

# ELECTRICITY INDUSTRY REFORM BILL

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## EXPLANATORY NOTE

### *General Policy Statement*

The purpose of this Bill is to implement the Government's decisions on electricity industry reform.

### *Electricity Distribution Reform*

The Bill effects the ownership separation of electricity distribution lines from electricity generation and retail activities.

The Bill's provisions are intended to address the risks of—

- Anti-competitive restrictions on access to electricity distribution lines for competing retailers
- Cross-subsidisation of electricity generation activities from electricity distribution lines
- Cross-subsidisation of electricity retail activities from electricity distribution lines.

It achieves those goals—

- By preventing integration between competitive and monopoly services
- By amending the Electricity Act 1992 to provide for a regulation-making power. That power will allow the Government to prescribe a mandatory default system to enable consumers to switch between competing electricity retailers. Such regulations will be made if, by April 1999, the industry has failed to make sufficient progress to introduce a low cost system (or systems) which will enable consumers, if they wish, to switch retail suppliers.

### *Electricity Generation Reform*

The Government's objective is to promote effective competition in the New Zealand generation market. To achieve this, it will restructure Electricity Corporation of New Zealand Limited into 3 competing State-owned enterprises which are commercially viable entities and effective competitors. The Bill's provisions are intended to facilitate that restructuring.

### *Part by Part Analysis*

It is proposed that the Bill be divided at the committee of the whole House stage. *Parts 1 to 5* will form a separate Electricity Industry Reform Act, *Part 6* will

form an Electricity Amendment Act, and *Part 7* will form a State-Owned Enterprises Amendment Act.

*Electricity Distribution Reform*

*Parts 1 to 5* provide for the separation of electricity lines businesses from electricity supply businesses. The core ownership separation rule is simple: electricity businesses are classified into 2 types—electricity lines businesses and electricity supply businesses (including generation). A person who holds a 10% or greater interest in one type of electricity business may not—

- (a) Hold more than 10%; or
- (b) Allow the holding of such persons together to exceed 20%,—  
of the other type of electricity business.

*Part 1* relates to interpretation, the application of the Act to the Crown, and the purposes of the Act.

The Bill is heavily dependent on the definitions in this Part. Pivotal definitions include “electricity lines business”, “electricity supply business”, “involved”, “10% threshold”, “control rights”, “equity return rights”, “material influence”, and “associate”.

*Clause 13* provides that the Act will not prevent the Crown from being involved in both a business that operates the national grid and in an electricity supply business.

*Clause 14* provides that the purpose of the distribution reforms is—

- (a) To prohibit certain involvements in electricity lines businesses and electricity supply businesses which may create incentives or opportunities—
  - (i) To inhibit competition in the electricity industry; or
  - (ii) To subsidise generation activities from electricity lines businesses;
 and
- (b) To restrict relationships between electricity lines businesses and electricity supply businesses which may not otherwise be at arms length; and
- (c) To facilitate competition among electricity suppliers and choice for smaller consumers.

*Part 2* provides for ownership separation of electricity lines businesses and electricity supply businesses.

*Clause 15* provides that no person involved in an electricity lines business may be involved in an electricity supply business, and vice versa. A person is involved in an electricity business if they—

- (a) Carry on that business; or
- (b) Exceed the 10% threshold in respect of that business; or
- (c) Have material influence over the business; or
- (d) Are in breach of the 20% aggregate separation rule in respect of that business.

For example, a person exceeds the 10% threshold if they—

- (a) Have more than 10% of the control rights in the business; or
- (b) Have more than 10% of the equity return rights in the business; or
- (c) Are one of 2 or more associates who, in aggregate, have more than 10% of the control rights in the business; or
- (d) Are one of 2 or more associates who, in aggregate, have more than 10% of the equity return rights in the business.

*Clause 16* is intended to prevent more than 20% in aggregate of the control rights or equity return rights in, or material influence over, an electricity lines

business or an electricity supply business being held by persons who are involved in the other type of business.

*Clause 17* sets out specific types of involvements which will be disregarded for the purposes of the ownership separation rules. These include involvements which are immaterial for the purposes of the Act.

*Clause 18* is intended to prevent the ownership separation rules from being circumvented where the beneficiaries who hold an undefined share or other “non-specific interest” in an entity involved in one type of business have sufficient commonality with the owners or beneficiaries of another entity involved in the other type of business to influence the management of the first entity. The clause defines specific overlap thresholds for beneficiaries which an entity cannot cross without being deemed to breach the ownership separation rules.

*Clauses 19 to 24* relate to mirror trusts. Electricity trusts and co-operatives may clone themselves, so that they can transfer interests to a mirror trust or co-operative for the purpose of achieving a form of quasi-ownership separation. For this option to be available, an unconditional transfer agreement must be entered into by 1 April 1999. For this purpose, the trust or co-operative and its mirror are exempt from *clause 18*, which would otherwise prevent them having common beneficiaries or owners. The effect of this is that the relationship between a mirror trust or co-operative and its settling trust or co-operative will not contravene the ownership separation rules. The settling trust or co-operative and its mirror are also exempt from *clause 25*, which prevents new substantial agency ownership.

*Clause 25* prevents other new substantial agency ownership for the initial separation. This rule is intended to limit future cases where, for example, beneficiaries of trusts are remote from decision making, may not have much prospect of practically supervising trustees, cannot sell out if they are not satisfied, etc. The purpose of the rule is to prevent transfers of interests in, or assets of, an electricity business to trusts, co-operatives, or other entities in which the practical likelihood of the holders exercising effective control over the managers of the agency is remote (whether because of inability or lack of reasonable incentives to aggregate control rights or equity return rights or otherwise).

*Part 3* relates to enforcement and penalties. The main powers of the Court are—

- (a) To award pecuniary penalties:
- (b) To grant injunctions:
- (c) To award damages for any loss or damage caused by a person’s contravention of the Act:
- (d) To order divestiture of assets or voting securities:
- (e) To order the payment of an amount not exceeding 3 times the value of any commercial gain resulting from a contravention of the Act:
- (g) To give directions and to re-open agreements.

*Part 4* contains transitional provisions. The effect of the Bill during the transitional period includes,—

- From the date of the Bill’s introduction,—
  - (a) Trusts and co-operatives may establish mirror trusts and co-operatives (*clause 19*):
  - (b) Trustees of electricity trusts may vary trust deeds to the extent necessary to enable the implementation of the Bill (*clause 37*):
  - (c) No person may do anything to defeat the purposes of the Bill (*clause 49*):

- (d) No transfers can be made to new substantial agency owners other than mirror trusts or co-operatives (*clause 25*).
- From *1 April 1999*,—
  - (a) The ownership separation rules apply. However, existing owners have until *1 January 2004* to achieve ownership separation (*clause 41*), although a sale can occur at any time during that period:
  - (b) Existing electricity businesses must be operated under corporate separation rules until they comply with the ownership separation rules. They must set up separate companies by *1 April 1999* to operate the different types of businesses, and each must act at arms length from the other half of the business:
  - (c) Arms length requirements set out in the Schedule of the Bill apply to existing owners who have not yet complied with the ownership separation rule, and to mirror trusts or co-operatives and their counterparts:
  - (d) The Act provides for a pro rata sell-down of existing holdings, where several parties are in breach of the 20% aggregate separation rule after *1 January 2004*:
  - (e) Ownership transfers of electricity businesses will have to—
    - (i) Take effect no later than *31 December 2003*; and
    - (ii) Not result in a contravention of the ownership separation rules or agency ownership rule; and
    - (iii) Not be to a new trust or co-operative set up as a mirror.
- From *1 January 2004*,—
  - (a) Full ownership separation must have taken place for everyone (except mirror trusts and co-operatives established by *1 April 1999*):
  - (b) Mirror trusts and co-operatives continue to be bound by the arms length rules.

### *Taxation*

*Clause 43* sets out the purpose of the taxation clauses. The intention of the Bill is to exempt the transfer of an electricity lines business or an electricity supply business from gift duty where that transfer is between companies which are 100% owned by electricity trusts. The Bill also modifies the application of the consolidation rules for those companies which use the consolidation rules to separate their electricity lines business and electricity supply business.

