increased 24% to \$249 million. This lift in mobile access network investment is likely a result of the start of the 5G rollout. Investment in the core and backhaul network was down on last year to \$190 million, while IT systems investment was unchanged from last year at \$269 million. Other investment, which includes copper access investment, decreased 19% in 2020 to \$269 million.



## Establishing a stable and predictable fibre regime

Regulatory certainty and clarity are important in the current economic environment, recognising that fibre infrastructure has required extensive capital investment and will continue to do so as network demand increases.

In the first half of 2020/21 we finalised the framework of rules, known as input methodologies, for the new fibre regulatory regime. The input methodologies will help establish the type of stable and predictable regime for fibre that we already have for the energy networks and airports, while still recognising the unique characteristics of the telecommunications sector.

The new regime will provide the certainty that is needed to encourage investment and innovation at an appropriate level so that consumers have access to high-quality and affordable broadband services and providers make reasonable profits.

In the second half of 2020/21 we used the input methodologies to begin to establish the core components of the regulatory regime. We published draft decisions on price-quality and information disclosure regulation for fibre providers. The draft decisions applied the input methodologies we set in 2020 to determine a draft view on the maximum revenues Chorus should be able to take from its fibre network over the first regulatory period from 1 January 2022 to 31 December 2024 and the minimum quality standards it must meet, along with information disclosure requirements for Chorus and the other three local fibre companies. Information disclosure is designed to give consumers and other stakeholders visibility of the performance (including relative performance) of the fibre providers. The draft decisions are a step towards ensuring a smooth transition from the current contractual regime for ultra-fast broadband to the new regime that starts on 1 January 2022.

Alongside this work, we produced guidance on equivalence and non-discrimination. This gives interested parties more clarity on how we will approach and assess these obligations under the new regime.



## Transitional arrangements, including consumer protections

We put in place rules and processes during the year that protect consumers in the transition from copper to fibre and other new technologies. The following case study summarises the key consumer protections we introduced – the Commission 111 Contact Code and the Copper Withdrawal Code. These transitional arrangements, along with the core components of the new fibre regime, provide clarity to market participants and consumers about how the new fibre regime works, the obligations on industry, protections for consumers, and our role as a regulator.

### CASE STUDY

#### Safeguarding consumers transitioning from copper to newer technologies

The 111 Contact Code and the Copper Withdrawal Code were priority pieces of consumer protection work for us in 2020/21.

The 111 Contact Code was published in November 2020 and came into effect in February 2021. It sets out the requirements telecommunications service providers must follow to ensure vulnerable consumers have access to the 111 emergency service in the event of a power failure.

The 111 Contact Code requires providers to make information available to consumers about the need to have power to contact 111 when using newer access technologies such as fibre and fixed wireless. It mandates a mechanism for vulnerable consumers to apply to their provider if they are at risk of needing to call emergency services for health, security or disability reasons. Providers must take steps to ensure that vulnerable consumers can contact emergency services during a power cut, at no cost to the consumer.

The Copper Withdrawal Code, which was published in December 2020 and came into effect in March 2021, sets out the requirements that Chorus, the provider of New Zealand's copper telecommunications network, must meet before it can stop providing wholesale copper phone and broadband services.

The Copper Withdrawal Code ensures that Chorus can stop supplying copper services only where households can access the same services over the fibre network. It sets the rules that Chorus must follow, including the minimum notice consumers must receive, before copper can be withdrawn.



## Improving consumer outcomes for users of telecommunications services

The Commission is doing more work on improving consumer outcomes across the telecommunications sector, particularly in relation to retail service quality and market monitoring. In 2020/21 we progressed our retail service quality programme, began reviewing the Telecommunications Dispute Resolution Scheme and extended our measuring broadband programme (see the following case study). We also completed our review of mobile billing and maintained regulation for certain wholesale access services. Together, these activities addressed a wide range of issues that telecommunications consumers experience.

INDICATOR		
	Target	2021
Consumers are confident that regulated suppliers are providing services at an appropriate price and quality	Maintain or increase confidence	<b>78%</b> (mobile and fixed line)
<p>Results from this survey combined satisfaction across mobile and fixed-line services, rather than separately, so are not directly comparable with previous surveys. Previous results are available in our 2020 Annual Report.</p> <p>In 2020/21 we ran a joint telecommunications survey with Consumer New Zealand for the first time.</p> <p>The overall satisfaction result from the survey is used as a proxy for confidence in the telecommunications sector, including whether consumers are confident that services are being provided at an appropriate price and quality.</p>		



### *Retail service quality*

The Consumer Telecommunications Survey 2021 shows that, while overall satisfaction has remained relatively constant, there are gaps between industry performance and consumer expectations across a range of areas. This is also reflected in the number of consumer complaints to the Commission over the past year, when telecommunications remained one of the most complained about sectors. The main types of complaints we receive about telecommunications relate to retail service quality, including customer service, billing, and installation issues.

This evidence of consumer experience is one of the driving forces behind the expansion of the Commission's retail service quality programme in 2020/21. We have been using workshops with community groups, submissions from consumers and industry stakeholders, and our consumer survey to increase our understanding of the 'pain points' consumers experience with their internet, landline and mobile phone services. We intend to publish a baseline report in 2021/22 that will outline the specific areas of retail service quality we will prioritise, and then test potential solutions to the issues identified. The programme involves both industry workshops and consumer engagement activities.

Recently, we moved quickly to address some of the issues that we have identified by sending an open letter to telecommunications providers urging them to inform consumers better about alternative technology options as they transition away from copper-based services.

### *Review of Telecommunications Dispute Resolution Scheme*

A key component of ensuring that retail service quality meets consumer expectations is having an effective dispute resolution scheme that captures and addresses all issues that consumers are unable to resolve directly with their providers. This year we started our first review of the Telecommunications Dispute Resolution Scheme. The Commission is required to review the Scheme at least once every three years, and to report on any recommendations for improving it. Consumer awareness of the Scheme and its ability to address systemic issues and improve outcomes for consumers, and the complaint handling process are all important issues that we are considering in our review. We will also look at the governance arrangements and independence of the industry-funded Scheme. The review will lead to recommendations for improvements to the Scheme and set dates for when we expect to see those improvements implemented.

### *Measuring Broadband New Zealand*

We have had another successful year with our Measuring Broadband New Zealand programme. We published four quarterly reports on the comparative performance of different technologies, services and service providers and extended the contract with our independent testing provider, SamKnows.

## CASE STUDY

### **Measuring Broadband New Zealand to support consumer choice in telecommunications services**

Our broadband monitoring programme, delivered by independent broadband monitor SamKnows, provides consumers with independent information about broadband performance across different providers, plans and technologies, to help consumers choose the best broadband for their household. Providing accessible information about broadband performance also encourages telecommunications providers to compete on performance and not just price.

In 2020/21 we published four *Measuring Broadband New Zealand* reports, all of which showed that broadband connections across all technologies that we test performed well, despite increasing consumer demands for greater data volume and speeds. The Summer 2020 report in particular showed that the performance of Fibre Max plans had improved substantially following collaboration between the Commission, SamKnows and the industry to fix performance issues that our earlier reporting had identified with premium fibre plans. The intervention increased the average download speed of Fibre Max plans by more than 200Mbps, or 35%, compared to the Spring report. This brought performance into line with advertised speeds, with no noticeable dip in performance during peak hours, and smoothed performance differences across the country.



### *Mobile bill review*

Following our 2019 Mobile Market Study, which identified issues with transparency and inertia in the residential mobile market, we reviewed the bills of a representative sample of 80,000 mobile consumers over the course of a year. We found that many consumers have a significant mismatch between their mobile usage and the plan they are on and that many could save money by switching plans or providers. In April 2021, as a result of this work, the three mobile network operators made commitments to provide consumers with greater access to, and transparency of, their spending and usage information, and to promote the development of comparison tools to make it easier for consumers to compare plans and providers.

### *Maintaining regulation for certain wholesale access services*

In May 2021 we decided to keep regulation in place for three wholesale telecommunications services: number portability, interconnection with a fixed public switched telephone network, and mobile co-location. Maintaining a regulatory backstop for these services helps to promote competition and protect consumers. Each of these services is used by retail service providers to supply the most common retail telecommunications services to consumers.

## CASE STUDY

### **FibreX**

We also remain focused on the telecommunications industry in our fair trading work. The Commission prosecuted Vodafone for misleading marketing of its FibreX broadband service, which resulted in Vodafone New Zealand being found guilty of engaging in conduct that was liable to mislead consumers.

In April 2021 the Court ruled that Vodafone was guilty of nine charges under section 11 of the Fair Trading Act involving branding and advertising that was liable to mislead consumers into thinking that the FibreX branded service was delivered over a fibre-to-the-home network (like those services delivered over the government-subsidised Ultra-Fast Broadband networks), when it was not. FibreX service delivered broadband to customers' homes via a hybrid fibre-copper wire system and not just fibre optic cable.

The charges related to conduct in Wellington, Kāpiti and Christchurch, where FibreX branded service was provided to up to 250,000 customers. The Court's sentencing decision is pending.



## Measuring our outputs | Te ine i ngā whakamaunga atu

This section reports on our performance against the measures and financial information in our Statement of Performance Expectations 2020/21 and the Estimates of Appropriations 2020/21.

In 2020/21 the Commission achieved all the output performance measure targets except for one measure relating to the delivery of reports within our Economic regulation: Specified airport services output class.

Competition	Consumer*	Market studies	Economic regulation**
<b>5/5</b> measures achieved	<b>6/6</b> measures achieved	<b>1/1</b> measures achieved	<b>22/23</b> measures achieved

\* Consumer includes fair trading and credit.

\*\* Economic regulation includes telecommunications, electricity, fibre, gas, airports and dairy.

### Competition

This output class is intended to achieve the prevention, identification, investigation and remediation of anti-competitive market behaviour, and includes administration of clearance and authorisation regimes.

Output measure	2021		2020
	Actual	Target	Actual
Percentage of merger clearance decisions made within 40 working days when no statements of issues are published	<b>75%</b>	75%	86%
Average number of working days from date of decision to date of publication of reasons for declined clearance applications	<b>There were no declined clearances</b>	10 days	There were no declined clearances
Number of Commerce Act 1986 matters completed	<b>8</b>	5–20	<b>12</b>
Percentage of competition investigations decided within 18 months of an investigation being opened	<b>78%</b>	75%	<b>91%</b>
Percentage of investigations involving a court action, statutory undertaking or negotiated settlement response that meet our internal process quality standards	<b>100%</b>	100%	<b>100%</b>

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	<b>10,493</b>	11,493	8,193
Other revenue	<b>185</b>	319	351
<b>Total operating revenue</b>	<b>10,678</b>	<b>11,812</b>	<b>8,544</b>
<b>Total operating expenses</b>	<b>10,295</b>	<b>11,812</b>	<b>8,451</b>
<b>SURPLUS/(DEFICIT)</b>	<b>383</b>	<b>0</b>	<b>93</b>

Expenditure in the Competition output class was less than budgeted, primarily because of lower-than-expected internal resourcing and external consultancy costs.



## Consumer including fair trading and credit

This output class is intended to achieve prevention, identification, investigation and remediation of market behaviour that is harmful for consumers.

Output measure	2021		2020 Actual
	Actual	Target	
Number of Credit Contracts and Consumer Finance Act 2003 matters completed	54	At least 50	58
Number of product safety and information standards matters completed	109	At least 75	103
Number of Fair Trading Act 1986 matters completed	316	At least 175	344
Percentage of Fair Trading Act investigations decided within 12 months of the investigation being opened	97%	95%	97%
Percentage of credit investigations decided within 18 months of the investigation being opened	98%	95%	98%
Percentage of investigations involving a court action, statutory undertaking or negotiated settlement response, meeting our internal process quality standards	100%	100%	100%

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	18,484	18,984	15,144
Other revenue	193	404	489
<b>Total operating revenue</b>	<b>18,677</b>	<b>19,388</b>	<b>15,633</b>
<b>Total operating expenses</b>	<b>18,362</b>	<b>19,388</b>	<b>15,777</b>
<b>SURPLUS / (DEFICIT)</b>	<b>315</b>	<b>0</b>	<b>(144)</b>

Expenditure in the Consumer output class was less than budgeted because of an underspend on internal resourcing costs. This was largely because activity in the enforcement work stream was lower than anticipated.

## Market studies (also known as competition studies)

This output class is intended to achieve improved market performance and outcomes through detailed research into a particular market, or markets, where there are concerns the market could be functioning sub-optimally.

Output measure	2021		2020
	Actual	Target	Actual
All competition studies undertaken are completed within agreed timeframes	Achieved	Achieved	Achieved

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	2,580	2,732	1,111
Other revenue	26	48	26
<b>Total operating revenue</b>	<b>2,606</b>	<b>2,780</b>	<b>1,137</b>
<b>Total operating expenses</b>	<b>2,606</b>	<b>2,780</b>	<b>1,137</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Market studies output class expenditure was less than budgeted as the retail grocery sector market study started later in the financial year than expected because of the COVID-19 pandemic.

## Appropriation funding

The following table shows the funding made available by the Crown through the Estimates and Supplementary Estimates compared with that recognised by the Commission in the year for our Competition, Consumer, and Competition Studies appropriations.

	Estimates \$000	Supplementary Estimates \$000	Actual \$000	Difference vs Supplementary Estimates \$000
<b>Vote Business, Science and Innovation: Enforcement of General Markets Regulation MCA</b>				
<b>Enforcement of Competition Regulation</b>				
Revenue – Crown	9,993	10,493	10,493	0
<b>Enforcement of Consumer Regulation</b>				
Revenue – Crown	17,784	18,484	18,484	0
<b>Total</b>	<b>27,777</b>	<b>28,977</b>	<b>28,977</b>	<b>0</b>
<b>Vote Business, Science and Innovation: Competition Studies</b>				
Revenue – Crown	<b>2,433</b>	<b>3,133</b>	<b>2,580</b>	<b>(553)</b>

In 2020/21 the Commission received \$2.5 million in COVID-19 response funding to cover potential activities such as more merger clearances, authorisation applications and anti-competitive behaviour investigations caused by the economic impacts of the pandemic. The level of activity and expenditure in this area was less than anticipated as a result of the measures taken to reduce the effects of the COVID-19 pandemic in Aotearoa New Zealand – meaning there were fewer failing firm merger applications or authorisations for conduct than was anticipated. With the ongoing impact of COVID-19 on the economy, the Commission has transferred \$1.0 million of the COVID-19 response funding to the 2021/22 financial year.

## Economic regulation

This section outlines output measures and financial budgeting information relating to our role under the following Acts:

- Telecommunications Act 2001
- Fuel Industry Act 2020
- Commerce Act 1986 (Part 4):
  - > Electricity lines services
  - > Gas pipeline services
  - > Specified airport services
  - > Input methodologies
- Dairy Industry Restructuring Act 2001.

### Telecommunications (excluding fibre networks)

This output class is intended to achieve the promotion of competition in the telecommunications markets for the long-term benefit of end-users.

Output measure	2021		2020 Actual
	Actual	Target	
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	5	At least 2	9
Average time to complete telecommunications determinations	3 months	6 months	2.5 months
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	9	At least 4	6
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	100%

	2021 Actual \$000	2020 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	5,403	6,550	6,022
Other revenue	58	81	317
<b>Total operating revenue</b>	<b>5,461</b>	<b>6,631</b>	<b>6,339</b>
<b>Total operating expenses</b>	<b>5,461</b>	<b>6,631</b>	<b>6,339</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Expenditure in the Telecommunications output class was less than budgeted, as a result of lower-than-expected internal resourcing and external consultancy costs. This was primarily driven by less activity across the compliance and enforcement and determinations work streams.

## Fibre

This output class is intended to achieve the regulation of wholesale fibre fixed-line broadband services and the work in relation to broadcasting transmission service providers.

Output measure	2021		2020
	Actual	Target	Actual
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	2	1	0
Fibre Input Methodology determination completed by 30 June 2020	Replaced by measure below (refer to Note 1)	Replaced by measure below (refer to Note 1)	Not achieved
Fibre Input Methodology determination completed by 30 June 2021	Achieved	Achieved	–
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	Not achieved

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	4,790	3,633	4,821
Other revenue	60	11	96
<b>Total operating revenue</b>	<b>4,850</b>	<b>3,684</b>	<b>4,917</b>
<b>Total operating expenses</b>	<b>4,850</b>	<b>3,684</b>	<b>4,917</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Fibre output class expenditure was higher than budgeted, because of greater internal resourcing and external consultancy costs, and increased activity relating to setting fibre price-quality regulation.

### Note 1

The Fibre Input Methodology determination measure was not met during the year ended 30 June 2020 as a result of a need to extend timeframes. The reasons for this were the:

- the complexity of the issues involved
- allowing time for consultation with stakeholders
- the impact of COVID-19.

The measure was transferred and was achieved in the year ended 30 June 2021; we completed the final determination on 3 November 2020.

## Fuel

This output class is intended to achieve implementation of the liquid fuels monitoring and enforcement regime.

The Commission did not have any output performance measures for the Fuel output class in 2020/21.

