

# The Treasury

## Disestablishment of the Productivity Commission Information Release

April 2024

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<b>Report Title:</b>	Initial Advice on the Disestablishment of the Productivity Commission		
<b>Report No:</b>	2023-0279		
<b>Date:</b>	5 December 2023		
<b>To:</b>	Hon Nicola Willis, Minister of Finance and Minister for the Public Service		
<b>Action Sought:</b>	<b>Provide your view on recommendations below</b>	<b>Due Date</b>	ASAP
<b>Action Sought:</b>	<b>Forward to the Minister of Regulation</b>	<b>Due Date</b>	
<b>Contact Person:</b>	Hannah Cameron, Deputy Commissioner Strategy and Policy (PSC)		
<b>Contact Number:</b>	[23]		
<b>Contact Person:</b>	James Beard, Deputy Secretary Macroeconomics and Growth (The Treasury)		
<b>Contact Number:</b>	[35]		
<b>Encl:</b>	No	<b>Priority:</b>	High
<b>Security Level:</b>			

## **Executive Summary**

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1. The Government has committed to disestablishing the Productivity Commission (the Commission) to provide a source of funding for the new, higher priority Ministry of Regulation. This briefing sets out a proposed process for the disestablishment, including timing options for repealing the Commission's legislation.
2. Regardless of timing, work to implement priorities in the Regulation portfolio has begun already, including the establishment of the new agency, and is not contingent on funding from the disestablishment of the Commission.
3. Based on discussions with you to date, officials understand that your preference is for a process which allows:
  - the Commission to be wound down as quickly and efficiently as possible while meeting all obligations, with particular care for employment obligations and treatment of staff.
  - the Commission's work programme to continue during disestablishment only to the extent needed to provide productive employment for staff who need to remain in the Commission to fulfil employment obligations.

4. To deliver this, officials recommend the following disestablishment process, which would see the Commission begin winding up as soon as possible, working towards the Commission's substantive operations ending no later than February 2024:

Week commencing 4 December 2023	You may wish to discuss your preferred disestablishment process with the chair of the Commission in order to enable them to initiate the wind up according to your expected timeframes, noting that the Commission and its staff are concerned to have clarity on the Government's intended timeframes for process.  Treasury officials are also available to undertake this engagement with the board's chair on your behalf if you prefer.
13 December 2023	You take a Cabinet paper to the relevant Cabinet Committee (100 or CBC) seeking agreement to key disestablishment decisions, including agreement to issue drafting instructions to the Parliamentary Council Office (PCO) for legislation to repeal the Act and disestablish the Commission - <b>paper to be lodged by Thursday 7<sup>th</sup> December.</b> Alternatively, you could seek permission from the Prime Minister to bypass Cabinet Committee and go straight to Cabinet - paper to be lodged by Thursday 7 <sup>th</sup> December if Cabinet on 11 <sup>th</sup> December, Thursday 14 <sup>th</sup> December if Cabinet on 18 <sup>th</sup> December (recommended).
18 December 2023	Cabinet paper progresses to Cabinet (recommended).
19 December 2023	You send a letter to the Commission's board confirming the Government's intentions to pass a bill repealing the Commission's Act and disestablishing the Commission. This letter would outline your expectation that the Commission will organise its activities to facilitate that objective, to the extent permitted by law and its good employer obligations to staff, <sup>1</sup> allowing the board to commence the wind up as quickly as possible
20 December 2023	Full drafting instructions provided to PCO
22-29 January 2024	Draft Bill undergoes New Zealand Bill of Rights Act (NZBORA) vetting, departmental consultation and Ministerial consultation
1 February 2024	Final Bill lodged with Cabinet Office ahead of Cabinet
5 February 2024	Cabinet approves introduction of Bill
First full week of February 2024	Bill introduced to the House and progressed through legislative processes as the wind down proceeds

No later than February 2024	Commission's operations substantively end to the extent permitted by law
By 30 June 2024	Bill passes to formally repeal the Commission's legislation, disestablishing the Commission (including the board) and transferring any residual disestablishment processes (eg resolving any outstanding liabilities, meeting reporting requirements) to a responsible agency (eg the Treasury)

5. Under this process, once Cabinet had taken the relevant decisions, the Commission's board would begin an orderly winding up of the entity's functions, staffing and contracts, to the extent permitted by the overarching legislative framework. Given the Commission's statutory independence, you may wish to engage directly with the board's chair to ensure the Commissioners' collaboration, and to enable them to initiate the wind up according to your preferred timeframes. Treasury officials are also available to undertake this engagement with the board's chair on your behalf if you prefer.
6. Officials have also considered options to expediate this process. One option may be to pass the repeal Bill under urgency in early February 2024, thereby formally disestablishing the Commission and board, and transferring residual disestablishment responsibilities to another agency (eg Treasury) earlier. Note that this option would not materially hasten the substantive closure of the Commission's operations (which would occur no later than February 2024 under either option), and could divert resources from the responsible agency (eg Treasury) away from other priorities.
7. You may wish to discuss this briefing and your preferred approach with officials from the Treasury and Public Service Commission at one of your regular catchups.