*Clause 44* provides for an exemption from gift duty where a 100% trust owned electricity company transfers either the electricity lines business or electricity supply business to a company which is 100% owned by a mirror trust for a consideration that is less than the market value. In such circumstances *subclause (2)* provides that the part of the consideration that constitutes the gift shall not be a dutiable gift for the purposes of the Estate and Gift Duties Act 1968. *Subclause (3) of clause 44* provides that for all other purposes a mirror trust company (being a defined term in *clause 47*) is deemed to have paid and an existing company is deemed to have received market value in respect of the transfer and that any gift shall not contribute to the mirror trust company's capital gain amounts upon liquidation.

*Clause 44* is not available for companies which have transferred all or part of their electricity lines or supply businesses to another company in the same consolidated group.

*Clause 45: Subclause (1)* provides that an electricity company which transfers its electricity supply business or lines business in accordance with *clause 44* cannot

use the consolidation rules to separate its electricity lines business and electricity supply business.

*Subclause (2)* provides that a company transferring an electricity lines business or electricity supply business to another company in a consolidated group will not be subject to the anti-avoidance provision in section FD 10 (9) of the Income Tax Act 1994 provided it can be concluded that the consolidation rules were utilised for the purpose of complying with obligations under *Part 2 or Part 4* of the Bill.

*Subclause (3) and (4)* provide that every transferee company (being a defined term in *clause 47*) is deemed to cease to be a member of a consolidated group on the day on which a transferring company (being a defined term in *clause 47*) ceases to be a member of the consolidated group.

*Clause 46* provides that a transfer of assets, liabilities, or property relating to an electricity lines business or electricity supply business between companies while they are in a consolidated group which involves a gift shall not contribute to the capital gain amounts of the company receiving the gift available for distribution to its shareholders upon liquidation.

*Clause 47* defines a number of terms for the purposes of the tax provisions.

*Clause 48* provides that a unanimous resolution of shareholders to the effect that directors of an electricity company may make a gift for the purposes of *clause 44* will allow the directors of an electricity company to make the gift without breaching any duty to the company or the shareholders. This allowance is subject to any specific obligations to third parties and any requirements for the company to remain solvent.

*Part 5* contains miscellaneous provisions.

*Part 6* amends the Electricity Act 1992 to enable regulations to be made that would prescribe a mandatory default system that would enable consumers to switch between competing electricity retailers. This regulation making power will expire by *1 April 2001* if, by that date, no regulations have been made under the new powers.

#### *Electricity Generation Reforms*

*Part 7* amends the State-Owned Enterprises Act 1986 to facilitate the restructuring of Electricity Corporation of New Zealand Limited into competing State-owned enterprises.

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## ELECTRICITY INDUSTRY REFORM

### ANALYSIS

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| <p>Title</p> <p>1. Short Title and commencement</p> <p style="text-align: center;"><b>PART 1</b></p> <p style="text-align: center;">PRELIMINARY PROVISIONS</p> <p style="text-align: center;"><i>Interpretation</i></p> <p>2. Interpretation</p> <p>3. Meaning of "electricity lines business"</p> <p>4. Meaning of "electricity supply business"</p> <p>5. Meaning of business A/business B</p> <p>6. Meaning of "involved"</p> <p>7. Meaning of "10% threshold"</p> <p>8. Meaning of "control rights"</p> <p>9. Meaning of "equity return rights"</p> <p>10. Meaning of "material influence"</p> <p>11. Meaning of "associate"</p> <p>12. Substance matters, not form</p> <p style="text-align: center;"><i>Application to the Crown</i></p> <p>13. Act binds the Crown</p> <p style="text-align: center;"><i>Purpose</i></p> <p>14. Purpose of Parts 1 to 5</p> <p style="text-align: center;"><b>PART 2</b></p> <p style="text-align: center;">SEPARATION OF ELECTRICITY BUSINESSES</p> <p style="text-align: center;"><i>Ownership Separation</i></p> <p>15. Cross-ownership prohibition</p> <p>16. 20% aggregate cross-ownership prohibition</p> <p>17. Certain involvements to be disregarded</p> <p>18. Application of ownership separation rules to non-specific interests</p> <p style="text-align: center;"><i>Mirror Trusts</i></p> <p>19. Mirror trusts</p> <p>20. Arms length requirements for mirror trusts</p> <p>21. No transfers to mirror trusts after 1 April 1999</p> <p>22. Application of ownership separation rules to mirror trusts</p> <p>23. Application of no new substantial agency rule to mirror trusts</p> <p>24. Trusts that cease to be mirror trusts</p> | <p style="text-align: center;"><i>Agency Ownership</i></p> <p>25. No new substantial agency ownership</p> <p style="text-align: center;"><b>PART 3</b></p> <p style="text-align: center;">ENFORCEMENT AND PENALTIES</p> <p style="text-align: center;"><i>Interpretation, Jurisdiction, Etc</i></p> <p>26. Interpretation</p> <p>27. Jurisdiction of High Court</p> <p>28. Jurisdiction of District Courts</p> <p style="text-align: center;"><i>Penalties</i></p> <p>29. Pecuniary penalties</p> <p>30. Injunctions</p> <p>31. Actions for damages</p> <p>32. Court may order divestiture of assets or voting securities</p> <p>33. Additional penalty for contravention involving commercial gain</p> <p>34. Other powers to give directions, re-open agreements</p> <p style="text-align: center;"><i>Miscellaneous Provisions</i></p> <p>35. Application of Commerce Act provisions</p> <p>36. Additional proceedings</p> <p style="text-align: center;"><b>PART 4</b></p> <p style="text-align: center;">TRANSITIONAL PROVISIONS</p> <p style="text-align: center;"><i>Provisions Applying from 21 May 1998</i></p> <p>37. Trust deeds</p> <p style="text-align: center;"><i>Provisions Applying from 1 April 1999</i></p> <p>38. Corporate separation for businesses without ownership separation</p> <p>39. 6 months' lead in time to full arms length</p> <p>40. Not interconnected under Commerce Act 1986</p> <p style="text-align: center;"><i>1 January 2004 Timelines</i></p> <p>41. Exemption from non-involvement rule pending separation</p> <p>42. Existing 20% aggregates</p> <p style="text-align: center;"><i>Taxation</i></p> <p>43. Purpose</p> |
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44. Mirror trusts  
 45. Consolidation rules modified generally for purposes of corporate ownership split and ownership split  
 46. Gifts not to form part of capital gain amounts  
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 61. Regulations

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 64. Interpretation  
 65. Directions by shareholding Ministers  
 66. Principal objective of ECNZ

## SCHEDULE

## Arms Length Rules

## A BILL INTITULED

## An Act—

- (a) To provide for the ownership separation of electricity lines businesses from electricity supply businesses; and 5  
 (b) To amend the Electricity Act 1992; and  
 (c) To enable the shareholding Ministers of Electricity Corporation of New Zealand Limited to require assets and liabilities of that company or of any wholly-owned subsidiary of that company to be transferred to the Crown or to other State enterprises or subsidiaries of State enterprises 10

BE IT ENACTED by the Parliament of New Zealand as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Electricity Industry Reform Act 1998. 15  
 (2) Except as provided in subsections (3) and (4), this Act comes into force on 1 April 1999.  
 (3) The following provisions are deemed to have come into force on 21 May 1998:  
 (a) Section 19 (mirror trusts); and 20  
 (b) Section 23 (application of no new substantial agency rule to mirror trusts); and

- (c) **Section 24** (trusts that cease to be mirror trusts); and
  - (d) **Section 25** (no new substantial agency ownership); and
  - (e) **Section 37** (trust deeds); and
  - (f) **Section 49** (duty not to defeat purposes); and
  - 5 (g) **Section 50** (no compensation); and
  - (h) **Part 3** (enforcement and penalties) in so far as it applies to a  
contravention of any of those sections.
- (4) The following provisions come into force on the day after  
the date on which this Act receives the Royal assent:
- 10 (a) **Sections 43 to 47** (tax); and
  - (b) **Section 48** (power to make gifts); and
  - (c) **Part 5** (other than **sections 49 and 50**); and
  - (d) **Part 7** (split of ECNZ).