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	484	500	0
Other revenue	7	7	0
<b>Total operating revenue</b>	<b>491</b>	<b>507</b>	<b>0</b>
<b>Total operating expenses</b>	<b>491</b>	<b>507</b>	<b>0</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Fuel output class expenditure was less than budgeted, because of lower-than-anticipated monitoring and enforcement activities and reduced spending on internal resourcing.

## Electricity lines services

This output class is intended to achieve the delivery of regulated electricity lines services at prices and quality that would have been available if the market were competitive, for the long-term benefit of consumers.

Output measure	2021		2020
	Actual	Target	Actual
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	8	At least 3	19
Percentage of Part 4 of the Commerce Act 1986 determinations completed by statutory deadlines	100%	100%	100%
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	6	At least 2	4
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	100%

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	5,792	6,000	6,883
Other revenue	1,505	1,604	259
<b>Total operating revenue</b>	<b>7,297</b>	<b>7,604</b>	<b>7,142</b>
<b>Total operating expenses</b>	<b>7,297</b>	<b>7,604</b>	<b>7,142</b>
<b>SURPLUS / (DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Expenditure in the Electricity output class was less than budgeted, as activity in the public reports and advice to officials work stream was lower than expected. The increase in other revenue compared to 2020 was a result of receiving higher revenue from fees and recoveries in 2021 due to Aurora Energy's application for a customised price-quality path.

## Gas pipeline services

This output class is intended to achieve the delivery of regulated gas pipeline services at prices and quality that would have been available if the market were competitive, for the long-term benefit of consumers.

Output measure	2021		2020
	Actual	Target	Actual
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	2	At least 2	2
Percentage of Part 4 of the Commerce Act 1986 determinations completed by statutory deadlines	<b>There were no determinations with statutory deadlines</b>	100%	There were no determinations with statutory deadlines
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	3	At least 1	2
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	100%

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	1,081	1,500	1,300
Other revenue	16	17	30
<b>Total operating revenue</b>	<b>1,097</b>	<b>1,517</b>	<b>1,330</b>
<b>Total operating expenses</b>	<b>1,097</b>	<b>1,517</b>	<b>1,330</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Gas output class expenditure was less than budgeted. This was a result of spending on an external consultant in the performance analysis work stream and on preparatory work for the gas default price-quality path reset being lower than expected.



## Specified airport services

This output class is intended to achieve the delivery of specified airport services at prices and quality that would have been available if the market were competitive, for the long-term benefit of consumers.

Output measure	2021		2020
	Actual	Target	Actual
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	2	At least 2	2
Percentage of Part 4 of the Commerce Act 1986 determinations completed by statutory deadlines	<b>There were no determinations with statutory deadlines</b>	100%	There were no determinations with statutory deadlines
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	0 <i>(refer to Note 2)</i>	At least 1	0
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	100%

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	341	350	800
Other revenue	5	5	16
<b>Total operating revenue</b>	<b>346</b>	<b>355</b>	<b>816</b>
<b>Total operating expenses</b>	<b>346</b>	<b>355</b>	<b>816</b>
<b>SURPLUS / (DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Expenditure in the Airports output class was less than budgeted, owing to activity in the public reports and advice to officials work stream being lower than expected.

### Note 2

*Quantity target not achieved because Wellington International Airport's price-setting proposal was deferred to 2021/22.*

## Dairy

This output class is intended to achieve incentives for Fonterra to operate efficiently while providing for contestability in the market for the purchase of milk from farmers.

Output measure	2021		2020
	Actual	Target	Actual
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	2	At least 2	2

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	628	650	627
Other revenue	8	10	15
<b>Total operating revenue</b>	<b>636</b>	<b>660</b>	<b>642</b>
<b>Total operating expenses</b>	<b>636</b>	<b>660</b>	<b>642</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Expenditure in the Dairy output class was less than budgeted because activity in the public reports and advice to officials work stream was less than anticipated and internal resourcing expenditure was lower than budgeted.

## Part 4 inquiries (Economic regulation inquiries)

This output class is intended to achieve better long-term outcomes for consumers by undertaking economic regulation inquiries (if required) under Part 4 of the Commerce Act in markets where there is little or no competition and little or no likelihood of a substantial increase in competition.

No Part 4 inquiries were completed in 2020/21.

Output measure	2021		2020
	Actual	Target	Actual
Part 4 inquiries will be completed as required	There were no Part 4 inquiries	Achieved	There were no Part 4 inquiries

## Appropriation funding

The table below shows the funding made available by the Crown through the Estimates and Supplementary Estimates compared with that recognised by the Commission in the year for each of our regulation appropriations

	Estimates \$000	Supplementary Estimates \$000	Actual \$000	Difference vs Supplementary Estimates \$000
<b>Vote Business, Science and Innovation: Enforcement of Telecommunications Sector Regulation</b>				
Revenue – Crown	6,250	5,559	5,403	(156)
<b>Vote Business, Science and Innovation: Enforcement of Telecommunications Sector Fibre and Broadcasting Transmission Service Regulation 2018–2022 (MYA)</b>				
Cumulative funding to 1 July 2020	8,200	8,148	8,148	0
Revenue – Crown	3,300	4,493	4,790	297
<b>Cumulative funding to 30 June 2021</b>	<b>11,500</b>	<b>12,641</b>	<b>12,938</b>	<b>297</b>
Remaining appropriation	800	6,018	5,721	(297)
<b>Total appropriation</b>	<b>12,300</b>	<b>18,659</b>	<b>18,659</b>	<b>0</b>
<b>Vote Business, Science and Innovation: Enforcement of General Market Regulation multi-category appropriation – Liquid Fuels Monitoring and Enforcement</b>				
Revenue – Crown	500	500	484	(16)
<b>Vote Business, Science and Innovation: Economic Regulation of Electricity Lines Services 2019–2024 (MYA)</b>				
Cumulative funding to 1 July 2020	7,200	6,883	6,883	0
Revenue – Crown	5,150	5,467	5,792	325
<b>Cumulative funding to 30 June 2020</b>	<b>12,350</b>	<b>12,350</b>	<b>12,675</b>	<b>325</b>
Remaining appropriation	15,961	26,215	25,890	(325)
<b>Total appropriation</b>	<b>28,311</b>	<b>38,565</b>	<b>38,565</b>	<b>0</b>
<b>Vote Business, Science and Innovation: Economic Regulation of Gas Pipeline Services 2019–2024 (MYA)</b>				
Cumulative funding to 1 July 2020	1,500	1,300	1,300	0
Revenue – Crown	1,700	1,900	1,081	(819)
<b>Cumulative funding to 30 June 2021</b>	<b>3,200</b>	<b>3,200</b>	<b>2,381</b>	<b>(819)</b>
Remaining appropriation	6,484	9,821	10,640	819
<b>Total appropriation</b>	<b>9,684</b>	<b>13,021</b>	<b>13,021</b>	<b>0</b>
<b>Vote Business, Science and Innovation: Economic Regulation of Specified Airport Services 2019–2024 (MYA)</b>				
Cumulative funding to 1 July 2020	800	318	318	0
Revenue – Crown	475	957	341	(616)
<b>Cumulative funding to 30 June 2021</b>	<b>1,275</b>	<b>1,275</b>	<b>659</b>	<b>(616)</b>
Remaining appropriation	1,488	1,488	2,104	616
<b>Total appropriation</b>	<b>2,763</b>	<b>2,763</b>	<b>2,763</b>	<b>0</b>
<b>Vote Business, Science and Innovation: Enforcement of Dairy Sector Regulation and Auditing of Milk Price Setting</b>				
Revenue – Crown	757	757	628	(129)

## Major litigation

This output class is intended to achieve the best possible outcomes for New Zealanders in competitive and regulated markets by undertaking major or complex litigation where appropriate.

Our litigation workload varies considerably each year based on the:

- number and types of cases we choose to litigate or that are brought against us
- appeals we defend
- complexity of the cases we have before us
- court timetables
- parties' approaches to the litigation.

This year our workload and timing of Court fixtures was also impacted by COVID-19.

Output measure	2021		2020
	Actual	Target	Actual
Litigation Funds are utilised in accordance with the Litigation Fund criteria	<b>Achieved</b>	Achieved	Achieved

### *Internally-sourced litigation*

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	4,376	4,658	3,500
Other revenue	55	95	91
<b>Total operating revenue</b>	<b>4,431</b>	<b>4,753</b>	<b>3,591</b>
<b>Total operating expenses</b>	<b>4,431</b>	<b>4,753</b>	<b>3,653</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>(62)</b>

### *Externally-sourced litigation*

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>			
Revenue – Crown	2,994	7,000	4,088
Other revenue	0	0	0
<b>Total operating revenue</b>	<b>2,994</b>	<b>7,000</b>	<b>4,088</b>
<b>Total operating expenses</b>	<b>2,994</b>	<b>7,000</b>	<b>4,088</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>

Major litigation is funded by the Crown out of the Vote Business, Science and Innovation: Commerce Commission Litigation Funds multi-category appropriation (MCA). The internally-sourced litigation category is used to meet the costs of resourcing litigation from our internal capability, while the externally-sourced litigation category is used to meet the direct costs of resourcing major litigation activity externally. For our internally-sourced litigation we also receive a share of the revenue from shared services cost recoveries.

Externally-sourced litigation expenditure was lower than anticipated because the Commission successfully reached settlements and resolved matters more quickly than expected. The number of matters entering the fund during the year were also fewer than anticipated. The budget for externally-sourced litigation is based on known matters and potential cases at the start of the year.

## Appropriation funding

	Estimates \$000	Supplementary Estimates \$000	Actual \$000	Difference vs Supplementary Estimates \$000
<b>Commerce Commission externally-sourced litigation</b>				
Revenue – Crown	9,161	8,000	<b>2,994</b>	(5,006)
<b>Commerce Commission internally-sourced litigation</b>				
Revenue – Crown	3,500	4,661	<b>4,376</b>	(285)
<b>Total</b>	<b>12,661</b>	<b>12,661</b>	<b>7,370</b>	<b>(5,291)</b>

# Our governance and management

## Te Kaitiakitanga me te Taha Whakahaere

### Meet our Board | Tō mātou Poari



**Anna Rawlings**  
*Chair*

Anna was appointed Chair in June 2019 and has been a Commissioner since June 2014. She was previously a partner in the dispute resolution division of Minter Ellison Rudd Watts, where she specialised in contentious and non-contentious aspects of competition, regulatory and consumer law. Anna holds a BA/LLB (Hons) from the University of Auckland and an LLM from the University of Toronto, where her work focused on law and economics.



**Sue Begg**  
*Deputy Chair*

Sue was appointed as a Commissioner in June 2009 and Deputy Chair in July 2010. She was an Associate Member of the Australian Competition and Consumer Commission from April 2016 to June 2019. She is an economist whose previous roles include Director of the consultancy company Impetus Group Limited, Vice-President and Head of the economic advisory unit of the investment banking division of Credit Suisse First Boston NZ Limited (and its predecessor companies), and manager of the Macroeconomic Policy section at the Treasury.



**Tristan Gilbertson**  
*Telecommunications Commissioner*

Tristan was appointed Telecommunications Commissioner in June 2020. He is a corporate and commercial lawyer with extensive international experience in telecommunications law and regulation. After an early career in private practice, Tristan was appointed Legal & Regulatory Director – Asia-Pacific at Vodafone Group Plc, where he was involved in the expansion and diversification of Vodafone’s business. He then joined Telecom New Zealand Ltd where he was Group General Counsel. Most recently, he was Group General Counsel of Digicel Group Ltd, where he focused on transformation and change across Digicel’s 32 global markets. Tristan holds a BA/LLB(Hons) from the University of Auckland and has completed the Executive Leadership Development Programme at the Wharton School of the University of Pennsylvania.



**Dr Derek Johnston**  
*Commissioner*

Derek was appointed as Commissioner in November 2019. A commercial lawyer, Derek has extensive experience and knowledge of competition law coupled with significant mergers and transactional expertise and familiarity with many of the regulated sectors. His past roles include being the independent Chair of NZX’s Regulatory Governance Committee and the Chair of the NZ Markets Disciplinary Tribunal. For many years Derek was a corporate partner with Russell McVeagh and most recently had been practising as a barrister and arbitrator at Thorndon Chambers. Derek holds undergraduate and postgraduate degrees in law from the University of Auckland and a doctorate in law from the University of Toronto.



**Dr John Small**  
*Commissioner*

John was appointed as Commissioner in June 2020. Before that he was as an Associate Commissioner from December 2018. Previously as an academic economist, John led the economics department at the University of Auckland where he taught, researched and supervised students on competition and regulatory economics. In private practice John has directed two economics consultancies and personally advised numerous corporates, regulators and policy agencies in the Asia Pacific region, often on contentious matters. A frequent expert witness before courts, tribunals and commissions, John has also served on the panel of lay members of the High Court of New Zealand. John has a PhD in economics from the University of Canterbury.



**Elisabeth Welson**  
*Commissioner*

Elisabeth was appointed in September 2012 as Associate Commissioner and as a Commissioner in August 2013. Before joining the Commission, she was a senior commercial partner at Simpson Grierson, where she co-led the competition and regulatory group and headed the energy, natural resources and utilities market group. Elisabeth holds an LLB (Hons) from the University of Auckland and has practised as a barrister and solicitor in Aotearoa New Zealand and as a Solicitor of the Supreme Court of Queensland and Solicitor of the Supreme Court of New South Wales.



**Joseph Liava'a**  
*Associate  
Commissioner*

Joseph was appointed as Associate Commissioner in April 2019. Before joining the Commission, Joseph worked as the Community Liaison Manager for Nirvana Health Group. Before that, he was a consumer law advisor for the former Ministry of Consumer Affairs and also worked as a private secretary for the Minister. Joseph has also given consumer law training to budget advice services and community law centres. He has been involved with a variety of boards and panels, including Pacific Health and Welfare Inc, Vaiola Pacific Island Budgeting Service Trust (Māngere), Otara Health Charitable Trust, as well as the board of Consumer New Zealand. Joseph holds a BCom from the University of Otago, and an LLB and post graduate diploma in business, specialising in health management, from the University of Auckland.



**John Crawford**  
*Associate  
Commissioner*

John was appointed as an Associate Commissioner in October 2018. Before joining the Commission, he was Chief Executive of Auckland Council Investments. He has also held senior management roles at the Treasury, in the Department of the Prime Minister and Cabinet, and at New Zealand Trade and Enterprise. John has commercial and regulatory experience in the electricity, energy and telecommunications sectors. He has undergraduate degrees in science and engineering, and holds an MBA from the University of Auckland.



**Vhari McWha**  
*Associate  
Commissioner*

Vhari was appointed as an Associate Commissioner in September 2020. She is an economist and has advised on public policy and regulation, including competition analysis and market design. Before joining the Commission, Vhari was a Director at Sapere. Her earlier roles include Deputy Director at the economic consultancy NZIER, and Regulatory Affairs Manager at Meridian Energy. Vhari holds an MCom (Hons) in economics from the University of Canterbury.



**Sarah Court**  
*Associate  
Commissioner*  
ACCC cross-appointment

Sarah was cross-appointed from the Australian Competition and Consumer Commission (ACCC) in December 2015. She was a Commissioner of the ACCC from April 2008 until June 2021, when she became Deputy Chair of the Australian Securities and Investment Commission. Previously, Sarah was a senior executive lawyer and director with the Australian Government Solicitor group in the Attorney-General's Department. She has experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation.

**Fred Hutchings**  
*External Convenor of the  
Audit and Risk Committee*

Fred is the external Convenor of the Audit and Risk Committee. He was a partner with PricewaterhouseCoopers and holds several governance roles, including Chair of Seeka Kiwifruit Industries Ltd, Director of Speirs Group Limited, Convenor of Ngāti Awa Audit and Risk Committee and an independent member of the ACC Risk Assurance and Audit Committee. He was formerly Chair of Tui Products Limited, the Office of the Auditor-General Audit and Risk Committee, and the Ministry of Foreign Affairs and Trade Audit and Risk Committee. He is also a Past President of Chartered Accountants Australia and New Zealand.

## Meet our Senior Leadership Team | Tō mātou Rōpū Kaiarataki



**Adrienne Meikle**  
*Chief Executive Officer*

Adrienne joined the Commission in May 2018 from the Ministry of Business, Innovation and Employment, where she had roles as Deputy Chief Executive, Corporate, Governance and Information group; Acting Deputy Chief Executive, Market Services; and General Manager, Resolution Services. Adrienne held previous roles as Acting Deputy Secretary, Tourism, Events and Consumer Affairs, Director of Legal in the former Ministry of Economic Development, Chief Legal Advisor in the former New Zealand Food Safety Authority, and Parliamentary Counsel and Private Secretary in the Attorney-General's office. She has also worked for the Department of Corrections and the Ministry of Education. She has a BA, LLB and LLM (Hons) degrees.



**Antonia Horrocks**  
*General Manager,  
Competition*

Antonia joined the Commission in August 2016 after four years at the UK Competition and Markets Authority, bringing experience as an anti-trust lawyer in the private and government sectors. She started her career in Aotearoa New Zealand and has a BA (Hons) in English, an LLB (Hons), and a Postgraduate Diploma in EU Competition Law.



