



# Annual Report

## 2020





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# Welcome from the Chair and the Chief Executive

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Kia ora tatou

Kei te tino harikoa mātou ki te whakatakoto atu i te pūrongo ā-tau mō te tau 2019/20.

At the centre of everything we do is our vision to make New Zealanders better off. To achieve this, our work helps to ensure that markets work well and consumers and businesses are confident market participants.

Every year we prioritise our activities in areas where we think we can have the greatest impact. Three of the priorities we identified at the start of this year related to essential services – our study of competition in the retail fuel market, the five-year reset of the revenue limits and quality standards for electricity networks, and setting new up-front regulatory rules for fibre broadband services. In different ways these significant projects influence the supply of essential services to New Zealanders at the right price and quality.

We delivered on these and other priorities, despite the disruption caused by COVID-19 in the second half of the financial year.

In addition to educating traders about their obligations in relation to environmental claims and online retail, we issued or updated a range of other guidance for consumers and businesses throughout the year, including in regard to our approach to work affected by COVID-19. We also undertook a range of initiatives to connect more closely with consumers in the communities that we serve, so that we can better understand where our activities can have the greatest impact and so that consumers are better informed and more confident market participants.

We engaged in a range of compliance activities and we were active in enforcing the law through the courts. This included obtaining a penalty against Aurora Energy for contravening its network quality standards and significant commentary from the Supreme Court confirming the approach taken to identify collusion between competitors. Alongside our usual merger work, we undertook an increasing number of investigations into transactions that were not notified to us.

We strengthened our relationships with international and domestic agencies by entering into cooperation agreements that support public trust and confidence in different areas of our work. Contributing to legislative change in our areas of expertise was also a focus, alongside preparing for and implementing changes to the laws that we enforce. A number of changes to consumer credit laws came into force this year, and in 2021 we will be required to certify lenders under a fit and proper person test and cartel conduct will become a criminal offence. Continuing to implement changes to the Telecommunications Act, including the new regulatory regime for fibre broadband services, has also been a major focus.

Legislative reform is part of a wider theme of change for our organisation. Our new powers, functions and duties have caused us to grow in size and we are making changes to ensure the ongoing sustainability, effectiveness and resilience of the Commission. The Government supported these changes through an increase in Crown funding announced in Budget 2020.

We have also experienced changes at the Board level, including saying farewell to Commissioner Jill Walker and Telecommunications Commissioner Dr Stephen Gale. We thank them for their leadership and expertise over many years with the Commission, and we wish them well for the future. In November 2019, we welcomed Derek Johnston as Commissioner. In June 2020, Tristan Gilbertson was welcomed as the new Telecommunications Commissioner and Dr John Small, who was formerly an Associate Commissioner, became a Commissioner. As we entered the 2020/21 year, Vhari McWha joined us as an Associate Commissioner in September 2020.

Through all these changes, we remain committed to our vision of making New Zealanders better off, which we confirmed this year in our new Statement of Intent for 2020–2024. The increasing levels of vulnerability felt by consumers and businesses as result of COVID-19 influenced our strategic thinking, alongside consideration of a number of other potential impacts of the pandemic. In the second half of this year, we worked at pace with other parts of the public sector to address the most urgent and important issues facing consumers and businesses in our communities.

What the full impact of COVID-19 will be is uncertain. However, our responsibilities as an independent Crown entity and the trust that New Zealanders place in us to promote and protect their interests remain front of mind as we continue to focus on strengthening markets and on helping to ensure that businesses and consumers confidently participate in them.

Ngā mihi



**Anna Rawlings**  
Chair



**Adrienne Meikle**  
Chief Executive



# Overview

The Commerce Commission is New Zealand's primary competition, consumer and economic regulation agency.

Our Annual Report<sup>1</sup> describes our performance over the past year and shows the progress we have made against our strategic objectives. It details our performance against our accountability frameworks – as set out in our *Statement of Intent 2016–2020* (SOI) and the performance measures and budgets in our *Statement of Performance Expectations 2019/20* (SPE).



1. The Commission's 2020 Annual Report is in line with the requirements of the Crown Entities Act 2004 and generally accepted accounting practice in New Zealand.

## Our strategic framework

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 vision and strategy for 2017–2022.



The two strategic objectives that underpin our vision support each other. The more confidence consumers and businesses have when participating in markets, the better markets are likely to function. Well-functioning markets also help to ensure that consumers and businesses can participate with confidence.

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

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

The first two strategies 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 organisational health and capability to deliver on the other strategies. We engage our strategies when selecting our priorities across each of our main areas of work and in this way, they inform the work that we do to achieve our strategic objectives and our vision.

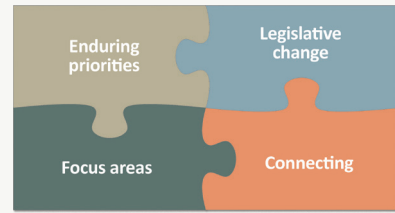
Our organisation's values form the foundation of our strategic framework. These values guide the way we operate to implement our three strategies and achieve our strategic objectives.

## 2020 priorities highlights

Every year we identify a number of priority areas to help focus our activity and resources on the areas where we can add the greatest value.

Enduring priorities are the areas the Commission will always regard as significant because of their potential to have a major impact on consumers, businesses or markets in New Zealand or because they are a core part of our statutory role. These include credit issues, product safety, cartel conduct, merger assessments, and certain functions in critical infrastructure industries, like energy and telecommunications.

For the 2019/20 year we identified priorities in specific areas where we wanted to address consumer harm, in addition to completing our first market study. We also wanted to increase our understanding and effectiveness in the way we connect with stakeholders – both individually as a regulator, and as part of the wider regulatory system. In addition, we prioritised legislative change, including implementing law changes and providing expert advice to government to help ensure the legislation we enforce is workable and effective.



### ACHIEVEMENT AGAINST Enduring priorities

Average number of working days taken to reach merger decisions reduced to 49 days.



Electricity lines company Aurora Energy penalised \$5m for excessive outages on its networks.



Unsafe toy animals, toy hammers and bikes recalled following safety inspections.



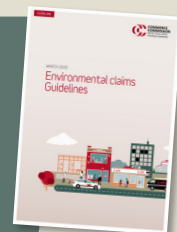
Reinforced the rules for traders entering into buyer groups by taking enforcement action against an Auckland property investment company.

### ACHIEVEMENT AGAINST Focus areas

Completed fuel market study, including recommendations to improve competition.



Published environmental claims guidelines to educate traders about fair trading obligations.



Set five-year revenue limits and quality standards that have limited excessive profits for electricity networks while enabling continued network investment.



Educated traders about online retail obligations and responded to misleading online rental reviews.



ACHIEVEMENT AGAINST

## Legislative change

Contributed to ongoing law reform, including reform of the Fair Trading Act and section 36 of the Commerce Act.



Continued to implement changes to the Telecommunications Act, including the new regulatory regime for fibre broadband services.

Provided input into the new Fuel Industry Act that promotes competition in fuel markets.



Responded to the Electricity Price Review.



Participated in the review of consumer credit law and implemented new protections for borrowers.



Prepared for the new criminal offence for cartel conduct, including raising trader awareness and preparation of internal systems.

Contributed to urgent legislative changes associated with COVID-19.



ACHIEVEMENT AGAINST

## Connecting

Focused on digital issues at Competition Matters 2019, our biennial conference.



COVID-19 guidance for consumers and businesses:

- *guidance for businesses about competition law*
- *guidance for lenders and borrowers about consumer credit law*
- *guidance about our approach to enforcement in infrastructure industries*
- *guidance on consumer rights and business obligations.*



Supported robust information sharing with domestic agencies through new memoranda of understanding.

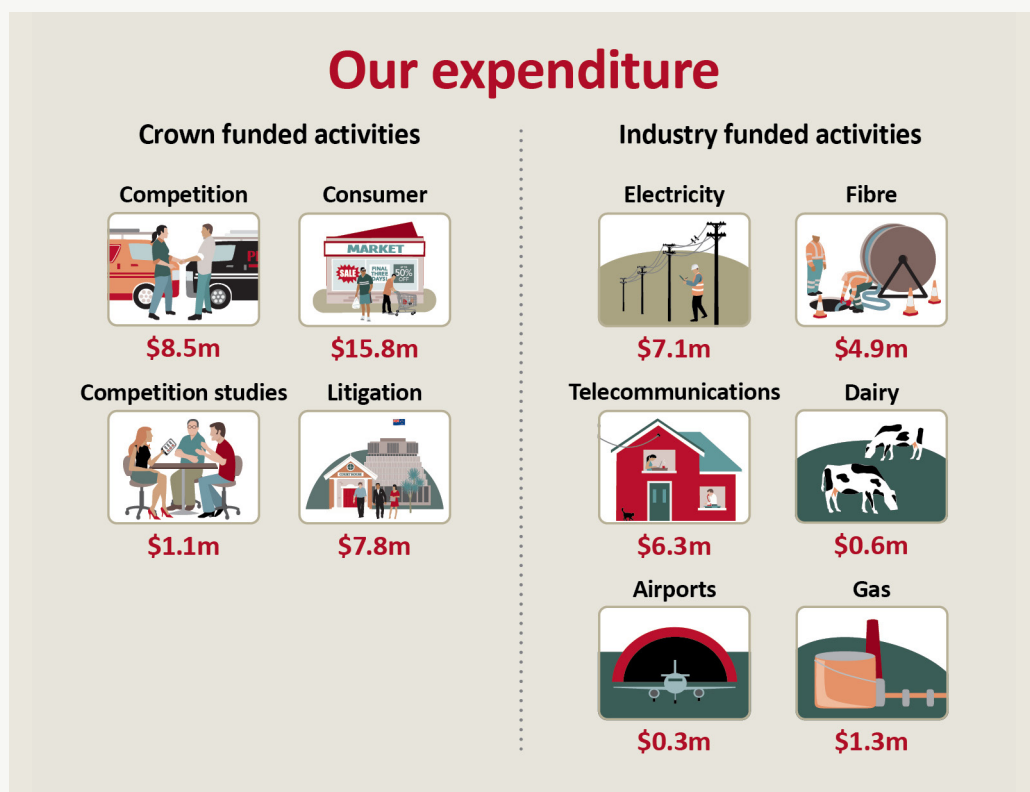
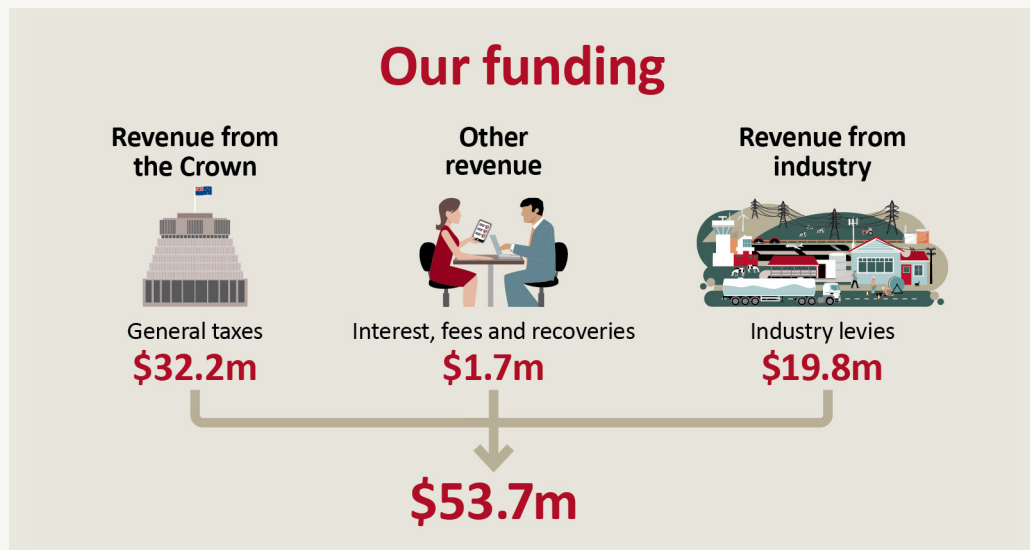


Strengthened relationships with international agencies, including agreements for better communication, coordination and cooperation.

Improved outcomes for New Zealanders by working across the system in response to COVID-19, including participation in the All-of-Government Response Group.

## 2020 financial story

The Commission's recorded funding in 2019/20 was a total of \$53.7m. The largest contribution to our revenue is from the Crown through a combination of general taxes and industry levies.



We provide more details of our financial performance in the 'Our finances' section of the report (page 60).

# Who we are

## Our role

As an independent Crown entity, the Commission is part of New Zealand's State Services, which sit within the wider public sector, as shown in the diagram below.

The public sector consists of many different types of organisations that have the power to carry out the work of the government. Members of the public sector are expected to act with a spirit of service to the community and meet high standards of integrity and conduct consistent with the State Services' Code of Conduct. Fairness, impartiality, responsibility and trust are all key aspects of who the Commission is and the work that it does on behalf of all New Zealanders.



Our status as an independent Crown entity is essential to our role as a regulator. We are not subject to direction from the Government when carrying out our enforcement and regulatory activities, and we are required to be an impartial promoter and enforcer of the law. We are primarily accountable to the Minister of Commerce and Consumer Affairs and the Minister for the Digital Economy and Communications for our performance.

## Legislated responsibilities and essential functions

The graphic below describes the laws we are responsible for administering and enforcing.

**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 'fit and proper person' certification.

**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.

**Commerce Commission NEW ZEALAND**  
Te Komihana Tauhohohoko

**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.

**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.

## Who we work with

While the Commission is independent, we are not alone in our work to make New Zealanders better off. As highlighted in our response to COVID-19 (page 13) and other parts of this annual report, we work closely with a range of organisations, including consumer and user groups, consumer advocacy and advice agencies, businesses, and other government entities, as well as ministries that oversee policy development and implementation across our competition, consumer protection and regulatory work streams.



To help strengthen our relationships with other agencies, this year we entered into several cooperation agreements related to different areas of our work. The Multilateral Mutual Assistance Framework for Competition Authorities will enable competition agencies in Australia, Canada, the United Kingdom, the United States and New Zealand to share intelligence, case theories and investigative techniques to better coordinate investigations across international borders. Our Memorandum of Understanding (MOU) with consumer agencies in Australia was also renewed to facilitate effective communication, cooperation and coordination of consumer laws across jurisdictions. Alongside these international agreements, we have entered into a domestic Memorandum of Understanding with New Zealand Police in relation to our investigative work, and with the Ministry of Business, Innovation and Employment (MBIE) in relation to the design and build of the technology required to implement some of the new credit laws. We are committed to entering into other agreements of this nature in future to help support public trust and confidence in our activities.

In July 2019, we hosted a conference, Competition Matters 2019, which brought together key players in the domestic and international community to discuss topics that affect consumers and businesses throughout New Zealand – particularly those with a digital dimension. Related to this, and as part of our engagement with overseas agencies, we also facilitated a visit by the Australian Competition and Consumer Commission (ACCC) to share the findings of the Digital Platforms Inquiry with the people we work with. The Digital Platforms Inquiry was published by the Australian Government in July 2019.

We also worked with the ACCC as part of the Competition Law Implementation Program, which delivers targeted capacity-building and technical assistance to the Association of Southeast Asian Nations Member States. We participated in, and presented at, training sessions related to investigating, competition and consumer issues, and running a competition regulator. We also presented recently at the Utility Regulators Forum.

# Our contribution to New Zealanders

All our work contributes to our vision that New Zealanders are better off. Our 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 2019/20 to seize opportunities to have the greatest impact.

In the following sections we describe the activities we undertook to protect, inform and empower consumers and businesses across each of our main areas of our work, and how we assessed our impact<sup>2</sup>.

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

- safeguarding the integrity of competitive markets throughout the economy
- influencing monopoly infrastructure performance for better essential services
- tackling consumer harm, including from unfair trade practices and irresponsible lending.

These areas come together in our work in the telecommunications industry. Before describing the key activities that we have undertaken in each of the three main areas, and in the telecommunications industry as a whole, we describe the work we undertook this year to respond to the impacts of COVID-19.



2. As some of the surveys we use to assess our impact were not conducted in 2020/21, the Commission will not have evidence on the direction of change until 2021. However, our narrative explains the work we have done to influence the strategic objectives.

## Our response to the impacts of COVID-19

Like most other organisations in New Zealand, the Commission's work has been affected by the impacts of COVID-19. Our response has been focused on supporting consumers and businesses to participate confidently in markets.

In March 2020, as New Zealand's borders closed to non-residents and Alert Level 4 restrictions came into force, we issued a range of guidance for businesses and consumers and engaged with agencies within New Zealand and overseas in relation to issues affecting markets. We continue to work on initiatives directed at supporting New Zealand markets to work well through the global pandemic.

Supporting New Zealanders' access to essential goods and services was an early priority. On 22 March 2020 we advised that we had no intention of taking enforcement action, under the Commerce Act, against businesses that cooperated to ensure that New Zealanders continued to be supplied with essential goods and services during the restrictions. We had regard to a Government Policy Statement issued on the same day when providing this advice. Later, we issued further guidance on our treatment of business collaborations – to provide greater certainty for businesses navigating a challenging commercial environment.

We provided input into legislation passed under urgency to enable us to better respond to the needs of businesses seeking authorisation during the epidemic notice period for agreements that may lessen competition or contain a cartel provision. When the legislation was passed, we issued guidelines explaining how we would assess provisional authorisations and applications for fee waivers, and the circumstances under which we might grant authorisation without issuing a draft determination or holding a conference.

