

Reprint  
as at 1 September 2017



## Electricity Industry Act 2010

Public Act 2010 No 116  
Date of assent 5 October 2010  
Commencement see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Electricity Industry Act 2010.

**2 Commencement**

- (1) Sections 34 and 35, 116 to 127, and 130 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on 1 November 2010.

**3 Act binds the Crown**

This Act binds the Crown.



## Part 1

### Preliminary provisions

#### 4 Purpose

The purpose of this Act is to provide a framework for the regulation of the electricity industry.

#### 5 Interpretation

In this Act, unless the context otherwise requires,—

**ancillary service agent** means a person who, pursuant to an agreement with the system operator, provides frequency keeping, instantaneous reserve, voltage support, over frequency reserve, black start, or any other ancillary service specified in the Code, and as defined in the Code

**approved test house** means a meter testing and calibration facility that has been approved in accordance with the procedures in the Code

**Authority**, or **Electricity Authority**, means the Electricity Authority established by section 12

**breach** has the meaning given in section 6

**Code**, or **Electricity Industry Participation Code**, means the Code administered by the Authority, as brought into force under section 36 and amended from time to time under section 38, 40, or 43

**clearing manager** means the person appointed by the Authority to act as the clearing manager under the Code

**community trust**, in relation to a distributor or a retailer, means a trust in respect of which—

- (a) at least 90% of the income beneficiaries comprise persons who are a class or classes identified by reference to their domicile or location or operation within the geographic area or areas of operation of the distributor or retailer; and
- (b) at least 90% of its income distributions are paid to those beneficiaries or for purposes related to that geographic area or areas

**consumer** means any person who is supplied, or applies to be supplied, with electricity other than for resupply

**customer co-operative**, in relation to a distributor or a retailer, means a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996) that has the characteristics described in the definition of customer trust in this section, applied as if references to trusts were to co-operatives, references to income beneficiaries were to shareholders, and all other necessary modifications were made

**customer trust**, in relation to a distributor or a retailer, means a trust in respect of which—

- (a) at least 90% of the income beneficiaries comprise persons who are a class or classes identified by reference to any of—
- (i) the person's connection to the lines of the distributor;
  - (ii) the person's liability for payment for supply of electricity from the retailer that retails to customers that are connected to the distributor's network;
  - (iii) the person's receipt of electricity from the retailer that retails to customers that are connected to the distributor's network;
  - (iv) the person's liability for payment for the connection to the lines of the distributor;
  - (v) the person's liability for payment for line services supplied by the distributor; and

- (b) at least 90% of its income distributions are paid to those beneficiaries

**distribution** means the conveyance of electricity on lines other than lines that are part of the national grid

**distributor** means a business engaged in distribution

**domestic consumer** means a person who purchases or uses electricity in respect of domestic premises

**domestic premises** means premises that are used or intended for occupation by a person principally as a place of residence; but does not include premises that constitute any part of premises described in section 5(c) to (k) of the Residential Tenancies Act 1986 (which refers to places such as jails, hospitals, hostels, hotels, and other places providing temporary accommodation)

**generation** means the generation of electricity that is fed into the national grid or a network

**generator** means a business engaged in generation

**industry participant**, or **participant**, means a person, or a person belonging to a class of persons, identified in section 7 as being a participant in the electricity industry

**industry service provider** means a person who—

- (a) provides a service or performs a role in the electricity industry that is recognised in the Code, including the people listed in section 7(2); but
- (b) is not any of the industry participants identified in section 7(1)(a) to (h)

**line function services** has the meaning given in section 2(1) of the Electricity Act 1992

**lines** means works used or intended to be used to convey electricity

**load aggregator** means a person who contracts with 1 or more consumers so that the person is able to deal with the electricity otherwise required by those consumers in any way, including putting in place agreements under which

those consumers voluntarily change their consumption level, so that the person is able to offer the combined increase or reduction in the interruptable load of all those consumers as collective demand, either in the wholesale electricity market or under any other bilateral agreement or contract

**market operation service provider** means the system operator and any person appointed by the Authority under the Code to perform any of the following market operation service provider roles:

- (a) the registry manager:
- (b) the reconciliation manager:
- (c) the pricing manager:
- (d) the clearing manager:
- (e) the market administrator:
- (f) the wholesale information trading system provider:
- (g) any other role identified in regulations as a market operation service provider role

**metering equipment owner** and **meter owner** means a person who owns any or all of the items of metering equipment installed in a metering installation

**metering equipment provider** means a person who, in accordance with the Code,—

- (a) assumes responsibility for any metering installation; or
- (b) is appointed to be responsible for any metering installation

**Minister**, in any provision, means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of that provision or the Part containing that provision

**Ministry**, in any provision, means the department responsible for the administration of that provision or the Part that contains that provision

**national grid** means the lines and associated equipment used or owned by Transpower to convey electricity

**network** means a distributor's lines and associated equipment used for distribution

**publicise**, in relation to a document or information being publicised by a person, means making the document or information available, free of charge,—

- (a) on the person's Internet site at all reasonable times (except to the extent that doing so would infringe copyright in the material or be inconsistent with any enactment or rule of law); and
- (b) in any other manner that the person may decide

**publicly available**, in relation to making a document or information available, means that—

- (a) the document or information is available for inspection, free of charge, on an Internet site that is publicly accessible at all reasonable times (except to the extent that doing so would infringe copyright in the material or be inconsistent with any enactment or rule of law); and
- (b) a copy of the document or information is available for inspection at all reasonable times, free of charge, at the head office of the person required to make it publicly available or, if the person is a Minister, at the head office of the relevant Ministry; and
- (c) copies of the document may be purchased by any person at a reasonable price

**purchaser** means an industry participant who buys electricity from the clearing manager; and includes any other participant that has assumed that person's rights and obligations in relation to the purchaser

**regulations** means regulations made under this Act

**retailer** means a business engaged in retailing

**retailing** means the sale of electricity to a consumer other than for the purpose of resale

**Rulings Panel** means the Rulings Panel continued by section 23

**system operator** means the person who ensures the real-time co-ordination of the electricity system, and is the person referred to in section 8

**trader in electricity** means a person who trades in electricity or electricity derivatives, and includes—

- (a) a person who buys or sells contracts under which the payment obligations may change according to the changes in the price at which electricity is bought or sold in any market in New Zealand; and
- (b) any related clearing house or exchange

**transmission** means the conveyance of electricity through the national grid

**Transpower** means Transpower New Zealand Limited or any subsidiary of, or successor to, that company

**works**—

- (a) means any fittings (as defined in section 2(1) of the Electricity Act 1992) that are used, designed, or intended for use in or in connection with the generation, conversion, transformation, or conveyance of electricity; but
- (b) does not include any part of an electrical installation (as defined in section 2(1) of the Electricity Act 1992).

## 6 Extended meaning of breach

- (1) In this Act, the regulations, and the Code, unless the context otherwise requires, a reference to a person who breaches a provision of this Act, the regulations, or the Code is a reference to a person who—

- (a) breaches the provision; or
  - (b) attempts to breach the provision; or
  - (c) aids, abets, counsels, or procures any other person to breach the provision; or
  - (d) induces, or attempts to induce, any other person, whether by threats or promises or otherwise, to breach the provision; or
  - (e) is in any way, directly or indirectly, knowingly concerned in, or party to, the breach by any other person of the provision; or
  - (f) conspires with any other person to breach the provision.
- (2) A breach includes a failure to comply.
- Compare: SR 2003/374 r 5(1)

## **Part 2**

### **Electricity industry governance**

#### Subpart 1—Who does what

##### *Industry participants*

#### **7 Industry participants**

- (1) The following are industry participants for the purposes of this Act:
- (a) a generator:
  - (b) Transpower:
  - (c) a distributor:
  - (d) a retailer:
  - (e) any other person who owns lines:
  - (f) a person who consumes electricity that is conveyed to the person directly from the national grid:
  - (g) a person, other than a generator, who generates electricity that is fed into a network:
  - (h) a person who buys electricity from the clearing manager:
  - (i) any industry service provider identified in subsection (2).
- (2) The following industry service providers are industry participants:
- (a) a market operation service provider:
  - (b) a metering equipment provider:
  - (c) a metering equipment owner:
  - (d) an ancillary service agent:
  - (e) a person that operates an approved test house:

- (f) a load aggregator;
  - (g) a trader in electricity;
  - (h) any other industry service provider identified in regulations made under section 109.
- (3) The Authority is not an industry participant, except to the extent that it performs functions as an industry service provider.
- Compare: SR 2003/374 r 4

### **8 Transpower is system operator**

- (1) The system operator is Transpower.
- (2) As well as acting as system operator for the electricity industry, the system operator must—
- (a) provide information, and short- to medium-term forecasting on all aspects of security of supply; and
  - (b) manage supply emergencies.
- (3) The Code must—
- (a) specify the functions of the system operator; and
  - (b) specify how the system operator's functions are to be performed; and
  - (c) set requirements relating to transparency and performance.
- (4) A failure to comply with subsection (2) is to be treated, for the purposes of enforcement under this Part, as a breach of the Code.
- Compare: SR 2003/374 r 30

### **9 Industry participants to register and comply with Code**

- (1) Every industry participant must—
- (a) register as an industry participant by supplying the Authority with the information specified in section 27(2); and
  - (b) comply with the Code.
- (2) A failure to comply with subsection (1) may result in an industry participant being—
- (a) liable to conviction for an offence under section 31, in the case of failure to register; and
  - (b) subject to the enforcement measures set out in this Part, in the case of failure to comply with the Code.

### **10 Exemption from obligation to register**

- (1) Despite section 9(1)(a), an industry participant need not register if—

- (a) it is a member of a class of industry participants identified in regulations made under section 110 as a class of industry participants that is exempt from the obligation to register; or
  - (b) the Authority exempts the participant by issuing an individual exemption notice in the *Gazette* that—
    - (i) identifies the industry participant that is exempt from the obligation to register; and
    - (ii) gives reasons for the exemption.
- (2) The Authority may grant an individual exemption to an industry participant only if the Authority is satisfied that—
- (a) it is not necessary, for the purpose of achieving the Authority’s objective under section 15, for the participant to be registered; and
  - (b) exempting the participant will reduce overall administration and compliance costs.
- (3) The Authority may amend or revoke an individual exemption, by issuing a notice in the *Gazette* that identifies the exempt participant and gives reasons for the amendment or revocation, but only if the Authority—
- (a) has given notice of the proposed amendment or revocation to the exempt participant and given the participant a reasonable opportunity to comment on the proposal; and
  - (b) is satisfied that—
    - (i) the amendment or revocation is necessary or desirable for the purpose of achieving the Authority’s objective under section 15; and
    - (ii) the benefit of the amendment or revocation outweighs any disadvantage resulting from any increased administration and compliance costs.
- (4) To avoid doubt, an individual exemption notice issued under subsection (1)(b) is not a regulation for any purpose.
- (5) The Authority must publicise a list of all current class and individual exemptions.

## **11 Exemption from obligation to comply with Code**

- (1) Despite section 9(1)(b), an industry participant need not comply with the Code, or specific provisions of the Code, if—
- (a) it is a member of a class of industry participants identified in regulations made under section 110 as a class of industry participants that is exempt from the obligation to comply with the Code or specific provisions of the Code; or
  - (b) the Authority exempts the participant by issuing an individual exemption notice in the *Gazette* that—

- (i) identifies the industry participant that is exempt from the obligation to comply with the Code or specific provisions of the Code; and
  - (ii) gives reasons for the exemption.
- (2) The Authority may grant an individual exemption to an industry participant only if the Authority is satisfied that—
  - (a) it is not necessary, for the purpose of achieving the Authority’s objective under section 15, for that participant to comply with the Code or the specific provisions of the Code; and
  - (b) exempting the participant will reduce overall administration and compliance costs.
- (3) The Authority may amend or revoke an individual exemption, by issuing a notice in the *Gazette* that identifies the exempt participant and gives reasons for the amendment or revocation, but only if the Authority—
  - (a) has given notice of the proposed amendment or revocation to the exempt participant and given the participant a reasonable opportunity to comment on the proposal; and
  - (b) is satisfied that—
    - (i) the amendment or revocation is necessary or desirable for the purpose of achieving the Authority’s objective under section 15; and
    - (ii) the benefit of the amendment or revocation outweighs any disadvantage resulting from any increased administration and compliance costs.
- (4) To avoid doubt, an individual exemption notice issued under subsection (1)(b) is not a regulation for any purpose.
- (5) The Authority must publicise a list of all current class and individual exemptions.

### *Electricity Authority*

#### **12 Authority established**

- (1) The Electricity Authority is established.
- (2) The Authority is a Crown entity for the purposes of section 7(1) of the Crown Entities Act 2004 (and, by virtue of being named in Part 3 of Schedule 1 of that Act, is an independent Crown entity).
- (3) The Crown Entities Act 2004 applies to the Authority except to the extent that this Act expressly provides otherwise.

Compare: 1992 No 122 s 172M

#### **13 Membership of Authority**

- (1) The Authority comprises between 5 and 7 members.



- (2) When recommending a person for membership of the Authority, the Minister must have regard to the need to ensure that the Authority has amongst its members knowledge and experience of, and capability in, the following:
  - (a) the electricity industry:
  - (b) consumer issues:
  - (c) business generally.
- (3) The Minister may not recommend a person for membership of the Authority unless he or she has first publicised an invitation for nominations from interested parties and considered any nominations received.

Compare: 1992 No 122 s 172R

#### **14 Independence of members of Authority**

- (1) No member of the Authority, when acting as a member, may represent, or promote the interests or views of, any organisation or any particular industry participant or group of industry participants.
- (2) This section does not limit, and is in addition to, the duties of members set out in Part 2 of the Crown Entities Act 2004.

Compare: 1992 No 122 s 172S

#### **15 Objective of Authority**

The objective of the Authority is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.

Compare: 1992 No 122 s 172N

#### **16 Functions of Authority**

- (1) The Authority's functions are as follows:
  - (a) to maintain a register of industry participants in accordance with subpart 2, and to exempt individual industry participants from the obligation to be registered:
  - (b) to make and administer the Electricity Industry Participation Code in accordance with subpart 3:
  - (c) to monitor compliance with the Act, the regulations, and the Code, and to exempt individual industry participants from the obligation to comply with the Code or specific provisions of the Code:
  - (d) to investigate and enforce compliance with this Part, Part 4, the regulations, and the Code (*see* subpart 4 of this Part):
  - (e) to investigate and enforce compliance with Part 3 (*see* subpart 2 of Part 3):

- (f) to undertake market-facilitation measures (such as providing education, guidelines, information, and model arrangements), and to monitor the operation and effectiveness of market facilitation measures:
  - (g) to undertake industry and market monitoring, and carry out and make publicly available reviews, studies, and inquiries into any matter relating to the electricity industry:
  - (h) to contract for market operation services (but *see* subsection (2)) and system operator services:
  - (i) to promote to consumers the benefits of comparing and switching retailers:
  - (j) to perform any other specific functions imposed on it under this or any other Act.
- (2) Instead of, or as well as, contracting for market operation services, the Authority may itself perform—
- (a) the functions of the market administrator, if the Authority considers it desirable to do so; and
  - (b) any other market operation service, but only on a temporary basis (such as when there is no current contract, or the contractor is unable or unwilling to perform the service).

Compare: 1992 No 122 s 172O

## 17 Statements of government policy

- (1) In performing its functions, the Authority must have regard to any statements of government policy concerning the electricity industry that are issued by the Minister.
- (2) Before issuing a statement under this section, the Minister must consult with the Authority.
- (3) Every statement of government policy concerning the electricity industry must be—
- (a) conveyed to the Authority in writing; and
  - (b) notified in the *Gazette*; and
  - (c) presented by the Minister to the House of Representatives; and
  - (d) made publicly available.
- (4) A statement of government policy concerning the electricity industry—
- (a) comes into effect on the date specified in the *Gazette* notice, which must be on or after the date of the notice and is to be treated as the date on which the statement is issued; and
  - (b) may be amended, revoked, or replaced in the same way as it may be given.

Compare: 1992 No 122 s 172ZK; 1986 No 5 s 26; 2004 No 115 s 115

## **18 Reviews on request by Minister**

- (1) On written request by the Minister, the Authority must review and report on any matter relating to the electricity industry that is specified by the Minister.
- (2) The Minister must consult the Authority before issuing a request for a review.
- (3) When requesting a review, the Minister may, without limitation,—
  - (a) specify a date by which, or a period within which, the Authority must provide its report; and
  - (b) give the Authority any specific directions about how to conduct the review (such as directions about consultation, the issue of draft reports, timing); and
  - (c) specify particular matters that the Authority is to consider.
- (4) If, in the course of a review, the Authority considers that there are matters that fall outside the scope of the review but which it should nevertheless report on to the Minister, the Authority may include a report on those matters in the final report or in a separate report.
- (5) Within 15 days after receiving a final report on a review conducted under this section, the Minister must make the report publicly available.
- (6) However, in making the report publicly available, the Minister may omit any information that he or she would be likely to withhold if it were requested under the Official Information Act 1982.

### *Security and Reliability Council, and other advisory groups*

## **19 Charter about advisory groups**

- (1) The Authority must make, and make publicly available, a charter that sets out—
  - (a) how it will establish and interact with advisory groups appointed under sections 20 and 21; and
  - (b) when and how it will consult advisory groups on material changes to the Code; and
  - (c) how advisory groups must operate, including provisions concerning procedure.
- (2) Before making a charter, the Authority must consult interested parties on a draft charter.
- (3) The Authority and all advisory groups must comply with the charter made under this section.
- (4) The first charter must be made within the first year after this section comes into force.
- (5) Until the first charter is made under this section,—

- (a) the Authority may establish and interact with advisory groups as it thinks fit; and
- (b) advisory groups may determine their own procedure, subject to any specific directions or requirements of the Authority.

## **20 Security and Reliability Council**

- (1) The Authority must appoint a Security and Reliability Council.
- (2) The function of the Security and Reliability Council is to provide independent advice to the Authority on—
  - (a) the performance of the electricity system and the system operator; and
  - (b) reliability of supply issues.
- (3) The Council must meet at least once every 6 months.
- (4) The Council may determine its own procedure, subject to this Act and the charter (once made) prepared under section 19.
- (5) The Authority must ensure that the members of the Council have between them appropriate knowledge and experience of the electricity industry to provide advice to the Authority, but members need not be independent persons.
- (6) The Authority may not appoint a person as a member of the Council unless the Authority has first publicised an invitation for nominations for membership and considered any nominations received.
- (7) The terms of appointment as a member of the Council are as determined by the Authority on an individual basis.

## **21 Other advisory groups**

- (1) The Authority must establish 1 or more other advisory groups to provide independent advice to the Authority on the development of the Code and on market facilitation.
- (2) Every advisory group must include people whom the Authority considers have appropriate knowledge of, and experience in, the electricity industry and consumer issues, but members need not be independent persons.

## **22 Application of Crown Entities Act 2004**

- (1) The following provisions of the Crown Entities Act 2004 apply, with all necessary modifications, to or in respect of each member of an advisory group appointed under section 20 or 21 (an **advisory group member**) as if the advisory group were a statutory entity:
  - (a) sections 43, 48, 57, 77, 120, 121, 126, and 135:
  - (b) sections 62 to 72, as if the disclosure required by those sections must be made to both the relevant advisory group and the Authority.

- (2) Section 47(1) of the Crown Entities Act 2004 (which is about remuneration) applies to advisory group members as if the advisory groups were autonomous Crown entities.
- (3) Each advisory group member is deemed to be a member of the Authority for the purpose of—
  - (a) the Authority indemnifying the member under section 122 of the Crown Entities Act 2004; and
  - (b) the Authority effecting insurance cover under section 123 of that Act; and
  - (c) the application of section 125 of that Act.
- (4) For the purpose of section 152 of the Crown Entities Act 2004 (which is about disclosing payments in an annual report), the Authority must treat each advisory group member as if he or she were a member of the Authority.

### *Rulings Panel*

#### **23 Continuation of Rulings Panel**

- (1) There continues to be a Rulings Panel.
- (2) The Rulings Panel is the same body as the body established by regulation 160 of the Electricity Governance Regulations 2003.

Compare: SR 2003/374 r 160

#### **24 Membership of Rulings Panel**

- (1) The Rulings Panel comprises up to 5 members appointed by the Governor-General.
- (2) The Governor-General must appoint—
  - (a) 1 member to be the chairperson of the Rulings Panel, who must be a barrister or solicitor of the High Court of at least 7 years' standing; and
  - (b) 1 member to be deputy chairperson of the Rulings Panel.
- (3) The Governor-General may make an appointment under subsection (1) or (2) only in accordance with a recommendation by the Minister given after the Minister has consulted with the Minister of Justice and the Authority.
- (4) Further provisions relating to the membership of the Rulings Panel may be set out in regulations made under section 112.

Compare: SR 2003/374 rr 162, 165(1)

#### **25 Function of Rulings Panel**

The function of the Rulings Panel is—

- (a) to assist in the enforcement of the Code by—
  - (i) hearing and determining complaints about breaches or possible breaches of the Code; and

- (ii) hearing and determining appeals from certain decisions made under the Code; and
  - (iii) considering and resolving certain disputes between industry participants relating to the Code; and
  - (iv) making appropriate remedial and other orders; and
- (b) to review any suspension of trading by the Authority under section 49; and
- (c) to exercise any other functions conferred on it under this Act or the regulations.

Compare: SR 2003/374 r 161

## **26 Funding of Rulings Panel and remuneration of members**

- (1) The Authority must fund the Rulings Panel.
- (2) The Authority may recover the costs of that funding from industry participants through levies payable under section 128.
- (3) The remuneration of members of the Rulings Panel, other than remuneration covered by subsection (4), must be set by the Remuneration Authority under section 12(1)(a)(va) of the Remuneration Authority Act 1977 as if the members were members of an independent Crown entity.
- (4) Members of the Rulings Panel are entitled, in accordance with the fees framework (as defined in section 10(1) of the Crown Entities Act 2004), to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out their functions as members.