## Recommended Action

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We recommend that you:

- a **note** that legislation to repeal the New Zealand Productivity Commission Act 2010 will be required to disestablish the Commission and that it will be necessary to retain a board of at least three Commissioners until that legislation is enacted
- b **note** that work to start implementing priorities in the Regulation portfolio has begun already and is not contingent on the disestablishment of the Commission for funding
- c **note** that this briefing outlines a proposed disestablishment process which would see the Commission's operations substantively end (to the extent permitted by law) no later than February 2024
- d **indicate** whether you would like to discuss your preferred approach to disestablishment with the Commission's chair as soon as possible, noting that Treasury officials are also available to undertake this engagement on your behalf if you prefer

*yes/no*

- e **invite** officials to prepare a draft Cabinet paper to be considered by Cabinet on 18 December 2023, seeking agreement to your preferred approach and timeframe for disestablishment and all necessary approvals, including to issue drafting instructions for the legislation

*agree/disagree*

- f **agree** to seek Cabinet's agreement to pass the repeal Bill through a normal process through the House, rather than progressing under urgency  
*agree/disagree*
- g **note** that, irrespective of the option chosen for progressing legislation, the formal wind up of staffing, assets and liabilities of the Commission should be completed by 30 June 2024
- h **note** that the proposed pace of disestablishment means there are likely to be redundancy payments and we will seek further information from the Commission on likely cost
- i **agree** to write to the Commission's board post-Cabinet to formally notify them of Cabinet's decisions and to outline the disestablishment process  
*agree/disagree*
- j **agree** that the Treasury will withhold the last appropriation payment at the end of March 2024 (approximately \$2m) noting that any costs required to disestablish the Commission could be funded using the Commission's existing cash reserves  
*agree/disagree*
- k **indicate** if you would like the Productivity Commission to complete their current inquiry into Improving Economic Resilience by 15 February 2024 (or by the substantive end of their operations, if earlier) as directed by the previous Cabinet, including releasing the current draft for light touch consultation as required by the Act  
*yes/no*
- l [If yes] **note** Treasury and the Productivity Commission will work together on communications for the release of the draft
- m **forward** this briefing to the Minister for Regulation  
*yes/no*

Hon Nicola Willis  
**Minister of Finance**  
**Minister for the Public Service**

## Purpose of Report

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8. The Government has committed to disestablishing the Productivity Commission (the Commission) to provide a funding source for the new, higher priority Ministry of Regulation.
9. As the Minister for the Public Service, you are responsible for working with your colleagues to ensure the systems of government are best arranged to deliver on Government priorities. As the Minister of Finance you are also the responsible Minister for the Commission and therefore have an interest in its orderly disestablishment.
10. This briefing seeks your agreement to a proposed process for disestablishing the Commission and repealing the Act. This process would see the Commission begin winding up as soon as possible, working towards its operations substantively ending no later than February 2024, and completion of all residual disestablishment activities by 30 June 2024.
11. To inform your consideration of the proposed disestablishment process, we have outlined the Commission's current functions, work programme and financial position.

## Background on the Productivity Commission

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### *Legislation*

12. The Productivity Commission is an Independent Crown Entity (ICE) established by the New Zealand Productivity Commission Act 2010, which is administered by the Treasury. Legislation will need to be passed in order to repeal this Act and formally disestablish the Commission.
13. The Act's only connections to other legislation are standard references in schedules to the Crown Entities Act 2004 and the Ombudsmen Act 1975. The repeal Bill should include transitional provisions to cover the winding up of the Commission, including any transfers of staff, intellectual property, and contracts.
14. The Commission's work programme (guided by its statutory functions as set out in the Act) is a combination of inquiries requested specifically by Ministers and general work to further research and public understanding on issues around productivity. The Commission is statutorily required to be a good employer, and this affects what is possible in the disestablishment process. As a public entity, disestablishment also requires addressing a number of other issues including public finance requirements such as the finalisation of full accounts, management of financial appropriations, transfers of assets and liabilities, public record requirements and completion of statutory reporting requirements.

