

**Reprint
as at 18 December 2013**



**Electricity Industry Reform Act
1998**

Public Act 1998 No 88
Date of assent 8 July 1998
Commencement see section 1

Electricity Industry Reform Act 1998: repealed, on 1 November 2010, by section 165 of the Electricity Industry Act 2010 (2010 No 116).

Contents

	Page
Title	7
1 Short Title and commencement	7
2 Purpose	7

Part 1

Separation of lines and supply—Preliminary provisions

Interpretation

3 Interpretation	9
4 Meaning of electricity lines business <i>[Repealed]</i>	15
5 Meaning of electricity supply business <i>[Repealed]</i>	15
6 Meaning of business A and business B	15
7 Meaning of involved	16
7A How to measure involvement	17

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Economic Development.

8	Meaning of 10% threshold	18
9	Meaning of control rights	18
10	Meaning of equity return rights	18
11	Meaning of material influence	20
12	Meaning of associate	21
13	Meaning of agency [<i>Repealed</i>]	22
14	Substance matters, not form	22
	<i>Application of Act</i>	
15	Application to persons outside New Zealand	23
16	Act binds the Crown	23
	Part 2	
	Separation of lines and supply—Rules and exemptions	
	<i>Ownership separation</i>	
17	Ownership restrictions	24
	<i>Connected generation and connected customers selling caps</i>	
17A	Connected generation cap rule	24
17B	Small or encouraged connected generation	25
17C	Connected customers selling cap rule	25
	<i>Corporate separation and arm's-length rules</i>	
17D	Threshold for corporate separation and arm's-length rules	26
17E	Corporate separation and arm's-length rules imposed	27
	<i>Use-of-systems agreements rules for businesses with 5 MW or more of connected generation</i>	
17F	Use-of-systems agreements rules for businesses with 5 MW or more of connected generation	27
	<i>Exemption for Transpower</i>	
17G	Exemption for Transpower New Zealand Limited for purpose of deferring investment in national grid	29
18	20% aggregate cross-ownership prohibition [<i>Repealed</i>]	29
	<i>Scope of application of rules in this Part</i>	
19	Certain businesses and involvements to be disregarded	29
	<i>Application of ownership separation rules to trust-like interests</i>	
20	Non-specific interests rule	32
21	Responsibility for remedying contravention	34

	<i>Process for compliance</i>	
	<i>[Repealed]</i>	
22	Compliance with ownership separation rules <i>[Repealed]</i>	34
23	Agreements and negotiations leading to separation <i>[Repealed]</i>	35
24	Corporate separation <i>[Repealed]</i>	35
25	Arms length rules <i>[Repealed]</i>	35
26	12 months' lead in time to full arms length <i>[Repealed]</i>	35
	<i>Interim exemptions, rules, and compliance options</i>	
	<i>[Repealed]</i>	
27	Purpose of sections <i>[Repealed]</i>	35
	<i>Exemptions for certain involvements</i>	
	<i>[Repealed]</i>	
28	Exemption for existing involvements until separation <i>[Repealed]</i>	35
29	Exemption for acquisitions of one person's cross-involvements <i>[Repealed]</i>	36
	<i>Ban on expanding cross-involvements</i>	
	<i>[Repealed]</i>	
30	Ban on expansion in cross-involvements <i>[Repealed]</i>	36
	<i>Options for persons wishing to expand</i>	
	<i>[Repealed]</i>	
31	Exemption for any involvement in single unseparated business <i>[Repealed]</i>	36
32	Exemption for certain Treaty-related transactions <i>[Repealed]</i>	36
33	Exemption for Highbank right of first refusal in Ngāi Tahu Treaty settlement <i>[Repealed]</i>	36
34	Exemption for companies with direct ownership <i>[Repealed]</i>	37
35	Other expansion option <i>[Repealed]</i>	37
	<i>Compliance process for existing 20% aggregates</i>	
	<i>[Repealed]</i>	
36	Compliance process for existing 20% aggregates <i>[Repealed]</i>	37
	<i>Mirror trust and mirror co-operative option</i>	
	<i>[Repealed]</i>	
37	Mirror trust option <i>[Repealed]</i>	37
38	Qualifying conditions on mirror trust option <i>[Repealed]</i>	37
39	Transfer of business to mirror trust <i>[Repealed]</i>	37

40	Beneficiaries of mirror trusts <i>[Repealed]</i>	38
41	Terms of trust deeds for mirror trusts <i>[Repealed]</i>	38
42	Mirror co-operatives <i>[Repealed]</i>	38
43	Exemption of mirror trusts from ownership separation rules <i>[Repealed]</i>	38
44	Exemption of mirror trusts from rule limiting expansion of control by trust-like agencies <i>[Repealed]</i>	38
45	Trusts that cease to be mirror trusts <i>[Repealed]</i>	38
	<i>No expansion of control by trust-like agencies in electricity supply [Repealed]</i>	
46	No expansion of control by trust-like agencies in electricity supply <i>[Repealed]</i>	39
	<i>Exemptions for generation [Repealed]</i>	
46A	Exemption for new generation from new renewable energy source <i>[Repealed]</i>	39
46B	Electricity lines business to publicly notify acquisition or increase of distributed generation <i>[Repealed]</i>	39
	<i>Exemptions for generation commissioned after 20 May 2003 and for reserve energy [Repealed]</i>	
46C	Exemptions for generation commissioned after 20 May 2003 and for reserve energy <i>[Repealed]</i>	39
 Part 3 Separation of lines and supply—Enforcement and penalties <i>Preliminary</i>		
47	Contraventions	40
48	Inadvertent contraventions	40
49	Jurisdiction of High Court	41
50	Jurisdiction of District Courts	41
	<i>Penalties</i>	
51	Pecuniary penalties	41
52	Injunctions	42
53	Actions for damages	42
54	Court may order divestiture of assets or voting securities	42
55	Additional penalty for contravention involving commercial gain	43
56	Other powers to give directions, re-open agreements	44

56A	Limits on defences and penalties for failure to publicly notify acquisition or increase of distributed generation <i>[Repealed]</i>	44
	<i>Miscellaneous provisions</i>	
57	Miscellaneous	45
58	Application of Commerce Act 1986 and the Crown Entities Act 2004 provisions	45
59	Additional proceedings	46
	Part 4	
	Separation of lines and supply—Taxation	
	<i>[Repealed]</i>	
60	Purpose <i>[Repealed]</i>	46
61	Mirror co-operatives <i>[Repealed]</i>	47
62	Mirror trusts <i>[Repealed]</i>	47
63	Consolidation rules modified generally for purposes of corporate ownership split and ownership split <i>[Repealed]</i>	47
64	Gifts not to form part of capital gain amounts <i>[Repealed]</i>	47
65	No stamp duty payable <i>[Repealed]</i>	47
66	Shares not acquired for resale <i>[Repealed]</i>	47
67	Definitions for tax sections <i>[Repealed]</i>	47
	Part 5	
	Separation of lines and supply—Miscellaneous provisions	
	<i>Anti-avoidance</i>	
68	Duty not to defeat purposes of Parts 1 to 5	48
	<i>No compensation</i>	
69	No compensation	48
	<i>Disclosure</i>	
70	Disclosure regime	48
70A	Disclosure as to electricity sold to connected customers within local network area	49
70B	Directors must report compliance with arm's-length rules	50
	<i>Matters relevant to implementation of Part 2</i>	
	<i>[Repealed]</i>	
71	Trust deeds <i>[Repealed]</i>	50
72	Beneficiaries of customer lines trusts <i>[Repealed]</i>	50
73	Shareholders of lines co-operatives <i>[Repealed]</i>	50
74	Power to make gifts <i>[Repealed]</i>	51
75	Application of Securities Act 1978 <i>[Repealed]</i>	51