Compare: SR 2003/374 r 176

## Subpart 2—Registration

### **27 Register of industry participants**

- (1) The Authority must maintain and publicise a register of industry participants.
- (2) The register must record—
  - (a) the name, contact details, and business details of every current industry participant, other than a participant that is exempt from the obligation to register:
  - (b) the date on which a participant's name was first entered in the register:
  - (c) the date and nature of every subsequent change to the details recorded for each participant:
  - (d) the name of every person who, after this section comes into force, has been recorded as a current industry participant but subsequently ceases to be.
- (3) For the purposes of the register,—

- (a) an industry participant's **contact details** are its physical address, postal address, telephone number, fax number, and email address; and
  - (b) an industry participant's **business details** are details about the nature of its business (for example, whether it is involved in generation, transmission, distribution, retailing, or a combination of any of these).
- (4) The register may, but need not, contain the names of all or any industry participants that are exempt from the obligation to be registered.

Compare: SR 2003/374 rr 9, 10, 12

### **28 Transfer of old information to register**

The name, contact details, and business details of every person that, immediately before this section comes into force, is recorded as an industry participant on the register maintained by the Electricity Commission under regulation 9 of the Electricity Governance Regulations 2003—

- (a) must be transferred to the register maintained under section 27(1); and
- (b) is deemed to have been recorded on that register on the date on which the register is established.

### **29 Registration and requirement to update information**

- (1) An industry participant is registered as soon as its information is recorded, or deemed to be recorded, on the register.
- (2) A registered industry participant must supply updated information, as soon as practicable, if its name, contact details, or business details change.

Compare: SR 2003/374 rr 8, 11

### **30 Ceasing to be registered**

- (1) The Authority must remove an industry participant's name, contact details, and business details from the register of current registered participants if satisfied that the person has ceased to be a participant; but the Authority may retain a record of the participant's name and business details on the register as a former participant.
- (2) A person ceases to be a registered industry participant when the person's name is no longer recorded on the register as a current industry participant.
- (3) An industry participant's obligations under the Code, and any proceedings underway or orders in effect under the Code, are not affected merely because the participant ceases to be registered as a current participant.

Compare: SR 2003/374 r 14

### **31 Offences relating to registration**

- (1) An industry participant that fails, without reasonable excuse, to register as an industry participant commits an offence and is liable on conviction to a fine not exceeding \$20,000.

- (2) A registered industry participant commits an offence, and is liable on conviction to a fine not exceeding \$20,000, if it knows or ought to know that the information recorded for it on the register is wrong or incomplete and it fails to supply updated information as required by section 29(2).

Section 31(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 31(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### Subpart 3—Electricity Industry Participation Code

#### *Content and status of Code*

#### **32 Content of Code**

- (1) The Code may contain any provisions that are consistent with the objective of the Authority and are necessary or desirable to promote any or all of the following:
- (a) competition in the electricity industry;
  - (b) the reliable supply of electricity to consumers;
  - (c) the efficient operation of the electricity industry;
  - (d) the performance by the Authority of its functions;
  - (e) any other matter specifically referred to in this Act as a matter for inclusion in the Code.
- (2) The Code may not—
- (a) impose obligations on any person other than an industry participant or a person acting on behalf of an industry participant, or the Authority; or
  - (b) purport to do or regulate anything that the Commerce Commission is authorised or required to do or regulate under Part 3 or 4 of the Commerce Act 1986 (other than to set quality standards for Transpower and set pricing methodologies (as defined in section 52C of that Act) for Transpower and distributors); or
  - (c) purport to regulate any matter dealt with in or under the Electricity Act 1992.
- (3) The Code may incorporate by reference any of the following:
- (a) New Zealand Standards, or standards, requirements, or recommended practices of any overseas or international body;
  - (b) codes of practice issued under Part 4 of the Electricity Act 1992;
  - (c) any other written material dealing with technical matters that, in the opinion of the Authority,—
    - (i) is too long to publish as part of the Code; or
    - (ii) it is impracticable to publish as part of the Code.



- (4) Schedule 1 applies to any material incorporated by reference into the Code.

### **33 Status of Code**

- (1) The Code is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (2) If any provision of the Code conflicts with this or any other Act, or with any regulation made under this or any other Act, the Act or regulation prevails.

Section 33(1): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### *Making and amending Code*

### **34 Content of initial Code**

- (1) The Code made under section 36 must comprise—
- (a) a consolidation of the following enactments:
    - (i) the Electricity Governance Rules made under section 172H of the Electricity Act 1992;
    - (ii) subpart 2 of Part 1 and Parts 2, 2A, and 3 of the Electricity Governance Regulations 2003;
    - (iii) subpart 2 of Part 10 of the Electricity Governance Regulations 2003 (the Comalco agreements exemptions);
    - (iv) the Electricity Governance (Security of Supply) Regulations 2008;
    - (v) the Electricity Governance (Connection of Distributed Generation) Regulations 2007;
  - (b) provisions referred to in section 8(3) (concerning the system operator);
  - (c) provisions to give effect to any exemptions granted under subpart 1 of Part 10 of the Electricity Governance Regulations 2003.
- (2) The Code must include whatever changes to the text of the enactments referred to in subsection (1)(a) are necessary or reasonably required to ensure that the Code—
- (a) is consistent with this Act, the regulations, and any amendments made to other enactments by this Act; and
  - (b) is accurate and coherent; and
  - (c) addresses any transitional issues.
- (3) To avoid doubt, the Code must not include provisions relating to statements of opportunities or grid planning assumptions.
- (4) The Code is deemed to include the provisions of any regulations or rules made, within 6 months before this section comes into force, under section 172E(3) of

the Electricity Act 1992 (which relates to regulations and rules made urgently); but—

- (a) the provisions expire on the date that is 6 months after the date on which those regulations and rules come into force; and
- (b) the text of those regulations and rules need not be included in any draft or final copy of the Code that is publicised or made publicly available.

### **35 Certification of draft Code**

- (1) The Minister must certify a draft Code that complies with section 34.
- (2) The Minister must publicise the draft Code as soon as practicable after it is certified.
- (3) The Minister's certificate is conclusive evidence that the draft complies with section 34.

### **36 Code comes into force**

- (1) The certified draft Code comes into force as the Code on the day this section comes into force.
- (2) That Code is deemed to have been made by the Authority on that day.

### **37 Making Code accessible**

- (1) The Authority must make the Code, and all amendments to it, publicly available.
- (2) The Minister must present a copy of the Code, and of all amendments to it, to the House of Representatives in accordance with section 4 of the Regulations (Disallowance) Act 1989.
- (3) The Authority may periodically issue and make publicly available consolidated versions of the Code with all amendments incorporated, in which case the consolidation must clearly show the date on which it is issued and when each amendment was made.

### **38 Authority amends Code**

- (1) The Authority may amend the Code at any time, subject to section 39 of this Act and section 54V of the Commerce Act 1986.
- (2) An amendment may be an addition, an omission, a substitution, or a complete replacement.
- (3) An amendment is made by—
  - (a) publicising the amendment; and
  - (b) giving notice in the *Gazette* of—
    - (i) the date on which the amendment comes into force; and
    - (ii) a short summary of what the amendment contains or relates to.

- (4) An amendment may not come into force until a date that is at least 28 days after the date of the *Gazette* notice.

### **39 Consultation on proposed amendments**

- (1) Before amending the Code, the Authority must—
- (a) publicise a draft of the proposed amendment; and
  - (b) prepare and publicise a regulatory statement; and
  - (c) consult on the proposed amendment and the regulatory statement.
- (2) The regulatory statement required for a proposed amendment to the Code must include the following:
- (a) a statement of the objectives of the proposed amendment;
  - (b) an evaluation of the costs and benefits of the proposed amendment;
  - (c) an evaluation of alternative means of achieving the objectives of the proposed amendment.
- (3) Despite subsection (1), the Authority need not comply with subsection (1)(b) or (c) if it is satisfied on reasonable grounds that—
- (a) the nature of the amendment is technical and non-controversial; or
  - (b) there is widespread support for the amendment among the people likely to be affected by it; or
  - (c) there has been adequate prior consultation (for instance, by or through an advisory group) so that all relevant views have been considered.

### **40 Urgent amendments to Code**

- (1) The Authority may amend the Code without complying with section 39(1) if—
- (a) the Authority considers that it is necessary or desirable in the public interest that the proposed amendment be made urgently; and
  - (b) along with the notice of the amendment that is published in the *Gazette* under section 38(3)(b), the Authority publishes a statement of the reasons why the urgent amendment is needed.
- (2) Every amendment made under this section—
- (a) comes into force on the date specified in the *Gazette* notice (despite section 38(4)), which may be any day after the date of that notice; and
  - (b) expires on the date that is 9 months after the date on which it comes into force.

Compare: 1992 No 122 s 172E(3)

### **41 Authority to publish consultation charter**

- (1) The Authority must develop, issue, and make publicly available a consultation charter that includes guidelines, not inconsistent with this Act, relating to the processes for amending the Code and consulting on proposed amendments.

- (2) However, no amendment to the Code is invalid merely because—
- (a) there was no consultation charter at the time the amendment was consulted on or made; or
  - (b) the Authority failed to comply with the charter.

*Specific new matters in Code*

**42 Specific new matters to be in Code**

- (1) Before the date that is 1 year after this section comes into force, the Authority must either—
- (a) have amended the Code so that it includes all the matters described in subsection (2) (the **new matters**); or
  - (b) to the extent that the Code does not include all the new matters, have delivered to the Minister a report described in subsection (3).
- (2) The new matters are as follows:
- (a) provision of compensation by retailers to consumers during public conservation campaigns:
  - (b) imposing a floor or floors on spot prices for electricity in the wholesale market during supply emergencies (including public conservation campaigns):
  - (c) mechanisms to help wholesale market participants manage price risks caused by constraints on the national grid:
  - (d) mechanisms to allow participants who buy electricity on the wholesale market (commonly called the demand side) to benefit from demand reductions:
  - (e) requirements for distributors that do not send accounts to consumers directly to use more standardised tariff structures:
  - (f) requirements for all distributors to use more standardised use-of-system agreements, and for those use-of-system agreements to include provisions indemnifying retailers in respect of liability under the Consumer Guarantees Act 1993 for breaches of acceptable quality of supply, where those breaches were caused by faults on a distributor's network:
  - (g) facilitating, or providing for, an active market for trading financial hedge contracts for electricity.
- (3) A report provided under subsection (1)(b) must—
- (a) identify which new matters are not included in the Code; and
  - (b) explain why the Authority has not amended the Code to include those matters; and
  - (c) suggest alternative methods by which the matters are or may be provided for; and

- (d) set out if, when, and how the Authority proposes to provide for the matters.

#### **43 Minister may amend Code to include new matters**

- (1) The Minister may amend the Code by including provisions for any of the new matters identified in section 42(2) if—
  - (a) the Minister considers that the Code’s provisions for a new matter are not satisfactory; or
  - (b) the Minister considers that, in light of the Authority’s report given under section 42(1)(b), it is necessary or desirable for the Minister to amend the Code to include provisions for the matter in the Code.
- (2) The Minister may amend the Code as if he or she were the Authority, and sections 37 to 40 apply accordingly.
- (3) Before amending the Code, the Minister must—
  - (a) consult with the Authority (in addition to any consultation required under section 39); and
  - (b) be satisfied that the amendments will achieve the Authority’s objective in section 15.
- (4) The power given by this section may not be exercised earlier than 1 year after, and not more than 3 years after, the date on which this section comes into force.

#### *Other specific content*

#### **44 Transmission agreements**

- (1) Without limiting section 32, the Code may require Transpower and 1 or more industry participants to enter into 1 or more agreements for connection to, use of, and (where relevant) investment in, the national grid (a **transmission agreement**).
- (2) The Code may prescribe default terms and conditions that are deemed to be included in transmission agreements.
- (3) The parties to a transmission agreement may, by mutual consent, agree to modify any default terms and conditions, but only if and to the extent that the Code permits those terms and conditions to be modified.
- (4) Every transmission agreement between Transpower and an industry participant is deemed to include a provision under which the industry participant agrees to pay Transpower any amounts that Transpower charges the industry participant in accordance with the transmission pricing methodology.
- (5) A transmission agreement is binding on both parties and enforceable as if it were a contract between the parties that had been freely and voluntarily entered into.

- (6) If the parties do not comply with a requirement in the Code to enter into 1 or more transmission agreements, the default terms and conditions in the Code, and the provision in subsection (4), are binding on both parties and enforceable as if they were set out in a transmission agreement.

Compare: 1992 No 122 s 172KA

## Subpart 4—Monitoring and enforcement

### *Authority's powers and procedures*

#### **45 Purposes of exercise of Authority's monitoring, investigation, and enforcement powers**

The purposes for which the powers in section 46 may be exercised are as follows:

- (a) carrying out the Authority's monitoring functions, which are to—
- (i) monitor compliance with this Act (including Part 3), the regulations, and the Code; and
  - (ii) undertake and monitor the operation and effectiveness of market-facilitation measures under section 16(1)(f); and
  - (iii) undertake industry and market monitoring, and carry out any other function referred to in section 16(1)(g):
- (b) carrying out the Authority's function of investigating breaches or possible breaches of, and enforcing compliance with, this Part, Part 4, the regulations, and the Code.

Compare: 1992 No 122 s 172KB

#### **46 Authority's monitoring, investigation, and enforcement powers**

- (1) The Authority may exercise the powers in this section only for a purpose described in section 45.
- (2) The Authority may require an industry participant to do any of the following:
- (a) provide, within any reasonable time specified by the Authority, any information, papers, recordings, and documents that are in the possession, or under the control, of the participant and that are requested for the purpose:
  - (b) permit its officers or employees to be interviewed (which interview may be recorded) and ensure as far as possible that they are made available for interview and answer truthfully and fully any questions put to them:
  - (c) give all other assistance that may be reasonable and necessary to enable the Authority to carry out its functions and exercise its powers.
- (3) Nothing in this section requires a person to give the Authority access to any premises, except for a purpose described in section 45(b) and under a warrant issued under section 47.

- (4) If an industry participant, whether directly or through an officer or employee, fails to comply with a requirement of the Authority under this section, the failure is treated as if it were a breach of the Code and the Authority may apply to the Rulings Panel for any order under section 54.

Compare: 1992 No 122 s 172KB

#### **47 Power to search**

- (1) The Authority may, for a purpose specified in section 45(b), authorise an employee of the Authority (an **authorised person**) to search, under a warrant issued under subsection (2), any place named in the warrant for the purpose of ascertaining whether an industry participant has breached, or may breach, this Part, Part 4, the regulations, or the Code.
- (2) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012), on an application made in the manner provided in subpart 3 of Part 4 of that Act, who is satisfied that there are reasonable grounds to believe that it is necessary, for the purpose of ascertaining whether an industry participant has breached, or may breach, this Part, Part 4, the regulations, or the Code, for an authorised person to search any place may, by warrant, authorise that person to search a place specified in the warrant.
- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except for sections 118 and 119) apply, with any necessary modifications.

Compare: 1992 No 122 s 172KD; 1986 No 5 s 98A

Section 47(2): amended, on 1 October 2012, by section 239(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 47(3): replaced, on 1 October 2012, by section 239(3) of the Search and Surveillance Act 2012 (2012 No 24).

#### **48 Privileges protected**

- (1) Nothing in section 46 limits any claim for legal professional privilege.
- (2) If the Authority requires an industry participant to do anything referred to in section 46, neither the industry participant nor any officer or employee of the industry participant is excused from answering a question or giving any information or document on the ground that to do so may incriminate or tend to incriminate the industry participant or the officer or employee.
- (3) However, any self-incriminating statement or document made or given by an officer or employee, or an industry participant that is an individual, is not admissible as evidence in any criminal or civil proceedings against that person.

Compare: 1992 No 122 s 172KC

#### **49 Authority may suspend trading in case of insolvency**

- (1) This section applies to a generator or purchaser that—
- (a) is unable to pay its debts; or
  - (b) calls a meeting for the purpose of Part 14 of the Companies Act 1993; or

- (c) is adjudicated bankrupt; or
  - (d) in the case of a company, society, or partnership, has a receiver or statutory manager or similar person appointed in respect of it or of all or any of its assets; or
  - (e) is put into liquidation.
- (2) A generator or purchaser is adjudicated bankrupt if,—
- (a) in the case of a partnership, all of the partners are adjudicated bankrupt; or
  - (b) in the case of an individual, that individual is adjudicated bankrupt.
- (3) The Authority may suspend the generator's or purchaser's rights to make bids or offers under the Code, with effect from a time to be determined by the Authority, which must be a time later than the relevant event under subsection (1).
- (4) Despite any suspension of trading ordered by the Authority, the generator or purchaser must continue to meet its common quality obligations under the Code, to the extent that the suspension order permits.
- (5) After a suspension order under this section takes effect,—
- (a) the Authority may order that any rights that were suspended be reinstated in respect of the generator or purchaser; and
  - (b) the Authority may apply to the Rulings Panel for a termination order in respect of the generator or purchaser; and
  - (c) the generator or purchaser may apply to the Rulings Panel to review the suspension by the Authority; and the Rulings Panel may, on review, exercise all the powers that the Authority has under subsection (3) and paragraph (a) of this subsection.

Compare: SR 2003/374 rr 143, 144, 145

### *Code enforcement*

#### **50 Complaints, appeals, and disputes**

- (1) Complaints about breaches or possible breaches of the Code must be made to the Authority at first instance.
- (2) The Authority must deal with complaints in accordance with this Part and the regulations.
- (3) Complaints may subsequently be referred to the Rulings Panel, in accordance with this Part and the regulations, by either the Authority or an industry participant.
- (4) The Rulings Panel may determine appeals against decisions made under the Code, and resolve disputes between industry participants that relate to the Code, that are of a kind that are identified in the regulations or the Code.



- (5) If the regulations or the Code prescribe practices and procedures in relation to any kind of such appeal or dispute, the Rulings Panel must apply those practices and procedures when dealing with the appeal or dispute.

### **51 Interim injunctions**

- (1) The Authority may at any time apply to the High Court for the grant of an interim injunction—
- (a) restraining an industry participant from doing anything that is in breach of the Code; or
  - (b) requiring an industry participant to do something in accordance with the Code.
- (2) The court may grant the injunction if, in the opinion of the court, it is desirable to do so.
- (3) Subsection (2) applies, in the case of an injunction under subsection (1)(a),—
- (a) whether or not the participant has done, or omitted to do, that thing; and
  - (b) whether or not there is an imminent danger of substantial damage to any person if the participant does, or omits to do, that thing.
- (4) The court may rescind or vary the injunction on application by the Authority or any participant affected by the injunction.
- (5) The court must not require the Authority, as a condition of granting an interim injunction, to give an undertaking as to damages, and must not, when determining the application, take into account the fact that the Authority is not required to give such an undertaking.
- (6) Nothing in this Act or the regulations prevents the Authority from seeking an interim injunction under this section at any time.

Compare: SR 2003/374 r 68

### **52 Limitation periods for breaches of Code**

- (1) The Authority may not exercise its powers in relation to a breach or possible breach of the Code if the breach—
- (a) was discovered, or ought reasonably to have been discovered, more than 3 years before the exercise of the power; or
  - (b) occurred more than 10 years before the exercise of the power.
- (2) However, once the Authority has exercised a power in relation to the breach or possible breach, the limitations in subsection (1) do not apply.

Compare: SR 2003/374 r 5(2)

### **53 Powers and procedures of Rulings Panel**

- (1) Every complaint, appeal, or dispute before the Rulings Panel must be dealt with by a panel of 3 members, one of whom must be the chairperson (except when the deputy chairperson acts on his or her behalf).

- (2) The Rulings Panel may determine its own procedures, subject to this Act and the regulations, the requirements of natural justice, and, in relation to particular kinds of appeals and disputes, the Code.
- (3) The Rulings Panel has all the powers necessary to perform its functions in accordance with this Act, the regulations, and the Code.

Compare: SR 2003/374 rr 96, 171A, 177

#### **54 Remedial orders for breach of Code**

- (1) On determining a complaint that an industry participant has breached the Code, the Rulings Panel may decide that no action should be taken, or do any 1 or more of the following:
  - (a) issue a private warning or reprimand to an industry participant:
  - (b) make an order that a public warning or reprimand be issued to an industry participant:
  - (c) impose additional or more stringent record-keeping or reporting requirements under or in connection with the Code:
  - (d) make a pecuniary penalty order requiring an industry participant to pay a pecuniary penalty to the Crown of an amount not exceeding \$200,000 (*see* section 56):
  - (e) make a compensation order requiring an industry participant to pay a sum by way of compensation to any other person:
  - (f) make a compliance order requiring an industry participant that is found not to be complying with the Code to take any action that is necessary to restore it to a position of compliance (*see* section 57):
  - (g) make orders regarding the reasonable costs of any investigations or proceedings:
  - (h) recommend to the Authority that a change should be made to the Code or the regulations:
  - (i) recommend to the Minister that a change should be made to the regulations or the Act.
- (2) The Rulings Panel must take into account its own previous decisions in respect of any similar situations previously dealt with by the Authority or any predecessor of the Authority.

Compare: 1992 No 122 s 172KE

#### **55 Restrictions on remedies**

- (1) The remedies that the Rulings Panel may impose under section 54 are the only remedies in respect of a breach of the Code.
- (2) No one may bring an action for breach of statutory duty that arises out of, or relates to, a breach of the Code.

- (3) No industry participant may bring an action in tort against a market operation service provider that arises out of, or relates to, any act, matter, or thing done, or required or omitted to be done, by the market operation service provider in the course of it providing market operation services, provided that the act or omission is not a fraudulent act or omission by the market operation service provider.
- (4) Except as provided in subsection (3), nothing in this section limits the recovery of—
  - (a) a debt owing under any order of the Rulings Panel made under this Act; or
  - (b) damages in tort other than breach of statutory duty; or
  - (c) damages for breach of contract, or for any other wrong, that arises from an act or omission that is also a breach of the Code.

Compare: 1992 No 122 ss 172KF, 172KG

#### **56 Pecuniary penalty orders**

- (1) The Rulings Panel may make a pecuniary penalty order under section 54(1)(d) only on an application by the Authority.
- (2) In determining whether to make a pecuniary penalty order and, if so, the amount of the order, the Rulings Panel must consider the seriousness of the breach of the Code, having regard to the following:
  - (a) the severity of the breach:
  - (b) the impact of the breach on other industry participants:
  - (c) the extent to which the breach was inadvertent, negligent, deliberate, or otherwise:
  - (d) the circumstances in which the breach occurred:
  - (e) any previous breach of the Code by the industry participant:
  - (f) whether the industry participant disclosed the matter to the Authority:
  - (g) the length of time the breach remained unresolved:
  - (h) the participant's actions on learning of the breach:
  - (i) any benefit that the participant obtained, or expected to obtain, as a result of the breach:
  - (j) any other matters that the Rulings Panel thinks fit.