Through our consumer credit work we acknowledged that borrowers might face new, and unexpected, credit needs of an unprecedented scale. To help facilitate appropriate access to credit, while also properly protecting borrowers' interests, we provided answers to key questions for borrowers, such as how to apply to change loan repayments and where to access alternative financial support. We also issued context-specific guidance for lenders relating to compliance with responsible lending obligations and we provided input into a legislative exemption granted to some lenders.

We supported businesses in the infrastructure industries in which we have regulatory responsibilities. We provided guidance to electricity networks that sought to provide price discounts to ease pressure on customers to pay bills during the lockdown. We also commented on our approach to enforcement, including where businesses could demonstrate that potential non-compliance was a consequence of prioritising efforts to protect consumers, security of supply and safety.

Our guidance and other information was made available on a dedicated COVID-19 page that we created on our website. Traffic on our website increased by 17% and the COVID-19 page was our most-viewed non-landing page in April 2020. We also saw an increase in the volume of questions we received on social media.

Complaints increased this year as well. Our *Complaints Snapshot* for 2019/20 showed the Commission received nearly 10,000 complaints in the year ending 30 June 2020 – an increase of more than 10%. Around 20% of the complaints we received were related to COVID-19 in some way.

We continued to update guidance as our understanding of issues facing New Zealand businesses and consumers evolved during the second half of the year and into the 2020/21 year. Complaint narratives were important in this regard, as was information gathered from the communities we serve.



For example, the travel sector was strongly affected by the pandemic and that caused a large increase in travel-related complaints, including complaints about airlines, booking agents, motor vehicle rentals and accommodation. Common themes in travel complaints were difficulty obtaining refunds, offers of credits rather than refunds for COVID-19-related cancellations, and new contract terms inserted in contracts, such as terms that provide for cancellation fees to be charged. We issued guidance addressing some frequently asked questions relating to refunds and cancellations. Aware that online shopping had increased, and that consumers were experiencing delays with the delivery of online purchases, we issued guidance reminding retailers of their fair trading obligations when selling online. Other complaints relating to COVID-19 included claims that products could protect consumers from the virus. Our telecommunications team also provided advice to consumers about improving broadband performance during Alert Level 4.

Working with other parts of the public sector was a key aspect of our response to the consumer issues arising from COVID-19. We participated in the COVID-19 All-of-Government Response Group on a range of issues related to product safety, including face masks, hand sanitisers and diagnosis and test kits. The group included MBIE, Medsafe, New Zealand Customs Service, Ministry for Primary Industries, the Environmental Protection Authority, PHARMAC, and Maritime New Zealand. MBIE also created the Price Watch website to provide consumers with a single port of call for price-related complaints, and those that related to the Fair Trading Act 1986 were passed to us to consider.

We worked closely with other organisations in relation to our other areas of regulatory responsibility. For example, in addition to providing input into the legislative change described earlier:

- In the credit sector, we were an active participant in the Council of Financial Regulators' working group set up in response to COVID-19 to help ensure that New Zealand's financial markets continued to operate smoothly and effectively.
- In the energy sector, we worked with MBIE and other regulators, including participating in the Electricity Authority's COVID-19 Issues Working Group, which focused on promoting consumer interests, ensuring the market continued to operate efficiently, and supporting the electricity industry as it responded to COVID-19-related issues.
- In the telecommunications sector, we worked with other regulators and industry agencies (eg, the Telecommunications Forum) to ensure their messaging to consumers was consistent and clear.

Across all our work we sought to understand the challenges facing stakeholders and their needs, while at the same time remaining vigilant and consistent in the detection of opportunistic conduct that was not in the interests of competition or of consumers. Our approach has reflected real-world circumstances, while remaining grounded in the laws that we have been entrusted to enforce.

We remain focused on ensuring that markets continue to work as effectively as possible for New Zealanders as the country responds to the COVID-19 pandemic. The sections that follow illustrate the other ways in which we contributed to making New Zealanders better off across the three main areas of our work in 2019/20.



## Safeguarding the integrity of competitive markets throughout the economy

Under the right conditions, competition encourages businesses to innovate and use resources more efficiently, resulting in less waste and greater productivity. Consumers benefit because they are offered a better selection of goods and services at more affordable prices.

### INDICATOR

#### Intensity of competition

The World Economic Forum publishes the Global Competitiveness Report every year. The report publishes New Zealand's score on the Global Competitiveness Index and is based on a survey of business leaders in each country. In October 2019, New Zealand's overall competitiveness score of 76.7 out of 100<sup>3</sup> was a slight decrease from the score of 77.5 in 2018. As a result, we did not meet the target, which was to maintain or increase the score year on year.

We have completed further work to understand the aspects of the survey that are most related to our work. From 2020/21, we will be reporting on New Zealand's results against the following measures within Pillar 7:

- Extent of market dominance – New Zealand scores 52.7 out of 100
- Competition in services – New Zealand scores 73.1 out of 100.

New Zealand has a ranking of 40 out of 141 economies for perceptions about the extent of market dominance. For perceptions about competition in services, the ranking is 25. The sample size for this survey is relatively small, but the scores and rankings indicate that – relative to several other countries – business leaders in New Zealand have concerns about competition in markets.



3. *The Global Competitiveness Report 2019*. As these results were reported in October 2019, they will not reflect the impact of the COVID-19 pandemic, which has brought greater uncertainty to the shape of markets. We report on the score and not the ranking to align with our SOI and SPEs.

The Minister for Commerce and Consumer Affairs asked us in December 2018 to conduct our first market study into the retail fuel market. Fuel is an essential purchase for many New Zealanders and can be a significant cost for households and businesses.

## CASE STUDY



### Study of the retail fuel market

Our study of the retail fuel market was a major focus for us this year. In December 2019, we published our final report and recommended changes to stimulate competition and benefit consumers. We considered many fuel companies have made persistently higher profits over the past decade than we would expect in a workably competitive market. For consumers, this means they are paying higher pump prices than could be expected.

We concluded that the core problem is that an active wholesale market for fuel does not exist in New Zealand. The major fuel companies supply 90% of the nation's fuel to their own branded retail sites, or through exclusive long-term supply contracts. Following consultation with stakeholders, we concluded that competition could be improved through targeted interventions such as:

- a Terminal Gate Price regime allowing competitors to obtain fuel from storage terminals on the existing network
- new requirements to make wholesale supply contracts less restrictive and more transparent.

Outside of the wholesale market, we found that price competition at retail sites, such as service stations, would be stronger if consumers were able to make better informed purchasing decisions. Improving the display of premium fuel prices, and monitoring the use of price discounting, are examples of our recommendations in this area. We also made a series of supporting recommendations, including the provision of information and record-keeping to enable future analysis.

Our analysis and recommendations influenced the development of the Fuel Industry Act 2020. Passed in August 2020, the purpose of the Act is to promote more competition in fuel markets for the long-term benefit of consumers.

Focus areas

We continued to respond to businesses that affect competition by not complying with the law, such as businesses that agree not to compete by fixing prices or dividing up markets. In markets ranging from equine transport through to container depots, our enforcement action this year demonstrates the importance of being able to detect cartel conduct in our economy.

The following case study shows some of the successful outcomes we have achieved through enforcement and demonstrates the different ways we have an impact.

## CASE STUDY

### Enforcement against cartels

A house is often a New Zealander's biggest asset, so confident participation by consumers in real estate markets is important. One of our investigations found that property investment company Ronovation Limited had put in place membership rules that meant its members agreed not to compete against each other when bidding for property. The company was fined \$400,000 by the courts following admissions it entered into and gave effect to an agreement between its members not to compete. This enforcement case has helped reinforce the rules for traders entering into buyer groups.

Enforcing the law when businesses engage in cartel conduct also gives consumers greater confidence that markets are competitive. In another case in the real estate sector, the Supreme Court this year confirmed the long standing approach the Commission has taken to determining whether competitor collusion has occurred. Some Hamilton-based real estate agents and their directors had been found to have engaged in price-fixing by agreeing to pass on TradeMe's pricing change for listings to vendors.

In the pharmacy sector, we enforced the law in response to Prices Pharmacy, in Nelson, facilitating a price-fixing arrangement with some competing Nelson pharmacies. The effect of the agreement was to fix the prices that the participating pharmacies would charge for filling prescriptions. In most cases, an additional \$1 would be charged on top of the prescription charge. We had previously warned the sector about the need to price independently. Prices Pharmacy and a director paid penalties of \$344,000 and \$50,000 respectively.

Enduring  
priorities



Consumers  
and businesses  
are confident

We also looked at competition in various industries in our mergers work. All the mergers we reviewed for the period were approved and the average number of working days for decisions reduced significantly to 49 days, even though several complex matters were considered.

The global trend of pharmaceutical mergers continued, and we also looked at local mergers, such as the merger between Cardrona and Treble Cone ski fields. There was also some further consolidation in the payment systems markets with Verifone’s acquisition of Smartpay’s terminal business.

Alongside this work we continued to monitor non-notified mergers and in July 2019 we updated our mergers and acquisitions guidelines.



INDICATOR		2020	2019	2018	2017
Businesses understand their responsibilities under competition law <i>Source of information: Commission business survey</i>	<b>No new result</b>	68%	No new result	63%	
Businesses are confident other businesses are following the rules <i>Source of information: Commission business survey</i>	<b>No new result</b>	62%	New measure	New measure	

Our year on year target is to maintain or increase business confidence. The Commission conducts a Business Survey every two years with the next survey scheduled for the 2021 financial year.

Other than matters discussed in the report, we are not aware of any other significant events that will result in a material difference in survey results since the last survey in 2019. The Commission continues to work towards contributing to business confidence through a range of initiatives described in the report.

## Preparing for the new criminal cartel offence to come into force

A new criminal offence is being introduced in April 2021 for competitors who agree not to compete. It will carry a maximum penalty of seven years in prison.

In preparation for the law change, we have been engaging with international enforcement agencies to better understand the potential impact of criminalisation on how we operate. We hosted staff from the United States Department of Justice and the Federal Bureau of Investigation to share knowledge about investigatory processes and how to manage trials. Staff joined us from the ACCC, the Competition Bureau Canada, the UK’s Competition and Markets Authority, and the Irish Competition and Consumer Protection Commission.

More recently we have started educating businesses and other stakeholders about the law change. This work has included a media campaign and targeted outreach about cartel conduct. We have also been reviewing our leniency policy and connecting with other parts of the public sector, including Crown Law and New Zealand Police, to ensure we are all prepared for the work we will do together under the new regime.



## Influencing monopoly infrastructure performance for better essential services

In specific essential services industries, like electricity and gas, our role is to influence the monopoly infrastructure part of the supply chain. In most cases, consumers do not have the option of accessing these essential services using alternative infrastructure. Economic regulation is therefore needed to promote outcomes consistent with those found in competitive markets so that consumers are not disadvantaged by the lack of competition.

### Electricity networks

Electricity networks provide the infrastructure that connects power generators to homes and businesses across the country. Our focus under Part 4 of the Commerce Act is on limiting excessive profits and ensuring appropriate management of assets for more reliable and resilient services.

#### CASE STUDY

##### Five-year revenue limits and quality standards for electricity networks

Setting five-year revenue limits and quality standards for electricity networks was a focus area for the organisation this year. We announced the new requirements in November 2019 and they took effect on 1 April 2020.

For 15 regional distribution networks, our decision:

- resulted in an initial reduction in average distribution charges – mainly reflecting cheaper finance associated with low-interest rates
- provided for over \$2 billion of network investment and reaffirmed our existing expectations for network reliability
- created an allowance for investment in innovative practices and technologies, as New Zealand looks to electrify its economy and reduce its carbon footprint.

For the national transmission network, owned and operated by Transpower New Zealand, we set a five-year revenue allowance of \$4.05 billion, which is a reduction of 15%, or more than \$685 million, compared to the previous five-year period. Similar to the situation for distribution networks, the decline in revenue was primarily a result of the fall in finance costs. Our adjustments to proposed expenditure were relatively modest.

The extent to which these cost reductions are passed through to end-use consumers is dependent on the effectiveness of competition in retail markets. However, taken together, the new revenue limits have helped limit excessive profits for electricity networks, while allowing for continued network investment under a stable regulatory regime.

Focus areas



Markets work well

We pro-actively met with distribution networks to discuss our expectations relating to asset management. Through this engagement we also heard about the challenges they face. Our conversations have informed our ongoing review of current asset management practices and have guided our related assessment of network risks.



## INDICATOR

### Regulated suppliers provide strong and sustainable infrastructure

As in previous years, the underlying infrastructure for electricity networks in New Zealand is generally continuing to deliver a reliable service to New Zealanders. However, there remains room for improvement in some areas of asset management so that, for example, all businesses have a good understanding of asset criticality and apply it to their planning.

Reliability performance (outages) varies on an annual basis as performance is impacted by factors within and outside of a network's control – and outage lengths can increase with changes to operational practices. The reliability limits set for regulated electricity networks reflect the inherent variance in performance due to factors such as weather conditions.

In 2019/20, we consider that the electricity network infrastructure performed well in response to COVID-19.

We are committed to taking action to hold networks to account where we consider the outage level to be too high. After the Commission's investigation, in March 2020, Dunedin-based lines company Aurora Energy was ordered by the High Court to pay a penalty of almost \$5 million for contravening its network quality standards through an excessive level of power outages between 2016 and 2019. In September 2019, we issued Transpower New Zealand a formal warning for breaching its quality standards in the 2015/16 and 2016/17 reporting years. We are investigating five other networks to ensure risks to reliability are being properly managed.



## INDICATOR

	2020	2019	2018	2017
Consumers are confident that regulated suppliers are providing services at an appropriate price and quality	<b>No new result</b>	73%	No new result	69%
<ul style="list-style-type: none"> <li>Electricity retailers</li> </ul>				
<i>Source of information: Electricity Consumers' Survey (Electricity Authority)</i>				

Our year on year target is to maintain or increase consumer confidence. The Electricity Authority's Electricity Consumers' Survey was not available for 2019/20 as the survey is run every two years.

The survey results for 2019 showed consumers are mostly satisfied, somewhat satisfied or very satisfied with their electricity retailer. This score can be compared with insurance providers (65%), internet providers (73%), mobile phone providers (81%) and banks (84%).

Notably, the network components typically account for around 40% of the total electricity bill and network issues are the primary cause of outages – a key aspect of quality for consumers. However, consumers often have limited visibility of network pricing because they usually deal with electricity retailers. Consumers also have limited understanding about the extent to which network outages could and should have been avoided.

In May 2019 an expert panel appointed by the Government completed its investigation into whether the electricity industry delivered a fair and equitable price to consumers. The Minister of Commerce and Consumer Affairs wrote to us in December 2019 to draw our attention to the key findings of the Electricity Price Review and the phased response to its recommendations.

## Considering the findings of the Electricity Price Review

One of the key findings of the Electricity Price Review in relation to our work was that consumers, particularly households and small businesses, struggle to make their voices heard and have influence over decisions that affect them in the sector. We are now looking at ways to strengthen the consumer voice and make sure it is heard and have made several practical changes through our work since the findings were published.

For example, to inform our assessment of Aurora Energy's proposed price increases, we are trialling new ways of connecting with consumers. We have also introduced new measures to assess the effectiveness of engagement by Transpower New Zealand. The announcement of many of our regulatory decisions are now being live-streamed, and we are starting to leverage the network of consumer representatives that we already engage with through other work. This network includes Age Concern, Rural Women, and the Salvation Army.

Another key finding of the review, in relation to our work, was that insufficient innovation is taking place to meet the challenges of new technology, electrification and decarbonisation. We have since incorporated ways to encourage innovation by electricity networks in the five-year revenue limits and quality standards that we set in November 2019, including a \$6 million allowance for investment in innovation. We will continue to promote incentives for energy efficiency and demand-side management.

The review also considered improvements to future-proof the sector and its governance structures. Consistent with Ministerial expectations, we have continued to work with government officials and other agencies on these matters, including the establishment of the Consumer Advocacy Council, changes to the Electricity Industry Act, proposals to strengthen our powers under Part 4 of the Commerce Act, consideration of cross-appointments between the Commission and the Electricity Authority, and the proposed review of energy sector policy and regulatory institutions.



## Gas networks

This year we published the findings of independent experts that looked at risk management practices in the gas pipeline sector. The assessment found that the gas networks are approaching a best appropriate level of risk management based on the size and nature of the specific organisations, the services they provide, and the size and nature of the infrastructure that enables these services to be delivered. Recommendations for improvement included in relation to asset criticality, resilience, cost benefit analysis, asset data accuracy and customer expectations.



### INDICATOR

#### Regulated suppliers provide strong and sustainable infrastructure

In 2019/20 our view is that the providers of gas networks are generally continuing to deliver strong and sustainable infrastructure for the benefit of New Zealanders. However, room for improvement remains in some areas of risk management.

Gas infrastructure currently provides services at a high level of reliability to New Zealanders connected to the reticulated network in the North Island. Work is still needed to address a specific resilience concern on the gas transmission network in Northern Taranaki. We are working with industry participants to ensure erosion risks are appropriately managed and long-term performance of the transmission network is maintained. For example, the recent report by independent experts found First Gas understands the geohazards present in its transmission network and has processes in place to identify and mitigate the risks posed.

Following the Government's decision to prohibit new offshore exploration permits, the gas industry is actively investigating the development of emerging fuels, such as hydrogen, as an alternative to make use of existing infrastructure.