**Nick Russ**  
*General Manager,  
Economic Regulation*

Nick joined the Commission in November 2010 as a Chief Adviser in the Regulation Branch, working across a range of regulatory issues before his current role managing the Commission's regulatory functions across several sectors, including electricity lines, gas pipelines, major airports, telecommunications, and dairy. Before joining the Commission, he worked for energy regulators in the UK and Australia. Nick has a degree in electrical engineering and is a chartered engineer.



**Louise Unger**  
*General Manager,  
Credit*

Louise joined the Commission in April 2021 from international firm Lawyers On Demand, where she specialised in risk and compliance. She has expertise in providing legal risk and compliance services to a range of Aotearoa New Zealand and international organisations, including banks, telecommunications and electricity companies. She led the Bank of New Zealand's legal team that advised on the Credit Contracts and Consumer Finance Act and subsequent changes. Louise has an LLB (Hons) and BCom from Canterbury University.



**Vanessa Horne**  
*General Manager,  
Fair Trading*

Vanessa joined the Commission in April 2021 from a role as Group Manager, Overseas Investment Office at Land Information New Zealand. Her regulatory and legal background spans several regulatory systems including overseas investment, intellectual property, health and safety, emergency management, occupational regulation, rural broadband, and energy safety. Vanessa has a Masters of Public Policy from Massey University and a law degree from Otago University.





**Geoff Williamson**  
*General Manager,  
Organisation  
Performance*

Geoff joined the Commission in July 2011 and was previously Director Corporate Services at the Tertiary Education Commission and Chief Financial Officer at the National Library of New Zealand, and had roles at Deloitte. Geoff is a chartered accountant with a BCA from Victoria University of Wellington and an Executive Master of Public Administration through the Australia and New Zealand School of Government.



**Raj Krishnan**  
*General Manager,  
Strategy, Governance  
and Engagement*

Raj joined the Commission in April 2021 after holding leadership positions at the Department of Internal Affairs, including General Manager Policy and General Manager Regulatory Services. He has also worked for the Department of the Prime Minister and Cabinet, the Department of Corrections, and the Accident Compensation Corporation. He has a BA in social policy and education and an MPP from Victoria University of Wellington.



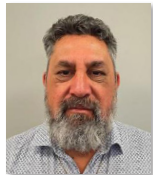
**Andrew Riseley**  
*General Manager,  
Legal Services*

Andrew joined the Commission in January 2017 after 20 years in competition law and economic regulation across five jurisdictions, including Singapore, the UK and Australia. Andrew has an MSc in Regulation from the London School of Economics, and an LLB (Hons) and BEc (Hons) from Monash University.



**John McLaren**  
*Principal Adviser to  
the Chief Executive*

John joined the Commission's Regulatory Branch in 2008 when Part 4 of the Commerce Act was amended. He was on secondment until April 2021 to advise the Chief Executive on organisation strategy and to support the Board and Senior Leadership Team in strategic planning and prioritisation. John has an MA (Hons) in economics from the University of Glasgow. He now manages the Commission's Communications and Engagement team.



**PJ Devonshire**  
*Principal Adviser  
Māori*

PJ is of Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa descent and joined the Commission in September 2021. He has held roles as Pouārahi with the Ministry of Social Development and General Manager of his iwi, Ngāti Kahungunu ki Wairarapa. PJ represented his iwi on the National Iwi Chairs Forum, is an honorary member of the Maori Women's Welfare League, a Trustee on the Ngāti Kahungunu ki Wairarapa Tamakinui a Rua Post Treaty Settlement Trust and a Board Member of Ngāti Kahungunu ki Wairarapa Iwi Authority.

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## **Governance of our organisation**

### Te mahi whakahaere a te poari

The Governor-General appoints our Board on the recommendation of the Minister of Commerce and Consumer Affairs. The Telecommunications Commissioner is appointed on the recommendation of the Minister for the Digital Economy and Communications. Board members are appointed for their knowledge of, and experience in, areas relevant to the Commission's work.

Associate Commissioners are appointed by the Minister of Commerce and Consumer Affairs.

The Board is the governing body of the Commission with authority to exercise the Commission's powers and perform the Commission's functions.

The Board performs a traditional governance role in monitoring performance, providing strategic direction, ensuring compliance and providing oversight. It also has a statutory decision-making role outlined in each piece of legislation we enforce.

The Board delegates to and holds the Chief Executive accountable for the management of the Commission.

### **Role and responsibilities of the Board**

The Board discharges the functions and requirements of the Commission in several ways, including:

- monitoring the Commission's performance and planning its strategic direction
- using delegations to make the Commission's work more efficient
- using advisory committees to the Board, such as the Audit and Risk Committee
- overseeing a broad variety of strategies, policies, processes, systems, frameworks and analytical approaches to help ensure effective decision making.

The Board ensures that Ministers and our monitoring Department, the Ministry of Business, Innovation and Employment, are informed of our performance, progress, issues, risks, and any matters affecting the Commission regularly throughout the year. This is communicated through regular meetings, organisation performance reports, response to the Minister's Annual Letter of Expectations, Annual Reports, Statements of Performance Expectations and Statements of Intent.

Our Chair establishes separate divisions of the Commission to exercise the powers of the Commission under the laws we enforce. Divisions can include Board members or Associate Commissioners. As at 30 June 2021 the Commission had nine standing divisions and two standing committees.

The Commission's divisions and committees in 2020/21 were:

<b>Commerce Act Division</b>	Exercises the Commission's functions and powers under Parts 2 and 6 of the Commerce Act including making decisions to commence proceedings under the legislation, undertaking investigations and inquiries, taking evidence and requiring information.
<b>Consumer Division</b>	Exercises the Commission's functions and powers under the Fair Trading Act and Credit Contracts and Consumer Finance Act including undertaking investigations and inquiries, taking evidence and requiring information, making decisions to commence proceedings under the legislation, and undertaking studies on matters affecting the interests of consumers under the Fair Trading Act.
<b>Dairy Division</b>	Exercises the Commission's powers and functions under the Dairy Industry Restructuring Act to regulate the domestic dairy sector and Fonterra.
<b>Fibre Regulation Division</b>	Exercises the Commission's powers and functions under Part 6 of the Telecommunications Act, including determining, reviewing and amending telecommunications input methodologies and determinations in relation to information disclosure and price-quality regulation, and responding to proceedings that challenge the Commission's decisions in relation to these areas.
<b>Fuel Division</b>	Exercises all the functions and powers of the Commission relating to the Fuel Industry Act and any regulations made under the Act.
<b>Market Studies Division</b>	Exercises the Commission's functions under Part 3A of the Commerce Act including carrying out competition studies (market studies) and preparing market study reports.
<b>Part 4 Division</b>	Exercises the Commission's powers and responsibilities under Part 4 of the Commerce Act to regulate electricity lines, gas pipelines and specified airport services.
<b>Merger Clearance or Authorisation Division</b>	For each merger clearance or authorisation filed with the Commission, a division is formed to exercise the functions and powers of the Commission under the Commerce Act in relation to that matter. This includes any application for clearance or authorisation, or any appeal resulting from a Commission decision to grant or decline clearance or authorisation.
<b>Telecommunications Division</b>	Exercises the Commission's functions and powers under the Telecommunications Act (other than Part 6), including determinations on designated multi-network services, pricing review determinations, liability allocation determinations, telecommunications service obligation cost calculation determinations, and investigations about any proposed alterations to the legislation.
<b>Audit and Risk Committee</b>	Assists the Board to achieve the Commission's vision and strategy by providing assurance that good practice audit, risk management and finance are implemented in the organisation.
<b>Enforcement Procedures Committee</b>	Advises the Board on strategic matters relevant to the Commission's enforcement practices.

## Health and safety

The Board has overall responsibility for health and safety, including exercising due diligence to ensure the Commission complies with workplace health and safety requirements, and actively engages in matters affecting the health, safety and wellness of our people. The 'Organisation capability and health' section of this report (page 67) provides more information on the Commission's health, safety and wellness approach.

## Conflicts of interest

The Board has a conflicts of interest process in place to ensure the independence of the Commission is maintained and our decisions are free of bias. Board members declare their interests as they change and the Commission maintains a register of interests for all Board members, which is reviewed and updated regularly.

## **Managing risk effectively**

We actively manage risk at the Commission to mitigate risks that could affect our ability to achieve our objectives. The Board is responsible for reviewing and approving our risk management framework and delegates day-to-day management of risk to the Chief Executive. This delegation ensures that risk is integrated into our overall business processes, with a robust framework of identification, evaluation, monitoring and control in place.

The Audit and Risk Committee also reviews reports from management, including reviews conducted by external professional service providers, and external auditors on the effectiveness of systems for internal control and financial reporting.

## **Legislative compliance**

Through our legislative compliance policy, we ensure the operations of the Commission are conducted in accordance, and comply with, legal and internal policy requirements. Legislative compliance assurance is part of the Commission's overall internal control environment. We assess, and report annually to the Board on, our compliance with our legislative obligations.

## **Ministerial directions**

The Minister for the Public Service and the Minister of Finance have communicated the following directions to the Commission under section 107 of the Crown Entities Act:

- Procurement functional leadership (New Zealand Gazette, 19 June 2014). We have continued to comply with the Government Procurement Rules in support of a whole-of-government approach to procurement.
- Support for a whole-of-government approach to the New Zealand Business Number (NZBN) (New Zealand Gazette, 14 July 2016). We have integrated the NZBN as the primary identifier for relevant businesses in our core system, Streamline. In May 2017 we implemented lookup functions, bringing business data into the system from the NZBN database via MBIE's online interfaces. The NZBN integration with our systems was enhanced further in 2020.

On 1 November 2019 the Minister of Finance and the Minister for the Public Service issued an Enduring Letter of Expectations to the Board Chairs of Statutory Crown Entities including the Commission. The letter replaces the previous Enduring Letter of Expectations that was published on 26 July 2012. It sets out the Government's expectations of all statutory Crown entities and is to be considered within the context of the Crown Entities Act and other relevant legislation.

On 22 March 2020 the Minister of Commerce and Consumer Affairs issued a Government Policy Statement in relation to maintaining confidence in the market for essential goods and services during the first COVID-19 Alert Level 4 lockdown.

No further directions were given to the Commission in writing by a Minister under any enactment during the year ended 30 June 2021.

# Organisation capability and health

## Tā te Whakahaere Āheinga, Hauora Hoki

### Our People Strategy | Tō Mātou Rautaki Tāngata

Our people are critical to achieving our vision and strategy. The importance of our people is reflected in our People Strategy, which includes six goals that guide our focus in relation to our people, supported by our organisational values.

We foster a connected and collaborative work environment, which is inclusive, diverse, safe and healthy, with excellent people leadership and management, to attract, develop and retain our people.

<b>Connected and collaborative</b> <b>Strategic goal</b> We nurture a connected and collaborative environment which boosts knowledge sharing and innovative thinking, leading to engaged teams and better business outcomes	<b>Inclusive, diverse, safe and healthy</b> <b>Strategic goal</b> We build and maintain an inclusive, diverse and healthy environment where our people are safe, feel valued, supported, respected and can flourish	<b>Excellent people leadership and management</b> <b>Strategic goal</b> We have excellent people leadership and management capability to encourage high performance, foster a great workplace and culture, enabling our people to excel
<b>Attract</b> <b>Strategic goal</b> We attract and recruit excellent and diverse people with the right skills and capability, for now and in the future, who are committed to our vision and values	<b>Develop</b> <b>Strategic goal</b> We develop our people to be the best they can and to deliver outstanding performance	<b>Retain</b> <b>Strategic goal</b> We retain our people by valuing and rewarding their contribution, and maintaining a great workplace where they can thrive
<b>Excellence · Integrity · Accountability · Respect · Good judgement</b>		

Our values shape our culture by setting out what is important to us and defining how we work with and behave towards each other and the communities we serve. We are reviewing our values as part of our focus on organisational culture, and we are considering the values that reflect the Commission now and into the future.

## Being a good employer | Kia tū hei kaitukumahi pai

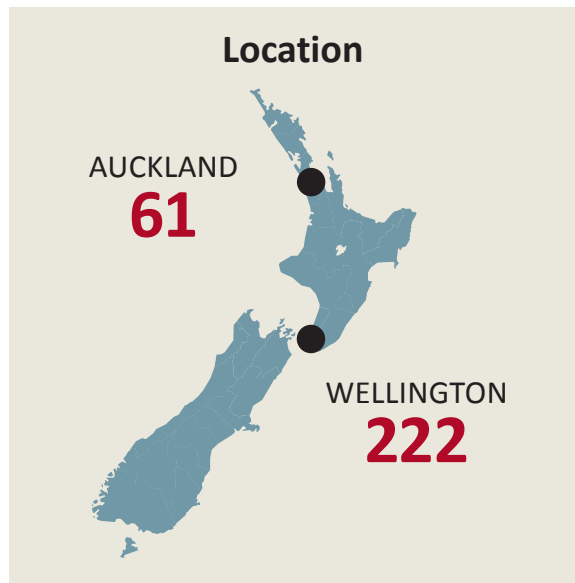
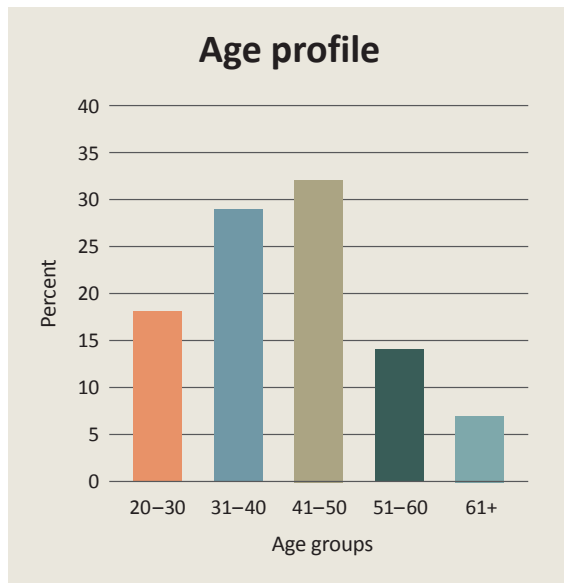
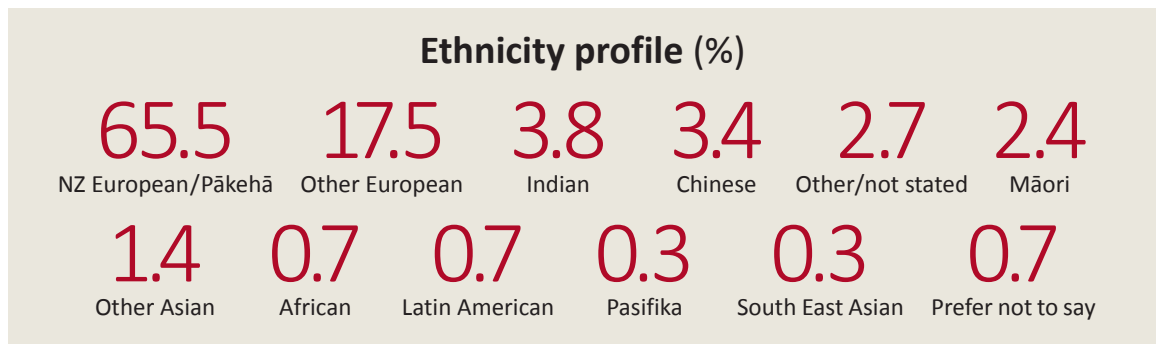
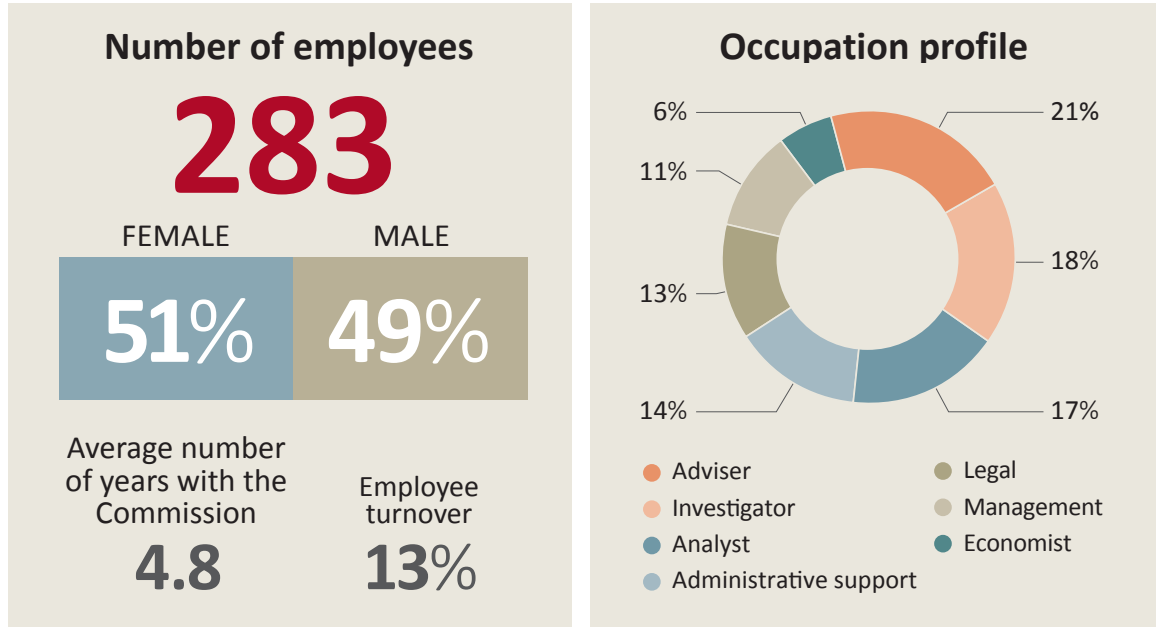
Our People Strategy incorporates the seven elements of being a good employer, as set out by the New Zealand Human Rights Commission. A good employer is defined as one who has a personnel policy with provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of employment. The table below provides examples of our approach under each of the seven elements.

