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1998, No. 88

An Act to reform the electricity industry

[*8 July 1998*

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

1. Short Title and commencement—(1) This Act may be cited as the Electricity Industry Reform Act 1998.

(2) Except as provided in subsections (3) to (5), this Act comes into force on the day after the date on which this Act receives the Royal assent.

(3) The following provisions are deemed to have come into force on 21 May 1998:

(a) Sections 37 to 45 (mirror trusts):

(b) Section 46 (no expansion of control by trust-like agencies in electricity supply):

(c) Part 3 (enforcement and penalties):

(d) Section 68 (duty not to defeat purposes):

(e) Section 69 (no compensation):

(f) Section 71 (trust deeds).

(4) Part 2 (ownership separation rules and exemptions) is deemed to have come into force on 23 June 1998.

(5) Section 100 comes into force on a date to be appointed by the Governor-General by Order in Council.

2. Purpose—(1) The purpose of this Act is to reform the electricity industry to better ensure that—

(a) Costs and prices in the electricity industry are subject to sustained downward pressure; and

(b) The benefits of efficient electricity pricing flow through to all classes of consumers—

by—

(c) Effectively separating electricity distribution from generation and retail; and

(d) Promoting effective competition in electricity generation and retail.

(2) The particular purpose of Parts 1 to 5 (separation of lines and supply) is—

(a) To prohibit certain involvements in electricity lines businesses and electricity supply businesses which may create incentives or opportunities—

(i) To inhibit competition in the electricity industry; or

(ii) To cross-subsidise generation activities from electricity lines businesses; and

(b) To restrict relationships between electricity lines businesses and electricity supply businesses which may otherwise not be at arms length.

(3) The particular purpose of Part 6 (price restraint) is to enable, in the event of a change in charges for line function services, the protection of domestic and rural consumers against a rate of change and level of change that is inappropriate.

(4) The particular purpose of Part 7 (amendments to Electricity Act 1992) is to facilitate competition among electricity retailers and choice for consumers.

(5) The particular purpose of Part 8 (split of ECNZ) is to promote effective competition in electricity generation by enabling the shareholding Ministers of Electricity Corporation of New Zealand Limited to require assets and liabilities of that company or of any wholly-owned subsidiary of that company to be transferred to the Crown or to other State enterprises or subsidiaries of State enterprises.

PART 1

SEPARATION OF LINES AND SUPPLY—PRELIMINARY PROVISIONS

Interpretation

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

"Agency" has the same meaning as in section 13:

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

"Arms length rules" means the objective and rules set out in Schedule 1:

"Assets" includes property of any kind, whether tangible or intangible, and includes rights, interests, and claims of every kind however they arise:

"Associate" has the same meaning as in section 12:

"Business" means any undertaking that is carried on whether for gain or reward or not:

"Business A" and "business B" have the same meanings as in section 6:

"Commission" means the Commerce Commission established by the Commerce Act 1986:

"Control right" has the same meaning as in section 9:

"Core assets", in relation to an electricity supply business, includes the assets referred to in section 5 (1) (c):

"Court" means the High Court; and includes a Judge of that Court:

"Cross-involvement" means an involvement or interest in an electricity lines business and an involvement or interest in an electricity supply business (whether in separate or unseparated electricity businesses) that is prohibited by the ownership separation rules, or would be so prohibited if those rules applied:

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

"Disregarded involvement" means a business or involvement or interest to which section 19 applies:

"Electricity business" means an electricity lines business or an electricity supply business or an unseparated electricity business:

"Electricity company" means a body corporate that carries on an electricity business (whether or not that business is its principal or only business):

"Electricity lines business" has the same meaning as in section 4:

"Electricity supply business" has the same meaning as in section 5:

"Electricity trust", in relation to an electricity business, means a trust that is constituted for purposes which include owning or controlling, directly or indirectly, all or part of an electricity company that carries on that business:

"Equity return right" has the same meaning as in section 10:

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

(a) More than 20% of the persons having non-specific interests in person A are likely to be the same persons as have interests in person B; or

(b) The class or classes of persons having non-specific interests in person A are substantially included in a class or classes of persons having interests in person B; or

(c) More than 20% of the persons likely to derive an appreciable benefit from non-specific interests in person A are likely to be the same persons as those that are likely to derive an appreciable benefit from equity return rights in person B; or

(d) More than 20% of the benefits distributed or distributable as a result of non-specific interests in person A are likely to benefit substantially the same class of persons as are likely to derive an appreciable benefit from equity return rights in person B; or

(e) Person A has a type of overlap specified from time to time in regulations made under section 87 and, for this purpose, paragraphs (a) to (d) of this definition do not limit the generality of that regulation-making power;—

and "overlap threshold being exceeded" has a corresponding meaning:

"Exempt person" means a person—

(a) That is involved in an electricity business; and

(b) That is exempt from complying with the ownership separation rules by reason of any of sections 28 to 35 (interim exemptions) or sections 37 to 45 (mirror trusts):

"Existing cross-involvement" means a cross-involvement that exists as at the close of 23 June 1998:

"Existing involvement" means an involvement that exists as at the close of 23 June 1998:

"Expectancy" means, in relation to a business or any other person,—

(a) An expectancy or a contingent or unvested right to equity returns of the business or person; or

(b) A right to equity returns of the business or person which does not confer on the holder a certain or defined share of the equity returns available to all or to any class of persons having equity return rights in the business or person:

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

"Involved" has the same meaning as in section 7:

"Manager", in relation to a person,—

(a) Means a person who, whether alone or jointly with any other person, manages, or directs or supervises the management of, the whole or a substantial part of the business and affairs of the person; and

(b) Includes, for the avoidance of doubt,—

(i) In relation to a body corporate, a director or officer of that body corporate:

(ii) In relation to a trust, a trustee:

(iii) In relation to a local authority, a councillor; but

(c) Does not include, in relation to an electricity business in which a local authority or any other person has an interest, a councillor of that local authority or manager of that person only as a result of having that position:

"Material influence" has the same meaning as in section 11:

"Member" includes a shareholder of a body corporate, a beneficiary of a trust, and a partner in a partnership:

"Mirror co-operative" has the same meaning as in section 42:

"Mirror trust" has the same meaning as in section 37; and includes (except for the purposes of sections 60 and 62) a mirror co-operative:

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

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

"Operating" does not include the provision only of maintenance and related services:

"Ownership separation rules" means section 17 (cross-ownership prohibition) and section 18 (20% aggregate cross-ownership prohibition) and section 20 (non-specific interests rule):

"Person" includes the trustees of a trust acting in that capacity:

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

"Settling trust" means the existing electricity trust which settles interests in a mirror trust under the mirror trust option in sections 37 to 45:

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

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

(a) Assign and convey; and

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

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

"Unseparated electricity business" means an electricity lines business and an electricity supply business that are related companies (within the meaning of section 2 (3) of the Companies Act 1993).

(2) Where a section has a statement of purpose, the statement is an indication of the matters that may be considered in ascertaining the meaning of the section, but does not limit the section or any other section.

4. Meaning of "electricity lines business"—(1) For the purposes of this Act, "electricity lines business"—

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

(b) Includes the ownership or operation, directly or indirectly, of lines in New Zealand or any other core assets of an electricity lines business.

(2) None of the following activities brings a person within subsection (1):

(a) Conveying, together with its associates (if any), less than 2.5 GWh per annum:

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

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

(d) Conveying electricity (other than via the national grid) only from a generator to a local distribution network or from a local distribution network to a generator:

(e) Conveying electricity by lines that are owned or operated by a business that also owns or operates a generator which generates electricity solely for the consumption of a local community, where both those lines and that generator are not connected, directly or indirectly, to the national grid:

(f) Conveying electricity only by a line or lines that are mostly in competition with a line or lines operated by another electricity lines business that is not an

associate of the person, provided that the competition is actual competition and not potential competition:

(g) Owning or operating, directly or indirectly, lines referred to in any of paragraphs (a) to (f) or any other core assets of an electricity lines business used in connection with those lines.