## Airports

In the wake of the COVID-19 pandemic, the whole aviation sector is facing significant revenue reductions as a result of the drop-off in demand. We are taking into account current circumstances in our approach to the enforcement of information disclosure requirements for Wellington, Christchurch and Auckland Airports.



### INDICATOR

#### Regulated suppliers provide strong and sustainable infrastructure

The long-term impact of COVID-19 is uncertain, but we consider that the underlying airport infrastructure generally remained strong in 2019/20.

The quality of airport infrastructure is reflected in the fact that runway outages at the three airports that we regulate are very unusual. Auckland Airport, however, experienced a couple of substantial outages of its runway over the first quarter of 2020. These outages were attributed, in part, to the unusually hot and dry weather experienced over the summer. The Airport undertook a review of its runway maintenance processes and replaced a portion of the runway in response to these outages.



## Investment in infrastructure under Part 4 of the Commerce Act

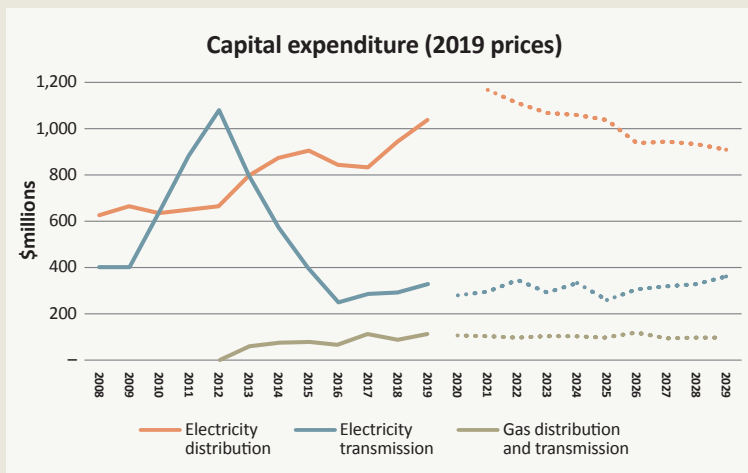
The regulatory regime for energy networks and airports is intended to ensure that investment incentives are similar to those found in competitive markets.

### 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 has inevitably been affected by COVID-19.

Actual and planned investments in the energy networks sector total around \$31 billion since the new regulatory regime was introduced under the Commerce Act in 2008 through to the end of the forecast period in 2029. That equates to around \$1.4 billion of investment each year. Investment is generally being maintained around or above historical levels, suggesting the regulatory regime is providing incentives for investment.



Most energy networks are forecasting levels of expenditure that are around or above recent outturns. In June 2020, Aurora Energy applied to increase its revenue limit to enable an additional \$383 million of investment to address safety and reliability issues on its network.

We do not have updated data about forecast investment for airports, but large programmes of investment have been deferred as a result of the pandemic. 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 and similar outcomes are being observed in competitive markets like airlines.



Consumers and businesses are confident

## Tackling consumer harm from unfair trade practices and irresponsible lending

Tackling consumer harm is vital to ensuring New Zealanders have the confidence to participate in our economy as buyers or sellers of goods and services.

### Fair trading – better informed purchasing decisions and mandatory product safety standards

Under the Fair Trading Act, we have been helping to make sure businesses do not mislead consumers when they buy products and services. We also have responsibilities to ensure compliance with product safety standards that are mandatory for a small number of items.

Our prioritisation process helps us to address the issues that cause the most harm, or have the potential to cause the most harm, to consumers – whether through the identification of annual priorities, or through the prioritisation of matters for investigation that come to our attention throughout the year.

One of the priority focus areas we identified at the start of the year was environmental claims. Environmental claims can be a powerful marketing tool and traders are using environmental claims as a point of difference from their competitors. Many consumers want to make environmentally responsible purchasing decisions and may be willing to pay a premium, depending on the claims made by the seller.

Our focus was on educating traders about the need to ensure that any claims they make about the environmental impact of products can be substantiated, are accurate, and can be relied on by consumers.

#### CASE STUDY

##### Environmental claims

A diverse range of environmental claims are made about products, and consumers rely on traders to provide clear and truthful information. Common examples include claims about:

- composition, eg, “contains no harmful chemicals”, “non-toxic”, “plant based”
- production processes, eg, “contains recycled content”, “zero waste”
- future disposal, eg, “breaks down in landfill”, “biodegradable”, “compostable”
- certification, eg, “organic certification”.

This year we sought input from stakeholders on updated Environmental Claims Guidelines, including general guidance principles, guidance relating to common types of environmental claims, and examples of cases previously taken by the Commission. We received a number of submissions on the draft guidelines as well as positive feedback about the initiative.

The revised guidelines were published on 7 July 2020 and were shared widely by our stakeholders, which contributed to good uptake with around 750 downloads of the document in the first three months. By helping traders comply with the Fair Trading Act when making environmental claims, we can help to ensure that consumers are better informed and more confident when buying products that make environmental claims.

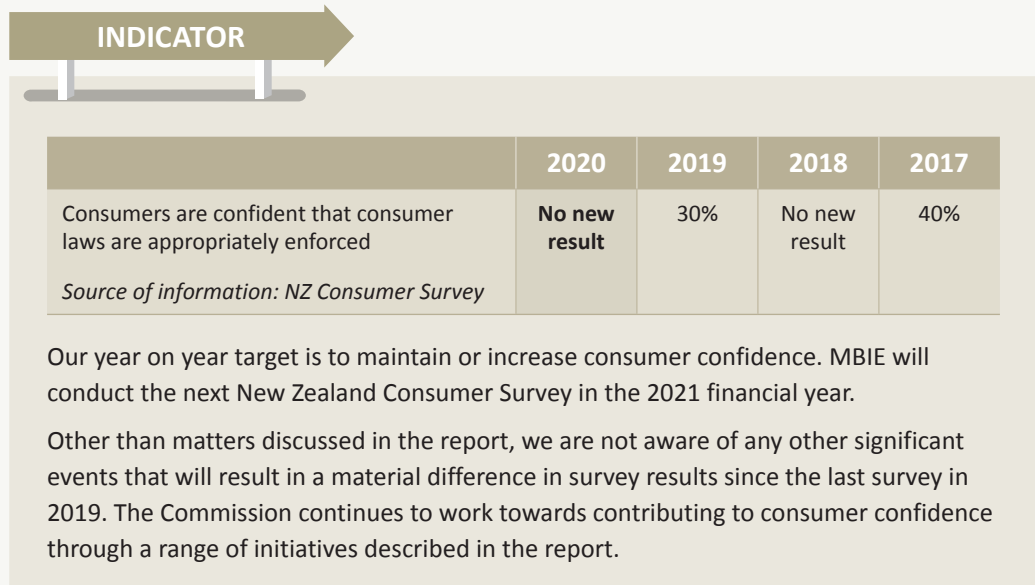
Focus areas



Consumers and businesses are confident

Online retail was another priority focus area this year. We progressed our proceedings against often complained about online ticket reseller Viagogo. Since 2014 the Commission has received 1,139 complaints and enquiries about the offshore ticket reseller Viagogo. There were 557 during 2018 alone, which made Viagogo the Commission’s most complained about trader in a single year. In 2019/20 we were successful in taking proactive steps to stop the company from making representations that we alleged to be false and misleading, until the statements have been considered by the Court. The Court will also consider whether some terms in Viagogo’s contracts are unfair.

We also successfully prosecuted a holiday rental management and accommodation provider for misleading consumers by altering and withholding the publication of online reviews posted by users of its accommodation services. We published guidelines for online retailers reminding them that genuine, unmoderated reviews give consumers accurate information that help them to make informed purchasing decisions. The importance to consumers of our prioritisation of fair trading in online retail gained particular significance as more consumers turned to online retail trade as a consequence of COVID-19.



In addition to our identified annual priorities, we used the range of tools at our disposal to achieve a variety of enforcement outcomes addressing a diverse range of unfair trading conduct affecting New Zealand consumers. Among the enforcement outcomes we achieved this year our cases relating to the Fair Trading Act resulted in penalties and payments to consumers totalling \$9.4 million.

We were successful in proceedings against companies that misled consumers by claiming that food products and health supplements were ‘made in New Zealand’. Some consumers could be willing to pay a premium for products they believe are New Zealand made. For some it is an important ethical consideration. Consumers can find it very difficult to verify these claims and they are entitled to rely on information provided by retailers about country of origin. Local companies also want to protect the high value placed on products that are genuinely made in New Zealand.

We concluded the prosecution of two cases involving other types of claims that consumers can find it hard to verify themselves. A product at the centre of long-running proceedings was a supplement that misrepresented the amount of active ingredient claimed to support health. We successfully prosecuted the first defended case against a trader that made unsubstantiated representations that its magnetic filtration system was ‘scientifically proven’ to treat tap water and improve health outcomes.

We also concluded cases relating to misrepresented pricing, including a prosecution involving misrepresented discounts offered as part of a rewards scheme and a series of cases against telecommunications retailers that had charged customers beyond the date of termination of their contracts.

A campervan rental company provided court enforceable undertakings and made refunds to customers after we formed the view that it likely misled customers about the extent of liability protection offered at the time it rented its vehicles.

During the year we also urged customers of the mobile trader HomeDirect to check if they were eligible for a credit or refund, after the High Court declared that terms in its contracts relating to its 'voucher entitlement scheme' were unfair and therefore unenforceable. Under the voucher scheme, customers continued to make direct debit payments to the trader after they had paid off their goods on credit. The additional payments converted into 'voucher entitlements' would be forfeited unless they were used towards the purchase of more goods from the same trader. More than \$640,000 was forfeited, in total, by over 14,000 consumers during the life of the scheme. It was the first time that a Court has made a declaration that contract terms are unfair since the provision was introduced in the Fair Trading Act in 2015.

This year was also the first time that directors have been banned from company management under the Fair Trading Act. The District Court issued banning orders against two directors for eight and 10 years, respectively, following prior breaches of the Act by the finance company they managed. The company had misrepresented its right to repossess goods, its right to recover interest and costs from borrowers, and the amounts borrowers were required to pay. In some cases, the company repossessed debtors' property so extensively that houses were left almost bare. In other cases, it repossessed items that it should have known were of low value and then dumped them, rather than realise any value from them. The bans we pursued will help to protect the public from risks of similar conduct by the two individuals concerned.

In some instances, we issued a warning letter to inform the recipient of a potential breach of the law, suggest a change in the recipient's behaviour, and encourage future compliance. Only the Courts can decide whether a breach of the law has in fact occurred. Among the warning letters issued this year, four women were warned for likely breaching the law by promoting and operating a pyramid scheme under the guise of a personal growth network. Over 200 letters were also issued to other members of the scheme to advise them of our warnings. More broadly, we worked with the FMA to raise awareness of pyramid schemes and other scams, including through radio advertisements and bilingual webpages and resources.

We also worked on improving trader compliance this year by releasing a tip sheet for motor vehicle dealers providing guidance for avoiding misleading conduct when advertising and selling motor vehicles. We also prosecuted a motor vehicle dealer for misleading consumers in relation to their rights under the Consumer Guarantees Act and in relation to advertised discounts. Large numbers of New Zealand consumers make the significant financial commitment to purchase a motor vehicle each year and we expect our work in this sector to continue.

## Providing input into proposed changes to the Fair Trading Act

Further changes to the Fair Trading Act have been proposed. These include several new provisions to protect consumers and small businesses. During the year we provided written submissions and appeared in front of the select committee to inform the process, based on our experience under existing consumer credit legislation and in other areas.

The changes that have been proposed would prohibit unconscionable conduct, extend protections against unfair contract terms to apply to small trade contracts, and add a right for consumers to require uninvited direct sellers to leave or not enter their property.

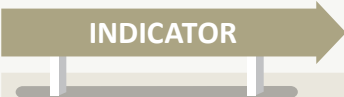


Legislative change

The standards we enforce in our product safety work help to protect the public by reducing accidents and injuries from children’s toys, household cots, specified bicycles and other specified items. This year we completed 75 inspections and took action against a number of companies that failed to comply with the standards. The action we took resulted in fines for businesses and unsafe products being recalled. Unannounced visits to retailers of many of these products continue to be a priority for us as we also explore new ways to engage with traders to encourage improved compliance over the long term.

## Credit contracts and consumer finance – our role in the credit sector

Our work under the Credit Contracts and Consumer Finance Act has helped protect people when they borrow money or buy goods on credit, including through mortgages, credit cards and short- or long-term loans.



**INDICATOR**

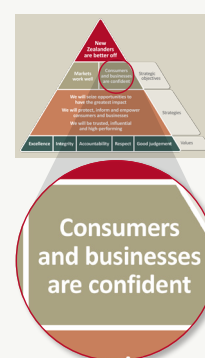
	2020	2019	2018	2017
Consumers are confident when accessing consumer credit	<b>No new result</b>	83%	New measure	New measure
<i>Source of information: NZ Consumer Survey</i>				

Our year on year target is to maintain or increase consumer confidence when accessing credit. We assess our performance through conducting two-yearly surveys. MBIE will conduct the next New Zealand Consumer Survey in the 2021 financial year.

Other than matters discussed in the report, we are not aware of any other significant events that will result in a material difference in survey results since the last survey in 2019. The Commission continues to work towards contributing to consumer confidence through a range of initiatives described in the report.

This year, particularly in light of COVID-19 (page 13), we issued a range of guidance to borrowers to inform borrowing decisions and to assist lenders to comply with consumer credit laws when setting fees, providing information to borrowers and offering consumer credit products.

Engaging with the wider credit ecosystem, including other agencies, industry bodies and consumer groups, has helped us better understand emerging issues and to respond effectively. After contributing to the Culture and Conduct review of the banking and insurance sector by the Reserve Bank and the Financial Markets Authority, we formally joined the Council of Financial Regulators. We also carried out follow up work with the major banks in New Zealand to understand the systems they have in place to comply with consumer credit law. Our closer connections through the Council of Financial Regulators have enabled increased engagement with the sector regulators here and in Australia.



A particular success for us this year was our ‘Don’t get stung by your loan’ campaign, which urged people to understand the total cost of their loan. During June and early July, the campaign video was viewed more than 1.8 million times on Facebook and YouTube – with nearly 1 million completed views. This was a record number of video views for a Commission video – with the next highest watched 281,000 times on YouTube. In a first for the Commission, we also enlisted on-air presenters on Mai FM to emphasise our ‘Don’t get stung by your loan’ message. This campaign contributed to the Commission’s goal of connecting with all New Zealanders to help protect, inform and empower consumers.

## CASE STUDY

### Responsible lending

Part of the Commission’s role is to enforce the Lender Responsibility Principles that apply to consumer credit contracts. They include an obligation for lenders to exercise the care, diligence and skill of a responsible lender in all their dealings with borrowers. Adequate enforcement helps to maintain consumer confidence in the credit sector. From 20 December 2019 lenders that breach the Lender Responsibility Principles became liable for statutory damages and penalties. The cases discussed below relate to conduct prior to this change coming into force.

In 2018 and 2019 we carried out investigations into responsible lending, to discuss the rules with lenders and deter those lenders not complying. We obtained a number of responsible lending outcomes in relation to high-cost short term lenders, motor vehicle lenders and banks. This included laying charges in four cases, two of which are described below and two of which remain before the courts.

In June 2020 the Commission obtained declarations that high-cost lender Ferratum had breached the Lender Responsibility Principles, in that it failed to make reasonable enquiries about the affordability and suitability of loans. Although not issuing new loans at the time the matter was resolved, the company also offered court enforceable undertakings regarding aspects of its lending and advertising practices in the event that it did begin to lend again. It also agreed to refund costs of borrowing for 46 named borrowers.

Also in June 2020 the Commission entered into an agreement with high-cost lender Pretty Penny, settling proceedings the Commission had filed in 2019. Pretty Penny offered loans of between \$50 and \$550 for terms of between one and 92 days with an annual interest rate of 365%, or 1% per day with interest compounding daily. The Commission alleged breaches of the Lender Responsibility Principles, including failing to exercise the care, diligence and skill of a responsible lender by ensuring that its loan agreements were not oppressive, including its interest rates. After indicating that Pretty Penny was no longer lending in New Zealand, it agreed to write off all outstanding loan balances at the time of its removal from the Companies Register and to refund costs of borrowing for the 21 borrowers named in the proceedings.

It also agreed not to advertise for, invite or enter into consumer loans in New Zealand, or provide any information about borrowers to third parties (except where required by law).

Enduring  
priorities



The Commission resolved a number of cases involving breaches of disclosure requirements under which lenders must provide key information to borrowers about their loans. Several lenders acknowledged disclosure failures, either through reporting conduct to us that they had identified themselves, or following an investigation by the Commission. Where appropriate, we issued a warning letter, and in other cases we entered into settlement agreements that included steps to improve compliance and to provide compensation to affected borrowers. We continued our work relating to reasonable fees requirements, bringing proceedings in one case alleging that the lender charged unreasonable default fees.

We also took action in relation to debt collection practices, including issuing warnings for potential breach of the Fair Trading Act in relation to information provided to debtors and conduct that we considered may amount to harassment and/or coercion, and for breach of the Responsible Lending Principles when entering into a loan, and unreasonably repossessing a motor vehicle. In total, our cases relating to the Credit Contracts and Consumer Finance Act resulted in penalties and payments to consumers totalling \$37.3 million.