Elements	Initiatives
<b>Leadership, accountability and culture</b>	<p>Our focus on people leadership capability helps create a workplace where our people can excel. Our regular People Leaders' Forum provides ongoing opportunity for leaders to share good practice.</p> <p>The Chief Executive and Senior Leadership Team hold regular sessions with our leaders and people to provide updates and share progress against organisational goals.</p> <p>This year we have worked on defining our future culture, aligned with strategy and context as the Commission implements its new operating model and structure. Development of a leadership roadmap has been a key element of the operating model change. It describes leadership priorities and how we are building our capability to support new ways of working. Initiatives are underway to provide development opportunities for new people leaders and to support our leaders to develop coaching skills. We have launched a leadership training programme and are piloting a Growth and Development framework.</p> <p>Our regular employee engagement survey, ComPulse, helps us track and measure our progress at both organisation and team level.</p> <p>Having managers who care about their people is consistently identified as our biggest strength in our employee feedback survey.</p>
<b>Recruitment, selection and Induction</b>	<p>We are further refining our in-house recruitment function, enhancing our ability to recruit great people. We use robust processes with a focus on embracing diversity and employment equity.</p> <p>We have embraced Te Kawa Mataaho Public Service Commission's new model standards covering Workforce Assurance within our recruitment and exit approach. We are reviewing our current recruitment systems and processes and refreshing our induction framework.</p>
<b>Employee development, promotion and exit</b>	<p>We are committed to growing our people and provide a range of development opportunities to everyone, with a focus on developing capability through on-the-job experience as well as targeted skills programmes. We invest in our people by building their knowledge and capability.</p> <p>We are piloting wider delivery of a growth and development framework that identifies key capabilities across the Commission, so our people can identify targeted development opportunities aligned with their capabilities. Advertising current vacancies internally further supports employee career development opportunities as does a refreshed secondment approach.</p>
<b>Flexibility and work design</b>	<p>Reviewing our flexible working approach and technology applications enabled us to cater better for flexible arrangements and organise work to support both our business needs and our people. Like many agencies, COVID-19 has pushed us to think about what flexible work means for our people and our organisation.</p>
<b>Remuneration, recognition and conditions</b>	<p>We follow the Government Workforce Policy Statement on the Government's expectations for employment relations in the public sector. We followed public service guidelines on pay restraint in response to the COVID-19 situation, and are further reviewing our overall remuneration strategy and framework as we refine our approach.</p>
<b>Harassment and bullying prevention</b>	<p>We have zero tolerance of harassment, bullying and discrimination. Expected behaviours and joint responsibilities are detailed in our: organisational values; code of conduct; anti-harassment, bullying and discrimination policy; equality, diversity and inclusion policy; and protected disclosures policy. These policies include details on how employees can safely raise matters of concern. Staff are required to make an annual declaration acknowledging their compliance with these Commission policies.</p>
<b>Safe and healthy work environment</b>	<p>Our health, safety and wellness policy, manual and framework ensure that we maintain a healthy and safe work environment. We comply with workplace health and safety laws and have safe operating procedures for several potential risks specific to our business. Our annual health and safety plan supports a focus on continuous improvement.</p>

# Profile of our people on 30 June 2021

Ō mātou tāngata i te 30 o Hune 2021

Changes to the Commission’s functions, powers and duties have seen us grow into a medium-sized organisation. On 30 June 2021 we had over 280 staff, up from 180 five years ago, and we expect that number to grow further as our responsibilities grow.



## **Evaluating our capability and health**

### Te Arotake i kaha me te hauora

Our Statement of Intent sets out measures to monitor our organisational health and capability.

#### **Employee engagement**

We want the Commission to be a place where our people can thrive. Our success depends on our people and we are committed to improving employee engagement.

Our regular employee survey, ComPulse, measures employee engagement and overall experience in areas such as culture, leadership and working environment. Understanding what matters to our people and making positive changes in response helps improve the Commission's work and employees' experience at work.

In 2020/21 we ran the survey in September, February and May. Overall participation in the survey remains consistent, with over 80% of employees responding to each survey. Our average engagement score was 7.5 out of 10 in September 2020 and February 2021 and 7.4 out of 10 in May 2021. The rating scale runs from 0 at worst to 10 at best.

We share results with all employees after each survey round. ComPulse team results are also available to managers on an online dashboard which can be shared with their team members. The dashboard includes an action plan feature that managers and teams can use to identify and address areas for improvement. Employees also have access to their own personal dashboard.

#### **The health, safety and well-being of our people**

In response to the ongoing COVID-19 pandemic, our focus remains on identifying and addressing threats to the health, safety and wellness of our people, while striving to minimise the impact on business continuity. This extends to health and safety considerations while working remotely and considering the pressures for staff working under lockdown conditions. We regularly update our internal COVID-19 policies, guidance and advice to reflect the evolving situation and support this with ongoing communications to our staff.

In line with our annual work programme, we offer a range of services, resources, education and workshops, including health checks, flu vaccinations, e-learning modules, mental health awareness workshops, mindfulness and EAP services. Courses are offered for training new health and safety representatives and first aiders. We also use our intranet as a vehicle to raise staff awareness and provide resources on health, safety and wellness issues and to celebrate national and world awareness days such as the ShakeOut 2020 earthquake drill, Evacuation Protocols, World Day for Health and Safety at Work, and Safer Internet Day.

After providing a voluntary employee health check service, a report produced by the external provider indicated that, overall, the results were good and the health of our employees is improving. Identified areas for improvement and tips for achieving improvements were shared with all employees.

We have developed a plan to action the recommendations of the health and safety audit, with a focus on continuous improvement. Regular reporting by the health and safety committee to the Senior Leadership Team and the Board enables tracking of progress and responses to risks that are identified.

#### **Driving security improvements**

The programme of work to drive security improvements across the Commission continues, and includes structured education and training, refreshing our threat and security assessments, and ensuring that security measures relating to our people, places and information are actively managed. As part of our commitment to continually improve our security culture, we are committed to implementing the government's Protective Security Requirements.



## Te ao Māori

The Commission is committed to building our understanding of our role as a Treaty partner under Te Tiriti o Waitangi/Treaty of Waitangi. We are beginning our journey to better understand te ao Māori and what it means for our work. We have recently appointed, jointly with the Office of the Privacy Commissioner, PJ Devonshire as Principal Adviser Māori and recognised Wiremu Lourie's role as Kaihautū Mātauranga Māori. The Principal Adviser Māori will lead us and we look forward to the journey.

## Diversity and inclusion in our organisation

Building and maintaining an inclusive, diverse and healthy environment where our people feel safe, valued, supported, respected and can flourish are core goals of our People Strategy.

Our focus on creating a diverse workforce and an inclusive culture to reflect and best serve our communities is supported by a planned programme of work each year, including measuring progress through data collection and our employee engagement survey. We are developing a new reporting dashboard to track progress. Our employee survey reflects that our employees are generally satisfied with the Commission's efforts to support diversity and inclusion.

To enhance our ability to report on ethnic and gender diversity, we have changed the questions we ask new employees so that they now have greater options for telling us about themselves. We also asked current Commission employees to voluntarily update their personal information.

The ethnic diversity score index measures diversity in a group and is useful to compare sets of data, for instance to see whether ethnic diversity is increasing or decreasing over time. In essence it measures the probability that two individuals randomly selected from the group will have different ethnicities. The range is from 0 to 1, where: high scores (close to 1) indicate high diversity, and low scores (close to 0) indicate low diversity. The Commission's ethnic diversity index score for 2020/21 is 0.52 compared to 0.48 in 2019/20.

We have an updated disability register and aim to ensure that our workplace environment caters to people of all abilities, with assistance available to all employees as required.

The scope of diversity and inclusion is broad. We have solid foundations in place and continue to make progress.



The Commission's staff-led Diversity and Inclusion Network still operates, with new leadership of the group facilitating further momentum.

As part of our partnership with Diversity Works, we are responding to the recommendations in its stocktake to build on the positive findings of its report on the Commission's diversity and inclusion landscape. Some specific areas of focus are recruitment and attraction, career development and inclusive leadership.

Consistent with a Diversity Works recommendation that we raise the visibility of our commitment, we launched a dedicated Diversity and Inclusion page on our intranet. The resources on the page include our strategy, related policies, learning and developments tools, te reo Māori resources, our calendar of events, information about our Diversity and Inclusion Network, and access to several publications and articles. We also added an option for our staff to include personal pronouns in their email signatures.

We participate in and celebrate awareness-building activities such as the Tupu Tai Pasifika internship programme, International Women's Day, Pink Shirt Day, Te Wiki o te Reo Māori, Samoan Language Week, and Mental Health Awareness Week.

In response to Te Kawa Mataaho Public Service Commission’s Papa Pounamu framework, we are providing opportunities for our people to build awareness and understanding of the five commitments: addressing bias, strengthening cultural competency, building inclusive leadership, developing relationships, and supporting and engaging with employee-led networks.

### Flexible working arrangements

The Commission is committed to providing an excellent work environment, which includes supporting flexible work practices where employees can excel and fully contribute their talents while maintaining a healthy work-life-family balance.

In response to the COVID-19 pandemic, we moved from being primarily an office-based organisation to having everyone working from home during Alert Levels 3 and 4. This experience provided invaluable insights into a full review of our overall approach to flexible working and the introduction of a new policy in 2020.

Our approach allows for vital in-person connectivity, collaboration and cohesion between individual employees, both within and across teams, as well as the flexibility to work outside the office. All roles are treated as flexible unless there is a genuine business reason for a role not to be. Every role should be suitable for some form of flexibility but not every type of flexibility will work for every role. We encourage flexible working requests that balance the needs of the Commission, the individual role, the employee and the team.

	2019	2020	2021
Percentage of employees with flexible working arrangements	12.1%	59%	<b>60%</b>

### Gender pay gap

The Commission is making progress in closing the gender pay gap and actively growing diversity. Fifty percent of our Board (our full Commissioners) are women, including our Chair and Deputy Chair, and 50% of our Senior Leadership Team, including the Chief Executive, are women.

Our gender pay gap is primarily caused by having a higher number of male staff in technical specialist roles, particularly in our regulated industries work, and more women in our administrative functions. To overcome this occupational segregation, we continue to focus on the pipeline for recruitment of women into specialist roles, supported by our approach to flexible working.

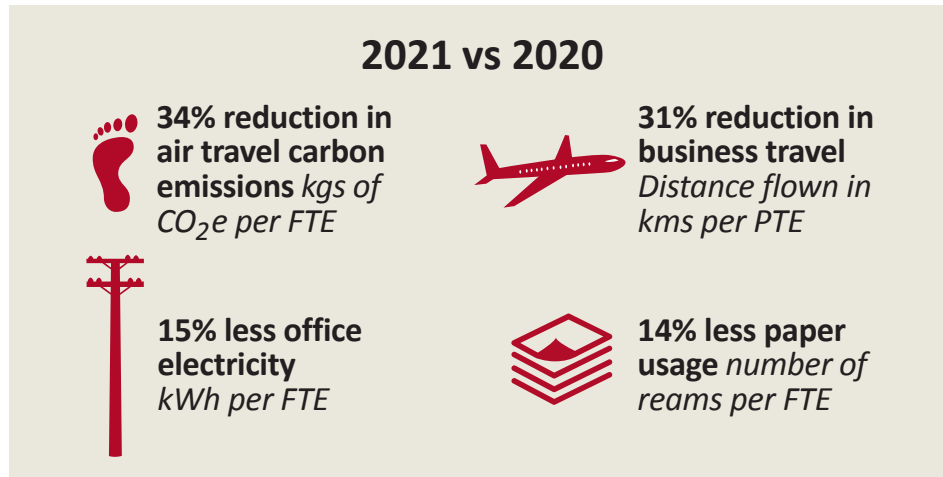
Gap	2019	2020	2021
Median difference between male and female employees	22.6%	18.5%	<b>16.5%</b>
Average difference between male and female employees	14.8%	13.6%	<b>10.8%</b>

### Working efficiently

As an independent Crown entity, funded by New Zealanders, we must operate efficiently and effectively. We understand the impact our processes and decisions can have on businesses and are committed to improving the efficiency and timeliness of our decisions. We keep looking for ways to operate more efficiently. For example, we share reception and meeting room facilities with the Tertiary Education Commission in Wellington and are improving the way we use our leased premises as our numbers grow. During 2020/21 we provided information services to the Electricity Authority by hosting their IT infrastructure and providing Chief Information Officer and IT helpdesk services, and shared security expertise with other agencies.

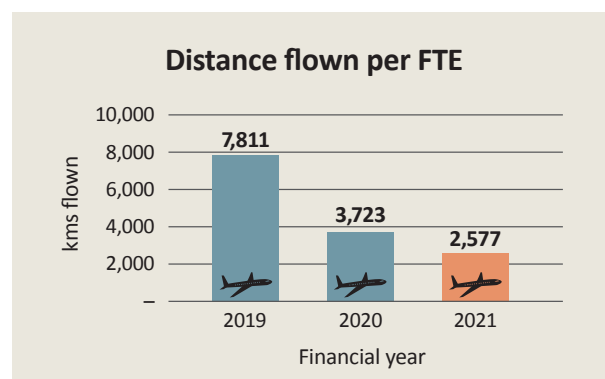
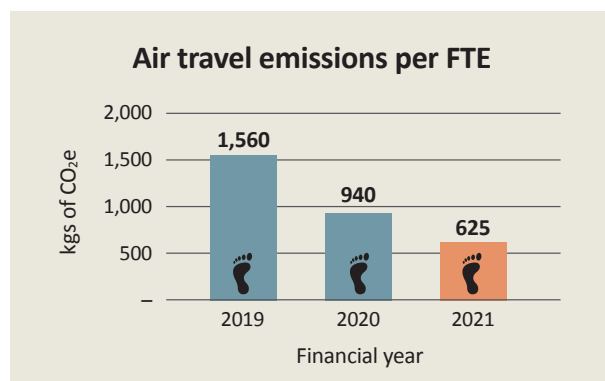
## Our environmental sustainability | Tā Mātou Kia Toitū te Taiao

We are committed to minimising our impact on the environment. We monitor our travel emissions, energy consumption and paper usage, and look for ways to reduce our environmental footprint. We are developing sustainability targets and performance measures for our environmental reporting and will keep adapting our approach to respond to shifts in expectations and future changes in government policy settings.



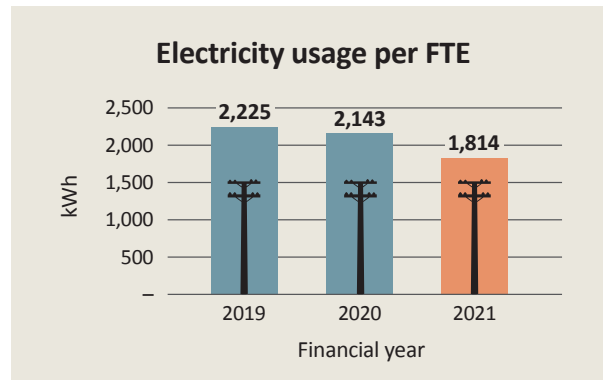
### Air travel

Air travel has significantly reduced in the last two years as travel restrictions were imposed in response to COVID-19. This trend continued throughout the year due to the ongoing impacts of COVID-19, as well as our initiatives to actively reduce emissions by reducing business travel activity, increased use of video conferencing technology, and improved processes so staff can communicate and collaborate effectively while working remotely. For example, our staff can now join all staff meetings via Microsoft Teams to avoid unnecessary travel. These changes have resulted in a further 31% reduction in kilometres flown per full-time equivalent (FTE) employee, and a 34% reduction in air travel carbon emissions overall compared to 2019/20.



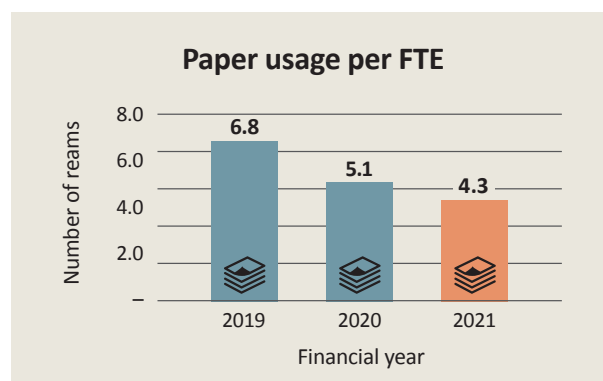
## Electricity

Electricity use in both our Wellington and Auckland offices has reduced over the last two years as more staff regularly worked from home since March 2020. Having more staff working from home during lockdown periods and by choice on a regular basis has resulted in electricity savings from our office computer monitors being used less frequently (each monitor consumes, on average, around 95% less power in sleep mode compared to when it's in use).<sup>9</sup> As our staff numbers grow, we aim to maximise the use of existing office space by adding more shared desks and collaborative workspaces.