5. Meaning of "electricity supply business"—(1) For the purposes of this Act, "electricity supply business"—

(a) Means a business that—

(i) Sells electricity in New Zealand:

(ii) Sells financial hedges for risks relating to the price of electricity in New Zealand:

(iii) Generates electricity in New Zealand:

(iv) Trades in rights to sell or generate electricity in New Zealand; and

(b) Includes the ownership or operation, directly or indirectly, of a generator in New Zealand or any other core generation assets; and

(c) Includes the ownership or operation, directly or indirectly, of any core assets of an electricity retail business, which include—

(i) The customer data base relating to and used for the purposes of an electricity retail or electricity trading business; and

(ii) The benefit of a contract to sell electricity; and

(iii) The benefit of an undertaking from any other electricity supply business not to compete with the business.

(2) None of the following activities brings a person within subsection (1):

(a) Selling or generating less than 2.5 GWh per annum:

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

(c) Generating electricity solely for the consumption of a local community, where—

(i) The generator is owned or operated by a business that also conveys electricity by line; and

(ii) Both those lines and that generator are not connected, directly or indirectly, to the national grid:

(d) Selling electricity that is generated at a generator referred to in paragraph (c) or subsection (3):

(e) Owning or operating, directly or indirectly, a generator referred to in any of paragraphs (b) to (d) or

subsection (3) or any other core generation assets used in connection with those generators.

(3) A person may, without coming within subsection (1), generate electricity at a generator or generators that are existing, and capable of generating electricity, as at 23 June 1998, if the total generating capacity (determined according to nameplate) of the business, together with its associates (if any), is 5 MW or less.

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

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

(3) References to trust A and trust B have corresponding meanings and application.

7. Meaning of "involved"—(1) For the purposes of this Act, a person is involved in an electricity business if the person—

(a) Carries on that business, either alone or together with its associates and either on its own or another's behalf; or

(b) Exceeds the 10% threshold in section 8 in respect of that business; or

(c) Has material influence over the business;—

and "involvement" has a corresponding meaning.

(2) Where a person is involved in an unseparated electricity business, the person is involved in both an electricity lines business and an electricity supply business.

(3) Without limiting the generality of subsection (1)(a), a person carries on a business if the person owns or operates any of the core assets comprising the business.

8. Meaning of "10% threshold"—A person exceeds the 10% threshold in respect of an electricity business if the person—

(a) Has more than 10% of the control rights in the business; or

(b) Has more than 10% of the equity return rights in the business; or

(c) Is one of 2 or more associates who, in aggregate, have more than 10% of the control rights in the business; or

(d) Is one of 2 or more associates who, in aggregate, have more than 10% of the equity return rights in the business.

9. Meaning of "control rights"—(1) For the purposes of this Act, a "control right" means a voting right attaching to a voting security.

(2) A person has a control right under this Act if the person would have a relevant interest, under section 5 of the Securities Amendment Act 1988, in the voting securities that confer that right,—

(a) If "voting security", in relation to a body, meant a security of the body which confers a right to vote at meetings of members (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the security); and includes a security which, in accordance with the terms of the security, is convertible into a security of that kind; and

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

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

(2) "Equity returns" means—

(a) Profits of the business; or

(b) Distributions from the business; or

(c) Other equity returns from the business.

(3) "Other equity returns"—

(a) Means a benefit derived, directly or indirectly, from a business which represents, or is calculated by reference to, or is determined by,—

(i) A share in or proportion of its capital; or

(ii) Its surplus or residual economic value (after satisfying prior contractual claims); or

(iii) Its profitability or other indicator of its success; but

(b) Does not include (for the avoidance of doubt) a right or entitlement to interest on debt calculated at general market rates prevailing at the time of the loan agreement, or fluctuating in accordance with a formula which applies general market rates prevailing from time to time.

(4) In respect of equity return rights for which percentage entitlements are not readily calculable for any reason, the persons that hold or may hold them and the amounts are to be determined in accordance with any method set out in regulations.

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

(6) The percentage of rights held by a person in another person is calculated as follows:

$$a = b \times c$$

where—

a is the percentage to be determined

b is the percentage of the equity return rights held by the first person in the second person

c is the percentage of the equity return rights held by the second person in the business.

11. Meaning of "material influence"—(1) Without limiting the ordinary meaning of the expression "material influence", the following people are deemed to have material influence over an electricity business:

(a) A manager of a person that carries on the business:

(b) If the business is carried on by a natural person, that person:

(c) A person in accordance with whose directions, instructions, or wishes a person referred to in either of paragraph (a) or paragraph (b), or the business, may be required or is accustomed to act in respect of the carrying on or management of the business:

(d) A person that exercises or that is entitled to exercise, or who controls or is entitled to control the exercise of, powers which would ordinarily fall to be exercised by a person referred to in either of paragraph (a) or paragraph (b):

(e) A person that can appoint or remove, or control the appointment or removal of, a person referred to in either of paragraph (a) or paragraph (b):

(f) A person that has a power to influence a decision of the business which would ordinarily require the holding of control rights which would cause the person to exceed the 10% threshold:

(g) A person in circumstances where that person and the business is acting, or proposing to act, jointly or in concert in relation to the business; or

(h) A person that, under a trust or agreement (whether or not the person is a party to it), may at any time have any of the powers referred to in paragraph (c) to paragraph (f).

(2) Where a person has material influence over an electricity business under this section, and another person has any of the powers or controls referred to in paragraph (c) to paragraph (h) in relation to the first person or the majority of its managers, then that other person is deemed also to have material influence over the business, and so on.

(3) A person is deemed to have material influence over an electricity business if the person is one of 2 or more associates who, together, have material influence over the business.

(4) Subsection (3) does not apply to deem a person to have material influence over a business only because that person is, under section 12 (1) (b) or (c), an associate of another person, provided those associates act in accordance with the arms length rules (with all necessary modifications) in respect of the business.

(5) For the avoidance of doubt, a power to cast one of many votes at an election of trustees or councillors does not, of itself, constitute material influence.

12. Meaning of "associate"—(1) For the purposes of this Act, person A is an "associate" of person B (and vice versa) if—

(a) Person A is a body corporate, and person B is—

(i) A director of that body corporate; or

(ii) A related body corporate of that body corporate (within the meaning of section 5 (7) of the Securities Amendment Act 1988); or

(iii) A director of a related body corporate of that body corporate (within that same meaning); or

(b) Person A is a spouse, child, or parent of person B; or

(c) Person A is a person living together in a relationship in the nature of marriage with person B, although they are not married to each other; or

(d) Person A is a partner, to whom the Partnership Act 1908 applies, of person B; or

(e) Person A is a nominee or trustee for person B in relation to interests in a business; or

(f) Person A is a director of a company, or holds more than 10% of the control rights in the company, and person A and person B are parties to an agreement relating to—

(i) The control of that company; or

(ii) More than 20% of the control rights in that company; or

(g) Person A and person B are acting, or propose to act, or are likely to act, jointly or in concert in relation to a business; or

(h) Person A is a person who, in making a decision or exercising a power materially affecting a business, is accustomed, or under an obligation, or proposes, or is likely, to act in accordance with the directions, instructions, or wishes of person B.

(2) References in subsection (1)(e) to (h) to a company or business relate to a company or business in respect of which a connection with an electricity business is relevant.

13. Meaning of "agency"—For the purposes of section 46, an "agency"—

(a) Means a person—

(i) That is involved in an electricity supply business; and

(ii) In which interests are held by more than 6 persons; and

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

(b) Includes a local authority except in so far as the interests in respect of an electricity business are held through a local authority trading enterprise within the meaning

of section 594B of the Local Government Act 1974; and

(c) Excludes a person where the members most likely to benefit from control rights or equity return rights in the agency are relatives (within the meaning of section OB 1 (a) of the Income Tax Act 1994) or close business associates of the person that established the person or of each other; and

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

(e) Excludes any other person or class of person declared, by regulations made under section 87, not to be an agency for the purposes of this Act.

14. Substance matters, not form—(1) Any question under Parts 1 to 5 is to be determined according to the nature, substance, and economic effect of the interest or relationship or other facts, and independently of form.

(2) Without limiting subsection (1), a person may be involved in an electricity business, or be an associate or agency, regardless of whether a right, influence, power, obligation, or agreement—

(a) Is expressed or implied:

(b) Is direct or indirect:

(c) Is legally enforceable or not:

(d) Is related to a particular control right or not:

(e) Is subject to restraint or restriction or is capable of being made subject to restraint or restriction:

(f) Is exercisable presently or in the future:

(g) Is exercisable only on the fulfilment of a condition:

(h) Is exercisable alone or jointly with another person or persons.

