

Electricity Amendment Act 2001

Public Act 2001 No 40
Date of assent 7 August 2001

Contents

		Page
1	Title	5
2	Commencement	5
3	Commencement of Electricity Governance Board provisions <i>[Repealed]</i>	5
4	Process to apply before Electricity Governance Board provisions may be commenced <i>[Repealed]</i>	5
5	Automatic trigger of process for commencing Electricity Governance Board provisions <i>[Repealed]</i>	5
6	Title amended	5
7	Interpretation	5
8	New sections 4 and 4A substituted	9
	4 Declaration of electricity distributors as electricity operators	9
	4A Declaration of electricity supply businesses as electricity operators	9
9	New section 22A inserted	10
	22A Owners of land not responsible for maintenance	10
10	Rights of entry in respect of existing works	10
11	New sections 23A to 23E inserted	11
	23A Line owner must give written notice of intention to maintain or complete existing works	11
	23B Line owner must give notice of intention to inspect or operate existing works	11
	23C Notice in emergencies	12

	23D	Land owner may set reasonable conditions on line owner's entry	12
	23E	Agreements preserved	12
12		New section 23F inserted	12
	23F	Disputes about land access	12
13		New headings and sections 158A to 158F inserted	13
		Subpart 1—General electricity matters	
		<i>Financial statements of customer and community trusts</i>	
	158A	Community and customer trusts to prepare audited financial statements	14
	158B	Publication of audited financial statements	14
	158C	Auditor of trusts	14
	158D	Procedures for annual meeting to appoint auditor	15
	158E	Auditor-General to be auditor if no other auditor appointed	16
	158F	Application of sections 158A to 158E	16
14		Repeal and saving of information disclosure provisions	17
15		Repeal of section 170A	17
16		New subpart 2 and Part 15 inserted	17
		Subpart 2—Electricity industry regulation-making powers	
	172A	Outline of subpart	17
		<i>Regulations—Low fixed charge tariff option for domestic consumers</i>	
	172B	Low fixed charge tariff option for domestic consumers	18
		<i>Regulations—Code on access for beneficiaries of community and customer trusts</i>	
	172C	Regulations for code on access for beneficiaries of customer and community trusts	20
		<i>Electricity governance regulations</i>	
	172D	Electricity governance regulations for wholesale market and transmission of electricity	21
	172E	Conditions and process for recommendations on electricity governance regulations for wholesale market and transmission of electricity	23
	172F	Other electricity governance regulations	24

172G	Process for recommendations on other electricity governance regulations	27
172H	Electricity governance rules	29
172I	Method of making electricity governance rules	30
	<i>Supplementary provisions</i>	
172J	Supplementary empowering provision for regulations and rules	30
172K	Supplementary empowering provision for regulations	31
	Part 15	
	Governance of electricity industry	
	<i>Preliminary provisions</i>	
172L	Purpose	32
	Subpart 1—Electricity Governance Board	
172M	Establishment of Electricity Governance Board	32
172N	Principal objective of EGB	32
172O	Functions of EGB	33
172P	Body corporate status and powers	33
172Q	Role of board of EGB	33
172R	Membership of EGB's board	34
	<i>Duties of members</i>	
172S	Duties of members	34
172T	Collective duties of EGB's board	34
172U	Members accountable to Minister	35
172V	Further provisions as to EGB and EGB's board in Schedule 2A	35
	<i>Role of EGB in relation to electricity governance regulations and rules</i>	
172W	EGB to make recommendations concerning electricity governance regulations and rules	36
172X	Objectives of recommendations	36
172Y	Obligation to consult	36
172Z	Minister must have regard to recommendations	36
	<i>Power to direct EGB</i>	
172ZA	Power to direct EGB	37
172ZB	Procedure for giving direction	38
	<i>Levy of industry participants</i>	

172ZC	Levy of industry participants	38
	<i>Miscellaneous</i>	
172ZD	Accountability of EGB	39
172ZE	Regulations	39
172ZF	EGB is public authority	39
172ZG	Amendment to Ombudsmen Act 1975	40
172ZH	Amendment to Public Finance Act 1989	40
	Subpart 2—Accountability of electricity governance organisations	
172ZI	Application of subpart	40
172ZJ	Interpretation	40
172ZK	Setting of GPS objectives and outcomes	41
172ZL	Agreement of annual performance standards	42
172ZM	Annual performance report to Minister	42
172ZN	Minister must present annual performance report to House of Representatives	43
172ZO	Assurance audit by Auditor-General	43
172ZP	Report by Parliamentary Commissioner for Environment	44
172ZQ	Functions under this subpart	44
172ZR	Offences	45
17	New Part 16 heading inserted	45
	Part 16	
	Repeals, etc, and transitional provisions	
18	New Schedule 2A inserted	45
19	Transitional provision for Transpower’s pricing methodology on and after 26 July 2001	45
20	Savings provision for Transpower’s pricing methodology before 26 July 2001	46
21	Validations of actions by persons without electricity operator status	47
22	Amendment to Public Audit Act 2001	47
	Schedule 1	48
	New Schedule 2A inserted	

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Electricity Amendment Act 2001.
- (2) In this Act, the Electricity Act 1992 is called “the principal Act”.

2 Commencement

Except as provided in section 3, this Act comes into force on the day after the date on which it receives the Royal assent.

3 Commencement of Electricity Governance Board provisions

[Repealed]

Section 3 was repealed, as from 18 October 2004, by section 14(4) Electricity Amendment Act 2004 (2004 No 80).

4 Process to apply before Electricity Governance Board provisions may be commenced

[Repealed]

Section 4 was repealed, as from 18 October 2004, by section 14(4) Electricity Amendment Act 2004 (2004 No 80).

5 Automatic trigger of process for commencing Electricity Governance Board provisions

[Repealed]

Section 5 was repealed, as from 18 October 2004, by section 14(4) Electricity Amendment Act 2004 (2004 No 80).

6 Title amended

The Title of the principal Act is amended by inserting, after the words “**the regulation of the supply of electricity**”, the words “**and the electricity industry**”.

7 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of the term **point of supply**, and substituting the following definition:

“**point of supply** has the meaning set out in subsection (3)”.

(2) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**community trust** means an electricity trust (within the meaning of section 3(1) of the Electricity Industry Reform Act 1998) that is a community trust under section 38 of that Act

“**customer trust** means an electricity trust (within the meaning of section 3(1) of the Electricity Industry Reform Act 1998) that is a customer trust under section 38 of that Act

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

“**domestic premises** means any premises that are used or intended for occupation by any person principally as a place of residence; but does not include any premises referred to in paragraphs (a) to (i) of section 90 of the Electricity Industry Reform Act 1998

“**EGB** means the Electricity Governance Board which may be established under subpart 1 of Part 15

“**EGB’s board** or **board**, for the purposes of Part 15 and Schedule 2A, has the meaning set out in section 172Q

“**electricity generator** means any person who owns or operates a generator connected to distribution or transmission lines

“**electricity governance organisation** has, for the purposes of subpart 2 of Part 15, the meaning set out in section 172ZI

“**electricity governance regulations** means regulations made under sections 172D and 172E

“**GPS objectives and outcomes** has the meaning set out in section 172ZJ

“**industry participant** means—

“(a) an electricity retailer:

“(b) an electricity distributor:

“(c) an electricity generator:

“(d) a line owner:

“(e) a person who uses electricity that is conveyed to the person directly by the national grid:

“(f) a person or group of persons involved in the governance or administration of the electricity industry

“**national grid** means the assets used or owned by Transpower for the purpose of conveying electricity

“**performance standards** has the meaning set out in section 172ZJ

“**report date** has, for the purposes of subpart 2 of Part 15, the meaning set out in section 172ZJ

“**reporting period** has the meaning set out in section 172ZJ

“**rules and electricity governance rules** mean, for the purposes of subpart 2 of Part XIV and subpart 1 of Part 15, rules made under section 172H

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

(3) Section 2 of the principal Act is amended by adding the following subsections:

“(3) In this Act, **point of supply**, in relation to a property, means the point or points on the boundary of the property at which exclusive fittings enter that property, except that,—

“(a) if there are both high voltage lines and a transformer owned by the electricity distributor on the property, the point of supply is the point at which electricity from the transformer enters exclusive fittings; or

“(b) if there are non-exclusive fittings on the property, the point of supply is the point at which those fittings become exclusive fittings; or

“(c) if the exclusive fittings on the property are owned by a consumer that is a tenant or licensee of the owner or occupier of the property, the point of supply is the point at which those exclusive fittings enter the area leased or licensed by the consumer; or

“(d) if there is specific agreement that any other point on the property is the point of supply, the point of supply is the agreed point;—

and, in this definition,—

“**exclusive fittings** means fittings used or intended to be used for the purpose of supplying electricity exclusively to that property

“**high voltage lines** means lines conveying electricity at a voltage of 1000 volts or more

- “**property**—
- “(a) means the land within the boundary where the electricity is consumed:
 - “(b) includes the whole of the property, if the property is occupied wholly or partially by tenants or licensees of the owner or occupier:
 - “(c) includes the whole of any property that has been subdivided under the Unit Titles Act 1972
- “**specific agreement** may be an agreement—
- “(a) entered into by—
 - “(i) the existing consumer; or
 - “(ii) any person with a greater interest in the property than the consumer (such as the consumer’s landlord); or
 - “(iii) any body corporate under the Unit Titles Act 1972 or the registered proprietor of the land to which the unit plan relates; and
 - “(b) entered into by the electricity distributor or the electricity retailer; and
 - “(c) entered into before or after the date on which this provision comes into force.
- “(4) The new definition of point of supply in subsection (3)—
- “(a) applies on and after the date on which the Electricity Amendment Act 2001 receives the Royal assent if—
 - “(i) an agreement exists between the electricity distributor and the consumer that the point of supply is already located at the point provided for in the new definition; and
 - “(ii) the consumer has not challenged the existence of that agreement before that date; and
 - “(b) is, in other cases, subject to the transitional provision in subsection (5).
- “(5) The new definition of point of supply in subsection (3) does not apply in any other particular case until the electricity distributor has—
- “(a) brought the fittings for which the consumer will become responsible as a result of the new definition to a reasonable standard of maintenance or repair, if those fittings

- are not at a reasonable standard at the time when this provision comes into force; and
- “(b) notified the consumer in writing—
- “(i) that the point of supply is as defined in accordance with the new definition; and
 - “(ii) the location of that point of supply; and
 - “(iii) the effect of the change to the point of supply; and
 - “(iv) that the point of supply may not take effect under this Act unless any fittings for which the consumer will become responsible have been brought to a reasonable standard of maintenance and repair; and
 - “(v) the date on which the point of supply will change (which must be no less than 20 working days after the date of the notification).”