### *Commissioners*

15. The Commission has a board of four Commissioners, appointed on terms and conditions determined by the Remuneration Authority. It is legally required to have at least three members. Current members and their terms of appointment are as follows:

<b>Commissioner</b>	<b>Appointed</b>	<b>Term expires</b>
Dr William Rosenberg	1/09/2020	31/08/2024
Dr Diane Ruwhiu	31/01/2021	30/06/2025
Dr Ganesh Nana (Chair)	31/01/2021	30/01/2026
Vicky Robertson	1/07/2023	30/06/2026

16. Under the Crown Entities Act, board members of Crown entities are not entitled to compensation for loss of office. The responsible Minister is legally responsible under the Crown Entities Act for ensuring that the board members required by an entity's legislation are in place as long as the entity exists.
17. Board members of an ICE can only be removed for just cause (eg misconduct, neglect of duty). Although the statutes establishing some Crown entities, especially Crown agents, provide for the Minister to replace the board with a Commissioner, there is no such provision in relation to the Commission. When working through the disestablishment of the Families Commission/SuperU, [36]

### *Financial position*

18. The Commission has approximately \$6 million of annual funding which is appropriated through Vote Finance. In the financial year 2023/24, \$3.9 million of the appropriation has already been invoiced for funding up to 28 February 2024. This leaves approximately \$2 million in the appropriation in the current financial year that has not yet been paid to the Commission.
19. As at 30 June 2023, the Commission held approximately \$3 million in cash reserves, and we understand there may also be an underspend (from amounts already disbursed from the appropriation) within the current year. Further advice will be needed to determine how the cash reserve is treated and returned to the centre. We recommend that the third and final appropriation payment be withheld, and that the costs required to disestablish the Commission be made with the cash reserves on hand.

### *Staff and capabilities*

20. The Commission employs around 20 staff. There are two inquiry teams, a specialist economics and research team, and a small corporate team including operations, finance and communications. Given the small size of the Commission, services like IT and payroll are contracted out to third parties.
21. The Commission's specialist economics and research team undertake primary firm-level research using the Longitudinal Business Database and the Integrated Data Infrastructure. This work informs our understanding of firm level productivity growth and supports agencies to target and assess policies. This expertise is very limited in the public sector and would be difficult to rebuild once lost. Agencies will consider options for rehoming this function as part of the wind up and upcoming savings and prioritisation processes, noting that it might be challenging to absorb these functions within existing resources.

### *Current work programme*

22. The only item on the Commission's current work programme that involves legislative requirements is the inquiry into Improving Economic Resilience, which is focused on New Zealand's resilience to supply chain disruptions. A draft report is ready for release, however before publishing their final report, the Commission's Act requires that they release a draft report for consultation. Given that some consultation has already occurred earlier in the process, Treasury is of the view that consultation on this final draft could be very light touch.
23. The previous Cabinet directed that the final Improving Economic Resilience inquiry report be published by 15 February 2024. If you would prefer that the Commission does not finish this inquiry, we will reflect this as a recommendation to Cabinet in the 18 December Cabinet paper.

24. Beyond their resilience inquiry, the Commission has signalled several other products underway that could be completed prior to disestablishment (based on the board’s current assumption of a March 2024 disestablishment date), subject to resourcing and staff attrition through the wind up process:
- Analysis of the performance of businesses in New Zealand for a new “Business by the numbers” publication
  - Completing an empirical research work programme that adds to our understanding of the productivity performance of New Zealand and the role of policy in lifting productivity
  - Evaluation of past inquiry impact
  - Identifying high value productivity issues for future policy work

### **Disestablishment process**

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25. Based on discussions with you to date, officials understand that your preference is for a process which allows:
- the Commission to be wound down as quickly and efficiently as possible to the extent permitted by law, while meeting all obligations, with particular care for employment obligations and treatment of staff
  - the Commission’s work programme to continue during disestablishment only to the extent needed to provide productive employment for staff who need to remain in the Commission to fulfil employment obligations.
26. To deliver this, officials recommend the following disestablishment process, which would see the Commission begin winding up as soon as possible, working towards a disestablishment of its substantive functions (to the extent permitted by law) no later than February 2024:

Week commencing 4 December 2023	You may wish to discuss your preferred disestablishment process with the chair of the Commission in order to enable them to initiate the wind up according to your expected timeframes, noting that the Commission and its staff are concerned to have clarity on the Government’s intended timeframes for process.  Treasury officials are also available to undertake this engagement with the board’s chair on your behalf, if you prefer.
13 December 2023	You take a Cabinet paper to the relevant Cabinet Committee (100 or CBC) seeking agreement to key disestablishment decisions, including agreement to issue drafting instructions to the Parliamentary Council Office (PCO) for legislation to repeal the Act and disestablish the Commission - paper to be lodged by Thursday 7 <sup>th</sup> December. Alternatively, you could seek permission from the Prime Minister to bypass Cabinet Committee and go straight to Cabinet - paper to be lodged by Thursday 7 <sup>th</sup> December if Cabinet on 11 <sup>th</sup> December, Thursday 14 <sup>th</sup> December if Cabinet on 18 <sup>th</sup> December (recommended).
18 December 2023	Cabinet paper progresses to Cabinet (recommended).