(3) A power, influence, or ability exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.

(4) A reference to a power or obligation includes a reference to a power, influence, ability, or requirement that arises from, or is capable of being exercised or required as the result of, a breach of any trust or agreement whether or not it is legally enforceable.

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

Application of Act

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

Cf. 1986, No. 5, s. 4 (3)

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

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

PART 2

SEPARATION OF LINES AND SUPPLY—RULES AND EXEMPTIONS

Ownership Separation

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

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

18. 20% aggregate cross-ownership prohibition—(1) The purpose of this section is to prevent more than 20% in aggregate of the control rights or equity return rights in, or material influence over, an electricity lines business or an electricity supply business being held by persons who are involved in the other type of business.

(2) A person who is involved in business A may not acquire an interest in business B if there are, or if the interest would, if acquired, result in there being, persons who are involved in any business A who—

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

(b) Have material influence over business B.

Scope of Application of Ownership Rules

19. Certain businesses and involvements to be disregarded—(1) For the purposes of this Act, no account is to be taken of a person's business, or involvement or interest in a business, if—

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

(b) That person has the involvement or interest by reason only of acting for another person to acquire or dispose of a security on behalf of the other person in the ordinary course of business of a sharebroker and that person is a member of a stock exchange; or

(c) That person—

(i) Has the involvement or interest by reason only that he or she has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at a meeting or meetings of members, or a class of members, of another person; and

(ii) Has no discretion to determine how to represent the body corporate at the meeting or meetings; or

(d) That person—

(i) Has the involvement or interest solely by reason of being appointed as a proxy to vote at a meeting or meetings of members, or of a class of members, of another person; and

(ii) Has no discretion to determine how the proxy should be exercised at the meeting or meetings; or

(e) That person has the involvement or interest by reason only that the person is a bare trustee of a trust to which the involvement or interest is subject; or

(f) That person is involved only because the ordinary business of the person consists of or includes the selling of core assets of an electricity business, and the person does not operate those assets; or

(g) That person is involved because the person has an interest in an irrigation scheme, where—

(i) That scheme is physically connected to a generator or core generation assets and was built and is operated primarily for the purpose of irrigation; and

(ii) That person does not hold, through the person's interest in the scheme, any equity return rights or control rights in, or manage or operate, the generator or core generation assets; or

(h) The business, involvement, or interest is exempted by the Commission under section 81; or

(i) The business, involvement, or interest is declared, by regulations made under this Act, to be a disregarded business, involvement, or interest.

(2) For the purposes of subsection (1)(e), a trustee may be a bare trustee despite the fact that he or she is entitled as a trustee to be remunerated out of the income or property of the trust.

(3) This section is subject to section 80 (extensions) and to any regulations made under this Act.

Cf. 1988, No. 234, s. 6

Application of Ownership Separation Rules to Trust-Like Interests

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

(2) No person (person A) may exceed the overlap threshold with another person (person B) where—

(a) Person A is involved in business A; and

(b) Person B is involved in business B; and

(c) Either or both of person A or person B is a trust-like entity; and

(d) Person B has a reverse overlap with person A or members of person A;—

and, if person A is in breach of this requirement, so is person B.

(3) "Reverse overlap" in subsection (2)(d) means person B exceeds the overlap threshold with person A as if that term had the meaning set out in section 3, but applied also to person B and as if all references in that definition to "non-specific interests" in person A were references to interests in person B.

(4) No local authority with an involvement in business A may, after 23 June 1998, establish a local overlap with a trust-like entity involved in business B.

(5) For the purposes of subsection (4), "local overlap" exists with the trust-like entity when the members of the trust-like entity substantially comprise people or organisations in the community of the local authority.

(6) The purpose of subsections (7) and (8) is to prevent avoidance of the ownership separation rules where interests in a trust-like entity are equivalent to an involvement.

(7) No person may participate in a trust-like entity which is involved in business A if that person is also involved in business B, or participates in a trust-like entity which is involved in business B.

(8) For the purposes of subsection (7), a person participates in a trust-like entity when it has—

(a) Expectancies receivable alone, or with any group of associates, in respect of benefits from the trust-like entity which are equivalent in significance to 10% or more of all equity return rights available from the trust-like entity; or

(b) A material influence over the trust-like entity where the definition of "material influence" in section 11 is read as if its references to the electricity business were references to the trust-like entity.

(9) For the purposes of this section, "trust-like entity" means any person in which non-specific interests are held.

(10) This section is subject to section 34 (which relates to companies with direct ownership).

21. Responsibility for remedying contravention— (1) This section governs the order of responsibility for remedying contraventions of section 20.

(2) The contraventions must be remedied as follows:

(a) First, by any person whose activities have resulted in the contravention where the person knew or ought to have known that the contravention was likely; and

(b) Second, by any person in which interests that constitute the overlap are held; and

(c) Third, by the members whose interests cause the contravention, other than any referred to in paragraph (a).

(3) In taking steps to comply with subsection (2) (b), unless the parties responsible otherwise agree, the interests of the persons whose interests most recently became part of the overlap must be first divested.

(4) The trustees of a trust may vary the trust deed, and the board of a body corporate may amend the constitution, to the extent necessary to enable the contravention to be remedied.

Process for Compliance

22. Compliance with ownership separation rules— (1) The following rules apply, in the period up to 1 January 2004, in determining whether or not a person has complied with the ownership separation rules:

(a) The person must comply in respect of all of that person's involvements:

(b) The person complies with the rules at the time specified in subsection (2).

(2) That time is when the person has—

(a) Entered into a binding written contract to transfer part or all of one or more of those involvements so as to comply with the ownership separation rules, and under that contract—

(i) The risks of owning or having the involvement have substantially passed to the buyer; and

(ii) The price to be paid by the buyer is a dollar amount that is certain at the date of the contract; or

(b) Transferred completely by whatever means all or part of the person's interests so as to comply with the ownership separation rules.

23. Agreements and negotiations leading to separation—For the purpose of this Act, any negotiations or arrangements reasonably necessary or incidental to entry into, or performance of, a contract referred to in section 22 do not, in themselves,—

(a) Make any person engaged in the negotiations or arrangements an associate of another; or

(b) Give rise to an involvement under this Act.

24. Corporate separation—Every person that carries on an electricity business that is exempt from complying with the ownership separation rules by reason of any of sections 28 to 35 (interim exemptions) or sections 37 to 45 (mirror trusts) must, from 1 April 1999, carry on its electricity lines business and its electricity supply business in different companies.

25. Arms length rules—(1) Every person that is involved in an electricity business and that is exempt from complying with the ownership separation rules by reason of any of sections 28 to 35 (interim exemptions) or sections 37 to 45 (mirror trusts), and every electricity business in which any such person is involved, must, from 1 April 1999, comply, and ensure that that person's electricity businesses comply, with the arms length rules.

(2) For that purpose, references in the arms length rules to business A and business B are references only to the electricity lines business and electricity supply business in which the exempt person is involved.

(3) A transfer that implements a separation for the purposes of section 24 need not be on an arms length basis, but the outcome of the separation must enable compliance with the arms length rules.

26. 12 months' lead in time to full arms length—It is a defence to any proceedings based on a contravention of the arms length rules during the period beginning on 1 April 1999 and ending with 31 March 2000 that the person is taking all reasonable steps to comply with the requirements of the arms length rules.

Interim Exemptions, Rules, and Compliance Options

27. Purpose of sections—The purpose of sections 28 to 45 is to provide the following interim exemptions, rules, and specific options for complying with the ownership separation rules:

(a) An exemption until 1 January 2004 for existing involvements (section 28):

(b) An exemption until 1 January 2004 for acquisitions of one person's cross-involvements (section 29):

(c) A ban on expanding cross-involvements (section 30):

(d) An exemption until 1 January 2004 for expanding cross-involvements in a single unseparated electricity business (section 31):

(e) Exemptions for Treaty related matters (sections 32 and 33):

(f) An exemption for companies with direct ownership (section 34):

(g) An expansion option until 1 July 1999 for a person that wishes to otherwise expand the person's involvements before ownership separation (section 35):

(h) A compliance process for existing 20% aggregates (section 36):

(i) A mirror trust option, which is a permanent exemption for mirror trusts and mirror co-operatives (sections 37 to 45).

