

# House of Representatives

# Supplementary Order Paper

**Tuesday, 9 November 2021**

## **Commerce Amendment Bill**

### *Proposed amendments*

Hon Todd McClay, in Committee, to move the following amendments:

#### *Clause 14*

In *clause 14, new section 36(1)*, replace “has the purpose, or has or is likely to have the effect” (page 7, line 33) with “has the purpose, or is likely to have the effect”.

In *clause 14, new section 36A(2)*, replace “has the purpose, or has or is likely to have the effect” (page 8, lines 21 and 22) with “has the purpose, or is likely to have the effect”.

### **Explanatory note**

This Supplementary Order Paper amends the Commerce Amendment Bill. It would amend the *new sections 36 and 36A* from having a “purpose, effect, or likely effect” test to a “purpose or likely effect” test. Removal of the “effect” condition will limit business liability to only include foreseeable consequences of commercial actions. Businesses with substantial market power will only be liable for reduced competition if this was a likely consequence of their decision, or if they intended to reduce competition.

If the conduct of a business with substantial market power has an anticompetitive effect, the business would be required to show a change in market conditions that was not reasonably foreseeable at the time of conduct.