Compare: SR 2003/374 r 109

#### **57 Offence to breach certain orders of Rulings Panel**

An industry participant that breaches a compliance order made under section 54(1)(f), or an order made under section 54(1)(c), commits an offence and is liable on conviction to a fine not exceeding \$20,000.

Compare: SR 2003/374 r 108

Section 57: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **58 Suspension and termination for breach of certain Rulings Panel orders**

The Rulings Panel may make a suspension order or a termination order against an industry participant if—

- (a) the industry participant has failed to comply with an order of the Rulings Panel, and the failure has seriously prejudiced the operational or financial security of the wholesale market or transmission system for electricity; or
- (b) the Authority has suspended trading in a generator or purchaser under section 49 and applies to the Rulings Panel for a termination order.

Compare: SR 2003/374 r 138

### **59 Effect of suspension and termination orders**

- (1) A suspension order suspends all or specified rights under the Code of the industry participant against whom it is made, subject to any conditions set out in the order, and for the period specified in the order.
- (2) A termination order terminates all or specified rights under the Code of the industry participant against whom it is made.
- (3) A termination order does not affect any liability for payment of money under the Code before the date of the relevant order.

Compare: SR 2003/374 rr 138(1), 146(2), (3)

### **60 Offences relating to suspension and termination orders**

An industry participant commits an offence, and is liable on conviction to a fine not exceeding \$20,000, if it fails to comply with—

- (a) a suspension order or a termination order; or
- (b) any direction or arrangement made by the Rulings Panel under the regulations in relation to a suspension order or a termination order.

Compare: SR 2003/374 r 139

Section 60: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **61 Powers in relation to appeals and disputes**

In determining an appeal, or resolving a dispute, of a kind identified in the regulations or the Code, the Rulings Panel may make any determination, order, or direction that it thinks fit, subject to—

- (a) any general provisions of the regulations relating to appeals and disputes; or
- (b) if there are specific provisions in the regulations or the Code relating to that kind of appeal or dispute, those provisions.

## **62 Orders generally**

Every order of the Rulings Panel under section 54 or 58—

- (a) must be in writing; and
- (b) is subject to this subpart and any regulations that limit or restrict the amount of liability under an order or cumulative orders; and
- (c) may be amended or revoked at any time by the Rulings Panel.

### *Appeals*

## **63 Appeal on ground of lack of jurisdiction**

An industry participant that is affected by a decision of the Rulings Panel may appeal that decision to the High Court on the ground of lack of jurisdiction.

Compare: 1992 No 122 s 172KH

## **64 Appeal on question of law**

There is a right of appeal to the High Court, on a question of law only, against any decision of the Authority or the Rulings Panel.

Compare: 1992 No 122 s 172KJ

## **65 Appeal against certain orders of Rulings Panel**

- (1) The Authority or an industry participant may appeal to the High Court against the following orders made by the Rulings Panel:
  - (a) an order requiring a public warning or reprimand to be issued (section 54(1)(b));
  - (b) a pecuniary penalty order, or the amount payable under a pecuniary penalty order (section 54(1)(d));
  - (c) a compensation order, or the amount payable under a compensation order (section 54(1)(e));
  - (d) a compliance order (section 54(1)(f));
  - (e) a costs order (section 54(1)(g));
  - (f) an order by the Rulings Panel, in relation to a particular kind of appeal or dispute, that is identified in the regulations or the Code as an order that may be appealed to the High Court under this section.
- (2) An industry participant may appeal to the High Court against a suspension order or termination order made by the Rulings Panel.
- (3) An industry participant may exercise a right of appeal under this section only if the participant is—
  - (a) an industry participant in whose favour or against whom the order of the Rulings Panel is made; or

- (b) an industry participant who joined or was joined as a party to the proceeding that is the subject of the appeal.

Compare: 1992 No 122 ss 172KK, 172KL

## **66 How and when appeals made**

An appeal under this Part must be made by giving notice of appeal within 20 working days after the date of the decision or order appealed against or within any further time that the High Court allows.

Compare: 1992 No 122 s 172KJ(2)

## **67 Determination of appeals**

In determining an appeal under section 65, the High Court may do any 1 or more of the following things:

- (a) confirm, modify, or reverse the order, or any part of it;
- (b) exercise any of the powers that could have been exercised by the Rulings Panel in relation to the matter to which the appeal relates.

Compare: 1986 No 5 s 93; 1992 No 122 s 172KM

## **68 High Court may refer appeals back for reconsideration**

- (1) The High Court may, instead of determining an appeal, direct the Rulings Panel to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.
- (2) In giving any direction under this section, the court must—
  - (a) advise the Rulings Panel of its reasons for doing so; and
  - (b) give to the Rulings Panel any directions that it thinks just concerning the reconsideration or otherwise of the whole or any part of the matter that is referred back.
- (3) In reconsidering the matter, the Rulings Panel must have regard to the court's reasons for giving the direction, and the court's directions.

Compare: 1986 No 5 s 94; 1992 No 122 s 172KN

## **69 Provisions pending determination of appeal**

If an appeal is brought against any decision or order of the Rulings Panel, the decision or order remains in full force pending the determination of the appeal, unless the High Court orders to the contrary.

Compare: 1986 No 5 s 95; 1992 No 122 s 172KO

## **70 High Court may order proceedings be heard in private**

- (1) The High Court may, in its discretion, order that the hearing or any part of the hearing of any appeal under this Part be held in private.
- (2) The High Court may make an order prohibiting the publication of any report or description of a proceeding or any part of a proceeding (whether heard in pub-

lic or in private), but no order may prohibit the publication of any determination of the court.

Compare: 1986 No 5 s 96; 1992 No 122 s 172KP

### **71 Appeal to Court of Appeal in certain cases**

- (1) Any party to an appeal before the High Court under this Part who is dissatisfied with a decision or order of the High Court, may, with the leave of the High Court or of the Court of Appeal, appeal to the Court of Appeal.
- (2) Section 56 of the Senior Courts Act 2016 applies to the appeal.
- (3) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made must have regard to the following matters:
  - (a) whether any question of law or general principle is involved;
  - (b) the importance of the issues to the parties;
  - (c) the amount of money in issue;
  - (d) any other matters that in the particular circumstances the court thinks fit.
- (4) The court granting leave may, in its discretion, impose any conditions that it thinks fit, whether as to costs or otherwise.

Compare: 1986 No 5 s 97; 1992 No 122 s 172KQ

Section 71(2): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

## **Part 3**

### **Separation of distribution from certain generation and retailing**

#### **Subpart 1—Separation of distribution from certain generation and retailing**

##### *Purpose and outline of Part*

### **72 Purpose and outline of this Part**

- (1) The purpose of this Part is to promote competition in the electricity industry—
  - (a) by prohibiting a person who is involved in a distributor from being involved in a generator where that may create incentives and opportunities to inhibit competition in the electricity industry; and
  - (b) by restricting relationships between a distributor and a generator or a retailer, where those relationships may not otherwise be at arm's length.
- (2) In general terms, this Part imposes rules in respect of distributors as follows:
  - (a) ownership separation, if a person is involved both in a distributor and in a generator with more than 250 MW of generation directly connected to the national grid:

- (b) corporate separation and arm's-length rules, if a person is involved both in a distributor and in either or both of—
    - (i) a generator that generates more than 50 MW of generation connected to the distributor's network:
    - (ii) a retailer that retails more than 75 GWh per year to customers connected to the distributor's network:
  - (c) use-of-systems agreement rules, if a connected retailer retails more than 5 GWh per year to customers connected to the distributor's local network:
  - (d) rules preventing persons involved in distributors from paying retailers in respect of the transfer of retail customers:
  - (e) no-discrimination rules that apply when distributors, or electricity trusts or customer co-operatives involved in distributors, pay dividends or rebates.
- (3) Subsection (2) is intended only as a guide to the general scheme and effect of this Part.
- Compare: 1998 No 88 s 2(2)

### *Interpretation of Part*

#### 73 Interpretation in this Part

In this Part and Schedules 2 and 3, unless the context otherwise requires,—

**arm's-length rules** means the objective and rules set out in Schedule 3

**assets** includes property of any kind, whether tangible or intangible, and includes rights, interests, and claims of every kind however they arise

**associate** has the meaning given in clause 8 of Schedule 2

**business** means any undertaking that is carried on whether for gain or reward or not

**control right** has the meaning given in clause 5 of Schedule 2

**customer**, in respect of a retailer, means a consumer to whom that retailer sells electricity

**director**, in relation to a body corporate, means a person occupying the position of director of the body corporate by whatever name called

**equity return right** has the meaning given in clause 6 of Schedule 2

**financial year** means a period of 12 months ending with 31 March

**involved in** has the meaning given in section 74

**manager** has the meaning given in clause 10 of Schedule 2

**material influence** has the meaning given in clause 7 of Schedule 2



**nameplate** means the full-load continuous rating of a generating plant under specific conditions as designated by its manufacturer and measured in megawatts in accordance with International Electrotechnical Commission Standard 60034-1 or any successor to that standard or any recognised equivalent standard

**person** includes the trustees of a trust acting in that capacity

**rights** means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective

**subsidiary** has the meaning given in sections 5 and 6 of the Companies Act 1993

**total capacity** means the total nominal capacity of a generator in a financial year (determined according to the nameplates of all of the generator's generating plants).

#### 74 **Meaning of involved in**

- (1) For the purposes of this Act, a person is **involved in** a distributor, a generator, or a retailer if the person—
  - (a) carries on a business that does any of those things, either alone or together with its associates and either on its own or another's behalf; or
  - (b) exceeds the 10% threshold in respect of a business that does any of those things; or
  - (c) has material influence over a business that does any of those things.
- (2) A person exceeds the 10% threshold in respect of a business if the person—
  - (a) has more than 10% of the control rights in the business; or
  - (b) has more than 10% of the equity return rights in the business; or
  - (c) is one of 2 or more associates who, in aggregate, have more than 10% of the control rights in the business; or
  - (d) is one of 2 or more associates who, in aggregate, have more than 10% of the equity return rights in the business.
- (3) **Involvement** has a corresponding meaning.
- (4) This section is subject to Schedule 2.

Compare: 1998 No 88 ss 7, 8

#### *Ownership separation*

#### 75 **Ownership separation**

- (1) A person who is involved in a distributor must not be involved in 1 or more generators that have a total capacity of more than 250 MW that is generated by 1 or more generating plants that are directly connected to the national grid.

- (2) To avoid doubt, generation connected to a distribution network is not directly connected to the national grid.

Compare: 1998 No 88 s 17

*Corporate separation and arm's-length rules*

**76 Corporate separation and arm's-length rules applying to distributors and connected generators and connected retailers**

- (1) The person or persons who carry on the business of distribution must carry on that business in a different company from the company that carries on the business of a connected generator or a connected retailer.
- (2) Every person who is involved in a distributor, and every person who is involved in a connected generator or a connected retailer, must comply, and ensure that the person's businesses comply, with the arm's-length rules.
- (3) In this section, unless the context otherwise requires,—

**connected generator**, in relation to a distributor, means a generator—

- (a) that has a total capacity of more than 50 MW of generation that is connected to any of the distributor's networks; and
- (b) in respect of which the distributor, or any other person involved in the distributor, is involved

**connected retailer**, in relation to a distributor, means a retailer—

- (a) that is involved in retailing more than 75 GWh of electricity in a financial year to customers who are connected to any of the distributor's networks; and
- (b) in respect of which the distributor, or any other person involved in the distributor, is involved.

Compare: 1998 No 88 ss 17D, 17E

*Other rules*

**77 Use-of-systems agreements**

- (1) Every director of a distributor in respect of which there is a connected retailer or a connected generator must ensure that—
- (a) the distribution business has a comprehensive, written use-of-systems agreement that provides for the supply of line function services and information to the connected retailer or connected generator (as the case may be); and
- (b) the terms of that use-of-systems agreement do not discriminate in favour of 1 business and do not contain arrangements that include elements that the business usually omits, or omit elements that the business usually includes, in use-of-systems agreements with parties that are—

- (i) connected or related only by the transaction or dealing in question; and
    - (ii) acting independently; and
    - (iii) each acting in its own best interests; and
  - (c) the business operates in accordance with that use-of-systems agreement; and
  - (d) the business publicises that use-of-systems agreement and provides it to the Authority.
- (2) A use-of-systems agreement required by subsection (1)(a) must be entered into, in the case of a business to which the corporate separation rule does not apply, as if the distribution business and the connected retailer or connected generator were separate legal persons.
- (3) In this section, unless the context otherwise requires,—
- connected generator**, in relation to a distributor, means a generator—
- (a) that has a total capacity of more than 10 MW of generation that is connected to any of the distributor’s networks; and
  - (b) in respect of which the distributor, or any other person involved in the distributor, is involved
- connected retailer**, in relation to a distributor, means a retailer—
- (a) that is involved in retailing more than 5 GWh of electricity on the distributor’s local network in a financial year to customers who are connected to that network; and
  - (b) in respect of which the distributor, or any other person involved in the distributor, is involved
- local network** means a network operated by a distributor in a contiguous geographic area or areas.
- (4) The directors of the distributor must ensure that there is also publicised, and provided to the Authority, a certificate signed by those directors stating whether or not, in the preceding calendar year,—
- (a) the terms in the use-of-systems agreement are a true and fair view of the terms on which line function services and information were supplied in respect of the retailing or generating to which the agreement relates during that year; and
  - (b) this section was otherwise fully complied with during that year.
- (5) Every director commits an offence who—
- (a) refuses or knowingly fails to comply with this section; or
  - (b) allows a use-of-systems agreement or a certificate to be publicised or provided to the Authority knowing that it is false or misleading in a material particular.

- (6) Every director who commits an offence under subsection (5) is liable on conviction to a fine not exceeding \$200,000.

Compare: 1998 No 88 s 17F

Section 77(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **78 Person involved in distributor must not pay for transfer of retail customers to connected retailers**

- (1) A distributor, and any other person listed in subsection (2), must not pay, or offer to pay, any consideration to a retailer in respect of the transfer to a connected retailer of any retail customers who are connected to the distributor's networks.
- (2) The persons are—
- (a) the distributor or any other person involved in the distributor;
  - (b) a connected generator in respect of the distributor or any other person involved in the connected generator;
  - (c) a connected retailer in respect of the distributor or any other person involved in the connected retailer.
- (3) In this section, **connected retailer** and **connected generator** have the same meaning as in section 77.
- (4) To avoid doubt, subsection (1) includes a prohibition on—
- (a) any agreement to acquire the assets or voting securities of another retailer (regardless of whether any, or only nominal, consideration is attributed to customers) as a result of which there is a transfer of responsibility for retailing electricity to customers; and
  - (b) any consideration that is directly or indirectly or in whole or in part in respect of the transfer of any of another retailer's customers or customer accounts.
- (5) Every person commits an offence who knowingly fails to comply with this section and is liable on conviction to a fine not exceeding \$500,000.

Section 78(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **79 No discrimination when paying rebates or dividends**

- (1) This section applies if a distributor has a connected retailer.
- (2) Every person listed in subsection (3) must ensure that any rebates or dividends or other similar payments paid do not discriminate between—
- (a) customers of the connected retailer; and
  - (b) customers of other retailers where those customers are connected to the distributor's networks.
- (3) The persons are—

- (a) the directors of the distributor:
  - (b) the trustees of any customer trust or community trust that is involved in the distributor and the connected retailer:
  - (c) the directors of any customer co-operative that is involved in the distributor and the connected retailer.
- (4) In this section, **connected retailer** has the same meaning as in section 77.
- (5) Every director and trustee commits an offence who knowingly fails to comply with this section and is liable on conviction to a fine not exceeding \$200,000.

Section 79(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## Subpart 2—Enforcement and general provisions

### *Enforcement and penalties for this Part*

#### **80 Pecuniary penalties**

- (1) If the High Court is satisfied on the application of the Authority that a person has breached a provision of this Part, the court may order the person to pay to the Crown a pecuniary penalty that the court determines to be appropriate.
- (2) The amount of any pecuniary penalty must not, in the case of an individual, exceed \$500,000 in respect of each act or omission.
- (3) The amount of any pecuniary penalty must not, in the case of a body corporate, exceed, in respect of each act or omission, the greater of—
- (a) \$10 million; or
  - (b) either,—
    - (i) if it can be readily ascertained and if the court is satisfied that the contravention occurred in the course of producing a commercial gain, 3 times the value of any commercial gain resulting from the contravention; or
    - (ii) if the commercial gain cannot be readily ascertained, 10% of the turnover of the body corporate and all of its interconnected bodies corporate (within the meaning of the Commerce Act 1986 and section 92) (if any).
- (4) In any proceedings under this section for a pecuniary penalty, the standard of proof is the standard of proof applying in civil proceedings.
- (5) In determining whether to make a pecuniary penalty order and, if so, the amount of the order, the court must have regard to all relevant matters, including—
- (a) the nature and extent of the act or omission:
  - (b) the nature and extent of any loss or damage suffered by any person as a result of the act or omission:

- (c) the circumstances in which the act or omission took place:
- (d) whether the person has previously been found by the court in proceedings under this Part (or any predecessor to this Part) to have engaged in any similar conduct.

Compare: 1986 No 5 s 80; 1998 No 88 s 51

## **81 Injunctions**

- (1) Where it appears to the High Court, on the application of the Authority or any other person, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes or would constitute a breach of a provision of this Part, the court, by order, may do all or any of the following things:
  - (a) grant an injunction restraining any person from engaging in conduct that constitutes or would constitute such a breach:
  - (b) impose on any person obligations to be observed in the carrying on of any business or the safeguarding of any business or any assets of any business:
  - (c) provide for the carrying on of any business or the safeguarding of any business or assets of any business, either by the appointment of a person to conduct or supervise the conduct of any business (on such terms and with such powers as may be specified or described in the order), or in any other manner, as the court thinks necessary in the circumstances of the case.
- (2) In any proceedings under this section, the Authority, upon the order of the court, may obtain discovery and administer interrogatories.

Compare: 1986 No 5 s 84; 1998 No 88 s 52

## **82 Actions for damages**

Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes a breach of a provision of this Part.

Compare: 1986 No 5 s 82; 1998 No 88 s 53

## **83 Other powers to give directions, reopen agreements**

- (1) If the High Court is satisfied, on the application of the Authority or any other person, that a person has breached a provision of this Part, the court may give directions ordering a person in breach to renegotiate any agreement that contravenes, or gives rise to a breach of, a provision of this Part, on such terms as the court specifies.
- (2) If directions under subsection (1) are not complied with to the satisfaction of the court, the court may—
  - (a) reopen any agreement that breaches, or gives rise to a breach of, a provision of this Part and make any orders it deems just and equitable for the purpose of reopening the transaction and setting aside the breach, and, if

appropriate, reinstating the parties as nearly as may be in their former positions:

- (b) give directions concerning the business or property of the person, or the management or administration of that person's business or property (including a direction that a person cease to be a manager of the business), and every person is bound by the directions.

Compare: 1998 No 88 s 56

#### **84 Miscellaneous provisions relating to civil proceedings under this Part**

- (1) In any civil proceedings under this Part, the Authority, upon the order of the High Court, may obtain discovery and administer interrogatories.
- (2) Civil proceedings under this Part may not be commenced more than 3 years after the matter giving rise to the breach arose.
- (3) Where conduct by any person constitutes a breach of 2 or more provisions of this Part, civil proceedings may be instituted under this Part against that person in relation to the breach of any 1 or more of the provisions; but no person is liable to more than 1 pecuniary penalty under this Part in respect of the same conduct.
- (4) Criminal proceedings under this Part may be started against a person whether or not proceedings for an order under section 80 have been started against the person for the same or substantially the same breach in respect of which the criminal proceedings have been started.
- (5) Uncompleted proceedings for an order under section 80 must be stayed if criminal proceedings are started or have already been started against the person for the same or substantially the same breach in respect of which the order is sought.

Compare: 1986 No 5 s 80(2)–(6); 1996 No 30 s 124F; 1998 No 88 s 57

#### **85 Application of Commerce Act 1986 provisions**

The following provisions of the Commerce Act 1986 apply for the purpose of the exercise by the Authority and the High Court of their jurisdiction and powers under this Part as if the Authority were the Commerce Commission, as if references to provisions of the Commerce Act 1986 were references to corresponding provisions of this Part of this Act, and with other necessary modifications:

- (a) sections 77 and 78 (lay members):
- (b) section 79 (evidence not otherwise admissible):
- (c) section 88A (when undertaking as to damages not required by Authority):
- (d) section 89 (other orders):
- (e) section 90 (conduct by servants or agents):

(f) Part 7 (except sections 98H, 99A, 104, 105, 106, 108, 110, and 111).

Compare: 1998 No 88 s 58

## **86 Additional proceedings**

Proceedings brought under this Part are in addition to any proceedings brought under any other Act.

Compare: 1998 No 88 s 59

### *Territorial application of this Part*

## **87 Application to persons outside New Zealand**

This Part extends to persons outside New Zealand who are involved in a distributor, generator, or retailer in New Zealand.

Compare: 1986 No 5 s 4(3); 1998 No 88 s 15

### *Disclosure and reporting to Authority*

## **88 Disclosure of information to Authority**

- (1) Each director of a distributor referred to in section 77(1) (use-of-system agreements) must ensure that the distributor discloses the quantity of electricity sold each financial year by connected retailers to customers who are connected to its local network (within the meanings in that section).
- (2) The disclosure must be made in a statement to the Authority within 2 months after the end of the financial year.
- (3) The statement must be in the form prescribed by the Authority from time to time.
- (4) The statement must be publicised by the Authority and the distributor.
- (5) Every director commits an offence who—
  - (a) refuses or knowingly fails to comply with this section; or
  - (b) provides the statement to the Authority knowing that it is false or misleading in a material particular.
- (6) Every director who commits an offence under subsection (5) is liable on conviction to a fine not exceeding \$200,000.

Compare: 1998 No 88 s 70A

Section 88(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **89 Directors must report compliance with arm's-length rules**

- (1) Each director of a business to which the arm's-length rules apply must provide to the Authority, no later than 31 March in each year, a statement confirming whether or not the director has complied with all of the arm's-length rules during the preceding calendar year.



- (2) The directors and the Authority must ensure that the statement is publicised.
- (3) Every director commits an offence who—
  - (a) refuses or knowingly fails to comply with this section; or
  - (b) provides the statement to the Authority knowing that it is false or misleading in a material particular.
- (4) Every person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding \$200,000.