Exemptions for Certain Involvements

28. Exemption for existing involvements until separation—(1) A person is exempt from the ownership separation rules in respect of that person's existing cross-involvements.

(2) This exemption applies until whichever is the earlier of the close of 31 December 2003 or the date on which the person first complies with the ownership separation rules.

29. Exemption for acquisitions of one person's cross-involvements—(1) A person that has no interest in an electricity business is exempt from the ownership separation rules in respect of an acquisition by that person of all or part of one person's cross-involvement.

(2) This exemption applies until whichever is the earlier of the close of 31 December 2003 or the date on which the person first complies with the ownership separation rules.

Ban on Expanding Cross-Involvements

30. Ban on expansion in cross-involvements—(1) Except as provided in sections 31 to 35, no person with a cross-involvement may acquire an involvement, or increase the level of any of that person's involvements, in an electricity business.

(2) For the avoidance of doubt, increasing the level of involvement in an electricity business includes the case where the person, or any business in which the person is involved, acquires all or part of the core assets of another electricity business.

(3) This section and section 46 do not apply to a transaction for which notice has been given under section 4 of the Listing Rules of the New Zealand Stock Exchange before 23 June 1998 with expiry due after that date, where the notice was given with the expectation that the transaction would be completed upon expiry of the notice.

(4) For the purposes of this Act, assets or interests acquired as a result of the transaction referred to in subsection (3) are deemed to have been acquired before 23 June 1998.

Options for Persons Wishing to Expand

31. Exemption for any involvement in single unseparated business—(1) A person is exempt from the ownership separation rules and the prohibition on expansions in section 30 if the person acquires, or increases the level of, a cross-involvement in one unseparated electricity business.

(2) This exemption is subject to the condition that the exempt person has or acquires an involvement only in that unseparated electricity business and has no involvement in any other electricity business.

(3) Subsection (1) does not exempt an increase in an involvement of a kind referred to in section 30 (2).

(4) This exemption applies until whichever is the earlier of the close of 31 December 2003 or the date on which the person first complies with the ownership separation rules.

32. Exemption for certain Treaty-related transactions—(1) This Act does not apply to an acquisition which arises as a result of a transaction under an agreement for sale which—

(a) Was entered into before 23 June 1998; and

(b) Is conditional only upon the passage of specified Treaty claim settlement legislation,—

until 14 days after the date of acquisition.

(2) After the expiry of that 14-day period, the assets or interests acquired must be held or transferred only in accordance with this Act.

(3) Any dates in this Act that have expired before the end of that 14-day period are deemed to expire on the date of expiry of that 14-day period, for the purpose of enabling compliance with subsection (2).

33. Exemption for Highbank right of first refusal in Ngāi Tahu Treaty settlement—(1) This section applies to the right of first refusal granted to the joint venture entity between Te Rūnanga o Ngāi Tahu and Electricity Ashburton Limited in respect of Highbank assets (as set out in attachment 9.2 to the deed of settlement executed on 21 November 1997 by the Crown and Te Rūnanga o Ngāi Tahu).

(2) If Electricity Ashburton Limited retains its interest in the joint venture entity and the joint venture entity acquires the Highbank assets pursuant to the exercise of the right of first refusal, then this Act does not apply to that acquisition, or to Electricity Ashburton Limited's interest in the joint venture entity, until 14 days after the date of acquisition.

(3) After the expiry of that 14-day period, the assets or interests acquired must be held or transferred only in accordance with this Act.

(4) Any dates in this Act that have expired before the end of that 14-day period are deemed to expire on the date of expiry of that 14-day period, for the purpose of enabling compliance with subsection (3).

(5) Terms used in this section have the same meanings as in the Deed of Grant of Right of First Refusal—Highbank Station, which deed is set out in the attachment 9.2 referred to in subsection (1).

34. Exemption for companies with direct ownership—(1) This section allows the shareholders of a company to be substantially the same as the members of a person in which there are non-specific interests, provided that the company meets the requirements in subsection (2).

(2) Section 20 (2) is not breached where—

(a) Person A is a company registered under the Companies Act 1993; and

(b) The shares in person A—

(i) Are one class; and

(ii) Are freely tradeable; and

(iii) Have the rights and powers referred to in section 36 (1) of the Companies Act 1993; and

(iv) Are widely distributed upon issue to persons who are entitled by being customers or members of a community or communities; and

(c) There is no person with an interest in person A who forms part of the overlap with person B and who also has an involvement in person A.

35. Other expansion option—(1) A person that wishes to acquire involvements, or increase the level of any of the person's involvements, otherwise than as set out in sections 31 to 34, is exempt from—

(a) The ownership separation rules; and

(b) The prohibition on expansions in section 30; and

(c) Section 46 (no expansion of control by trust-like agencies in electricity supply),—

provided that—

(d) The exempt person must notify the Commission, as soon as practicable after first acquiring an involvement or increasing the level of an involvement, that the person is exercising the option under this section; and

(e) The exempt person must, before 1 July 1999, either—

(i) Comply with the ownership separation rules; or

(ii) Revert to the same involvements as that person held as at 23 June 1998, which is then deemed to be a cross-involvement exempted by section 28; and

(f) It is a condition of using the option in paragraph (e) (ii) that the notification given to the Commission under paragraph (d) specified the nature and level of the person's existing involvements; and

(g) The exempt person must notify the Commission as at 1 July 1999 whether that person has complied with the ownership separation rules or reverted to the

same involvements as that person held as at 23 June 1998; and

(h) Where paragraph (e) (i) applies, the exempt person must have completed any transfer contract referred to in section 22 by 1 April 2000.

(2) If the electricity supply business in which the exempt person is involved is controlled by one or more agencies, the exempt person must transfer that involvement when complying with the ownership separation rules; and for this purpose, "control" has the meaning set out in section 46.

(3) Section 46 applies to any transfer by the exempt person for the purpose of complying with the ownership separation rules.

(4) This exemption applies until whichever is the earlier of the close of 30 June 1999 or the date on which the person first complies with the ownership separation rules.

(5) A settling trust may use the mirror trust option in respect of part of the settling trust's interests in an electricity business and may use the option under this section or otherwise comply with this Act in respect of any other interests.

(6) No account is to be taken of the effect of section 24 (corporate separation) when determining whether a person has reverted to the same involvements held as at 23 June 1998.

(7) In this section, "same involvements" means involvements in the same electricity business or businesses at the same levels as existing as at 23 June 1998.

Compliance Process for Existing 20% Aggregates

36. Compliance process for existing 20% aggregates—(1) The purpose of this section is to prevent the continuation, after 31 December 2003, of existing holdings and circumstances, as at 23 June 1998, which result in 20% in aggregate of the control rights or equity return rights of, or material influence over, an electricity lines business or an electricity supply business being held by persons who are involved in the other type of business.

(2) A person who is involved in business A may not retain, after 31 December 2003, an interest in business B if the interest would, if retained, result in persons who are involved in any business A—

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

(b) Having material influence over business B.

(3) It is a defence to any proceedings under this section that the person did not know, and ought not reasonably to have known, of the contravention.

(4) This defence expires on a date to be fixed by the Governor-General, by Order in Council, which date must not be earlier than the effective implementation date of the disclosure regime provided for in section 70.

(5) The persons affected by this section must endeavour to agree on how to avoid a contravention of the section.

(6) If those affected persons fail to agree, all of those persons must transfer sufficient of their interest on a pro rata basis to result in compliance with this section.

(7) A pro rata basis means the transfer by each person of the proportion of its interest which is equivalent to the proportion its interest bears to the total interests of those 2 or more affected persons.

Mirror Trust and Mirror Co-operative Option

37. Mirror trust option—(1) The mirror trust option means that, where an electricity trust has a cross-involvement (the "settling trust"), the trust may establish a new trust (a "mirror trust") to hold, or to hold through a company in which the mirror trust is or will be involved, certain interests of the settling trust or of any company in which the settling trust is involved in either an electricity lines business or an electricity supply business.