PART 1

15 PRELIMINARY PROVISIONS

*Interpretation*

**2. Interpretation**—(1) In **Parts 1 to 5**, unless the context  
otherwise requires,—

- 20 “Agency” has the same meaning as in **section 25 (3)**;
- “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:
- 25 “Associate” has the same meaning as in **section 11**;
- “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 5**;
- 30 “Commission” means the Commerce Commission  
established by the Commerce Act 1986;
- “Control right” has the same meaning as in **section 8**;
- “Court” means the High Court; and includes a Judge of  
that Court:
- 35 “Director” has the same meaning as in section 126 of the  
Companies Act 1993;
- “Disregarded involvement” means an involvement to  
which **section 17** applies;
- “Electricity business” means an electricity lines business or  
an electricity supply business;
- 40 “Electricity company” means a body corporate that  
carries on an electricity business (whether or not that  
business is its principal or only business):



- “Electricity lines business” has the same meaning as in **section 3**:
- “Electricity supply business” has the same meaning as in **section 4**:
- “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: 5
- “Equity return right” has the same meaning as in **section 9**: 10
- “Expectancy” has the same meaning as in **section 9 (4)**:
- “Interest” means a direct or indirect control right or equity return right in, or a material influence over, an electricity business:
- “Involved” has the same meaning as in **section 6**: 15
- “Manager” means a director, officer, trustee, manager, or any other person occupying a similar position (by whatever name called) and, in the case of a local authority that is involved in an electricity business, includes a councillor: 20
- “Material influence” has the same meaning as in **section 10**:
- “Mirror trust” has the same meaning as in **section 19 (2) and (4)**:
- “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: 25
- “Non-specific interests” has the same meaning as in **section 18 (4)**:
- “Overlap threshold” has the same meaning as in **section 18 (3)**: 30
- “Ownership separation rules” means **section 15** (cross-ownership prohibition) and **section 16** (20% aggregate cross-ownership prohibition):
- “Person” includes the trustees of a trust acting in that capacity: 35
- “Property” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and, without limiting the generality of the foregoing, includes— 40
- (a) Choses in action and money:
  - (b) Goodwill:
  - (c) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an 45

instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective:

“Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

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“Settling trust” means the existing electricity trust which settles interests in a mirror trust under **section 19**, and has the same meaning as in **section 19 (4)**:

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“Subsidiary” has the same meaning as in sections 5 and 6 of the Companies Act 1993:

“Transfer” includes, in the case of an involvement or interest, any divestment or termination of that involvement or interest by whatever means; and also includes—

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(a) Assign and convey; and

(b) Grant leases, rights, and interests in any real or personal property; and

(c) In the case of liabilities, the assumption thereof by the transferee.

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(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.

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**3. Meaning of “electricity lines business”**—(1) For the purposes of this Act, “electricity lines business”—

(a) Means a business that conveys electricity by line; and

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(b) Includes a person that owns or operates, directly or indirectly, assets that are used, or are likely to be used, primarily for or in connection with a business that conveys electricity by line; and also includes a person that provides services that are necessary to such use of any such assets.

(2) **Subsection (1)** does not apply to an activity of a person that is confined to—

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(a) Conveying, either alone or together with its associates, less than 0.5 GWh per annum:

(b) Conveying electricity solely for its own consumption or for the consumption of its associates:

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(c) Conveying electricity only from a generator to the national grid:

(d) Conveying electricity only by a line or lines that are mostly in competition with a line or lines operated by another electricity lines business that is not an associate of the person, provided that the

competition is actual competition and not potential competition:

- (e) Owning or operating assets that are used, or are likely to be used, primarily for an activity that is referred to in any of **paragraphs (a) to (d)**, and providing services that are necessary to such use of any such assets. 5

**4. Meaning of “electricity supply business”**—(1) For the purposes of this Act, “electricity supply business”—

- (a) Means a business that— 10  
 (i) Sells electricity;  
 (ii) Generates electricity;  
 (iii) Trades in rights to sell or generate electricity;  
 and

- (b) Includes a person that owns or operates, directly or indirectly, assets that are used, or are likely to be used, primarily for or in connection with a business that sells or generates electricity or trades in rights to sell or generate electricity. 15

(2) **Subsection (1)** does not apply to an activity of a person that is confined to— 20

- (a) Selling or generating less than 0.5 GWh per annum;  
 (b) Generating electricity solely for its own consumption or for the consumption of its associates;  
 (c) Owning or operating assets that are used, or are likely to be used, primarily for an activity referred to in either of **paragraphs (a) and (b)**, and providing services that are necessary to such use of any such assets. 25

**5. Meaning of business A/business B**—(1) Where this Act uses the term “business A”, it refers to one of an electricity lines business or an electricity supply business, and the term “business B” then refers to an electricity business of the other type, and vice versa. 30

(2) Where this Act applies to business A, it applies equally to business B, and vice versa.

**6. Meaning of “involved”**—For the purposes of this Act, a person is involved in an electricity business if the person— 35

- (a) Carries on that business; or  
 (b) Exceeds the 10% threshold in **section 7** in respect of that business; or  
 (c) Has material influence over the business; or 40  
 (d) Is in breach of **section 16** or **section 42** (20% aggregate cross-ownership prohibitions) in respect of that business,—

and “involvement” has a corresponding meaning.

**7. Meaning of “10% threshold”**—A person exceeds the 10% threshold in respect of an electricity business if the person—

- 5 (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
- 10 (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.

15 **8. 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 section 5 of the Securities  
20 Amendment Act 1988, in the voting securities that confer that  
right,—

- 25 (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 or shareholders (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
- 30 (b) If references in that section to a number or percentage of  
voting securities were a reference to the number or  
percentage of the votes conferred by those securities.

**9. Meaning of “equity return rights”**—(1) For the  
purposes of this Act, a person has an “equity return right” in  
35 relation to a business if the person has a right or entitlement or  
expectancy to receive equity returns, directly or indirectly, of  
the business.

- (2) “Equity returns” means—
  - 40 (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 an electricity business which represents, or is calculated by reference to, or is determined or conditioned by, or is a function of,—
- (i) A share in or proportion of its capital; or 5
  - (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. 10
- (4) “Expectancy” means, in relation to an electricity business or any other person,— 15
- (a) An expectancy or a contingent or unvested right to receive equity returns of the business or person; or
  - (b) A right to receive equity returns of the business 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. 20
- (5) 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. 25
- (6) A person is deemed to have a percentage of the equity return rights held by another person in an electricity 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. 30
- (7) The percentage of rights held by a person in another person is calculated as follows: 35

$$A = B \times C$$

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 40
- C is the percentage of the equity return rights held by the second person in the electricity business.

**10. 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 the carrying on of an electricity business:

- 5 (a) A manager of a person that is involved in 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  
10 of **paragraphs (a) or (b)** may be required or is accustomed to act:  
(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  
15 a person referred to in either of **paragraphs (a) or (b)**:  
(e) A person that can appoint or remove, or control the appointment or removal of, a person referred to in either of **paragraphs (a) or (b)**:  
20 (f) A person that does not exceed the 10% threshold, or that is not in breach of **section 16 or section 42** (20% aggregate cross-ownership prohibitions), but has a power to influence a decision of, or in relation to, an entity which would ordinarily require the holding of control rights which would cause the person to exceed the  
25 10% threshold or to be in breach of either of those sections:  
(g) A person that, under a trust or agreement (whether or not the person is a party to it), may at any time have any of the powers referred to in **paragraphs (c) to (f)**.  
30 (2) Where a person has material influence under this section, and another person has any of the powers or controls referred to in **paragraphs (c) to (g)** in relation to the first person, then that other person is deemed also to have material influence, and so on.  
35 (3) A person is deemed to have material influence over the carrying on of an electricity business if the person is one of 2 or more associates who, together, have material influence over the way in which the business is carried on.  
(4) For the avoidance of doubt, a power to cast one of many  
40 votes at an election of trustees or councillors does not, of itself, constitute material influence.