Compare: 1998 No 88 s 70B

Section 89(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Exemptions*

#### **90 Exemptions**

- (1) The Authority may, by notice in the *Gazette*, exempt—
  - (a) any business or involvement from the application of this Part; or
  - (b) any person from compliance with any provisions of this Part.
- (2) The Authority may grant an exemption only if it is satisfied that—
  - (a) the exemption will either promote, or not inhibit, competition in the electricity industry; and
  - (b) the exemption will not permit an involvement in a distributor and a generator or a retailer that may create incentives and opportunities to inhibit competition in the electricity industry.
- (3) The exemption takes effect from the date specified in the exemption (which may not be earlier than the date of the *Gazette* notice).
- (4) The Authority may grant an exemption on any terms and conditions that it reasonably considers are necessary to give effect to the purpose of this Part.
- (5) The Authority may in like manner vary or revoke any such exemption.
- (6) The Authority must make publicly available a list of all current exemptions under this section.
- (7) An exemption under this section is neither a disallowable instrument nor a legislative instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Compare: 1998 No 88 s 81

Section 90(7): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

*Application of other Acts***91 Application of Commerce Act 1986**

Except as provided in section 92, nothing in this Part overrides or limits the provisions of the Commerce Act 1986.

Compare: 1998 No 88 s 82

**92 Not interconnected under Commerce Act 1986**

(1) For the purposes of Part 2 of the Commerce Act 1986, businesses to which section 76 (corporate separation and arm's-length rules) applies are deemed to be separate bodies corporate that are not interconnected, despite the fact that they may have a common owner.

(2) Subsection (1) applies despite section 2(7) of the Commerce Act 1986.

Compare: 1998 No 88 s 83

**93 Illegal contracts**

(1) An agreement lawfully entered into does not become illegal or unenforceable by any party by reason of the fact that its performance is in breach of a provision of this Part.

(2) An agreement entered into in breach of a provision of this Part is voidable at the option of any party to the agreement who is not in breach of a provision of this Part by notice in writing to the other party to the agreement at any time within 1 month after the innocent party has notice that the agreement is in breach of a provision of this Part.

Compare: 1998 No 88 s 86

Section 93 heading: amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

**94 Substance matters, not form**

Any question under this Part or Schedule 2 or 3 is to be determined according to the nature, substance, and economic effect of the interest or relationship or other facts, and independently of form.

Compare: 1988 No 234 s 5(4), (5), (6); 1998 No 88 s 14

**Part 4****Industry participants and consumers****Subpart 1—Dispute resolution****95 Complaints about Transpower, distributors, and retailers**

(1) Any person described in subsection (2) may make a complaint to the dispute resolution scheme concerning Transpower (except in its capacity as system operator) or any distributor or retailer.

- (2) The persons who may make a complaint are any persons (including consumers, potential consumers, and owners and occupiers of land) except members of the dispute resolution scheme.
- (3) The **dispute resolution scheme** is either—
  - (a) the approved scheme identified in clause 3 of Schedule 4; or
  - (b) the regulated scheme provided for in regulations made under clause 18 of Schedule 4.
- (4) The procedures for making complaints to the dispute resolution scheme are as set out in the rules of the dispute resolution scheme.

Compare: 1992 No 122 s 158G

### **95A Indemnity disputes**

The dispute resolution scheme may resolve disputes between members of the dispute resolution scheme concerning the application of the indemnity in section 46A of the Consumer Guarantees Act 1993 (an **indemnity dispute**).

Section 95A: inserted, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

### **96 Membership of dispute resolution scheme**

- (1) Transpower (other than in its capacity as system operator), and every distributor and retailer, must be a member of the dispute resolution scheme, unless exempt under subsection (3).
- (2) A person commits an offence and is liable on conviction to a fine not exceeding \$100,000 if the person knowingly refuses or fails to become a member of the dispute resolution scheme.
- (3) A person need not be a member of a dispute resolution scheme if—
  - (a) the person is a member of a class of industry participants identified in regulations made under section 111 as a class of industry participants that need not be members; or
  - (b) the Minister of Consumer Affairs exempts the person by issuing an individual exemption notice in the *Gazette* that—
    - (i) identifies the person that is exempt from the obligation to be a member; and
    - (ii) gives reasons for the exemption.
- (4) The Minister of Consumer Affairs may grant an individual exemption to a person only if he or she is satisfied that membership of the dispute resolution scheme by the person is not necessary in order to meet the purpose of the dispute resolution scheme because complaints are unlikely to be made against the person or because complaints should be made in another forum, and the person is unlikely to be involved in indemnity disputes.

- (5) The Minister of Consumer Affairs may amend or revoke an individual exemption, by issuing a notice in the *Gazette* that identifies the exempt participant and gives reasons for the amendment or revocation, but only if the Minister—
- (a) has given notice of the proposed amendment or revocation to the exempt person (where possible) and given the person a reasonable opportunity to comment on the proposal; and
  - (b) is satisfied that the amendment or revocation is necessary or desirable in order to meet the purpose of the dispute resolution scheme.
- (6) To avoid doubt, an individual exemption notice issued under subsection (3)(b) is not a regulation for any purpose.
- (7) The Ministry must publicise a list of all current class and individual exemptions.

Section 96(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 96(4): amended, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

## **97 Compliance with rules and binding settlements**

- (1) Members of the dispute resolution scheme must comply with the rules of the scheme.
- (2) On the application of the person responsible for the dispute resolution scheme, the District Court may require a member of the scheme to do any of the following:
- (a) comply with the rules of the scheme;
  - (b) comply with a binding settlement determined by the scheme in response to a complaint;
  - (c) comply with a binding settlement determined by the scheme in an indemnity dispute.
- (3) If the District Court is satisfied that the terms of a binding settlement are manifestly unreasonable, the court's order under subsection (2)(b) may modify the terms of the binding settlement, but only to the extent that the modification results in a binding settlement that could have been made under the dispute resolution scheme.
- (4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by the District Court for the payment of a sum of money.
- (5) A reference in this section to a member includes a reference to a person who was a member of the dispute resolution scheme at the relevant time but is no longer a member at the time of the application or order.

Section 97(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 97(2): amended, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 97(2)(c): inserted, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 97(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 97(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **98 Offence to fail to comply with District Court order**

- (1) A member or former member of the dispute resolution scheme who, knowing that the member or former member is subject to an order made under section 97, fails to comply with the order, or fails to comply with the order within the time or in the manner required by the order, commits an offence and is liable on conviction to a fine not exceeding \$100,000.
- (2) Nothing in this section applies to an order or part of an order of the District Court referred to in section 97(4).

Section 98(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 98(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## Subpart 2—Financial statements of customer and community trusts

### **99 Customer and community trusts must prepare and submit for audit financial statements**

The trustees of a customer trust and the trustees of a community trust must, within 4 months after the end of each financial year of the trust,—

- (a) prepare financial statements in accordance with generally accepted accounting practice (within the meaning of section 8 of the Financial Reporting Act 2013) in relation to the trust for that financial year; and
- (b) submit those financial statements to an auditor for audit.

Compare: 1992 No 122 s 158A

Section 99(a): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

### **100 Publication of audited financial statements**

- (1) The trustees of a customer trust and the trustees of a community trust must make publicly available the financial statements referred to in section 99 and the auditor's report on those financial statements.
- (2) The trustees must also notify the fact that copies of the documents referred to in subsection (1) are so available (and where) by advertisement in the news section of 2 separate editions of each newspaper that is widely read by custom-

ers of the customer trust or by persons in the community of the community trust (as the case requires).

Compare: 1992 No 122 s 158B

### **101 Auditor of trusts**

- (1) The trustees of a community trust and the trustees of a customer trust must, in each financial year, hold an annual meeting of beneficiaries at which the beneficiaries appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual meeting of beneficiaries.
- (2) The trustees may fill any casual vacancy in the office of auditor by appointing an auditor to hold office until the conclusion of the next annual meeting of beneficiaries (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).
- (3) The fees and expenses of the auditor must be fixed—
  - (a) at the annual meeting of beneficiaries or in the way the beneficiaries determine at the meeting, if the auditor is appointed at the annual meeting:
  - (b) by the trustees, if the auditor is appointed by the trustees.
- (4) An auditor of a customer trust or community trust—
  - (a) must be a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013) and, in selecting an auditor, the beneficiaries may seek the advice of the Auditor-General:
  - (b) must not be a trustee, a director, an employee, or an agent of the trust or of any distributor owned by the trust, or be otherwise disqualified from being an auditor under section 36(4)(b) and (d) of the Financial Reporting Act 2013.
- (5) *See* sections 37 to 39 of the Financial Reporting Act 2013 (which provide for the appointment of a partnership and access to information in relation to a customer trust or community trust).
- (6) In addition, sections 207B and 207T to 207W of the Companies Act 1993 apply in relation to the auditor.
- (7) Those sections of the Companies Act 1993 apply as if references to a company were to a trust, references to a director were to a trustee, references to a board were to the trustees, references to shareholders were to beneficiaries, references to a subsidiary were to a distributor owned by the trust and the distributor's subsidiaries, and all other necessary modifications were made.

Compare: 1992 No 122 s 158C

Section 101(4): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 101(5): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 101(6): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 101(7): inserted, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

## **102 Procedures for annual meeting to appoint auditor**

- (1) The trustees must give no less than 14 days' notice of the annual meeting of beneficiaries to appoint an auditor in the news section of 2 separate editions of each newspaper that is widely read by customers of the customer trust or by persons in the community of the community trust (as the case requires).
- (2) Every beneficiary has 1 vote.
- (3) The quorum for the annual meeting is 20 beneficiaries.
- (4) No business may be transacted at the annual meeting if a quorum is not present.

Compare: 1992 No 122 s 158D

## **103 Auditor-General to be auditor if no other auditor appointed**

- (1) If no auditor is appointed in accordance with section 101(1) or a casual vacancy in the office of auditor is not filled within 1 month after the vacancy occurring in accordance with section 101(2), the Auditor-General must be the auditor of a customer trust or community trust.
- (2) The trustees of a customer trust or community trust must, within 5 working days after subsection (1) becoming applicable, give written notice to the Auditor-General of this fact.
- (3) If the Auditor-General becomes the auditor of a trust, the sections and Parts of the Public Audit Act 2001 listed in section 19 of that Act apply to the trust, until an auditor is appointed at an annual meeting of beneficiaries, as if references in those sections to a public entity were references to the trust and with any other necessary modifications.

Compare: 1992 No 122 s 158E

## **104 Offences, enforcement, and application of sections 99 to 103**

- (1) The trustees of a customer trust and the trustees of a community trust must comply with sections 99 to 103, rather than section 46A of the Energy Companies Act 1992.
- (2) Every trustee commits an offence and is liable on conviction to a fine not exceeding \$200,000 who, without lawful justification or excuse, knowingly acts in breach of, or fails to comply in any respect with, any provision of sections 99 to 103.
- (3) Except as provided in subsection (1), nothing in sections 99 to 103 limits any other enactment or rule of law concerning the maintenance and auditing of the financial statements of a trust.
- (4) For the purpose of enforcing sections 99 to 103 and any regulations made under section 114, the Authority's monitoring, investigation, and enforcement

powers in Part 2 apply to trustees of customer trusts and trustees of consumer trusts as if those trustees were industry participants.

Compare: 1992 No 122 s 158F

Section 104(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### Subpart 3—Continuance of supply

#### 105 Continuance of distributors' supply obligation

- (1) This section applies to a distributor who, in relation to any place,—
  - (a) is, immediately before the repeal by this Act of section 62 of the Electricity Act 1992, prohibited from ceasing to supply line function services to the place without the prior consent of either the Minister or every consumer who would be affected by the cessation of those services; or
  - (b) is the successor in business to a distributor referred to in paragraph (a).
- (2) A distributor to whom this section applies must, in relation to the place referred to in subsection (1), either—
  - (a) supply line function services to the place so that the place is within the distributor's network; or
  - (b) supply the place with electricity from an alternative source.
- (3) The obligation in subsection (2) is subject to anything to the contrary in the Electricity Act 1992, any regulations made under section 169 of that Act, or any written agreement, entered into before this section comes into force, between the distributor and a landowner who is, or would be but for the agreement, affected by the obligation.
- (4) A distributor who is obliged under subsection (2) to supply line function services or electricity from an alternative source to a place commits an offence, and is liable on conviction to a fine not exceeding \$10,000 and to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues, if the distributor,—
  - (a) having been made aware that supply to the place has ceased in the circumstances described in section 106(2)(a), fails to resume supply as soon as is reasonable in the circumstances; or
  - (b) knowingly ceases to supply line function services or electricity (as the case may be) to the place, other than in the circumstances described in section 106(2)(b) or (c).
- (5) In this section and sections 106 to 108,—

**landowner**, in relation to a place, means a person who owns the lines or electrical installations at the place, being lines or electrical installations to which a distributor's lines are connected



**supplying electricity from an alternative source** means supplying a place with electricity from a source other than a distributor's network, and includes, if necessary, supplying the associated line function services to deliver that electricity.

Compare: 1992 No 122 s 62

Section 105(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **106 Cessation and suspension of supply obligation**

- (1) A distributor's obligation under section 105(2) comes to an end with respect to a place if—
  - (a) the landowner and (if the landowner is not the consumer) the consumer, or the Minister, agree in writing to the obligation coming to an end; or
  - (b) the obligation is assigned to, or assumed by, a successor in business to the distributor.
- (2) The obligation in section 105(2) is suspended, in relation to any place, in any of the following circumstances:
  - (a) the supply of line function services or electricity from an alternative source has ceased as a result of circumstances beyond the control of the distributor (such as fire, earthquake, or inevitable accident);
  - (b) the supply of line function services or electricity from an alternative source needs to cease for reasons of safety or in order to carry out maintenance or upgrading work;
  - (c) the distributor, or a retailer, is entitled to cease supply (whether of line function services or electricity) because of a failure to pay money due on account to the distributor or retailer in respect of the place.
- (3) If the supply of line function services or electricity from an alternative source ceases in any of the circumstances described in subsection (2), the cessation may continue only for as long as the reason for cessation continues.

### **107 Proposal to supply electricity from alternative source**

- (1) A distributor to whom section 105 applies, and who proposes to comply with section 105(2) by supplying a place with electricity from an alternative source, must give at least 6 months' notice of the proposal to—
  - (a) every consumer affected by the proposal; and
  - (b) if the landowner is not the consumer, the landowner; and
  - (c) every retailer who supplies electricity to the place; and
  - (d) the public in the district in which the place is situated.
- (2) The notice to each affected consumer and any landowner must—
  - (a) outline the proposal; and

- (b) describe how, under the proposal, the consumer's reasonable electricity needs will be met; and
  - (c) give the consumer and any landowner a reasonable period in which to comment on the proposal.
- (3) If the distributor is unable to locate a landowner of a place after taking reasonable steps to do so, the distributor is not required to give notice to the landowner under subsection (1).
- (4) The notice to the public must be by way of a notice—
  - (a) published in a newspaper that is published at least weekly and that circulates in the district to which the proposal relates; and
  - (b) that outlines the proposal and specifies the time within which any person may comment on it.
- (5) The distributor must have regard to any comments received in response to the proposal.

#### **108 Application of other enactments**

- (1) Any obligations under the following that apply to retailers apply to a distributor in connection with any supply by the distributor of electricity from an alternative source, if that supply is in fulfilment of the supply obligation in section 105(2):
  - (a) obligations under this Act, the regulations, and the Code;
  - (b) obligations under the Electricity Act 1992 and any regulation made under that Act.
- (2) However, regulations made under section 113 about low fixed charge tariff options do not apply to a distributor in respect of consumers to whom the distributor supplies electricity from an alternative source.
- (3) If a distributor, during a trial or transition in the course of complying with section 105(2), both supplies a place with line function services that connect the place to a network and, at the same time, supplies the place with electricity from an alternative source, the distributor is not to be treated as thereby being involved in generation or retailing for the purposes of Part 3.
- (4) For the purposes of subpart 9 of Part 4 of the Commerce Act 1986, the Commerce Commission must treat the costs of providing electricity to a place from an alternative source, and any cost arising in respect of a place from an agreement under section 106(1)(a), as if the costs were the cost of providing electricity lines services (as defined in section 54C of the Commerce Act 1986).

## **Part 5**

### **Miscellaneous**

#### **Subpart 1—Regulations**

##### **109 Regulations identifying industry participants and market operation service provider roles**

The Governor-General may, by Order in Council made on the recommendation of the Minister, given after consulting the Authority, make regulations for the following purposes:

- (a) identifying which industry service providers, in addition to those listed in section 7(2), are industry participants:
- (b) identifying market operation service provider roles that are additional to those listed in the definition of market operation service provider in section 5.

##### **110 Class exemptions relating to registration and Code compliance**

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister responsible for Part 2, given after receiving a recommendation from the Authority, make regulations that do either or both of the following:

- (a) identify a class of industry participants that is exempt from the obligation in section 9(1)(a) to register:
- (b) identify a class of industry participants that is exempt from the obligation in section 9(1)(b) to comply with the Code or specific provisions of the Code.

(2) Regulations made under subsection (1)(b) may exempt a class of industry participants from all or specified provisions of the Code.

##### **111 Class exemptions relating to membership of dispute resolution scheme**

The Governor-General may, by Order in Council made on the recommendation of the Minister of Consumer Affairs, make regulations identifying a class of industry participants that is exempt from the obligation in section 96(1) to be a member of a dispute resolution scheme.

Section 111: amended, on 12 December 2012, by section 4 of the Electricity Industry Amendment Act 2012 (2012 No 102).

##### **112 Regulations relating to monitoring, investigating, and enforcing Code**

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister responsible for Part 2, given after consulting the Authority, make regulations for all or any of the following purposes:

- (a) requiring industry participants to report breaches or possible breaches of the Code, and prescribing procedures relating to such reporting:

- (b) prescribing the practices and procedures of the Authority in relation to monitoring compliance with the Code:
  - (c) prescribing the practices and procedures of the Authority and the Rulings Panel in relation to the investigation of breaches and possible breaches of the Code (including the appointment and powers of investigators) and other enforcement measures:
  - (d) prescribing the information that the Authority must or may require from industry participants generally, or classes of industry participants, and regulating what it must or may do with such information:
  - (e) regulating the membership and operation of the Rulings Panel:
  - (f) identifying the kinds of appeals and disputes that may be determined by the Rulings Panel:
  - (g) prescribing, both generally and in relation to specific kinds of appeal or dispute, practices and procedures of the Rulings Panel for dealing with appeals and disputes, whether those appeals and disputes are identified in the regulations or the Code:
  - (h) prescribing determinations, orders, or directions, or imposing limits on any determinations, orders, or directions, that the Rulings Panel may make in relation to specific kinds of appeals and disputes (whether those appeals and disputes are identified in the regulations or the Code), and providing for any associated rights of appeal:
  - (i) restricting or limiting the amount of liability of, or the amount of any penalty that may be imposed upon, an industry participant or class of industry participant:
  - (j) identifying regulations the breach of which are to be treated as a breach of the Code:
  - (k) providing for offences, punishable on conviction by a fine not exceeding \$20,000, for breaching any regulation made under this section or breaching any order made by the Rulings Panel under the regulations.
- (2) The requirement in subsection (1) to consult with the Authority does not apply to the first regulations made under this section if—
- (a) the regulations largely correspond to Parts 4 to 8 of the Electricity Governance Regulations 2003, adapted as necessary for consistency with this Act; and
  - (b) the Minister or the Electricity Commission has consulted with interested parties on any material changes.

Compare: 1992 No 122 ss 172D, 172K(a)

Section 112(1)(k): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**113 Regulations about tariffs and other consumer issues**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister given after the consultation referred to in subsection (4), make regulations for the purpose of—
  - (a) regulating the type of tariffs for fixed and other charges that must or may be offered to domestic consumers; and
  - (b) promoting the fair treatment by distributors and retailers of domestic consumers and small businesses; and
  - (c) enabling the protection of rural consumers, and consumers supplied with electricity from an alternative source under section 105, from unfair rates of change in the prices charged to them.
- (2) Regulations made under subsection (1) may, without limitation, do any of the following:
  - (a) require low fixed charge tariff options to be made available to consumers who use less than a prescribed amount of electricity, and impose requirements (including amounts, or ways of calculating amounts) on industry participants in order to ensure that those tariffs result in a benefit to domestic consumers who opt for them:
  - (b) provide for regional variations in the application of the regulations relating to low fixed charge tariff options:
  - (c) require distributors or retailers, or both, to provide information relating to the types of tariffs offered to consumers, including to low fixed charge tariffs:
  - (d) regulate distributors' and retailers' dealings with domestic consumers and small businesses, including requiring distributors and retailers to comply with any policies, practices, procedures, guidelines, or model contracts or clauses in contracts, that are set out or referred to in the regulations:
  - (e) regulate the rate of change in the prices charged by distributors to rural consumers on a network as compared with the rate of change in the prices charged to comparable non-rural consumers on the same network:
  - (f) regulate the rate of change in the prices charged to consumers supplied with electricity from an alternative source under section 105:
  - (g) provide for offences, punishable on conviction by a fine prescribed by the regulations but not exceeding \$100,000, for breaching any regulation made under this section.
- (3) Regulations made under this section may include any other provisions necessary or desirable for monitoring and enforcing compliance with the regulations.
- (4) Before recommending an Order in Council under this section, the Minister must—

- (a) consult with the Minister of Consumer Affairs; and
  - (b) obtain and consider advice from the Authority on the impact of the proposed Order in Council on the promotion of competition in, the reliable supply by, and the efficient operation of, the electricity industry.
- (5) In this section,—
- rural consumer** means a consumer in a sparsely populated area
- small business** means a non-domestic consumer that consumes less than 40 MWh per year.
- (6) If any material is incorporated by reference in the regulations, Schedule 1 applies.
- (7) The Electricity (Low Fixed Charge Tariff Option for Domestic Consumers) Regulations 2004 are deemed to have been made under this section.