(2) The mirror trust option is an exemption in certain respects,—

(a) Under section 43, from the non-specific interests rule in section 20, and therefore the ownership separation rules; and

(b) Under section 44, from the limits on expansion by trust-like agencies in electricity supply in section 46.

(3) Those exemptions are subject to the conditions in sections 38 to 41.

38. Qualifying conditions on mirror trust option—(1) A settling trust may use the mirror trust option if—

(a) The settling trust is an existing trust that has a cross-involvement in an electricity business as at 23 June 1998; and

(b) The settling trust is either of or both a customer or community trust; and

(c) The mirror trust is established by 1 April 1999.

(2) Where the mirror trust option is used, the settling trust and the mirror trust, and any companies in which either the settling trust or mirror trust is involved, must comply with the rules in section 25 (arms length rules) and sections 39 to 41.

(3) A customer trust is a trust—

(a) Whose income beneficiaries substantially comprise persons who are a class or classes identified by reference to any of—

(i) The person's connection to the lines of the electricity business:

(ii) The person's receipt of electricity from the electricity business:

(iii) The person's liability for payment for supply of electricity from the electricity business:

(iv) The person's liability for payment for the connection:

(v) The person's liability for payment for line services; and

(b) That has confined distributions largely to those beneficiaries.

(4) A community trust is a trust—

(a) Whose income beneficiaries substantially comprise persons who are a class or classes identified by reference to their domicile or location or operation within, or connection to, a prescribed geographic area:

(b) That has confined distributions largely to those beneficiaries or for purposes related to a prescribed geographic area.

39. Transfer of business to mirror trust—(1) By 1 April 1999, the mirror trust, or any company in which the mirror trust is or will be involved, must have entered into a binding written contract to acquire all or part of the interests in or assets of the electricity lines business or electricity supply business from the settling trust or any company in which the settling trust is involved.

(2) By 1 April 1999, under that contract,—

(a) The risks of owning or having the involvement must have substantially passed to the buyer; and

(b) The price to be paid by the buyer must be a dollar amount that is certain at the date of the contract.

(3) As from 1 April 1999, business A must be carried on by the mirror trust or any company in which the mirror trust is involved, and not by the settling trust or any company in which the settling trust is involved.

(4) By 1 April 2000, the contract referred to in subsection (1) must have been completed.

40. Beneficiaries of mirror trusts—(1) The mirror trust must have the same beneficiaries or the same class of beneficiaries as the settling trust, and no others.

(2) This section is subject to sections 72 and 73.

41. Terms of trust deeds for mirror trusts—(1) The terms of the mirror trust must be as near, or as near as they may reasonably be, to the terms of the settling trust as at 23 June 1998, but without provisions for appointment of trustees or otherwise which would be likely to create or leave any person with an involvement in an electricity business in contravention of this Act.

(2) Subsection (1) does not prevent the terms of the trust deed of a settling trust or a mirror trust being from time to time subsequently varied, subject to the provisions of this Act, in accordance with any power of variation in the trust deed of the settling trust, or as reproduced in the trust deed of the mirror trust.

(3) Subsection (1) does not require that the terms of the new mirror trust include any provision from the settling trust's trust deed that is properly regarded as spent.

(4) Subsection (1) does not prevent the inclusion of provisions necessary to ensure compliance with the arms length rules.

42. Mirror co-operatives—(1) For the purposes of this Act, (except for sections 60 and 62) the provisions relating to mirror trusts apply to Electricity Ashburton Limited and Otago Power Limited and their respective shareholders.

(2) Those provisions apply as if references to settling trusts were references to those co-operatives, references to mirror trusts were references to mirror companies of those co-operatives ("mirror co-operatives"), references to beneficiaries were references to shareholders of those co-operatives, and all other necessary modifications were made.

43. Exemption of mirror trusts from ownership separation rules—(1) Section 20 (non-specific interests rule) does not apply to a mirror trust in relation to its settling trust, and vice versa.

(2) Subsection (1) is subject to section 45 (trusts that cease to be mirror trusts).

44. Exemption of mirror trusts from rule limiting expansion of control by trust-like agencies—Section 46 does not apply to a mirror trust in respect of a binding written contract to transfer the interests of the settling trust in business A to the mirror trust that is entered into before 1 April 1999.

45. Trusts that cease to be mirror trusts—(1) Sections 43 and 44 apply to a mirror trust and its settling trust only if and so long as section 25 and sections 38 to 41 are complied with.

(2) Once either the mirror trust or the settling trust, or a company owned by a mirror trust, has contravened any of those sections, then neither trust can come within the protection of sections 43 and 44, even if that contravention is remedied.

(3) Subsection (2) does not apply to a contravention of any of section 25 and sections 38 to 41 if the Commission or Court is satisfied—

(a) That the contravention is only a technical one and is immaterial for the purposes of this Act; and

(b) That the person contravening did not know, and ought not reasonably to have known, of the contravention; and

(c) That the contravention was remedied (if capable of remedy) as soon as practicable after the person became aware of the contravention.

No Expansion of Control by Trust-Like Agencies in Electricity Supply

46. No expansion of control by trust-like agencies in electricity supply—(1) The purpose of this section is to prevent transfers of interests in, or assets of, an electricity supply business to trusts or other agencies in which the practical likelihood of the members or beneficial owners of the agency exercising effective control over the managers of the agency is remote (whether because of inability or lack of reasonable incentives to aggregate control rights or equity return rights or otherwise).

(2) A person may transfer interests in, or core assets of, an electricity supply business, or a person that controls an electricity supply business, to an agency or a person controlled by an agency, and an agency, or a person controlled by an agency, may acquire any such interests or assets, only where persons other than agencies will have or retain, after the transfer, control over the electricity supply business without the concurrence of the agencies or any one of them.

(3) For the purposes of subsection (2), "control" means the direct or indirect power to control use of the assets of, or to control, or to change the constitution or governing rules of, an electricity business or agency, as the case may be.

PART 3

SEPARATION OF LINES AND SUPPLY—ENFORCEMENT AND PENALTIES

Preliminary

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

(a) Has contravened the provision; or

(b) Has attempted to contravene the provision; or

(c) Has aided, abetted, counselled, or procured any other person to contravene the provision; or

(d) Has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene the provision; or

(e) Has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of the provision; or

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

48. Inadvertent contraventions—(1) It is a defence to any proceedings under this Part for contravention of Part 2 (except for sections 25 and 36) that—

(a) The contravention arose otherwise than by reason of the person's action; and

(b) The person did not know, and ought not reasonably to have known, of the contravention.

(2) This defence expires 3 months after the person became aware of the contravention.

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

(a) Proceedings for the recovery of pecuniary penalties under section 51:

(b) Applications for injunctions under section 52:

(c) Actions for damages under section 53:

(d) Proceedings under section 54 (order divestiture of assets):

(e) Proceedings under section 55 (penalty/commercial gain):

(f) Applications under section 56 (give directions, re-open agreements):

(g) Applications for orders under section 89 of the Commerce Act 1986 (as applied to this Act by section 58 of this Act).

Cf. 1986, No. 5, s. 75

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

Cf. 1986, No. 5, s. 76

Penalties

51. Pecuniary penalties—(1) If the Court is satisfied on the application of the Commission or any other person that a person has contravened Part 2 or section 68, the Court may order the person to pay to the Crown a pecuniary penalty that the Court determines to be appropriate.

(2) The maximum amount of the pecuniary penalty is the same as may from time to time be specified in section 80 of the Commerce Act 1986, in respect of each act or omission.

Cf. 1986, No. 5, s. 80

52. Injunctions—Where it appears to the Court, on the application of the Commission or any other person, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes or would constitute a contravention of Part 2 or section 68, the Court, by order, may do all or any of the following things:

(a) Grant an injunction restraining any person from engaging in conduct that constitutes or would constitute such a contravention:

(b) Impose on any person obligations to be observed in the carrying on of any business or the safeguarding of any business or any assets of any business:

(c) Provide for the carrying on of any business or the safeguarding of any business or assets of any business, either by the appointment of a person to conduct or supervise the conduct of any business (on such terms and with such powers as may be specified or described in the order), or in any other manner, as it thinks necessary in the circumstances of the case.

Cf. 1986, No. 5, s. 84

53. Actions for damages—(1) Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes a contravention of Part 2 or section 68.

