

## New position subject to passage of Bill

On behalf of the Minister of Commerce and Consumer Affairs, the Ministry of Business, Innovation and Employment (MBIE) is seeking candidates who wish to be considered for appointment to the role of Grocery Commissioner. The Grocery Commissioner will also be a member of the Commerce Commission | Te Komihana Tauhokohoko (the Commission).

This appointment is subject to the passage of the Grocery Industry Competition Bill (the Grocery Bill) currently before Parliament and the Grocery Bill retaining provisions relating to a Grocery Commissioner. The intention is that the appointment commences in mid-2023. However, depending on the timing of the passage of the Grocery Bill and the upcoming election, there is a possibility that any appointment to the role will not be able to be made until after the election.

## About the Commission and the Grocery Bill

### The Commission

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

The Commission is an independent Crown entity, established under section 8 of the Commerce Act. The Commission must act independently in performing its statutory functions and duties and in exercising its powers under the Acts it is responsible for.

The Commission has responsibility for administering and enforcing a range of laws relating to the regulation of markets, including cross-sector roles under the Commerce Act 1986 and the Fair Trading Act 1986, and sector-specific regulation of two types: natural monopolies and regulation aimed at promoting competition. Under the Commerce Act, the Commission also adjudicates on applications for clearance or authorisation, carries out competition studies and administers economic regulation for electricity lines, gas pipelines, and specified airport services. The Commission also has enforcement and regulatory responsibilities under the Telecommunications Act 2001, Dairy Industry Restructuring Act 2001, Credit Contracts and Consumer Finance Act 2003, Fuel Industry Act 2020 and Retail Payment System Act 2022.

The Commission's overriding goal is to make New Zealanders better off. It aims to do this by contributing to markets working well, and supporting consumers and businesses to be confident participants in those markets.

### The Grocery Bill

The Grocery Bill, as introduced to Parliament, provides for the regulation and oversight of the grocery industry by the Commission to promote competition and efficiency for the long-term benefit of consumers.

Currently, the main functions that must be carried out by the Commission under the Grocery Bill are:

- the dissemination of information and guidance to sector participants
- monitoring compliance with and investigating conduct – including in relation to the Grocery Code of Conduct and obligations under the quasi-regulatory and regulatory wholesale grocery access regimes
- taking a range of enforcement actions

- monitoring, conducting studies/ enquiries/reviews into any matter relating to the operation of grocery markets and the performance of the regime
- inquiring and making recommendations with regard to designations
- inquiring, setting and reviewing requirements or determinations for how any designated grocery retailer should be regulated for wholesale grocery access
- setting information disclosure requirements
- delivering annual state of competition reports on competition in the retail grocery sector.
- monitoring the grocery industry

These functions are subject to change as the Grocery Bill proceeds through the House.

### Commission membership

Under the Commerce Act, the Commission consists of four to eight members appointed by the Governor-General, including the Chairperson, Deputy Chairperson and the Telecommunications Commissioner. At least one member (excluding the Telecommunications Commissioner) must be a barrister or solicitor of at least five years' standing.

The Grocery Industry Bill, as introduced, establishes the position of Grocery Commissioner who must be one of the eight members that make up the Commission board. Members have two roles:

- a governance role to operate as a board under the Crown Entities Act 2004
- a statutory decision-making role to carry out any of the Commission's functions, powers and duties under the Acts that it is responsible for.

The Commission may also have any number of associate members, who are appointed by the Minister of Commerce and Consumer Affairs in relation to a matter, or class of matters, arising under an Act the Commission is required to act independently on. Associate members do not have a governance role. Up to two associate members may be cross-appointed from the Australian Competition and Consumer Commission in accordance with cross-appointment arrangement between the Australian and New Zealand Governments.

Further information on the Commission can be found on its website [www.comcom.govt.nz](http://www.comcom.govt.nz).

## About the role

### Role and expectations of the Grocery Commissioner

The Grocery Bill, as introduced, requires the Grocery Commissioner to carry out the Commission's statutory decision-making roles under the Grocery Bill, either acting alone or with two or more other members of the Commission. In specified cases, the Grocery Commissioner must act with two or more other members of the Commission.

The Grocery Commissioner's consent must also be obtained for any delegation under section 73 of the Crown Entities Act 2004 of a function or power of the Commission that they would normally perform, and which is capable of delegation.

While the Grocery Commissioner leads the Commission's statutory decision-making under the Grocery Bill, the Commission board continues to have a governance role under the Crown Entities Act 2004 in relation to this work. This includes the Commission board being responsible for oversight of the Commission's accountability, appropriation and reporting arrangements to the responsible Minister and Parliament.

In addition, the Grocery Commissioner position does not confer any managerial responsibility. The Commission board delegates to the Commission Chief Executive the management of staff and the day-to-day affairs of the agency.

The Grocery Commissioner is expected to be the principal spokesperson for the Commission in relation to its functions under the Grocery Bill. They will also have the primary relationship at Commission board level with stakeholders with an interest in the grocery industry.

As a member of the Commission board, the Grocery Commissioner participates fully in the governance of the Commission. The Grocery Commissioner may also be involved in the Commission's statutory decision-making under any of the other Acts it is responsible for.

### Roles and expectations of board members

The provisions of the Commerce Act and the Crown Entities Act 2004 set out some of the roles and expectations of members, which are also applicable to the Grocery Commissioner as a member of the Commission. Members are expected to familiarise themselves with those provisions.

In the course of carrying out the Commission's functions and duties, members have a collective duty to ensure that:

- the Commission acts in a manner consistent with its objectives, functions, and its Statement of Intent and Statement of Performance Expectations
- the Commission's functions are performed efficiently and effectively, in a manner consistent with the spirit of service to the public, and in collaboration with other public entities where practicable, and in a fiscally responsible manner.