Compare: 1992 No 122 ss 172B, 172D

Section 113(2)(g): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **114 Regulations promoting accountability in customer trusts and community trusts**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the purpose of promoting the accountability of customer trusts and community trusts.
- (2) Regulations made under this section may, without limitation, do any of the following:
- (a) require trustees to disclose specified information to beneficiaries of the trust:
  - (b) specify procedures concerning requests by beneficiaries for information from trusts and trustees, responses to such requests, and rights to review responses:
  - (c) require trustees to hold meetings for beneficiaries, and regulate the practices and procedures associated with those meetings.
- (3) Regulations made under this section may include provisions necessary or desirable for monitoring and enforcing compliance with the regulations, including making it an offence, punishable by a fine not exceeding \$10,000, to fail to comply with a requirement of the regulations.
- (4) If any material is incorporated by reference in the regulations, Schedule 1 applies.

Compare: 1992 No 122 s 172C

#### **115 General regulation-making power**

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the matters in respect of which fees or charges are payable under this Act or the regulations, the amounts of those fees or charges, or the method or rates by which they are to be assessed, the persons liable for payment of those fees or charges, and the circumstances in which the payment of the whole or any part of those fees or charges may be refunded or waived:
- (b) providing for such other matters as are contemplated by, or are necessary for giving full effect to, this Act and for its due administration.

Compare: 1998 No 88 s 87

## Subpart 2—State-owned enterprise asset reconfiguration and miscellaneous matters

### *State-owned enterprise asset reconfiguration: General provisions*

#### **116 Interpretation for subpart**

In this subpart, unless the context otherwise requires,—

**board** means the board of directors of a State generator

**consent authority** means a consent authority under the Resource Management Act 1991

**Genesis** means Genesis Energy Limited, and includes any subsidiary of that company

**Meridian** means Meridian Energy Limited, and includes any subsidiary of that company

**Mighty River** means Mighty River Power Limited, and includes any subsidiary of that company

**permit** means a water permit or a discharge permit granted, or deemed to be granted, under the Resource Management Act 1991

**shareholding Ministers** means the Minister of Finance and the Minister for State Owned Enterprises

**State generator** means each of Genesis, Meridian, and Mighty River

**Waitaki Power Scheme** means the activities allowed by the resource consents numbered from CRC905301.1 to CRC905366.1 relating to the generation of electricity within the Waitaki River system.

Compare: 1998 No 88 s 97

Section 116 **Genesis**: amended, on 21 November 2013, by clause 4 of the State-Owned Enterprises (Genesis Energy Limited) Order 2013 (SR 2013/435).

#### **117 Directions that may be given by shareholding Ministers**

- (1) The purpose of this section is to improve competition in both wholesale and retail electricity markets, and make improvements in security of supply, by adjusting the configuration of assets held by State generators.

- (2) The shareholding Ministers may, at any time before 1 November 2011, give to the board of all or any of the State generators 1 or more of the following directions:
- (a) a direction requiring the State generators to enter into 1 or more long-term contracts (of up to 15 years' duration) with each other for financial hedges for electricity for the purpose of this section:
  - (b) a direction requiring the transfer of ownership (such as by way of sale and purchase agreement) from Meridian to Genesis of all assets and any rights and obligations relating to Tekapo A and Tekapo B generating stations:
  - (c) a direction requiring Meridian to purchase from the Crown all assets and any rights and obligations of the Crown relating to the Whirinaki generating station:
  - (d) 1 or more directions requiring the State generators to enter into 1 or more contracts that are necessary or desirable to implement a direction under any of paragraphs (a) to (c) and specifying some or all of the terms and conditions of those contracts.

Compare: 1998 No 88 s 98(1)

### **118 Process for giving directions**

- (1) The shareholding Ministers—
- (a) may at any time advise the relevant board of their intentions or expectations with regard to directions to be given under section 117; and
  - (b) must advise the relevant board of the matters to be referred to in a direction to be given under section 117 at least 14 days before the direction is given; and
  - (c) must consider any comments that the relevant board makes to them relating to the direction within 10 days after the date on which the board receives the advice under paragraph (b).
- (2) Every direction given under section 117 must be in writing.
- (3) The Minister for State Owned Enterprises must—
- (a) present a copy of any direction given under section 117 to the House of Representatives within 12 sitting days after the direction is given to the board; and
  - (b) publish a copy of it in the *Gazette* as soon as practicable after giving the direction.
- (4) However, the Minister for State Owned Enterprises may withhold from disclosure under subsection (3) any part of a direction that he or she considers is commercially sensitive, and in that case must substitute a note of explanation for the parts withheld.

Compare: 1998 No 88 s 98(2), (7)



### **119 Legal effect of directions**

- (1) The shareholding Ministers may give a direction under section 117 despite anything to the contrary in sections 4 to 7 of the State-Owned Enterprises Act 1986 or in the Companies Act 1993 or any other Act or rule of law.
- (2) The board must comply with a direction given to it under section 117 despite anything to the contrary in the State-Owned Enterprises Act 1986, the Companies Act 1993, or any other Act or rule of law.
- (3) Neither the Crown nor any shareholding Minister is in breach of, or liable to any person under, sections 4 to 7 of the State-Owned Enterprises Act 1986, the Companies Act 1993, or any other Act or rule of law by reason of giving a direction under section 117 or advice under section 118.
- (4) No State generator, and no director, employee, or contractor of, or adviser to, a State generator, is in breach of, or liable to any person under, the State-Owned Enterprises Act 1986, the Companies Act 1993, or any other Act or rule of law by reason of any act or omission reasonably believed by the person to be necessary or desirable—
  - (a) to give effect to, or as a consequence of, a direction given under section 117; or
  - (b) as a result of advice given under section 118.
- (5) In subsections (3) and (4), the references to any other Act do not extend to the Commerce Act 1986 (but section 130 provides specific authorisations under that Act).
- (6) To avoid doubt, subsections (3) and (4) do not give any protection from liability for breach of, or default under, any agreement.
- (7) No director, employee, or contractor of, or adviser to, a State generator is in breach of, or default under, any agreement, or in breach of confidence, or in the position of having committed any tort (including negligence) or other civil wrong, by reason of any act or omission referred to in subsection (4).

Compare: 1998 No 88 s 98(3)–(6)

#### *Asset reconfiguration provisions in respect of Waitaki Power Scheme*

### **120 Purposes of sections 121 to 126**

The purposes of sections 121 to 126 are—

- (a) to facilitate the transfer to Genesis of the permits in the Waitaki Power Scheme relating to the Tekapo A and Tekapo B generating stations; and
- (b) to maintain, despite Meridian no longer controlling the entire Waitaki Power Scheme,—
  - (i) the conditions of the permits that relate to environmental effects; and

- (ii) the rights and obligations as specified in the conditions of the permits; and
- (iii) the rights and obligations as specified in the existing agreements referred to in section 123.

**121 Process for Meridian and Genesis to recommend changes to permit conditions in respect of Waitaki Power Scheme**

- (1) Meridian and Genesis must, in consultation with the consent authority, identify, and agree (if possible) any recommended changes to the conditions of the permits that are, in the opinion of Meridian and Genesis, necessary to meet the purposes set out in section 120.
- (2) The Minister, by notice to Meridian and Genesis, may specify a date by which the recommended changes must be provided to the Minister.
- (3) Meridian and Genesis may provide separate or joint recommendations.
- (4) Meridian and Genesis must provide the recommended changes to the Minister by the date specified by the Minister.
- (5) The Minister must, as soon as practicable after receiving any recommended changes, notify the consent authority of the recommended changes, and specify a date by which the consent authority may make representations to the Minister about whether those changes would maintain the effects on the environment that are achieved by the current conditions of the permits.

**122 Minister may change permit conditions by order**

- (1) The Minister may, after consultation with the Minister for the Environment, make an order changing 1 or more of the conditions of a permit.
- (2) The Minister may make an order only if the Minister is satisfied that—
  - (a) the changes to the conditions are needed only because of the transfer of the Tekapo A and Tekapo B generating stations; and
  - (b) it is not reasonably practicable to achieve the purposes set out in section 120 by means of a direction requiring Meridian and Genesis to enter into 1 or more contracts with each other; and
  - (c) changes to the conditions achieve the purpose set out in section 120(b) in all material respects; and
  - (d) either or both of Meridian and Genesis have recommended changes to the conditions after consultation with the consent authority; and
  - (e) the Minister has considered any representations made by the consent authority by the date specified under section 121(5).
- (3) An order under this section—
  - (a) must be notified in the *Gazette*, and publicised by the Minister and the consent authority, as soon as practicable after it is made; and

- (b) takes effect on a date specified in the order (which may be on or before the date that the permits are transferred to Genesis under the Resource Management Act 1991 but may not be before the date of the notice in the *Gazette*); and
  - (c) takes effect as if it were a change to a condition that had been made by the consent authority; and
  - (d) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4) The Minister must present a copy of the order to the House of Representatives in accordance with section 4 of the Regulations (Disallowance) Act 1989.
- Section 122(3)(d): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### **123 Existing agreements with other parties in respect of Waitaki Power Scheme**

- (1) This section and section 124 apply to the following (the **existing agreements**):
- (a) the agreements listed in Schedule 5; and
  - (b) any other written agreements to which Meridian is a party (other than employment agreements)—
    - (i) that, in the opinion of the Minister, relate directly to the ownership or operation of either or both of Tekapo A and Tekapo B generating stations and that Meridian will no longer be able to perform, or no longer requires, as a result of the transfer of ownership of the generating stations; and
    - (ii) in respect of which the Minister has given notice in the *Gazette* that this subpart applies.
- (2) No existing agreement is terminated only because Meridian no longer controls the entire Waitaki Power Scheme.
- (3) However, a party to an existing agreement (other than Meridian or Genesis) may, by notice in writing to the Minister, Meridian, and Genesis, terminate the party's involvement in the agreement in accordance with section 124(2)(c) or (9).

### **124 Reconfiguration of existing agreements**

- (1) The shareholding Ministers may include, in a direction given under section 117(2)(b), 1 or more of the following:
- (a) a direction requiring Meridian and Genesis to negotiate the retention or transfer, or the sharing or splitting (as the case may be), of the existing agreements in a way that meets the purposes set out in section 120:

- (b) a direction requiring either or both of Meridian and Genesis to offer to any other parties that have rights or obligations under the existing agreements (**third parties**) 1 or more replacement contracts that are necessary to meet the purposes set out in section 120:
  - (c) dates by which things must be completed, for example,—
    - (i) dates by which replacement contracts must be offered:
    - (ii) dates by which choices must be made under subsection (2) or (9).
- (2) A third party that has rights or obligations under an existing agreement must choose, by the date specified under subsection (1)(c),—
  - (a) to enter into any replacement contract that is offered; or
  - (b) for the existing agreement to continue in accordance with a direction to be given under subsection (4); or
  - (c) to terminate the existing agreement.
- (3) If a third party chooses to enter into any replacement contract that is offered, the existing agreement ceases to have effect to the extent that it is replaced by the replacement contract.
- (4) If a replacement contract has not been entered into by the date specified in a direction under subsection (1)(c), the shareholding Ministers may give to the boards of Meridian and Genesis a further direction specifying—
  - (a) which existing agreements Meridian must remain a party to; and
  - (b) which existing agreements Genesis must become a party to; and
  - (c) which agreements are to be shared between the generators by Genesis becoming a party to the agreements in addition to Meridian; and
  - (d) which agreements are to be split, by Meridian remaining a party in relation to certain provisions and Genesis replacing Meridian as a party in relation to other provisions.
- (5) If a direction is given under subsection (4)(a) in respect of an existing agreement, Meridian and the third parties to the agreement remain subject to the agreement as if this Act had not been passed.
- (6) If a direction is given under subsection (4)(b) in respect of an existing agreement, all rights and obligations of Meridian under the agreement become the rights and obligations of Genesis on the date specified in the direction.
- (7) If a direction is given under subsection (4)(c) in respect of an existing agreement, all rights and obligations of Meridian under the agreement become the joint and several rights and obligations of Meridian and Genesis on the date specified in the direction.
- (8) If a direction is given under subsection (4)(d) in respect of an existing agreement, on the date specified in the direction the rights and obligations of Meridian under the agreement remain with Meridian except to the extent that any of those rights and obligations are transferred to Genesis.

- (9) However, a party to an existing agreement in respect of which a direction is given under subsection (4) (other than Meridian or Genesis) may terminate the party's involvement in the agreement, by notice in writing to the Minister, Meridian, and Genesis given by the further date specified under subsection (1)(c).
- (10) In this section, **rights and obligations** includes entitlements and liabilities.

#### **125 Other provisions about directions**

- (1) Sections 118 and 119 apply to any direction given under section 124(4), but nothing in this section requires the terms and conditions of any agreement to be disclosed under section 118(3).
- (2) This section and section 124 do not limit section 117.

#### **126 Interface with Resource Management Act 1991**

- (1) Sections 88 to 121 and 127 of the Resource Management Act 1991 do not apply in respect of any matters under sections 121 to 125.
- (2) There are no other appeal rights in respect of any matters under sections 121 to 125.
- (3) To avoid doubt, the Waitaki Catchment Water Allocation Regional Plan is not changed by this Act, and its effect on permits that are transferred or changed under this subpart is not affected by the transfer or change.

#### *Asset reconfiguration provision in respect of Whirinaki*

#### **127 Whirinaki**

- (1) The Minister may terminate the Whirinaki agreement, at any time before its termination date, by notice in writing to the Authority.
- (2) The Minister must publicise the termination as soon as practicable.
- (3) Until the Whirinaki agreement terminates, the Whirinaki agreement continues as if—
- (a) the Authority were the Commission and the reserve energy scheme were continuing; and
  - (b) this Act had not been passed.
- (4) In this Part, the **Whirinaki agreement** means the reserve generation capacity agreement entered into between the Electricity Commission and Her Majesty the Queen in right of New Zealand.

#### *Levy of industry participants*

#### **128 Levies**

- (1) Every industry participant (or prescribed class of industry participant) must pay to the Authority on behalf of the Crown a levy prescribed by regulations.

- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy.
- (3) The levy must be prescribed on the basis that the following costs should be met fully out of the levy:
  - (a) the costs of the Authority in performing its functions and exercising its powers and duties under this Act and any other enactment; and
  - (b) the costs that are associated with the Whirinaki agreement referred to in section 127, and any costs incurred by the Crown that are associated with the Whirinaki generating plant after the Whirinaki agreement is terminated; and
  - (c) a portion of the costs of the Energy Efficiency and Conservation Authority in performing its functions and exercising its powers and duties under the Energy Efficiency and Conservation Act 2000 where the size of the portion to be met by levies under this Act is determined by the Minister; and
  - (d) the costs incurred by the Crown before 1 May 2014 in promoting to customers the benefits of comparing and switching retailers, subject to both of the following limits:
    - (i) a limit of \$5 million per financial year; and
    - (ii) an overall limit of \$15 million for the period commencing on 1 November 2010 and ending with 30 April 2014; and
  - (e) the costs of the Rulings Panel; and
  - (f) the costs of establishing and operating any regulated dispute resolution scheme in respect of the electricity industry under Schedule 4; and
  - (g) the costs incurred by the Crown in relation to developing and publishing regional electricity supply and demand forecasts and scenarios, and related information and analysis, for the purpose of assisting investment planning by industry participants; and
  - (h) for the first financial year to which the levy applies, the costs incurred by the Crown on or after 1 January 2010 relating to establishing the Authority, disestablishing the Electricity Commission, transferring functions to other agencies, and preparing the initial Code; and
  - (i) the costs of collecting the levy money.
- (4) The levy may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.
- (5) The regulations may—
  - (a) specify the amount of the levy or method of calculating or ascertaining the amount of the levy:

- (aa) include, in the method of calculating or ascertaining the amount of the levy, provisions related to any shortfall in recovering, or over-recovery of, the actual costs from a previous year:
  - (b) include or provide for including in the levy any shortfall in recovering the actual costs:
  - (c) refund or provide for refunds of any over-recovery of those actual costs:
  - (d) provide for different levies for different classes of industry participants:
  - (e) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:
  - (f) provide for the payment and collection of levies:
  - (g) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:
  - (h) exempt or provide for exemptions from, or provide for waivers of, the whole or any part of the levy for any case or class of cases.
- (6) The levy for a financial year that starts after the Authority begins to carry out any additional function under this Act or any other Act may cover the costs of performing that additional function, irrespective of the fact that the regulations may be made and come into effect after the start of the financial year.
- (7) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Authority on behalf of the Crown.
- (8) The Authority must pay into a Crown Bank Account, and separately account for, each levy payment.

Section 128(3)(c): amended, on 1 July 2017, by section 4(1) of the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27).

Section 128(5)(aa): inserted, on 1 July 2017, by section 4(2) of the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27).

## **129 Authority consultation about request for appropriation**

- (1) The Authority must, before submitting a request to the Minister seeking an appropriation of public money for the following year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of levies under section 128, consult about that request with—
- (a) those industry participants who are liable to pay a levy under that section; and
  - (b) any other representatives of persons whom the Authority believes to be significantly affected by a levy.
- (2) The Authority must, at the time when the request is submitted, report to the Minister on the outcome of that consultation.

- (3) The Ministry must consult in a like manner in respect of a levy to recover costs referred to in section 128(3)(g).
- (4) This section applies to requests in respect of the financial year beginning 1 July 2011 and later financial years.

Section 129 heading: amended, on 1 July 2017, by section 5(1) of the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27).

Section 129(1): amended, on 1 July 2017, by section 5(2) of the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27).

Section 129(2): amended, on 1 July 2017, by section 5(3) of the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27).

### **129A Energy Efficiency and Conservation Authority consultation about request for appropriation**

- (1) The Energy Efficiency and Conservation Authority must, before submitting a request to the Minister seeking an appropriation of public money for the following year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of levies under section 128(3)(c), consult about that request with—
  - (a) those industry participants who are liable to pay a levy under that section; and
  - (b) any other representatives of persons whom the Energy Efficiency and Conservation Authority believes to be significantly affected by a levy.
- (2) The Energy Efficiency and Conservation Authority must, at the time when the request is submitted, report to the Minister on the outcome of that consultation.
- (3) This section applies to requests in respect of the financial year beginning 1 July 2018 and later financial years.

Section 129A: inserted, on 1 July 2017, by section 6 of the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27).

### *Specific authorisations for purposes of Commerce Act 1986*

#### **130 Specific authorisations for purposes of Commerce Act 1986**

- (1) The following are specifically authorised for the purpose of section 43 of the Commerce Act 1986:
  - (a) anything done or omitted by the Authority, the Rulings Panel, or an industry participant that is reasonably necessary to comply with, enforce, or otherwise administer this Act, the regulations, or the Code; and
  - (b) the giving by the shareholding Ministers of a direction under this subpart; and
  - (c) anything done or omitted by a State generator, or a director or employee of a State generator, if the act or omission is reasonably necessary to—
    - (i) comply with a direction given under this subpart; or



- (ii) give effect to a contract entered into pursuant to a direction under section 117(2)(d); and
  - (d) anything done or omitted to be done by an industry participant for the purpose of developing and operating an active market for trading financial hedge contracts for electricity.
- (2) Section 47 of the Commerce Act 1986 does not apply to any transfer of assets undertaken by a State generator pursuant to a direction given under section 117(2)(b) or (c).

Compare: 1992 No 122 s 172ZR

*Distributors' and grid owners' exemption from liability*

**131 Distributors and grid owners exempt from liability for certain outages**

No claim for damages may be made against a distributor or the owner of the national grid in relation to damage caused by, or arising from, an outage that resulted from the distributor or grid owner complying with—

- (a) the regulations or the Code; or
- (b) any instruction issued by the Authority or the system operator under the regulations or the Code that the distributor or grid owner was obliged to comply with.

**Subpart 2A—Secondary networks**

Subpart 2A: inserted, on 1 July 2017, by section 7 of the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27).

**131A Application of electricity industry legislation to secondary networks**

- (1) This Act, the regulations, and the Electricity Industry Participation Code apply, with all necessary modifications, to a secondary network provider as if that provider were a distributor.

- (2) In this section,—

**secondary network** means equipment that—

- (a) is used, designed, or intended for use in, or in connection with, the conveyance of electricity; and
- (b) is indirectly connected to the national grid

**secondary network provider** means a business that—

- (a) is engaged in the conveyance of electricity on a secondary network; and
- (b) provides services that are substantially similar to the services provided by a distributor.

Section 131A: inserted, on 1 July 2017, by section 7 of the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27).

### Subpart 3—Transitional and consequential provisions

#### 132 Interpretation

In this subpart, unless the context otherwise requires,—

**commencement date** means the date on which this section comes into force

**Electricity Commission** means the Electricity Commission continued by section 172M of the Electricity Act 1992

**property**—

- (a) means every type of property; and
- (b) includes money, and every type of estate and interest in property

**suitable alternative position**, in relation to an employee, means a position—

- (a) for which the employee has the appropriate skills and experience; and
- (b) the pay and conditions of which are, in their overall effect, no less favourable to the employee than those applying to the employee immediately before the date of the employee's transfer to that position

**transferred employee** means a person who,—

- (a) immediately before the commencement date, is employed by the Electricity Commission; and
- (b) is transferred to the Authority under section 134(1)(f).

#### *Dissolution of Electricity Commission*

#### 133 Electricity Commission dissolved

- (1) The Electricity Commission is dissolved.
- (2) The members of the board of the Electricity Commission cease to hold office at the close of the day before the commencement date.

#### 134 Consequences of dissolution

- (1) On the commencement date,—
  - (a) the functions and powers of the Electricity Commission under any enactment vest in the Authority, but only to the extent that those functions and powers are consistent with the functions and powers of the Authority under this Act (subject to subsection (5)); and
  - (b) all property belonging to the Electricity Commission vests in the Authority; and
  - (c) all information held by the Electricity Commission is held by the Authority; and
  - (d) all money payable to or by the Electricity Commission becomes payable to or by the Authority; and

- (e) all rights, liabilities, contracts, entitlements, and engagements of the Electricity Commission become the rights, liabilities, contracts, entitlements, and engagements of the Authority; and
  - (f) subject to section 137, every employee of the Electricity Commission becomes an employee of the Authority on the same terms and conditions as applied immediately before he or she became an employee of the Authority; and
  - (g) anything done, or omitted to be done, or that is to be done, by or in relation to the Electricity Commission is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the Authority; and
  - (h) the commencement, continuation, or enforcement of proceedings by or against the Electricity Commission may instead be commenced, continued, or enforced by or against the Authority without amendment to the proceedings; and
  - (i) the completion of a matter or thing that would, but for section 133(1), have been completed by the Electricity Commission, may be completed by the Authority.
- (2) Despite anything in subsection (1), the Authority may appoint a new chief executive or general manager to commence on or after the commencement date.
- (3) The transfer of information from the Electricity Commission to the Authority under subsection (1)(c) does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.
- (4) The dissolution of the Electricity Commission does not, by itself, affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by the Electricity Commission in relation to the performance of its functions or the exercise of its powers under any enactment:
  - (b) any proceedings commenced by or against the Electricity Commission:
  - (c) any other matter or thing arising out of the Electricity Commission's performance or exercise, or purported performance or exercise, of its functions or powers under any enactment.
- (5) Despite subsection (1)(a), it is a function of the Authority to perform any functions and exercise any powers of the Electricity Commission that are necessary or desirable for it to exercise or perform, on a temporary basis,—
- (a) in order for it to comply with section 127; or
  - (b) in order to make a reserve supply determination, as referred to in section 136; or

- (c) for the purpose of effectively managing the transition of functions from the Electricity Commission to the Authority.