76	Protection from other Acts <i>[Repealed]</i>	51
77	Member approvals, etc <i>[Repealed]</i>	51
78	Consultation requirements <i>[Repealed]</i>	51
79	Technical redundancy <i>[Repealed]</i>	51
	<i>Extensions and exemptions</i>	
80	Extensions	51
81	Exemptions	52
	<i>Application of other Acts</i>	
82	Application of Commerce Act 1986	53
83	Not interconnected under Commerce Act 1986	53
84	Application of Energy Companies Act 1992 <i>[Repealed]</i>	54
85	Dealing with land held for public works <i>[Repealed]</i>	54
86	Illegal Contracts Act 1970	54
	<i>Regulation-making powers</i>	
87	Regulations	54
	Part 6	
	Price restraint for line charges for domestic and rural consumers	
88	Regulations relating to charges for line function services	56
89	Way in which price restraint may be imposed	57
90	Definition of domestic premises	57
91	Offences	58
92	Other Acts relating to price control not affected	59
93	Interpretation	59
	Part 7	
	Amendments to Electricity Act 1992	
	<i>[Repealed]</i>	
94	Regulations relating to information disclosure <i>[Repealed]</i>	60
95	Regulations <i>[Repealed]</i>	60
96	Offences <i>[Repealed]</i>	60
	Part 8	
	Split of Electricity Corporation of New Zealand	
	<i>[Repealed]</i>	
97	Interpretation <i>[Repealed]</i>	60
98	Directions by shareholding Ministers <i>[Repealed]</i>	60
99	Principal objective of ECNZ <i>[Repealed]</i>	60
100	Enactments amended <i>[Repealed]</i>	61
101	Amendment to Electricity Act 1992 <i>[Repealed]</i>	61

Schedule 1	62
Arm's-length rules	
Schedule 2	67
Amendments consequential upon split of ECNZ	

An Act to reform the electricity industry

1 Short Title and commencement

- (1) This Act may be cited as the Electricity Industry Reform Act 1998.
- (2) Except as provided in subsections (3) to (5), this Act comes into force on the day after the date on which this Act receives the Royal assent.
- (3) The following provisions are deemed to have come into force on 21 May 1998:
 - (a) sections 37 to 45 (mirror trusts):
 - (b) section 46 (no expansion of control by trust-like agencies in electricity supply):
 - (c) Part 3 (enforcement and penalties):
 - (d) section 68 (duty not to defeat purposes):
 - (e) section 69 (no compensation):
 - (f) section 71 (trust deeds).
- (4) Part 2 (ownership separation rules and exemptions) is deemed to have come into force on 23 June 1998.
- (5) Section 100 comes into force on a date to be appointed by the Governor-General by Order in Council.

Section 1(5): section 100 brought into force, on 14 May 1999, by the Electricity Industry Reform Act (Commencement of Section 100) Order 1999 (SR 1999/115).

2 Purpose

- (1) The purpose of this Act is to better ensure—
 - (a) that costs and prices in the electricity industry are subject to sustained downward pressure; and
 - (b) that the benefits of efficient electricity pricing flow through to all classes of consumers; and

- (c) new investment in generation from renewable energy sources.
- (1A) The Act does this by—
- (a) effectively separating electricity lines from generation and retail where those activities are co-located; and
 - (b) promoting effective competition in electricity generation and retail; and
 - (c) limiting barriers to new investment in generation from renewable energy sources.
- (2) The particular purpose of Parts 1 to 3 and 5 (separation of lines and supply) is—
- (a) to prohibit certain involvements in electricity lines and electricity generation and retail that may create incentives or opportunities—
 - (i) to inhibit competition in the electricity industry; or
 - (ii) to cross-subsidise generation or retail activities from electricity lines activities; and
 - (b) to restrict relationships between a business that has involvement in electricity lines and a business that has involvement in electricity generation or retail, where those relationships may not otherwise be at arm's-length; and
 - (c) to provide specified exemptions for new investment in generation from renewable energy sources.
- (3) The particular purpose of Part 6 (price restraint) is to enable, in the event of a change in charges for line function services, the protection of domestic and rural consumers against a rate of change and level of change that is inappropriate.
- (4) *[Repealed]*
- (5) *[Repealed]*

Section 2(1): substituted, on 14 October 2008, by section 4(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 2(1A): inserted, on 14 October 2008, by section 4(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 2(2): substituted, on 14 October 2008, by section 4(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 2(4): repealed, on 14 October 2008, by section 4(3) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 2(5): repealed, on 14 October 2008, by section 4(4) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Part 1 Separation of lines and supply—Preliminary provisions

Interpretation

3 Interpretation

(1) In Parts 1 to 5, 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

arm's-length rules means the objective and rules set out in Schedule 1

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 same meaning as in section 12

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

business A and **business B** have the same meanings as in section 6

Commission means the Commerce Commission established by section 8 of the Commerce Act 1986

connected customer, in respect of a person, means a consumer (within the meaning of section 2(1) of the Electricity Act 1992) to whom that person sells electricity, if—

- (a) the electricity is conveyed to that consumer on a line in which the person is involved; and
- (b) the consumer and the line are within the same local network area

connected customers selling cap means the rule in section 17C

connected electricity business has the same meaning as in section 17D

connected generation, in respect of a person, means generation in which the person is involved that is connected to a

line in which the person is involved, if the generation and the line are within the same local network area

connected generation cap means the rule in section 17A

control right has the same meaning as in section 9

court means the High Court; and includes a Judge of that court

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

disregarded involvement means a business or involvement or interest to which section 19 applies

electricity business means a business that does any of the things referred to in section 7(1)(a) to (c)

electricity trust, in relation to an electricity business, means 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

equity return right has the same meaning as in section 10

exceeds the overlap threshold, for the purposes of section 20, means person A exceeds the overlap threshold in respect of person B if—

- (a) more than 20% of the persons having non-specific interests in person A are likely to be the same persons as have interests in person B; or
- (b) the class or classes of persons having non-specific interests in person A are substantially included in a class or classes of persons having interests in person B; or
- (c) more than 20% of the persons likely to derive an appreciable benefit from non-specific interests in person A are likely to be the same persons as those that are likely to derive an appreciable benefit from equity return rights in person B; or
- (d) more than 20% of the benefits distributed or distributable as a result of non-specific interests in person A are likely to benefit substantially the same class of persons as are likely to derive an appreciable benefit from equity return rights in person B; or
- (e) person A has a type of overlap specified from time to time in regulations made under section 87 and, for this

purpose, paragraphs (a) to (d) of this definition do not limit the generality of that regulation-making power;—
and **overlap threshold being exceeded** has a corresponding meaning

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

financial year means a period of 12 months ending on 31 March

interest, in relation to an electricity business, means a direct or indirect control right or equity return right in, or a material influence over, the business

involved has the same meaning as in section 7

line means works that are used or intended to be used for the conveyance of electricity, and includes a wire or cable

local network means the lines, and associated equipment, owned or operated by an electricity distributor (within the meaning of section 2(1) of the Electricity Act 1992) in a contiguous geographic area or areas but does not include the national grid, and **local network area** has a corresponding meaning

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, for the avoidance of 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 an electricity 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 having that position

material influence has the same meaning as in section 11

maximum demand means, in relation to lines, the single highest half-hourly input (in kilowatts), during a particular financial year, to the lines, after allowing for diversity of the demand at each point of input

member includes a shareholder of a body corporate, a beneficiary of a trust, and a partner in a partnership

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

nameplate means the full-load continuous rating of a generator 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

national grid means the assets used or owned by Transpower New Zealand Limited or any subsidiary of, or successor to, that company; and includes any replacement assets for those assets

non-specific interests means expectancies, or other interests that are not transferable or able to be surrendered, or not transferable or able to be surrendered without constraints of a kind likely to result in the consideration for such a transfer or surrender being substantially less than the value of the interest if it were freely transferable

operating does not include the provision only of maintenance and related services

ownership separation rules means the rules in sections 17 to 17C and section 20 (non-specific interests rule)

person includes the trustees of a trust acting in that capacity

qualifying generation has the same meaning as in section 17C(2)

renewable energy source means solar, wind, hydro, geothermal, biomass, tidal, wave, ocean current sources, or any other energy source that occurs naturally and the use of which will not permanently deplete New Zealand's energy sources of that kind, because those sources are generally expected to be replenished by natural processes within 50 years or less of being used

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

sell means any arrangement under which electricity is bought and sold, except financial hedge contracts, and **sell electricity** has a corresponding meaning

subsidiary has the same meaning as in sections 5 and 6 of the Companies Act 1993.

- (2) Where a section has a statement of purpose, the statement is an indication of the matters that may be considered in ascertaining the meaning of the section, but does not limit the section or any other section.
- (3) In relation to sections 17 and 19,—
 - (a) limitations, exclusions, or exemptions under those sections 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 sections.