**11. 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 5 (7) of the Securities Amendment Act 1988); or
- (iii) A director of a related body corporate of that body corporate (within that same meaning); or 5
- (b) Person A is a spouse, child, or parent of person B; or
- (c) Person A is a person in a relationship in the nature of marriage with person B, although they are not married to each other; or 10
- (d) Person A is a partner, to whom the Partnership Act 1908 applies, of person B; 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 10% of the control rights in the company, and person A and person B are parties to an agreement relating to— 15
  - (i) The control of that company; or
  - (ii) More than 20% of the control rights in that company; or 20
- (g) Person A and person B are acting 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 to act in accordance with the directions, instructions, or wishes of person B; or 25
- (i) Person A is a person who, by reason of an agreement, expects to benefit from, or have an interest in, equity return rights of person B in relation to a business; or 30
- (j) Either person A or person B, or both of them, propose to do, or are likely to do, anything that will cause them to become associated in terms of **paragraphs (a) to (i)**.
- (2) References in **subsection (1) (e) to (i)** to a company or business relate to a company or business in respect of which a connection with an electricity business is relevant. 35

**12. 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. 40

(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 voting security or not:
- 5 (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:
- 10 (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.
- 15 (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, or any of them, whether or not it is legally enforceable.

Cf. 1988, No. 234, s. 5 (4), (5), (6)

20 *Application to the Crown*

**13. Act binds the Crown**—(1) This Act binds the Crown except as provided in **subsection (2)**.

25 (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.

*Purpose*

**14. Purpose of Parts 1 to 5**—The purpose of **Parts 1 to 5** is—

- 30 (a) To prohibit certain involvements in electricity lines businesses and electricity supply businesses which may create incentives or opportunities—
  - (i) To inhibit competition in the electricity industry;
  - or
  - 35 (ii) To subsidise generation activities from electricity lines businesses; and
- (b) To restrict relationships between electricity lines businesses and electricity supply businesses which may otherwise not be at arms length; and
- 40 (c) To facilitate competition among electricity suppliers and choice for smaller consumers.



## PART 2

## SEPARATION OF ELECTRICITY BUSINESSES

*Ownership Separation*

**15. Cross-ownership prohibition—**(1) No person involved in an electricity lines business may be involved in an electricity supply business. 5

(2) No person involved in an electricity supply business may be involved in an electricity lines business.

**16. 20% aggregate cross-ownership prohibition—**  
(1) The purpose of this section is to prevent more than 20% in aggregate of the control rights or equity return rights in, or material influence over, an electricity lines business or an electricity supply business being held by persons who are involved (other than under this section) in the other type of business. 10 15

(2) A person who is involved in business A because the person carries on the business or exceeds the 10% threshold in respect of the business or has material influence over the business may not acquire an interest in business B if there are, or if the interest would, if acquired, result in there being, persons who are involved because of those reasons in any business A who— 20

(a) Have more than 20% in aggregate of the control rights or equity return rights in business B; or

(b) Have material influence over business B. 25

(3) A person who acquires an interest in business B in contravention of this section is involved in business B.

**17. Certain involvements to be disregarded—**(1) For the purposes of this Act, no account is to be taken of a person's involvement in an electricity business if— 30

(a) The ordinary business of the person consists of, or includes, the lending of money and that person has the involvement only as security given for a loan or guarantee of a loan entered into in the ordinary course of the business of that person; or 35

(b) That person has the involvement 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 member of a stock exchange; or 40

(c) That person has the involvement by reason only that he or she has been authorised by resolution of the

- 5 directors or other governing body of a body  
corporate to act as its representative at a particular  
meeting of members, or class of members, of a  
company, and a copy of the resolution is deposited  
with the company not less than 48 hours before the  
meeting; or
- 10 (d) That person has the involvement solely by reason of  
being appointed as a proxy to vote at a particular  
meeting of members, or of a class of members, of the  
company and the instrument of that person's  
appointment is deposited with the company not less  
than 48 hours before the meeting; or
- 15 (e) That person has the involvement by reason only that the  
person is a bare trustee of a trust to which the  
involvement is subject; or
- 20 (f) The involvement is exempted by the Commission under  
**section 54** or is declared, by regulations made under  
this Act, to be a disregarded involvement for the  
purpose of this section because it is immaterial to the  
purposes of this Act or for any other reason.
- (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.
- 25 (3) This section is subject to **section 53** (extensions) and to any  
regulations made under this Act.

Cf. 1988, No. 234, s. 6

**18. Application of ownership separation rules to non-specific interests**—(1) The purpose of this section is to  
30 prevent the ownership separation rules being circumvented  
where the beneficiaries that have non-specific interests in a  
person involved in one type of electricity business have such  
commonality with the beneficial owners of another person  
involved in a different type of electricity business that that  
commonality may result in the managers of the first person  
35 acting in a way that those managers would not have acted if  
there had been no such commonality.

(2) Where a person (person A) involved in business A crosses  
the overlap threshold with another person (person B) who is  
involved in business B, then person A is deemed to be the same  
40 person as person B, and, accordingly, person A is deemed to  
have contravened the ownership separation rules by virtue of  
this section.

(3) Person A crosses the overlap threshold if—

- (a) More than 20% of the persons holding non-specific interests in person A are likely to be the same persons as hold interests in person B; or
- (b) The class or classes of persons holding non-specific interests in person A are substantially included in a class or classes of persons holding interests in person B; or 5
- (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 10
- (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 15
- (e) The person has a type of overlap specified from time to time in regulations made under **section 58** and, for this purpose, **paragraphs (a) to (d)** do not limit the generality of that regulation-making power. 20
- (4) In this section, “non-specific interests” means expectancies, or other interests that are not transferable, or not transferable without constraints of a kind likely to result in the consideration for such a transfer being substantially less than the value of the interest if it was freely transferable. 25
- (5) Subject to **subsection (7)**, if there is a contravention of **section 15** or **section 16** (ownership separation rules) because of the operation of this section, then the persons in which the interests are held (and not the holders of the interests) are the persons responsible for the contravention and for ensuring that the contravention is remedied. 30
- (6) For the purposes of complying with **subsection (5)**,—
- (a) The person that last entered into the transaction that caused the contravention is the first person that must remedy the contravention, and so on; and 35
- (b) If **paragraph (a)** does not apply, then the persons affected must endeavour to agree on how to remedy the contravention, and failing agreement, must comply with **section 42 (4) and (5)**. 40
- (7) If any person that comprises part of the overlap referred to in **subsection (3)** has material influence over, or is an associate of, person A or any of the managers of person A, that person is deemed to have the same involvement as person A, and

accordingly that person may contravene the ownership separation rules by virtue of this section.

*Mirror Trusts*

5       **19. Mirror trusts**—(1) The purpose of **sections 20 to 24** is to allow for the establishment of a clone of an existing electricity trust to hold the interests of that trust (the “settling trust”) in either the electricity lines business or the electricity supply business, and for this purpose “existing electricity trust” means one that exists and is involved in an electricity business as at  
10       **21 May 1998.**

(2) In this Act, “mirror trust” means a trust that—

(a) Has been created before **1 April 1999**, and that has, before that date, entered into an unconditional agreement to acquire the interests of the settling trust in business  
15       A; and

(b) Has the same beneficiaries or class of beneficiaries as the settling trust, and no others; and  
(c) Of which the trustees of the new mirror trust do not at any time include persons who are trustees of the  
20       settling trust, or associates of, or persons involved in, the settling trust or in the electricity business in which the settling trust will retain an involvement; and

(d) Of which the terms are as near or may reasonably be to the terms of the settling trust, but without provisions for appointment of trustees or otherwise which  
25       would be likely to create or leave any person with an involvement in an electricity business in contravention of this Act.