## Paper usage

Over the last three years our paper use has reduced from an average of 6.8 reams per FTE to 4.3 reams per FTE. This resulted from using mobile devices and technology to enable a move to more paperless processes, rolling out 'Follow-Me' printing, which has resulted in less waste, replacing paper filing systems with digital filing in our document management system, and increasing the support for flexible working arrangements.



9. We acknowledge that while there have been electricity savings in our offices as a result of staff working from home, the positive impacts of this will likely be offset by staff increasing their home electricity use, overall having a net neutral impact on the environment.

## Financial statements overview

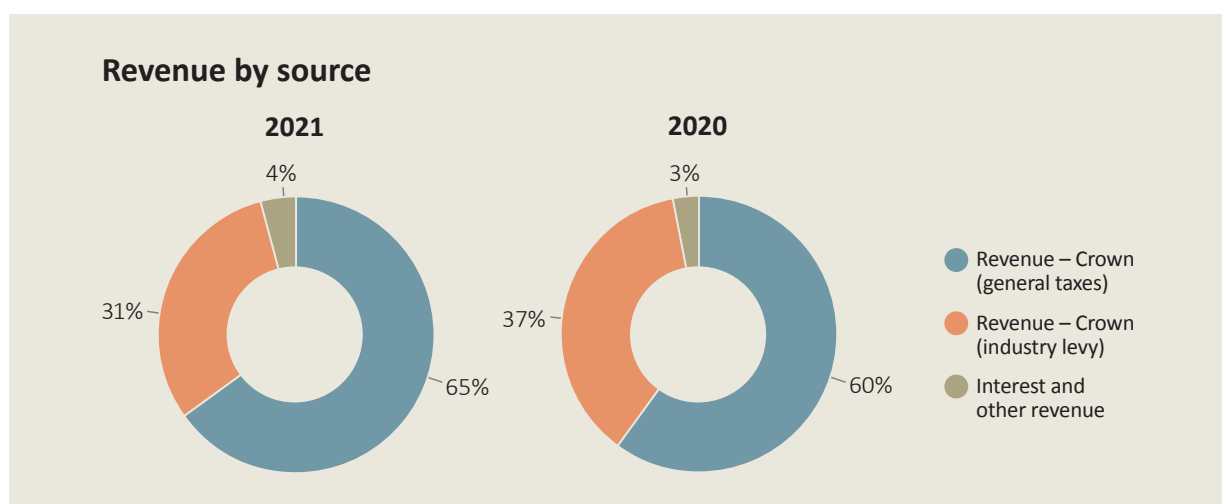
### Tirohanga whānui ki ngā tauākī pūtea

The Commission's financial results and our financial position show we are well placed to play our part in ensuring New Zealanders are better off as we navigate the ongoing uncertainty of the current economic environment. This section provides an overview of our financial statements for the year ended 30 June 2021.

### Revenue

The Commission recorded revenue of \$59.6 million for 2020/21, compared to \$53.7 million for 2019/20. Much of our Crown-sourced revenue has restrictions limiting the revenue recognised to the extent that expenditure has been incurred.

The largest contribution to our revenue is from the Crown, through a combination of general taxes and industry levies (which pay for the regulation of, for instance, electricity lines businesses). Other sources of revenue include interest on cash we hold, court cost awards from litigation, and application fees paid by businesses seeking clearances and other determinations.



Crown funding through appropriations provides us with the resources to complete our many functions. The funding is a maximum amount we may spend (excluding revenue from other sources) for each function. We budget to produce our work within this funding. Earlier in this Annual Report, we have provided tables for each function showing total revenue and expenses (see pages 10 and 11).

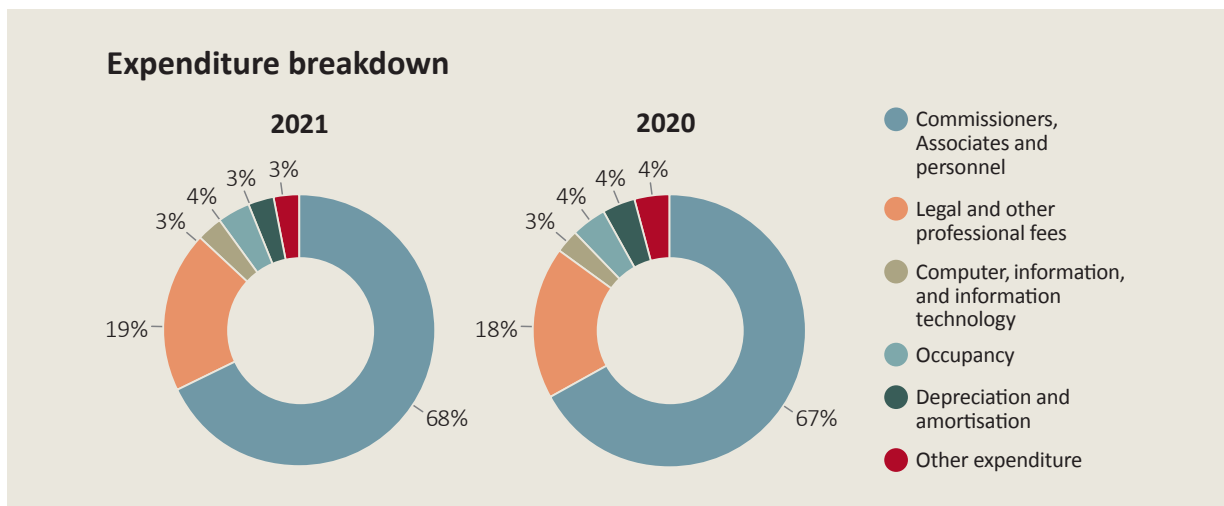
Crown appropriations for funding the Commission are sourced from both general taxes and levies charged directly to the regulated industries. The proportion of the Commission's revenue sourced from general taxes increased to 65% in 2020/21 (from 60% in 2019/20), due to additional Crown funding to enhance the Commission's capability and impact. The proportion of the Commission's revenue sourced from industry levies decreased to 31% in 2020/21 (from 37% in 2019/20), as a result of lower expenditure on Electricity and Gas as we worked on Aurora Energy's application for a customised price-quality path.

The Aurora customised price-quality path resulted in higher revenue from fees and recoveries in 2020/21, offsetting reduced interest revenue from lower interest rates on cash deposits throughout 2020/21 compared with 2019/20.

## Expenditure

This year we spent \$58.9 million, compared to a budgeted spend of \$66.7 million and a prior year spend of \$53.8 million. Expenditure on Personnel was up again significantly on last year as our increasing work programme required us to recruit more staff, both permanent and temporary. Legal and other professional fees similarly increased compared to last year, although they were less than budget due to less-than-anticipated expenditure on litigation cases.

The COVID-19 pandemic and lockdown periods throughout the 2020/21 year had minimal impact on the Commission's expenditure overall. Commission operations continued through adjustments to Alert Levels and so, while circumstances delayed some projects and investigations, costs were immaterially affected.



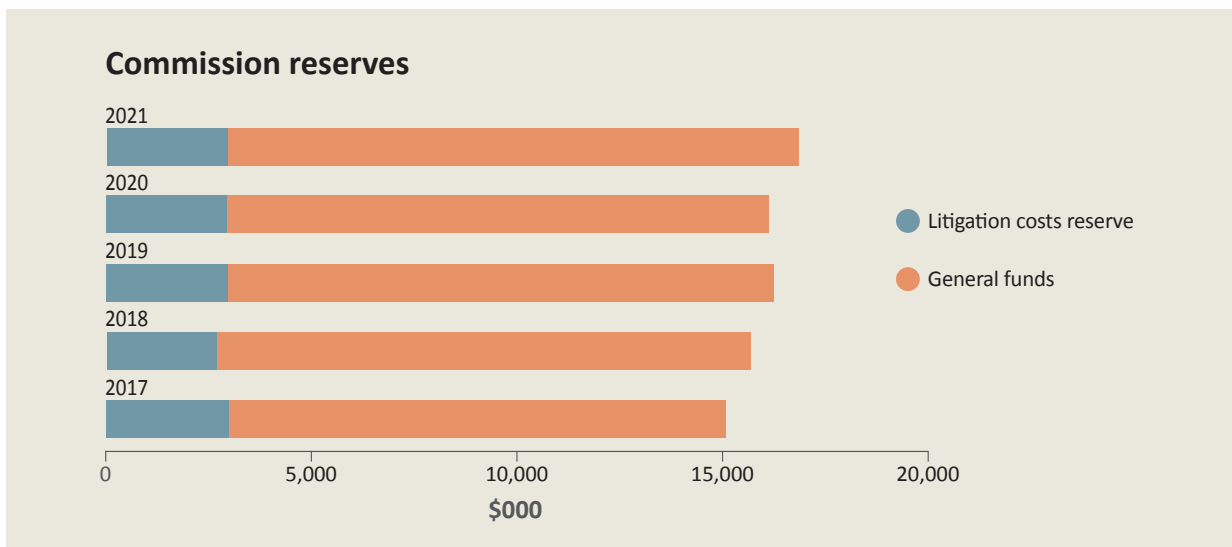
The investigative and analytical nature of much of our work meant that wages and salaries made up just over two-thirds of our 2020/21 expenditure. This percentage increased slightly from 2019/20 and prior years, reflecting the increasing size of our workforce to manage additional functions, expectations and activity since 2017/18.

Expenditure on associated costs of additional staff, such as occupancy costs, additional computer and IT infrastructure all grew proportionately. Likewise, an increasing proportion of costs was spent on external legal and other professional support to assist with progressing our work programme and enforcing legislation we administer.

## Financial position

We maintain reserves at a level that allows us to manage litigation risks and other financial risks. These risks are diverse but can involve significant, unanticipated expenditures in a relatively short timeframe. For instance, if we lose a large multi-party litigation case, we may have to pay sizeable adverse cost awards to the winning parties. Alternatively, we may have to incur unplanned expenditure on a Part 4 inquiry or a large merger clearance or authorisation (including legal costs), while delivering our business as usual activities.

The Commission's equity (or reserves) at 30 June 2021 was \$16.9 million, an increase of \$0.7 million on 31 June 2020. The increase in equity resulted from small net surpluses on our Competition and Consumer output classes.



The Commission's reserves are made up of two components. The first is a Litigation costs reserve, which is a separate, ring-fenced reserve to help the Commission meet the costs payable in losing a significant litigation case (a contribution towards the costs of the other, successful, party). The second is our General fund, which manages the other, broader, risks described above (including where the Litigation costs reserve is insufficient), and also allows the Commission to invest in Fixed Assets and Intangible Assets.

We expect our 2021/22 budget to have a significant increase in Crown funding to \$81.9 million, which will provide for additional investments we need to make in our operations to improve our effectiveness and impact. This will fund expected increases on expenditure in our Telecommunications and Fuel output classes.

## Statement of responsibility | Tauākī Haepapatanga

Under the Crown Entities Act 2004, the Board of the Commerce Commission is responsible for the preparation of the Commission's financial statements and statement of performance, and for the judgements made in them.

We are also responsible for any end-of-year performance information provided by the Commission under section 19A of the Public Finance Act 1989, whether or not that information is included in the Commission's Annual Report.

The Commission's Board is also responsible for establishing, and has established, a system of internal controls designed to provide reasonable assurance of the integrity and reliability of our financial reporting.

In the Board's opinion, these financial statements and the statement of performance fairly reflect the financial position, and results of the operations, of the Commission for the year ended 30 June 2021.

Signed on behalf of the Board:



**Anna Rawlings**  
*Chair – Commerce Commission*

4 February 2022



**Sue Begg**  
*Deputy Chair – Commerce Commission*

4 February 2022



## Independent auditor's report

### Te pūrongo a te kaitātari kaute motuhake

To the readers of the Commerce Commission's financial statements and performance information for the year ended 30 June 2021

The Auditor-General is the auditor of the Commerce Commission (the Commission). The Auditor-General has appointed me, Karen Young, using the staff and resources of Audit New Zealand, to carry out the audit of the financial statements and the performance information, including the performance information for appropriations, of the Commission on his behalf.

#### Opinion

We have audited:

- the financial statements of the Commission on pages 83 to 107, that comprise the statement of financial position as at 30 June 2021, the statement of comprehensive revenue and expenses, statement of changes in equity, statement of cash flows and statement of accounting policies for the year ended on that date and the notes to the financial statements including other explanatory information; and
- the performance information of the Commission on pages 19, 23, 25, 27, 34-35, 43 and 46 to 59.

In our opinion:

- the financial statements of the Commission on pages 83 to 107:
  - > present fairly, in all material respects:
    - its financial position as at 30 June 2021; and
    - its financial performance and cash flows for the year then ended; and
  - > comply with generally accepted accounting practice in New Zealand in accordance with Public Benefit Entity Reporting Standards; and
- the performance information on pages 19, 23, 25, 27, 34-35, 43 and 46 to 59:
  - > presents fairly, in all material respects, the Commission's performance for the year ended 30 June 2021, including:
    - for each class of reportable outputs:
      - its standards of delivery performance achieved as compared with forecasts included in the statement of performance expectations for the financial year; and
      - its actual revenue and output expenses as compared with the forecasts included in the statement of performance expectations for the financial year; and
    - what has been achieved with the appropriations; and
    - the actual expenses or capital expenditure incurred compared with the appropriated or forecast expenses or capital expenditure.
  - > complies with generally accepted accounting practice in New Zealand.

### ***Our audit was completed late***

Our audit was completed on 4 February 2022. This is the date at which our opinion is expressed. We acknowledge that our audit was completed later than required by the Crown Entities Act 2004, section 156(3)(a). This was due to an auditor shortage in New Zealand and the consequential effects of Covid-19, including lockdowns.

The basis for our opinion is explained below. In addition, we outline the responsibilities of the Board and our responsibilities relating to the financial statements and the performance information, we comment on other information, and we explain our independence.

### **Basis for our opinion**

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the Professional and Ethical Standards and the International Standards on Auditing (New Zealand) issued by the New Zealand Auditing and Assurance Standards Board. Our responsibilities under those standards are further described in the Responsibilities of the auditor section of our report.

We have fulfilled our responsibilities in accordance with the Auditor-General's Auditing Standards.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibilities of the Board for the financial statements and the performance information**

The Board are responsible on behalf of the Commission for preparing financial statements and performance information that are fairly presented and comply with generally accepted accounting practice in New Zealand. The Board are responsible for such internal control as they determine is necessary to enable them to prepare financial statements and performance information that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements and the performance information, the Board are responsible on behalf of the Commission for assessing the Commission's ability to continue as a going concern. The Board are also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting, unless there is an intention to merge or to terminate the activities of the Commission, or there is no realistic alternative but to do so.

The Board's responsibilities arise from the Crown Entities Act 2004 and the Public Finance Act 1989.

### **Responsibilities of the auditor for the audit of the financial statements and the performance information**

Our objectives are to obtain reasonable assurance about whether the financial statements and the performance information, as a whole, are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit carried out in accordance with the Auditor-General's Auditing Standards will always detect a material misstatement when it exists. Misstatements are differences or omissions of amounts or disclosures, and can arise from fraud or error. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of readers, taken on the basis of these financial statements and the performance information.

For the budget information reported in the financial statements and the performance information, our procedures were limited to checking that the information agreed to the Commission's statement of performance expectations.

We did not evaluate the security and controls over the electronic publication of the financial statements and the performance information.

As part of an audit in accordance with the Auditor-General's Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. Also:

- We identify and assess the risks of material misstatement of the financial statements and the performance information, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- We obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control.
- We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Board.
- We evaluate the appropriateness of the reported performance information within the Commission's framework for reporting its performance.
- We conclude on the appropriateness of the use of the going concern basis of accounting by the Board and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Commission's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements and the performance information or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Commission to cease to continue as a going concern.
- We evaluate the overall presentation, structure and content of the financial statements and the performance information, including the disclosures, and whether the financial statements and the performance information represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the Board regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Our responsibilities arise from the Public Audit Act 2001.

## **Other information**

The Board are responsible for the other information. The other information comprises the information included on pages 1 to 109, but does not include the financial statements and the performance information, and our auditor's report thereon.

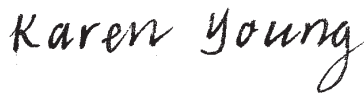
Our opinion on the financial statements and the performance information does not cover the other information and we do not express any form of audit opinion or assurance conclusion thereon.

In connection with our audit of the financial statements and the performance information, our responsibility is to read the other information. In doing so, we consider whether the other information is materially inconsistent with the financial statements and the performance information or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on our work, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## **Independence**

We are independent of the Commission in accordance with the independence requirements of the Auditor-General's Auditing Standards, which incorporate the independence requirements of Professional and Ethical Standard 1: International Code of Ethics for Assurance Practitioners issued by the New Zealand Auditing and Assurance Standards Board.

Other than in our capacity as auditor, we have no relationship with, or interests, in the Commission.