During the year, we provided written submissions to the Finance and Expenditure Committee on a variety of topics relating to consumer credit law reform. Some new consumer credit protections complement our existing responsibilities and others will better equip us to enforce consumer credit laws and meet our statutory objectives. Amendments began to come into force from December 2019 and will continue to take effect throughout 2020 and 2021.

## **Participating in the review of consumer credit law and implementing changes passed into law**

When participating in the review of consumer credit law we focused on giving effect to the underlying policy objectives in a clear, coherent and consistent manner so that the amended Act could be effectively enforced by the Commission and easily complied with by lenders. Amendments to the Credit Contracts and Consumer Finance Act were passed into statute in December 2019. They have considerable implications for our role in the sector.

For example, previously, there were no penalties associated with failure to comply with the Lender Responsibility Principles. Now, failure to abide by these principles could lead to civil pecuniary penalties, statutory damages, and/or be remedied through enforceable undertakings. These tools incentivise compliance and give us greater options when taking enforcement action in response to irresponsible lending.

We are also now responsible for enforcing new limits introduced to cap the fees and interest charged on high-cost consumer credit contracts. This year we have been working to promote compliance with the new limits by educating and engaging with lenders about the changes. Already we have seen that the number of lenders offering contracts of this type has fallen – and we are now monitoring to see how lenders' product offerings and costs of borrowing have changed since the law came into force.

In addition, from October 2021, lenders and mobile traders must obtain certification from the Commission that their directors and senior managers are fit and proper persons to hold their respective positions. In February this year, we engaged with stakeholders to seek feedback on the implementation of the new requirements. In June, we provided a summary of the feedback received and our response. We have also started establishing the function and registry ahead of the due date for certification.

A number of other changes have also been made that will enhance our ability to effectively and efficiently investigate and take enforcement action against breaches of the Credit Contracts and Consumer Finance Act 2003.



## Our work in the telecommunications industry

The telecommunications industry provides a good illustration of the convergence of our infrastructure, competition, and consumer areas of work. Telecommunication services now support New Zealanders in all aspects of their lives and have arguably never been more important to social and economic well-being.

The importance of telecommunications was highlighted in our latest annual monitoring report, which showed continued increases in average data consumption across both broadband and mobile. COVID-19 has further highlighted how important having good telecommunications infrastructure is for work and keeping in touch with family and friends.

### INDICATOR

#### Regulated suppliers provide strong and sustainable infrastructure

In 2019/20 we consider that regulated suppliers of telecommunications networks are generally continuing to deliver strong and sustainable infrastructure for the benefit of New Zealanders.

New Zealand's international ranking in broadband speed improved from 26th to 17th reflecting the increase in average fixed broadband download speeds from 24Mbps in 2018 to almost 33Mbps in 2019. This is well above the OECD averages and reflects the uptake of fibre broadband. The fibre and copper networks have also performed well at peak times, including during the COVID-19 lockdown.

Mobile infrastructure appears to be performing relatively well too, with 4G speeds in New Zealand assessed as 8th out of 88 countries. There is some evidence that the availability of 4G is increasing, but in May 2019 New Zealand remained 57th out of 87 countries. However, 3G or 4G availability in New Zealand ranks well, with New Zealand ranked 6th out of 95 countries. 5G is the next generation of mobile technology and will require mobile operators to invest in spectrum and in key network infrastructure.

The Government has contributed to the expansion of infrastructure, including the national roll out of fibre broadband and in rural areas through the Rural Broadband Initiative and Mobile Black Spot Fund.

In September 2019, we found the key indicators of effective competition to exist in mobile markets. New Zealanders continue to benefit from having three strong mobile network operators, and we have been working to safeguard competition in future. For example, assessing the effect on competition through our merger approval process before we cleared Infratil to acquire up to a 50% share in Vodafone. We have also been working with MBIE to ensure that competition considerations are at the forefront in the upcoming spectrum allocations for 5G.

Competition has been a key enabler of improved performance in fixed line markets too. For example, reporting on actual broadband performance through our independent testing programme has encouraged providers to compete on performance and not just price.

This year fibre overtook copper as the main way New Zealand households access the internet from home. Reflecting this, a major focus for the Commission has been continuing to implement the new regime for the regulation of fibre fixed line access services, similar to the approach taken to the regulation of energy networks.





## Continuing to implement the new regime for fibre broadband services

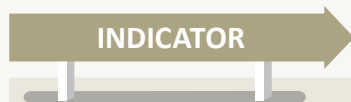
A key part of the new regime for fibre broadband is the upfront regulatory rules, known as input methodologies, for fibre fixed line access services. As with other regulated sectors, the input methodologies are designed to give fibre providers upfront certainty in relation to a range of key matters – including asset valuation, cost allocation, rates of return, and quality – that are traditionally highly contested parts of regulatory decision making.

This year we consulted in depth with stakeholders and later published our final decision in two parts. The core areas were finalised on 13 October 2020, and on 3 November 2020 we concluded the process by publishing our final decision on the approach to valuing the financial loss asset for fibre service providers. This work started in 2018 and has been a significant undertaking for the Commission and industry stakeholders.

Having put these regulatory rules in place, we are now turning our attention to applying them to set the revenue limit and minimum quality standards for Chorus, and the information disclosure regime for all fibre providers. The information disclosure regime is intended to improve transparency about their performance for stakeholders and consumers.



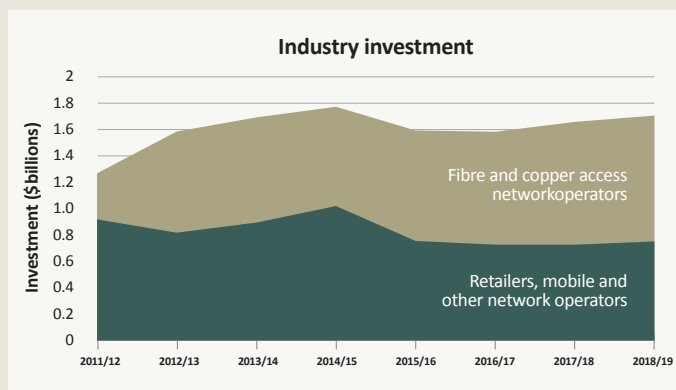
Our annual monitoring report has also shown that investment in the industry has continued during the period of regulatory transition.



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

Our high-level assessment indicates that telecommunications providers remain confident to invest under the regulatory regime.

Overall industry investment has been above \$1 billion a year for more than 15 years in a row and has been above \$1.5 billion a year since 2012/13. As well as the ongoing growth in Ultrafast Broadband, investment has been driven by continuing technology upgrades in the rest of the industry.



Significant acquisition activity occurred during May 2020, with First State Investments agreeing to purchase WEL's 85% majority shareholding and Waipa's 15% shareholding in the Local Fibre Company, Ultra Fast Fibre, for \$854 million.



On one hand competition and investment has delivered significant benefits for consumers through competitive pricing, high-speed connections, and a wide range of product offerings. On the other hand, it is clear not all groups of consumers are benefiting from these competitive outcomes to the same extent. For example, our study of the mobile market identified room for improved consumer engagement, and possible consumer inertia. We recently completed a review of mobile consumer bills and highlighted that some consumers could make significant savings if they switched plans or providers.



INDICATOR	2020	2019	2018
<p>Consumers are confident that regulated suppliers are providing services at an appropriate price and quality</p> <ul style="list-style-type: none"> <li>• Mobile</li> <li>• Fixed line</li> </ul> <p><i>Source of information: Consumer NZ's annual Mobile &amp; Internet Provider Satisfaction Survey</i></p>	<p><b>83%</b></p> <p><b>81%</b></p>	<p>82%</p> <p>78%</p>	<p>79%</p> <p>76%</p>

Our year on year target is to maintain or increase consumer confidence.

The overall satisfaction result from Consumer NZ's annual survey is used as a proxy for confidence in the telecommunications sector more generally, including whether consumers are confident that services are being provided at an appropriate price and quality.

Consumer NZ's consumer survey shows a slight increase in satisfaction year on year, but satisfaction levels remain subdued for around one fifth of New Zealanders. The number of consumer complaints is another indicator of consumer experience and, over the past year, there has been an increase in the number of consumer complaints and enquiries to the industry dispute resolution scheme, the Telecommunications Disputes Resolution Scheme, and the Commerce Commission. The main types of complaints we receive relate to aspects of retail service quality, including customer service, billing, and installation issues.

In recent years, we have remained focused on the industry in our fair trading investigations, which in 2019/20 resulted in:

- the District Court penalising a number of retail service providers for making false representations in consumer invoices by invoicing for services beyond the date of termination of the customer's contract
- a warning to another provider about misleading consumers in relation to account credits, and its loyalty discounts promotion.

Recent amendments to the Telecommunications Act have put in place consumer safeguards that mean in future we will be able to provide regulatory oversight of retail quality standards, and dispute resolution processes.

## CASE STUDY

### Supporting consumer choice of telecommunication services

Consumers have the confidence to participate in markets when they have access to information that helps them make informed purchasing decisions. For a number of years our broadband monitoring regime has supported consumer choice by providing independent information about download speeds, including the performance of different technologies.

In 2019/20, we published two 'Measuring Broadband NZ' reports, both of which showed that copper and fibre broadband connections experienced no significant decrease in download speeds, on average, despite very high demand from consumers. Testing for the reports coincided with the Rugby World Cup and the national lockdown for COVID-19.

InternetNZ has also used our consolidated datasets to help consumers search for their address and understand what broadband technologies and speeds are available to them.

More broadly, we are progressing an independent survey to better understand what information would help consumers choose services that suit their individual needs. By improving consumer understanding and working directly with telecommunications retailers we hope to see further improvements in the sector.

Enduring  
priorities

Under the amended Act, the Commission is also required to put in place safeguards for consumers during the move to fibre broadband and the progressive withdrawal of copper services. During the year we consulted on two other key initiatives relating to that transition:

- The Copper Withdrawal Code will set out the minimum consumer protection requirements that Chorus must meet before it can withdraw copper-based services (and eventually its copper network) in neighbourhoods where fibre services are available.
- The 111 Contact Code is intended to ensure that vulnerable consumers, who are more likely to require access to emergency services (such as those with a known medical condition), have access to an appropriate means of contacting the 111 emergency service in the event of a power failure.

The 111 Contact Code is needed because the equipment used to provide fibre and fixed wireless services does not work without electricity. In contrast, existing copper landlines may continue to function in the event of a power outage.



## Measuring our outputs

This section provides detailed reporting on our output performance against our targets, as included in our Statement of Performance Expectations 2019/20 (SPE) and the Estimates of Appropriations 2019/20. COVID-19 had an immaterial impact on the Commission's output performance measures in 2019/20. We met all our targets except for the Fibre Input Methodology determination measures, refer to page 39.



## Competition and Consumer

The Crown primarily funds our competition and consumer work, through the Vote Business, Science and Innovation: Enforcement of General Market Regulation multi-category appropriation (MCA).

We also receive revenue which funds this work from third-party application fees, interest revenue, cost awards from successful litigation cases, and cost recoveries for shared corporate services with other state sector agencies.

This section reports on the:

- output performance measures contained in our SPE 2019/20, as well as the Estimates of Appropriations 2019/20, under the Vote Business, Science and Innovation: Enforcement of General Market Regulation multi-category appropriation (MCA)
- revenue and expenditure relating to the delivery of our competition and consumer work.

## Competition

Output measure	2020		2019 Actual
	Actual	Target	
Percentage of merger clearance decisions made within 40 working days when no letter of issues is sent to parties	86%	75%	100%
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	12	5–20	14
Percentage of competition investigations decided within 18 months of the investigation being opened	91%	75%	100%
Percentage of investigations involving a court action, statutory undertaking or negotiated settlement response, meeting our internal process quality standards	100%	100%	New measure

## Finances

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	8,193	8,193
Other revenue	351	264
<b>Total operating revenue</b>	<b>8,544</b>	<b>8,457</b>
<b>Total operating expenses</b>	<b>8,451</b>	<b>8,806</b>
<b>SURPLUS/(DEFICIT)</b>	<b>93</b>	<b>(349)</b>

Expenditure in the Competition output class was less than budgeted. The under-spend was mainly due to lower than expected external consultant costs. Higher than anticipated activity in the enforcement work stream was offset by lower mergers expenditure.

## Consumer

Output measure	2020		2019 Actual
	Actual	Target	
Number of Credit Contracts and Consumer Finance Act matters completed	58	50–100	63
Number of product safety and information standards matters completed	103	75–150	90
Number of Fair Trading Act matters completed	344	175–300	230
Percentage of Fair Trading Act investigations decided within 12 months of the investigation being opened	97%	95%	95%
Percentage of credit investigations decided within 18 months of the investigation being opened	98%	95%	89%*
Percentage of investigations involving a court action, statutory undertaking or negotiated settlement response, meeting our internal process quality standards	100%	100%	New measure

\* The percentage of consumer investigations decided output measure was revised in 2019/20 to separate Fair Trading and Credit investigations. We have reported the comparator based on historical data for 2018/19.

## Finances

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	15,144	15,144
Other revenue	489	423
<b>Total operating revenue</b>	<b>15,633</b>	<b>15,567</b>
<b>Total operating expenses</b>	<b>15,777</b>	<b>16,413</b>
<b>SURPLUS/(DEFICIT)</b>	<b>(144)</b>	<b>(846)</b>

Consumer output class expenditure was less than budget due to lower than expected internal resourcing and external consultancy costs. The underspend related to the enforcement work stream. Advocacy activity was higher than anticipated.

## Competition studies

The Crown primarily funds our competition studies work, through the Vote Business, Science and Innovation: Competition Studies appropriation.

Output measure	2020		2019
	Actual	Target	Actual
All competition studies undertaken are completed within agreed timeframes	<b>Achieved</b>	Achieved	New measure

## Finances

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	1,111	1,500
Other revenue	26	28
<b>Total operating revenue</b>	<b>1,137</b>	<b>1,528</b>
<b>Total operating expenses</b>	<b>1,137</b>	<b>1,528</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>

Competition Studies output class expenditure was less than budget for 2019/20. The underspend was mainly due to the study completing in December 2019. The budget assumed a second study would commence during the 2019/20 year. This did not happen.

## 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	8,193	8,193	8,193	0
<b>Enforcement of Consumer Regulation</b>				
Revenue – Crown	15,144	15,144	15,144	0
<b>Total</b>	<b>23,337</b>	<b>23,337</b>	<b>23,337</b>	<b>0</b>
<b>Vote Business, Science and Innovation: Competition Studies</b>				
Revenue – Crown	<b>1,500</b>	<b>1,632</b>	<b>1,111</b>	<b>(521)</b>

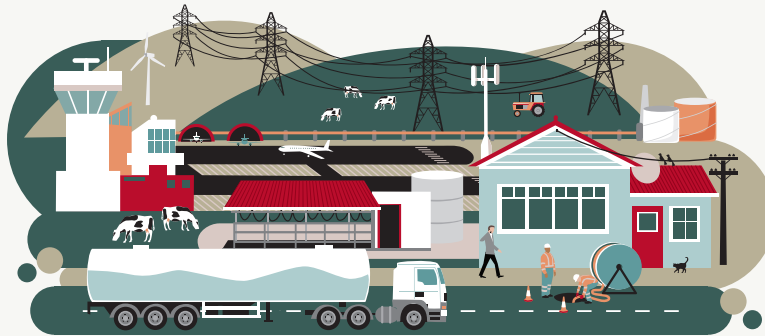
## Regulated industries

Our regulation work is primarily funded by the Crown through six appropriations, with our work under Part 4 of the Commerce Act funded by three multi-year appropriations, each for a five-year period (2019–2024).

We also receive revenue for this work from cost recoveries for shared corporate services with other state sector agencies, and cost recoveries for specific determinations applied for by third parties.

This section reports on the performance measures contained in our SPE 2019/20, and the measures in the Estimates of Appropriations 2019/20 under Vote Business, Science and Innovation:

- Enforcement of Telecommunications Sector Regulation
- Enforcement of Telecommunications Sector Fibre and Broadcasting Transmission Service Regulation 2018–2022 (multi-year appropriation)
- Regulation of Electricity Lines Services 2019–2024 (multi-year appropriation)
- Regulation of Gas Pipeline Services 2019–2024 (multi-year appropriation)
- Regulation of Airport Services 2019–2024 (multi-year appropriation)
- Enforcement of Dairy Sector Regulation and Auditing of Milk Price Setting.



## Telecommunications

Output measure	2020		2019
	Actual	Target	Actual
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	9	0–10	3
Average time to complete telecommunications determinations	2.5 months	6 months	3.5 months
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	6	0–9	6
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	New measure

### Finances

Expenditure in the Telecommunications output class was around 5% below budget due to lower than expected external consultancy costs. Higher than anticipated activity in the public reports and advice to officials work stream was offset by lower determinations expenditure. Compliance and enforcement expenditure were also less than budget.

Other revenue included \$0.205 million from invoicing applicants for the final portion of the final pricing principle (FPP) costs.

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	6,022	6,300
Other revenue	317	323
<b>Total operating revenue</b>	<b>6,339</b>	<b>6,623</b>
<b>Total operating expenses</b>	<b>6,339</b>	<b>6,623</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>



## Fibre

Output measure	2020		2019
	Actual	Target	Actual
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	0	1	0
Fibre Input Methodology determination completed by 30 June 2020	<b>Not Achieved</b> <i>(refer to note 1)</i>	Achieved	New measure
Quality assurance processes for determinations and code amendments are in place and applied	<b>Not Achieved</b> <i>(refer to note 1)</i>	100%	New measure

### Note 1

Fibre targets were not met during the year as a result of a need to extend timeframes in producing the final determination for the input methodologies for fibre services under Part 6 of the Telecommunications Act 2001. There were several reasons for this:

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

We completed the final determination on 3 November 2020.