(3) **Subsections (1) and (2)** do not—

30       (a) Require that the terms of the new mirror trust include any provision from the settling trust’s trust deed that is properly regarded as spent; or

(b) Prevent the inclusion of provisions necessary to ensure compliance with the arms length Schedule.

35       (4) For the purposes of this Act, the provisions relating to mirror trusts apply to Electricity Ashburton Limited and Otago Power Limited, and their respective shareholders as at **21 May 1998**, as if references to settling trusts were references to those co-operatives, references to mirror trusts were references to  
40       mirrors of those co-operatives, references to beneficiaries were references to shareholders of those co-operatives, and all other necessary modifications were made.

**20. Arms length requirements for mirror trusts—**

(1) Every mirror trust and its settling trust must comply with the following rules:

(a) If interests in business A are retained by the settling trust, the mirror trust may hold no interest in business A, and vice versa; and 5

(b) If interests in business A are settled on the mirror trust, the settling trust may hold no interest in business A, and vice versa.

(2) Every mirror trust and its settling trust must comply, and ensure that their electricity businesses comply, with the arms length Schedule. 10

(3) For that purpose, references in the arms length Schedule to business A and business B are references to the electricity lines business and electricity supply business in which the mirror trust and the settling trust are involved. 15

**21. No transfers to mirror trusts after 1 April 1999—**No person may, on or after 1 April 1999, enter into an agreement to transfer all or part of its interest in an electricity lines business or electricity supply business to a mirror trust. 20

**22. Application of ownership separation rules to mirror trusts—**(1) Section 18 (application of ownership separation rules to non-specific interests) does not apply to a mirror trust in relation to its settling trust, and vice versa.

(2) Subsection (1) is subject to section 24 (trusts that cease to be mirror trusts). 25

**23. Application of no new substantial agency rule to mirror trusts—**(1) Section 25 does not apply to a mirror trust in respect of an unconditional agreement to transfer the interests of the settling trust in business A to the mirror trust entered into before 1 April 1999. 30

(2) A transfer in accordance with such an agreement does not count as a transfer for the purpose of section 25 (6) (previous transfers).

**24. Trusts that cease to be mirror trusts—**(1) Sections 22 and 23 apply to a mirror trust and its settling trust only if and so long as section 19 (mirror trusts) and section 20 (arms length) are complied with. 35

(2) Once either the mirror trust or the settling trust has contravened either of those sections, then neither trust can 40

come within the protection of **sections 22 and 23** even if that contravention is remedied.

*Agency Ownership*

5     **25. No new substantial agency ownership**—(1) The purpose of this section is to prevent transfers of interests in, or assets of, an electricity business to new trusts, co-operatives, or other entities in which the practical likelihood of the holders exercising effective control over the managers of the agency is remote (whether because of inability or lack of reasonable incentives to aggregate control rights or equity return rights or otherwise).

10     (2) Subject to **subsections (6) and (7)**, a person may transfer interests in, or assets of, an electricity business to an agency, and an agency may acquire any such interests or assets, only where persons other than agencies will have or retain, after the transfer, the power to control use of the assets of, or to control, or to change the constitution of, the electricity business without the concurrence of the agencies or any one of them.

15     (3) For the purposes of this section, an “agency”—

20     (a) Means a person—

      (i) That is involved in an electricity business; and  
      (ii) In which interests are held by more than 6 persons; and

25     (iii) In which the interests of the beneficial owners are expectancies, or other interests which are not transferable, or not transferable without constraints of a kind likely to result in the consideration for such a transfer being materially less than the value of the interest if it was freely transferable; and

30     (b) Includes a local authority except in so far as the interests in respect of an electricity business are held through a local authority trading enterprise within the meaning of section 594B of the Local Government Act 1974; and

35     (c) Excludes a person where the beneficiaries most likely to benefit from control rights or equity return rights in the agency are relatives (within the meaning of the Income Tax Act 1994) or close business associates of the person that established the person or of each other; and

40     (d) Excludes a registered superannuation scheme within the meaning of section 2 of the Superannuation Schemes Act 1989; and

(e) Excludes any other class of person declared, by regulations made under **section 58**, not to be an agency for the purposes of this Act;—  
and “agency interests” has a corresponding meaning.

(4) A power to exercise one vote among many at an election of managers does not, of itself, amount to the exercise of effective control over a manager for the purpose of **subsection (1)**. 5

(5) It is a defence for the transferor to any proceedings based on a contravention of **subsection (2)** that the transferor did not know, and ought not reasonably have known, that the transferee was an agency or that the transfer would result in that contravention. 10

(6) This section does not apply to interests or assets that have previously been transferred for the purpose of complying with the ownership separation rules, and, for this purpose, the principles of section 6 of the Securities Amendment Act 1988 (except subsection (3)) apply, with necessary modifications, as if references to previously allotted securities were references to previous transfers under this Act. 15

(7) This section does not apply to a transfer to an existing agency that is involved in an electricity business, so long as in the case of a local authority, the transfer of interests is to a local authority trading enterprise (within the meaning of section 594B of the Local Government Act 1974) owned by that local authority, and, for this purpose, “existing agency” means one that exists and is involved in an electricity business as at 21 May 1998. 20  
25

### PART 3

#### ENFORCEMENT AND PENALTIES

#### *Interpretation, Jurisdiction, Etc* 30

**26. Interpretation**—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 35
- (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 40

- (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
- 5 (f) Has conspired with any other person to contravene the provision.

**27. Jurisdiction of High Court**—In accordance with this Part, the High Court may hear and determine the following matters:

- 10 (a) Proceedings for the recovery of pecuniary penalties under **section 29**:
- (b) Applications for injunctions under **section 30**:
- (c) Actions for damages under **section 31**:
- (d) Proceedings under **section 32** (order divestiture of assets):
- (e) Proceedings under **section 33** (penalty/commercial gain):
- 15 (f) Applications under **section 34** (give directions, re-open contracts):
- (g) Applications for orders under section 89 of the Commerce Act 1986 (as applied to this Act by **section 35** of this Act).
- 20 Cf. 1986, No. 5, s. 75

**28. 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 35** of this Act).

25 Cf. 1986, No. 5, s. 76

*Penalties*

**29. 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 Part 4 or section 49**, the Court may order the person to pay to the Crown a pecuniary penalty that the Court determines to be appropriate.

30

(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.

35

(3) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention arose.

(4) Section 80 (2) to (6) of the Commerce Act 1986 applies with necessary modifications.

40 Cf. 1986, No. 5, s. 80



**30. 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 Part 4 or section 49**, the Court, by order, may do all or any of the following things: 5

- (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: 10
- (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. 15

Cf. 1986, No. 5, s. 84 20

**31. 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 Part 4 or section 49**.

(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. 25

(3) An action under **subsection (1)** may be commenced at any time within 3 years from the time when the cause of action arose. 30

Cf. 1986, No. 5, s. 82

**32. Court may order divestiture of assets or voting securities**—(1) In any case where the Court, on the application of the Commission, 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,— 35

- (a) Give directions for the disposal by that person of the assets or voting securities that may be specified in the order; or 40
- (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

5 (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.

10 (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—

15 (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:

20 (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—

25 (i) Applied towards the costs of the application:

(ii) Paid in such amounts and to such persons as the Court specifies.

(4) Section 85 (2) of the Commerce Act 1986 applies with necessary modifications.

30 Cf. 1978, No. 103, s. 32 (1) (d), (l), (m), 32 (2), 32 (3); 1986, No. 5, s. 85

**33. Additional penalty for contravention involving commercial gain—**

35 (1) The Court may order a person who is found to have contravened **Part 2 or Part 4 or section 49** 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.

Cf. 1990, No. 98, s. 47; 1991, No. 69, s. 339B; 1994, No. 104, s. 409; 1996, No. 69, s. 8

5

**34. 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 Part 4 or section 49**, 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.