**Karen Young**

**Audit New Zealand**

On behalf of the Auditor-General  
Wellington, New Zealand

# Financial statements | Ngā tauākī pūtea

## Statement of comprehensive revenue and expense

for the year ended 30 June 2021

	Notes	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Operating revenue</b>				
<i>Revenue from non-exchange transactions</i>				
Revenue – Crown		57,446	64,050	52,008
Court cost awards		0	100	238
<b>Total revenue from non-exchange transactions</b>		<b>57,446</b>	<b>64,150</b>	<b>52,246</b>
<i>Revenue from exchange transactions</i>				
Fees and recoveries		1,476	1,550	631
Interest		212	600	489
Other revenue		430	391	323
<b>Total revenue from exchange transactions</b>		<b>2,118</b>	<b>2,541</b>	<b>1,443</b>
<b>Total operating revenue</b>		<b>59,564</b>	<b>66,691</b>	<b>53,689</b>
<b>Operating expenses</b>				
Members and personnel	1	39,871	42,894	36,184
Legal and other professional fees	2	11,128	15,723	9,850
Computer, information, and information technology		1,891	1,953	1,514
Occupancy	3	2,412	2,384	2,218
Depreciation and amortisation		1,871	1,909	1,880
Other expenditure	4	1,693	1,828	2,156
<b>Total operating expenses</b>		<b>58,866</b>	<b>66,691</b>	<b>53,802</b>
<b>Surplus/(Deficit)</b>		<b>698</b>	<b>0</b>	<b>(113)</b>
<b>TOTAL COMPREHENSIVE REVENUE AND EXPENSE</b>		<b>698</b>	<b>0</b>	<b>(113)</b>

## Statement of changes in equity

for the year ended 30 June 2021

	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Balance at 1 July</b>	<b>16,158</b>	<b>16,055</b>	<b>16,271</b>
<b>Comprehensive revenue and expense</b>			
Surplus/(deficit)	698	0	(113)
<b>Total comprehensive revenue and expense</b>	<b>698</b>	<b>0</b>	<b>(113)</b>
<b>BALANCE AT 30 JUNE</b>	<b>16,856</b>	<b>16,055</b>	<b>16,158</b>

The accompanying statement of accounting policies and notes to the financial statements on pages 86 to 107 form part of the financial statements.

## Statement of financial position

as at 30 June 2021

	Notes	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Equity</b>				
General funds	5	13,856	13,055	13,158
Litigation costs reserve	5	3,000	3,000	3,000
<b>Total equity</b>		<b>16,856</b>	<b>16,055</b>	<b>16,158</b>
<b>Current assets</b>				
Cash and cash equivalents	6	12,084	2,154	7,072
Fees and recoveries receivable		69	114	777
Crown funding receivable		714	0	0
Short-term investments		8,000	14,000	13,098
Prepayments		1,194	720	809
<b>Total current assets</b>		<b>22,061</b>	<b>16,988</b>	<b>21,756</b>
<b>Non-current assets</b>				
Property, plant and equipment	7	2,955	3,255	3,411
Intangibles	8	1,201	2,190	1,364
<b>Total non-current assets</b>		<b>4,156</b>	<b>5,445</b>	<b>4,775</b>
<b>Total assets</b>		<b>26,217</b>	<b>22,433</b>	<b>26,531</b>
<b>Current liabilities</b>				
Creditors and other payables	9	1,102	1,612	1,324
Accrued expenses		1,607	930	954
Lease incentive		170	170	170
Penalties and cost awards held in trust	10	95	50	702
Crown funding repayable	11	2,095	126	3,267
Employee entitlements	12	3,442	2,640	2,936
<b>Total current liabilities</b>		<b>8,511</b>	<b>5,528</b>	<b>9,353</b>
<b>Non-current liabilities</b>				
Lease incentive		850	850	1,020
<b>Total non-current liabilities</b>		<b>850</b>	<b>850</b>	<b>1,020</b>
<b>Total liabilities</b>		<b>9,361</b>	<b>6,378</b>	<b>10,373</b>
<b>NET ASSETS</b>		<b>16,856</b>	<b>16,055</b>	<b>16,158</b>

The accompanying statement of accounting policies and notes to the financial statements on pages 86 to 107 form part of the financial statements.

## Statement of cash flows

for the year ended 30 June 2021

	Notes	2021 Actual \$000	2021 Budget \$000	2020 Actual \$000
<b>Cash flows from operating activities</b>				
Crown funding received		62,167	64,266	58,277
Fees and recoveries received		1,963	2,041	1,107
Receipts and payment of penalties (net)		(29)	115	(85)
Interest received		287	600	524
Commissioners, Associates and personnel payments		(39,299)	(43,180)	(35,171)
Supplier payments		(17,464)	(22,045)	(16,524)
Repayment of Crown funding		(6,513)	(1,394)	(4,534)
Goods and services tax (net)		(82)	83	(17)
<b>Net cash inflow from operating activities</b>	13	<b>1,030</b>	<b>486</b>	<b>3,577</b>
<b>Cash flows from investing activities</b>				
Investments receipts/(deposits)		5,098	(902)	(98)
Property, plant and equipment sale proceeds		0	(577)	(2)
Property, plant and equipment purchases		(751)	0	(1,093)
Intangible asset purchases		(365)	(1,566)	(514)
<b>Net cash inflow/(outflow) from investing activities</b>		<b>3,982</b>	<b>(3,045)</b>	<b>(1,707)</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>				
Opening cash and cash equivalents		7,072	4,713	5,202
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	6	<b>12,084</b>	<b>2,154</b>	<b>7,072</b>

The GST (net) component of operating activities reflects the net GST paid and received from the Inland Revenue Department (IRD). We have presented the GST component on a net basis, as the gross amounts do not provide meaningful information for financial statement purposes.

We have presented receipts and payment of penalties and cost awards as a net item because the Commission holds these funds in trust in accordance with agreements.

The accompanying statement of accounting policies and notes to the financial statements on pages 86 to 107 form part of the financial statements.

# Statement of accounting policies | Tauākī kaupapa kaute

for the year ended 30 June 2021

## Reporting entity

The Commerce Commission is a Crown entity (as defined by the Crown Entities Act 2004), established under the Commerce Act 1986, and operating solely within New Zealand. The ultimate parent of the Commission is the New Zealand Crown.

The Commission's main objective is to provide services to the Aotearoa New Zealand public, instead of making a financial return. We provide public services to meet our responsibilities under the Commerce Act 1986, the Fair Trading Act 1986, the Dairy Industry Restructuring Act 2001, the Telecommunications Act 2001, the Fuel Industry Act 2020, and the Credit Contracts and Consumer Finance Act 2003.

We are a public sector public benefit entity (PBE) for the purposes of the Accounting Standards Framework issued by the New Zealand External Reporting Board, because we are a public entity as defined in the Public Audit Act 2001.

## Measurement base and statement of compliance

These financial statements comply with the requirements of the Crown Entities Act, and are prepared on a historical cost basis for a going concern in accordance with New Zealand generally accepted accounting practice (GAAP) to comply with Tier 1 PBE accounting standards. The Commission authorised the financial statements for issue on 4 February 2022.

The Commission was required under section 156(3)(a) of the Crown Entities Act 2004 to complete the audited financial statements and statements of performance by 31 December 2021. The timeframe was not met because Audit New Zealand was unable to complete the audit within this timeframe due to an auditor shortage and the consequential effects of Covid-19 including lockdowns.

## Functional and presentation currency

The Commission's functional and presentation currency is the New Zealand dollar (rounded to the nearest thousand).

## Significant accounting policies

The accounting policies that significantly affect the measurement of comprehensive revenue and expenditure, financial position and cash flows were applied consistently for all reporting periods covered by these financial statements, including the comparative (prior year and budget) information. These are the significant accounting policies:

**Revenue** – Revenue is measured at the fair value of consideration (eg, money) received or receivable. We earn revenue from providing specific services (known as outputs) for the Crown, for services to other third parties, court cost award recoveries and interest revenue.

**Revenue – Crown** – The Commission receives funding via appropriations from the Crown. Revenue – Crown is a form of non-exchange transaction, because there is no direct relationship between the services we provide (funded through taxation and levies) and the general public we ultimately provide the services to. Our funding is restricted in its use for the purpose of meeting the Commission's objectives and the scope of the relevant appropriations. Revenue – Crown we receive but do not spend is refunded to the Crown after year end for all output classes except Vote Business, Science and Innovation – Enforcement of General Market Regulation, which the Commission is allowed to retain as reserves. Also, we may retain specific ring-fenced revenue provided to build up our ability to meet the cost of adverse cost awards.

Revenue from the Crown is initially recognised as a liability when received, and then as revenue when we have provided services which entitle us to the funding.



**Expenditure** – All expenditure we incur in providing services for the Crown or other third parties is recognised in the statement of comprehensive revenue and expense when an obligation to pay arises on an accruals basis.

**Foreign currency transactions** – Transactions in foreign currencies are converted into the Commission’s functional currency (New Zealand dollars) at exchange rates on the dates of the transactions. Monetary liabilities in foreign currencies at the reporting date are converted to New Zealand dollars at the exchange rate on that date.

**Leases** – The Commission is party to various operating leases as a lessee. As the lessors retain substantially all of the risk and rewards of ownership of the leased property, plant and equipment, the operating lease payments are recognised as expenses only in the period in which they arise. Any lease incentives received or obligations to reinstate the condition of leased premises are recognised in the statement of comprehensive revenue and expense over the term of the lease. At balance date we recognise any unamortised lease incentive and outstanding obligation for reinstatement as a liability.

**Depreciation and impairment** – Depreciation (and amortisation for intangible assets) is provided on a straight-line basis on all assets to allocate the cost of the asset (less any estimated residual value) over its useful life. The residual values and remaining useful lives of property, plant and equipment components are reviewed at least annually. All property, plant and equipment is subject to an annual test of impairment to test the recoverable amount. Any impairment losses are recorded as an expense in the period in which they are first identified.

The estimated useful lives of the major asset classes are:

Computer and office equipment	Up to 5 years
Furniture and fittings	Up to 5 years
Leasehold improvements	For the period of the lease
Motor vehicles	Up to 5 years
Software and other intangible assets	Up to 5 years

**Taxation** – The Commission is exempt from income tax under section CW 38 of the Income Tax Act 2007.

**Cost allocation** – Direct costs are charged directly to outputs. Personnel costs are allocated to outputs based on time records. The indirect costs of support groups, and corporate overhead costs are charged to outputs based on the budgeted relative time records of each output.

**Goods and services tax (GST)** – All items in the financial statements are presented exclusive of GST, except for receivables, payables, and unearned Revenue – Crown received in advance, which are presented on a GST-inclusive basis. Where we cannot claim a portion of GST, we recognise the GST portion as part of the related asset or expense.

The net GST recoverable from, or payable to, the IRD is included as part of receivables or creditors in the statement of financial position, and classified as an operating cash flow in the statement of cash flows.

**Equity** – Equity is the Crown’s ownership interest in the Commission and is measured as the difference between total assets and total liabilities. We have classified equity into components and disclosed these separately to allow clearer recognition of the specified uses that we have for our equity.

**Cash and cash equivalents** – Cash and cash equivalents are our cash on hand, transactional cash balances in bank accounts, and some term deposits with maturities of less than 90 days held with Aotearoa New Zealand-registered banks.

**Investments** – Investments are term deposits issued by Aotearoa New Zealand-registered banks with

maturities of more than 90 days. Investments are initially recognised and measured at fair value, usually the amount invested. After initial recognition, investments are measured at amortised cost. A loss allowance for expected credit losses is recognised if the estimated loss allowance is not trivial.

**Property, plant and equipment** – All items of property, plant and equipment owned are recorded at historical cost of purchase, less accumulated depreciation and any impairment losses. An item of property, plant and equipment acquired in stages is not depreciated until the item of property, plant and equipment is in its final state and ready for its intended use. Any later expenditure that extends the useful life or enhances the service potential of an existing item of property, plant and equipment is also capitalised and depreciated.

All other costs to maintain the useful life or service potential of an existing item of property, plant and equipment are recognised as expenditure when incurred. Any gain or loss arising from the sale or disposal of an item of property, plant and equipment is recognised in the period in which the item of property, plant and equipment is sold or disposed of.

**Intangible assets** – Computer software that is not integral to the operation of the hardware is recorded as an intangible asset, less accumulated amortisation.

**Employee entitlements** – Employee entitlements are unpaid salaries, bonuses, and annual leave due to our personnel. At balance date, any unpaid employee entitlements are recognised as a liability and charged as an expense. Entitlements are calculated on an actual entitlement basis using current salary rates.

**Contingencies** – As the Commission is a quasi-judicial body, it is engaged in litigation activity which may result in costs being ordered against or in favour of the Commission. The outcome of an order for costs may not be certain until all appeal processes are complete. Therefore, the possibility of a costs award being incurred or received is disclosed firstly as either a contingent liability or a contingent asset, respectively. An award for costs, whether for or against the Commission, is only recognised in the statement of comprehensive revenue and expense when it is probable that there will be a payment or receipt of agreed costs which can be measured reliably.

**Comparatives** – To ensure consistency with the current year, all comparative information including the budget has been restated or reclassified where appropriate. The budget comparatives are those approved by the Commission at the beginning of the year for inclusion as prospective financial statements in our statement of performance expectations. The budget complies with GAAP and used accounting policies consistent with those used to prepare these financial statements.

### **Changes in accounting policies**

The accounting policies adopted are consistent with the previous year.

### **Changes to applicable reporting standards and interpretations**

The XRB has issued the following reporting standards which are applicable to the Commission and not yet effective:

- *PBE FRS 48 Service Performance Reporting*, which establishes requirements for Tier 1 and Tier 2 public benefit entities to select and present service performance information. This standard is effective for reporting periods beginning on or after 1 January 2022, with early application permitted. We expect the effect of applying the new standard on our service performance reporting to be minor.
- *PBE IPSAS 41 Financial Instruments*, which is a public sector equivalent of *PBE IFRS 9 Financial Instruments*. The standard is effective for reporting periods beginning on or after 1 January 2022, with early adoption permitted. While we have not yet assessed the differences between this standard and PBE IFRS 9, we expect any effects to be minor.

# Notes to the financial statements

He kōrero tāpiri ki ngā tauākī pūtea  
for the year ended 30 June 2021

## 1. Commissioners, Associates and personnel

	2021 Actual \$000	2020 Actual \$000
Salaries and wages (including annual leave and other entitlements)	35,537	33,293
Defined contribution plan employer contributions	879	790
Redundancy	103	–
Recruitment	275	216
Professional development	385	452
Other employment-related costs	2,692	1,433
<b>TOTAL MEMBERS AND PERSONNEL EXPENDITURE</b>	<b>39,871</b>	<b>36,184</b>

Employer contributions to defined contribution plans includes payments to KiwiSaver and the State Sector Retirement Savings Scheme.

During the year ended 30 June 2021, compensation or other benefits paid to two employees in relation to cessation totalled \$136,817 (2020: no employees received compensation or other benefits in relation to cessation).

### Employee annual remuneration bands over \$100,000

	2021 Actual #	2020 Actual #
\$100,000 – \$110,000	15	16
\$110,001 – \$120,000	21	21
\$120,001 – \$130,000	18	15
\$130,001 – \$140,000	21	17
\$140,001 – \$150,000	16	14
\$150,001 – \$160,000	12	13
\$160,001 – \$170,000	10	3
\$170,001 – \$180,000	10	11
\$180,001 – \$190,000	3	2
\$190,001 – \$200,000	7	7
\$200,001 – \$210,000	3	5
\$210,001 – \$220,000	2	3
\$220,001 – \$230,000	0	1
\$230,001 – \$240,000	1	1
\$240,001 – \$250,000	0	1
\$250,001 – \$260,000	0	1
\$260,001 – \$270,000	1	0
\$270,001 – \$280,000	2	1
\$280,001 – \$290,000	1	0
\$290,001 – \$300,000	1	1
\$360,001 – \$370,000	1	0
\$370,001 – \$380,000	0	0
\$380,001 – \$390,000	0	1

## 2. Legal and other professional fees

	2021 Actual \$000	2020 Actual \$000
Legal consultants	4,560	5,354
Other consultants and experts	5,527	3,525
Specialist support services	1,059	918
Court cost awards	–	–
Other expenses	(18)	53
<b>TOTAL LEGAL AND OTHER PROFESSIONAL FEES</b>	<b>11,128</b>	<b>9,850</b>

Other expenses for 2021 includes a refund of security for costs, which the Commission received following successful proceedings against Harmony in January 2021. This was partially offset by test purchases, witness expenses, and court and services fees.

## 3. Occupancy

	2021 Actual \$000	2020 Actual \$000
Operating leases – rent	2,007	1,890
Other occupancy expenses	405	328
<b>TOTAL OCCUPANCY</b>	<b>2,412</b>	<b>2,218</b>

## 4. Other expenditure

	2021 Actual \$000	2020 Actual \$000
Telecommunications	541	704
Travel	461	672
Postage, photocopying and stationery	97	118
Publications and knowledge sharing	237	312
Loss on disposal of assets	1	13
Audit fees for financial statement audit	51	55
Other expenses	305	282
<b>TOTAL OTHER EXPENDITURE</b>	<b>1,693</b>	<b>2,156</b>

## 5. Equity

The Commission's total comprehensive revenue and expenses for the year of \$698,000 surplus (2020: \$113,000 deficit) flows to both our general funds and our litigation costs reserve. The respective increase or decrease in both reserves equals the Commission's total comprehensive revenue and expense for the year.