Section 3(1) **agency**: repealed, on 8 August 2001, by section 3(1) of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

Section 3(1) **arm's-length rules**: amended, on 14 October 2008, by section 5(3) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **Commission**: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 3(1) **connected customer**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **connected customers selling cap**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **connected electricity business**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **connected generation**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **connected generation cap**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **core assets**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **cross-involvement**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **customer co-operative**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **distributed generation**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **electricity business**: substituted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **electricity company**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **electricity lines business**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **electricity supply business**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **exempt person**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **existing cross-involvement**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **existing involvement**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **financial year**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **line**: substituted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **local network**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **manager**: substituted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **maximum demand**: inserted (with effect on 20 May 2003), on 17 October 2004, by section 4(2) of the Electricity Industry Reform Amendment Act 2004 (2004 No 81).

Section 3(1) **Minister**: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 3(1) **mirror co-operative**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **mirror trust**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **nameplate**: substituted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **ownership separation rules**: substituted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **qualifying generation**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **renewable energy source**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **sell**: inserted, on 14 October 2008, by section 5(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **settling trust**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **transfer**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(1) **unseparated electricity business**: repealed, on 14 October 2008, by section 5(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 3(3): added, on 8 August 2001, by section 3(5) of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

Section 3(3): amended, on 14 October 2008, by section 5(4) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

4 Meaning of electricity lines business

[Repealed]

Section 4: repealed, on 14 October 2008, by section 6 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

5 Meaning of electricity supply business

[Repealed]

Section 5: repealed, on 14 October 2008, by section 6 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

6 Meaning of business A and business B

- (1) Where section 20 uses the term business A, it refers to a business that would have to have its ownership separated under sections 17 to 17G, and the term business B then refers to a

business from which business A must be separated under those sections.

- (2) Where the rest of this Act uses the term business A, it refers to a business that is required to be carried out in one company under section 17E, and the term business B then refers to a business that is required to be carried out in another company under that section.
- (3) Where this Act 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.

Section 6: substituted, on 14 October 2008, by section 7 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

7 Meaning of involved

- (1) For the purposes of this Act, a person is **involved**—
 - (a) in a line if the person conveys electricity by the line, or owns or operates, directly or indirectly, the line or any other assets used in connection with the line, either alone or together with its associates and either on its own or another's behalf;
 - (b) in any generation if the person generates electricity from the generator, or owns or operates, directly or indirectly, the generator or any other assets used in connection with the generator, either alone or together with its associates and either on its own or another's behalf;
 - (c) in selling electricity to a customer if the person sells to the customer either on its own or another's behalf;
 - (d) in any of the things referred to in paragraphs (a) to (c) if the person—
 - (i) 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
 - (ii) exceeds the 10% threshold in section 8 in respect of a business that does any of those things; or
 - (iii) has material influence over a business that does any of those things.
- (2) **Involvement** has a corresponding meaning.

Section 7: substituted, on 14 October 2008, by section 7 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

7A How to measure involvement

- (1) This section applies for the purposes of calculating the caps and thresholds referred to in the following sections:
 - (a) section 17A (connected generation cap):
 - (b) section 17C (connected customers selling cap):
 - (c) section 17D (threshold for corporate separation and arm's-length rules).
- (2) A person is involved in any connected generation only in proportion to the extent of the person's interest in the connected generation.

Examples

LineCo has a 20% shareholding in a joint venture company that operates a connected 100 MW generating plant.

LineCo is therefore involved in 20 MW of generation. Consequently, 20 MW of generation counts towards the cap on connected generation (50 MW in the case of thermal generation and unlimited in the case of renewable generation).

LineCo can sell to connected customers all of the total annual nominal MWh capacity of the 20 MW. The selling cap does not change in proportion to the extent of LineCo's interest in the business selling the electricity. For example, if the business selling the electricity is a joint venture company in which LineCo has only a 30% shareholding, then LineCo's selling cap is the same as it would have been if LineCo had a 100% shareholding in the selling business.

Fred is a director of LineCo. That directorship is his only interest in anything. Fred's involvement in respect of both generation and selling is the same as LineCo's.

LineCo must corporately separate and operate the generation and retail businesses at arm's-length (because the 20 MW exceeds the 10 MW threshold). However, it does not need to have separate managers because the 20 MW does not exceed the 30 MW threshold for separate managers in the arm's-length rules.

Section 7A: inserted, on 14 October 2008, by section 7 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

8 Meaning of 10% threshold

A person exceeds the 10% threshold in respect of an electricity 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.

9 Meaning of control rights

- (1) For the purposes of this Act, a **control right** means a voting right attaching to a voting security.
- (2) A person has a control right under this Act if the person would have a relevant interest, under sections 5 to 5B of the Securities Markets Act 1988, in the voting securities that confer that right,—
 - (a) if **voting security**, in relation to a body, meant a security of the body which 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 security); and includes a security which, in accordance with the terms of the security, is convertible into a security of that kind; and
 - (b) if references in those sections to a number or percentage of voting securities were a reference to the number or percentage of the votes conferred by those securities.

Section 9(2): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 9(2): amended, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 9(2)(b): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

10 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 en-

titlement 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.
- (3) **Other equity returns**—
- (a) means a benefit derived, directly or indirectly, from a business which 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) does not include (for the avoidance of doubt) a right or entitlement to interest on debt calculated at general market rates prevailing 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) In respect of equity return rights for which percentage entitlements are not readily calculable for any reason, the persons that hold or may hold them and the amounts are to be determined in accordance with any method set out in regulations.
- (5) 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 one of 2 or more associates who together have, more than 10% of the equity return rights in the second person.
- (6) 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.

11 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 an electricity 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 paragraph (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 which would ordinarily fall to be exercised by a person referred to in either of paragraph (a) or paragraph (b):
 - (e) a person that can appoint or remove, or control the appointment or removal of, a person referred to in either of paragraph (a) or paragraph (b):
 - (f) a person that has a power to influence a decision of the business which would ordinarily require the holding of control rights which would cause the person to exceed the 10% threshold:
 - (g) a person in circumstances where that person and the business is acting, or proposing to act, jointly or in concert in relation to the business; or
 - (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 paragraph (c) to paragraph (f).
- (2) Where a person has material influence over an electricity business under this section, and another person has any of the powers or controls referred to in paragraph (c) to paragraph (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 an electricity business if the person is one of 2 or more associates who, together, have material influence over the business.
- (4) Subsection (3) does not apply to deem a person to have material influence over a business only because that person is, under section 12(1)(b) or (c), 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) For the avoidance of doubt, a power to cast one of many votes at an election of trustees or councillors does not, of itself, constitute material influence.

Section 11(1)(a): amended, on 14 October 2008, by section 8(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 11(2): amended, on 14 October 2008, by section 8(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 11(4): amended, on 14 October 2008, by section 5(3) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

12 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 of section 5B(2) of the Securities Markets Act 1988); 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) *[Repealed]*
 - (d) person A is a partner, to whom the Partnership Act 1908 applies, of person B; or
 - (da) 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 subsection (1)(e) to (h) to a company or business relate to a company or business in respect of which a connection with an electricity business is relevant.

Section 12(1)(a)(ii): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 12(1)(a)(ii): amended, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 12(1)(b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 12(1)(c): repealed, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 12(1)(da): inserted, on 14 October 2008, by section 9 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

13 **Meaning of agency**

[Repealed]

Section 13: repealed, on 8 August 2001, by section 5 of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

14 **Substance matters, not form**

- (1) Any question under Parts 1 to 5 is to be determined according to the nature, substance, and economic effect of the interest or relationship or other facts, and independently of form.

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

Compare: 1988 No 234 s 5(4), (5), (6)

Application of Act

15 Application to persons outside New Zealand

This Act extends to the acquisition or having of interests in electricity businesses in New Zealand by persons outside New Zealand.

Compare: 1986 No 5 s 4(3)

16 Act binds the Crown

- (1) This Act binds the Crown except as provided in subsection (2).
- (2) This Act does not apply to the Crown in so far as this Act applies, or would apply, to the Crown's involvement in both a business that operates all or part of the national grid and in an electricity supply business.

Part 2

Separation of lines and supply—Rules and exemptions

Ownership separation

Heading: substituted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

17 Ownership restrictions

- (1) The purpose of this section is to prevent a person being involved both in a line, and in generation or supply, in certain circumstances.
- (2) It is a contravention of this Part if a person has an involvement that is a breach of either or both of the following:
 - (a) the connected generation cap:
 - (b) the connected customers selling cap.