10

(2) If directions under **subsection (1)** are not complied with to the satisfaction of the Court, the Court may—

15

(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:

20

(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.

25

#### *Miscellaneous Provisions*

**35. Application of Commerce Act provisions**—The following provisions of the Commerce Act 1986 apply with necessary modifications:

30

(a) Section 79 (evidence not otherwise admissible):

(b) Section 88 (general provisions relating to granting of injunctions):

(c) Section 89 (other orders):

(d) Section 90 (conduct by servants or agents):

35

(e) Section 98 (Commission may require person to supply information or documents or give evidence):

(f) Section 98A (power to search):

(g) Sections 98B to 98G (relating to warrants, etc):

(h) Section 99 (powers of Commission to take evidence):

40

(i) Section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):

- (j) Section 100A (Commission may state case for opinion of High Court):
- (k) Sections 101 and 102 (notices):
- (l) Section 103 (offences):
- 5 (m) Section 104 (determinations of Commission):
- (n) Section 105 (delegation by Commission):
- (o) Section 106 (proceedings privileged):
- (p) Section 106A (judicial notice):
- (q) Section 109 (Commission may prescribe forms).
- 10 **36. Additional proceedings**—Proceedings brought under this Part are in addition to any proceedings brought under any other Act.

## PART 4

## TRANSITIONAL PROVISIONS

15 *Provisions Applying from 21 May 1998*

- 37. Trust deeds**—(1) The trustees of an electricity trust may vary the trust deed of the trust to the extent necessary to enable the implementation of **Parts 1 to 5**.
- 20 (2) The power of variation in **subsection (1)** does not authorise an abrogation of a requirement to consult with the beneficiaries of the trust, but may allow variation of the requirement to meet the circumstances of this Act.
- (3) This Part applies despite anything to the contrary in the trust deed of an electricity trust or in any other enactment or
- 25 rule of law or agreement.
- (4) No trustee of an electricity trust is liable to any person for breach of trust or otherwise by reason of any act or omission necessary to give effect to **Parts 1 to 5**.

*Provisions Applying from 1 April 1999*

- 30 **38. Corporate separation for businesses without ownership separation**—(1) Every person involved in an electricity business that is exempt from complying with the ownership separation rules by virtue of **section 41**, and the business, must—
- 35 (a) Carry on its electricity lines business and its electricity supply business in different companies; and
- (b) Comply, and ensure that its electricity businesses comply, with the arms length Schedule,—
- and, for that purpose, references in the arms length Schedule
- 40 to business A and business B are references to the electricity

lines business and the electricity supply business in which that person is involved.

(2) This section does not limit **section 20** (arms length requirement for mirror trusts).

**39. 6 months' lead in time to full arms length**—It is a defence to any proceedings based on a contravention of the arms length Schedule under **section 20** (arms length requirements for mirror trusts) or **section 38** (corporate separation for businesses without ownership separation) during the period beginning on **1 April 1999** and ending with **30 September 1999** that the person is taking all reasonable steps to comply with the requirements of the arms length Schedule. 5  
10

**40. Not interconnected under Commerce Act 1986**—(1) For the purposes of Part II of the Commerce Act 1986, an electricity lines business and an electricity supply business that do not have ownership separation are deemed to be separate bodies corporate that are not interconnected, despite the fact that they may have a common owner. 15

(2) **Subsection (1)** applies notwithstanding section 2 (7) of the Commerce Act 1986. 20

*1 January 2004 Timelines*

**41. Exemption from non-involvement rule pending separation**—(1) **Section 15** and **section 16** (ownership separation rules) do not apply to a person's involvement in an electricity business that exists as at the close of **31 March 1999** until whichever is the earlier of the close of **31 December 2003** or the date on which the person first complies with the ownership separation rules in respect of that involvement. 25

(2) This section does not apply to a mirror trust or to a settling trust that has at any time established a mirror trust. 30

**42. Existing 20% aggregates**—(1) The purpose of this section is to prevent the continuation, after **31 December 2003**, of existing holdings and circumstances, as at **1 April 1999**, which result in 20% in aggregate of the control rights or equity return rights of, or material influence over, an electricity lines business or an electricity supply business being held by persons who are involved (other than under this section) in the other type of business. 35

(2) A person who is involved in business A because the person carries on the business or exceeds the 10% threshold in respect of the business or has material influence over the 40

business may not retain, after **31 December 2003**, an interest in business B if the interest would, if retained, result in persons who are involved because of those reasons in any business A—

- 5 (a) Having more than 20% in aggregate of the control rights or equity return rights in business B; or
- (b) Having material influence over business B.
- (3) The persons affected by this section must endeavour to agree on how to avoid a contravention of the section.
- 10 (4) If those affected persons fail to agree, all of those persons must transfer sufficient of their interest on a pro rata basis to result in compliance with this section.
- 15 (5) A pro rata basis means the transfer by each person of the proportion of its interest which is equivalent to the proportion its interest bears to the total interests of those 2 or more affected persons.
- (6) A person who retains an interest in business B in contravention of this section is involved in business B.

#### *Taxation*

20 **43. Purpose**—Subject to their express provisions, **sections 44 to 47** are intended—

- 25 (a) To exempt from liability for gift duty, any gift component on a transfer by a company of assets, liabilities, and property comprising an electricity lines business or an electricity supply business, being a company in respect of which an electricity trust holds all of the voting interests and market value interests (if any), to a company in respect of which that electricity trust's mirror trust holds all of the voting interests and market value interests (if any); and
- 30 (b) To modify the application of the consolidation rules to electricity companies that use those rules to separate their electricity lines business and their electricity supply business.

35 **44. Mirror trusts**—(1) This section applies if—

- 40 (a) An electricity trust owns all of the voting interests and market value interests (if any) in an electricity company (the “existing company”) carrying on both an electricity lines business and an electricity supply business; and
- (b) A mirror trust is established in respect of the electricity trust; and

- (c) The mirror trust incorporates a company in which it holds directly all of the voting interests and market value interests (if any) (the “mirror trust company”); and
- (d) The existing company has not transferred assets, liabilities, or property comprising all or part of either the existing company’s electricity lines business or electricity supply business to a company in its consolidated group; and 5
- (e) Before **1 April 1999**, the existing company transfers the assets, liabilities, and property comprising all of either the existing company’s electricity lines business or electricity supply business to the mirror trust company; and 10
- (f) The assets, liabilities, and property are transferred for a consideration less than their market value. 15
- (2) The part of the consideration in respect of a transfer referred to in **subsection (1) (e)** that constitutes a gift is deemed not to be a dutiable gift for the purposes of the Estate and Gift Duties Act 1968.
- (3) For the purposes of the Inland Revenue Acts (except for the purposes of gift duty),— 20
- (a) An existing company is deemed to have received, and the mirror trust company is deemed to have paid, market value in respect of a transfer referred to in **subsection (1) (e)**; and 25
- (b) Where any gift in respect of a transfer referred to in **subsection (1) (e)** would, but for this provision, have formed part of or contributed to the capital gain amounts of the relevant mirror trust company available for distribution to its shareholders upon liquidation, the capital gain amounts are deemed to be reduced to zero or by the amount of the gift, whichever is the smaller reduction. 30

**45. Consolidation rules modified generally for purposes of corporate ownership split and ownership split—** 35

(1) An electricity company which transfers or will transfer assets, liabilities, and property to a mirror trust company in accordance with arrangements to which **section 44 (1)** applies may not separate its electricity lines business and its electricity supply business using the consolidation rules. 40

(2) Section FD 10 (9) of the Income Tax Act 1994 is deemed not to apply to a company in a consolidated group where and to the extent that it can be concluded that the consolidation rules were utilised by the company for the purpose of

complying with its obligations, or the obligations of any other company in the consolidated group, under **Part 2 or Part 4**.

5 (3) In addition to any provision of the consolidation rules that applies in respect of a company ceasing, or that requires a company to cease, to be a member of a consolidated group, every transferee company is deemed to cease to be a member of the consolidated group when a transferring company ceases to be a member of the consolidated group.