### General funds

	2021 Actual \$000	2020 Actual \$000
<b>Balance at 1 July</b>	<b>13,158</b>	<b>13,271</b>
Total comprehensive revenue and expense attributable	698	(113)
<b>BALANCE AT 30 JUNE</b>	<b>13,856</b>	<b>13,158</b>

The Commission's general funds are funds held in reserve as a result of past surpluses in certain output classes, plus an initial capital contribution from the Crown. The Commission is allowed to retain surpluses from our competition and consumer output classes.

### Litigation costs reserve

	2021 Actual \$000	2020 Actual \$000
<b>Balance at 1 July</b>	<b>3,000</b>	<b>3,000</b>
Total comprehensive revenue and expense attributable	0	0
<b>BALANCE AT 30 JUNE</b>	<b>3,000</b>	<b>3,000</b>

The Commission undertakes major litigation for alleged breaches of legislation, and also defends regulations and rulings it sets under the Acts it administers. The litigation costs reserve is a contingency fund established to manage the impact of adverse cost awards from these cases. The Commission receives up to \$500,000 in funding per year to build a contingency fund of up to \$3 million to help meet adverse cost awards. The Commission offsets this funding against any adverse cost awards it must pay to other parties during the year.

## 6. Cash and cash equivalents

	2021 Actual \$000	2020 Actual \$000
Cash on hand and at bank	11,989	6,866
Cash held in trust	95	206
<b>TOTAL CASH AND CASH EQUIVALENTS</b>	<b>12,084</b>	<b>7,072</b>

While cash and cash equivalents at 30 June 2021 are subject to the expected credit loss requirements of PBE IFRS 9, no loss allowance has been recognised because the estimated loss allowance for credit losses is trivial.

The Commission holds unspent Crown funding received, which is subject to restrictions on how it may be spent, and when. We also hold cost awards in trust, a portion of which is payable to the Crown or Commission, while a further portion is held in trust for various parties. As part of the Commission's financial management, portions of these funds may be placed on term deposit or held as cash at bank. See notes 10 and 11 for the relevant amounts.

## 7. Property, plant and equipment

### Cost and valuation:

	Computer and office equipment \$000	Furniture and fittings \$000	Leasehold improvements \$000	Motor vehicles \$000	Total \$000
<b>Balance at 1 July 2019</b>	<b>3,125</b>	<b>1,049</b>	<b>3,545</b>	<b>51</b>	<b>7,770</b>
Additions	589	129	387	0	1,105
Disposals	(957)	(20)	(165)	0	(1,142)
<b>BALANCE AT 30 JUNE 2020</b>	<b>2,757</b>	<b>1,158</b>	<b>3,767</b>	<b>51</b>	<b>7,733</b>

	Computer and office equipment \$000	Furniture and fittings \$000	Leasehold improvements \$000	Motor vehicles \$000	Total \$000
<b>Balance at 1 July 2020</b>	<b>2,757</b>	<b>1,158</b>	<b>3,767</b>	<b>51</b>	<b>7,733</b>
Additions	620	93	29	0	742
Disposals	(13)	(2)	0	0	(15)
<b>BALANCE AT 30 JUNE 2021</b>	<b>3,364</b>	<b>1,249</b>	<b>3,796</b>	<b>51</b>	<b>8,460</b>

Property, plant and equipment not yet commissioned at 30 June 2021 totalled \$125,000 (2020: \$9,000).

### Accumulated depreciation and impairment losses:

	Computer and office equipment \$000	Furniture and fittings \$000	Leasehold improvements \$000	Motor vehicles \$000	Total \$000
<b>Balance at 1 July 2019</b>	<b>2,188</b>	<b>697</b>	<b>1,441</b>	<b>34</b>	<b>4,360</b>
Depreciation expense	567	184	334	6	1,091
Elimination on disposal	(944)	(20)	(165)	0	(1,129)
<b>BALANCE AT 30 JUNE 2020</b>	<b>1,811</b>	<b>861</b>	<b>1,610</b>	<b>40</b>	<b>4,322</b>

	Computer and office equipment \$000	Furniture and fittings \$000	Leasehold improvements \$000	Motor vehicles \$000	Total \$000
<b>Balance at 1 July 2020</b>	<b>1,811</b>	<b>861</b>	<b>1,610</b>	<b>40</b>	<b>4,322</b>
Depreciation expense	642	166	382	6	1,196
Elimination on disposal	(12)	(1)	0	0	(13)
<b>BALANCE AT 30 JUNE 2021</b>	<b>2,441</b>	<b>1,026</b>	<b>1,992</b>	<b>46</b>	<b>5,505</b>

### Carrying amounts:

	Computer and office equipment \$000	Furniture and fittings \$000	Leasehold improvements \$000	Motor vehicles \$000	Total \$000
At 1 July 2019	937	352	2,104	17	3,410
At 30 June and 1 July 2020	946	297	2,157	11	3,411
<b>AT 30 JUNE 2021</b>	<b>923</b>	<b>223</b>	<b>1,804</b>	<b>5</b>	<b>2,955</b>

There is no restriction over the title of the Commission's assets. No property, plant and equipment assets are pledged as security for liabilities.

## 8. Intangibles

### Cost:

	TSLRIC models \$000	Acquired software \$000	Total \$000
<b>Balance at 1 July 2019</b>	<b>1,905</b>	<b>4,159</b>	<b>6,064</b>
Additions	0	534	534
Disposals	0	(495)	(495)
<b>BALANCE AT 30 JUNE 2020</b>	<b>1,905</b>	<b>4,198</b>	<b>6,103</b>

	TSLRIC models \$000	Acquired software \$000	Total \$000
<b>Balance at 1 July 2020</b>	<b>1,905</b>	<b>4,198</b>	<b>6,103</b>
Additions	0	512	512
Disposals	(1,905)	0	(1,905)
<b>BALANCE AT 30 JUNE 2021</b>	<b>0</b>	<b>4,710</b>	<b>4,710</b>

Intangible assets not yet commissioned at 30 June 2021 totalled \$386,000 (2020: \$60,000).

### Accumulated amortisation and impairment losses:

	TSLRIC models \$000	Acquired software \$000	Total \$000
<b>Balance at 1 July 2019</b>	<b>1,706</b>	<b>2,740</b>	<b>4,446</b>
Amortisation expense	199	590	789
Disposals	0	(496)	(496)
<b>BALANCE AT 30 JUNE 2020</b>	<b>1,905</b>	<b>2,834</b>	<b>4,739</b>

	TSLRIC models \$000	Acquired software \$000	Total \$000
<b>Balance at 1 July 2020</b>	<b>1,905</b>	<b>2,834</b>	<b>4,739</b>
Amortisation expense	0	675	675
Disposals	(1,905)	0	(1,905)
<b>BALANCE AT 30 JUNE 2021</b>	<b>0</b>	<b>3,509</b>	<b>3,509</b>



## Carrying amounts:

	TSLRIC models \$000	Acquired software \$000	Total \$000
At 1 July 2019	199	1,419	1,618
At 30 June and 1 July 2020	0	1,364	1,364
<b>AT 30 JUNE 2021</b>	<b>0</b>	<b>1,201</b>	<b>1,201</b>

The Commission holds licenses for software, including certain applications which have restrictions on their use. No intangible assets are pledged as security for liabilities.

## 9. Creditors and other payables

	2021 Actual \$000	2020 Actual \$000
<b>Payables under exchange transactions</b>		
Creditors	115	461
<b>Total payables under exchange transactions</b>	<b>115</b>	<b>461</b>
<b>Payables under non-exchange transactions</b>		
PAYE and other taxes withheld for payment to the Crown	499	433
Goods and services tax payable to the Crown	488	430
<b>Total payables under non-exchange transactions</b>	<b>987</b>	<b>863</b>
<b>TOTAL CREDITORS AND OTHER PAYABLES</b>	<b>1,102</b>	<b>1,324</b>

## 10. Penalties and cost awards held in trust

	2021 Actual \$000	2020 Actual \$000
<b>Balance at the beginning of the year</b>	<b>702</b>	<b>209</b>
Court cost awards compensation received (or recognised as receivable), and interest earned	65	1,199
Infringement fees received (or receivable) and paid to the Crown (net)	(5)	1
Court cost awards, compensation, and interest paid out	(667)	(707)
<b>BALANCE AT THE END OF THE YEAR</b>	<b>95</b>	<b>702</b>

Penalties and cost awards held in trust are civil penalties and cost awards received by the Commission but payable to another party. This is generally the Crown, but can also be compensation received for third parties, or civil penalties and cost awards held in trust while a litigation case continues. The Commission may also be entitled to a portion of court cost awards received. The Commission is not entitled to any of the penalties received, but acts as an agent for the Crown in collecting and forwarding the penalties received.

Infringement fees are issued to various parties for breaches of legislation we enforce. The Crown receives the proceeds of the infringements issued. Any Fair Trading Act infringements unpaid after a certain length of time are transferred to the Ministry of Justice for collection. Infringements issued under the Telecommunications Act 2001 are collected by the Commission.

The Commission receives cost awards and compensation for third parties through our investigations and litigation activities. Cost awards are split between the Crown and the Commission, in proportion to the funding each contributes to the costs of pursuing the investigation or litigation. This split occurs once the investigation or litigation is complete and the total cost of the case is known. Interest is earned and paid on all cost awards and settlements received.

### Components of penalties and cost awards held in trust:

	2021 Actual \$000	2020 Actual \$000
Infringement fees due to the Crown (including receivable)	0	5
Court cost awards and compensation due to Crown or other parties	95	697
<b>BALANCE AT THE END OF THE YEAR</b>	<b>95</b>	<b>702</b>

In general, penalties received by the Commission must be paid to the Crown within seven days of receipt, unless the penalties received are subject to an arrangement while litigation continues.

Where there are cases involving several parties, settlements can be received from some parties while others continue to defend. As a result, reliable estimates of total cost awards or settlements due to the Crown are not possible. These estimates can change substantially as the case progresses. In these situations, the Commission records a provision for the cost awards due to the Commission or the Crown which equals any cost awards received for that case. Once a case is finished and the total cost of the case and funds to distribute are known, the amount receivable and the amount due to the Crown are recognised, instead of a provision.

If we receive compensation settlements to pay to several third parties (eg, customers of a business we investigate), we recognise the whole amount as a payable to third parties when we receive the settlement.

Infringement fees are paid to the Crown every four months, after receipt.

## 11. Crown funding repayable

	2021 Actual \$000	2020 Actual \$000
Airports	10	553
Competition Studies	636	599
Dairy	148	150
Electricity	0	364
Fuel	18	0
Fibre	0	60
Gas	482	230
Telecommunications	179	837
Litigation Fund	622	474
<b>TOTAL CROWN FUNDING REPAYABLE</b>	<b>2,095</b>	<b>3,267</b>

## 12. Employee entitlements

	2021 Actual \$000	2020 Actual \$000
Accrued salaries and wages	730	542
Annual leave	2,243	1,959
Accrued performance and at-risk incentives	469	435
<b>TOTAL EMPLOYEE ENTITLEMENTS</b>	<b>3,442</b>	<b>2,936</b>

### 13. Reconciliation of operating surplus for the year to net cash inflows from operating activities

	2021 Actual \$000	2020 Actual \$000
<b>Operating surplus for the year</b>	<b>698</b>	<b>(113)</b>
<b>Non-cash items:</b>		
Depreciation and amortisation	1,871	1,880
Lease incentives recognised	(170)	(181)
<b>Total non-cash items</b>	<b>1,701</b>	<b>1,699</b>
<b>Items classified as investing or financing activities:</b>		
Gain on sale of property, plant and equipment	0	(2)
Loss on sale of property, plant and equipment	2	13
<b>Total items classified as investing or financing activities</b>	<b>2</b>	<b>11</b>
<b>Change in statement of financial position items:</b>		
Fees and recoveries receivable	(6)	(478)
Prepayments	(385)	102
Creditors	(251)	(320)
Accrued expenses	543	(388)
Crown funding repayable	(1,171)	1,608
Penalties and cost awards held in trust	(607)	493
Provisions	0	0
Employee entitlements	506	963
<b>Total change in statement of financial position items</b>	<b>(1,371)</b>	<b>1,980</b>
<b>NET CASH INFLOWS FROM OPERATING ACTIVITIES</b>	<b>1,030</b>	<b>3,577</b>

## 14. Critical accounting judgements and estimates

In authorising these financial statements for issue, the Commission has ensured that:

- all specific accounting policies needed to properly understand these financial statements are disclosed
- all adopted accounting policies are appropriate
- all accounting policies were applied consistently throughout the year.

When applying the accounting policies, the Commission is required to make certain judgements and estimates. The Commission has considered the following critical judgements and estimates to be appropriate.

### *COVID-19 impact on the Commission*

While COVID-19 continues to have a global impact, the Commission has assessed that COVID-19 has minimal impact on its operations and ability to operate to date. There is no information to suggest that the Commission needs to update its going concern assumption. Crown funding of the Commission's operations continues unaffected, and the Commission retains adequate financial reserves to manage the effect of a variety of future financial shocks if required.

### *Contingencies*

The Commission is party to several significant litigation cases and appeals as a result of its enforcement and quasi-judicial role. In undertaking significant litigation, the Commission is faced with the risk of losing, and as a result having to pay a multi-million dollar cost award.

The Commission has assessed the likelihood of the appeals being successful and of costs being awarded against, or in favour of, the Commission.

Cost awards that are likely to result in a future receipt or payment of cost awards have been recognised as at 30 June 2021 in the statement of comprehensive revenue and expense. The Commission has also disclosed its contingent liabilities and assets as a result of cost awards that may possibly result in a future receipt or payment of costs as at 30 June 2021 (see note 16).

## 15. COVID-19 impact

COVID-19 has had no material financial impact on the Commission, despite the ongoing pandemic during the year.

## 16. Contingent liabilities and assets

The Commission regularly has a number of matters before the courts which may lead to future assets or future liabilities. Where no judgment has been issued in a proceeding, our general presumption is that the outcome is rarely sufficiently predictable to register the case as giving rise to either a contingent asset or liability.

Litigation cases in which the Commission is involved can either be civil cases (where the Commission may be the plaintiff seeking an enforcement outcome, or the defendant when other parties appeal our decisions) or criminal prosecutions, where the Commission acts as prosecutor. Assets or liabilities resulting from criminal prosecutions by the Commission are not disclosed, because if the Commission is successful any cost awards are payable to the Crown. Similarly, if the Commission is unsuccessful in criminal prosecutions then very rarely will costs be ordered against the Commission. If costs are ordered against the Commission, those costs are paid by the Crown.

We do not treat penalties as contingent assets of the Commission, as any penalties if received will be payable to the Crown.

### **Contingent liabilities as at 30 June 2021:**

There are no contingent liabilities.

### **Contingent liabilities as at 30 June 2020:**

There were no contingent liabilities.

### **Contingent assets as at 30 June 2021:**

There are no contingent assets.

### **Contingent assets as at 30 June 2020:**

There were no contingent assets.

## 17. Financial instruments

The carrying amounts of each class of financial assets and liabilities are:

### Monetary assets:

	2021 Actual \$000	2020 Actual \$000
<b>Financial assets measured at amortised cost</b>		
Cash and cash equivalents	12,084	7,072
Fees and recoveries receivable	69	777
Short-term investments	8,000	13,098
<b>TOTAL MONETARY ASSETS</b>	<b>20,153</b>	<b>20,947</b>

### Monetary liabilities:

	2021 Actual \$000	2020 Actual \$000
<b>Financial liabilities measured at amortised cost</b>		
Creditors	1,102	1,324
Penalties and cost awards held in trust	95	702
Crown funding repayable	2,095	3,267
<b>TOTAL MONETARY LIABILITIES</b>	<b>3,292</b>	<b>5,293</b>

Financial instruments include cash and cash equivalents, receivables, investments and payables resulting from day-to-day operations. There are risks inherent with all financial instruments and risk management policies are used to mitigate the exposure to market risk comprising liquidity risk, credit risk, interest rate risk and currency risk.

### Liquidity risk

Liquidity risk is the risk of not having enough liquid funds (eg, cash) available, leading to difficulty in making debt payments on their due date. As Crown funding is received quarterly in advance, the Commission does not have a material risk in meeting its day-to-day obligations as they fall due.

### Credit risk

Credit losses may occur if a third party defaults on obligations owed to the Commission, resulting in the Commission suffering a financial loss. Financial instruments which potentially subject the Commission to risk consist of cash and bank balances, receivables and investments (bank deposits). The maximum credit risk exposure is represented by the carrying amount of each monetary asset in the statement of financial position.

The Commission does not have a material credit risk for receivables due from third parties. All other receivables are due from the Crown. Cash not immediately needed to settle obligations as they fall due is invested with Aotearoa New Zealand-registered banks with appropriate credit ratings. Limits are in place restricting deposit terms, individual deposit amounts, currency and the level of deposits with any one registered bank. The Commission is not exposed to any concentrations of credit risk, other than an exposure to the Aotearoa New Zealand banking sector. No collateral is required to be held as security against amounts owed to the Commission.

