

# The Treasury

## Disestablishment of the Productivity Commission Information Release

April 2024

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Key to sections of the Act under which information has been withheld:

- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment;
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## Treasury Report: Productivity Commission draft Letter of Expectations and speaking notes ahead of Cabinet

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<b>Date:</b>	15 December 2023	<b>Report No:</b>	T2023/2150
		<b>File Number:</b>	SH-11-1-3-1-2-4

### Action sought

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	Action sought	Deadline
Hon Nicola Willis <b>Minister of Finance</b>	<b>Note</b> the attached draft Letter of Expectations	18 December 2023
Hon David Seymour <b>Minister for Regulation</b>	<b>Agree</b> to sign the new Letter of Expectations, or indicate any changes required	
	<b>Note</b> attached is speaking notes ahead of Cabinet	

### Contact for telephone discussion (if required)

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Name	Position	Telephone	1st Contact
Hilary Devine	Senior Analyst, Economic Strategy [39]	[35]	
Renee Philip	Manager, Economic Strategy		✓

### Minister's Office actions (if required)

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<p><b>Return</b> the signed report to Treasury.</p> <p>If no changes are required, <b>send</b> the Letter of Expectations to the Chair of the Productivity Commission</p>
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Note any feedback on the quality of the report

**Enclosure:** Yes (attached): Annex 1 draft Letter of Expectations; Annex 2 speaking points for Cabinet.

# Treasury Report: Productivity Commission draft Letter of Expectations and speaking notes ahead of Cabinet

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## Recommended Action

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We recommend that you:

- a **note** the draft new Letter of Expectations attached to this report that informs the Productivity Commission of Cabinet’s decision and sets expectations that the Commission’s board initiate the disestablishment.
- b **agree** to sign the new Letter of Expectations and for your office to send this to the Productivity Commission, subject to any changes requested.

*Agree/disagree*

*Agree/disagree*

- c **note** the attached speaking notes for Cabinet on Monday 18 December 2023.

Renee Philip  
**Manager, Economic Strategy**

Hon Nicola Willis  
**Minister of Finance**

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Hon David Seymour  
**Minister for Regulation**

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# Treasury Report: Productivity Commission draft Letter of Expectations and speaking notes ahead of Cabinet

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## Purpose of Report

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1. This report provides a draft Letter of Expectations (LoE) to inform the Productivity Commission (the Commission) of the Government's intention to disestablish the Commission, and formally notifies the board that their positions will be disestablished once the legislation is enacted and the Commission is disestablished.
2. The report also attaches speaking notes and Q&A for Cabinet on Monday 18 December 2023.

## Purpose and content of the Letter of Expectations

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3. The attached draft LoE informs the Commission of the decisions expected to be made by Cabinet on 18 December 2023. It informs the Commission of the agreed process and timing for disestablishment and seeks to provide clarity for the board and staff.
4. This LoE will be the first formal communication the Commission will receive on the disestablishment, including the timing of the wind up.
5. As the Commission is an Independent Crown Entity (ICE), Ministers have limited powers to direct the Commission in how they undertake their remaining activities. This includes their expenditures and the ongoing inquiry into resilience of the New Zealand Economy to supply chain disruptions. LoEs are a key lever for communicating the Government's expectations of the process of the disestablishment.
6. The letter covers the following points on the disestablishment:
  - a Informing the Commission of Cabinet's 18 December 2023 anticipated decision to disestablish the Commission and that the required legalisation will be taken under urgency.
  - b Your expectation that the substantive operations of the Commission will cease by end February 2024, and includes a request of the board to start the wind up process immediately.
  - c The costs required to disestablish will be met through the Commission's cash reserves and that no further funding from the appropriation will be made.
  - d Your expectation that the Commission meets the Crown's obligations as a good employer and to acknowledge this will be a difficult time for staff.
  - e Outlines next steps and encourages the Commission to work with officials to ensure an orderly wind up and transfer of assets and liabilities to the Treasury.
7. Past convention is that LoEs to the Commission are published on the Commission's website.

## Speaking notes ahead of Cabinet

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Attached is a one page speaking note and Q&A requested by the Minister for Regulation's office ahead of Cabinet on Monday 18 December 2023.



[Date]

Ganesh Nana  
Chair  
New Zealand Productivity Commission  
PO Box 8036  
WELLINGTON 6143

Dear Ganesh

## **Letter of Expectations for the New Zealand Productivity Commission**

Thank you for your letter to me on 5 December 2023. I am writing to inform you of the Government's expectations of the New Zealand Productivity Commission (the Commission). This letter replaces the Letter of Expectations issued to the Commissions on 9 March 2023.