10 (4) Notwithstanding any provision of the consolidation rules, when **subsection (3)** applies every transferee company is treated as having ceased to be a member of the consolidated group with effect from the beginning of the day on which the cessation of membership occurred.

**46. Gifts not to form part of capital gain amounts—**

15 (1) This section applies to transfers of assets, liabilities, or property comprising all or part of an electricity lines business or an electricity supply business between companies while they are in a consolidated group.

20 (2) If a transfer referred to in **subsection (1)** involves a gift which would, but for this provision, have formed part of or contributed to the capital gain amounts of the company receiving the gift available for distribution to its shareholders upon liquidation, the capital gain amounts are deemed to be reduced to zero or by the amount of the gift, whichever is the smaller reduction.

25

**47. Definitions for tax sections—**(1) For the purposes of **sections 43 to 47**, the following words have the meanings given to them in section OB 1 of the Income Tax Act 1994:

30 (a) Capital gain amount:

(b) Consolidated group:

(c) Consolidation rules:

(d) Income year:

(e) Inland Revenue Acts:

(f) Liquidation:

35 (g) Market value interest:

(h) Voting interest.

(2) For the purposes of **sections 43 to 47**,—

(a) Existing company is defined in **section 44 (1) (a)**:

(b) Mirror trust company is defined in **section 44 (1) (c)**:

40 (c) Transferring company is an electricity company that is required by **Part 2** to transfer an electricity lines business or an electricity supply business:



(d) Transferee company, in respect of an electricity lines business or an electricity supply business carried on by a transferring company, means a company in the same consolidated group as the transferring company to which assets, liabilities, or property comprising all or part of the electricity lines business or electricity supply business are transferred. 5

**48. Power to make gifts**—(1) If there is a unanimous resolution of shareholders to that effect, the directors of an electricity company may make a gift for the purposes of **section 44** (mirror trusts) without breaching any duty under law to the company or to its shareholders. 10

(2) **Subsection (1)** does not affect any specific obligations of the directors or the company to third parties or any requirement for the company to remain solvent. 15

## PART 5

### MISCELLANEOUS PROVISIONS

#### *Anti-Avoidance*

**49. 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**. 20

Cf. 1992, No. 56, s. 67 (1)

#### *No Compensation*

**50. 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. 25

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

Cf. 1993, No. 7, s. 8 30

#### *Disclosure*

**51. Disclosure regime**—(1) Every person must disclose that person's involvement in an electricity business in accordance with any disclosure regulations that may from time to time be made in that regard under **section 58**. 35

(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: 40

- (d) The form of the disclosure:
- (e) The maintenance of files of notices or registers of involvements and access to those files or registers and limitations on access to those files or registers:
- 5 (f) Exemptions from the requirements of the regulations:
- (g) Providing for a method of ascertaining percentages for the purpose of the 10% and 20% thresholds.
- (3) **Subsection (2)** does not limit the generality of **section 58 (2) (d)**.
- (4) Sections 30 to 35A of the Securities Amendment Act 1988
- 10 apply to any failure to make disclosure as required under this section.
- (5) Those sections apply with necessary modifications and with any other modifications that may from time to time be prescribed by regulations made under **section 58 (2) (e)**.

15 *Miscellaneous Provisions*

**52. Protection from other Acts**—No person is liable under—

- (a) Section 131 of the Companies Act 1993 or any other provision of that Act; or
- 20 (b) Section 36 of the Energy Companies Act 1992 or any other provision of that Act; or
- (c) Any other Act or rule of law,—
- by reason of any act or omission necessary to give effect to **Part 2 or Part 4 or section 49 or section 51**.

25 **53. Extensions**—(1) The Commission may for the purposes of this Act, in its discretion, by notice in the *Gazette*, bring within this Act an involvement that is disregarded under **section 17**.

(2) The Commission may exercise that power by designating an involvement as an involvement to which a paragraph of **section 17** no longer applies.

30

(3) The designation takes effect from the date specified in the designation (which may not be earlier than the date of the *Gazette* notice).

35 (4) The designation has effect according to its tenor.

(5) The Commission may in like manner vary or revoke any such designation.

(6) 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.

40

(7) An exemption under this section is not a regulation for the purposes of the Regulations (Disallowance) Act 1989.

- 54. Exemptions**—(1) The Commission may for the purposes of this Act, in its discretion and upon such terms and conditions (if any) as it thinks fit, by notice in the *Gazette*, exempt any involvement in an electricity business from the application of this Act, or exempt any person from compliance with any provisions of any regulations made under this Act, and may in like manner vary or revoke any such exemption. 5
- (2) Every exemption has effect according to its tenor.
- (3) An exemption under this section is not a regulation for the purposes of the Regulations (Disallowance) Act 1989. 10
- 55. Application of Commerce Act 1986**—Except as provided in section 40 (not interconnected under Commerce Act 1986), nothing in this Act overrides or limits the provisions of the Commerce Act 1986.
- 56. Application of Energy Companies Act 1992**—(1) This section applies to an electricity company formed after 21 May 1998 whose shareholders are— 15
- (a) A mirror trust:
- (b) A settling trust:
- (c) The same shareholders as an energy company which is an associate of the new electricity company. 20
- (2) Sections 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, and 46A of the Energy Companies Act 1992 apply to the new electricity company as if that company was an energy company for the purposes of that Act. 25
- 57. 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 one month after the innocent party has notice that the agreement is in breach of this Act. 30
- 58. 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: 35
- (a) Declaring a class of involvement to be a disregarded involvement to which this Act does not apply for the purpose of section 17 (1) (f): 40

(b) Declaring a class of involvement to be an involvement that is no longer disregarded under **section 17**.

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

(a) Determining whether (and in what circumstances and on what conditions) an activity or ownership or use of an asset falls within the definition of “electricity lines business” or “electricity supply business”:

10 (b) Declaring any class of person not to be an agency for the purposes of this Act:

(c) Specifying any further type of overlap to which **section 18 (3)** applies (application of ownership separation rules to non-specific interests):

15 (d) Providing for the disclosure of involvements in electricity lines businesses and electricity supply businesses under **section 51**:

(e) Making modifications to sections 30 to 35A of the Securities Amendment Act 1988 for the purpose of applying those sections to **section 51** (disclosure regime):

20 (f) Providing such anti-avoidance measures as are necessary to ensure that the purposes of this Act are not defeated:

25 (g) Adding to or omitting anything from the arms length Schedule, or otherwise amending the Schedule, or repealing the Schedule and substituting a new arms length Schedule:

(h) Prescribing the procedure to be followed under this Act in respect of applications and notices to, and proceedings of, the Commission:

30 (i) Prescribing forms of applications, notices, and other documents required for the purposes of this Act, and requiring the use of such forms:

35 (j) 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:

40 (k) Providing for such other matters as are contemplated by or are necessary for giving full effect to this Act and for its due administration.

## PART 6

## AMENDMENTS TO ELECTRICITY ACT 1992

**59. Part to be part of Electricity Act 1992**—This Part is part of the Electricity Act 1992 (in this Part referred to as “the principal Act”). 5

**60. Regulations relating to information disclosure**—The principal Act is amended by inserting, after paragraph (k) of section 170 (1), the following paragraph:  
 “(l) Providing for the revocation of any exemption of any person or class of persons from all, or any, of the requirements of any regulations made under this section.” 10

**61. Regulations**—The principal Act is amended by inserting, after section 170, the following heading and section:

*“Regulations—Consumer Choice of Electricity Retailer”* 15

**170A. Regulations relating to ability of consumers to choose their preferred electricity retailer**—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

“(a) Providing for a system or set of rules that will enable any consumer or class of consumer to elect to choose, and alternate between, competing electricity retailers: 20

“(b) Requiring every electricity retailer to comply with, and give effect to, a system or set of rules that will enable any consumer or class of consumer to elect to choose, and alternate between, competing electricity retailers: 25

“(c) Exempting or providing for the exemption of any person or class of persons from all or any of the requirements of any regulations made under this section: 30

“(d) Providing for the revocation of any exemption of any person or class of persons from all or any of the requirements of any regulations made under this section: 35

“(e) Providing for such other matters as are contemplated by, or necessary for giving full effect to, all or any of the requirements of any regulations made under this section and for their due administration. 40

“(2) This section expires at the close of **31 March 2001** if no regulations have been made under this section by that date.”