8 New sections 4 and 4A substituted

The principal Act is amended by repealing sections 4 and 4A, and substituting the following sections:

“4 Declaration of electricity distributors as electricity operators

- “(1) The Minister may, by notice in the *Gazette*, declare a person to be an electricity operator for the purposes of this Act or any provision or provisions of this Act if the Minister is satisfied that a declaration is necessary to enable the person to commence or carry on a business as an electricity distributor.
- “(2) The Minister must, as soon as reasonably practicable, by notice in the *Gazette*, declare that a person ceases to be an electricity operator on a date stated in the notice if the Minister is satisfied that the person has ceased to carry on a business as an electricity distributor.

“4A Declaration of electricity supply businesses as electricity operators

- “(1) The Minister may, by notice in the *Gazette*, declare an electricity supply business to be an electricity operator for the purposes of this Act or any provision or provisions of this Act if the Minister is satisfied—

- “(a) that a declaration is necessary to enable the person to carry on all or any of the activities referred to in section 4(2) of the Electricity Industry Reform Act 1998; and
 - “(b) that the electricity distribution business interests of the electricity supply business in respect of which the declaration is made are confined to any or all of the activities set out in that subsection.
- “(2) The Minister must, as soon as reasonably practicable, by notice in the *Gazette*, declare that a person ceases to be an electricity operator on a date stated in the notice if the Minister is satisfied that the person is no longer carrying out any of the activities referred to in section 4(2) of the Electricity Industry Reform Act 1998.
- “(3) For the purposes of this section, **electricity supply business** has the meaning set out in section 5(1)(a)(iii) of the Electricity Industry Reform Act 1998.”

9 New section 22A inserted

The principal Act is amended by inserting, after section 22, the following section:

“22A Owners of land not responsible for maintenance

- “(1) An owner or occupier of land on which any existing works are situated is not required by this Act to maintain existing works, or to maintain tracks for the purpose of providing the owner of the works with access to the existing works.
- “(2) This section does not limit or override any new or existing legally binding agreement that provides for an owner or occupier of the land to be responsible for any maintenance.”

10 Rights of entry in respect of existing works

- (1) Section 23 of the principal Act is amended by adding the following subsection:
- “(3) In this section, **maintenance** includes—
 - “(a) any repairs and any other activities for the purpose of maintaining, or that have the effect of maintaining, existing works; and

- “(b) the carrying out of any replacement or upgrade of existing works as long as the land will not be injuriously affected as a result of the replacement or upgrade.”
- (2) The amendment made by subsection (1) does not have the effect of making an activity a permitted use under a district plan or regional plan under the Resource Management Act 1991 if it would not have been a permitted use if subsection (1) had not been enacted.

11 New sections 23A to 23E inserted

- (1) The principal Act is amended by inserting, after section 23, the following sections:

“23A Line owner must give written notice of intention to maintain or complete existing works

- “(1) An owner of existing works that intends to enter upon land for the purpose of maintaining or completing the works under section 23 must give reasonable notice (at least 10 working days before entry) of its intention to do so to the owner or occupier of the land.
- “(2) The notice must be in writing, and must specify—
- “(a) the location of the proposed entry and work; and
 - “(b) the reasons for the entry and work and the nature of the work to be undertaken; and
 - “(c) the date and time of entry; and
 - “(d) the length of time that the owner of the works expects to be on the land.

“23B Line owner must give notice of intention to inspect or operate existing works

- “(1) An owner of existing works that intends to enter upon land for the purpose of inspecting or operating the works under section 23 must give reasonable notice of its intention to do so to the owner or occupier of the land.
- “(2) The notice may be given by telephone or in any other manner that the owner of the works thinks appropriate.

“23C Notice in emergencies

- “(1) An owner of existing works is excused from giving notice as required by section 23A or section 23B if—
- “(a) entry upon the land is necessary in circumstances of probable danger to life or property; or
 - “(b) entry upon the land is immediately necessary to maintain the continuity or safety of the supply and distribution of electricity.
- “(2) However, in either case, the owner of the existing works must give notice to the owner or occupier of the land as soon as practicable and to the extent that the circumstances permit (and no later than 5 working days after entry).

“23D Land owner may set reasonable conditions on line owner’s entry

The owner or occupier of the land may set reasonable conditions relating to the timing of entry under section 23 and the access route, but those conditions may not—

- “(a) delay the entry by more than 15 working days; or
- “(b) require monetary or other consideration; or
- “(c) otherwise defeat the ability of the owner of the works to exercise effectively the powers in section 23.

“23E Agreements preserved

Sections 23A to 23D do not limit or override any new or existing agreement that is legally binding on the owner or occupier of the land and the owner of the works.”

- (2) Section 159(1) of the principal Act is consequentially amended by inserting, before the expression “31”, the words “23A to 23E,”.

12 New section 23F inserted

The principal Act is amended by inserting, before section 24, the following section:

“23F Disputes about land access

- “(1) The owner or occupier of land, or the owner of the works, may refer any dispute under sections 23 to 23E to the Environment Court.

- “(2) The objector must, as soon as practicable after making a written objection, serve a copy of the objection on the other party to the dispute.
- “(3) Within 1 month after receiving a copy of the objection or within any further period that the Environment Court allows, the other party to the dispute must send to the Environment Court and serve on the objector a reply to the objection containing matters that are appropriate having regard to the objection made and to any practice directions issued by the Environment Court.
- “(4) The Environment Court must inquire into the objection and, for that purpose, may conduct a hearing at any time and place it appoints.
- “(5) The Environment Court must give not less than 15 working days’ notice of any time and place so appointed to the objector and to the other party to the dispute.
- “(6) The Environment Court has power to make a declaration as if the proceeding had been brought under sections 310 to 313 of the Resource Management Act 1991.
- “(7) The findings of the Environment Court are binding on the objector and the other party to the dispute.
- “(8) The Environment Court may award those costs that it considers just either in favour of or against either party.
- “(9) Subject to sections 299 to 308 of the Resource Management Act 1991, no appeal lies from any declaration of the Environment Court under this section.
- “Compare: 1981 No 35 s 24”.

13 New headings and sections 158A to 158F inserted

- (1) The principal Act is amended by inserting, after the Part 14 heading, the following headings and sections:

“Subpart 1—General electricity matters

“*Financial statements of customer and
community trusts*

“**158A Community and customer trusts to prepare audited
financial statements**

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

- “(a) prepare financial statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993, applied as if trusts were reporting entities) with respect to the affairs of the trust for that financial year; and
- “(b) submit those financial statements to an auditor for audit; and
- “(c) make available to the public in accordance with section 158B those audited financial statements and the auditor’s report on those financial statements.

“**158B Publication of audited financial statements**

- “(1) The trustees of a community trust and the trustees of a customer trust must make the documents referred to in section 158A(c) available to the public by making copies of them available—
 - “(a) for inspection at every office of the trust or at any other place specified in the notification under subsection (2) (during ordinary office hours) free of charge; and
 - “(b) for purchase at a reasonable price.
- “(2) The trustees must also notify the fact that copies are so available (and where) by advertisement in the news section of 2 separate editions of each newspaper that is widely read by customers of the customer trust or by persons in the community of the community trust (as the case requires).

“**158C Auditor of trusts**

- “(1) The trustees of a community trust or a customer trust must, in each financial year, hold an annual meeting of beneficiaries at which the beneficiaries appoint an auditor to hold office from

the conclusion of that meeting until the conclusion of the next annual meeting of beneficiaries.

- “(2) The trustees of a community trust or a customer trust may fill any casual vacancy in the office of auditor by appointing an auditor to hold office until the conclusion of the next annual meeting of beneficiaries (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).
- “(3) The fees and expenses of the auditor must be fixed—
- “(a) at the annual meeting of beneficiaries or in the way the beneficiaries determine at the meeting, if appointed at the annual meeting;
 - “(b) by the trustees, if appointed by the trustees.
- “(4) An auditor of a community trust or customer trust—
- “(a) must be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the beneficiaries may seek the advice of the Auditor-General;
 - “(b) must not be a trustee, director, employee, or agent of the trust or of any electricity company owned by the trust or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.
- “(5) In addition, sections 198, 200, and 202 to 207 of the Companies Act 1993 apply in relation to the auditor.
- “(6) These sections of the Companies Act 1993 apply as if references to a company were to a trust, references to a director were to a trustee, references to a board were to the trustees, references to shareholders were to beneficiaries, references to a subsidiary were to an electricity company owned by the trust and that company’s subsidiaries, and all other necessary modifications were made.
- “(7) In this section, **electricity company** has the meaning set out in section 3(1) of the Electricity Industry Reform Act 1998.