Compare: 2008 No 47 Schedule 2 cl 26

### **135 References in documents to Electricity Commission**

On and after the commencement date, every reference in a document (other than an enactment) to the Electricity Commission must be read as a reference to the Authority, if—

- (a) the document was written or prepared before the commencement date; and
- (b) such a reading is consistent with this Act.

Compare: 2008 No 47 Schedule 2 cl 28

### **136 References to reserve generation capacity in resource consents**

- (1) This section applies to any condition of a resource consent, imposed before this section comes into force, that refers to a determination by the Electricity Commission that—
  - (a) reserve generation capacity is required to, or should, generate electricity; or
  - (b) reserve generation capacity is no longer required.
- (2) After the date on which the Whirinaki agreement ends, any references to determinations referred to in subsection (1) must be read as references to the Authority making a reserve supply determination, or rescinding a reserve supply determination, as the case requires.
- (3) The Authority may make or rescind a reserve supply determination only in accordance with criteria that are publicly available.
- (4) The Authority may delegate to the system operator the power under this section to make and rescind reserve supply determinations, but may not delegate the power to set the criteria published under subsection (3).
- (5) A condition of a resource consent referred to in subsection (1) may be amended or revoked in the same way as any other condition of the resource consent.

### **137 Transferred employees**

- (1) The terms and conditions of employment of a transferred employee immediately before the commencement date continue to apply in relation to that employee until—
  - (a) those terms and conditions are varied by agreement between the transferred employee and the Authority; or
  - (b) the transferred employee accepts a subsequent appointment with the Authority.

- (2) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of a transferred employee,—
  - (a) the employment agreement of that employee is to be treated as unbroken; and
  - (b) the employee's period of service with the Electricity Commission, and every other period of service of that employee that is recognised by the Electricity Commission as continuous service, is to be treated as a period of service with the Authority.
- (3) To avoid doubt, the employment of a transferred employee by the Authority does not constitute new employment for the purposes of the KiwiSaver Act 2006.
- (4) A transferred employee is not entitled to receive any payment or benefit from the Electricity Commission or the Authority on the grounds that the person's position in the Electricity Commission or Authority has ceased to exist, or the person has ceased to be an employee of the Electricity Commission as a result of the transfer to the Authority, if—
  - (a) the employee is transferred to a suitable alternative position with the Authority; or
  - (b) the person is offered a suitable alternative position by the Authority, the Commerce Commission, the Energy Efficiency and Conservation Authority, Transpower, or the Ministry, and—
    - (i) the offer is made in the period between the date on which this Act receives the Royal assent and the earlier of 1 January 2011 and the date on which the person's employment with the Authority ceases; and
    - (ii) the offer is made for employment that commences on or after the commencement date.

Compare: 2008 No 47 Schedule 2 cl 31

### **138 Government Superannuation Fund**

- (1) This section applies to every person who, immediately before the commencement date, is an employee of the Electricity Commission.
- (2) Nothing in this Act affects any entitlement under the Government Superannuation Fund Act 1956 of a person to whom this section applies.
- (3) This section is for the avoidance of doubt.

Compare: 2008 No 47 Schedule 2 cl 32

### **139 Complaints, investigations, etc, transfer to Authority**

- (1) On and from the commencement date, the Authority takes over responsibility for dealing with every matter, such as a complaint about a breach, or possible breach, of the Electricity Governance Rules 2003, or an investigation, that was

before the Electricity Commission immediately before its disestablishment, provided the matter had not, before the commencement date, been referred to the Rulings Panel (*see* section 142).

- (2) The processes, procedures, and rights of appeal set out in this Act and the regulations apply to—
  - (a) every matter referred to in subsection (1), as if the matter had arisen after the commencement date; and
  - (b) every such matter that is referred to the Authority after the commencement date and that concerns events that occurred before that date.
- (3) However, the only penalties that may be imposed in relation to a matter that arose, or events that occurred, before the commencement date are the penalties that could have been imposed at the time that the matter arose or events occurred.

#### **140 References to Electricity Governance Rules 2003 and certain regulations**

Unless the context otherwise requires, a reference in any agreement, contract, or other document to the Electricity Governance Rules 2003 or to any provision of those rules, or to the regulations listed in section 34(1) or any provision of those regulations, must be read as a reference to the Code or to the corresponding provision of the Code, as the case requires.

### *Rulings Panel*

#### **141 Members of Rulings Panel**

- (1) Every person who, immediately before the commencement date, is a member of the Rulings Panel is to be treated as if he or she had been appointed as a member under section 24 in accordance with the regulations.
- (2) However, despite section 26(3), the terms and conditions (including remuneration) of a member of the Rulings Panel to whom subsection (1) applies remain the same after the commencement date as before it, unless and until the member's appointment ends and he or she is reappointed as a member.
- (3) The chairperson and deputy chairperson of the Rulings Panel are to be treated as if they had been appointed under section 24, except that the qualification contained in section 24(2)(a) does not apply to the chairperson.

#### **142 Work of Rulings Panel**

- (1) All proceedings, appeals, disputes, or other matters before the Rulings Panel immediately before the commencement date must be dealt with as if this Act had not been enacted and as if the Electricity Governance Regulations 2003 were still in force.
- (2) All matters that are referred to, or otherwise come before, the Rulings Panel after the commencement date must be dealt with under this Act and the regulations, subject to section 139(3).

- (3) Nothing in this Act—
- (a) affects or invalidates any order made by the Rulings Panel before the commencement date; or
  - (b) affects any appeal that is or may be brought against, or relating to, a determination or order of the Rulings Panel.

*Commerce Commission*

**143 Investigations relating to separation of distribution from generation and retailing**

- (1) After the commencement date, the Commerce Commission may continue any investigations and proceedings in relation to a breach or possible breach of the Electricity Industry Reform Act 1998 as if that Act had not been repealed, but only if the Commerce Commission has, before the commencement date, confirmed in writing to a party to the investigation or proceedings that the investigation or proceeding has begun.
- (2) Any breach or possible breach of the Electricity Industry Reform Act 1998 that is not referred to the Commerce Commission before the commencement date may be referred after that date to the Authority (but may not be referred to the Commerce Commission), in which case subpart 2 of Part 3 of this Act applies to the breach or possible breach.
- (3) The Commerce Commission must, on request by the Authority, provide to the Authority any information it holds that the Authority considers is, or may be, relevant to a breach or possible breach of Part 3 of this Act.

**144 Exemptions granted under Electricity Industry Reform Act 1998**

- (1) Any exemption granted by the Commerce Commission under the Electricity Industry Reform Act 1998 from an obligation under that Act continues in force, until it is revoked or expires, as if it was granted by the Authority under this Act in respect of any corresponding obligation under this Act.
- (2) The Authority must include any exemption that is continued in force by this section in the list of exemptions that it is required to make publicly available under section 90(6).

Subpart 4—Amendments to other enactments

*Amendments to Commerce Act 1986*

**145 Amendments to Commerce Act 1986**

Sections 146 to 156 amend the Commerce Act 1986.

**146 Interpretation**

- (1) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

**Authority** means the Electricity Authority established under the Electricity Industry Act 2010

- (2) Section 2(1) is amended by repealing the definition of **Electricity Commission**.

**147 Matters covered by input methodologies**

Section 52T(1)(b) is amended by inserting “, except where another industry regulator (such as the Electricity Authority) has the power to set pricing methodologies in relation to particular goods or services” after “methodologies”.

**148 Commission’s costs in setting customised price-quality path**

- (1) The heading to section 53Y is amended by omitting “**in setting**” and substituting “**relating to assessing, setting, and reconsidering**”.
- (2) Section 53Y(1) is amended by omitting “setting” and substituting “assessing a proposal for, and setting or reconsidering,”.
- (3) Section 53Y is amended by inserting the following subsection after subsection (1):
- (1A) If the amount paid by a person in respect of a proposal for a customised price-quality path exceeds the Commission’s costs in assessing the proposal and (if applicable) setting or reconsidering the customised price-quality path, the Commission may refund the excess to the person who paid it.

**149 Interpretation for subpart**

Section 54B is amended by adding the following subsection as subsection (2):

- (2) References in this subpart to Transpower include references to Transpower in its role as system operator under the Electricity Industry Act 2010.

**150 Meaning of electricity lines services**

- (1) Section 54C is amended by repealing subsection (1) and substituting the following subsection:
- (1) In this subpart, unless the context otherwise requires, **electricity lines services**—
- (a) means the conveyance of electricity by line in New Zealand; and
  - (b) with respect to services performed by Transpower, includes services performed as system operator.
- (2) The definition of **associate** in section 54C(4) is amended by omitting “section 12 of the Electricity Industry Reform Act 1998” and substituting “section 73 of the Electricity Industry Act 2010”.



- (3) The definition of **national grid** in section 54C(4) is amended by omitting “section 2(1) of the Electricity Act 1992” and substituting “section 5 of the Electricity Industry Act 2010”.

**151 Definition of consumer-owned**

- (1) Section 54D(1)(a) is amended by omitting “section 3 of the Electricity Industry Reform Act 1998” and substituting “clause 6 of Schedule 2 of the Electricity Industry Act 2010”.

- (2) Section 54D(1) is amended by repealing paragraph (b) and substituting the following paragraph:

(b) the trustees of each customer trust or community trust, or the committee of shareholders of each customer co-operative, as the case may be, that is referred to in paragraph (a) are elected by the persons who are consumers of the supplier in accordance with subsections (2A) to (2C); and

- (3) Section 54D is amended by inserting the following subsections after subsection (2):

- (2A) The requirements in respect of elections for the purposes of subsection (1)(b) are as follows:

(a) every trustee of the customer trust or community trust, or every member of the committee of shareholders of each customer co-operative, as the case may be, must have been elected solely by the persons who are consumers of the supplier; and

(b) either—

- (i) at least 90% of the persons who are consumers of the supplier at the time of the election are eligible to vote in those elections; or  
(ii) in the case of a customer trust or community trust, there is ward-based voting that complies with the requirements of subsection (2B); and

(c) each consumer must have an equal vote.

- (2B) The requirements for ward-based voting are as follows:

(a) at least 90 % of the persons in a ward who are consumers of the supplier at the time of the election are eligible to vote in the election of all of the trustees of that ward; and

(b) ward boundaries must provide for effective and fair representation of all consumers of the supplier, and in particular,—

- (i) the proportion of consumers in relation to the number of trustees of the relevant trust must be approximately equal in each ward; and  
(ii) the wards must not be based on volume of electricity supplied; and

- (c) ward boundaries must be reviewed periodically (at intervals determined by the Commission) in consultation with all consumers of the supplier.
- (2C) A trustee of a customer trust or community trust, or a member of the committee of shareholders of a customer co-operative, as the case may be, must be treated as having been elected solely by the persons who are consumers of the supplier if the person—
- (a) has been declared to be elected without an election in the case of a nominee at an election where the number of nominations was equal to or less than the number of vacancies; or
  - (b) has been declared to be elected as the next-highest-polling candidate in the case where a higher-polling candidate at the election was unable to fill the elected position; or
  - (c) has been declared to be elected by the remaining trustees or members following a casual vacancy that arose between elections, provided that—
    - (i) the person is the first person to have been so elected since the last election at which consumers of the supplier voted; and
    - (ii) the person is elected to hold office only until the next scheduled election at which consumers of the supplier will vote.
- (2D) The Commerce Commission may require a supplier that claims to meet the criteria in this section to verify that claim by statutory declaration.
- (2E) The declaration must be made by the persons and in the form required by the Commerce Commission.

**152 How exempt status can be lost and default/customised price-quality regulation can be applied to consumer-owned suppliers**

- (1) Section 54H is amended by inserting the following subsection after subsection (2):
- (2A) A supplier must give notice in writing to the Commission within 10 working days after becoming aware that it has ceased to be consumer-owned.
- (2) Section 54H(3) is amended by repealing paragraphs (a) to (c) and substituting the following paragraphs:
- (a) 15% of the persons who are domestic consumers of the supplier as at the date of the petition who are eligible to vote in elections for trustees of the customer trust or community trust, or for members of the committee of shareholders of the customer co-operative:
  - (b) 20% of the persons who are domestic consumers of the supplier as at that date who are not eligible to vote in elections for trustees of the customer trust or community trust, or for members of the committee of shareholders of the customer co-operative:

- (c) 25% of the persons who are non-domestic consumers (either by number or by consumption of that class of consumer) of the supplier as at that date.
- (3) Section 54H is amended by inserting the following subsection after subsection (3):
- (3A) In this section, **domestic consumer** has the same meaning as in section 5 of the Electricity Industry Act 2010.

### **153 Administrative settlements with Transpower made before 1 April 2009**

- (1) Section 54M(3)(b) is amended by omitting “path”.
- (2) Section 54M(6) is repealed.

### **154 Proposals for customised price-quality paths**

Section 54P(1) is amended by—

- (a) omitting “a section 52P determination” and substituting “an input methodology”; and
- (b) omitting “is made” and substituting “is published under section 52W”.

### **155 New heading and sections 54R and 54S substituted**

The heading above section 54R and sections 54R to 54U are repealed and the following heading and sections substituted:

*Transpower grid upgrade plans and capital expenditure proposals*

#### **54R Approval of Transpower’s grid upgrade plans**

- (1) The role of the Electricity Commission in requesting or approving grid upgrade plan proposals by Transpower (including proposals to amend existing grid upgrade plans) is transferred to the Commission on the commencement date.
- (2) Subsection (1) applies both to proposals made on and after the commencement date and to any proposals that were requested or under consideration by the Electricity Commission before the commencement date.
- (3) Until the input methodology required by section 54S is determined and published under section 52W,—
  - (a) Transpower must comply with Part F of the Electricity Governance Rules, as that Part relates to grid upgrade plan proposals; and
  - (b) when considering grid upgrade plan proposals, the Commission—
    - (i) must apply, with any necessary modifications, the grid investment test set out in Schedule F4 of Part F of the Electricity Governance Rules; and
    - (ii) must apply, with any necessary modifications, those parts of section III of Part F of the Electricity Governance Rules that relate to

the process for approving grid upgrade plans (which includes rules 12 to 15 and 17.2); and

- (iii) need not repeat any processes already undertaken by the Electricity Commission or undertake any processes that the Electricity Commission would have been required to undertake.
- (4) To avoid doubt,—
- (a) subsection (1) takes effect on the commencement date whether or not the Commerce Act (Transpower Thresholds) Notice 2008 or any administrative settlement between the Commission and Transpower has been amended to reflect the transfer referred to in that subsection; and
  - (b) nothing in this section affects the transfer from the Electricity Commission to the Electricity Authority of all other roles relating to transmission, such as setting grid reliability standards and the transmission pricing methodology.
- (5) The Commission may change any timetables previously agreed for consultation on, and approval of, grid upgrade plan proposals, but must first consult Transpower on any timetable changes.
- (6) To facilitate the transfer of roles referred to in subsection (1), the Electricity Authority must give the Commission copies of all information it holds regarding grid upgrade plan proposals that were under consideration by the Electricity Commission before the commencement date.
- (7) In this section,—
- commencement date** means 1 November 2010
- Electricity Governance Rules** means the Electricity Governance Rules 2003 as they were immediately before their revocation by the Electricity Industry Act 2010
- grid upgrade plan** has the meaning set out in the Electricity Governance Rules.

#### **54S Commission to prepare input methodology for capital expenditure proposals**

- (1) The Commission must determine an input methodology for Transpower's capital expenditure proposals.
- (2) The input methodology must include—
  - (a) requirements that must be met by Transpower, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of consultation and agreement with consumers; and
  - (b) the criteria the Commission will use to evaluate capital expenditure proposals; and

- (c) time frames and processes for evaluating capital expenditure proposals, including what happens if the Commission does not comply with those time frames.
- (3) The input methodology must be determined no later than 1 November 2011; but the Minister may, on the written request of the Commission, extend the deadline once by a period of up to 3 months, in which case notice of the extension must be given in the *Gazette*.
- (4) Subpart 3 of Part 4 applies to the input methodology as if it were an input methodology referred to in section 52T, except as provided in subsection (2) or (3) of this section.

Compare: 1986 No 5 ss 52T(1)(d), 52U

#### **156 New section 54V substituted**

Section 54V is repealed and the following heading and section are substituted:

#### *Interface with Electricity Industry Act 2010*

#### **54V Impact of certain decisions made under Electricity Industry Act 2010**

- (1) The Electricity Authority must consult with the Commission before amending the Electricity Industry Participation Code (the **Code**) in a manner that will, or is likely to, affect the Commission in the performance of its functions or exercise of its powers under this Part.
- (2) The Electricity Authority must advise the Commission as soon as practicable after doing any of the following things that is likely to be relevant to the powers or functions of the Commission under this Part:
  - (a) making any provision of the Code:
  - (b) making any decision under the Code:
  - (c) issuing any guidelines:
  - (d) giving a direction to Transpower and 1 or more industry participants to enter into 1 or more transmission agreements under section 44 of the Electricity Industry Act 2010.
- (3) The Electricity Authority must advise the Commission, as soon as practicable, following any change in the Code that results in increased costs to Transpower or to any distributor or class of distributors.
- (4) The Commission must take into account, before exercising any of its powers or performing any of its functions under this Part,—
  - (a) any provision of the Code, or decision made under it, that relates to or affects the pricing methodologies or performance requirements applicable to Transpower:
  - (b) any provision of the Code, or decision made under it, that relates to or affects the pricing methodologies applicable to any other line owner:

- (c) any guidelines of which it receives advice under subsection (2)(c) that are likely to be relevant to the exercise of the powers or performance of the duties or functions of the Commission under this Part:
  - (d) any directions of which it receives advice under subsection (2)(d):
  - (e) the levy payable by Transpower or any other line owner under section 128 of the Electricity Industry Act 2010:
  - (f) the continuance of supply obligations imposed by section 105 of the Electricity Industry Act 2010.
- (5) The Commission must, if asked by the Electricity Authority to do so, reconsider a section 52P determination and, to the extent that the Commission considers it necessary or desirable to do so, amend the determination, to take account of any matter referred to in subsection (4).
- (6) Requirements relating to quality standards for Transpower in a section 52P determination must be based on, and be consistent with, quality standards for Transpower that are set by the Electricity Authority; but the Commission may prescribe them in any way it considers appropriate, as authorised by section 53M(3).

*Amendments to Energy (Fuels, Levies, and References) Act 1989*

**157 Amendments to Energy (Fuels, Levies, and References) Act 1989**

Sections 158 and 159 amend the Energy (Fuels, Levies, and References) Act 1989.

**158 Part 2 repealed**

Part 2 is repealed.

**159 Purpose of levies**

Section 14(1)(c) is amended by inserting “or gas retailers (as defined in section 2(1) of the Gas Act 1992)” after “Electricity Act 1992”.

*Amendments to Electricity Act 1992*

**160 Amendments to Electricity Act 1992**

Sections 162 to 164 amend the Electricity Act 1992.

**161 Purposes**

Section 1A is amended by repealing paragraph (b).

**162 Interpretation**

- (1) Section 2(1) is amended by repealing the definition of **electrical installation** and substituting the following definition:

**electrical installation—**

- (a) means—
- (i) in relation to a property with a point of supply, all fittings beyond the point of supply that form part of a system that is used to convey electricity to a point of consumption, or used to generate or store electricity; and
  - (ii) in relation to a property without a point of supply, all fittings that form part of a system that is used to convey electricity to a point of consumption, or used to generate or store electricity; but
- (b) does not include any of the following:
- (i) an electrical appliance;
  - (ii) any fittings that are owned or operated by an electricity generator and that are used, designed, or intended for use in or in association with the generation of electricity, or used to convey electricity from a source of generation to distribution or transmission lines;
  - (iii) any fittings that are used, designed, or intended for use in or in association with the conversion, transformation, or conveyance of electricity by distribution or transmission lines

- (2) The definition of **works** in section 2(1) is amended by omitting paragraph (b) and substituting the following paragraph:

(b) does not include any part of an electrical installation.

### 163 New section 43A inserted

- (1) The following section is inserted after section 43:

#### 43A Different Ministries responsible for different codes

- (1) In order to allow electrical codes of practice to be administered by the most appropriate Ministry, all Ministers responsible for the administration of any provision of this Act must, by agreement from time to time, identify which particular codes, or codes relating to particular matters, are to be administered by which Ministry (referred to in this section as the **responsible Ministry**).
- (2) In sections 36 and 37 and 39 to 42, in relation to a code, **Secretary** means the Secretary of the responsible Ministry.
- (3) In sections 38, 40, and 42, in relation to a code, **Minister** means the Minister for the time being responsible for the responsible Ministry.

- (2) Section 40(7) is consequentially amended by omitting “means the chief executive of the Ministry, and”.

### 164 Consequential amendments and repeal of spent provisions

- (1) Section 2(1) is amended by repealing the following definitions: **Commission**, **Commission’s board** or **board**, **community trust**, **Council**, **customer trust**, **domestic consumer**, **domestic premises**, **electricity governance regulations**,

**GPS objectives and outcomes, industry participant, national grid, performance standards, publicise, report date, reporting period, reserve energy, rules and electricity governance rules, Rulings Panel, and Transpower.**

- (2) Part 5 is repealed.
- (3) Section 62 is repealed.
- (4) The heading above section 158A and the heading above section 158G, and sections 158A to 158G, are repealed.
- (5) Subpart 2 of Part 14 is repealed.
- (6) Part 15 is repealed.
- (7) Section 177 is repealed.

*Repeal of Electricity Industry Reform Act 1998*

**165 Repeal of Electricity Industry Reform Act 1998**

The Electricity Industry Reform Act 1998 (1998 No 88) is repealed.