### Finances

Fibre output class expenditure was around 4% less than budget for the 2019/20 year. This was mainly due to lower than expected external consultant costs related to the development of Fibre input methodology determinations.

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	4,821	5,000
Other revenue	96	101
<b>Total operating revenue</b>	<b>4,917</b>	<b>5,101</b>
<b>Total operating expenses</b>	<b>4,917</b>	<b>5,101</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>

## Electricity lines services

Output measure	2020		2019 Actual
	Actual	Target	
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	19	6–16	5
Percentage of Part 4 of the Commerce Act 1986 determinations completed by statutory deadlines	100%	100%	Not applicable <sup>4</sup>
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	4	0–7	6
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	New measure

### Finances

Expenditure in the Electricity output class was around 3% less than budget. The underspend was due to lower than expected external consultant costs. Higher than budgeted determinations costs were offset by lower expenditure in the compliance and enforcement and the public reports and advice to officials work streams.

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	6,883	7,200
Other revenue	259	146
<b>Total operating revenue</b>	<b>7,142</b>	<b>7,346</b>
<b>Total operating expenses</b>	<b>7,142</b>	<b>7,346</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>

4. The determinations completed did not have statutory deadlines.

## Gas pipeline services

Output measure	2020		2019
	Actual	Target	Actual
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	2	2–5	3
Percentage of Part 4 of the Commerce Act 1986 determinations completed by statutory deadlines	Not applicable <sup>5</sup>	100%	Not applicable <sup>5</sup>
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	2	0–4	1
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	New measure

### Finances

Gas output class expenditure was less than budget. The underspend was due to lower than anticipated external consultant costs in the compliance and enforcement and the public reports, and advice to officials work streams.

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	1,300	1,500
Other revenue	30	31
<b>Total operating revenue</b>	<b>1,330</b>	<b>1,531</b>
<b>Total operating expenses</b>	<b>1,330</b>	<b>1,531</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>

5. The determinations completed did not have statutory deadlines.

## Airport services

Output measure	2020		2019 Actual
	Actual	Target	
Number of determinations (includes determinations, clarifications, reviews, codes and amendments)	2	2-4	3
Percentage of Part 4 of the Commerce Act 1986 determinations completed by statutory deadlines	Not applicable <sup>6</sup>	100%	Not applicable <sup>6</sup>
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	0	0-3	2
Quality assurance processes for determinations and code amendments are in place and applied	100%	100%	New measure

## Finances

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	319	800
Other revenue	7	16
<b>Total operating revenue</b>	<b>326</b>	<b>816</b>
<b>Total operating expenses</b>	<b>326</b>	<b>816</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>

Expenditure in the Airports output class was less than budget. The budget assumed the review of a price-setting event which was postponed by Wellington Airport. The postponement of this event meant Airports activity was reduced significantly.

6. The determinations completed in 2019 and 2020 did not have statutory deadlines.

## Dairy

Output measure	2020		2019 Actual
	Actual	Target	
Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports)	2	1-2	2

## Finances

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	627	600
Other revenue	15	12
<b>Total operating revenue</b>	<b>642</b>	<b>612</b>
<b>Total operating expenses</b>	<b>642</b>	<b>612</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>

Expenditure in the Dairy output class was marginally higher than budget but within appropriation. External consultant expenditure related to the 2019/20 season reviews of Fonterra's milk price manual and base milk price calculation was more than anticipated. There were no determinations during the year and no compliance expenditure was incurred.

## Part 4 inquiries

There were no Part 4 inquiries completed in 2019/20, following a trend from previous years. The Commission can undertake an inquiry into markets with limited competition under Part 4 of the Commerce Act 1986.

Output measure	2020		2019 Actual
	Actual	Target	
Number of Part 4 inquiries completed	0	0-1	0

## 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	7,000	6,750	6,022	(728)
<b>Vote Business, Science and Innovation: Enforcement of Telecommunications Sector Fibre and Broadcasting Transmission Service Regulation (MYA)</b>				
Cumulative funding to 1 July	3,200	3,200	3,327	127
Revenue – Crown	4,300	5,000	4,821	(179)
<b>Cumulative funding to 30 June 2020</b>	<b>7,500</b>	<b>8,200</b>	<b>8,148</b>	<b>(52)</b>
Remaining appropriation	4,800	4,100	4,152	52
<b>Total appropriation</b>	<b>12,300</b>	<b>12,300</b>	<b>12,300</b>	<b>0</b>
<b>Vote Business, Science and Innovation: Economic Regulation of Electricity Lines Services 2019–2024 (MYA)</b>				
Cumulative funding to 1 July	0	0	0	0
Revenue – Crown	7,000	7,200	6,883	(317)
<b>Cumulative funding to 30 June 2020</b>	<b>7,000</b>	<b>7,200</b>	<b>6,883</b>	<b>(317)</b>
Remaining appropriation	21,311	21,111	21,428	317
<b>Total appropriation</b>	<b>28,311</b>	<b>28,311</b>	<b>29,083</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	0	0	0	0
Revenue – Crown	1,500	1,500	1,300	(200)
<b>Cumulative funding to 30 June 2020</b>	<b>1,500</b>	<b>1,500</b>	<b>1,300</b>	<b>(200)</b>
Remaining appropriation	8,184	8,184	8,384	200
<b>Total appropriation</b>	<b>9,684</b>	<b>9,684</b>	<b>9,684</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	0	0	0	0
Revenue – Crown	800	800	319	(481)
<b>Cumulative funding to 30 June 2020</b>	<b>800</b>	<b>800</b>	<b>319</b>	<b>(481)</b>
Remaining appropriation	1,963	1,963	2,444	481
<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	612	(145)

## Major litigation

We undertake litigation across functions where we believe this is likely to achieve the most effective outcome. Major litigation funding is used where cases meet the conditions for accessing the fund.

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	2020		2019
	Actual	Target	Actual
Using the fund according to conditions for use	<b>Achieved</b>	Achieved	New measure

## Finances

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 external direct costs of resourcing major litigation activity. For our internally-sourced litigation, we also receive a share of the revenue from shared services cost recoveries.

Externally-sourced litigation expenditure was below budget as the Commission successfully reached settlements and resolved matters more quickly than expected. The impact of COVID-19 also slowed litigation activity during the last quarter of the financial year. The budget for externally-sourced litigation is based on known litigation projects and potential cases in various categories, as at the start of the year.

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

Internally-sourced litigation expenditure was slightly less than budget for the 2019/20 year.

	2020 Actual \$000	2020 Budget \$000
<b>Operating revenue</b>		
Revenue – Crown	3,500	3,500
Other revenue	91	96
<b>Total operating revenue</b>	<b>3,591</b>	<b>3,596</b>
<b>Total operating expenses</b>	<b>3,653</b>	<b>3,729</b>
<b>SURPLUS/(DEFICIT)</b>	<b>(62)</b>	<b>(133)</b>

## 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 the appropriation Vote Business, Science and Innovation: Commerce Commission Litigation Funds MCA.

	Estimates \$000	Supplementary Estimates \$000	Actual \$000	Difference vs Supplementary Estimates \$000
<b>Commerce Commission externally-sourced litigation</b>				
Revenue – Crown	7,500	7,500	4,088	(3,412)
<b>Commerce Commission internally-sourced litigation</b>				
Revenue – Crown	3,500	3,500	3,500	0
<b>Total</b>	<b>11,000</b>	<b>11,000</b>	<b>7,588</b>	<b>(3,412)</b>



# Our governance and management

## Meet our Board

### Anna Rawlings

*Chair*



Anna Rawlings 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 Begg was appointed as 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–June 2019. Sue is an economist. Her 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 (from June 2020)*



Tristan Gilbertson 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 Stephen Gale

*Telecommunications Commissioner (to June 2020)*



Stephen Gale was appointed as the Telecommunications Commissioner from July 2012–June 2020. Before July 2012, he was an Associate Commissioner for two years. Stephen has specialised for some years in infrastructure economics (energy, telco and transport) and competition proceedings at the consulting firm Castalia. Before that, he was at the New Zealand Institute of Economic Research. He holds a PhD from the University of Cambridge.

### Dr Jill Walker

*Commissioner (to March 2020)*



Jill Walker was appointed Commissioner from December 2015–March 2020. Before December 2015, Jill was an Associate Commissioner for five years. She was a Commissioner of the Australian Competition and Consumer Commission (ACCC) from September 2009–April 2016. Before joining the ACCC, Jill was a Member of the Australian Competition Tribunal and worked as an economic consultant. She is currently a member of the Bureau of the Competition Committee of at the Organisation for Economic Cooperation and Development (OECD). Jill holds a BA in Economics and a PhD in Land Economy from the University of Cambridge. She also has a MA in Economics from the University of Massachusetts.

### Elisabeth Welson

*Commissioner*



Elisabeth Welson was appointed as Commissioner in August 2013. Before that she was an Associate Commissioner from September 2012. Elisabeth's previous role was as 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. She has practised as a Barrister and Solicitor in New Zealand as well as a Solicitor of the Supreme Court of Queensland and Solicitor of the Supreme Court of New South Wales.

## Dr Derek Johnston

*Commissioner*



Derek Johnston 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 Small 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.

## Joseph Liava'a

*Associate Commissioner*



Joseph Liava'a 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 Crawford was appointed as Associate Commissioner in October 2018. Before joining the Commission, John was Chief Executive of Auckland Council Investments. He has also held senior management roles at the Treasury,

the Department of the Prime Minister and Cabinet, and New Zealand Trade and Enterprise. John has substantial commercial and regulatory experience in key sectors, such as electricity, energy and telecommunications. He has undergraduate degrees in Science and Engineering, and also holds an MBA from the University of Auckland.

## Sarah Court

*Associate Commissioner*

*ACCC cross-appointment*



Sarah Court was cross-appointed from the Australian Competition and Consumer Commission as Associate Commissioner in December 2015. Sarah has been a Commissioner of the ACCC from April 2008. Previously, she was a former

senior executive lawyer and director with the Australian Government Solicitor. She has extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation. As Chair of the ACCC's Enforcement Committee, Sarah oversees the agency's enforcement and litigation programme. She also sits on the ACCC's Merger Review Committee and the Adjudication Committee.

## Vhari McWha

*Associate Commissioner*



Vhari McWha was appointed as an Associate Commissioner in September 2020, following the start of the 2020/21 financial year.

## Fred Hutchings

*External Convenor of the Audit and Risk Committee*

Fred Hutchings is our external Convenor of the Audit and Risk Committee. Fred was a partner with PricewaterhouseCoopers and now holds several governance roles, including Chairman of Seeka Kiwifruit Industries Ltd, director of Speirs Group Limited, convener of Ngati Awa audit and risk committee and an independent member of the ACC Risk Assurance and Audit Committee. Formerly, he was Chairman 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

### Adrienne Meikle

*Chief Executive*



Adrienne Meikle joined the Commission in May 2018. Before this, Adrienne held senior leadership positions at the Ministry of Business, Innovation and Employment – most recently as Deputy Chief Executive, Corporate, Governance and Information Group. She has extensive experience in the public sector. Before joining MBIE in 2012, she held the roles of 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 Ministry of Education. Adrienne has a BA/LLB and an LLM (Hons).

### Antonia Horrocks

*General Manager Competition and Consumer*



Antonia Horrocks manages the Commission's Competition and Consumer branch, which is responsible for education, compliance and enforcement under the Fair Trading Act, the Commerce Act (merger, trade practices and market studies functions) and the Credit Contracts and Consumer Finance Act. She joined the Commission in August 2016 from the UK's Competition and Markets Authority. Before joining the CMA, Antonia worked as an antitrust lawyer in London for nearly a decade, most recently as Counsel at Shearman & Sterling (LLP) in London. She started her career in New Zealand and has a law degree, a BA (Hons) in English, and a Postgraduate Diploma in EU Competition Law.

### Nick Russ

*General Manager Regulation*



Nick Russ manages the Commission's regulatory functions across several sectors, including electricity lines, gas pipelines, major airports, telecommunications and dairy. He was previously Head of Part 4 and Dairy. Nick joined the Commission in November 2010 as a Chief Adviser in the Regulation Branch working across a range of regulatory issues. Before joining the Commission, he spent many years working for energy regulators in the UK and Australia. Nick has a degree in electrical engineering and is a Chartered Engineer.

### Geoff Williamson

*General Manager Organisation Performance*



Geoff Williamson joined the Commission in July 2011 and manages the organisation performance functions. Geoff was Acting Chief Executive for the Commission between January–May 2018. He was previously Director Corporate Services at the Tertiary Education Commission, and his previous work experience includes Chief Financial Officer at the National Library of New Zealand and a range of roles at Deloitte. Geoff has a BCA from Victoria University of Wellington, an Executive Master of Public Administration through the Australia and New Zealand School of Government and is a Chartered Accountant.

### John McLaren

*Principal Adviser to the CE*



John McLaren joined the Commission in 2008. He is currently working on secondment to advise the Chief Executive on organisation strategy. He also supports the Board and Senior Leadership Team in the planning and prioritisation of strategic dialogue. With over a decade of experience at the Commission, John has held a variety of roles since first joining the Regulation Branch when Part 4 of the Commerce Act was amended. John has a degree in Economics.

## Governance of our organisation

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 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, strategic direction, ensuring compliance and providing oversight, it also has a statutory decision-making role outlined under each piece of legislation we enforce.

The Board delegates the day-to-day management of the Commission to the Chief Executive. Our Chief Executive, with the support of the senior leadership team, is the key point of accountability between the Board and the organisation.

## 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 directions
- using delegations to make our work more efficient
- using advisory committees to the Board, such as the Audit and Risk Committee (ARC)
- overseeing a wide variety of strategies, policies, processes, systems, frameworks and analytical approaches to help ensure effective decision making.

Our Chair establishes separate divisions of the Commission to exercise the powers of the Commission under the laws under we enforce. Divisions can include Board members and/or Associate Commissioners. As at 30 June 2020, the Commission had seven standing divisions and one standing committee.



The Commission's divisions for the 2019/20 year are explained in the table below.

<b>Commerce Act Division</b>	Exercises the Commission's functions and powers under 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 (FT Act) and Credit Contracts and Consumer Finance Act (CCCF Act), including undertaking investigations and inquiries, taking evidence and requiring information, making decisions to commence proceedings under the legislations and undertaking studies regarding matters affecting the interests of consumers under the FT Act.
<b>Dairy Division</b>	Exercises the Commission's powers and functions under the Dairy Industry Restructuring Act (DIRA) 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 about information disclosure and price-quality regulation and responding to proceedings that challenge the Commission's decisions concerning these areas.
<b>Telecommunications Division</b>	Exercises the Commission's functions and powers under the Telecommunications Act, including determinations in respect of designated multi-network services, pricing review determinations, liability allocation determinations, Telecommunications Service Obligations cost calculation determinations and investigations about any proposed alterations to the legislation.
<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, gas pipeline and specified airport services.
<b>Audit and Risk Committee</b>	Assists the Board in achieving the Commission's vision and strategy by assuring that good-practice audit, risk management and finance are in place.

## 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 the report (page 53) 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 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 Rules of Sourcing 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. We automated those functions in September 2019 to ensure our system remains in sync with the NZBN database.

No directions were given to the Commission in writing by a Minister under any enactment during the year ended 30 June 2020.

## **Government Policy Statements**

On 22 March 2020, the Minister of Commerce and Consumer Affairs issued a Government Policy Statement under s26 of the Commerce Act. The statement conveyed the economic policy of the Government in relation to maintaining confidence in the market for essential goods and services such as grocery products during the period that COVID-19 is affecting the New Zealand economy.

In October 2019, the Government Policy Statement (GPS) issued to the Commission in 2011 under s 19A of the Telecommunications Act 2001, concerning incentives for companies to invest in broadband infrastructure, was revoked.

# Organisation capability and health

## Our People Strategy

Our staff are critical to achieving our vision and strategy. As part of our People Strategy, we have identified six strategic goals which we use to guide our people focus, underpinned by our organisational values.

<p><b>Connected and collaborative</b></p> <p><b>Strategic goal</b></p> <p>We nurture a connected and collaborative environment which boosts knowledge sharing and innovative thinking, leading to engaged teams and better business outcomes</p>	<p><b>Inclusive, diverse, safe and healthy</b></p> <p><b>Strategic goal</b></p> <p>We build and maintain an inclusive, diverse and healthy environment where our people are safe, feel valued, supported, respected and can flourish</p>	<p><b>Excellent people leadership and management</b></p> <p><b>Strategic goal</b></p> <p>We have excellent people leadership and management capability to encourage high performance, foster a great workplace and culture, enabling our people to excel</p>
<p><b>Attract</b></p> <p><b>Strategic goal</b></p> <p>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</p>	<p><b>Develop</b></p> <p><b>Strategic goal</b></p> <p>We develop our people to be the best they can and to deliver outstanding performance</p>	<p><b>Retain</b></p> <p><b>Strategic goal</b></p> <p>We retain our people by valuing and rewarding their contribution, and maintaining a great workplace where they can thrive</p>

**Excellence · Integrity · Accountability · Respect · Good judgement**

Our values shape our culture by setting out what is important and defining how we will work and behave towards each other and the communities we serve.