“158D Procedures for annual meeting to appoint auditor

- “(1) The trustees must give no less than 14 days’ notice of the annual meeting of beneficiaries to appoint an auditor in the news section of 2 separate editions of each newspaper that is widely

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

- “(2) Every beneficiary has 1 vote.
- “(3) The quorum for the annual meeting is 20 beneficiaries.
- “(4) No business may be transacted at the annual meeting if a quorum is not present.
- “(5) The regulations under section 172C (if any) may govern proceedings at the annual meeting.

“158E Auditor-General to be auditor if no other auditor appointed

- “(1) If no auditor is appointed in accordance with section 158C(1) or a casual vacancy in the office of auditor is not filled within 1 month of the vacancy occurring in accordance with section 158C(2), the Auditor-General must be the auditor of a community trust or customer trust.
- “(2) The trustees of a community trust or customer trust must, within 5 working days of subsection (1) becoming applicable, give written notice to the Auditor-General of this fact.
- “(3) If this section applies, the sections and Parts of the Public Audit Act 2001 listed in section 19 of that Act apply to the trust, until an auditor is appointed at an annual meeting of beneficiaries, as if references in those sections to a public entity were references to the trust and with any other necessary modifications.

“158F Application of sections 158A to 158E

- “(1) The trustees of a community trust and the trustees of a customer trust must comply with sections 158A and 158B, rather than section 46A of the Energy Companies Act 1992.
- “(2) Except as provided in subsection (1), nothing in sections 158A to 158E limits any other enactment or rule of law concerning the maintenance and auditing of the financial statements of a person.”
- (2) Sections 158C to 158E (as inserted by subsection (1)) apply to a community trust or customer trust for a financial year that begins no sooner than 6 months after the commencement of this section, and for subsequent financial years.

14 Repeal and saving of information disclosure provisions

- (1) The principal Act is amended by repealing sections 170, 171, 171A, and 172 and the heading above section 170.
- (2) The Electricity (Information Disclosure) Regulations 1999 continue in force until they are revoked, despite the repeal of section 170.
- (3) Sections 171, 171A, and 172 continue in force for the purpose of the continuation of the Electricity (Information Disclosure) Regulations 1999 under subsection (2).

15 Repeal of section 170A

The principal Act is amended by repealing section 170A.

16 New subpart 2 and Part 15 inserted

The principal Act is amended by inserting, after section 172, the following subpart and Part:

“

“

“Subpart 2—Electricity industry
regulation-making powers

“172A Outline of subpart

- “(1) In this subpart, the principal regulation-making powers are as follows:
 - “(a) regulations may be made under section 172B on a low fixed charge tariff option or options for domestic consumers and under section 172C on a code on access for beneficiaries of customer and community trusts:
 - “(b) electricity governance regulations and rules may be made under sections 172D and 172H on the wholesale market and transmission of electricity:
 - “(c) under section 172E, these electricity governance regulations and rules on wholesale and transmission matters may be made only if EGB is established (and then either for transitional purposes or to implement the substantive effect of a recommendation by EGB) and in accordance with the process in that section:

- “(d) other electricity governance regulations and rules may be made under sections 172F and 172H:
 - “(e) under section 172H, these other electricity governance regulations and rules may be made whether or not EGB is established or has made a recommendation, but only in accordance with the process in that section.
- “(2) This section is intended only as a guide to the general scheme and effect of the principal regulation-making powers in this Part.

*“Regulations—Low fixed charge tariff option
for domestic consumers*

“172B Low fixed charge tariff option for domestic consumers

- “(1) The objective of this section is to enable the making of regulations to ensure that electricity providers offer a low fixed charge tariff option or options for delivered electricity to domestic consumers that will assist low-use consumers and encourage energy conservation.
- “(2) In this section,—
- “**delivered electricity** includes components like electricity supply, line function services, customer service, meter provision, and meter reading services
 - “**electricity provider** means an electricity retailer or other business that contracts with consumers to sell delivered electricity or a component of delivered electricity
 - “**fixed charge** means a charge levied for each customer connection in currency per time period (for example, cents per day).
- “(3) The Governor-General may, by Order in Council, make regulations—
- “(a) requiring electricity providers to make available to domestic consumers 1 or more tariff options that include a fixed charge for delivered electricity to domestic premises at not more than a specified amount or proportion calculated by reference to the total charge of the average or median domestic consumer:
 - “(b) regulating the variable (cents per kilowatt hour) charges in those required tariff options to ensure that average

- or median domestic consumers would pay no more on the required tariff option than on any alternative option available from that electricity provider:
- “(c) regulating other charges and other terms and conditions of the contracts to which the low fixed charge tariff options in paragraph (a) relate, to ensure that they are not, in the opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:
 - “(d) setting rules as to the offering, supply, advertisement, promotion, availability, and unbundling of regulated charging options:
 - “(e) specifying criteria for the Minister to exempt electricity providers, or electricity providers in relation to particular areas, from the application of the regulations if, in the opinion of the Minister, the electricity providers materially comply with the objective of this section.
- “(4) If the components that make up the delivered electricity are unbundled, regulations may be made under subsection (3) for each component, or group of components, of delivered electricity to ensure that the objective of this section is achieved for the aggregate of all the components.
- “(5) Subsection (4) applies regardless of whether different components of delivered electricity are supplied by the same electricity provider.
- “(6) Regulations made under subsection (3) may provide for the way in which the total charge of the average or median domestic consumer is to be assessed, which may be (without limitation) calculated with reference to national data or the data relating to any electricity retailer or electricity distributor.
- “(7) The Governor-General may, for the purpose of assisting retailers to deliver low fixed charge tariff options, by Order in Council, make regulations—
- “(a) regulating all or any charges charged by electricity distributors to ensure that they are not, in the opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:
 - “(b) regulating the terms and conditions under which electricity distributors supply their services in relation to domestic consumers to ensure that they are not, in the

opinion of the Minister, unreasonably detrimental to the interests of low-use consumers:

- “(c) setting rules as to the offering, availability, supply, and unbundling of electricity distributors’ services.
- “(8) The Governor-General may, by Order in Council, make regulations providing for the supply and collection of information from electricity providers and electricity distributors—
 - “(a) about contracts, offers, advertising, or promotion relating to the supply of delivered electricity, or components of delivered electricity, to domestic consumers; or
 - “(b) information that is necessary for the purposes of calculating the total charge for the average or median domestic consumer.
- “(9) Subsection (7) does not apply to Transpower.

“Regulations—Code on access for beneficiaries of community and customer trusts

“172C Regulations for code on access for beneficiaries of customer and community trusts

- “(1) The objective of this section is to enable the making of regulations to promote the accountability of community and customer trusts to their beneficiaries.
- “(2) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes in relation to community trusts and customer trusts:
 - “(a) providing for a code of practice for those trusts and their trustees that specifies—
 - “(i) requirements for trustees to disclose to beneficiaries information of the kind that they are required to disclose to beneficiaries under the Trustee Act 1956, the relevant trust deed, and any other rule of law:
 - “(ii) procedures and other matters concerning requests for information, decisions on those requests, and the form in which information must be provided:
 - “(iii) requirements for those trustees to hold at least 1 annual meeting that beneficiaries may attend and other matters concerning those meetings, includ-

ing notice requirements, the rights of beneficiaries to attend and to receive copies of minutes of or other material relating to those meetings, and a requirement for the chairperson of those meetings to allow a reasonable opportunity for beneficiaries at the meeting to question, discuss, or comment on the management of the trust:

- “(b) providing for rights of review of acts and decisions of trustees concerning matters governed by the code, the powers and procedures of the person or court undertaking that review, and consequential rights of appeal or review.
- “(3) Nothing in the code under subsection (2)(a) limits any rights to information under any other enactment or rule of law.

“Electricity governance regulations

“172D Electricity governance regulations for wholesale market and transmission of electricity

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with section 172E, make regulations for all or any of the purposes in subsection (2).

“(2) The purposes are—

“Wholesale electricity market

- “(a) providing for the establishment and operation of wholesale markets for electricity, including for pricing and determining quantities of electricity for market transactions; for clearing, settling, and reconciling market transactions; for scheduling and dispatching electricity; for disclosure of market information; for minimum prudential standards for market participation; and for minimum standards of market conduct:
- “(b) requiring participants in wholesale electricity markets or classes of participants to comply with the matters in paragraph (a):

“Transmission of electricity

- “(c) prescribing reasonable terms and conditions on which Transpower must enable distribution lines and gener-

- ators and users of electricity to be connected to the national grid, and that must be complied with in connecting to the national grid:
- “(d) regulating the way in which expansions, replacements, or upgrades of the national grid or parts of the national grid must be evaluated, carried out, and funded, including specifying—
 - “(i) the circumstances in which Transpower must generally carry out expansions, replacements, or upgrades:
 - “(ii) particular expansions, replacements, or upgrades that Transpower must carry out:
 - “(iii) the methodology on which costs for expansions, replacements, or upgrades must be allocated among industry participants, or the actual allocation of those costs, and providing for their payment by industry participants:
 - “(iv) obligations for Transpower to report annually in relation to forecasts of medium-term system adequacy to assist in identifying opportunities for the use of alternatives to expansions, replacements, or upgrades:
 - “(e) setting quality and security standards for the transmission system or parts of the transmission system, or for the use of that system or part, and requiring industry participants to comply with those standards:
 - “(f) requiring the use by Transpower of a specified methodology or component of a methodology for allocating Transpower’s revenue requirement to individual electricity generators, electricity retailers, electricity distributors, line owners, customers, or consumers, or classes of any of those persons, including—
 - “(i) defining the charges for any of those persons or classes of any of those persons:
 - “(ii) imposing quality standards generally or in respect of the supply of transmission services to any of those persons or classes of any of those persons:
 - “(iii) requiring a specified person or class of persons receiving (either directly or indirectly) goods or services from Transpower to pay a specified amount or proportion of

the total price, or the total price, for those goods or services:

- “(iv) authorising a way or ways in which Transpower may apply the methodology.