Section 17: substituted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Connected generation and connected customers selling caps

Heading: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

17A Connected generation cap rule

- (1) The connected generation cap is breached by a person if—
 - (a) any of the person's connected generation with a capacity greater than 5 MW in total (determined according to nameplate or nameplates) was commissioned before 20 May 2003; or
 - (b) the person's connected generation has a total capacity (determined according to nameplate or nameplates) that exceeds the greater of—
 - (i) 50 MW; or
 - (ii) 20% of the average of the maximum demand, in the immediately preceding 3 financial years, on the local network area.
- (2) This section is subject to section 17B.

Section 17A: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

17B Small or encouraged connected generation

The following connected generation is not counted for the purpose of section 17A (but is counted for the purposes of section 17D, which relates to the threshold for corporate separation and arm's-length rules):

- (a) generation commissioned on or after 8 August 2001 if the electricity generated from it is produced only from renewable energy sources:
- (b) generation commissioned on or after 8 August 2001 if the electricity generated from it is produced partly from renewable energy sources, as long as fossil fuels provide no more of the total fuel energy input for the generator or generators comprising the generation plant in any 12-month period than—
 - (i) 20%; or
 - (ii) any larger amount approved by the Minister (on the conditions, if any, he or she thinks fit) after first taking into account whether or not the generation uses new or advanced technology:
- (c) generation where the total capacity (determined according to nameplate or nameplates) of the generator is 5 MW or less if the generation was owned or operated, directly or indirectly, by the relevant person—
 - (i) before 23 June 1998; and
 - (ii) continuously between that date and the date when the person counts that generation for the purposes of section 17A:
- (d) generation that is disregarded under section 19.

Section 17B: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

17C Connected customers selling cap rule

- (1) The connected customers selling cap is breached by a person if the person is involved in selling more electricity to connected customers within a local network area, in total, in a financial year, than the equivalent of the person's qualifying generation within the local network area.
- (2) The person's **qualifying generation** is the sum of the total annual nominal MWh capacity of the following generation (cal-

culated as if the generation were operated at total capacity (determined according to nameplate or nameplates) for 24 hours for 365 days per annum):

$$a + b + c$$

where—

- a is the person's connected generation that is counted for the purpose of the connected generation cap in section 17A; and
 - b is any connected generation referred to in section 17B(a), (b), or (c) in which the person has an involvement; and
 - c is any generation referred to in section 17B(a) or (b) that is connected to the national grid, if,—
 - (a) on application by or on behalf of the person, the Commission has determined, by notice in the *Gazette*, that the generation should be treated as being within the local network area of the lines in which the person is involved; and
 - (b) the total capacity (determined according to nameplate or nameplates) of all generation in which the person has an involvement does not exceed 100 MW.
- (3) The Commission may not determine that any generation should be treated as being within more than 1 local network area.

Section 17C: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Corporate separation and arm's-length rules

Heading: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

17D Threshold for corporate separation and arm's-length rules

A business is a **connected electricity business** if the business, or a person involved in the business, has an involvement in more than 10 MW (determined according to nameplate or nameplates) of connected generation (including any connected

generation referred to in section 17B and any generation that the Commission has determined under section 17C(2) should be treated as being within a local network area).

Section 17D: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

17E Corporate separation and arm's-length rules imposed

- (1) Every person or persons who carry on a connected electricity business must carry on the business involving the relevant line in a different company from the company that carries on the business involving the qualifying generation or the selling to connected customers.
- (2) Every person who is involved in either of the connected electricity businesses must comply, and ensure that the person's electricity businesses comply, with the arm's-length rules.

Section 17E: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

*Use-of-systems agreements rules for businesses
with 5 MW or more of connected generation*

Heading: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

**17F Use-of-systems agreements rules for businesses with
5 MW or more of connected generation**

- (1) This section applies to an electricity business—
 - (a) that either—
 - (i) is required to comply with the arm's-length rules; or
 - (ii) would be required to comply with the arm's-length rules if the threshold for those rules were set at 5 MW of connected generation (instead of 10 MW); and
 - (b) that sells more than 5 GWh of electricity to connected customers in a financial year.
- (2) Every director of that electricity business must ensure that—
 - (a) the business has a comprehensive, written use-of-systems agreement that provides for the supply of line services (to the extent that those services are for the pur-

- pose of retailing) to the business that is involved in selling electricity (entered into, in the case of a business to which the corporate separation rule does not apply, as if the businesses were separate legal persons); and
- (b) the terms of that use-of-systems agreement do not discriminate in favour of one 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 publishes that use-of-systems agreement on an Internet site maintained by or on behalf of the business so that it is available to the public at all reasonable times.
- (3) The directors of that electricity business must publish on an Internet site maintained by or on behalf of the business, so that it is available to the public at all reasonable times, 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 services were supplied in respect of the sales to which the agreement relates during that year; and
 - (b) this section was otherwise fully complied with during that year.
- (4) Every director commits an offence who—
- (a) refuses or knowingly fails to comply with this section; or
 - (b) publishes a use-of-systems agreement or a certificate knowing that it is false or misleading in a material particular.

- (5) Every director who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding \$200,000.

Section 17F: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Exemption for Transpower

Heading: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

17G Exemption for Transpower New Zealand Limited for purpose of deferring investment in national grid

- (1) In this section, unless the context otherwise requires, **Transpower** means Transpower New Zealand Limited and any subsidiary of or successor to that company.
- (2) This section applies if, and to the extent to which, Transpower contracts with another person for that person to generate electricity for the purpose of deferring the need for investment by Transpower in the national grid.
- (3) Transpower is not involved in that person's electricity generation for the purposes of this Act.

Section 17G: inserted, on 14 October 2008, by section 10 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

18 20% aggregate cross-ownership prohibition

[Repealed]

Section 18: repealed, on 14 October 2008, by section 11 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Scope of application of rules in this Part

Heading: substituted, on 14 October 2008, by section 12 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

19 Certain businesses and involvements to be disregarded

- (1) For the purposes of this Act, no account is to be taken of a person's business, or involvement or interest in a business, if—
- (a) the ordinary business of the person consists of, or includes, the lending of money and that person has the involvement or interest 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
- (b) that person has the involvement or interest by reason only of acting for another person to acquire or dispose of a security on behalf of the other person in the ordinary course of business of a sharebroker and that person is a person authorised to undertake trading activities on a stock exchange; or
 - (c) that person—
 - (i) has the involvement or interest 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
 - (d) that person—
 - (i) has the involvement or interest 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
 - (e) that person has the involvement or interest by reason only that the person is a bare trustee of a trust to which the involvement or interest is subject; or
 - (f) 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
 - (g) that person is involved because the person has 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
 - (ga) that person is involved because the person has 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 the date on which this paragraph comes into force, 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 nameplates); or
 - (gb) that person is involved in the generation of reserve energy that is in accordance with the terms and conditions for that reserve energy set by the Commission, as those terms are defined in the Electricity Act 1992; or
 - (gc) that person is involved in the generation of electricity that is solely for the person's own consumption or for the consumption of that person's associates; or
 - (gd) that person is involved in the generation of electricity that does not have a total annual nominal capacity greater than 5 GWh per annum (determined according to nameplate or nameplates); or
 - (ge) that person is involved in selling no more than 5 GWh of electricity to connected customers within a local network area, in total, in a financial year; or
 - (h) the business, involvement, or interest is exempted by the Commission under section 81; or
 - (i) the business, involvement, or interest is declared, by regulations made under this Act, to be a disregarded business, involvement, or interest.
- (1A) For the purposes of this Act, no account is to be taken of a person's involvement in a line that—
- (a) is not connected, directly or indirectly, to the national grid:
 - (b) conveys electricity only from a generator to the national grid or from the national grid to a generator:

- (c) conveys less than 5 GWh per annum:
 - (d) conveys electricity solely for the consumption of a person who is involved in the line or for the consumption of its associates:
 - (e) conveys electricity (other than via the national grid) only from a generator to a local network or from a local network to a generator:
 - (f) conveys 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.
- (2) For the purposes of subsection (1)(e), a trustee may be a bare trustee despite the fact that he or she is entitled as a trustee to be remunerated out of the income or property of the trust.
- (3) This section is subject to section 80 (extensions) and to any regulations made under this Act.

