

## Bill to amend Commerce Act introduced

[Tony Dellow](#), [Susie Kilty](#), [Anna Parker](#)

11 March 2021

On 10 March, the Minister of Commerce and Consumer Affairs introduced the Commerce Amendment Bill to make changes to the Commerce Act that were announced last year.

The most significant change is one that has been mooted for some time to change the current prohibition on misuse of market power to align with recent changes in Australia. Under the proposed new law, conduct by entities with substantial market power will be subject to a competition test that considers the effect of the conduct (rather than just the purpose) under section 36 of the Commerce Act.

Other key changes proposed in the Bill are to:

- Repeal current exceptions in the Commerce Act relating to intellectual property rights
- Increase the maximum penalties for anti-competitive mergers
- Clarify the application of the Commerce Act to covenants and other interests in land.

Further details about the changes and the potential implications for businesses are set out in our June 2020 update, [Market power and IP arrangements to be subject to new scrutiny under proposed Commerce Act changes](#). As set out in that update, we recommend that:

- If your business may have substantial market power, ensure that consideration has been given to how the changes may affect you
- IP arrangements such as licensing arrangements are considered from a Commerce Act perspective, and any instances in which you have relied on an IP exception under the Commerce Act are considered in light of the proposed changes.

It is proposed that most of the changes will come into force a year after the Bill is passed (although the Commerce Commission may consider applications for authorisation during the transitional period before the new section 36 comes into force, and a three year transitional period is proposed relating to IP arrangements and covenants entered into before the relevant new prohibitions come into force to allow businesses time to review the arrangements).

There will be an opportunity for submissions to be made on the Bill as it goes through the Parliamentary process.

If you have any questions about how the upcoming changes may affect you or are interested in making a submission on the Bill, please contact a member of our [competition law team](#).

### Auckland

188 Quay Street  
Auckland 1010

PO Box 1433  
Auckland 1140  
New Zealand

P: +64 9 358 2555  
F: +64 9 358 2055

### Wellington

Aon Centre  
1 Willis Street  
Wellington 6011

PO Box 2694  
Wellington 6140  
New Zealand

P: +64 4 499 4242  
F: +64 4 499 4141

### Christchurch

83 Victoria Street  
Christchurch 8013

PO Box 322  
Christchurch 8140  
New Zealand

P: +64 3 379 1747  
F: +64 3 379 5659