“172E Conditions and process for recommendations on electricity governance regulations for wholesale market and transmission of electricity

- “(1) The Minister may recommend electricity governance regulations under section 172D only if—
 - “(a) EGB is established; and
 - “(b) the recommendation—
 - “(i) is for transitional purposes if EGB is established but has not yet made a recommendation to the Minister on the matter; or
 - “(ii) implements the substantive effect of a recommendation by EGB to the Minister.
- “(2) The following process applies to recommendations by the Minister and EGB concerning those regulations:
 - “(a) sections 172W to 172Z apply in relation to EGB’s recommendation:
 - “(b) before making a recommendation, EGB or, if there is no EGB recommendation, the Minister must consult with persons that EGB or the Minister (as the case may be) thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations:
 - “(c) EGB and the Minister must each, before making a recommendation, have regard to the following objectives:
 - “(i) energy and other resources are used efficiently:
 - “(ii) risks relating to security of supply are properly and efficiently managed:
 - “(iii) the full costs of producing and transporting each additional unit of electricity are signalled:
 - “(iv) delivered electricity costs and prices are subject to downward pressure:
 - “(v) the quality of electricity services as far as possible reflects customers’ preferences:
 - “(vi) transmission losses and constraints are signalled:

- “(vii) consistency with the Government’s climate change policies and objectives is achieved.
- “(3) Subsection (2)(b) does not apply if EGB or the Minister (as the case may be) considers that it is necessary or desirable in the public interest that the proposed regulations be made urgently and, in this case, the recommendation must state that it is made in reliance on this subsection and then, within 6 months of those regulations being made,—
- “(a) EGB or the Minister must consult on the regulations in accordance with subsection (2)(b); and
- “(b) after that consultation, the Minister must publish a notice in the *Gazette* stating whether or not he or she decides to revoke, replace, or amend the regulations and explaining the reasons for that decision, or stating where copies of that explanation may be obtained,—
- and then within a further 6 months, the Minister must implement that decision.
- “(4) A failure to comply with subsection (2)(b) does not affect the validity of the recommendation or regulations.

“172F Other electricity governance regulations

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with section 172G, make regulations for all or any of the purposes in subsection (2).
- “(2) The purposes (and the relevant objectives applying for the purpose of section 172G) are—
- “*Complaints resolution system*
- “(a) with the objective of promoting best industry practice and enhancing access to redress for complaints, establishing a complaints resolution system for complaints from any person (including, without limitation, potential consumers and landowners) about electricity distributors and electricity retailers, to be administered independently of those electricity distributors and electricity retailers, containing—
- “(i) a code of practice setting minimum standards of conduct, and containing benchmarks for best

practice, for electricity distributors and electricity retailers:

- “(ii) requirements for electricity distributors and electricity retailers to establish and maintain procedures for handling complaints (including referring complaints to EGB, each other, or other agencies for their consideration):
- “(iii) procedures for complaints to be made to a complaints resolution agency, and providing for the powers and procedures of that agency in relation to the handling of, investigation of, reporting on, and the making of recommendations or decisions on those complaints (including referring complaints to EGB or other agencies for their consideration):
- “(iv) provision for compensation up to a maximum of \$20,000 to be awarded and other actions to be taken by the complaints resolution agency referred to in subparagraph (iii) in relation to those complaints:
- “(v) provision for rights of appeal or review in relation to decisions relating to those complaints:
- “(vi) requirements for the complaints resolution agency to collect and publish aggregated statistical information on the use of prepayment meters and on disconnections:

“Prepayment meters

- “(b) requiring electricity retailers to offer prepayment meters to domestic consumers at a reasonable cost, and prescribing conditions on which those meters must be supplied, with the objective of ensuring that all domestic consumers who wish to pay for electricity in advance have the option to do so at reasonable cost:

“Ability of consumers to choose preferred electricity retailer

- “(c) providing a system or set of rules that will enable any consumer or class of consumer to choose, and alternate, between competing electricity retailers, with the object-

ive of promoting competition in electricity retail markets:

- “(d) requiring all users of the national grid or distribution lines to comply with, and give effect to, a system or set of rules that will enable any consumer or class of consumer to choose, and alternate, between competing electricity retailers, with the objective of promoting competition in electricity retail markets:

“Transition arrangements for insolvent electricity retailers

- “(e) providing a system of transition arrangements for consumers in the event of an electricity retailer becoming insolvent, and requiring industry participants to comply with that system, with the objective of protecting consumers or managing the liabilities of other electricity retailers:

“Connection of generation to distribution lines

- “(f) prescribing reasonable terms and conditions on which line owners and electricity distributors must enable generators to be connected to distribution lines other than the national grid, and that must be complied with in connecting to those distribution lines, with the objective of facilitating the use of distributed generation and ensuring that generators using distributed generation do not face barriers in connecting to those lines:

“Hydro spill

- “(g) with the objective of providing transparency on hydro spill and so minimising hydro spill and promoting the efficient use of energy and other resources,—

“(i) requiring hydro-generators to disclose information in relation to the amount, location, timing of, and reasons for, any hydro spill from works owned by that hydro-generator:

“(ii) requiring hydro-generators to use a prescribed methodology or model in calculating hydro spill:

“(iii) requiring hydro-generators to obtain an annual audit of the disclosure in subparagraph (i) from an organisation nominated by the Minister (af-

ter consultation with the Minister for the Environment), and specifying requirements relating to that audit:

“Hedge prices

- “(h) requiring electricity retailers and electricity generators to supply information relevant to hedge prices to a central collection agency that is involved in the governance or administration of the electricity industry, and requiring that agency to collate and disclose aggregated information on hedge prices, with the objective of providing information on the expected balance between electricity supply and demand to help investors and consumers make decisions on providing for security of electricity supply:

“Dispute resolution procedure

- “(i) providing procedures for resolving disputes between industry participants:
- “(j) providing for the operation and facilitation of those dispute resolution procedures by a person, and the powers and procedures of that person:

“Enforcement of electricity governance regulations

- “(k) providing for compliance with electricity governance regulations and rules to be monitored and enforced by EGB or any other person or court, and the powers and procedure of that person or court.

- “(3) In subsection (2)(h), **electricity generator** means a person who owns or operates assets that, whether taken individually or as a whole, have a rated electricity generating capacity equal to or greater than 10 megawatts.

“172G Process for recommendations on other electricity governance regulations

- “(1) The Minister may recommend electricity governance regulations under section 172F whether or not EGB is established and whether or not EGB has made a recommendation on the matter to the Minister.
- “(2) The following process applies to recommendations by the Minister and EGB concerning those regulations:

- “(a) sections 172W to 172Z apply in relation to EGB’s recommendation:
 - “(b) before making a recommendation, EGB must consult with persons that EGB thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations:
 - “(c) if there is no EGB recommendation or the Minister thinks that his or her proposed recommendation substantially departs from EGB’s recommendation, the Minister must, before making a recommendation, consult with persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations:
 - “(d) before making a recommendation concerning regulations under section 172F(2)(a), the Minister must consult with the Minister of Consumer Affairs:
 - “(e) EGB and the Minister must each, before making a recommendation, have regard to the relevant objective contained in section 172F(2):
 - “(f) if EGB has made a recommendation to the Minister on the matter, the Minister must have regard to EGB’s recommendation before making his or her own recommendation.
- “(3) Subsection (2)(b), (c), and (d) does not apply if EGB or the Minister (as the case may be) considers that it is necessary or desirable in the public interest that the proposed regulations be made urgently and, in this case, the recommendation must state that it is made in reliance on this subsection and then, within 6 months of those regulations being made,—
- “(a) the Minister must consult on the regulations in accordance with subsection (2)(c); and
 - “(b) after that consultation, the Minister must publish a notice in the *Gazette* stating whether or not he or she decides to revoke, replace, or amend the regulations and explaining the reasons for that decision, or stating where copies of that explanation may be obtained,—
and then within a further 6 months, the Minister must implement that decision.

“(4) A failure to comply with subsection (2)(b), (c), or (d) does not affect the validity of the recommendation or regulations.

“172H Electricity governance rules

“(1) The Minister may make a rule for all or any of the purposes for which an electricity governance regulation may be made.

“(2) In deciding whether to make a rule rather than recommend the making of an electricity governance regulation, the Minister must have regard to only—

“(a) the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals:

“(b) the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle:

“(c) the application of the rule, including—

“(i) whether the rule applies principally to a particular group (eg, industry participants) rather than the general public:

“(ii) whether the benefits of publication in accordance with section 172I rather than the Acts and Regulations Publication Act 1989 outweigh the costs of publication by that method:

“(d) the expertise and rule-making procedures of the agency that has recommended the rule (eg, the expertise of EGB).

“(3) If the Minister makes, or EGB recommends, a rule for a purpose for which an electricity governance regulation may be made, the Minister and EGB must comply with the same conditions and process that would apply under section 172E or section 172G if they were making recommendations on that electricity governance regulation, and those sections apply (with all necessary modifications) accordingly.

“(4) Section 172I applies to the method of making the rule.

“(5) A rule is a regulation for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989).

- “(6) To the extent that a rule is inconsistent with an electricity governance regulation, the rule is subject to the electricity governance regulation.
- “(7) If a court holds that a rule has been made in contravention of subsection (2), it may declare the rule invalid with effect from a date specified by the court (but that date must be at least 6 months after the date on which the declaration was made).