(2) The amount of damages is the same as the amount that applies from time to time under section 82 of the Commerce Act 1986.

Cf. 1986, No. 5, s. 82

54. Court may order divestiture of assets or voting securities—(1) In any case where the Court, on the application of the Commission or any other person, is satisfied that any person has contravened Part 2 in respect of any involvement or has been found in any other proceedings under this Part to have contravened Part 2 in that respect, it may, by order,—

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

(b) Prohibit the exercise, for such period as the Court thinks fit, of any right to vote attaching to any voting securities specified in the order (being securities in respect of which the person is in contravention of Part 2); or

(c) Declare that the exercise of voting or other rights attaching to any voting securities (being securities in respect of which the person is in contravention of Part 2) is void and of no effect; or

(d) For the purpose of securing compliance with any other order made under this subsection, direct any person to do or refrain from doing a specified act.

(2) An order under subsection (1) may be made on such terms and conditions as the Court thinks fit.

(3) Without limiting subsection (2), an order made under this section may require—

(a) That assets and voting securities are, or any interest in them is, disposed of within a time specified by the Court, regardless of the price obtainable at that time:

(b) That neither the assets and voting securities are, nor any interest in them is, disposed of to any specified person or class of persons:

(c) That the assets and voting securities are, or any interest in them is, disposed of in a manner and on terms specified by the Court:

(d) That the proceeds of any disposition are—

(i) Applied towards the costs of the application:

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

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

55. Additional penalty for contravention involving commercial gain—(1) The Court may order a person who is found to have contravened Part 2 or section 68 to pay an amount not exceeding 3 times the value of any commercial gain resulting from the contravention if the Court is satisfied that the contravention occurred in the course of producing a commercial gain.

(2) The order may be in addition to any other penalty the Court may impose under this Act.

(3) For the purpose of subsection (1), the value of any gain is to be assessed by the Court, and any amount ordered to be paid is recoverable in the same manner as a pecuniary penalty.

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

56. Other powers to give directions, re-open agreements—(1) If the Court is satisfied, on the application of the Commission or any other person, that a person has contravened Part 2 or section 68, the Court may give directions ordering a person or persons in contravention to renegotiate any agreement or agreements that contravene, or give rise to a contravention of, this Act, on such terms as the Court specifies.

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

(a) Re-open any agreement that contravenes, or gives rise to a contravention of, this Act and make any orders it deems just and equitable for the purpose of

reopening the transaction and setting aside the contravention, and, if appropriate, reinstating the parties as nearly as may be in their former positions:

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

Miscellaneous Provisions

57. Miscellaneous—(1) In determining an appropriate penalty under this Part, the Court must have regard to all relevant matters, including—

(a) The nature and extent of the act or omission:

(b) The nature and extent of any loss or damage suffered by any person as a result of the act or omission:

(c) The circumstances in which the act or omission took place:

(d) Whether or not the person has previously been found by the Court in proceedings under this Part to have engaged in any similar conduct.

(2) The standard of proof in proceedings under this Part is the standard of proof applying in civil proceedings.

(3) In any proceedings under this Part, the Commission, upon the order of the Court, may obtain discovery and administer interrogatories.

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

(5) Where conduct by any person constitutes a contravention of 2 or more provisions of Part 2 or section 68, proceedings may be instituted under this Act against that person in relation to the contravention of any one or more of the provisions; but no person is liable to more than one pecuniary penalty under this Part in respect of the same conduct.

Cf. 1986, No. 5, s. 80 (2)-(6)

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

(a) Sections 77 and 78 (lay members):

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

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

(d) Section 89 (other orders):

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

(f) Section 98 (Commission may require person to supply information or documents or give evidence):
(g) Section 98A (power to search):
(h) Sections 98B to 98G (relating to warrants, etc):
(i) Section 99 (powers of Commission to take evidence):
(j) Section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
(k) Section 100A (Commission may state case for opinion of High Court):
(l) Sections 101 and 102 (notices):
(m) Section 103 (offences):
(n) Section 104 (determinations of Commission):
(o) Section 105 (delegation by Commission):
(p) Section 106 (proceedings privileged):
(q) Section 106A (judicial notice):
(r) Section 109 (Commission may prescribe forms).

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

PART 4

SEPARATION OF LINES AND SUPPLY—TAXATION

60. Purpose—Subject to their express provisions, sections 62 to 67 are intended—

(a) To exempt from liability for gift duty, any gift component on a transfer by a company of assets and liabilities comprising all or part of an electricity lines business or an electricity supply business, being a co-operative company or a company in respect of which at least one electricity trust holds all of the voting interests and market value interests (if any), to a mirror co-operative or a company in respect of which an electricity trust's mirror trust holds, or more than one electricity trusts' mirror trusts hold in the same proportions, all of the voting interests and market value interests (if any); and
(b) To modify the application of the consolidation rules to electricity companies that use those rules to separate their electricity lines business and their electricity supply business; and
(c) To exempt from liability for stamp duty certain instruments executed to enable or assist a person to comply with Part 2; and

(d) To specify that shares acquired and sold for the purpose of enabling or assisting a person to comply with Part 2 are not acquired for the purpose of resale within the meaning of a specific limb of a section of the Income Tax Act 1994.

61. Mirror co-operatives—(1) This section applies if—

(a) A co-operative company carrying on both an electricity lines business and an electricity supply business establishes a mirror company (the "mirror co-operative"); and

(b) Before 1 April 2000, the co-operative company transfers the assets and liabilities comprising all or part of either the co-operative company's electricity lines business or electricity supply business to the mirror co-operative for a consideration less than their market value.

(2) No dutiable gift (as defined in section 2 of the Estate and Gift Duties Act 1968) arises in respect of a transfer referred to in subsection (1) (b).

(3) For the purposes of the Inland Revenue Acts (except for the purposes of gift duty),—

(a) A co-operative company is deemed to have received, and the mirror co-operative is deemed to have paid, market value in respect of a transfer referred to in subsection (1) (b); and

(b) Where any gift in respect of a transfer referred to in subsection (1) (b) would, but for this provision, have formed part of or contributed to the capital gain amounts of the relevant mirror co-operative available for distribution to its shareholders upon liquidation, the capital gain amounts are deemed to be reduced to zero or by the amount of the gift, whichever is the smaller reduction.

62. Mirror trusts—(1) This section applies if—

(a) One or more electricity trusts owns or own all of the voting interests and market value interests (if any) in an electricity company (the "existing company") carrying on both an electricity lines business and an electricity supply business; and

(b) A mirror trust is established in respect of each electricity trust; and

(c) The mirror trust incorporates or the mirror trusts incorporate a company (the "mirror trust company") in which it holds or they hold all of the voting interests and market value interests (if any) in the same proportions in which the respective settling trust or settling trusts hold all of the voting interests and market value interests (if any) in the existing company; and

(d) Before 1 April 2000, the existing company transfers the assets and liabilities comprising all or part of either the existing company's electricity lines business or electricity supply business to the mirror trust company for a consideration less than their market value.

(2) No dutiable gift (as defined in section 2 of the Estate and Gift Duties Act 1968) arises in respect of a transfer referred to in subsection (1) (d).

(3) For the purposes of the Inland Revenue Acts (except for the purposes of gift duty),—

(a) An existing company is deemed to have received, and the mirror trust company is deemed to have paid, market value in respect of a transfer referred to in subsection (1) (d); and

(b) Where any gift in respect of a transfer referred to in subsection (1) (d) would, but for this provision, have formed part of or contributed to the capital gain amounts of the relevant mirror trust company available for distribution to its shareholders upon liquidation, the capital gain amounts are deemed to be reduced to zero or by the amount of the gift, whichever is the smaller reduction.

63. Consolidation rules modified generally for purposes of corporate ownership split and ownership split—(1) Section FD 10 (9) of the Income Tax Act 1994 is deemed not to apply to a company in a consolidated group where and to the extent that it can be concluded that the consolidation rules were utilised by the company for the purpose of complying with its obligations, or the obligations of any other company in the consolidated group, under Part 2.

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

of the consolidated group when a transferring company ceases to be a member of the consolidated group.

(3) Notwithstanding any provision of the consolidation rules, when subsection (2) applies, every transferee company is treated as having ceased to be a member of the consolidated group with effect from the beginning of the day on which the cessation of membership occurred.

