Draft for CLPINZ

Commerce (Modernised Exceptions) Amendment Bill 2024

Member’s Bill

Explanatory Note

General Policy Statement

This Bill amends the Commerce Act 1986 (the Act) to modernise the way in which the Act applies to Crown organisations, and to improve the application of statutory exceptions to the Act. These reflect a general principle that exceptions to the Act should be no wider than reasonably necessary to achieve their purpose.

The Bill also provides for the consistent interpretation of statutory exceptions to the Act. This reflects a general principle that the Act and its exceptions should, as far as possible, be interpreted as a single coherent body of law, whether the exceptions are included in the Act or another Act.

The Bill also provides for regular review of statutory exceptions to the Act. This is to ensure that exceptions to the Act continue for no longer than is reasonably necessary to achieve their purpose.

Clause by Clause Analysis

[TBC]

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Hon A Member

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The Parliament of New Zealand enacts as follows—

1. Title

This Act is the Commerce (Modernised Exceptions) Amendment Act 2024.

1. Commencement
   1. This Act comes into force on the first anniversary of Royal assent.
2. Principal Act amended

This Act amends the Commerce Act 1986.

Part 1

Amendments to principal Act

1. Section 2 amended (Interpretation

In section 2(1), insert in its appropriate alphabetical order:

**Crown organisation** means—

* + 1. an organisation that is a Crown organisation for the purposes of the Crown Organisation (Criminal Liability) Act 2002; and
    2. the Reserve Bank of New Zealand.

**Public activity** means any act, omission, or conduct undertaken for a public purpose, and includes—

* + 1. imposing or collecting:
       1. taxes; or
       2. levies; or
       3. fees for licences; and
    2. granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions);
    3. a transaction involving only Crown organisations;

but does not include any activity undertaken in trade, including—

* + 1. the supply of goods or services in competition with any person; or
    2. the commercial supply or acquisition of goods or services by a Crown organisation.

1. Sections 5 and 5 replaced

Replace sections 5 and 6 with:

“5 Application of Act to the Crown

Subject to this section, this Act binds the Crown.

However, subsection (1) does not apply to conduct by a Crown organisation that is reasonably necessary for the purpose of a public activity.

A Crown organisation that is not a body corporate shall not be liable to:

pay a pecuniary penalty under section 80; or

be prosecuted for an offence against this Act.

Where it is alleged that a Crown organisation that is not a body corporate has contravened any provision of this Act and that contravention constitutes an offence, the Commission or the person directly affected by the contravention may apply to the court for a declaration that the Crown has contravened that provision; and, if the court is satisfied beyond a reasonable doubt that the Crown has contravened that provision, it may make a declaration accordingly.

1. New Section 43A inserted (Interpretation of statutory exceptions)

After section 43, insert:

“43A Interpretation of statutory exceptions

This section applies to:

a provision of an enactment or Order in Council made under any Act that specifically authorises any act, matter or thing for the purpose of section 43(1); and

sections 5, 31 to 33, and 44 of this Act.

Wherever a provision to which subsection (1) applies can be given a meaning that is consistent with subsection (3), that meaning must be preferred to any other meaning.

A statutory exception to this Act:

should be no wider than is reasonably necessary to achieve the purpose of the statutory exception; and

should be interpreted consistently with other similar statutory exceptions, and in light of the purpose of this Act.

For the avoidance of doubt, this section does not affect the decision of the Privy Council in *Apple Fields Ltd v New Zealand Apple and Pear Marketing Board* [1991] 1 NZLR 257 (PC).

*See* Schedule 7 for examples of provisions of enactments that specifically authorise an act, matter or thing for the purpose of section 43(1).

1. New Section 43B inserted (Minister must require regular reports)

After section 43, insert:

“43B Minister must require regular reports

The Minister must require regular reports from the chief executive on whether the provisions listed in Schedule 7, and any other statutory exception to this Act, should be retained, repealed, or amended.

The Minister must require the first report no earlier than 2 years after the commencement of the Commerce (Modernised Exceptions) Amendment Act 2024 and present the report to the House of Representatives no later than 3 years after commencement of that Act.

The Minister must require any subsequent report no later than 4 years after presentation of the previous report to the House of Representatives, and present the report to the House of Representatives no later than 5 years after presentation of the previous report to the House of Representatives

The Minister may, after consulting with the Chair of the Commerce Commission, require the Commission to provide input for a regular report under this section.

In providing any input to the report as required by the Minister, the Commission may exercise its powers under this Act.

The terms of reference for a report under this section may provide for any matter that relates to whether the provisions listed in Schedule 7, or any other statutory exception to this Act, should be retained, repealed, or amended that the Minister considers appropriate.

The Minister must publish the terms of reference on the Ministry’s Internet site.

The Crown is not bound by a report under this section.

This section is not intended to—

create any rights or protections in relation to any person or group of persons; or

confer any rights or protections on any person or group of persons.

1. New Schedule 7 added

Schedule 7 set out in the Schedule 1 of this Act is added.

Part 2

Transitional amendments

1. Schedule 1AA amended
   1. In Schedule 1AA, after Part 5, insert the Part 6 set out in Schedule 2 of this Act.

Schedule 1

1. New Schedule 7

Schedule 7

1. Statutory Exceptions to this Act

Accident Compensation Act 2011, s 305.

Civil Aviation Act 2023, s 204.

Education and Training Act 2020, s 517.

Electricity Industry Act 2010, s 130.

Fisheries Act 1996, s 296C.

Gas Act 1992, s 43ZZR.

Human Tissue Act 2008, s 64.

Land Transport Management Act 2003, s 95.

Meat Board Act 2004, s 14.

Pae Ora (Healthy Futures) Act 2022, s 74.

Pork Industry Board Act 1997, s 14.

Retail Payment Systems Act 2022, s 52.

Screen Industry Workers Act 2022, s 7.

Telecommunications Act 2001, ss 63, 78, 156AZC and 156AZF.

Schedule 2

1. New Part 6 inserted into Schedule 1AA

[Set out Transitional provisions]