“172I Method of making electricity governance rules

- “(1) A rule may be made under section 172H by the Minister publishing a notice in the *Gazette* that states—
- “(a) the empowering provision for the electricity governance regulation in relation to which the rule is made and a brief description of the nature of the rule; and
 - “(b) where copies of the rule are available for inspection and purchase.
- “(2) The notice in the *Gazette* need not contain the rule.
- “(3) A rule comes into force 28 days after the date on which it is notified in the *Gazette* or on any later date stated in the notice.
- “(4) The Minister or, if it is established, EGB must make all of the rules made under section 172H available to the public by making copies of them available—
- “(a) for inspection, free of charge,—
 - “(i) at the Ministry or the principal office of the EGB (during ordinary office hours), as the case requires; and
 - “(ii) on the Internet in an electronic form that is publicly accessible (at all reasonable times); and
 - “(b) for purchase at a reasonable price.

“Supplementary provisions

“172J Supplementary empowering provision for regulations and rules

- “(1) Any regulations made under sections 172B to 172F and any rules made under section 172H may—
- “(a) provide for the establishment of 1 or more persons or bodies or groups of persons to carry out functions in relation to those regulations or rules, and for matters con-

cerning their constitution, functions, members (including their appointment, removal, duties, and protection from liability), procedures, employees, administration and operation, funding by industry participants, and reporting requirements:

- “(b) prescribe the form and manner in which information is to be disclosed:
 - “(c) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner, by persons belonging to any specified class of persons:
 - “(d) prescribe when and for how long information must be disclosed:
 - “(e) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements in regulations made under sections 172B to 172F and rules made under section 172H:
 - “(f) provide for the supply of information for the purpose of administration and enforcement of this Act, and regulations and rules made under this Act:
 - “(g) provide for transitional provisions:
 - “(h) provide for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.
- “(2) Regulations or rules that may be made in respect of all industry participants or classes of industry participants may be made in respect of all or any of the persons in that class and in respect of all or part of their business.

“172K Supplementary empowering provision for regulations

Any regulations made under sections 172B to 172F may—

- “(a) provide for offences that are punishable by summary conviction for a contravention of those regulations, or of rules made under section 172H, and provide for penalties not exceeding \$20,000 for those offences:

- “(b) provide for compensation, civil penalties, and other actions that may be taken in respect of contraventions of those regulations or of rules made under section 172H:
- “(c) confer and provide for rights of appeal and review in relation to decisions relating to contraventions of the regulations or of rules made under section 172H.

“Part 15

“Governance of electricity industry

“Preliminary provisions

“172L Purpose

The purpose of this Part is to—

- “(a) enable the establishment of the Electricity Governance Board to be responsible for—
 - “(i) developing recommendations on electricity governance regulations or rules that promote its principal objective in accordance with subpart 1:
 - “(ii) other matters relating to the governance of the electricity industry in accordance with section 172O:
- “(b) ensure the accountability of electricity governance organisations in accordance with subpart 2.

“Subpart 1—Electricity Governance Board

“172M Establishment of Electricity Governance Board

- “(1) This section establishes an organisation called the Electricity Governance Board (**EGB**).
- “(2) EGB is a Crown entity for the purposes of the Public Finance Act 1989.

“172N Principal objective of EGB

The principal objective of EGB is to ensure that electricity is generated, conveyed, and supplied to all classes of consumers in an efficient, fair, reliable, and environmentally sustainable manner.

“172O Functions of EGB

- “(1) The functions of EGB are to—
- “(a) formulate and make recommendations concerning electricity governance regulations and rules in accordance with this subpart:
 - “(b) administer, monitor compliance with, enforce, and apply penalties or other remedies for contraventions of electricity governance regulations and rules:
 - “(c) establish, operate, and facilitate the operation of (by contracting with other parties, entering into a joint venture company or contractual arrangement, or other means) markets for industry participants:
 - “(d) develop best practice distribution pricing methodologies and other standards and model agreements for use by industry participants:
 - “(e) provide advice to the Minister on matters concerning the electricity industry:
 - “(f) carry out any other functions the Minister may direct under section 172ZA.
- “(2) In performing its functions, EGB must promote its principal objective.

“172P Body corporate status and powers

- “(1) EGB is a body corporate with perpetual succession.
- “(2) Subject to this Act, EGB has—
- “(a) full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction; and
 - “(b) for the purposes of paragraph (a), full rights, powers, and privileges.
- “(3) EGB may exercise its powers only for the purpose of carrying out its functions.

“172Q Role of board of EGB

- “(1) All decisions relating to the operation of EGB must be made by or under the authority of the members of EGB who number not less than the required quorum acting together as a board (**EGB’s board** or **board**) in accordance with this Act.

- “(2) EGB’s board has all the powers necessary for carrying out its role in subsection (1).

“172R Membership of EGB’s board

EGB’s board must consist of members numbering no less than 5 and no more than 9.

“Duties of members

“172S Duties of members

- “(1) A member, when acting as a member, must act—
- “(a) in good faith; and
 - “(b) with reasonable care, diligence, and skill; and
 - “(c) with honesty and integrity; and
 - “(d) in accordance with clauses 9 to 12 of Schedule 2A, which govern interests of members.
- “(2) A member, when acting as a member, must not act as a representative of, or promote the interests or views of, any organisation to which the member belongs, a particular industry participant, or a particular group of industry participants.

“172T Collective duties of EGB’s board

EGB’s board must—

- “(a) not contravene, or cause EGB or any subsidiary of EGB to contravene, this Act; and
- “(b) ensure that EGB, and endeavour to ensure that any subsidiary of EGB, acts in a manner consistent with the objectives and functions of EGB and with EGB’s current statement of intent and purchase agreement; and
- “(c) ensure that EGB, and endeavour to ensure that any subsidiary of EGB, performs its functions efficiently and effectively and in a manner consistent with the spirit of service to the public; and
- “(d) ensure that EGB, and endeavour to ensure that any subsidiary of EGB, operates in a financially responsible manner and, for this purpose, that it—
 - “(i) endeavours to maintain its long-term financial viability; and

- “(ii) endeavours to ensure that its total operating expenses do not exceed its total operating revenues; and
- “(iii) endeavours to act as a successful going concern; and
- “(iv) prudently manages its assets and liabilities.

“172U Members accountable to Minister

- “(1) A member is accountable to the Minister for performing his or her duties and responsibilities as a member.
- “(2) If EGB’s board breaches any of its duties under section 172T,—
 - “(a) each member of that board is accountable to the Minister for the breach; and
 - “(b) that breach justifies all or any of the members being removed from office.
- “(3) Subsection (2) does not apply to a member if—
 - “(a) he or she did not know and could not reasonably be expected to know that the duty was to be or was being breached; or
 - “(b) he or she took all reasonable steps to prevent the duty being breached.
- “(4) The duties of members and the board under section 172S are duties owed only to the Minister and EGB and the duties of members and the board under section 172T are owed only to the Minister, and they do not provide any ground of action for any other person.

“172V Further provisions as to EGB and EGB’s board in Schedule 2A

Schedule 2A applies to EGB and EGB’s board.

*“Role of EGB in relation to electricity
governance regulations and rules*

**“172W EGB to make recommendations concerning electricity
governance regulations and rules**

- “(1) EGB must, in accordance with this subpart, formulate and make recommendations concerning regulations or rules under the following sections:
- “(a) section 172D, which relates to regulations for the wholesale market and transmission of electricity;
 - “(b) section 172F, which relates to other electricity governance regulations;
 - “(c) section 172H, which relates to electricity governance rules.
- “(2) EGB’s recommendations under subsection (1) may extend to the supplementary matters stated in sections 172J and 172K in relation to those regulations and rules.

“172X Objectives of recommendations

In formulating recommendations under section 172W, EGB must—

- “(a) have regard to its principal objective; and
- “(b) ensure the recommendations are consistent with any direction under section 172ZA; and
- “(c) have regard to objectives in accordance with sections 172E(2)(c) and 172G(2)(e).

“172Y Obligation to consult

EGB must, in formulating recommendations, consult with persons in accordance with sections 172E(2)(b) and 172G(2)(b) (except if the consultation requirement does not apply under those sections) and consult with the Minister.

“172Z Minister must have regard to recommendations

- “(1) The Minister must have regard to a recommendation by EGB in exercising any of his or her powers or functions in relation to electricity governance regulations or rules, but may, in his or her absolute discretion,—

- “(a) decide not to act on that recommendation or, for regulations or rules for a purpose contained in section 172F, to depart from it:
 - “(b) defer, for any period and reasons the Minister thinks fit, making a decision on the recommendation:
 - “(c) refer back to EGB its recommendation for further consideration by EGB.
- “(2) If the Minister decides not to act on an EGB recommendation, to substantially depart from an EGB recommendation, or to defer making a decision on an EGB recommendation, the Minister must publish a notice in the *Gazette* stating his or her decision and explaining the reasons for it or where copies of that explanation may be obtained.

“Power to direct EGB

“172ZA Power to direct EGB

- “(1) The Minister may direct EGB—
- “(a) to carry out any other functions:
 - “(b) to give effect to a government policy set out in the direction:
 - “(c) on outcomes to be achieved by EGB or objectives for EGB that are contained in, or are related to outcomes or objectives that are contained in, the statement of government policy under section 172ZK:
 - “(d) on the following matters:
 - “(i) which matters EGB must formulate and make recommendations on under section 172W:
 - “(ii) principles or objectives for those recommendations.
- “(2) A direction—
- “(a) under subsection (1)(a) must be consistent with the purpose of this Part and the principal objective of EGB:
 - “(b) under subsection (1)(b) to (d) must be consistent with the functions and principal objective of EGB.
- “(3) EGB must, in performing its functions, comply with a direction given under subsection (1) that is in writing and signed by the Minister and complies with subsection (4).