64. Gifts not to form part of capital gain amounts—(1) This section applies to transfers of assets and liabilities comprising all or part of an electricity lines business or an electricity supply business between companies while they are in a consolidated group.

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

65. No stamp duty payable—(1) No stamp duty is payable under the Stamp and Cheque Duties Act 1971 in respect of an instrument—

(a) Which is executed on or after 21 May 1998 and before 1 April 2000; and

(b) Which is required to transfer property to enable or assist a person to comply with that person's obligations under Part 2.

(2) For the purposes of subsection (1), "executed", "instrument", "property", and "stamp duty" have the meanings given to them in the Stamp and Cheque Duties Act 1971.

66. Shares not acquired for resale—(1) If, on or after 21 May 1998 and before 31 December 2003,—

(a) A person (the "shareholder") acquires shares in a company (the "relevant shares"); and

(b) While the shareholder holds the relevant shares, the company purchases or otherwise acquires all or part of the assets and liabilities of an electricity lines business or an electricity supply business; and

(c) After such purchase or other acquisition by the company, the shareholder sells all or some of the relevant shares so as to enable or assist a person to comply with that person's obligations under Part 2,—

the shareholder is deemed not to have acquired the relevant shares for the purpose of selling them (within the meaning of section CD 4 of the Income Tax Act 1994).

(2) Nothing in subsection (1) is taken to imply that section CD 4 of the Income Tax Act 1994 necessarily applies to a sale of shares in a company where that sale is to enable or assist a person to comply with that person's obligations under Part 2.

67. Definitions for tax sections—(1) For the purposes of this section and sections 60 to 66, the following words have the meanings given to them in section OB 1 of the Income Tax Act 1994:

(a) Capital gain amount:

(b) Consolidated group:

(c) Consolidation rules:

(d) Inland Revenue Acts:

(e) Liquidation:

(f) Market value interest:

(g) Voting interest.

(2) For the purposes of this section and sections 60 to 66,—

(a) "Existing company" is defined in section 62 (1) (a):

(b) "Mirror co-operative" is defined in section 61 (1) (a):

(c) "Mirror trust company" is defined in section 62 (1) (c):

(d) "Transferring company" is an electricity company that is required by Part 2 to transfer an electricity lines business or an electricity supply business:

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

(3) For the purposes of section 66, the terms "shareholder" and "relevant shares" are defined in that section.

PART 5

SEPARATION OF LINES AND SUPPLY—MISCELLANEOUS PROVISIONS

Anti-Avoidance

68. Duty not to defeat purposes of Parts 1 to 5—No person may at any time do anything to defeat the purposes of Parts 1 to 5.

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

No Compensation

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

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

Cf. 1993, No. 7, s. 8

Disclosure

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

(a) An involvement or interest in an electricity business:

(b) A non-specific interest in a person involved in an electricity business:

(c) Interests in or of an agency.

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

(a) By and to whom the disclosure is made:

(b) What needs to be disclosed:

(c) When it must be disclosed:

(d) The form of the disclosure:

(e) The maintenance of files of notices or registers of involvements or interests and access to those files or registers and limitations on access to those files or registers:

(f) Exemptions from the requirements of the regulations:

(g) A method of ascertaining percentages for the purpose of the 10% and 20% thresholds:

(h) The consequences of any failure to make disclosure in accordance with the regulations, including providing for any matter currently referred to in sections 30 to 35A of the Securities Amendment Act 1988.

(3) Subsection (2) does not limit the generality of section 87 (2) (f).

Matters Relevant to Implementation of Part 2

71. Trust deeds—(1) The trustees of an electricity trust may vary the trust deed of the trust to the extent necessary to comply with Parts 1 to 5.

(2) This section applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed of an electricity trust or in any other enactment or rule of law or agreement.

(3) No trustee of an electricity trust is liable to any person for breach of trust or otherwise by reason of any act or omission necessary to give effect to Parts 1 to 5.

72. Beneficiaries of customer lines trusts—(1) The purpose of this section is to prevent the beneficiaries of a customer lines trust being electricity supply businesses rather than the end-customers of an electricity lines business.

(2) If such a result would otherwise arise from compliance with section 40 (beneficiaries of mirror trusts) or with the ownership separation rules,—

(a) The lines trust deed must identify or be varied to identify the relevant class of beneficiaries of the trust as the persons who are directly connected to the lines of the electricity lines business and who are either—

(i) End-customers who are liable for the payment for electricity conveyed to them over those lines or for services in relation to those lines; or

(ii) End-customers of any electricity supply business that is liable for payments for services in relation to those lines; and

(b) The class of beneficiaries must be identified so as to align as closely as may be in other respects with the class of beneficiaries of the settling trust prior to the trust using the mirror trust option.

(3) Persons must not be disqualified from being beneficiaries by reason only of not choosing to become or remain end-customers of any particular electricity supply business.

(4) In this section, "customer lines trust" means a customer trust (as defined in section 38) that is involved in an electricity lines business.

73. Shareholders of lines co-operatives—(1) Section 72 applies to Electricity Ashburton Limited and Otago Power Limited as if references to trusts were to those co-operative companies, references to trust deeds were to constitutions,

references to beneficiaries were to shareholders, and all other necessary modifications were made.

(2) Where subsection (1) applies, and the constitution of the co-operative company that carries on an electricity lines business provides that the persons who may be shareholders of the company are customers of the type described in section 72 (2) (a), then, for the purposes of the Co-operative Companies Act 1996, if the constitution so provides,—

(a) Those shareholders from time to time are deemed to be transacting shareholders of that company; and

(b) The supply of services relating to lines connected to those shareholders and to those shareholders (whether directly or indirectly through any electricity supply business) is deemed to be a co-operative activity.

74. Power to make gifts—(1) If there is a special resolution of shareholders to that effect, the directors of an electricity company may make a gift for the purposes of section 61 (mirror co-operatives) or section 62 (mirror trusts) without breaching any duty under law to the company or to its shareholders.

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

75. Application of Securities Act 1978—(1) The Securities Act 1978 does not apply to an offer of securities (if any) to the members of a mirror trust or mirror co-operative that is made at the time of establishment of that mirror trust or mirror co-operative by the settling trust or settling co-operative, provided that those members are not required to provide any consideration for the securities.

(2) This section is subject to section 6 of the Securities Act 1978.

76. Protection from other Acts—(1) No person is liable under—

(a) Section 131 of the Companies Act 1993 or any other provision of that Act; or

(b) Section 36 of the Energy Companies Act 1992 or any other provision of that Act; or

(c) Any other Act or rule of law,—

by reason of any act or omission necessary to give effect to Part 2 or Part 5.

(2) This section is subject to sections 74, 77, and 78.

77. Member approvals, etc—(1) This section applies where the managers of a person must obtain the approval of the members or other owners to a transaction required in order to comply with the ownership separation rules.

(2) The managers must take all reasonable steps—

(a) To produce an option for complying with the ownership separation rules that, given the requirement to comply with those rules, the managers reasonably believe should be the most acceptable to the majority of the members or other owners of the person; and

(b) To have the transaction approved by the majority of those members or other owners, or to make the transaction contingent on that approval.

(3) However, if the members or other owners of the person fail to approve an option for complying with the ownership separation rules, then the managers may enter into a transaction to the extent necessary to comply with this Act.

(4) Subsection (3) applies notwithstanding section 129 of the Companies Act 1993 or any provision of the trust deed or constitution of the person or any other Act or rule of law that requires the approval of the members or other owners to be obtained to a transaction.

78. Consultation requirements—(1) The managers of a person are not in breach of trust and do not contravene any enactment or rule of law by reason of failing to comply with any requirement to consult with the members or other owners of the person before taking any action necessary to comply with this Act, as long as the managers have taken reasonable steps to consult with the members or other owners of the person to the extent that is possible given the requirements of this Act.

(2) This section applies whether the consultation requirement is in the trust deed or in section 88 of the Energy Companies Act 1992 or in any other enactment or rule of law.

79. Technical redundancy—(1) This section applies where all or any part of the business of an electricity business is transferred—

(a) As part of a transfer for the purposes of this Act to a mirror trust or an electricity company owned by a mirror trust:

(b) For the purpose of complying with section 24 (corporate separation).