### Interest rate risk

As interest rates change, the fair value of interest-bearing bank deposits may change, and future cash inflows will fluctuate. In accordance with the Commission's cash management policy, there are limits on the terms of all interest-bearing deposits, ensuring that deposits mature within 12 months (short-term). There are no other market risks.

The financial instruments carrying amount closely approximates their fair values as at 30 June 2021 and 30 June 2020. The average interest rate on interest-bearing term deposits over the year was 1.75% (2020: 3.11%). A 1% (100 basis points) change in interest rates, with all other factors unchanged, would change interest earnings by \$110,600 (2020: \$128,000).

### Currency risk

Currency risk results from fluctuations in the value of future cash outflows because of changes in foreign exchange rates. The Commission engages overseas experts and purchases specialist goods and services from foreign suppliers, requiring payment in a range of foreign currencies. The transactions are not hedged and are translated into New Zealand dollars at the exchange rate (spot) obtained when the invoices are paid. With all other factors unchanged, a 10% increase in exchange rates would increase expenditure by \$95,700 (2020: \$62,000), while a 10% decrease in exchange rates would decrease expenditure by \$116,900 (2020: \$75,800).

## 18. Operating (non-cancellable) leases

### Operating (non-cancellable) lease payments due:

	2021 Actual \$000	2020 Actual \$000
Within 1 year	2,456	2,164
Within 1 to 2 years	2,429	2,185
Within 2 to 5 years	5,357	5,199
After 5 years	1,634	2,979
<b>TOTAL OPERATING (NON-CANCELLABLE) LEASES DUE</b>	<b>11,876</b>	<b>12,527</b>

The future operating (non-cancellable) lease payments consists of the contractual amounts due for leased premises, car parks, and office equipment, being the monthly rent plus our share of operating expenses.

The Commission leases offices in Auckland and Wellington, with the Wellington lease expiring in 2027, and the Auckland leases expiring partly in 2022 and partly in 2025 (with a break right in 2023). Under the Wellington lease there are further rights of renewal of up to six years, and under the Auckland lease a further right of renewal of four years. The Commission will not make any decisions on renewal in Wellington and Auckland until closer to the initial term expiry. From 1 July 2021, payments for the Wellington lease have increased following a market rent review, and from 1 October 2021 additional space was taken up on the Auckland lease.



## 19. Capital expenditure commitments

	2021 Actual \$000	2020 Actual \$000
Computer and office equipment	0	208
Furniture and fittings	0	6
Acquired software	0	8
Leasehold improvements	85	0
<b>TOTAL CAPITAL EXPENDITURE COMMITMENTS</b>	<b>85</b>	<b>222</b>

## 20. Related party transactions

The Commission is an independent Crown entity, primarily monitored by the Ministry of Business, Innovation and Employment on behalf of the Minister of Commerce and Consumer Affairs and the Minister for Digital Economy and Communications.

Related party transactions with other government entities (eg, Crown entities or government departments) that are related parties, where the transactions are within a normal supplier relationship on normal commercial terms, or normal operating arrangements between government agencies made on the same terms have not been disclosed.

There were no other related party transactions during the year (2020: \$Nil).

### Key management personnel

	2021 Actual \$000	2020 Actual \$000
Commissioners' and Associates' full-time equivalents	3,104	3,049
Senior Leadership Team remuneration	1,743	1,520
<b>TOTAL KEY MANAGEMENT PERSONNEL REMUNERATION</b>	<b>4,847</b>	<b>4,569</b>

	2021 Actual	2020 Actual
Commissioners and Associates	7	7
Senior Leadership Team full-time equivalents	5.7	5
<b>TOTAL KEY MANAGEMENT PERSONNEL FULL-TIME EQUIVALENTS</b>	<b>12.7</b>	<b>12</b>

Key management personnel comprise Commissioners and Associates (who are all members of the Board), the Chief Executive Officer, and the members of the Senior Leadership Team.

## 21. Members' remuneration

	2021 Actual \$000	2020 Actual \$000
A Rawlings (Chair)	558	640
S Begg (Deputy Chair)	410	429
S Gale (Telecommunications Commissioner to 7 June 2020)	0	422
T Gilbertson (Telecommunications Commissioner from 8 June 2020)	446	32
E Welson (Commissioner)	366	367
J Walker (Commissioner to 27 March 2020)	0	252
J Crawford (Associate Commissioner)	257	270
J Small (Associate Commissioner from 17 December 2018, Commissioner from 8 June 2020)	295	250
J Liava'a (Associate Commissioner)	216	236
D Johnston (Commissioner from 1 November 2019)	319	151
V McWha (Associate Commissioner from 14 September 2020)	237	0
<b>TOTAL MEMBERS' REMUNERATION</b>	<b>3,104</b>	<b>3,049</b>

The Chair (Anna Rawlings) and the Telecommunications Commissioner (Tristan Gilbertson, and his predecessor Dr Stephen Gale) are in full-time positions and receive leave entitlements. The dollar value of the movement in any accrued leave entitlement is included in the remuneration total above. Both had temporary remuneration reductions imposed in response to COVID-19 for the period 9 July 2020 to 6 January 2021 (10% reduction for the Telecommunications Commissioner and 20% reduction for the Chair).

All other Commissioners are paid for service on a daily rate set by the Remuneration Authority as follows:

### Commissioners' and Associates' daily rates:

*Applied from 1 July 2019 to 8 July 2020, and from 7 January 2021 onwards*

	\$
Deputy Chair	1,936
Commissioners and Associates	1,630

### Remuneration reduction period

*Applied from 9 July 2020 to 6 January 2021*

	\$
Deputy Chair	1,744
Commissioners and Associates	1,467

The Deputy Chair, Commissioners and Associates had imposed a temporary remuneration reduction of 10% in response to COVID-19, resulting in reduced rates for the period 9 July 2020 to 6 January 2021.

### **Commissioners' and Associates' additional remuneration**

Most Commissioners and Associates are entitled to additional pay above the daily rate if the number of hours worked on any day exceeds eight hours. The daily rate includes any annual and sick leave entitlement, and no additional payments are made on account of annual leave or sick leave. The Chair and Telecommunications Commissioner are salaried appointments and receive annual leave and sick leave entitlements in addition to their salary. The Chair and Telecommunications Commissioner are not entitled to additional pay for additional hours worked.

### **Other payments in respect of Commissioners and Associates**

The Commission paid \$12,500 to an Audit and Risk Committee member appointed by the Board who is not a Board member during the year (2020: \$11,181).

The Commission has provided a Deed of Indemnity to Commissioners and Associates for certain activities undertaken in the performance of the Commission's functions.

The Commission has taken out Directors' and Officers' Liability and Professional Indemnity insurance cover during the financial year in respect of the liability or costs of Commissioners, Associates and employees.

No Commissioners or Associates received compensation in relation to cessation (2020: \$Nil).

## **22. Capital management**

The Commission's capital is its equity, which is made up of general funds and other reserves as disclosed in note 5. Equity is represented by net assets.

The Commission is subject to the financial management and accountability provisions of the Crown Entities Act, which impose restrictions on borrowings, acquisition of securities, issuing of guarantees and indemnities, and the use of derivatives.

The Commission manages its equity as a by-product of prudently managing revenues, expenses, assets, liabilities, investments and general financial dealings to ensure the Commission effectively achieves its objectives and purpose, while remaining a going concern.

## 23. Significant events after balance date

As an enforcement agency and regulator, the Commission is regularly involved in litigation and often has a large number of matters before the courts. A number of financially insignificant matters have been progressed or finalised by 4 February 2022. Significant matters are disclosed below.

### **Economic Regulation Review**

During 2021 following confirmation of levy funding, the structure of the Economic Regulation branch was reviewed to explore opportunities to better set the Commission up for sustainable success. Following extensive consultation, it was decided that from 1 March 2022, the Economic Regulation Branch will be split into two new branches – the Infrastructure Regulation Branch and the Market Regulation Branch.

The cost of the new operating structure will be met by existing funding sources.

### **Mondiale Freight Services Limited; Oceanbridge Shipping Limited and others**

On 17 December 2021, the Commission filed civil proceedings in the High Court against two international freight forwarding companies, Mondiale Freight Services Limited (Mondiale) and Oceanbridge Shipping Limited (Oceanbridge), and four individuals associated with the companies, alleging each company entered into and gave effect to cartel agreements.

The Commission alleges the defendants agreed with competing freight forwarders not to compete for their customers. These were separate cartels and the Commission does not allege Oceanbridge and Mondiale entered into any agreements with each other. The competing freight forwarders also purchased freight forwarding services from the defendants.

The Commission has agreed settlements to resolve the separate proceedings with each of the defendants. A penalty hearing will be scheduled in the near future. Any penalties that are paid to the Commission will be transferred in full to the Crown (via the Ministry of Business, Innovation and Employment) within seven days of receipt.

### **Objective Corporation Limited; Master Business Systems Limited**

On 21 January 2022, the Commission filed civil proceedings in the High Court against Objective Corporation Limited, alleging its acquisition of 100% of the shares of Master Business Systems Limited contravened section 47 of the Commerce Act 1986. Objective and MBS were both suppliers of software used to lodge building consent applications and manage the building consent process.

The Commission has agreed a settlement with Objective to resolve the proceedings. A penalty hearing will be scheduled in the near future. Any penalty that is paid to the Commission will be transferred in full to the Crown (via the Ministry of Business, Innovation and Employment) within seven days of receipt.

## 24. Explanation of significant variances against budget

Significant variations from the budgeted figures in the *Statement of Performance Expectations 2020/21* are set out in the table below. Explanations for each variance are found underneath.

	Explanatory notes	2021 Actual \$000	2021 Budget \$000	Variance \$000
<b>Statement of comprehensive revenue and expense</b>				
Revenue – Crown	1	57,466	64,050	(6,584)
Commissioners, Associates and personnel	2	39,871	42,894	(3,023)
Legal and other professional fees	3	11,128	15,723	(4,595)
<b>Statement of financial position</b>				
Cash and cash equivalents	4	12,084	2,154	9,930
Short-term investments	5	8,000	14,000	(6,000)
Intangibles	6	1,201	2,190	(989)
Crown funding repayable	7	2,095	126	1,969
<b>Statement of cash flows</b>				
Crown funding received	8	62,167	64,266	(2,099)
Member and employee payments	9	(39,299)	(43,180)	(3,881)
Supplier payments	10	(17,464)	(22,045)	4,581
Repayment of Crown funding	11	(6,513)	(1,394)	(5,119)
Investment receipts/(deposits)	12	5,098	(902)	(6,000)
Property, plant and equipment purchases	13	(365)	(1,566)	1,201

### Explanatory notes

- 1 Revenue – Crown was \$6.6 million less than budget due to underspends totalling \$7.8 million across all output classes apart from Fibre, which incurred a \$1.2 million overspend largely due to a higher spend on price-quality regulation determinations because of accelerating the completion timeframe.
- 2 Commissioners, Associates and personnel expenses was \$3.0 million less than budget as a result of vacancies, additional staff starting later than originally planned, and the Chair, Deputy Chair, Telecommunications Commissioner, Commissioners and Associate Commissioners having a remuneration reduction imposed for a period during the year.
- 3 Legal and other professional fees were \$4.6 million less than budget primarily due to lower litigation-related expenditure as a result of cases settling and less litigation eventuating than was anticipated.
- 4 Cash and cash equivalents were \$9.9 million greater than budget due to holding less funds in short-term investments than planned at year end, reduced spend on capital investments, and payments to suppliers being overall lower than budget.
- 5 Short-term investments were \$6.0 million less than budget as we held more funds in cash than planned at year end (see variance explanation 4 above).
- 6 Intangibles were \$1.0 million less than budget due to capital spending being lower than planned (see variance 13 explanation below).
- 7 Crown funding repayable was \$2.0 million greater than budget as funding for many of our appropriations to fund our classes of outputs was greater than our expenditure against those output classes.
- 8 Crown funding received was \$2.0 million less than budget primarily due to recognising less Crown revenue than was budgeted for as a result of underspends across most output classes.
- 9 Commissioners, Associates and personnel payments were \$3.9 million less than budget as a result of vacancies and Members taking a remuneration reduction due to COVID-19 for part of the year.
- 10 Supplier payments were \$4.6 million less than budget due to general underspends across our most of our output classes.
- 11 Repayment of Crown funding was \$5.1 million greater than budget due to receiving excess funding for the External Litigation Fund during 2021 (which was then repaid before the end of the financial year), as well as prior year Crown funding repayable being greater than expected when the Budget was set.
- 12 Investment receipts were \$6.0 million more than budget as less funds were held in short-term investments than expected at year end (see variance explanation 5 above).
- 13 Intangible asset purchases were \$1.2 million less than budgeted due to lower-than-anticipated expenditure on software projects, and timing differences relating to registry system software for the Fit and Proper Person tests.

# Financial statements glossary

## Kuputaka mō ngā tauākī pūtea

The following table provides definitions of some terms used in our financial statements. Please note that these definitions are only provided as a help to readers, and are not part of the financial statements, or necessarily reflect the way that we interpret and apply accounting standards.

<b>Accounts payable</b>	Debts owed to somebody (eg, a company) for goods or services provided to us that we have not yet paid at balance date.
<b>Accounts receivable</b>	Debts owed to us by somebody (eg, a company) for a service we have provided, where we have not been paid at balance date.
<b>Amortisation</b>	Amortisation is basically the same as depreciation (see below), except that it is applied to intangible assets (eg, software).
<b>Asset</b>	An asset is something we own, expect to receive in the future, or control.
<b>Balance date</b>	The date at which a set of accounts is prepared. For the Commission, that date is 30 June of each year.
<b>Cash equivalents</b>	Cash equivalents are assets like term deposits which share most of the characteristics of cash. They are cash equivalent because we can quickly turn them into cash, but they are technically not cash in a bank account or in the hand.
<b>Comprehensive revenue and expense</b>	Comprehensive revenue and expense is a broader concept of revenue which includes a surplus (or loss) from an entity's operations, and movements in parts of equity that aren't the result of surpluses or owner transactions. An example is a revaluation gain on the value of assets, which increases equity by increasing the value of an asset revaluation reserve.
<b>Current asset (or liability)</b>	A current asset is an asset that can be converted into cash or used to pay a liability within 12 months. A current liability is a liability that we expect to repay within 12 months.
<b>Depreciation</b>	Depreciation is the charge of an asset's cost over a certain time period. Depreciation recognises that assets decline in their value and usefulness over time.
<b>Equity</b>	Equity represents the value of an entity to its owners, and is the amount left over after deducting all liabilities from all assets. It is also known as net assets.
<b>Financial instruments</b>	Financial instruments are assets or liabilities which are tradable in some way, such as cash, shares or loans. Other financial instruments include 'derivatives', which are traded securities that get their value from an underlying asset (like a future oil shipment or a future foreign currency purchase).
<b>Generally accepted accounting practice (GAAP)</b>	GAAP is shorthand for the series of standards, interpretations and concepts which are followed by accountants. NZ GAAP is defined by law to include standards issued by the External Reporting Board and, where that (or a specific law) does not cover a matter, accounting policies considered authoritative by the accounting profession in New Zealand.
<b>Going concern</b>	An assumption made by an entity that it will continue to operate into the foreseeable future. If this is incorrect, then the entity has to prepare its accounts as if it is being wound up.

<b>Intangible assets</b>	Intangible assets are assets that do not have a physical substance, and are not cash.
<b>Liability</b>	A liability is something we owe, expect to pay in the future, or may have to pay in the future.
<b>Monetary assets</b>	Monetary assets are assets that are cash, or will become cash, in a short timeframe (eg, bank account balances, term deposits, accounts receivable).
<b>Monetary liabilities</b>	Monetary liabilities are debts owed to another party, such as accounts payable, loans or unpaid salaries.
<b>Non-current asset (or liability)</b>	A non-current asset is an asset we cannot ordinarily turn into cash within 12 months. A non-current liability is a liability we would not ordinarily have to repay within 12 months.
<b>Output class</b>	An output class is a grouping of similar outputs or activities with similar objectives. The Commission's output classes are primarily funded by appropriations from the Crown via the Ministry of Business, Innovation and Employment.
<b>Provision</b>	An estimate of an amount that an entity may, or will, have to pay as a result of an obligation the entity has to another party.
<b>Public benefit entity</b>	An entity which aims to provide goods or services to the general public to meet a specific need, rather than to make a profit for its owners.
<b>Related party</b>	Another person or entity which is related to us because of, for example, a common owner or person in a position of authority (eg, director, senior management).
<b>Statement of cash flows</b>	A statement that shows how much cash we have received from various sources (investments, operating activities, cash injections received from the Crown) and cash payments we have made (expenses, salaries, repayment of money to the Crown).
<b>Statement of comprehensive revenue and expense</b>	A statement that shows our surplus or deficit from our operating activities, plus or less any movements in non-owner equity items (see Comprehensive revenue and expense above).
<b>Statement of financial position</b>	A statement showing what assets we own or control, what liabilities we have, and the remainder (equity) at the balance date.
<b>TSLRIC cost model</b>	A telecommunications costing model developed to determine pricing for copper broadband networks in New Zealand, based on forward-looking costs over the long run. TSLRIC stands for Total Service Long Run Incremental Cost.

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