### **Cabinet has agreed a process to disestablish the Commission**

On 18 December 2023, Cabinet agreed a process to disestablish the Commission subject to the enactment of legislation through Parliament. I intend to seek Cabinet's approval on 12 February 2024 to introduce legislation to the House under urgency that will formally disestablish the Commission and board, and transfer residual disestablishment responsibilities to the Treasury.

### **In line with Cabinet's intention, I expect that the substantive operations of the Commission will cease by end February 2024**

Subject to meeting its statutory obligations, I request that the board starts the wind up of the Commission's substantive functions, staffing and contracts immediately, and is in a position to cease the substantive operations of the Commission by the end of February 2024. This will include undertaking employer obligations to staff, exiting commercial agreements and meeting any management responsibilities.

### **I expect the costs associated with disestablishment are funded through the Commission's existing cash reserves**

Due to the timeframes for disestablishing the Commission, my expectation is that the remainder of the Commission's appropriation for 2023/24 financial year will not be invoiced.

I expect the costs associated with disestablishment are funded by the Commission's existing cash reserves. These cash reserves should be used to affect the disestablishment and should not compromise the financial position of the Commission.

### **I expect the Commission meets the Crown's obligations as a good employer**

I acknowledge this is a very challenging and uncertain time for the Commission's staff, particularly over the Christmas period. I thank you for the assurances to enable an orderly and efficient wind up and to meet the Crown's obligations as a good employer in your letter to me, and I confirm this is also my expectation. This will include relevant employment obligations required under the Employment Relations Act 2000.

It is Cabinet's intention that disestablishment by legislation will dissolve all employment positions within the Commission, as well as your role as Commissioners. Where applicable for staff, this will require the payment of the redundancy entitlements. I expect that these processes will be completed in parallel with legislation to disestablish the Commission.

**I request that you discuss the current work programme with officials**

I encourage you to discuss the current work underway with officials as to what could be completed before end February 2024.

**Next steps and engagement with officials**

As a next step I request that you consider your current activities and financial position and report back to officials on proposed steps and timeline for an orderly wind up the operations of the Commission and smooth transition of assets and liabilities to the Treasury by end February 2024. Officials from the Treasury and Public Service Commission will work with you to support you through the wind up period.

I would like to thank you and the other Commissioners for your work and direction of the Commission throughout your tenure on the board. I acknowledge the Commission's work throughout its lifetime and the valuable contributions its staff have made through its inquiries and other research into productivity matters in New Zealand.

Yours sincerely

Hon Nicola Willis  
**Minister of Finance**

## **Annex 2 - Suggested talking points for Cabinet paper “Disestablishing the Productivity Commission”**

- We have committed to starting work to improve the quality of regulation within our first 100 days in Government. This includes identifying a preferred approach to the establishment of a new regulation agency, and the approach to disestablishment of the Productivity Commission, which will provide a source of funding to the new agency.
- This paper seeks agreement to formally disestablish the Productivity Commission through introducing legislation to repeal the New Zealand Productivity Commission Act 2010 and disestablish the Commission.
- As the Commission is an Independent Crown Entity, Ministers have limited powers to direct the Commission in how they undertake their remaining activities.
- Given this fact, we recommend that we send a letter to the Commission’s board to request that they commence the winding up process immediately, alongside issuing drafting instructions for a Bill to repeal the Act. This approach will allow the Commission’s substantive operations to end no later than end February 2024 (to the extent permitted by law).
- We intend to seek Cabinet’s approval in mid February 2024 to introduce the disestablishment Bill to the House and to progress the Bill under urgency.
- When the repeal Bill is enacted, the Commission will be formally disestablished, and all remaining employment positions within the Commission will be dissolved. Any outstanding management responsibilities (i.e., assets and liabilities) will be transferred to the Treasury.
- In parallel, work is underway on the regulation agency and I will report back to Cabinet in the New Year on funding arrangements for the new agency, consistent with the 100-day plan.

### **Q&A**

- ***Could the Productivity Commission be disestablished faster?***

Officials have advised that end February is likely the earliest that the Commission’s operations could substantively end while still fulfilling their employment obligations. The Parliamentary Counsel Office has advised that mid February is the earliest feasible timeframe to seek Cabinet approval to introduce the Bill.

- ***Is the Productivity Commission currently working on any inquiries?***

In October 2022, Ministers requested that the Commission undertake an inquiry into the resilience of the New Zealand economy to supply chain disruptions. The inquiry’s Terms of Reference specified that this inquiry be finalised no later than 15 February 2024.

- ***What will happen to remaining assets and liabilities?***

The Treasury will inherit any remaining assets and liabilities. If there are residual cash reserves after disestablishment, these could be used to fund the new regulatory agency. If there are residual expenses associated with disestablishment, these will need to be managed by the Treasury, which may require funding.