*Amendments to other enactments*

**166 Amendments to other enactments**

The enactments specified in Schedule 6 are consequentially amended in the manner set out in that schedule.



## Schedule 1

### Material incorporated by reference

ss 32(4), 113(6), 114(4)

#### 1 Definitions

In this schedule, unless the context otherwise requires,—

**Agency** means the Authority or the Ministry, as the case requires

**main document** means the Code or regulations made under section 113 or 114, as the case requires

**material** means written material set out in a document other than the main document

**responsible person** means the chairperson of the Authority or the chief executive of the Ministry, as the case requires.

#### 2 Material incorporated by reference into main document

- (1) Material may be incorporated by reference into the main document only if—
  - (a) the material deals with technical matters; and
  - (b) in the opinion of the Agency,—
    - (i) the material is too long to publish in the main document; or
    - (ii) it is otherwise impractical to publish the material in the main document.
- (2) Material may be incorporated by reference into the main document—
  - (a) in whole or in part; and
  - (b) with any modifications, additions, or variations specified in the main document.
- (3) Material incorporated by reference—
  - (a) is the material as it exists at the time the relevant provision of the main document is published; and
  - (b) has legal effect as part of the main document for all purposes, except as provided in clauses 7 and 8.

#### 3 Proof of material incorporated by reference

- (1) A copy of any material incorporated by reference into the main document must be—
  - (a) certified by the responsible person as a correct copy of the material; and
  - (b) retained by the Agency.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material into the main document.

**4 Access to material incorporated by reference**

- (1) The Agency must make copies of all material incorporated by reference publicly available, and must give notice in the *Gazette* of how the material is available for inspection and purchase.
- (2) Subclause (1) applies to material when it is first incorporated into the main document, and to any subsequent amendment or replacement of the material that is incorporated into the main document.
- (3) A failure to comply with this clause does not invalidate the main document or any part of it.

**5 Power to give effect to amendments to, or replacements of, material**

Legal effect may be given to an amendment to, or replacement of, material incorporated by reference into the main document if—

- (a) the amendment or replacement material is made by the person or organisation that made the original material; and
- (b) the amendment or replacement material is of the same general character as the original material; and
- (c) the Agency, by notice in the *Gazette*, adopts the amendment or replacement material as having legal effect as part of the main document.

**6 Effect of expiry of material incorporated by reference**

Material incorporated by reference into the main document that expires, is revoked, or ceases to have effect, ceases to have legal effect as part of the main document only if—

- (a) an amendment to the main document states that the material ceases to have that legal effect; or
- (b) the Agency, by notice in the *Gazette*, states that the material ceases to have that legal effect.

**7 Application of Legislation Act 2012**

- (1) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference into the main document, or to any amendment to, or replacement of, the material.
- (2) Subpart 1 of Part 3 of the Legislation Act 2012, except section 41, applies to material incorporated by reference in the main document, or to any amendment to, or replacement of, the material.

Schedule 1 clause 7: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

**8 Application of Regulations (Disallowance) Act 1989**

*[Repealed]*

Schedule 1 clause 8: repealed, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

**Schedule 2**  
**When person is involved in distributor, generator, or retailer for  
purposes of Part 3**

ss 73, 74, 94

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*Involvements that do not count for purposes of separation rules in Part 3*

**1 Purpose of this schedule**

The purpose of this schedule is—

- (a) to exclude certain interests from the application of the separation rules in Part 3; and
- (b) to help in interpreting those rules.

**2 Interests in distributors that are too small to count for purposes of Part 3**

No account is to be taken, for the purpose of determining under Part 3 whether a person is involved in a distributor, of any of the following:

- (a) lines that are not connected, directly or indirectly, to the national grid (for example, certain lines in Haast, the Chatham Islands, and Stewart Island):
- (b) the conveyance of electricity only from a generator to the national grid or from the national grid to a generator:

- (c) the conveyance of less than 5 GWh per financial year:
- (d) the conveyance of electricity solely for the consumption of a person who is involved in the distributor or for the consumption of any of the distributor's associates:
- (e) the conveyance of electricity (other than via the national grid) only from a generator to a network or from a network to a generator:
- (f) the conveyance of electricity mostly in competition with another line or lines operated by another electricity business that is not an associate of a person who is involved in the first line, provided that the competition is actual competition and not potential competition.

Compare: 1988 No 234 s 6; 1998 No 88 s 19

### **3 Interests in generators that are too small to count for purposes of Part 3**

No account is to be taken, for the purpose of determining under Part 3 whether a person is involved in a generator, of any of the following interests:

- (a) an interest in an irrigation scheme, where—
  - (i) that scheme is physically connected to a generator or core generation assets and was built and is operated primarily for the purpose of irrigation; and
  - (ii) that person does not hold, through the person's interest in the scheme, any equity return rights or control rights in, or manage or operate, the generator or core generation assets; or
- (b) an interest in a business that generates electricity from a geothermal energy source if—
  - (i) the geothermal plant was commissioned between 1 January 1998 and 1 January 2009, and is currently owned by the person that commissioned it; and
  - (ii) the output from the geothermal plant is less than 12 MW (determined according to nameplate); or
- (c) the generation of electricity that does not have a total annual nominal capacity greater than 5 GWh per year (determined according to nameplate).

Compare: 1988 No 234 s 6; 1998 No 88 s 19

### **4 Other interests that are not counted for purposes of Part 3**

- (1) No account is to be taken, for the purposes of Part 3, of a person's business or involvement if—
  - (a) the business or involvement is exempted by the Authority under section 90; or
  - (b) the ordinary business of the person consists of, or includes, the lending of money, and that person has the involvement only as security given for

- a loan or guarantee of a loan entered into in the ordinary course of the business of that person or as a result of enforcing that security; or
- (c) that person is authorised to undertake trading activities on a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) and has the involvement by reason only of acting for another person to acquire or dispose of a financial product on behalf of the other person in the ordinary course of business of carrying out those trading activities; or
- (d) that person—
- (i) has the involvement by reason only that he or she has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at a meeting or meetings of members, or a class of members, of another person; and
- (ii) has no discretion to determine how to represent the body corporate at the meeting or meetings; or
- (e) that person—
- (i) has the involvement solely by reason of being appointed as a proxy to vote at a meeting or meetings of members, or of a class of members, of another person; and
- (ii) has no discretion to determine how the proxy should be exercised at the meeting or meetings; or
- (f) that person has the involvement by reason only that the person is a bare trustee of a trust to which the involvement or interest is subject; or
- (g) that person is involved only because the ordinary business of the person consists of or includes the selling of core assets of an electricity business, and the person does not operate those assets; or
- (h) that person has the involvement only because the person is an adviser or industry service provider.
- (2) For the purposes of subclause (1)(f), a trustee may be a bare trustee despite the fact that he or she is entitled as a trustee to be remunerated from the income or property of the trust.

Compare: 1988 No 234 s 6; 1998 No 88 s 19

Schedule 2 clause 4(1)(c): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*Interpretation of terms used in definition of “involved in”*

**5 Meaning of control rights**

- (1) For the purposes of this Act, a **control right** means a voting right attaching to a voting product.

- (2) A person has a control right if the person would have a relevant interest, under sections 235 to 238 of the Financial Markets Conduct Act 2013, in the voting products that confer that right,—
- (a) if voting product, in relation to a body, meant a financial product of the body that confers a right to vote at meetings of members (whether or not there is any restriction or limitation on the number of votes that may be cast by, or on behalf of, the holder of the financial product); and included a financial product that, in accordance with the terms of the financial product, is convertible into a financial product of that kind; and
  - (b) if references in those sections to a number or percentage of voting products were references to the number or percentage of the votes conferred by those financial products.

- (3) In subclause (2), **financial product** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013.

Compare: 1998 No 88 s 9

Schedule 2 clause 5(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 2 clause 5(2): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 2 clause 5(3): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## 6 Meaning of equity return rights

- (1) For the purposes of this Act, a person has an **equity return right** in relation to a business if the person has a right or entitlement or expectancy to receive equity returns, directly or indirectly, of the business.
- (2) **Equity returns** means—
- (a) profits of the business; or
  - (b) distributions from the business; or
  - (c) other equity returns from the business, as defined in subclause (3).
- (3) **Other equity returns**—
- (a) means a benefit derived, directly or indirectly, from a business that represents or is calculated by reference to or is determined by,—
    - (i) a share in or proportion of its capital; or
    - (ii) its surplus or residual economic value (after satisfying prior contractual claims); or
    - (iii) its profitability or other indicator of its success; but
  - (b) to avoid doubt, does not include a right or entitlement to interest on debt calculated at general market rates that prevail at the time of the loan agreement, or fluctuating in accordance with a formula which applies general market rates prevailing from time to time.

- (4) A person is deemed to have a percentage of the equity return rights held by another person in a business if the first person has, or is 1 of 2 or more associates who together have, more than 10% of the equity return rights in the second person.
- (5) The percentage of rights held by a person in another person is calculated as follows:

$$a = b \times c$$

where—

- a is the percentage to be determined
- b is the percentage of the equity return rights held by the first person in the second person
- c is the percentage of the equity return rights held by the second person in the business.

Compare: 1998 No 88 s 10

## 7 Meaning of material influence

- (1) Without limiting the ordinary meaning of the expression **material influence**, the following people are deemed to have material influence over a business:
- (a) a director or manager of a person that carries on the business:
  - (b) if the business is carried on by a natural person, that person:
  - (c) a person in accordance with whose directions, instructions, or wishes a person referred to in either of paragraph (a) or (b), or the business, may be required or is accustomed to act in respect of the carrying on or management of the business:
  - (d) a person that exercises or that is entitled to exercise, or who controls or is entitled to control the exercise of, powers that would ordinarily be exercised by a person referred to in either paragraph (a) or (b):
  - (e) a person that can appoint or remove, or control the appointment or removal of, a person referred to in either paragraph (a) or (b):
  - (f) a person that has a power to influence a decision of the business that would ordinarily require the holding of control rights which would cause the person to exceed the 10% threshold:
  - (g) a person in circumstances where the person and the business are acting, or proposing to act, jointly or in concert in relation to the business:
  - (h) a person that, under a trust or agreement (whether or not the person is a party to it), may at any time have any of the powers referred to in paragraphs (c) to (f).
- (2) Where a person has material influence over a business under this clause, and another person has any of the powers or controls referred to in subclause (1)(c) to (h) in relation to the first person or the majority of its directors or managers,



then that other person is deemed also to have material influence over the business, and so on.

- (3) A person is deemed to have material influence over a business if the person is 1 of 2 or more associates who, together, have material influence over the business.
- (4) Subclause (3) does not apply to deem a person to have material influence over a business only because that person is, under clause 8(1)(b), an associate of another person, provided those associates act in accordance with the arm's-length rules (with all necessary modifications) in respect of the business.
- (5) To avoid doubt, a power to cast 1 of many votes at an election of trustees or councillors does not, of itself, constitute material influence.

Compare: 1998 No 88 s 11

## 8 Meaning of associate

- (1) For the purposes of this Act, person A is an **associate** of person B (and vice versa) if—
  - (a) person A is a body corporate, and person B is—
    - (i) a director of that body corporate; or
    - (ii) a related body corporate of that body corporate (within the meaning in section 12(2) of the Financial Markets Conduct Act 2013); or
    - (iii) a director of a related body corporate of that body corporate (within that same meaning); or
  - (b) person A is a spouse, civil union partner, de facto partner, child, or parent of person B; or
  - (c) person A is a partner, to whom the Partnership Act 1908 applies, of person B; or
  - (d) person A is a limited partnership or an overseas limited partnership and person B is a general partner or a limited partner who takes part in the management of the limited partnership (within the meaning of the Limited Partnerships Act 2008); or
  - (e) person A is a nominee or trustee for person B in relation to interests in a business; or
  - (f) person A is a director of a company, or holds more than 10% of the control rights in the company, and person A and person B are parties to an agreement relating to—
    - (i) the control of that company; or
    - (ii) more than 20% of the control rights in that company; or
  - (g) person A and person B are acting, or propose to act, or are likely to act, jointly or in concert in relation to a business; or

- (h) person A is a person who, in making a decision or exercising a power materially affecting a business, is accustomed, or under an obligation, or proposes, or is likely, to act in accordance with the directions, instructions, or wishes of person B.
- (2) References in subclause (1)(e) to (h) to a company or business relate to a company or business in respect of which a connection with a business is relevant.

Compare: 1998 No 88 s 12

Schedule 2 clause 8(1)(a)(ii): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **9 Substance matters, not form, for purposes of determining level of involvement**

- (1) Without limiting section 74, a person may be involved in a business, or be an associate or agent, regardless of whether a right, influence, power, obligation, or agreement is—
- (a) expressed or implied:
  - (b) direct or indirect:
  - (c) legally enforceable:
  - (d) related to a particular control right:
  - (e) subject to restraint or restriction or is capable of being made subject to restraint or restriction:
  - (f) exercisable presently or in the future:
  - (g) exercisable only on the fulfilment of a condition:
  - (h) exercisable alone or jointly with another person or persons.
- (2) A power, influence, or ability exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.
- (3) A reference to a power or obligation includes a reference to a power, influence, ability, or requirement that arises from, or is capable of being exercised or required as a result of, a breach of any trust or agreement whether or not it is legally enforceable.

Compare: 1988 No 234 s 5(4)–(6); 1998 No 88 s 14(2)–(4)

## **10 Other interpretation for purposes of separation rules**

For the purposes of Part 3, this schedule, and Schedule 3, unless the context otherwise requires,—

**agreement** includes a deed, a contract, an agreement, an arrangement, and an understanding, whether oral or written, express or implied, and whether or not enforceable at law

**expectancy** means, in relation to a business or any other person,—

- (a) an expectancy or a contingent or unvested right to equity returns of the business or person; or
- (b) a right to equity returns of the business or person which does not confer on the holder a certain or defined share of the equity returns available to all or to any class of persons having equity return rights in the business or person

**manager**, in relation to a person,—

- (a) means a person who, whether alone or jointly with any other person, manages, or directs or supervises the management of, the whole or a substantial part of the business and affairs of the person; and
- (b) includes, to avoid doubt,—
  - (i) in relation to a trust, a trustee:
  - (ii) in relation to a local authority, a member; but
- (c) does not include,—
  - (i) in relation to a body corporate, a director of that body corporate:
  - (ii) in relation to a business in which a local authority or any other person has an interest, a member of that local authority or manager of that person only as a result of that person having that position.

Compare: 1998 No 88 s 3(2)

## **11 Exclusions, etc, are cumulative**

In relation to this schedule,—

- (a) limitations, exclusions, or exemptions under any clause may be applied cumulatively; and
- (b) references to an activity being carried out only or solely for a particular purpose or in a particular way, or to a person having an involvement or interest only or solely for a particular reason, must not be read as excluding reliance on any other limitation, exclusion, or exemption in any of those clauses.

Compare: 1998 No 88 s 3(3)

## Schedule 3

### Arm's-length rules

ss 73, 76

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#### 1 Objective

- (1) The objective of this schedule is to ensure that businesses to which section 76 apply operate at arm's length.
- (2) Without limiting the ordinary meaning of the expression, **arm's length** includes having relationships, dealings, and transactions that—
  - (a) do not include elements that parties in their respective positions would usually omit; and
  - (b) do not omit elements that parties in their respective positions would usually include,—  
if the parties were—
    - (c) connected or related only by the transaction or dealing in question; and
    - (d) acting independently; and
    - (e) each acting in its own best interests.

#### 2 Interpretation

- (1) In this schedule,—
 

**business A** means a business that is required to be carried out in 1 company under section 76 and the term **business B** then refers to a business that is required to be carried out in another company under that section

**common parent**, in relation to business A and business B, means a person that is involved in both business A and business B

**electricity trust** means a community trust or a customer trust or a customer co-operative

**parent**, in relation to a business, means every person that is involved in the business.
- (2) In this schedule, a person is **interested** in a transaction if the person, or an associate of that person,—

- (a) is a party to, or will derive a material financial benefit from, the transaction; or
  - (b) has a material financial interest in a party to the transaction; or
  - (c) is a director or manager of a party to, or a person who will or may derive a material financial benefit from, the transaction; or
  - (d) is otherwise directly or indirectly materially interested in the transaction.
- (3) Where this schedule applies to business A, it applies equally to business B, and vice versa.
- (4) References to trust A and trust B have corresponding meanings and application.

### **3 Arm's-length rules**

The arm's-length rules are as follows:

#### *Duty to ensure arm's-length objective is met*

- 1 Business A and every parent of business A, and business B and every parent of business B, must take all reasonable steps to ensure that the arm's-length objective in clause 1 is met.

#### *Arm's-length test*

- 2 Business A, and every parent of business A, must not enter into a transaction in which business B, or any parent of business B, is interested if the terms of the transaction are terms that unrelated parties in the position of the parties to the transaction, each acting independently and in its own best interests, would not have agreed to.

#### *Duty not to prefer interests of business B*

- 3 A director or manager of business A must not, when exercising powers or performing duties in connection with business A, act in a manner that the director or manager knows or ought reasonably to know would prefer the interests of business B over the interests of business A.

#### *Duty not to discriminate in favour of business B*

- 4 Business A must not, in providing services or benefits, discriminate in favour of business B or the customers, suppliers, or members of business B.

#### *Duty to focus on interests of right ultimate owners*

- 5 A director or manager of business A must, when exercising powers or performing duties in connection with business A, act in the interests of the ultimate members of business A in their capacity as such, and must neither subordinate

the interests of those members to the interests of the members of business B nor, to the extent that the members or ultimate beneficial members of each business overlap, take account of that fact or have regard to their dual capacity as members of business B and business A.

*Duty of directors and managers of parents of business A*

- 6 A director or manager of a parent of business A must not, when exercising powers or performing duties in connection with business A, act in a manner that the director or manager knows or ought reasonably to know would prefer the interests of business B, or of the customers, suppliers, or members of business B in that capacity, over the interests of business A or the customers, suppliers, or members of business A.

*At least 2 independent directors*

- 7 At least 2 directors of business A must—
- (a) be neither a director nor a manager of business B; and
  - (b) not be an associate of business B, other than by virtue of being a director of business A.

*No cross-directors who are executive directors*

- 8 A director of business A may be a director of business B, but must not—
- (a) manage business B on a day-to-day basis; or
  - (b) be an associate of business B, other than by virtue of being a director of business A or business B; or
  - (c) be involved in business B (other than by having material influence over business B by virtue of being a director of business B).

*Separate management rule*

- 9(1) This clause applies if business A is involved in—
- (a) a generator that has a total capacity of more than 50 MW and that is connected to any of business A's networks; or
  - (b) a retailer that retails more than 75 GWh of electricity in a financial year to customers who are connected to any of business A's networks.
- (2) A manager of business A must not—
- (a) be a manager of business B; or
  - (b) be an associate of business B, other than by virtue of being a manager of business A; or
  - (c) be involved in the business of business B.

*Directors and managers must not be placed under certain obligations*

- 10(1) Subject to subclause (2), no person may place a director or manager of business A under an obligation, whether enforceable or not, to act in accordance with the directions, instructions, or wishes of business B, or any director or manager or associate of business B, or any parent of business B, and no director or manager may submit to any such obligation.
- (2) A common parent, or a cross-director or a cross-manager, of both business A and business B may place a director or manager under an obligation referred to in subclause (1) if doing so does not contravene another of the arm's-length rules.

*Restriction on use of information*

- 11(1) Business A must not disclose or permit the disclosure to business B, or use or permit the use for the purposes of business B, of restricted information of business A.

An electricity trust that is a parent of business A (**trust A**), business A, and every parent of trust A, must not disclose or permit the disclosure to business B, an electricity trust that is a parent of business B (**trust B**), or any parent of trust B, or use or permit the use for the purposes of business B or trust B, of restricted information of business A or trust A.

In these rules, **restricted information** is information received or generated, and held, by business A or trust A that is connected with its business, being information that—

- (a) is not available to the competitors or potential competitors of business B or trust B; and
- (b) if disclosed to business B or trust B, would put, or be likely to put, business B or trust B in a position of material advantage in relation to any competitor or potential competitor.
- (2) This rule does not prevent cross-directors under rule 8 from having access to normal board information.
- (3) A manager of business A who is not prohibited from being a manager of business B under rule 9 may use restricted information of both business A and business B, but only to the extent that the use does not contravene another of the arm's-length rules.

*Records*

- 12 Every business to which this schedule applies must keep at its registered office a register of transactions entered into between business A, or any parent of business A, and business B, or any parent of business B.

- 13 Business A must, within 10 working days of entering into any such transaction, enter in its register details sufficient to identify the nature and import of the transaction.

*Practical considerations*

- 14 Business A and every parent of business A must ensure that its practical arrangements, such as use of accommodation, equipment, and services, do not contravene this schedule.
- 15 Business A and every parent of business A must ensure that its selection and appointment of advisors does not prejudice compliance with rules 7 to 11.

**4 Rules do not limit objective**

The arm's-length rules in clause 3 do not limit the generality of the arm's-length objective in clause 1.

**5 These duties are additional to other duties**

The requirements of this schedule are additional to the requirements of any provisions of the Code or regulations made under this Act.



## Schedule 4 Dispute resolution scheme

s 95(3)

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### 1 Purpose of dispute resolution scheme

The purpose of the dispute resolution scheme is to ensure that—

- (a) any person (including consumers, potential consumers, and owners and occupiers of land, but excluding members of the scheme) who has a complaint about a member has access to a scheme for resolving the complaint; and
- (aa) members have a mechanism for resolving indemnity disputes; and
- (b) the scheme is accessible, independent, fair, accountable, efficient, and effective.

Schedule 4 clause 1(aa): inserted, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

## 2 Interpretation

In this schedule, unless the context otherwise requires,—

**approved scheme** has the meaning given in clause 3

**dispute resolution scheme**, at any time, means whichever of the following is in force under this schedule at the time:

- (a) the approved scheme:
- (b) the regulated scheme

**indemnity dispute** means a dispute, referred to in section 95A of this Act and section 43EAA of the Gas Act 1992, concerning the application of the indemnity in section 46A of the Consumer Guarantees Act 1993

**member**, in relation to the dispute resolution scheme, means a person who is required to be a member of the dispute resolution scheme

**provider**, in relation to a scheme, means the person responsible for the scheme

**regulated scheme** means the scheme provided for in regulations made under clause 18.

Schedule 4 clause 2 **indemnity dispute**: inserted, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

*Approved scheme: approval and withdrawal of approval*

## 3 Meaning of approved scheme

The **approved scheme** is—

- (a) the complaints resolution scheme (if any) approved by the Electricity Commission under section 158G of the Electricity Act 1992, and the Minister under section 43E of the Gas Act 1992 (provided the scheme's approval has not been withdrawn); or
- (b) the scheme approved by the Minister under clause 6 (provided the approval has not been withdrawn).