Members also have an individual duty to:

- comply with the Crown Entities Act 2004 and the Commission's enabling legislation;
- act with honesty and integrity, in good faith and not at the expense of the Commission's interests, with reasonable care, diligence and skill
- not disclose or make use of information that otherwise would not be available to them, unless specifically permitted.

Members must:

- perform all aspects of their work for the Commission impartially. They must disclose any conflicts of interest in accordance with the Commission's policy
- comply with any relevant requirements of the Public Service Act 2020 applying to independent Crown entities, such as relating to minimum standards of integrity and conduct as set by the Public Service Commissioner
- comply with any relevant Commission policies, such as relating to health and safety
- maintain a respected and credible profile in the market
- have an understanding of the Commission's role in the market and the wider economic environment in which it operates.

### Term of appointment

The term of appointment of a Grocery Commissioner and member may be for up to five years or any shorter period as agreed.



Section 32(3) of the Crown Entities Act 2004 states that a member continues in office despite the expiry of term, until either reappointed, or a successor is appointed or the member is informed in writing that they are not to be reappointed and that no successor is to be appointed at that time. The Grocery Bill provides that similar provisions apply in relation to the position of Grocery Commissioner.

While there is provision for reappointment, there should be no expectation that a Grocery Commissioner and member will be offered a subsequent term of office on the expiry of term.

### Remuneration

Remuneration is determined by the Remuneration Authority.

For more information on the setting of remuneration for independent statutory officers and boards by the Remuneration Authority, see:

- Clients' Remuneration: Independent Officers and Boards: <http://remauthority.govt.nz/clients-remuneration/independent-officers-and-boards/>
- Role of Remuneration Authority in Setting Remuneration for Individuals Appointed to Statutory Bodies and Other Positions: <https://www.dPMC.govt.nz/publications/co-11-7-role-remuneration-authority-setting-remuneration-individuals-appointed>

### Work commitment and location of work

The Commission has offices in Wellington and Auckland, and the Grocery Commissioner would be allocated an office space at one of these locations. Candidates living in different parts of New Zealand may apply for the position, but they must be willing to travel to one or other of the Commission's offices for some of their work on a frequent basis. Some travel may be required for the position, and where it is, travel expenses will be reimbursed for actual and reasonable costs incurred.

The work for a Grocery Commissioner and member is likely to be a commitment of 5 days per week, but there may be flexibility depending on the candidate. Candidates are invited to indicate their preferred time commitment when applying. The hours and location of work may be further specified by agreement with the Chairperson of the Commission.

## Person specifications

### Specific skills, experience and attributes required

At this time, the Ministry is looking for candidates with a range of the following skills, experience and attributes:

- a good understanding of the grocery sector
- sound understanding of various competition and regulatory approaches taken in New Zealand and overseas relating to vertically integrated businesses with market power, imbalances in bargaining power in the supply chain, and promoting the interests of consumers
- expertise or experience relevant to the Commission's work in the grocery industry or any other industry, commerce, law, economics, accountancy, public administration or consumer affairs
- the ability to make timely, principled, and analytically-robust decisions consistent with statutory requirements
- experience in leadership and/or governance, ideally in a multi-stakeholder environment
- strong relationship management skills and the ability to work effectively in a collegial, decision-making environment with other Commission members, the Chief Executive and Commission staff, as well as



maintaining good working relationships with Ministers of the Crown, public entities, industry and consumer bodies, regulated businesses and other stakeholders

- strong communication skills, including the ability to reason objectively, convey ideas clearly and accurately, and structure and direct work constructively, as well as comfort engaging with media and acting as spokesperson for the Commission when required
- a clear sense of public accountability and some understanding of the relationships between Government and Crown entities, and the role and responsibilities of public decision-makers and enforcement agencies
- an appreciation of diversity, and the ability to promote effective working relationships and manage diversity of thought
- an appreciation of the Commission's role in supporting future-focused Māori Crown relations and
- skills and experience to be able to effectively contribute to the Commission's strategic, planning and governance responsibilities under the Crown Entities Act 2004.

### General criteria for appointment

The responsible Minister will:

- only recommend a person for appointment as Grocery Commissioner and member of the Commission who, in the responsible Minister's opinion, has the appropriate knowledge, skills and experience to assist the Commission to achieve its objectives and perform its functions. In particular,
  - the person is qualified for appointment, having regard to the functions and powers of the Commission under the Grocery Bill and any other legislation, and
  - such qualifications relate to the person's knowledge of, or experience in, the grocery industry or any other industry, commerce, economics, law, accountancy, public administration, or consumer affairs
- take into account the desirability of promoting diversity in the membership in appointing or recommending an appointment.

### Disclosure of interest

Before a person is appointed as a member of the Commission, a person must:

- consent in writing to being a member
- certify that they are not disqualified from being a member
- disclose to the responsible Minister the nature and extent (including monetary value, if quantifiable) of all interests that the person has at the time, or is likely to have, in matters relating to the Commission.

As part of the appointment process, candidates are expected to complete a disclosure form. The information that is disclosed by the candidates enables the responsible Minister to know the relevant interests and any conflicts that a person may have in relation to an appointment to the Commission.

The information is used to assess whether a candidate would be able to contribute effectively to the Commission's affairs, and where conflicts are identified, to ensure that those can be managed appropriately.

### Additional information

For further enquiries about the position, email: [board.appointments@mbie.govt.nz](mailto:board.appointments@mbie.govt.nz)