- “(4) A direction to EGB must not require EGB, in respect of a particular person, to make a particular decision, or to do or refrain from doing a particular act, or to bring about a particular result (other than in relation to Transpower).

“172ZB Procedure for giving direction

- “(1) The Minister must consult with EGB before giving a direction to EGB.
- “(2) The direction must be given in writing, be dated, and be signed by the Minister.
- “(3) As soon as practicable after giving the direction, the Minister must—
- “(a) publish a copy of it in the *Gazette*; and
 - “(b) present a copy of it to the House of Representatives.
- “(4) The direction may be amended, revoked, or replaced in the same way as it may be given.

“Levy of industry participants

“172ZC Levy of industry participants

- “(1) Every industry participant (or prescribed class of industry participants) must pay to the Minister a levy prescribed by regulations under section 172ZE.
- “(2) The regulations under that section may—
- “(a) specify the amount of levies or method of calculating or ascertaining the amount of levies, on the basis that the estimated costs of performing EGB’s functions, powers, and duties under this Act, and of collecting the levy money, should be met fully out of levies:
 - “(b) include or provide for including in levies any shortfall in recovering those actual costs:
 - “(c) refund or provide for refunds of any over-recovery of those actual costs:
 - “(d) provide different levies for different classes of industry participants:
 - “(e) specify the financial year or part financial year to which those levies apply, and apply to that financial year or part and each subsequent financial year until revoked or replaced:

- “(f) provide for the payment and collection of those levies:
 - “(g) for the first financial year to which the levy applies, include in the levy amount or method the costs of performing EGB’s functions, duties, and powers under this Act from the date on which this subpart comes into force, irrespective of the fact that the regulations may be made and come into effect after that date:
 - “(h) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:
 - “(i) exempt or provide for exemptions from, or provide for waivers of, the whole or any part of the levy for any case or class of cases.
- “(3) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Crown.
- “(4) In this section, **industry participant** does not include a person who is only an industry participant by reason of being involved in the governance or administration of the electricity industry.

“Miscellaneous

“**172ZD Accountability of EGB**

EGB is accountable to the Minister in accordance with Part V of the Public Finance Act 1989 and subpart 2.

“**172ZE Regulations**

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

- “(b) providing for the levies under section 172ZC:
- “(c) providing for any other matters contemplated by this subpart or necessary for its administration or necessary for giving it full effect.

“**172ZF EGB is public authority**

- “(1) EGB is a public authority for the purposes of the Inland Revenue Acts.
- “(2) In this section, **Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994.

“172ZG Amendment to Ombudsmen Act 1975

“ The Ombudsmen Act 1975 is amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

“ ‘Electricity Governance Board and every subsidiary of the Electricity Governance Board.’

“172ZH Amendment to Public Finance Act 1989

“ The Public Finance Act 1989 is amended by inserting in the Fourth, Fifth, and Sixth Schedules, in its appropriate alphabetical order, the following item:

“ ‘Electricity Governance Board.’

**“Subpart 2—Accountability of electricity
governance organisations**

“172ZI Application of subpart

“(1) This subpart applies to—

“(a) EGB, if it is established; and

“(b) any person to whom it applies under subsection (2),—
and each is called an **electricity governance organisation** in this subpart.

“(2) The Minister may, by notice in the *Gazette*,—

“(a) apply this subpart to any person or group of persons involved in developing rules or standards applying to any industry participants under a contract, arrangement, or understanding between those participants, or in monitoring or enforcing the contract, arrangement, or understanding, or otherwise involved in the governance of the electricity industry; and

“(b) cease to apply this subpart to that person or group.

“(3) The Minister may nominate a report date for that person or group in the notice under subsection (2).

“172ZJ Interpretation

In this subpart, unless the context otherwise requires,—

“**GPS objectives and outcomes** means the objectives and outcomes that apply to an electricity governance organisation under section 172ZK

“**performance standards** means the performance targets, measures, and satisfactory performance standard agreed for an electricity governance organisation under section 172ZL

“**report date** means,—

“(a) for EGB, the close of 30 June in each calendar year:

“(b) for other electricity governance organisations, the close of 30 June in each calendar year or any other date in each calendar year that the Minister nominates as the organisation’s report date in the notice under section 172ZI

“**reporting period** means, for an electricity governance organisation,—

“(a) the period from the date on which this subpart applies to the organisation under section 172ZI and ending on the organisation’s report date; and

“(b) each subsequent 12-month period ending on the organisation’s report date.

“**172ZK Setting of GPS objectives and outcomes**

“(1) The Minister must set objectives and outcomes that the Government wants an electricity governance organisation to pursue in relation to the governance of the electricity industry, and against which an electricity governance organisation must report and be examined in accordance with this subpart.

“(2) The Minister must set those objectives and outcomes by—

“(a) giving the electricity governance organisation a statement of government policy containing those objectives and outcomes (**GPS objectives and outcomes**); or

“(b) giving the electricity governance organisation an amendment to, or replacement of, that statement.

“(3) Each statement (or amendment to, or replacement of, a statement) under subsection (2) must be published in the *Gazette* and presented to the House of Representatives as soon as practicable after it is given to the electricity governance organisation.

“172ZL Agreement of annual performance standards

- “(1) An electricity governance organisation (other than EGB) must, within 3 months after the commencement of each reporting period, agree performance standards with the Minister for that reporting period.
- “(2) The performance standards—
- “(a) must include the performance targets and other measures by which the performance of the organisation may be judged; and
 - “(b) must state the overall standard of performance by the organisation that will be considered satisfactory at the end of the reporting period (**satisfactory performance standard**); and
 - “(c) must be matters against which the organisation’s actual performance may be reported and audited; and
 - “(d) must relate to all of the GPS objectives and outcomes that are affected, or could be affected, by a wholesale market or a transmission matter contained in section 172D; and
 - “(e) may relate to any other GPS objectives and outcomes, but to no other matter.
- “(3) Before agreeing the performance standards, the Minister must consult with the Auditor-General on whether the proposed performance standards meet the requirements in subsection (2)(c), (d), and (e).

“172ZM Annual performance report to Minister

- “(1) An electricity governance organisation must, within 3 months after the organisation’s report date, deliver to the Minister a report on its operations during the last reporting period, and submit that annual report to the Auditor-General for an assurance audit under section 172ZO.
- “(2) The annual report—
- “(a) must contain the information that is necessary to enable an informed assessment to be made of the performance of the organisation against the GPS objectives and outcomes and (for organisations other than EGB) against the performance standards; but

- “(b) need not contain information on the organisation’s financial performance.

“172ZN Minister must present annual performance report to House of Representatives

The Minister must present copies of every annual report provided to him or her under section 172ZM to the House of Representatives as soon as practicable after receiving that report.

“172ZO Assurance audit by Auditor-General

“(1) The Auditor-General—

“(a) must examine the annual report provided to the Auditor-General under section 172ZM and report to the Minister and the House of Representatives as soon as practicable after receiving the annual report:

“(b) may, at any time, examine the information to be contained in the annual report and the systems of an electricity governance organisation, and report on that examination to the Minister and the House of Representatives.

“(2) The Auditor-General’s report under subsection (1) must—

“(a) provide assurance on—

“(i) the appropriateness, adequacy, and accuracy of the information contained, or to be contained, in the annual report; and

“(ii) whether the annual report enables, or is likely to enable, an informed assessment to be made of the matters stated in section 172ZM(2)(a); and

“(b) (for organisations other than EGB) state whether or not the organisation has met the satisfactory performance standard or that the organisation’s annual report does not enable an informed assessment of whether or not it has done so.

“(3) A report under subsection (1)(a) that states that an electricity governance organisation has not met the satisfactory performance standard or that its annual report does not enable an informed assessment of whether or not it has done so is a **negative annual audit report** for the purpose of section 5 of the Electricity Amendment Act 2001.

“172ZP Report by Parliamentary Commissioner for Environment

- “(1) The Parliamentary Commissioner for the Environment must examine, in accordance with subsection (2), the extent to which an electricity governance organisation is meeting the GPS objectives and outcomes concerning the environment.
- “(2) The Parliamentary Commissioner for the Environment—
- “(a) must, as soon as practicable after each report date of an electricity governance organisation, carry out the examination in subsection (1) in respect of the last reporting period and report to the House of Representatives on the results of the examination:
- “(b) in addition, may carry out the examination in subsection (1) and report to the House of Representatives on the results of the examination at any other time.
- “(3) A report under subsection (2)(a) that states that an electricity governance organisation has failed significantly and overall to meet the GPS objectives and outcomes concerning the environment that are affected, or could be affected, by a wholesale market or a transmission matter contained in section 172D is a **negative annual audit report** for the purpose of section 5 of the Electricity Amendment Act 2001.

“172ZQ Functions under this subpart

- “(1) The Parliamentary Commissioner for the Environment may exercise all of the Commissioner’s powers under the Environment Act 1986 in relation to the functions in this subpart, and that Act applies to those functions as if they were functions conferred under that Act.
- “(2) The Public Audit Act 2001 applies with respect to the assurance audit of an electricity governance organisation, as if it were a public entity as defined in section 4 of that Act.
- “(3) The functions conferred on the Auditor-General and the Parliamentary Commissioner for the Environment by this subpart are additional to, and do not limit, the Auditor-General’s or the Commissioner’s functions, duties, and powers under the Public Audit Act 2001 or the Environment Act 1986 (as the case may be).