19 December 2023	You send a letter to the Commission's board confirming the Government's intentions to pass a bill repealing the Commission's Act and disestablishing the Commission. This letter would outline your expectation that the Commission will organise its activities to facilitate that objective, to the extent permitted by law, allowing the board to commence wind up
20 December 2023	Full drafting instructions provided to PCO
22-29 January 2024	Draft Bill undergoes New Zealand Bill of Rights Act (NZBORA) vetting, departmental consultation and Ministerial consultation
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27. Under this process, once Cabinet has taken the relevant decisions, the Commission's board would begin an orderly winding up of the entity's functions, staffing and contracts, to the extent permitted by the overarching legislative framework.
28. Given the Commission's statutory independence, you may wish to engage directly with the board's chair to confirm the Commissioners' collaboration and to enable them to initiate the wind up according to your preferred timeframes. Alternatively, Treasury officials are available to undertake this engagement on your behalf.
29. Once Cabinet decisions are taken, we recommend that you write to the board to outline your expectation that the Commission will organise its activities to facilitate that objective.
30. Disestablishment of the Commission will mean payment of whatever redundancy entitlements apply to staff. Entitlement to redundancy payment will not arise where staff are offered suitable alternative positions in the State services (Public Service Act s88 by virtue of Schedule 8, clauses 8 and 9), but potential for this may be more limited due to the pace of the disestablishment process. We have not yet seen individual employment agreements. The Commission is currently compiling this information and will provide this to agencies so we can brief you on the financial implications.
31. The Commission is also likely to have other contracts and assets, eg office accommodation and IT equipment. The Commission is currently compiling this information, and will provide this to agencies to support disestablishment.

32. We note that as disestablishing an Independent Crown Entity is a rare event, there are no well-established processes. A number of residual issues are likely to emerge, that officials will need to work through, including the management of residual assets and liabilities [36] and obligations under the Public Records Act.

#### *Progressing disestablishment legislation under urgency*

33. Officials have also considered options to expediate the disestablishment process. One option would be to pass the repeal Bill under urgency in early February 2024, thereby formally disestablishing the Commission and transferring residual disestablishment responsibilities to another agency (eg Treasury) earlier.
34. While this option is not expected to materially hasten the substantive closure of the Commission's operations, it would:
- bring forward the formal disestablishment of the Commission and board
  - bring forward the transfer of disestablishment activities to another agency (eg Treasury)
35. However, this option would likely also:
- increase the complexity of the transitional arrangements which need to be canvassed in the repeal Bill
  - increase the risk of errors in the legislation, given the need to work at pace and because this option would involve less parliamentary process
  - divert resources from the responsible agency (eg Treasury) away from other priorities
36. Treasury notes that if we were asked to manage the wind up, transitional costs would need to be funded as Treasury does not have a standing capacity for the specialist skills required to deliver this. [33]

#### **Links to priorities in the Regulation portfolio**

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37. Treasury notes that work to start implementing priorities in the Regulation portfolio has already begun and is not contingent on the disestablishment of the Productivity Commission for funding.
38. The Treasury is already engaging with the Minister for Regulation on options for establishing a new agency and identification of what existing and new functions would sit within it. Once these decisions are taken, work can begin on implementation, in anticipation of a funding transfer from the Productivity Commission and full establishment.
39. You also have an interest in this work due to your responsibilities for organisational decisions as the Minister for the Public Service.

#### **Next steps**

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40. You may wish to discuss this briefing and your preferred approach with officials from the Treasury and Public Service Commission at a regular catchup.

41. You may also wish to engage with the board's chair to confirm the board's collaboration, their intention to remain in office during the wind up, and your preferred timeframes and process. We can provide you with an aide memoire to support this discussion. Alternatively, Treasury officials are available to undertake this engagement on your behalf.
42. We will work with you to secure Cabinet approval by 18 December 2023 for your preferred approach and obtain all other necessary approvals to progress the legislation and the wind-up process. This will require you to lodge a Cabinet paper by Thursday 7 December to be discussed by Cabinet Committee (100-day or CBC) next week.
43. Alternatively, you could seek permission from the Prime Minister to bypass Cabinet Committee and go straight to Cabinet on either 11 December or 18 December:
  - For an 11 December Cabinet, the paper would still need to be lodged by Thursday 7 December.
  - For an 18 December Cabinet (our recommended approach), the paper would need to be lodged by Thursday 14 December, allowing you time to provide feedback to officials on a draft paper before it is finalised.