## Being a good employer

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 continued focus on people leadership capability helps create a workplace where our people can excel. We provide a range of development opportunities, including on-the-job experience, coaching and skills development programmes. Our regular People Leaders' Forum provides an opportunity for people leaders to share learning and good practice.</p> <p>A new employee engagement survey, ComPulse, helps People Leaders act on employee feedback and take practical steps to create positive change.</p> <p>The Chief Executive and senior leadership team meet regularly with our people to communicate the Commission's vision and share progress against organisational goals.</p> <p>Our people are asked for their views on updated and new policies and procedures implemented by the Commission.</p>
<b>Recruitment, selection and Induction</b>	<p>Our dedicated in-house recruitment function has further refined our ability to recruit excellent people. We work hard to ensure that we follow robust processes with a focus on embracing diversity and employment equity.</p>
<b>Employee development, promotion and exit</b>	<p>The Commission is committed to growing our people and provides a range of development opportunities to everyone, with a focus on developing capability through on-the-job experience as well as targeted skills programmes.</p>
<b>Flexibility and work design</b>	<p>Through the initiation of a review of our flexible working approach and updated technology applications, we strive to accommodate flexible arrangements and organise work to support both our people's needs and the needs of our business.</p>
<b>Remuneration, recognition and conditions</b>	<p>We maintain our adherence to Government Expectations on Employment Relations in the State Sector. We plan a further review of our remuneration strategy and framework to refine our approach further. The Commission adopted the Public Service guidelines covering pay restraint in response to the COVID-19 situation.</p>
<b>Harassment and bullying prevention</b>	<p>We have a zero-tolerance of harassment, bullying and discrimination. Our organisational values; refreshed code of conduct; anti-harassment, bullying and discrimination policy; equality, diversity and inclusion policy; and protected disclosures policy all detail our expected behaviours and joint responsibilities.</p>
<b>Safe and healthy work environment</b>	<p>Our health, safety and wellness policy, manual and framework ensure 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.</p>

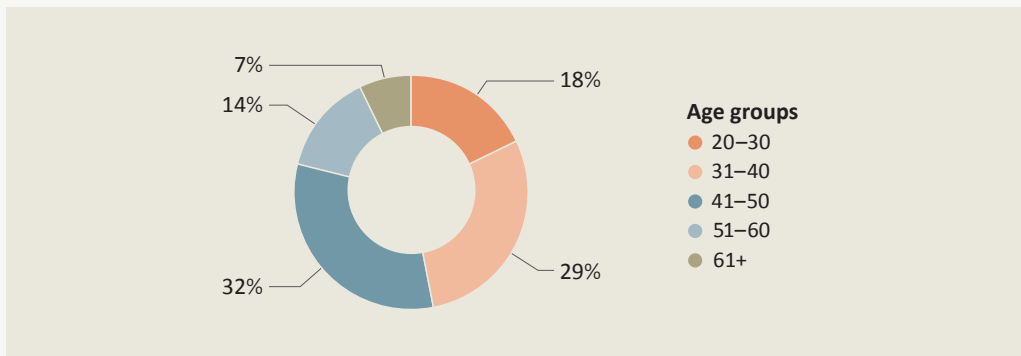


## Profile of our people *(at 30 June)*

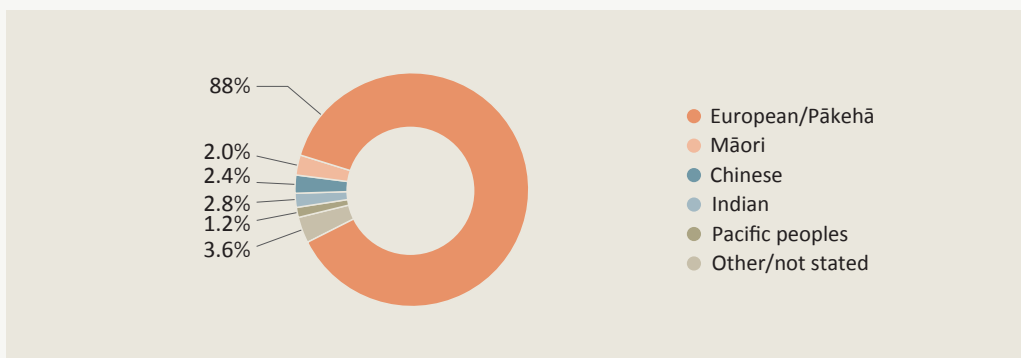
In recent years, changes to the Commission's functions, powers and duties have seen us grow from a small to a medium-sized organisation. We now have around 250 staff, up from 180 five years ago, and we expect that number to grow further as we manage and support new functions, powers and duties.

	2020	2019
Number of employees (FTE)	<b>244</b>	247
Male	<b>50%</b>	51%
Female	<b>50%</b>	49%
Employee turnover	<b>10.3%</b>	11.2%
The average number of years of experience of our employees (with the Commerce Commission)	<b>5.2</b>	4.8

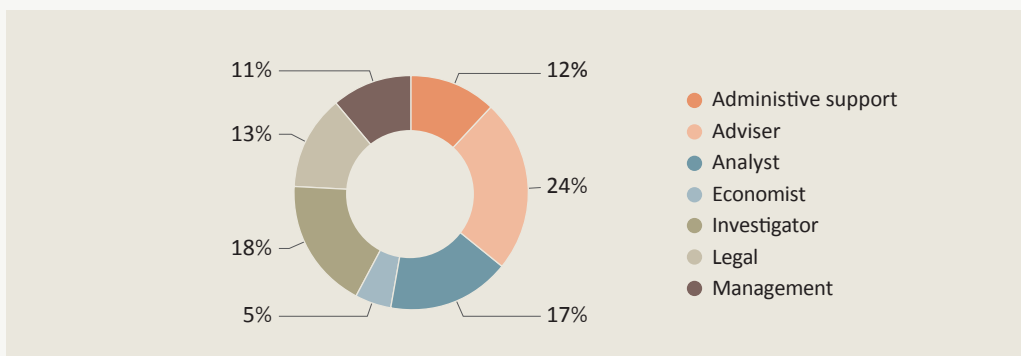
### Age profile *(percentage of employees)*



### Ethnicity profile *(percentage of employees)*



### Occupation profile *(percentage of employees)*



## **Evaluating our capability and health**

In our SOI, we set out the 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 focused on continuing to improve employee engagement.

In February 2020 we launched a new employee engagement survey, ComPulse. Our survey measures engagement and overall experience in areas such as culture, leadership and working environment.

This year we ran the survey twice, providing a baseline measure to track progress over time. Our overall participation rate was consistent, with 84% of employees responding to each survey. Our average engagement score was also consistent across both surveys at 7.4, using a rating scale of 0–10.

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

In response to the COVID-19 pandemic, we focused our efforts on identifying and addressing the health, safety and wellness of our people, while striving to minimise the impact on business continuity.

In line with our annual work programme, we continue to offer a range of services, education and workshops, including health checks, flu vaccinations, mental health awareness workshops, mindfulness and EAP services. Courses are offered for training new health and safety representatives and first aiders.

The Commission enlisted the services of an external specialist provider to undertake a health and safety audit in November 2019. We were commended for having a proactive approach and genuinely showing interest in the welfare of our employees. We have since developed an annual plan to action the recommendations of the audit, with a focus on continuous improvement.

### **Driving security improvements**

In October 2019, the Commission experienced a security breach when an external service provider was burgled, and their computer equipment was stolen. The equipment contained a range of documents relating to the Commission's work, including confidential information provided to us by businesses and individuals. The Commission engaged Richard Fowler QC and KPMG to undertake two independent reviews relating to the incident. The Fowler review looked at circumstances relating to the security incident while the KPMG review looked at the Commission's broader information management and security. The Commission accepted the findings and recommendations from both reviews. We have taken a range of actions, including embarking on longer-term information management and security programme to help ensure that the public continues to have confidence in our ability to protect confidential and commercially sensitive information.

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

## 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.

We aim to maintain a diverse, bias-free and respectful workplace that allows employees to perform at their best to achieve the Commission's objectives. We have an updated disability register and aim to ensure our workplace environment caters to people of all abilities, with assistance available to all employees as required.

The scope of the diversity and inclusion area is broad. We have solid foundations in place and are making further progress.

The Commission's active and enthusiastic staff-led Diversity and Inclusion Network continues to increase awareness in these areas by hosting several guests, covering a range of topics, through our external speaker series.

Our partnership with Diversity Works continues and has included an external 'stocktake'. Overall, the report shows a positive picture of the Commission's diversity and inclusion landscape, with room for opportunities to improve our positioning in some areas. Diversity Works found that the Commission has made "good initial gains in diversity and inclusion practices. There are important foundational elements, good infrastructure and overall good spirit to foster an inclusive culture". Some specific areas we can continue to focus on include 'the entrance funnel' (ie, recruitment and attraction), career development and inclusive leadership.

Efforts towards achieving our diversity and inclusion goals continue. For example, consistent with a Diversity Works recommendation that we provide unconscious bias training to those involved in recruitment, the Commission delivered a workshop, in partnership with Diversity Works, to our People Leaders. We also identified a range of e-learning modules, with one on unconscious bias, that were released with our refreshed policy.

To make our commitment more visible, an update on diversity and inclusion was the key topic of an organisation-wide stand-up, where we also shared an in-house video covering several of our staff's personal experiences of diversity and inclusion at the Commission.

We continue to participate in and celebrate awareness-building activities, such as the Tupu Tai Pasifika internship programme, Pink Shirt Day, language weeks and Mental Health Week.



## Flexible working arrangements

In response to the COVID-19 pandemic, we moved from being an office-based organisation to working from home. This experience provided helpful insights into our overall approach to flexible working, and a large number of our people continue to retain a mix of working in the office and remotely.

	2020	2019
Percentage of employees with flexible working arrangements	59%	12.1%

## Gender pay gap

The Commission continues to progress, closing the gender pay gap and actively growing diversity. Fifty percent of our Board (our full Commissioners) are women, and 40% of our senior leadership team, including the Chief Executive, are women. The Commission has compared gender pay across our comparable roles, and this shows a gap close to zero.

Gap	2020	2019
The median difference between male and female employees	18.5%	22.6%
The average difference between male and female employees	13.6%	14.8%

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.

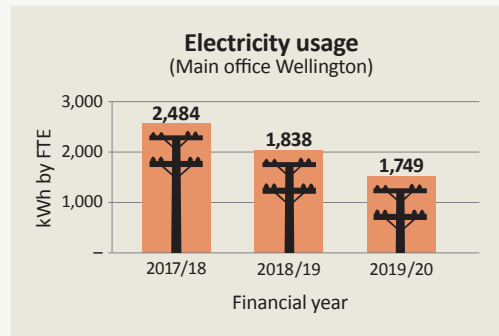
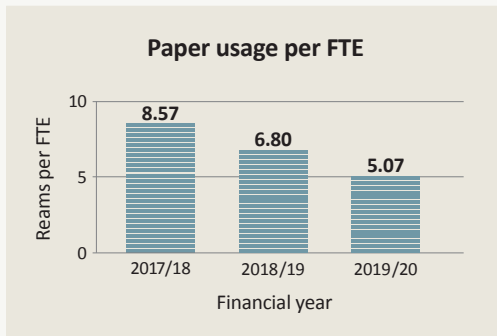
## Working efficiently

As an independent Crown entity, funded by New Zealanders, we must operate most 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 also continue to look for ways to save on back-office costs. This includes sharing reception and meeting room facilities with the Tertiary Education Commission in Wellington and providing information services to the Electricity Authority by hosting their IT infrastructure and providing Chief Information Officer and IT helpdesk services.

### Environmental sustainability

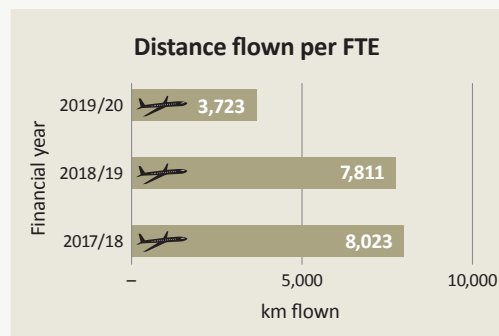
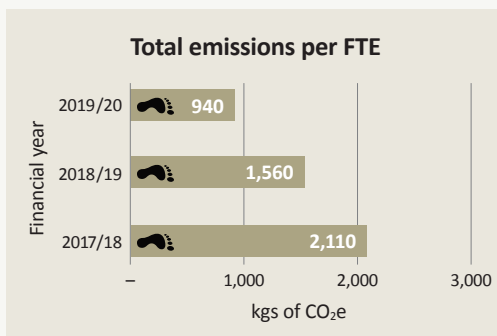
We are committed to minimising our impact on the environment. We currently monitor our flight, paper and energy usage and continue to look for ways to actively reduce our environmental footprint.

Over the last five years, we have more than halved our paper use, which has saved a significant amount of money and limited our environmental impact. We managed this through a range of initiatives, including the rollout of 'Follow-Me' printing, the introduction of mobile devices and technology, default duplex printing, support for flexible working arrangements, and enhanced filing protocols.



### Air travel

Our business travel emissions have reduced over the years with a significant drop in the 2019/20 financial year. This drop was primarily the result of travel restrictions imposed in response to COVID-19. The Commission used more technology solutions such as Microsoft Teams to enable our staff to continue to communicate and collaborate effectively during, and following, Alert Level 4 restrictions.



# Our finances

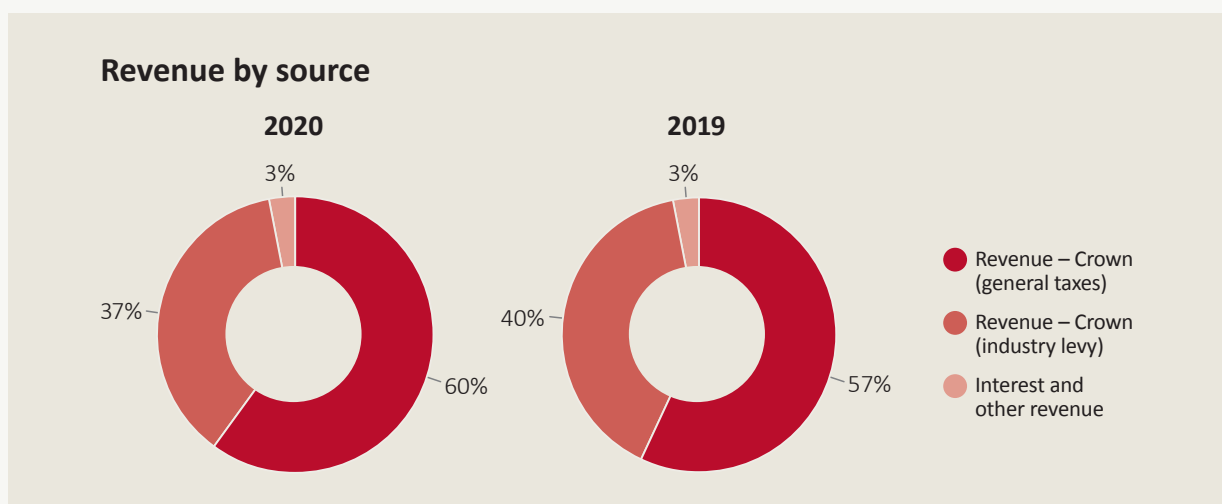
## Financial statements overview

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 recover from the economic impact of COVID-19. This section provides an overview of our financial statements for the year ended 30 June 2020.

### Revenue

The Commission recorded revenue of \$53.7 million for 2020, compared to \$48.4 million in 2019. 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.



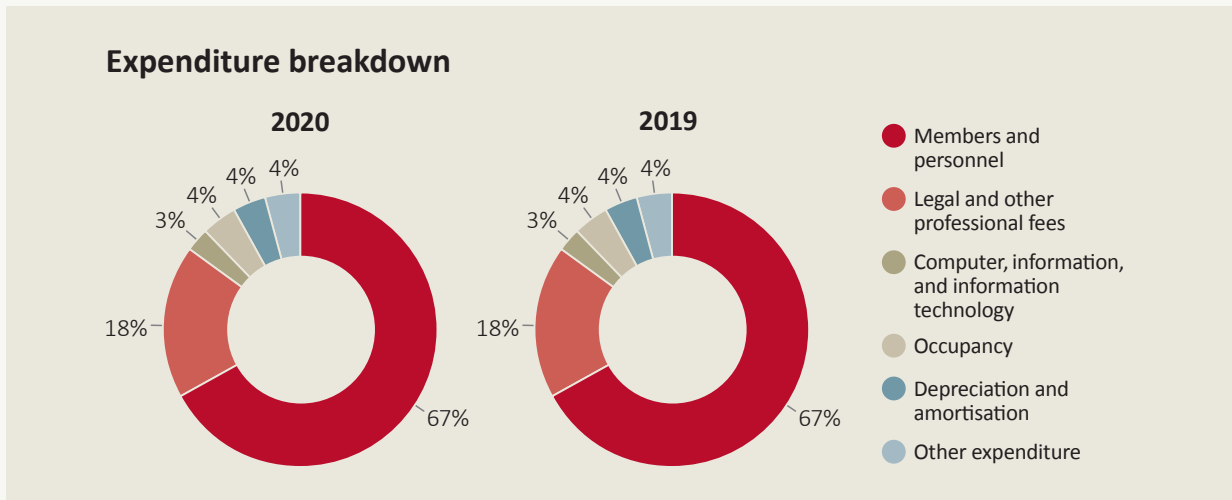
The Crown funding received as appropriations provides us with the resources to complete several work streams. The funding is a maximum amount we may spend (excluding revenue from other sources) for each stream. We budget to produce our work within this funding. In the earlier part of this annual report, we have provided tables for each work stream showing total revenue and expenses.