“172ZR Offences

- “(1) Every person commits an offence who,—
- “(a) when required to do so by or under this subpart, knowingly fails to produce any information that is in that person’s possession or under that person’s control in relation to the management, performance, or activities of an electricity governance organisation:
 - “(b) intentionally obstructs, hinders, or resists any person in the exercise of the person’s powers under any enactment in relation to the person’s functions under this subpart:
 - “(c) makes a statement or gives information when required to do so by or under this subpart, knowing that the statement or information is false or misleading.
- “(2) A person who commits an offence under subsection (1) is liable on summary conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$2,000:
 - “(b) in the case of a person or organisation other than an individual, to a fine not exceeding \$5,000.”

17 New Part 16 heading inserted

The principal Act is amended by inserting, before the heading “*Repeals, revocations, amendments, and savings*”, the following heading:

“Part16**“Repeals, etc, and transitional provisions”****18 New Schedule 2A inserted**

The principal Act is amended by inserting, after Schedule 2, Schedule 2A as set out in the Schedule of this Act.

19 Transitional provision for Transpower’s pricing methodology on and after 26 July 2001

- (1) Any person who has assets that are directly connected to the national grid must pay for grid connection services provided on and after 26 July 2001 the amount that is charged by Transpower in accordance with the transitional pricing methodology.

- (2) The **transitional pricing methodology** is the pricing methodology contained in Pricing for Grid Connection Services from 1 April 2001, as published by Transpower in December 2000, without being affected by any year-specific data that is, or may later be, appended to that methodology.
- (3) The amount payable under subsection (1)—
 - (a) is recoverable in any court of competent jurisdiction as a debt due to Transpower; and
 - (b) may be challenged in any proceedings to recover the debt on the ground that Transpower has incorrectly applied the methodology in a manner that is adverse to the payer, but the methodology itself may not be challenged.
- (4) This section applies—
 - (a) except to the extent that it would limit or override any new or existing agreement that is binding on Transpower and the other person; and
 - (b) until the end of the transitional period.
- (5) The **transitional period** ends on the close of 6 April 2004.
- (6)

Subsection (5) was substituted, as from 26 January 2004, by section 30 Electricity Amendment Act 2004 (2004 No 80).

Subsection (6) was repealed, as from 26 January 2004, by section 30 Electricity Amendment Act 2004 (2004 No 80).

20 Savings provision for Transpower's pricing methodology before 26 July 2001

- (1) No person who owns assets that are directly connected to the national grid may, on or after 26 July 2001,—
 - (a) recover in court any amount paid for grid connection services provided by Transpower before 26 July 2001; or
 - (b) make any set-off, counterclaim, or deduction in respect of all or any part of such an amount, against or from any amount that is owing to Transpower under section 19 or otherwise.
- (2) Transpower may not, on or after 26 July 2001, recover in court any amount—

- (a) that has been charged in respect of grid connection services provided by Transpower before 26 July 2001; and
 - (b) that is the subject of a genuine dispute relating to the transitional pricing methodology (or a previous pricing methodology relating to grid connection services), which dispute has been notified in writing to Transpower before 26 July 2001.
- (3) Subsection (1) applies despite the fact that a person may have paid the amount to Transpower on a without prejudice basis.

21 Validations of actions by persons without electricity operator status

- (1) Actions taken by persons in the following circumstances are as lawful as if the persons who carried out the actions were electricity operators under section 4 of the principal Act at the time when the actions were carried out:
- (a) actions carried out, at any time during the period commencing on 1 April 1993 and ending with the date of commencement of the Electricity Operators Order 1995, by persons named in that order; and
 - (b) actions carried out, at any time during the period commencing on 23 June 1998 and ending with 28 December 2000, by the companies currently known as United Networks Limited, VECTOR Limited, Orion New Zealand Limited, and Eastland Network Limited.
- (2) Subsection (1) applies only to the extent that the actions were carried out in a way that is consistent with being an electricity operator.

22 Amendment to Public Audit Act 2001

- (1) Schedule 1 of the Public Audit Act 2001 is amended by omitting the item “Electricity trusts that are customer trusts or community trusts, or both (as those terms are defined in sections 3 and 38 of the Electricity Industry Reform Act 1998)”.
- (2) Schedule 2 of the Public Audit Act 2001 is amended by—
- (a) omitting the item “Electricity Ashburton Limited”; and
 - (b) omitting the item “Otago Power Limited”.

Schedule 1

s 18

New Schedule 2A inserted**Schedule 2A**

s 172V

**Further provisions for EGB and EGB's
board****Appointment, term, resignation, and removal of members****1 Appointment of members**

- (1) The Minister may appoint a member by sending written notice to the member (with a copy to EGB).
- (2) In making appointments, the Minister may only appoint a person who, in the Minister's opinion, has appropriate skills and experience to assist EGB to perform its functions.
- (3) The notice of appointment must—
 - (a) state the date on which the appointment takes effect; and
 - (b) be given only after the person to be appointed has consented in writing to being a member, certified in writing that he or she is not disqualified from being a member under clause 2, and disclosed to the Minister all interests that the person would, if he or she were a member, have to disclose at that time under clauses 9 to 12.

2 Restrictions on persons who may be members

The following persons are disqualified from being a member:

- (a) a person who is an undischarged bankrupt;
- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993;
- (c) a person who is subject to a property order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act;
- (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or

Schedule 2A—*continued*

served the sentence or otherwise suffered the penalty imposed on the person:

- (e) a person who has failed to disclose all interests under clause 1:
- (f) a person who is not a natural person.

3 Term of appointment

- (1) A member—
 - (a) holds office for 3 years or any shorter period stated in the notice of appointment; and
 - (b) may be reappointed; and
 - (c) continues in office despite the expiry of his or her term of office until—
 - (i) the member is reappointed; or
 - (ii) the member's successor is appointed; or
 - (iii) the Minister informs the member by written notice (with a copy to EGB) that the member is not to be reappointed and no successor is to be appointed.
- (2) This clause is subject to clause 7.

4 Validity of acts

The acts of a person as a member are valid even if—

- (a) the person's appointment was defective; or
- (b) the person is not qualified for appointment.

5 Resignation

- (1) A member may resign from office by written notice to the Minister (with a copy to EGB) signed by the member.
- (2) The resignation is effective on receipt by the Minister of the notice, or at any later time specified in the notice.

6 Removal from office

- (1) The Minister may, at any time and entirely at his or her discretion, remove a member from office by written notice to the member (with a copy to EGB).

Schedule 2A—*continued*

- (2) A member is not entitled to any compensation or other payment or benefit relating to his or her removal from office.

7 Members ceasing to hold office

A member ceases to hold office if he or she—

- (a) resigns in accordance with clause 5; or
- (b) is removed from office in accordance with clause 6 or any other enactment; or
- (c) becomes disqualified from being a member under clause 2; or
- (d) otherwise ceases to hold office in accordance with any enactment.

Reliance on information and advice**8 When members may rely on certain information and advice**

- (1) A member, when acting as a member, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
- (a) an employee of EGB whom the member believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert in relation to matters that the member believes on reasonable grounds to be within the person's professional or expert competence;
 - (c) any other member or a committee of the board on which the member did not serve in relation to matters within the member's or committee's designated authority.
- (2) A member, when acting as a member, may rely on reports, statements, financial data, and other information supplied by the Minister.
- (3) Subclauses (1) and (2) apply to a member only if the member—
- (a) acts in good faith; and

Schedule 2A—*continued*

- (b) makes proper inquiry if the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that the reliance is unwarranted.

Disclosure of interests of members in matters of EGB**9 Meaning of interested**

- (1) A member is **interested** in a transaction of, or other matter relating to, EGB if, and only if, the member—
 - (a) is a party to, or will or may derive a material financial benefit from, the transaction or matter; or
 - (b) has a material financial interest in another party to the transaction or in a person to whom the matter relates; or
 - (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
 - (d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
 - (e) is otherwise directly or indirectly materially interested in the transaction or matter.
- (2) However, a member is not interested in a transaction or other matter merely because he or she is a member or a director or an officer of a wholly-owned subsidiary of EGB.

10 Obligation to disclose interest

A member who is interested in a transaction or proposed transaction of, or other matter relating to, EGB must disclose the nature of the interest in accordance with clause 11 as soon as practicable after the member becomes aware that he or she is interested.

11 Method of disclosure of interest

- (1) If clause 10 applies, the member must disclose the details listed in subclause (2) in an interests register and to—
 - (a) the chairperson or, if there is no chairperson, the deputy chairperson; or

Schedule 2A—*continued*

- (b) if the member concerned is the chairperson, or the positions of the chairperson and deputy chairperson are vacant, the Minister.
- (2) The details are—
 - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

12 Consequences of interest

A member who is interested in a transaction or proposed transaction of, or other matter relating to, EGB—

- (a) must not vote or take part in any deliberation or decision of the board or any board committee relating to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board or board committee during which a deliberation or decision relating to the matter occurs or is made.

Confidentiality of information**13 Confidentiality of information**

- (1) A member who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of or act on that information, except—
 - (a) for the purposes of EGB; or
 - (b) as required or permitted by law; or
 - (c) in accordance with subclause (2); or
 - (d) in complying with clauses 10 and 11.
- (2) A member may disclose, make use of, or act on the information if—
 - (a) the member is first authorised to do so by the board; and
 - (b) the disclosure, use, or act in question will not, or will not be likely to, prejudice EGB.

Schedule 2A—*continued***Liability of members and employees of EGB****14 Liability of members and employees of EGB**

No member or employee of EGB is personally liable for any liability of EGB, or for any act done or omitted to be done by the board, any member, or any employee of EGB, in good faith in pursuance or intended pursuance of the functions, duties, or powers of EGB.