Compare: 1988 No 234 s 6

Section 19(1)(b): amended, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19(1)(ga): inserted, on 8 August 2001, by section 6 of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

Section 19(1)(gb): inserted, on 14 October 2008, by section 13(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 19(1)(gc): inserted, on 14 October 2008, by section 13(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 19(1)(gd): inserted, on 14 October 2008, by section 13(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 19(1)(ge): inserted, on 14 October 2008, by section 13(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 19(1A): inserted, on 14 October 2008, by section 13(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

*Application of ownership separation rules to
trust-like interests*

20 Non-specific interests rule

- (1) The purpose of subsections (2) to (5) is to ensure that ownership separation is required of trust-like entities where there are significant levels of membership overlap.

- (2) No person (person A) may exceed the overlap threshold with another person (person B) where—
 - (a) person A is involved in business A; and
 - (b) person B is involved in business B; and
 - (c) either or both of person A or person B is a trust-like entity; and
 - (d) person B has a reverse overlap with person A or members of person A;—and, if person A is in breach of this requirement, so is person B.
- (3) **Reverse overlap** in subsection (2)(d) means person B exceeds the overlap threshold with person A as if that term had the meaning set out in section 3, but applied also to person B and as if all references in that definition to non-specific interests in person A were references to interests in person B.
- (4) No local authority with an involvement in business A may, after 23 June 1998, establish a local overlap with a trust-like entity involved in business B.
- (5) For the purposes of subsection (4), **local overlap** exists with the trust-like entity when the members of the trust-like entity substantially comprise people or organisations in the community of the local authority.
- (6) The purpose of subsections (7) and (8) is to prevent avoidance of the ownership separation rules where interests in a trust-like entity are equivalent to an involvement.
- (7) No person may participate in a trust-like entity which is involved in business A if that person is also involved in business B, or participates in a trust-like entity which is involved in business B.
- (8) For the purposes of subsection (7), a person participates in a trust-like entity when it has—
 - (a) expectancies receivable alone, or with any group of associates, in respect of benefits from the trust-like entity which are equivalent in significance to 10% or more of all equity return rights available from the trust-like entity; or
 - (b) a material influence over the trust-like entity where the definition of material influence in section 11 is read as if

its references to the electricity business were references to the trust-like entity.

- (9) For the purposes of this section, **trust-like entity** means any person in which non-specific interests are held.
- (10) This section is subject to section 34 (which relates to companies with direct ownership).

21 Responsibility for remedying contravention

- (1) This section governs the order of responsibility for remedying contraventions of section 20.
- (2) The contraventions must be remedied as follows:
 - (a) first, by any person whose activities have resulted in the contravention where the person knew or ought to have known that the contravention was likely; and
 - (b) second, by any person in which interests that constitute the overlap are held; and
 - (c) third, by the members whose interests cause the contravention, other than any referred to in paragraph (a).
- (3) In taking steps to comply with subsection (2)(b), unless the parties responsible otherwise agree, the interests of the persons whose interests most recently became part of the overlap must be first divested.
- (4) The trustees of a trust may vary the trust deed, and the board of a body corporate may amend the constitution, to the extent necessary to enable the contravention to be remedied.

Process for compliance *[Repealed]*

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

22 Compliance with ownership separation rules

[Repealed]

Section 22: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

23 Agreements and negotiations leading to separation

[Repealed]

Section 23: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

24 Corporate separation

[Repealed]

Section 24: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

25 Arms length rules

[Repealed]

Section 25: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

26 12 months' lead in time to full arms length

[Repealed]

Section 26: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

*Interim exemptions, rules, and compliance
options*

[Repealed]

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

27 Purpose of sections

[Repealed]

Section 27: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Exemptions for certain involvements

[Repealed]

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

28 Exemption for existing involvements until separation

[Repealed]

Section 28: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

29 Exemption for acquisitions of one person's cross-involvements

[Repealed]

Section 29: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Ban on expanding cross-involvements

[Repealed]

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

30 Ban on expansion in cross-involvements

[Repealed]

Section 30: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Options for persons wishing to expand

[Repealed]

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

31 Exemption for any involvement in single unseparated business

[Repealed]

Section 31: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

32 Exemption for certain Treaty-related transactions

[Repealed]

Section 32: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

33 Exemption for Highbank right of first refusal in Ngāi Tahu Treaty settlement

[Repealed]

Section 33: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

34 Exemption for companies with direct ownership

[Repealed]

Section 34: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

35 Other expansion option

[Repealed]

Section 35: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

*Compliance process for existing 20%
aggregates
[Repealed]*

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

36 Compliance process for existing 20% aggregates

[Repealed]

Section 36: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

*Mirror trust and mirror co-operative option
[Repealed]*

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

37 Mirror trust option

[Repealed]

Section 37: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

38 Qualifying conditions on mirror trust option

[Repealed]

Section 38: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

39 Transfer of business to mirror trust

[Repealed]

Section 39: repealed, on 8 August 2001, by section 12 of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

40 Beneficiaries of mirror trusts*[Repealed]*

Section 40: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

41 Terms of trust deeds for mirror trusts*[Repealed]*

Section 41: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

42 Mirror co-operatives*[Repealed]*

Section 42: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

43 Exemption of mirror trusts from ownership separation rules*[Repealed]*

Section 43: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

44 Exemption of mirror trusts from rule limiting expansion of control by trust-like agencies*[Repealed]*

Section 44: repealed, on 8 August 2001, by section 15 of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

45 Trusts that cease to be mirror trusts*[Repealed]*

Section 45: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

*No expansion of control by trust-like agencies
in electricity supply
[Repealed]*

Heading: repealed, on 8 August 2001, by section 17(1) of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

46 No expansion of control by trust-like agencies in electricity supply

[Repealed]

Section 46: repealed, on 8 August 2001, by section 17(1) of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

Exemptions for generation
[Repealed]

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

46A Exemption for new generation from new renewable energy source

[Repealed]

Section 46A: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

46B Electricity lines business to publicly notify acquisition or increase of distributed generation

[Repealed]

Section 46B: repealed (with effect on 20 May 2003), on 17 October 2004, by section 11 of the Electricity Industry Reform Amendment Act 2004 (2004 No 81).

*Exemptions for generation commissioned after
20 May 2003 and for reserve energy*
[Repealed]

Heading: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

46C Exemptions for generation commissioned after 20 May 2003 and for reserve energy

[Repealed]

Section 46C: repealed, on 14 October 2008, by section 14 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Part 3
Separation of lines and
supply—Enforcement and penalties

Preliminary

47 Contraventions

In this Part, unless the context otherwise requires, a reference to a person who has contravened a provision of this Act is a reference to a person who—

- (a) has contravened the provision; or
- (b) has attempted to contravene the provision; or
- (c) has aided, abetted, counselled, or procured any other person to contravene the provision; or
- (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene the provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of the provision; or
- (f) has conspired with any other person to contravene the provision.

48 Inadvertent contraventions

- (1) It is a defence to any proceedings under this Part for contravention of Part 2 that—
 - (a) the contravention arose otherwise than by reason of the person's action; and
 - (b) the person did not know, and ought not reasonably to have known, of the contravention.
- (2) This defence expires 3 months after the person became aware of the contravention.
- (3) This section does not apply to a contravention of section 17D or 17E (corporate separation and arm's-length rules) or 17F (use-of-systems agreements).

Section 48(1): amended, on 14 October 2008, by section 15(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 48(3): added, on 14 October 2008, by section 15(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

49 Jurisdiction of High Court

In accordance with this Part, the High Court may hear and determine the following matters:

- (a) proceedings for the recovery of pecuniary penalties under section 51:
- (b) applications for injunctions under section 52:
- (c) actions for damages under section 53:
- (d) proceedings under section 54 (order divestiture of assets):
- (e) proceedings under section 55 (penalty/commercial gain):
- (f) applications under section 56 (give directions, re-open agreements):
- (g) applications for orders under section 89 of the Commerce Act 1986 (as applied to this Act by section 58 of this Act).

Compare: 1986 No 5 s 75

50 Jurisdiction of District Courts

In accordance with this Part, the District Court may hear and determine proceedings for offences against sections 100 and 103 of the Commerce Act 1986 (as applied to this Act by section 58 of this Act).

Compare: 1986 No 5 s 76

Penalties

51 Pecuniary penalties

- (1) If the court is satisfied on the application of the Commission or any other person that a person has contravened Part 2 or section 68, the court may order the person to pay to the Crown a pecuniary penalty that the court determines to be appropriate.
- (2) The maximum amount of the pecuniary penalty is the same as may from time to time be specified in section 80 of the Commerce Act 1986, in respect of each act or omission.