Compare: 2008 No 97 s 50

## 4 Application for approval

- (1) The provider of a scheme may apply to the Minister for approval of the scheme as the approved scheme.
- (2) The application must include—
  - (a) the rules of the scheme; and
  - (b) any other information that the Minister, by notice in the *Gazette*, prescribes as required to be included in an application under this clause; and
  - (c) the prescribed fee (if any).

- (3) The Minister may ask an applicant to supply any further information or documentation in support of the application.

Compare: 2008 No 97 s 51

## **5 Mandatory considerations for approval**

- (1) When considering an application under clause 4, the Minister must have regard to the following considerations in light of the principles listed in subclause (2):
- (a) whether the scheme is capable of meeting the purpose of the dispute resolution scheme as set out in clause 1:
  - (b) whether the scheme has broad support among the persons who are required to be members:
  - (c) whether the scheme is capable of dealing with a wide range of complaints by persons entitled to make a complaint:
  - (d) whether the scheme is an integrated scheme for the resolution of complaints in both the electricity and gas industries:
  - (e) whether the applicant has adequate funding to enable it to operate the scheme according to its purpose and in accordance with its rules:
  - (f) whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme:
  - (g) whether the rules of the scheme are adequate and comply with—
    - (i) the principles listed in subclause (2); and
    - (ii) the requirements of clause 13(1).
- (2) The principles are—
- (a) accessibility:
  - (b) independence:
  - (c) fairness:
  - (d) accountability:
  - (e) efficiency:
  - (f) effectiveness.

Compare: 2008 No 97 s 52

## **6 Minister must decide application for approval**

- (1) After considering an application made under clause 4, the Minister may—
- (a) approve the scheme as the approved scheme; or
  - (b) decline the application.
- (2) The Minister may only decide whether to approve the scheme or decline the application after consulting—
- (a) the Minister of Energy; and

- (b) the Authority; and
  - (c) if an industry body is appointed under section 43ZL of the Gas Act 1992, that industry body; and
  - (d) any persons (or their representatives) that the Minister considers are likely to be substantially affected by the approval.
- (3) A failure to consult with the persons referred to in subclause (2)(d) does not affect the validity of any approval of the scheme.
- (4) The Minister may approve a scheme if there is already another approved scheme, but in that case the approval does not take effect until the approval of the other scheme is withdrawn.

Compare: 2008 No 97 s 53

#### **7 Decision must be notified and publicised**

The Minister must, as soon as practicable after deciding an application,—

- (a) notify the applicant of the decision; and
- (b) if the decision is to approve the application, ensure that the approval is publicised.

Compare: 2008 No 97 s 54

#### **8 Rules of approved scheme not to change without Ministerial approval**

- (1) The rules of the approved scheme must not be changed unless the Minister approves the change.
- (2) If the provider of the approved scheme notifies the Minister of a proposed rule change, the rule change is deemed to be approved by the Minister unless, within 45 days after the date of notification, the Minister declines approval.
- (3) The Minister may decline approval for a rule change only on the grounds that, if the rules were changed as proposed, they would not comply with the principles listed in clause 5(2) or would not comply with clause 13.

Compare: 2008 No 97 ss 65, 66

#### **9 Notice of intention to withdraw approval**

- (1) If the Minister proposes to withdraw approval for an approved scheme, the Minister must notify the provider.
- (2) The Minister's notice must—
- (a) state that the Minister intends to withdraw the scheme's approval; and
  - (b) identify which of the grounds described in subclause (3) apply; and
  - (c) state why the Minister considers those grounds apply; and
  - (d) identify the notice period, which must be at least 3 months, during which the provider may object, under clause 10, to the intended withdrawal.
- (3) The only grounds for withdrawing approval are as follows:

- (a) the scheme is not, or is no longer, capable of meeting the purpose of the dispute resolution scheme as set out in clause 1:
  - (b) there has been a loss of broad support for the scheme:
  - (c) the scheme is no longer an integrated scheme for the resolution of complaints in both the electricity and gas industries:
  - (ca) the scheme is not, or is no longer, capable of resolving indemnity disputes:
  - (d) there has been a failure to comply with the rules of the scheme:
  - (e) the provider has not publicised the rules as required by clause 13(2):
  - (f) the provider has not supplied the Minister with 1 or more of the following:
    - (i) an annual report as required by clause 16:
    - (ii) any further information requested by the Minister under clause 17:
    - (iii) a report of an independent review as required by clause 15:
  - (g) the provider has not notified the Minister before changing the rules of the scheme as required by clause 8:
  - (h) the scheme no longer satisfies the principles in clause 5(2).
- (4) The Minister's notice may require the provider to—
- (a) notify all members of the Minister's intention to withdraw the scheme's approval; or
  - (b) provide the Minister with a list of the names and business addresses of current members so that the Minister can, if the Minister wishes, notify all members of the Minister's intention to withdraw the scheme's approval.

Compare: 2008 No 97 ss 56, 57

Schedule 4 clause 9(3)(ca): inserted, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

## **10 Objection to withdrawal of approval**

- (1) During the notice period, the provider may object (with reasons) to the proposed withdrawal of approval.
- (2) The Minister must consider any objection that is received before the end of the notice period.

Compare: 2008 No 97 s 58

## **11 Withdrawal of approval**

- (1) If the Minister has given notice of intention to withdraw approval, the Minister may withdraw the approval at any time after the expiry of the notice period.

- (2) When considering whether to withdraw approval, the Minister must have regard to the considerations referred to in clause 5(1) in light of the principles listed in clause 5(2).
- (3) The Minister must withdraw the approval of an approved dispute resolution scheme if the provider so requests, in which case the scheme is no longer approved from the date that is 3 months after the date of withdrawal of approval.  
Compare: 2008 No 97 s 56

## 12 Effect of withdrawal of approval

On the date that the withdrawal of an approved scheme's approval takes effect, the members of the scheme become members of—

- (a) any other approved scheme that is approved with effect from that date;  
or
- (b) the regulated scheme.

Compare: 2008 No 97 s 61

### *Approved scheme: rules and obligations*

## 13 Rules of approved scheme

- (1) The rules of the approved scheme must provide for, or set out, with respect only to its function of dealing with complaints made under section 95 of this Act or section 43E of the Gas Act 1992, the following:
  - (a) that any person (including consumers, potential consumers, and owners and occupiers of land, but excluding members of the scheme) may make complaints for resolution by the scheme:
  - (b) how complaints to be dealt with by the scheme may be made:
  - (c) the kinds of complaints that the scheme will deal with:
  - (d) a period after which the scheme, if asked by a complainant, must investigate a complaint that has been made directly to a member:
  - (e) that complaints about members must be investigated in a way that is consistent with the rules of natural justice:
  - (f) that any information may be considered in relation to a complaint, and any inquiry may be made, that is fair and reasonable in the circumstances:
  - (g) the kinds of remedial action that the scheme may require members to take in order to resolve complaints (for example, a requirement to compensate a complainant up to a certain amount stated in the rules, or to change a system):
  - (h) that the scheme will not charge a fee to any complainant to investigate or resolve a complaint:

- (i) that a resolution of a complaint about a member of the scheme is binding on the member concerned:
  - (j) that a resolution of a complaint about a member of the scheme is binding on the complainant concerned if the complainant accepts the resolution or has agreed to be bound by a final decision and a final decision is made:
  - (k) that the scheme may cease investigating and resolving a complaint if the complainant takes alternative court action against the member:
  - (l) that, if a complainant accepts a resolution or has agreed to be bound by a final decision and a final decision is made, the complainant may not seek or obtain any other resolution of the complaint through any court or tribunal:
  - (m) how the provider will promote knowledge about, and accessibility to, the scheme to persons entitled to make a complaint.
- (1A) The rules of the approved scheme must provide for, or set out, rules and procedures for dealing with indemnity disputes.
- (2) The responsible person of the approved scheme must publicise the rules.
- Compare: 2008 No 97 ss 63, 64
- Schedule 4 clause 13(1): amended, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).
- Schedule 4 clause 13(1A): inserted, on 17 June 2014, by section 16 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

#### **14 List of members**

The provider of the approved scheme must maintain and publicise a list of current members of the scheme.

Compare: 2008 No 97 s 62

#### **15 Independent 5-yearly review**

The provider of the approved scheme must ensure that, at least once every 5 years, an independent review of the scheme is carried out and the report of the review is provided to the Minister within 3 months of its completion.

Compare: 2008 No 97 s 63(q)

#### **16 Annual report**

- (1) The provider of the approved scheme must prepare an annual report containing information, identified by the Minister by notice to the scheme, about the scheme in relation to that financial year.
- (2) The report must be supplied to the Minister within 3 months after the end of the financial year applying to the scheme.
- (3) The provider must publicise the annual report.

Compare: 2008 No 97 ss 68, 70

**17 Provision of information**

- (1) The provider of the approved scheme must, on request by the Minister, provide information on the following:
  - (a) matters relating to the most recent annual report;
  - (b) the scheme's compliance with the principles listed in clause 5(2).
- (2) Nothing in this clause or clause 16 authorises a breach of the Privacy Act 1993 or any obligation of confidentiality.

Compare: 2008 No 97 s 69

*Regulated scheme: rules of scheme and appointment of provider*

**18 Regulations setting out rules of regulated schemes**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the regulated scheme.
- (2) The regulations must—
  - (a) set out the rules of the scheme, which must comply with clause 13; and
  - (b) be consistent with the purpose in clause 1.
- (3) Before making a recommendation for the regulations, the Minister must consult with—
  - (a) the Minister of Energy; and
  - (b) the Authority; and
  - (c) any persons or their representatives that the Minister considers are likely to be substantially affected by the recommendation.
- (4) However, a failure to consult with the persons referred to in subclause (3)(c) does not affect the validity of the regulations.

Schedule 4 clause 18 heading: amended, on 12 December 2012, by section 5 of the Electricity Industry Amendment Act 2012 (2012 No 102).

**19 Order in Council appointing provider of regulated scheme**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint a person to provide the regulated scheme.
- (2) The Minister may make a recommendation under this clause only if the Minister is satisfied that the person appointed as the provider—
  - (a) is a formally constituted dispute resolution body; and
  - (b) is capable of providing the scheme in accordance with the purpose in clause 1 and the rules of the scheme.
- (3) Before making a recommendation for an Order in Council, the Minister must consult with the Minister of Energy.



**20 Notice of intention to revoke appointment**

- (1) An appointment made by Order in Council may not be revoked on the ground that the Minister has approved, or intends to approve, an approved scheme under clause 6 unless the Minister has given the scheme provider at least 3 months' notice in writing of the intention to revoke the appointment.
- (2) Nothing in this clause limits the grounds on which the Minister may otherwise recommend the revocation of any appointment.

**Schedule 5****Existing agreements in respect of Waitaki Power Scheme**

s 123

- 1 Agreement between Meridian Energy Limited and Transit New Zealand, dated April 2008, entitled “Agreement in relation to water rights”.
- 2 Agreement between Meridian Energy Limited and Her Majesty The Queen acting by and through the Director-General of Conservation, dated September 2006, entitled “Compensatory funding agreement”.
- 3 Agreement between Meridian Energy Limited and the Mackenzie District Council, dated January 2008, entitled “Agreement in relation to water rights”.
- 4 Agreement between Meridian Energy Limited and Royal Forest & Bird Protection Society of New Zealand Incorporated, undated, entitled “Agreement in relation to water rights”.
- 5 Agreement between Meridian Energy Limited and Central South Island Fish and Game Council, dated 24 September 2008, entitled “Agreement in relation to water rights”.
- 6 Agreement between Meridian Energy Limited and New Zealand Recreational Canoeing Association Incorporated and Tekapo Whitewater Trust, dated 30 September 2009, entitled “Agreement in relation to water rights”.
- 7 Agreement between Electricity Corporation of New Zealand Limited and Lower Waitaki Irrigation Company Limited, Maerewhenua District Water Resource Co. Limited and Morven, Glenavy, Ikawai Irrigation Company Limited, dated 26 November 1990, entitled “Agreement in relation to water rights”.
- 8 Agreement between Electricity Corporation of New Zealand Limited and Benmore Irrigation Company Limited, dated 26 November 1990, entitled “Agreement in relation to water rights”.
- 9 Agreement between Meridian Energy Limited and Te Rūnanga o Ngāi Tahu, dated 2 August 2000, entitled “Waitaki catchment deed of agreement”.
- 10 Agreement between Meridian Energy Limited and Mount Cook Salmon Limited, dated 24 May 1999, entitled “Agreement to lease”.
- 11 The head agreement between Electricity Corporation of New Zealand Limited and—
  - (a) Her Majesty The Queen acting by and through the Minister of Conservation; and
  - (b) South Canterbury Fish and Game Council; and

- (c) Ngāi Tahu Trust Board; and
  - (d) Benmore Irrigation Company Limited; and
  - (e) The New Zealand Canoeing Association Incorporated; and
  - (f) Mackenzie District Council; and
  - (g) Lower Waitaki Irrigation Company Limited; and
  - (h) Maerewhenua District Water Resource Co. Limited; and
  - (i) Morven, Glenavy, Ikawai Irrigation Company Limited; and
  - (j) Transit New Zealand; and
  - (k) South Canterbury Branch of Royal Forest & Bird Protection Society of New Zealand Incorporated; and
  - (l) New Zealand Salmon Anglers Association Incorporated, dated 26 November 1990, entitled “Agreement to Electricity Corporation’s water rights”.
- 12 Agreement between Meridian Energy Limited and Mackenzie Irrigation Company Limited, dated 31 October 2006, entitled “Agreement in relation to the allocation of water for irrigation”.

## Schedule 6

### Amendments to other enactments

s 166

#### Part 1

#### Repeals of, and amendments to, Acts

##### **Crown Entities Act 2004 (2004 No 115)**

Item relating to Electricity Commission in Part 1 of Schedule 1: repeal.

First column of Part 3 of Schedule 1: insert “Electricity Authority” in its appropriate alphabetical order.

##### **Electricity Amendment Act 2004 (2004 No 80)**

Repeal.

##### **Energy Companies Act 1992 (1992 No 56)**

Section 46A: add:

- (4) This section is subject to section 104 of the Electricity Industry Act 2010.

##### **Gas Act 1992 (1992 No 124)**

Heading above section 43E: repeal and substitute:

*Dispute resolution*

Section 43E: repeal and substitute:

##### **43E Access to dispute resolution scheme**

- (1) Any person described in subsection (2) may make a complaint to the dispute resolution scheme concerning a gas distributor or a gas retailer.
- (2) The persons who may make a complaint are any persons (including consumers, potential consumers, and owners and occupiers of land) except members of the dispute resolution scheme.
- (3) The **dispute resolution scheme** is either—
  - (a) the approved scheme identified in clause 3 of Schedule 4 of the Electricity Industry Act 2010; or
  - (b) the regulated scheme provided for in regulations made under clause 18 of Schedule 4 of that Act.
- (4) The procedures for making complaints to the dispute resolution scheme are as set out in the rules of the dispute resolution scheme.

Compare: 1992 No 122 s 158G

**Gas Act 1992 (1992 No 124)—continued**

**43EA Membership of dispute resolution scheme**

- (1) Every gas distributor and every gas retailer must be a member of the dispute resolution scheme, unless exempt under subsection (3).
- (2) A person commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 if the person knowingly refuses or fails to become a member of the dispute resolution scheme.
- (3) A person need not be a member of a dispute resolution scheme if—
  - (a) the person is a member of a class of industry participants identified in regulations made under section 43S(1) as a class that need not be a member; or
  - (b) the Minister of Consumer Affairs exempts the person by issuing an individual exemption notice in the *Gazette* that—
    - (i) identifies the person that is exempt from the obligation to be a member; and
    - (ii) gives reasons for the exemption.
- (4) The Minister of Consumer Affairs may grant an individual exemption to a person only if he or she is satisfied that membership of the dispute resolution scheme by the person is not necessary in order to meet the purpose of the dispute resolution scheme because complaints are unlikely to be made against the person or because complaints should be made in another forum.
- (5) The Minister of Consumer Affairs may amend or revoke an individual exemption, by issuing a notice in the *Gazette* that identifies the exempt participant and gives reasons for the amendment or revocation, but only if the Minister—
  - (a) has given notice of the proposed amendment or revocation to the exempt person (where possible) and given the person a reasonable opportunity to comment on the proposal; and
  - (b) is satisfied that the amendment or revocation is necessary or desirable in order to meet the purpose of the dispute resolution scheme.
- (6) To avoid doubt, an individual exemption notice issued under subsection (3)(b) is not a regulation for any purpose.
- (7) The Ministry must include on its Internet site a list of all current class and individual exemptions.

**43EB Compliance with rules and binding settlements**

- (1) Members of the dispute resolution scheme must comply with the rules of the scheme.
- (2) On the application of the person responsible for the dispute resolution scheme, the District Court may require a member of the scheme to do either or both of the following:

**Gas Act 1992 (1992 No 124)—continued**

- (a) comply with the rules of the scheme:
  - (b) comply with a binding settlement determined by the scheme in response to a complaint.
- (3) If a District Court is satisfied that the terms of a binding settlement are manifestly unreasonable, the court's order under subsection (2)(b) may modify the terms of the binding settlement, provided that the modification results in a binding settlement that could have been made under the dispute resolution scheme.
- (4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by a District Court for the payment of a sum of money.

**43EC Offence to fail to comply with District Court order**

- (1) A member of the dispute resolution scheme who, knowing that the member is subject to an order made under section 43EB, fails to comply with the order, or fails to comply with the order within the time or in the manner required by the order, commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.
- (2) Nothing in this section applies to an order or part of an order of a District Court referred to in section 43EB(4).

Section 43S(1): insert the following paragraph after paragraph (f):

- (fa) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any class of persons from all or any of the requirements in sections 43EA to 43EC (which relate to dispute resolution):

Section 43ZZH(2): omit "Electricity Commission that is continued under subpart 1 of Part 15 of the Electricity Act 1992" and substitute "Electricity Authority established by section 12 of the Electricity Industry Act 2010".

Section 43ZZI(1): omit "Electricity Commission continues under both the Electricity Act 1992" and substitute "Electricity Authority continues under both the Electricity Industry Act 2010".

Section 43ZZI(2): omit "Electricity Commission" and substitute "Electricity Authority".

Section 43ZZJ(2): omit "objective specified in section 172N of the Electricity Act 1992 in relation to electricity" and substitute "objective specified in section 15 of the Electricity Industry Act 2010 in relation to electricity".

Section 43ZZK(2): repeal.

**Gas Act 1992 (1992 No 124)—continued**

Section 43ZZL(3): omit “functions specified in section 172O of the Electricity Act 1992” and substitute “functions specified in section 16 of the Electricity Industry Act 2010”.

Section 43ZZM: repeal and substitute:

**43ZZM Additional members and their duties**

- (1) The Minister may recommend, and the Governor-General may appoint, up to 2 additional persons as members of the Energy Commission, having regard to the need to ensure that the Commission has among its members knowledge and experience of, and capability in, the gas industry.
- (2) In that case, section 13(1) of the Electricity Industry Act 2010 must be read as if the Commission comprises between 5 and 9 members.
- (3) A member appointed under this section, when acting as a member, must not act as a representative of, or promote the interests or views of, any organisation, a particular gas industry participant, or a particular group of gas industry participants.

Section 43ZZN: omit “must give effect to its principal objective and specific outcomes and its GPS objectives and outcomes” and substitute “must give effect to its principal objective and specific outcomes and have regard to its GPS objectives and outcomes”.

Section 43ZZO: omit “Sections 172Z and 172ZJ to 172ZQ of the Electricity Act 1992 apply equally in relation to the Energy Commission and in respect of gas” and substitute “Section 172Z of the Electricity Act 1992 applies (as if it had not been repealed) in relation to the Energy Commission in respect of gas”.

Section 43ZZP(1): omit “Section 172ZC of the Electricity Act 1992” and substitute “Section 128 of the Electricity Industry Act 2010”.

Section 43ZZQ(1): omit “Electricity Commission” and substitute “Electricity Authority”.

Section 43ZZQ(2): omit “Electricity Commission” and substitute “Electricity Authority”.

**Local Government Act 2002 (2002 No 84)**

Section 6(4)(a) of the Local Government Act 2002 (which defines what are not council-controlled organisations) is repealed and the following paragraph substituted:

- (a) a body corporate that carries on an electricity business (whether or not that business is its principal or only business) or a trust that is constituted for purposes which include owning or controlling, directly or indirectly, all or part of an electricity company that carries on that business; or

**Ombudsmen Act 1975 (1975 No 9)**

Schedule 1, Part 2: omit item relating to the Electricity Commission and substitute:

**Ombudsmen Act 1975 (1975 No 9)—continued**

Electricity Authority

**Part 2****Revocations of, and amendments to, other enactments****Electricity Governance Regulations 2003 (SR 2003/374)**

Revoke.

**Electricity Governance (Connection of Distributed Generation) Regulations 2007 (SR 2007/219)**

Revoke.

**Electricity Governance (Security of Supply) Regulations 2008 (SR 2008/252)**

Revoke.

**Electricity Industry Reform Act (Fees) Regulations 1998 (SR 1998/276)**

Revoke.

**Electricity Governance Rules 2003**

Revoke.



## Reprints notes

### 1 *General*

This is a reprint of the Electricity Industry Act 2010 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Energy Innovation (Electric Vehicles and Other Matters) Amendment Act 2017 (2017 No 27): Part 1  
Contract and Commercial Law Act 2017 (2017 No 5): section 347  
District Court Act 2016 (2016 No 49): section 261  
Senior Courts Act 2016 (2016 No 48): section 183(b)  
Consumer Guarantees Amendment Act 2013 (2013 No 144): section 16  
Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126  
State-Owned Enterprises (Genesis Energy Limited) Order 2013 (SR 2013/435): clause 4  
Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150  
Legislation Act 2012 (2012 No 119): section 77(3)  
Electricity Industry Amendment Act 2012 (2012 No 102)  
Search and Surveillance Act 2012 (2012 No 24): section 239  
Criminal Procedure Act 2011 (2011 No 81): section 413