Members' remuneration and allowances**15 Members' remuneration and allowances**

A member is entitled to receive, from the funds of EGB, remuneration and other benefits not within clause 16 for services as a member at a rate and of a kind determined by the Minister.

16 Allowances for members

A member is entitled to receive, from the funds of EGB, reasonable and actual allowances for travelling and other expenses relating to the performance of his or her duties and responsibilities as a member.

Chairperson and deputy chairperson**17 Appointment**

- (1) The Minister may appoint a member as the chairperson of the board by written notice to the member (with a copy to the board).
- (2) The Minister may appoint another member as deputy chairperson of the board by written notice to the member (with a copy to the board).
- (3) The notice of appointment must state the date on which the appointment takes effect.

Schedule 2A—*continued***18 Term of appointment**

The chairperson and the deputy chairperson each holds that office from the date stated in the notice of appointment until he or she—

- (a) resigns from that office; or
- (b) is removed from it by the Minister; or
- (c) ceases to hold office as a member.

19 Resignation

- (1) A chairperson or deputy chairperson may, without resigning as a member, resign from that office by written notice to the Minister (with a copy to the board).
- (2) The notice of resignation must state the date on which the resignation takes effect.

20 Removal

- (1) The Minister may remove a chairperson or deputy chairperson from that office by written notice to the person (with a copy to the board).
- (2) The notice of removal must state the date on which the removal takes effect.

21 Exercise of chairperson's functions, duties, and powers during vacancy

If there is no chairperson or, for any reason, the chairperson is unable to perform his or her functions, duties, and powers as chairperson, the deputy chairperson has all the functions, duties, and powers of the chairperson.

Procedures of board**22 Procedure generally**

Except as otherwise provided in this Act, the members may regulate their own procedure.

Schedule 2A—*continued***23 Dates, times, and places of meetings**

- (1) The board must appoint the dates, times, and places of ordinary meetings of the board, and give notice of those meetings to each member not present when the appointment is made.
- (2) The chairperson or any 2 members may call a special meeting of the board by giving at least 7 days' notice of the special meeting, and of the business to be transacted at the meeting, to each member for the time being in New Zealand.
- (3) No business other than that specified in a notice of special meeting may be transacted at a special meeting.

24 Requirements as to notice of meetings

Notice of a meeting—

- (a) must be written, and state the date, time, and place of the meeting; and
- (b) may be given by post, delivery, or electronic transmission; and
- (c) must be sent to the member's last known address in New Zealand.

25 Methods of holding meetings

A meeting of the board may be held—

- (a) by a number of the members who constitute a quorum, being assembled together at the date, time, and place appointed for the meeting; or
- (b) by means of audio, audio and visual, or electronic communication by which all members participating and constituting a quorum can simultaneously communicate with each other throughout the meeting.

26 Quorum

- (1) A quorum for a meeting of the members is—
 - (a) half the number of members (if the board has an even number of members) or a majority of the members (if the board has an odd number of members); but
 - (b) in any case, no less than 3 members.

Schedule 2A—*continued*

- (2) No business may be transacted at a meeting of the board if a quorum is not present.

27 Presiding at meetings

- (1) At a meeting of the board, the following person presides:
- (a) if there is a chairperson and he or she is present, the chairperson; or
 - (b) if there is no chairperson or he or she is not present, the deputy chairperson; or
 - (c) in any other case, a member chosen by the members present to be the chairperson of the meeting.
- (2) The elected person may exercise all the powers, duties, and functions of the chairperson for the purposes of the meeting.

28 Voting at meetings

- (1) Each member has 1 vote.
- (2) In addition to his or her general vote, the chairperson at a meeting has a casting vote.
- (3) A resolution of the board is passed if it is agreed to by all members present without dissent or if a majority of the votes cast on it are in favour of it.
- (4) A member present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from or votes against the resolution at the meeting.

29 Unanimous written resolutions

- (1) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic transmission) by all members is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted.
- (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.

Schedule 2A—*continued***Delegation****30 Ability to delegate**

The board may delegate any of the functions and powers of EGB or the board, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons:

- (a) a member;
- (b) an employee;
- (c) a committee established by resolution of the board that includes at least 1 member;
- (d) any other person or persons approved by the Minister.

31 Effect of delegation

- (1) If any functions or powers are delegated under clause 30, the delegate—
 - (a) may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were EGB or the board; and
 - (b) may delegate the function or power only if approved by the Minister.
- (2) A delegate who purports to perform a function or exercise a power under a delegation is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation.
- (3) A delegation under clause 30—
 - (a) may be revoked at will by resolution of the board and written notice to the delegate; but
 - (b) does not prevent the board from performing the function or exercising the power.

Method of contracting**32 Method of contracting**

- (1) A contract or other enforceable obligation may be entered into by EGB as provided in subclauses (2) to (4).

Schedule 2A—*continued*

- (2) An obligation that, if entered into by an individual, is required to be by deed, may be entered into on behalf of EGB in writing, signed under the name of EGB by—
 - (a) 2 or more of its members; or
 - (b) 1 or more attorneys appointed by EGB in accordance with clause 33.
- (3) An obligation that, if entered into by an individual, is required to be in writing, may be entered into on behalf of EGB in writing by a person acting under EGB's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing, may be entered into on behalf of EGB in writing or orally by a person acting under EGB's express or implied authority.
- (5) This clause applies to a contract or other obligation—
 - (a) whether or not that obligation was entered into in New Zealand; and
 - (b) whether or not the law governing that obligation is the law of New Zealand.

33 Attorneys

- (1) EGB may, by an instrument in writing executed in accordance with clause 32(2), appoint a person as its attorney either generally or in relation to a specified matter.
- (2) An act of the attorney in accordance with the instrument binds EGB.

34 Presumptions and saving of certain transactions

- (1) The validity or enforceability of any deed, agreement, right, or obligation entered into, or incurred by, EGB is not affected by a failure of EGB or its board to comply with any provision of this Act.
- (2) A person purporting to execute any documentation on behalf of EGB under any authority is, in the absence of proof to the contrary, presumed to be acting in accordance with that authority.

Schedule 2A—*continued***Employees****35 EGB to be good employer**

- (1) EGB must, if it employs employees,—
- (a) operate a personnel policy that complies with the principle of being a good employer; and
 - (b) report on its compliance with that policy (including its equal employment opportunities programme) in its annual report.
- (2) For the purposes of this clause, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
- (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—
 - (i) the aims and aspirations of Maori; and
 - (ii) the employment requirements of Maori; and
 - (iii) the need for involvement of Maori as employees of EGB; and
 - (e) opportunities for the enhancement of the abilities of individual employees; and
 - (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this section, an **equal employment opportunities programme** means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

Schedule 2A—*continued***36 Employment of chief executives**

- (1) EGB must not agree to the terms and conditions of employment for a chief executive, or to an amendment of those terms and conditions, without—
 - (a) consulting the State Services Commissioner; and
 - (b) if the proposed terms and conditions or amendment do not comply with any guidance issued by the State Services Commissioner to 1 or more Crown entities, consulting the Minister; and
 - (c) having regard to the recommendations that the Commissioner and (if applicable) the Minister make to it within a reasonable time of being consulted.
- (2) A failure to comply with this clause does not invalidate the acts of a chief executive of EGB.

37 Employment of employees

- (1) If the Governor-General, by Order in Council, requires it, EGB must not agree to the terms and conditions of employment, or an amendment to those terms and conditions, for an employee without—
 - (a) consulting the State Services Commissioner; and
 - (b) having regard to the recommendations that the Commissioner makes to EGB within a reasonable time of being consulted.
- (2) The Order in Council may relate to all employees or classes of employees.
- (3) A failure to comply with this clause does not invalidate the acts of an employee of EGB.

38 Application of Acts to members and employees

No person is, by reason only of that person's appointment as a member of, or employment by, EGB, deemed to be employed in the State services for the purposes of the State Sector Act 1988 or in the Government service for the purposes of the Government Superannuation Fund Act 1956.

Schedule 2A—*continued***Financial provisions****39 Funds of EGB**

The funds of EGB consist of—

- (a) all money appropriated by Parliament and paid to EGB; and
- (b) all other money lawfully received by EGB for its purposes; and
- (c) all accumulations of income derived from that money.

40 Bank accounts

- (1) EGB must establish, maintain, and operate 1 or more bank accounts at 1 or more registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989).
- (2) All money received by EGB must be paid into that bank account or 1 of those bank accounts as soon as practicable after it has been received.
- (3) EGB must properly authorise the withdrawal or payment of money from any of its bank accounts.

41 Investment of money

Any money that belongs to EGB and that is not immediately required may be invested only in accordance with section 25 of the Public Finance Act 1989.

42 EGB not to borrow without consent of Minister of Finance

EGB must not borrow from any person, or amend the terms of any borrowing, without the prior written approval of the Minister of Finance.

43 Auditor-General to be auditor of EGB

EGB is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Schedule 2A—*continued***Subsidiaries****44 Subsidiaries**

- (1) EGB must not form or acquire shares in any subsidiary with powers or functions wider than those of EGB.
- (2) Section 172S(1)(c), section 172T(a) and (b), and clauses 35 to 38, and 40 to 43 of this schedule apply to any subsidiary of EGB as if every reference to EGB were a reference to a subsidiary and all other necessary modifications were made except that,—
 - (a) under section 172T(b), the board of a subsidiary must act in a manner consistent with EGB's current statement of intent and purchase agreement:
 - (b) under clause 36(1)(b) and (c), a subsidiary must consult, and have regard to recommendations of, EGB rather than the Minister.

Legislative history

25 July 2001	Divided from Electricity Industry Bill (Bill 86-1), (Bill 86-2A)
31 July 2001	Third reading
7 August 2001	Royal assent