Compare: 1986 No 5 s 80

52 Injunctions

Where it appears to the court, on the application of the Commission or any other person, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes or would constitute a contravention of Part 2 or section 68, 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 contravention:
- (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 it thinks necessary in the circumstances of the case.

Compare: 1986 No 5 s 84

53 Actions for damages

- (1) Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes a contravention of Part 2 or section 68.
- (2) The amount of damages is the same as the amount that applies from time to time under section 82 of the Commerce Act 1986.

Compare: 1986 No 5 s 82

54 Court may order divestiture of assets or voting securities

- (1) In any case where the court, on the application of the Commission or any other person, is satisfied that any person has contravened Part 2 in respect of any involvement or has been found in any other proceedings under this Part to have contravened Part 2 in that respect, it may, by order,—
 - (a) give directions for the disposal by that person of the assets or voting securities that may be specified in the order; or

- (b) prohibit the exercise, for such period as the court thinks fit, of any right to vote attaching to any voting securities specified in the order (being securities in respect of which the person is in contravention of Part 2); or
 - (c) declare that the exercise of voting or other rights attaching to any voting securities (being securities in respect of which the person is in contravention of Part 2) is void and of no effect; or
 - (d) for the purpose of securing compliance with any other order made under this subsection, direct any person to do or refrain from doing a specified act.
- (2) An order under subsection (1) may be made on such terms and conditions as the court thinks fit.
- (3) Without limiting subsection (2), an order made under this section may require—
- (a) that assets and voting securities are, or any interest in them is, disposed of within a time specified by the court, regardless of the price obtainable at that time;
 - (b) that neither the assets and voting securities are, nor any interest in them is, disposed of to any specified person or class of persons;
 - (c) that the assets and voting securities are, or any interest in them is, disposed of in a manner and on terms specified by the court;
 - (d) that the proceeds of any disposition are—
 - (i) applied towards the costs of the application;
 - (ii) paid in such amounts and to such persons as the court specifies.
- (4) This section does not apply to a contravention of section 17D or 17E (corporate separation and arm's-length rules) or 17F (use-of-systems agreements).

Compare: 1978 No 103 s 32(1)(d), (l), (m), (2), (3); 1986 No 5 s 85

Section 54(4): added, on 14 October 2008, by section 16 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

55 Additional penalty for contravention involving commercial gain

- (1) The court may order a person who is found to have contravened Part 2 or section 68 to pay an amount not exceeding

3 times the value of any commercial gain resulting from the contravention if the court is satisfied that the contravention occurred in the course of producing a commercial gain.

- (2) The order may be in addition to any other penalty the court may impose under this Act.
- (3) For the purpose of subsection (1), the value of any gain is to be assessed by the court, and any amount ordered to be paid is recoverable in the same manner as a pecuniary penalty.

Compare: 1990 No 98 s 47; 1991 No 69 s 339B; 1994 No 104 s 409; 1996 No 69 s 8

56 Other powers to give directions, re-open agreements

- (1) If the court is satisfied, on the application of the Commission or any other person, that a person has contravened Part 2 or section 68, the court may give directions ordering a person or persons in contravention to renegotiate any agreement or agreements that contravene, or give rise to a contravention of, this Act, 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) re-open any agreement that contravenes, or gives rise to a contravention of, this Act and make any orders it deems just and equitable for the purpose of reopening the transaction and setting aside the contravention, 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.

56A Limits on defences and penalties for failure to publicly notify acquisition or increase of distributed generation

[Repealed]

Section 56A: repealed (with effect on 20 May 2003), on 17 October 2004, by section 13 of the Electricity Industry Reform Amendment Act 2004 (2004 No 81).

Miscellaneous provisions

57 Miscellaneous

- (1) In determining an appropriate penalty under this Part, 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 or not the person has previously been found by the court in proceedings under this Part to have engaged in any similar conduct.
- (2) The standard of proof in proceedings under this Part is the standard of proof applying in civil proceedings.
- (3) In any proceedings under this Part, the Commission, upon the order of the court, may obtain discovery and administer interrogatories.
- (4) Proceedings under this Part may be commenced within 3 years after the matter giving rise to the contravention arose.
- (5) Where conduct by any person constitutes a contravention of 2 or more provisions of Part 2 or section 68, proceedings may be instituted under this Act against that person in relation to the contravention 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.

Compare: 1986 No 5 s 80(2)–(6)

58 Application of Commerce Act 1986 and the Crown Entities Act 2004 provisions

The following provisions of the Commerce Act 1986 apply with necessary modifications:

- (a) sections 77 and 78 (lay members):
- (b) section 79 (evidence not otherwise admissible):
- (c) section 88 (general provisions relating to granting of injunctions):
- (ca) section 88A (when undertaking as to damages not required by Commission):
- (d) section 89 (other orders):

- (e) section 90 (conduct by servants or agents):
- (f) section 98 (Commission may require person to supply information or documents or give evidence):
- (g) section 98A (power to search):
- (h) sections 98B to 98G (relating to warrants, etc):
- (i) section 99 (powers of Commission to take evidence):
- (j) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (k) section 100A (Commission may state case for opinion of High Court):
- (l) sections 101 and 102 (notices):
- (m) section 103 (offences):
- (n) section 104 (determinations of Commission):
- (o) *[Repealed]*
- (p) section 106 (proceedings privileged):
- (q) section 106A (judicial notice):
- (r) section 109 (Commission may prescribe forms).

Section 58 heading: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 58(ca): inserted, on 14 October 2008, by section 17 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 58(o): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

59 Additional proceedings

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

Part 4

Separation of lines and supply—Taxation

[Repealed]

Part 4: repealed, on 14 October 2008, by section 18 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

60 Purpose

[Repealed]

Section 60: repealed, on 14 October 2008, by section 18 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

61 Mirror co-operatives

[Repealed]

Section 61: repealed, on 14 October 2008, by section 18 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

62 Mirror trusts

[Repealed]

Section 62: repealed, on 14 October 2008, by section 18 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

63 Consolidation rules modified generally for purposes of corporate ownership split and ownership split

[Repealed]

Section 63: repealed, on 14 October 2008, by section 18 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

64 Gifts not to form part of capital gain amounts

[Repealed]

Section 64: repealed, on 14 October 2008, by section 18 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

65 No stamp duty payable

[Repealed]

Section 65: repealed, on 20 May 1999, by section 7 of the Stamp Duty Abolition Act 1999 (1999 No 61).

66 Shares not acquired for resale

[Repealed]

Section 66: repealed, on 14 October 2008, by section 18 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

67 Definitions for tax sections

[Repealed]

Section 67: repealed, on 14 October 2008, by section 18 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Part 5
**Separation of lines and
supply—Miscellaneous provisions**

Anti-avoidance

68 Duty not to defeat purposes of Parts 1 to 5

No person may at any time do anything to defeat the purposes of Parts 1 to 5.

Compare: 1992 No 56 s 67(1)

No compensation

69 No compensation

(1) No compensation shall be payable by the Crown to any person or in any other manner howsoever for any loss or damage or any taxation liability arising from the enactment or operation of this Act.

(2) Subsection (1) applies notwithstanding any other enactment or rule of law.

Compare: 1993 No 7 s 8

Disclosure

70 Disclosure regime

(1) Every person must disclose the following, in accordance with any disclosure regulations that may from time to time be made under section 87:

- (a) an involvement or interest in an electricity business:
- (b) a non-specific interest in a person involved in an electricity business.
- (c) *[Repealed]*

(2) Any such regulations may provide for any or all of the following:

- (a) by and to whom the disclosure is made:
- (b) what needs to be disclosed:
- (c) when it must be disclosed:
- (d) the form of the disclosure:
- (e) the maintenance of files of notices or registers of involvements or interests and access to those files or registers and limitations on access to those files or registers:

- (f) exemptions from the requirements of the regulations:
 - (g) a method of ascertaining percentages for the purpose of the 10% and 20% thresholds:
 - (h) the consequences of any failure to make disclosure in accordance with the regulations, including providing for the court to make orders directing disclosure, compensatory orders, or other orders described in section 42ZF of the Securities Markets Act 1988, who may apply for the orders, and related matters.
- (3) Subsection (2) does not limit the generality of section 87(2)(f).
Section 70(1)(c): repealed, on 14 October 2008, by section 19 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).
Section 70(2)(h): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

70A Disclosure as to electricity sold to connected customers within local network area

- (1) Every person who sells electricity to connected customers must provide to the Commission, as soon as practicable after the end of each financial year, a statement that—
- (a) shows the calculation of the person's qualifying generation in respect of that financial year; and
 - (b) sets out how much electricity the person sold to connected customers during that financial year; and
 - (c) includes a certificate, signed by the directors of the electricity business, stating whether or not the quantity of electricity the person sold to connected customers during that financial year exceeded the limit set out in section 17C.
- (2) The statement must be in the form prescribed by the Commission from time to time.
- (3) The statement must be audited by an independent chartered accountant.
- (4) The statement must be published on an Internet site maintained by or on behalf of the electricity business so that it is available to the public at all reasonable times.
- (5) Every person commits an offence who—
- (a) refuses or knowingly fails to provide the statement to the Commission; or

- (b) provides the statement to the Commission knowing that it is false or misleading in a material particular.
- (6) Every person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding \$200,000.