**62. Offences**—(1) Section 172 (1) of the principal Act is amended by omitting from paragraph (a) and from paragraph (b) the words “, without reasonable excuse”.

5 (2) Section 172 (1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(c) Fails to comply with any requirement prescribed in regulations made under section 170A.”

PART 7

SPLIT OF ELECTRICITY CORPORATION OF NEW ZEALAND

10 **63. Part to be part of State-Owned Enterprises Act 1986**—This Part is part of the State-Owned Enterprises Act 1986 (in this Part referred to as “the principal Act”).

**64. Interpretation**—(1) In this Part,—

15 “Assets” has the same meaning as in section 29 (1) of the principal Act:

“Board” means the board of directors of ECNZ:

“ECNZ” means Electricity Corporation of New Zealand Limited:

20 “Liabilities” has the same meaning as in section 29 (1) of the principal Act:

“Rights” has the same meaning as in section 29 (1) of the principal Act:

“Shareholding Ministers” means the Minister of Finance and the Minister for State-Owned Enterprises:

25 “State enterprise” means an organisation that is named in the First Schedule of the principal Act, and includes a subsidiary of such an organisation:

“Transfer” includes—

30 (a) Assign and convey; and

(b) Grant leases, rights, and interests in any real or personal property; and

(c) In the case of liabilities, the assumption thereof by the transferee.

35 (2) Nothing in this Part limits any powers or rights that the Crown or a Minister has other than under this Part.

**65. Directions by shareholding Ministers**—(1) The shareholding Ministers may, at any time or times before 1 July 2000, by written notice to the Board, give to the Board one or more of the following directions:

40 (a) A direction that any or all of the assets and liabilities of ECNZ, or of any wholly-owned subsidiary of ECNZ, being assets or liabilities (or both) referred to in the

direction, be transferred to any one or more of the Crown and any State enterprise or State enterprises specified in the direction:

- (b) A direction specifying terms and conditions of any transfer directed under **paragraph (a)** (which may be some or all of the terms and conditions of transfer). 5
- (2) The shareholding Ministers—
  - (a) May at any time, by written notice to the Board, advise the Board of their intentions or expectations with regard to directions to be given under this section; 10
    - and
    - (b) Must advise the Board, by written notice to the Board, of the matters to be referred to in a direction to be given under this section at least 14 days before the direction is given; and 15
    - (c) Must consider any comments relating to the direction that the Board makes to them within 10 days of the date on which the Board receives the advice under **paragraph (b)**. 20
  - (3) The shareholding Ministers may give a direction under this section despite anything to the contrary in sections 4 to 7 of the principal Act or in the Companies Act 1993 or any other Act or rule of law. 25
  - (4) The Board must comply with a direction given to it under this section despite anything to the contrary in the principal Act, the Companies Act 1993, or any other Act or rule of law. 25
  - (5) Neither the Crown nor any shareholding Minister is in breach of, or liable to any person under, sections 4 to 7 of the principal Act, the Companies Act 1993, or any other Act or rule of law by reason of the giving of a direction under **subsection (1)** or advice under **subsection (2)**. 30
  - (6) No director of ECNZ is in breach of, or liable to any person under, the principal Act, the Companies Act 1993, or any other Act or rule of law by reason of any act or omission reasonably believed by the director to be necessary or desirable— 35
    - (a) To give effect to, or as a consequence of, a direction given under **subsection (1)**; or
    - (b) As a result of any advice given under **subsection (2)**.
  - (7) The Minister for State-Owned Enterprises must— 40
    - (a) Present a copy of the direction to the House of Representatives within 12 sitting days after a direction is given to the Board under this section; and
    - (b) Publish a copy of it in the *Gazette* as soon as practicable after the giving of the direction. 45

**66. Principal objective of ECNZ**—(1) Sections 4 and 5 (1) of the principal Act do not apply to ECNZ from the date on which this subsection comes into force.

5 (2) **Subsection (1)** comes into force on a date to be appointed by the Governor-General by Order in Council made on the recommendation of the shareholding Ministers.

(3) The shareholding Ministers may not make a recommendation for the purposes of **subsection (2)** unless—

10 (a) One or more directions have been given under **section 65**;  
and

(b) The shareholding Ministers consider that the principal objective specified in section 4 of the principal Act is not likely to be appropriate for ECNZ following the implementation of those directions.

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## SCHEDULE

## Sections 20, 38

## ARMS LENGTH RULES

**1. Objective**—(1) The objective of this Schedule is to ensure that where—

- (a) Persons involved in an electricity business or businesses do not have ownership separation; and
- (b) A settling trust and a mirror trust are involved in electricity businesses,—

the electricity lines business and electricity supply business and, in the case of paragraph (b), the settling trust and the mirror trust, operate at arms length.

(2) Without limiting the ordinary meaning of the expression, “arms length” includes having relationships, dealings, and transactions which—

- (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. Arms length rules**—The arms length rules are as follows:

*Arms Length Terms*

- 1 Business A, and every person that is involved in business A, must not enter into a transaction in which business B, or any person involved in 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*

- 2 A manager of business A must not, when exercising powers or performing duties in connection with business A, act in a manner which a reasonable manager would know would prefer the interests of business B over the interests of business A.

*Duty Not to Discriminate in Favour of Business B*

- 3 Business A must not, in providing services, information, or benefits, discriminate in favour of business B or the customers, suppliers, owners, or beneficiaries of business B.

*Duty to Focus on Interests of Right Ultimate Owners*

- 4 A manager of business A must, when exercising powers or performing duties in connection with business A, act in the interests of the ultimate beneficial owners of business A in their capacity as such, and must neither subordinate the interests of those owners to the interests of the owners of business B nor, to the extent that the owners or ultimate beneficial owners of each business overlap, take account of that fact or have regard to their capacity as owners of business B.

SCHEDULE—*continued*

ARMS LENGTH RULES—*continued*

*Owners of Business A*

- 5 A manager of a person involved in business A must not, when exercising powers or performing duties in a way which affects or relates to business B or business A's dealings with business B, take account of or have regard to the interests of business B or of the owner, customers, suppliers, or beneficiaries of business B in that capacity.

*Requirement for Separate Management*

- 6 A manager of business A must not be a manager of business B.  
7 A manager of business A must not be an associate of business B.  
8 A manager of business A must not be involved in the business of business B.  
9 A manager of a person involved in business A must not be a manager of business A or business B.  
10 No person may place the 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 manager, or associate of business B, or any person involved in business B, and no manager may submit to any such obligation.  
Provided that any person that is involved in both business A and business B may place a manager under such an obligation provided that to do so does not contravene another of the arms length rules.

*Restriction on Use of Information*

- 11 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 involved in business A (trust A), business A, and every person involved in trust A, must not disclose or permit the disclosure to business B, an electricity trust involved in business B (trust B), or any person involved in 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.  
"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.

*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 person involved in business A, and business B, or any person involved in business B.

SCHEDULE—*continued*ARMS LENGTH RULES—*continued*

- 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 person involved in business A must ensure its practical arrangements, such as use of accommodation, equipment, and services, do not contravene this Schedule.
- 15 Business A and every person involved in business A must ensure that its selection and appointment of advisors does not prejudice **rules 6 to 11**.
- 16 Business A, and every person involved in business A, and business B, and every person involved in business B, must take all reasonable steps to ensure that the arms length objective in **clause 1** is met.

**3. Rules do not limit objective**—The arms length rules in **clause 2** do not limit the generality of the arms length objective in **clause 1**.

**4. Interpretation**—(1) 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 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.

(2) 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 the Electricity (Information Disclosure) Regulations 1994 and any other regulations from time to time made under the Electricity Act 1992.