In 2020, Crown funding sourced from industry levies comprised 37% of Commission revenue, compared to 40% in 2019. This is due to a \$4.4 million increase in Crown funding from general taxation, despite a \$0.7 million increase in funding sourced from industry levies. We received slightly greater revenue from fees and recoveries as we had one application for a customised price-quality path for a regulated business late this financial year, offsetting declining interest revenue particularly as the economic effects of the COVID-19 pandemic began to affect New Zealand.

## Expenditure

This year we spent \$53.8 million, compared to a budgeted spend of \$59.5 million and a prior year spend of \$47.9 million. Expenditure on Board members and staff was up again significantly on last year as our increasing work programme required us to recruit more permanent and temporary staff. Legal and other professional fees similarly increased, although they were less than budget due to less expenditure on litigation.

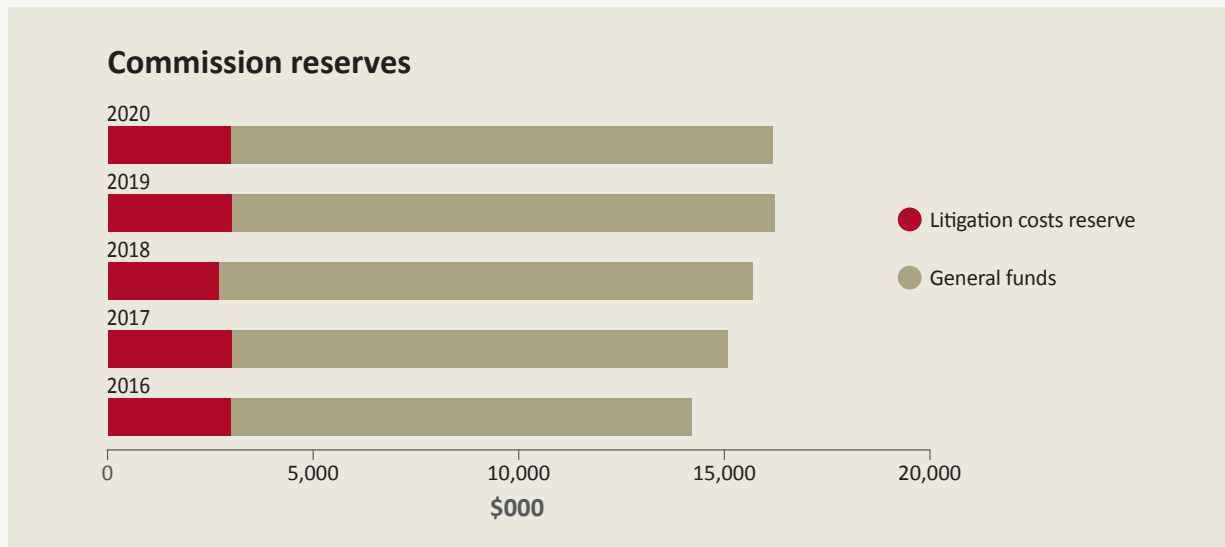
The COVID-19 pandemic and the first lockdown did not substantially affect the Commission's expenditure overall. Commission operations continued throughout lockdown, and so while circumstances delayed some projects and investigations, costs were immaterially affected. We discuss the effects of COVID-19 on the Commission's finances in Note 15.



The investigative and analytical nature of much of our work means that wages and salaries make up approximately two-thirds of our 2020 expenditure. This percentage is unchanged from 2019, but greater than in prior years. It reflects the increasing size of our workforce to manage additional functions and activity since 2018.

Expenditures on associated costs of additional staff, such as occupancy costs, additional computer and IT infrastructure, and depreciation and amortisation on office equipment and software all grew proportionately, with a likewise increasing proportion of costs 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 which allows us to manage litigation risks and other financial risks. These risks are diverse but can involve large unanticipated expenditures in a relatively short timeframe. For instance, if we lose a large multi-party litigation case, we may have to pay large 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 continuing to deliver our business as usual activities.

The Commission's equity (or reserves) at 30 June 2020 was \$16.2 million, a decrease of \$0.1 million in 2019. The reduction in equity is the result of a small net surplus in our Competition output class, offset by deficits in our Consumer and Internal Major Litigation output classes.

Our 2021 budget expects that additional Crown funding will match additional investments we need to make in our operations to improve our effectiveness and impact, leaving us in an unchanged financial position. However, there are several work streams which may require use of Commission reserves during 2021 to ensure we make progress.



## Statement of responsibility

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 reflect a true and fair view of the financial position, and results of the operations, of the Commission for the year ended 30 June 2020.



**Anna Rawlings**

*Chair – Commerce Commission*

18 December 2020



**Sue Begg**

*Deputy Chair – Commerce Commission*

18 December 2020

## Independent auditor's report

To the readers of the Commerce Commission's financial statements and performance information for the year ended 30 June 2020

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 67 to 91, that comprise the statement of financial position as at 30 June 2020, the statement of comprehensive revenue and expense, 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 12 to 46.

In our opinion:

- the financial statements of the Commission on pages 67 to 91:
  - > present fairly, in all material respects:
    - its financial position as at 30 June 2020; 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 12 to 46:
  - > presents fairly, in all material respects, the Commission's performance for the year ended 30 June 2020, 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 on 18 December 2020. This is the date at which our opinion is expressed.

The basis for our opinion is explained below, and we draw attention to the impact of Covid-19 on the Commission. 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.

## **Emphasis of matter – Impact of Covid-19**

Without modifying our opinion, we draw attention to the disclosures about the impact of Covid-19 on the Commission's performance information on pages 12–14, 34 and 39 and the financial statements set out in Notes 14, 15 and 24.

## **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 is 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 is responsible for such internal control as it determines is necessary to enable it 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 is responsible on behalf of the Commission for assessing the Commission's ability to continue as a going concern. The Board is 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 is responsible for the other information. The other information comprises the information included on pages 2 to 93, 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 (Revised): 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

### Statement of comprehensive revenue and expense

for the year ended 30 June 2020

	Notes	2020 Actual \$000	2020 Budget \$000	2019 Actual \$000
<b>Operating revenue</b>				
<i>Revenue from non-exchange transactions</i>				
Revenue – Crown		52,008	56,737	46,902
Court cost awards		238	50	133
<b>Total revenue from non-exchange transactions</b>		<b>52,246</b>	<b>56,787</b>	<b>47,035</b>
<i>Revenue from exchange transactions</i>				
Fees and recoveries		631	525	537
Interest		489	600	603
Other revenue		323	265	231
<b>Total revenue from exchange transactions</b>		<b>1,443</b>	<b>1,390</b>	<b>1,371</b>
<b>Total operating revenue</b>		<b>53,689</b>	<b>58,177</b>	<b>48,406</b>
<b>Operating expenses</b>				
Members and personnel	1	36,184	37,004	32,143
Legal and other professional fees	2	9,850	14,363	8,712
Computer, information, and information technology		1,514	1,385	1,337
Occupancy	3	2,218	2,417	1,875
Depreciation and amortisation		1,880	2,007	1,963
Other expenditure	4	2,156	2,329	1,864
<b>Total operating expenses</b>		<b>53,802</b>	<b>59,505</b>	<b>47,894</b>
<b>(Deficit)/Surplus</b>		<b>(113)</b>	<b>(1,328)</b>	<b>512</b>
<b>TOTAL COMPREHENSIVE REVENUE AND EXPENSE</b>		<b>(113)</b>	<b>(1,328)</b>	<b>512</b>

### Statement of changes in equity

for the year ended 30 June 2020

	2020 Actual \$000	2020 Budget \$000	2019 Actual \$000
<b>Balance at 1 July</b>	<b>16,271</b>	<b>16,092</b>	<b>15,759</b>
<b>Comprehensive revenue and expense</b>			
Surplus/(deficit)	(113)	(1,328)	512
<b>Total comprehensive revenue and expense</b>	<b>(113)</b>	<b>(1,328)</b>	<b>512</b>
<b>BALANCE AT 30 JUNE</b>	<b>16,158</b>	<b>14,764</b>	<b>16,271</b>

The accompanying statement of accounting policies and notes to the financial statements on pages 70 to 91 form part of the financial statements.

## Statement of financial position

as at 30 June 2020

	Notes	2020 Actual \$000	2020 Budget \$000	2019 Actual \$000
<b>Equity</b>				
General funds	5	13,158	11,764	13,271
Litigation costs reserve	5	3,000	3,000	3,000
<b>Total equity</b>		<b>16,158</b>	<b>14,764</b>	<b>16,271</b>
<b>Current assets</b>				
Cash and cash equivalents	6	7,072	2,216	5,202
Fees and recoveries receivable		777	160	299
Short-term investments		13,098	11,000	13,000
Prepayments		809	541	911
<b>Total current assets</b>		<b>21,756</b>	<b>13,917</b>	<b>19,412</b>
<b>Non-current assets</b>				
Property, plant and equipment	7	3,411	4,631	3,410
Intangibles	8	1,364	1,730	1,618
<b>Total non-current assets</b>		<b>4,775</b>	<b>6,361</b>	<b>5,028</b>
<b>Total assets</b>		<b>26,531</b>	<b>20,278</b>	<b>24,440</b>
<b>Current liabilities</b>				
Creditors and other payables	9	1,324	1,120	1,631
Accrued expenses		954	500	1,326
Lease incentive		170	170	181
Penalties and cost awards held in trust	10	702	50	209
Crown funding repayable	11	3,267	181	1,659
Employee entitlements	12	2,936	2,473	1,973
<b>Total current liabilities</b>		<b>9,353</b>	<b>4,494</b>	<b>6,979</b>
<b>Non-current liabilities</b>				
Lease incentive		1,020	1,020	1,190
<b>Total non-current liabilities</b>		<b>1,020</b>	<b>1,020</b>	<b>1,190</b>
<b>Total liabilities</b>		<b>10,373</b>	<b>5,514</b>	<b>8,169</b>
<b>NET ASSETS</b>		<b>16,158</b>	<b>14,764</b>	<b>16,271</b>

The accompanying statement of accounting policies and notes to the financial statements on pages 70 to 91 form part of the financial statements.

## Statement of cash flows

for the year ended 30 June 2020

	Notes	2020 Actual \$000	2020 Budget \$000	2019 Actual \$000
<b>Cash flows from operating activities</b>				
Crown funding received		58,277	56,917	52,239
Fees and recoveries received		1,107	840	919
Receipts and payment of penalties (net)		(85)	0	(5)
Interest received		524	600	617
Member and employee payments		(35,171)	(36,732)	(31,994)
Supplier payments		(16,524)	(20,717)	(13,464)
Repayment of Crown funding		(4,534)	(2,430)	(5,464)
Goods and services tax (net)		(17)	2	163
<b>Net cash inflow from operating activities</b>	13	<b>3,577</b>	<b>(1,520)</b>	<b>3,011</b>
<b>Cash flows from investing activities</b>				
Investments receipts/(deposits)		(98)	2,000	1,000
Property, plant and equipment sale proceeds		(2)	0	0
Property, plant and equipment purchases		(1,093)	(2,570)	(954)
Intangible asset purchases		(514)	(1,000)	(301)
<b>Net cash inflow/(outflow) from investing activities</b>		<b>(1,707)</b>	<b>(1,570)</b>	<b>(255)</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>				
Opening cash and cash equivalents		5,202	5,306	2,446
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	6	<b>7,072</b>	<b>2,216</b>	<b>5,202</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 70 to 91 form part of the financial statements.

# Statement of accounting policies

for the year ended 30 June 2020

## 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 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, 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 18 December 2020.

## 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 to meet 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 are 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	3–4 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 New Zealand registered banks.

**Investments** – Investments are term deposits issued by 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 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 2021, 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

for the year ended 30 June 2020

## 1. Members and personnel

	2020 Actual \$000	2019 Actual \$000
Salaries and wages (including annual leave and other entitlements)	33,293	29,386
Defined contribution plan employer contributions	790	709
Redundancy	0	59
Recruitment	216	334
Professional development	452	509
Other employment-related costs	1,433	1,146
<b>TOTAL MEMBERS AND PERSONNEL EXPENDITURE</b>	<b>36,184</b>	<b>32,143</b>

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

During the year ended 30 June 2020, no employees received compensation and other benefits in relation to cessation (2019: one employee received compensation totalling \$59,045).

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

	2020 Actual #	2019 Actual #
\$100,000 – \$110,000	16	15
\$110,001 – \$120,000	21	24
\$120,001 – \$130,000	15	10
\$130,001 – \$140,000	17	15
\$140,001 – \$150,000	14	9
\$150,001 – \$160,000	13	10
\$160,001 – \$170,000	3	11
\$170,001 – \$180,000	11	2
\$180,001 – \$190,000	2	7
\$190,001 – \$200,000	7	3
\$200,001 – \$210,000	5	7
\$210,001 – \$220,000	3	0
\$220,001 – \$230,000	1	1
\$230,001 – \$240,000	1	0
\$240,001 – \$250,000	1	0
\$250,001 – \$260,000	1	2
\$260,001 – \$270,000	0	1
\$270,001 – \$280,000	1	0
\$280,001 – \$290,000	0	1
\$290,001 – \$300,000	1	0
\$340,001 – \$350,000	0	1
\$380,001 – \$390,000	1	0

## 2. Legal and other professional fees

	2020 Actual \$000	2019 Actual \$000
Legal consultants	5,354	4,920
Other consultants and experts	3,525	2,891
Specialist support services	918	1,135
Court cost awards	0	(265)
Other expenses	53	31
<b>TOTAL LEGAL AND OTHER PROFESSIONAL FEES</b>	<b>9,850</b>	<b>8,712</b>

The court cost awards figure for 2019 above includes the reversal of a provision for a court cost award payable, offset by a small adverse cost award paid for another litigation matter.

## 3. Occupancy

	2020 Actual \$000	2019 Actual \$000
Operating leases – rent	1,890	1,565
Other occupancy expenses	328	310
<b>TOTAL OCCUPANCY</b>	<b>2,218</b>	<b>1,875</b>

## 4. Other expenditure

	2020 Actual \$000	2019 Actual \$000
Telecommunications	704	389
Travel	672	906
Postage, photocopying and stationery	118	153
Publications and knowledge sharing	312	184
Loss on disposal of assets	13	0
Audit fees for financial statement audit	55	49
Other expenses	282	183
<b>TOTAL OTHER EXPENDITURE</b>	<b>2,156</b>	<b>1,864</b>

## 5. Equity

The Commission's total comprehensive revenue and expenses for the year of \$0.113 million deficit (2019: \$0.512 million surplus) flows to both our general funds and our litigation costs reserve. The respective increase or decrease in both reserves equal the Commission's total comprehensive revenue and expense for the year.

### General funds

	2020 Actual \$000	2019 Actual \$000
<b>Balance at 1 July</b>	<b>13,271</b>	<b>13,043</b>
Total comprehensive revenue and expense attributable	(113)	228
<b>BALANCE AT 30 JUNE</b>	<b>13,158</b>	<b>13,271</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 class.

### Litigation costs reserve

	2020 Actual \$000	2019 Actual \$000
<b>Balance at 1 July</b>	<b>3,000</b>	<b>2,716</b>
Total comprehensive revenue and expense attributable	0	284
<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 \$0.5 million in funding per year to build a contingency fund of up to \$3.0 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.

In 2019 the Commission reversed a provision for an adverse cost award from a litigation case, due to a successful appeal of a High Court decision. The reversal of the provision did not result in a drawdown of any funding to replenish the reserve to its \$3.0 million cap.

## 6. Cash and cash equivalents

	2020 Actual \$000	2019 Actual \$000
Cash on hand and at bank	6,866	4,997
Cash held in trust	206	205
<b>TOTAL CASH AND CASH EQUIVALENTS</b>	<b>7,072</b>	<b>5,202</b>

While cash and cash equivalents at 30 June 2020 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 2018</b>	<b>2,250</b>	<b>972</b>	<b>3,545</b>	<b>51</b>	<b>6,818</b>
Additions	877	77	0	0	954
Disposals	(2)	0	0	0	(2)
<b>BALANCE AT 30 JUNE 2019</b>	<b>3,125</b>	<b>1,049</b>	<b>3,545</b>	<b>51</b>	<b>7,770</b>

	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>

Property, plant and equipment not yet commissioned at 30 June 2020 totalled \$9,000 (2019: \$39,000).

## 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 2018</b>	<b>1,753</b>	<b>525</b>	<b>1,043</b>	<b>27</b>	<b>3,348</b>
Depreciation expense	437	172	398	7	1,014
Elimination on disposal	(2)	0	0	0	(2)
<b>BALANCE AT 30 JUNE 2019</b>	<b>2,188</b>	<b>697</b>	<b>1,441</b>	<b>34</b>	<b>4,360</b>

	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>

## Carrying amounts:

	Computer and office equipment \$000	Furniture and fittings \$000	Leasehold improvements \$000	Motor vehicles \$000	Total \$000
At 1 July 2018	497	447	2,502	24	3,470
At 30 June and 1 July 2019	937	352	2,104	17	3,410
<b>AT 30 JUNE 2020</b>	<b>946</b>	<b>297</b>	<b>2,157</b>	<b>11</b>	<b>3,411</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 2018</b>	<b>1,905</b>	<b>3,858</b>	<b>5,763</b>
Additions	0	301	301
Disposals	0	0	0
<b>BALANCE AT 30 JUNE 2019</b>	<b>1,905</b>	<b>4,159</b>	<b>6,064</b>

	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>

Intangible assets not yet commissioned at 30 June 2020 totalled \$60,000 (2019: \$147,000).