Section 70A: inserted, on 14 October 2008, by section 20 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

70B 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 Commission, 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 director must publish that statement on an Internet site maintained by or on behalf of the business so that it is available to the public at all reasonable times.

Section 70B: inserted, on 14 October 2008, by section 20 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Matters relevant to implementation of Part 2 *[Repealed]*

Heading: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

71 Trust deeds

[Repealed]

Section 71: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

72 Beneficiaries of customer lines trusts

[Repealed]

Section 72: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

73 Shareholders of lines co-operatives

[Repealed]

Section 73: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

74 Power to make gifts

[Repealed]

Section 74: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

75 Application of Securities Act 1978

[Repealed]

Section 75: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

76 Protection from other Acts

[Repealed]

Section 76: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

77 Member approvals, etc

[Repealed]

Section 77: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

78 Consultation requirements

[Repealed]

Section 78: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

79 Technical redundancy

[Repealed]

Section 79: repealed, on 14 October 2008, by section 21 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Extensions and exemptions

80 Extensions

- (1) The Commission may, for the purposes of this Act, in its discretion, by notice in the *Gazette*, bring within this Act a business or involvement or interest that is disregarded under section 19.
- (2) The Commission may exercise that power by designating a business or involvement or interest as one to which a paragraph of section 19 no longer applies.

- (3) This section does not authorise the Commission to make a class designation.
- (4) Before making a designation under this section, the Commission must do everything reasonably possible on its part to advise the person whose business, involvement, or interest is being designated of the proposed terms of it; and give that person a reasonable opportunity to make submissions to the Commission.
- (5) Subsection (4) does not apply in respect of a designation if the Commission considers that it is desirable in the public interest that the designation be made urgently.
- (6) Failure to comply with subsection (4) does not affect the validity of a designation.
- (7) The designation takes effect from the date specified in the designation (which may not be earlier than the date of the *Gazette* notice).
- (8) The designation has effect according to its tenor.
- (9) The Commission may in like manner vary or revoke any such designation.
- (10) The Commission must keep a list of all current designations made by it under this section available for public inspection free of charge during normal office hours at the offices of the Commission.
- (11) A designation under this section is not a regulation within the meaning of the Regulations (Disallowance) Act 1989.

81 Exemptions

- (1) The Commission may, for the purposes of this Act, in its discretion and upon the terms and conditions (if any) that it thinks fit, by notice in the *Gazette*, exempt—
 - (a) any business, involvement, or interest, or class of business, involvement, or interest, from the application of this Act; or
 - (b) any person or class of persons from compliance with any provisions of this Act or any regulations made under it.

- (2) *[Repealed]*
- (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 exemption has effect according to its tenor.
- (5) The Commission may in like manner vary or revoke any such exemption.
- (6) The Commission must keep a list of all current exemptions made by it under this section available for public inspection free of charge during normal office hours at the offices of the Commission.
- (7) An exemption under this section is not a regulation within the meaning of the Regulations (Disallowance) Act 1989.

Section 81(1): substituted, on 8 August 2001, by section 22 of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

Section 81(2): repealed, on 8 August 2001, by section 22 of the Electricity Industry Reform Amendment Act 2001 (2001 No 42).

Application of other Acts

82 Application of Commerce Act 1986

Except as provided in section 83 (not interconnected under Commerce Act 1986), nothing in this Act overrides or limits the provisions of the Commerce Act 1986.

83 Not interconnected under Commerce Act 1986

- (1) For the purposes of Part 2 of the Commerce Act 1986, businesses to which sections 17D and 17E (corporate separation and arm's-length rules) apply 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 notwithstanding section 2(7) of the Commerce Act 1986.

Section 83(1): amended, on 14 October 2008, by section 22 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

84 Application of Energy Companies Act 1992*[Repealed]*

Section 84: repealed, on 14 October 2008, by section 23 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

85 Dealing with land held for public works*[Repealed]*

Section 85: repealed, on 14 October 2008, by section 23 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

86 Illegal Contracts Act 1970

- (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 this Act.
- (2) An agreement entered into in breach of this Act is voidable at the option of any party to the agreement who is not in breach of this Act 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 this Act.

*Regulation-making powers***87 Regulations**

- (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Commission, make regulations for all or any of the following purposes:
 - (a) declaring a class of businesses or involvements or interests to be a disregarded business or involvement or interest to which this Act does not apply for the purpose of section 19(1)(i) and specifying any conditions that apply:
 - (b) declaring a class of businesses or involvements or interests to be businesses, involvements, or interests that are no longer disregarded under section 19.
- (2) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
 - (a) *[Repealed]*
 - (b) setting out the method of determining persons or amounts for the purpose of section 10(4) (percentage

entitlements to equity return rights not readily ascertainable):

- (c) *[Repealed]*
- (d) *[Repealed]*
- (e) declaring any person or class of persons or type of overlap or non-specific interest to be exempt (and on what conditions) from section 20 (non-specific interests rule):
- (f) providing for the disclosure of involvements in businesses under section 70:
- (g) providing such anti-avoidance measures as are necessary to ensure that the purposes of this Act are not defeated:
- (h) adding to or omitting anything from the arm's-length schedule, or otherwise amending that schedule for the purpose of ensuring that the purposes of this Act are not defeated:
- (i) prescribing the procedure to be followed under this Act in respect of applications and notices to, and proceedings of, the Commission:
- (j) prescribing forms of applications, notices, and other documents required for the purposes of this Act, and requiring the use of such forms:
- (k) prescribing the matters in respect of which fees or charges are payable under this Act, 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 remitted or waived:
- (l) providing for such other matters as are contemplated by or are necessary for giving full effect to this Act and for its due administration.

Section 87(2)(a): repealed, on 14 October 2008, by section 24(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 87(2)(c): repealed, on 14 October 2008, by section 24(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 87(2)(d): repealed, on 14 October 2008, by section 24(1) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 87(2)(f): amended, on 14 October 2008, by section 24(2) of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Section 87(2)(h): amended, on 14 October 2008, pursuant to section 27 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Part 6

Price restraint for line charges for domestic and rural consumers

88 Regulations relating to charges for line function services

- (1) The Governor-General may from time to time, by Order in Council, make regulations imposing or providing for the imposition of restraint in respect of the charges relating to line function services—
 - (a) to domestic premises (as defined in section 90):
 - (b) to consumers in sparsely populated areas (**rural consumers**).
- (2) Without limiting the generality of subsection (1), regulations made under this section may impose, or provide for the imposition of, price restraint in respect of the charges relating to line function services to domestic premises or rural consumers—
 - (a) by electricity distributors generally or by particular classes of electricity distributors or by individual electricity distributors:
 - (b) in respect of particular classes of areas or an individual area or areas, defined by reference to geographic area or sparsity of population or distance from main centres or any other method of definition:
 - (c) in respect of particular classes of consumers.
- (3) Regulations made under this section do not apply to—
 - (a) the offering to consumers of terms and conditions for new line function services:
 - (b) charges relating to the national grid.
- (4) Without limiting the generality of subsection (1), regulations made under this section may impose, or provide for the imposition of, price restraint in respect of charges for line function services, despite the fact that the charge is not payable directly by an end-consumer to an electricity distributor, but is payable via an electricity retailer.