### Accumulated amortisation and impairment losses:

	TSLRIC models \$000	Acquired software \$000	Total \$000
<b>Balance at 1 July 2018</b>	<b>1,229</b>	<b>2,268</b>	<b>3,497</b>
Amortisation expense	477	472	949
Disposals	0	0	0
<b>BALANCE AT 30 JUNE 2019</b>	<b>1,706</b>	<b>2,740</b>	<b>4,446</b>

	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>



## Carrying amounts:

	TSLRIC models \$000	Acquired software \$000	Total \$000
At 1 July 2018	676	1,590	2,266
At 30 June and 1 July 2019	199	1,419	1,618
<b>AT 30 JUNE 2020</b>	<b>0</b>	<b>1,364</b>	<b>1,364</b>

The Commission holds licenses for use of certain software applications for which it does not hold title. For other software applications, there is no restriction over the title of the Commission's assets. No intangible assets are pledged as security for liabilities.

## 9. Creditors and other payables

	2020 Actual \$000	2019 Actual \$000
<b>Payables under exchange transactions</b>		
Creditors	461	828
<b>Total payables under exchange transactions</b>	<b>461</b>	<b>828</b>
<b>Payables under non-exchange transactions</b>		
PAYE and other taxes withheld for payment to the Crown	433	383
Goods and services tax payable to the Crown	430	420
<b>Total payables under non-exchange transactions</b>	<b>863</b>	<b>803</b>
<b>TOTAL CREDITORS AND OTHER PAYABLES</b>	<b>1,324</b>	<b>1,631</b>

## 10. Penalties and cost awards held in trust

	2020 Actual \$000	2019 Actual \$000
<b>Balance at the beginning of the year</b>	<b>209</b>	<b>214</b>
Court cost awards compensation received (or recognised as receivable), and interest earned	1,199	435
Infringement fees received (or receivable) and paid to the Crown (net)	1	(3)
Court cost awards, compensation, and interest paid out	(707)	(437)
<b>BALANCE AT THE END OF THE YEAR</b>	<b>702</b>	<b>209</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:

	2020 Actual \$000	2019 Actual \$000
Infringement fees due to the Crown (including receivable)	5	4
Court cost awards and compensation due to Crown or other parties	697	205
<b>BALANCE AT THE END OF THE YEAR</b>	<b>702</b>	<b>209</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 a number of 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 is not possible. This estimate 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 a number of 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

	2020 Actual \$000	2019 Actual \$000
Airports	553	12
Competition studies	599	152
Dairy	150	377
Electricity	364	265
Gas	230	139
Telecommunications	837	612
<b>Fibre</b>	<b>60</b>	<b>0</b>
Litigation fund	474	102
<b>TOTAL CROWN FUNDING REPAYABLE</b>	<b>3,267</b>	<b>1,659</b>

## 12. Employee entitlements

	2020 Actual \$000	2019 Actual \$000
Accrued salaries and wages	542	236
Annual leave	1,959	1,358
Accrued performance and at-risk incentives	435	379
<b>TOTAL EMPLOYEE ENTITLEMENTS</b>	<b>2,936</b>	<b>1,973</b>

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

	2020 Actual \$000	2019 Actual \$000
<b>Operating surplus for the year</b>	<b>(113)</b>	<b>512</b>
<b>Non-cash items:</b>		
Depreciation and amortisation	1,880	1,963
Lease incentives recognised	(181)	(233)
<b>Total non-cash items</b>	<b>1,699</b>	<b>1,730</b>
<b>Items classified as investing or financing activities:</b>		
Gain on sale of property, plant and equipment	(2)	0
Loss on sale of property, plant and equipment	13	0
<b>Total items classified as investing or financing activities</b>	<b>11</b>	<b>0</b>
<b>Change in statement of financial position items:</b>		
Fees and recoveries receivable	(478)	(101)
Prepayments	102	(383)
Creditors	(320)	566
Accrued expenses	(388)	894
Crown funding repayable	1,608	(10)
Penalties and cost awards held in trust	493	(5)
Provisions	0	(284)
Employee entitlements	963	92
<b>Total change in statement of financial position items</b>	<b>1,980</b>	<b>769</b>
<b>NET CASH INFLOWS FROM OPERATING ACTIVITIES</b>	<b>3,577</b>	<b>3,011</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*

The Commission's operations were affected by the COVID-19 novel coronavirus and the public health response. As a non-essential government operation, the Commission's offices were closed, and all staff worked from home in line with government directives.

The Commission has assessed the effect of COVID-19 on its operations and ability to operate into the future. An assessment of the financial effect on the Commission's operations during the 2019/20 financial year is found in Note 15 and where relevant also referred to in Note 24 – Explanation of significant variances against budget.

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 2020 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 2020 (see note 16).

## 15. COVID-19 impact

The Commission's financial position was not materially affected by the public health response to COVID-19 during the 2020 financial year. As a Crown Entity, we are primarily funded by government appropriations, and so our revenue was largely unaffected by economic conditions and the lockdown.

Overall the Commission's expenditure declined slightly as a result of the lockdown. Personnel costs for existing staff were higher than expected as activity remained high and annual leave has accumulated. This led to an increase in annual leave liability. This was offset by lower professional development costs, and salary costs from new staff as recruitment was paused over the period of Alert Levels 3 and 4. Travel costs were significantly lower as international travel ceased and domestic travel was increasingly curtailed. Other costs were only marginally lower or were caught up as we entered Alert Levels 2 and 1.

There were no payments to contractors or providers to ensure their availability to work once Alert Levels permitted; many of our contractors or providers continued to operate and did not have availability payment clauses in their contracts. Commission staff, while mostly deemed non-essential under the Alert Level framework, were able to work from home for the entirety of the lockdown. Some work was re-prioritised, and in several work streams we had to respond to the effect of COVID-19 and Alert Levels 3 and 4 on businesses and customers.

## 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 are either civil cases (both as prosecutor and as a defendant when other parties appeal our decisions) or criminal prosecutions. Criminal prosecutions under the Fair Trading Act, CCCF Act and s 103 of the Commerce Act are not disclosed because if the Commission is successful any cost awards are payable to the Crown. Similarly, if the Commission is unsuccessful then very rarely will costs be ordered against the Commission. If costs are ordered against the Commission the 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 2020:**

There are no contingent liabilities.

### **Contingent liabilities as at 30 June 2019:**

#### *Harmony*

In July 2020 the Court of Appeal confirmed the High Court judgment that the Platform Fee charged by peer-to-peer lender Harmony was a credit fee. Costs were awarded to the Commission, effectively removing the previously disclosed contingent liability. The cost award is not disclosed as a contingent asset for 2020 as the amount is considered immaterial.

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

There are no contingent assets.

### **Contingent assets as at 30 June 2019:**

#### *Real estate fees – Hamilton*

In December 2015 the Commission brought proceedings against a number of real estate agencies in the Hamilton real estate market, concerning price-fixing of marketing fees. In June 2018 the High Court found in favour of the defendants. The Commission successfully appealed in the Court of Appeal, with costs awarded in an unquantified amount. The defendants appealed this decision to the Supreme Court, with judgment in favour of the Commission during the 2020 financial year. Costs of approximately \$357,000 payable were confirmed in 2020 and are recorded in the Commission's financial statements.

## 17. Financial instruments

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

### Monetary assets:

	2020 Actual \$000	2019 Actual \$000
<b>Financial assets measured at amortised cost</b>		
Cash and cash equivalents	7,072	5,202
Fees and recoveries receivable	777	299
Short-term investments	13,098	13,000
<b>TOTAL MONETARY ASSETS</b>	<b>20,947</b>	<b>18,501</b>

### Monetary liabilities:

	2020 Actual \$000	2019 Actual \$000
<b>Financial liabilities measured at amortised cost</b>		
Creditors	1,324	1,631
Penalties and cost awards held in trust	702	209
Crown funding repayable	3,267	1,659
<b>TOTAL MONETARY LIABILITIES</b>	<b>5,293</b>	<b>3,499</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 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 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 2020 and 30 June 2019. The average interest rate on interest-bearing term deposits over the year was 3.11% (2019: 3.43%). A 1% (100 basis points) change in interest rates, with all other factors unchanged, would change interest earnings by \$128,000 (2019: \$117,000).

## 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 \$62,000 (2019: \$68,800), while a 10% decrease in exchange rates would decrease expenditure by \$75,800 (2019: \$84,000).

## 18. Operating (non-cancellable) leases

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

	2020 Actual \$000	2019 Actual \$000
Within 1 year	2,164	1,963
Within 1 to 2 years	2,185	2,062
Within 2 to 5 years	5,199	5,755
After 5 years	2,979	4,451
<b>TOTAL OPERATING (NON-CANCELLABLE) LEASES DUE</b>	<b>12,527</b>	<b>14,231</b>

The future operating (non-cancellable) lease payments consist of the contractual amounts due for leased office equipment and premises. The Commission leases offices in Auckland and Wellington, with the Wellington lease expiring in 2027, and the Auckland office 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.



## 19. Capital expenditure commitments

	2020 Actual \$000	2019 Actual \$000
Computer and office equipment	208	220
Furniture and fittings	6	0
Acquired software	8	82
Leasehold improvements	0	238
<b>TOTAL CAPITAL EXPENDITURE COMMITMENTS</b>	<b>222</b>	<b>540</b>

## 20. Related party transactions

The Commission is an independent Crown entity, primarily monitored by the Ministry of Business, Innovation, and Employment (MBIE) 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 (2019: \$Nil).

### Key management personnel

	2020 Actual \$000	2019 Actual \$000
Members' remuneration	3,049	2,608
Senior Leadership Team remuneration	1,520	1,411
<b>TOTAL KEY MANAGEMENT PERSONNEL REMUNERATION</b>	<b>4,569</b>	<b>4,019</b>

	2020 Actual	2019 Actual
Members' full-time equivalents	7	5.8
Senior Leadership Team full-time equivalents	5	4.8
<b>TOTAL KEY MANAGEMENT PERSONNEL FULL-TIME EQUIVALENTS</b>	<b>12</b>	<b>10.6</b>

Key management personnel comprise all members of the Board, the Chief Executive Officer, and the members of the Senior Leadership Team.

## 21. Members' remuneration

	2020 Actual \$000	2019 Actual \$000
A Rawlings (Commissioner to 31 May 2019, Chair from 1 June 2019)	640	289
M Berry (Chairman to 31 May 2019)	0	509
S Begg (Deputy Chair)	429	413
S Gale (Telecommunications Commissioner to 7 June 2020)	422	420
T Gilbertson (Telecommunications Commissioner from 8 June 2020)	32	0
E Welson (Commissioner)	367	362
J Walker (Commissioner to 27 March 2020)	252	356
J Crawford (Associate Commissioner from 19 November 2018)	270	105
J Small (Associate Commissioner from 17 December 2018, Commissioner from 8 June 2020)	250	108
J Liava'a (Associate Commissioner from 8 April 2019)	236	46
D Johnston (Commissioner from 1 November 2019)	151	0
<b>TOTAL MEMBERS' REMUNERATION</b>	<b>3,049</b>	<b>2,608</b>

The Chair Anna Rawlings, her predecessor Dr Mark Berry, 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. All other Commissioners are paid for service on a daily rate set by the Remuneration Authority as follows:

### Members' daily rates:

	2020 \$	2019 \$
Deputy Chair	1,936	1,920
Commissioners and Associates	1,630	1,630

### Members' additional remuneration

Most Members 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 Members

The Commission recorded \$11,181 as payable to an Audit and Risk Committee member appointed by the Board who is not a Board member during the year (2019: \$15,179 paid to an Audit and Risk Committee member appointed by the Board who is not a Board member).

The Commission has provided a Deed of Indemnity to Members 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 Members and employees.

No Members received compensation or other benefits in relation to cessation (2019: \$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 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 30 November 2020. Significant matters are disclosed below.

### *Fit for the Future*

The Commission is reviewing its operational structure and processes to ensure it is well placed to continue achieving its objectives and purpose, given significant increases in responsibilities over the last five years. A draft proposal establishes a new operating structure for the Commission, disestablishing a number of roles at various levels, and establishing new roles. The expected additional cost of the structure and roles is yet to be confirmed but will fall within additional funding provided by the Crown to the Commission from the 2021 financial year.

### *Real estate fees – Hamilton*

In September 2020 the Auckland High Court ordered Hamilton-based Lodge Real Estate Limited to pay penalties of \$2.1 million and Monarch Real Estate Limited to pay penalties of \$1.9 million for engaging in price-fixing in breach of the Commerce Act. This followed the Supreme Court decision in April 2020 which upheld a Court of Appeal judgment in favour of the Commission.

Penalties are paid to the Commission and transferred in full to the Crown (via the Ministry of Business, Innovation and Employment) within seven days of receipt.

### *Steel & Tube*

In November 2020 the Court of Appeal dismissed the Commission's appeal of the High Court sentence for Steel and Tube's breach of the Fair Trading Act for making false and misleading representations about its steel mesh products which are used in construction to provide strength and stability in the event of an earthquake. The Court of Appeal set aside the High Court fines and imposed fines of \$1.560 million which is payable to the Crown.

## 24. Explanation of significant variances against budget

Significant variations from the budgeted figures in the *Statement of Performance Expectations 2019/20* are set out in the table below. Explanations for each variance are found underneath.

	Explanatory notes	2020 Actual \$000	2020 Budget \$000	Variance \$000
<b>Statement of comprehensive revenue and expense</b>				
Revenue – Crown	1	52,008	56,737	(4,729)
Legal and other professional fees	2	9,859	14,363	(4,513)
<b>Statement of financial position</b>				
General funds	3	13,158	11,764	1,394
Cash and cash equivalents	4	7,072	2,216	4,856
Short-term investments	5	13,098	11,000	2,098
Property, plant and equipment	6	3,411	4,631	(1,220)
Crown funding repayable	7	3,267	181	3,086
<b>Statement of cash flows</b>				
Crown funding received	8	58,277	56,917	1,360
Member and employee payments	9	35,171	36,732	(1,561)
Supplier payments	10	16,524	20,717	(4,193)
Repayment of Crown funding	11	4,534	2,430	2,104
Investment receipts/(deposits)	12	(98)	2,000	(2,098)
Property, plant and equipment purchases	13	(1,093)	(2,570)	1,477

### Explanatory notes

- Revenue – Crown** was \$4.7 million less than budget due to general under-spends across most of our output classes (see Note 11).
- Legal and other professional fees** were \$4.5 million less than budget primarily due to significantly less expenditure on litigation related costs arising from settlements and court hearing delays (some influenced by COVID-19), and favourable judgments.
- General funds** were \$1.4 million greater than budget primarily due to the Commission's deficit being \$1.2 million better than budget, resulting in a smaller reduction in reserves.
- Cash and cash equivalents** were \$4.9 million greater than budget as expenditure against output classes and capital expenditure was less than budgeted, while Crown funding received was \$1.4 million greater than budgeted.
- Short-term investments** were \$2.1 million greater than budget as we managed our cash funds differently from the assumptions made when preparing the 2020 budget and had greater cash and cash equivalents available as discussed above.
- Property, plant and equipment** was \$1.2 million less than budget primarily as a budgeted provision for further leasehold improvements in Wellington was not utilised.
- Crown funding repayable** was \$3.1 million greater than budget as funding received in advance for many of our appropriations to fund our classes of outputs was greater than our expenditure against those output classes.
- Crown funding received** was \$1.4 million greater than budget primarily due to more funding received for Telecommunications, Competition Studies, and Dairy work than budgeted.

- 9 **Members and employee payments** were \$1.6 million less than budget due to greater than budgeted vacancies and a greater than budgeted increase in annual leave balances as staff deferred leave plans during the COVID-19 lockdown.
- 10 **Supplier payments** were \$4.2 million less than budget due to general under-spends across our output classes, and \$2.9 million less than budgeted Litigation Fund – External expenditure.
- 11 **Repayment of Crown funding** was \$2.1 million greater than budget due to repayment of unneeded Litigation Fund – External funding during the year, and prior year Crown funding repayable being greater than expected.
- 12 **Investment receipts** were \$2.1 million less than budget due to greater funds held in short term investments than expected (see variance explanation 5).
- 13 **Property, plant and equipment** purchases were \$1.5 million less than budget as fewer broadband probes were deployed than assumed, and there was no expenditure on Wellington leasehold improvements as assumed in the budget (see variance explanation 6).

## Financial statements glossary

The following table provides definitions for 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 which 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 it is applied to intangible assets (eg, software).
<b>Asset</b>	An asset is something which 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 which can be converted into cash or used to pay a liability within 12 months. A current liability is a liability which 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 which 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 which 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 which we cannot ordinarily turn into cash within 12 months. A non-current liability is a liability which 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 MBIE.
<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 which 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 which 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 which shows what assets we own or control, what liabilities we have, and the remainder (equity) at the balance date.

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