Compare: 1992 No 122 s 63(1), (2)

89 Way in which price restraint may be imposed

- (1) Price restraint imposed by or pursuant to regulations made under section 88 may specify the manner in which the charges for line function services to domestic premises or rural consumers are to be restrained, and may, in particular, but without limiting the generality of section 88,—
- (a) control, in relation to charges for line function services to domestic premises or rural consumers,—
 - (i) the amount of the charge:
 - (ii) the amount of any component of the charge:
 - (iii) the proportion that any component of the charge may bear to the total charge or to any part of the charge:
 - (b) control the frequency with which the charge, or any component of the charge, may be increased:
 - (c) control the amount of any increase in the charge, or any component of the charge.
- (2) Without limiting the generality of the foregoing provisions of this section and section 88, any controls imposed by or pursuant to any power conferred by any of paragraphs (a) to (c) of subsection (1) may be expressed to operate by reference to the charge lawfully being charged in respect of the line function services on any date specified for the purpose in the regulations, being the date of the commencement of the regulations or any other date, whether before or after the date of the commencement of the regulations, but not being earlier than 1 January 1998.

Compare: 1992 No 122 s 63(3), (4)

90 Definition of domestic premises

For the purposes of section 88, the term **domestic premises** means any premises that are used or intended for occupation by any person principally as a place of residence; but does not include—

- (a) premises that constitute part of any prison that is a Corrections prison or a Police jail:
- (b) premises that constitute part of any hospital, home, or other institution for the care of sick, disabled, or aged persons:

- (c) premises that constitute part of Police barracks, or Police cells and lock-ups:
- (d) premises that constitute any barracks conducted by the Armed Forces for the accommodation of persons subject to the Armed Forces Discipline Act 1971:
- (e) premises that constitute part of any hostel, barracks, dormitory, or other similar type of premises providing accommodation for any persons or class of persons:
- (f) premises that constitute part of a building occupied by a club and used by the club for the provision of temporary or transient accommodation to members of the club:
- (g) premises that constitute part of any hotel in respect of which there is in force an on-licence under the Sale and Supply of Alcohol Act 2012:
- (h) premises that constitute part of any hotel, motel, boardinghouse, or lodginghouse used for the provision of temporary or transient accommodation:
- (i) premises that constitute part of any camping ground, motor camp, or marina.

Compare: 1992 No 122 s 64

Section 90(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 90(g): amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

91 Offences

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500,000 who, without lawful justification or excuse, acts in contravention of, or fails to comply in any respect with, any provision of any regulations made under section 88.
- (2) Where—
 - (a) a person is convicted of an offence against this section; and
 - (b) the offence consists of or includes charging for line function services to domestic premises or rural consumers in excess of the charge that is authorised or permitted by regulations made under section 88,—the court, in addition to or instead of passing any other sentence or making any other order, may make an order for the

payment by the defendant of an amount not exceeding the difference (to be ascertained and specified by the court) between the amount charged for the line function services and the amount so authorised or permitted.

- (3) All money payable pursuant to an order made under subsection (2) is recoverable, in accordance with the Summary Proceedings Act 1957, in the same manner as fines are recoverable.
- (4) Where, in any case to which subsection (2) applies, the court is satisfied that the whole or any part of the charge has been paid to the defendant by any other person, the court, if it considers that it is just and equitable, may make an order authorising the payment to that other person of the whole or such part of any amount paid by the defendant under that subsection, as the court thinks fit.
- (5) An order under subsection (4) is sufficient authority to the Registrar of the court to pay the amount so authorised.

Compare: 1992 No 122 s 65

92 Other Acts relating to price control not affected

Nothing in this Part limits or affects Part 4 of the Commerce Act 1986 (which relates to the control of prices) or any other enactment relating to price restraint or price control.

Section 92: amended, on 1 April 2009, by section 30(2) of the Commerce Amendment Act 2008 (2008 No 70).

93 Interpretation

Terms used in this Part are to be interpreted in accordance with the Electricity Act 1992.

Part 7 Amendments to Electricity Act 1992

[Repealed]

Part 7: repealed, on 14 October 2008, by section 25 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

94 Regulations relating to information disclosure*[Repealed]*

Section 94: repealed, on 14 October 2008, by section 25 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

95 Regulations*[Repealed]*

Section 95: repealed, on 14 October 2008, by section 25 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

96 Offences*[Repealed]*

Section 96: repealed, on 14 October 2008, by section 25 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Part 8
Split of Electricity Corporation of New Zealand*[Repealed]*

Part 8: repealed, on 14 October 2008, by section 26 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

97 Interpretation*[Repealed]*

Section 97: repealed, on 14 October 2008, by section 26 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

98 Directions by shareholding Ministers*[Repealed]*

Section 98: repealed, on 14 October 2008, by section 26 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

99 Principal objective of ECNZ*[Repealed]*

Section 99: repealed, on 14 October 2008, by section 26 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

100 Enactments amended

[Repealed]

Section 100: repealed, on 14 October 2008, by section 26 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

101 Amendment to Electricity Act 1992

[Repealed]

Section 101: repealed, on 14 October 2008, by section 26 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

Schedule 1

s 3(1)

Arm's-length rules

Schedule 1: substituted, on 14 October 2008, by section 27 of the Electricity Industry Reform Amendment Act 2008 (2008 No 71).

1 Objective

- (1) The objective of this schedule is to ensure that connected electricity businesses 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; or
 - (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 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 which 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 1 independent director

- 7 At least 1 director 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 more than 30 MW (determined according to nameplate or nameplates) of connected generation (including any connected generation referred to in section 17B and any generation that the Commission has determined under section 17C(2) should be treated as being within the local network area).
- (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 the 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 such an obligation 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 connected with its business, being information which—

- (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.

3 Rules do not limit objective

The arm's-length rules in clause 2 do not limit the generality of the arm's-length objective in clause 1.

4 Interpretation

- (1) In this schedule,—
- (a) **common parent**, in relation to business A and business B, means a person that is involved in both business A and business B;
 - (b) **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) References in this schedule to business A or trust A apply equally to business B or trust B and vice versa.

5 These duties are additional to other duties

The requirements of this schedule are additional to the requirements of any regulations made under the Electricity Act 1992.

Schedule 2

s 100

**Amendments consequential upon split of
ECNZ**

Conservation Act 1987 (1987 No 65) (RS Vol 36, p 1)

Amendment(s) incorporated in the Act(s).

Electricity Act 1992 (1992 No 122)

Amendment(s) incorporated in the Act(s).

Employment Contracts Act 1991 (1991 No 22)

Amendment(s) incorporated in the Act(s).

**Manapouri - Te Anau Development Act 1963 (1963 No 23) (RS
Vol 16, p 389)**

Amendment(s) incorporated in the Act(s).

Maori Purposes Act 1959 (1959 No 90) (RS Vol 36, p 441)

Amendment(s) incorporated in the Act(s).

Electricity Industry Reform Amendment Act 2008

Public Act 2008 No 71
Date of assent 16 September 2008
Commencement see section 2

1 Title

This Act is the Electricity Industry Reform Amendment Act 2008.

2 Commencement

This Act comes into force on the 28th day after the date on which it receives the Royal assent.

Part 2 Amendments to other Acts and transitional provision

31 Saving of existing exemptions

- (1) This section applies to any exemption granted under section 81 of the Electricity Industry Reform Act 1998 in respect of a cross-involvement if the cross-involvement would continue to be unlawful after the enactment of this Act but for the exemption.
 - (2) The exemption, and the conditions subject to which it was granted, continue to have effect in so far as they apply to the cross-involvement as if this Act had not been enacted.
-

Reprints notes

1 General

This is a reprint of the Electricity Industry Reform Act 1998 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, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

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

Sale and Supply of Alcohol Act 2012 (2012 No 120): section 417(1)
Electricity Industry Act 2010 (2010 No 116): section 165
Electricity Industry Reform Amendment Act 2008 (2008 No 71)
Commerce Amendment Act 2008 (2008 No 70): section 30
Securities Markets Amendment Act 2006 (2006 No 47): section 14
Relationships (Statutory References) Act 2005 (2005 No 3): section 7
Crown Entities Act 2004 (2004 No 115): section 200
Electricity Industry Reform Amendment Act 2004 (2004 No 81)
Corrections Act 2004 (2004 No 50): section 206
Securities Markets Amendment Act 2002 (2002 No 44): section 30
Electricity Industry Reform Amendment Act 2001 (2001 No 42)
Stamp Duty Abolition Act 1999 (1999 No 61): section 7
Electricity Industry Reform Act (Commencement of Section 100) Order 1999 (SR 1999/115).