(2) Where any transferee of the business being transferred—

(a) Offers to employ any employee of the electricity business—

(i) To perform substantially the same duties as he or she was performing before the transfer; and

(ii) On terms and conditions of employment that are no less favourable to the employee than those applying at the date of the transfer; and

(b) Agrees to treat service with the electricity business as if it were service with the transferee, and as if it were continuous,—

then, notwithstanding anything contained in any employment contract or redundancy agreement, the electricity business is not required to pay any compensation for redundancy to the employee.

Cf. 1988, No. 20, s. 61

Extensions and Exemptions

80. Extensions—(1) The Commission may, for the purposes of this Act, in its discretion, by notice in the *Gazette*, bring within this Act a business or involvement or interest that is disregarded under section 19.

(2) The Commission may exercise that power by designating a business or involvement or interest as one to which a paragraph of section 19 no longer applies.

(3) This section does not authorise the Commission to make a class designation.

(4) Before making a designation under this section, the Commission must do everything reasonably possible on its part to advise the person whose business, involvement, or interest is being designated of the proposed terms of it; and give that person a reasonable opportunity to make submissions to the Commission.

(5) Subsection (4) does not apply in respect of a designation if the Commission considers that it is desirable in the public interest that the designation be made urgently.

(6) Failure to comply with subsection (4) does not affect the validity of a designation.

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

(8) The designation has effect according to its tenor.

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

(10) The Commission must keep a list of all current designations made by it under this section available for public inspection free of charge during normal office hours at the offices of the Commission.

(11) A designation under this section is not a regulation within the meaning of the Regulations (Disallowance) Act 1989.

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

(2) This section does not authorise the Commission to make a class exemption.

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

(4) The exemption has effect according to its tenor.

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

(6) The Commission must keep a list of all current exemptions made by it under this section available for public inspection free of charge during normal office hours at the offices of the Commission.

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

Application of Other Acts

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

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

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

84. Application of Energy Companies Act 1992—(1) This section applies to an electricity company formed after 21 May 1998 whose shareholders are—

(a) A mirror trust:

(b) A settling trust:

(c) The same shareholders as an energy company which is an associate of the new electricity company.

(2) Sections 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, and 46A of the Energy Companies Act 1992 apply with necessary modifications to the new electricity company as if that company were an energy company for the purposes of that Act.

85. Dealing with land held for public works—(1) Nothing in sections 40 to 42 of the Public Works Act 1981 applies to the vesting of land in, or the transfer of land to, any person in so far as that vesting or transfer occurs pursuant to section 24 or sections 37 to 45 of this Act; but sections 40 and 41 of that Act apply, after the vesting or transfer, to that land as if the electricity company were a local authority and the land had not been vested or transferred pursuant to this Act.

(2) If, in relation to land that has been vested in, or transferred to, an electricity company under this Act, an offer made under section 40 (2) of the Public Works Act 1981 is not accepted—

(a) Within 40 working days after the making of the offer or such further period as the electricity company considers reasonable; or

(b) If an application has been made pursuant to subsection (2A) of that section to the Land Valuation Tribunal, within 20 working days after the determination of the Tribunal,—

whichever is later, and the parties have not agreed on other terms for the sale of the land, the electricity company may sell or otherwise dispose of the land to any person on such terms and conditions as it thinks fit.

(3) For the purposes of subsection (2), the term "working day" has the same meaning as it has in section 2 of the Public Works Act 1981.

86. Illegal Contracts Act 1970—(1) An agreement lawfully entered into does not become illegal or unenforceable by any party by reason of the fact that its performance is in breach of this Act.

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

Regulation-Making Powers

87. Regulations—(1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Commission, make regulations for all or any of the following purposes:

(a) Declaring a class of businesses or involvements or interests to be a disregarded business or involvement or interest to which this Act does not apply for the purpose of section 19 (1) (i) and specifying any conditions that apply:

(b) Declaring a class of businesses or involvements or interests to be businesses, involvements, or interests that are no longer disregarded under section 19.

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

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

(b) Setting out the method of determining persons or amounts for the purpose of section 10 (4) (percentage entitlements to equity return rights not readily ascertainable):

(c) Declaring any person or class of persons not to be an agency for the purposes of this Act and specifying any conditions that apply:

(d) Specifying any further type of overlap to which section 20 applies (non-specific interests rule):

(e) Declaring any person or class of persons or type of overlap or non-specific interest to be exempt (and on what conditions) from section 20 (non-specific interests rule):

(f) Providing for the disclosure of involvements in electricity lines businesses and electricity supply businesses under section 70:

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

(h) Adding to or omitting anything from the arms length schedule, or otherwise amending that schedule for the purpose of ensuring that the purposes of this Act are not defeated:

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

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

(k) Prescribing the matters in respect of which fees or charges are payable under this Act, the amounts of those fees or charges, or the method or rates by which they are to be assessed, the persons liable for payment of those fees or charges, and the circumstances in which the payment of the whole or any part of those fees or charges may be remitted or waived:

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

PART 6

PRICE RESTRAINT FOR LINE CHARGES FOR DOMESTIC AND RURAL CONSUMERS

88. Regulations relating to charges for line function services—(1) The Governor-General may from time to time, by Order in Council, make regulations imposing or providing for the imposition of restraint in respect of the charges relating to line function services—

(a) To domestic premises (as defined in section 90):

(b) To consumers in sparsely populated areas ("rural consumers").

(2) Without limiting the generality of subsection (1), regulations made under this section may impose, or provide for the imposition of, price restraint in respect of the charges relating to line function services to domestic premises or rural consumers—

(a) By electricity distributors generally or by particular classes of electricity distributors or by individual electricity distributors:

(b) In respect of particular classes of areas or an individual area or areas, defined by reference to geographic area or sparsity of population or distance from main centres or any other method of definition:

(c) In respect of particular classes of consumers.

(3) Regulations made under this section do not apply to—

(a) The offering to consumers of terms and conditions for new line function services:

(b) Charges relating to the national grid.

(4) Without limiting the generality of subsection (1), regulations made under this section may impose, or provide for the imposition of, price restraint in respect of charges for line function services, despite the fact that the charge is not payable directly by an end-consumer to an electricity distributor, but is payable via an electricity retailer.

Cf. 1992, No. 122, s. 63 (1), (2)

89. Way in which price restraint may be imposed— (1) Price restraint imposed by or pursuant to regulations made under section 88 may specify the manner in which the charges for line function services to domestic premises or rural consumers are to be restrained, and may, in particular, but without limiting the generality of section 88,—

(a) Control, in relation to charges for line function services to domestic premises or rural consumers,—

(i) The amount of the charge:

(ii) The amount of any component of the charge:

(iii) The proportion that any component of the charge may bear to the total charge or to any part of the charge:

(b) Control the frequency with which the charge, or any component of the charge, may be increased:

(c) Control the amount of any increase in the charge, or any component of the charge.

(2) Without limiting the generality of the foregoing provisions of this section and section 88, any controls imposed by or pursuant to any power conferred by any of paragraphs (a) to (c) of subsection (1) may be expressed to operate by reference to the charge lawfully being charged in respect of the line function services on any date specified for the purpose in the regulations, being the date of the commencement of the regulations or any other date, whether before or after the date

of the commencement of the regulations, but not being earlier than 1 January 1998.

Cf. 1992, No. 122, s. 63 (3), (4)

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

(a) Premises that constitute part of any penal institution of a kind specified in section 4 (1) of the Penal Institutions Act 1954:

(b) Premises that constitute part of any hospital, home, or other institution for the care of sick, disabled, or aged persons:

(c) Premises that constitute part of police barracks, or police cells and lock-ups:

(d) Premises that constitute any barracks conducted by the Armed Forces for the accommodation of persons subject to the Armed Forces Discipline Act 1971:

(e) Premises that constitute part of any hostel, barracks, dormitory, or other similar type of premises providing accommodation for any persons or class of persons:

(f) Premises that constitute part of a building occupied by a club and used by the club for the provision of temporary or transient accommodation to members of the club:

(g) Premises that constitute part of any hotel in respect of which there is in force an on-licence under the Sale of Liquor Act 1989:

(h) Premises that constitute part of any hotel, motel, boardinghouse, or lodginghouse used for the provision of temporary or transient accommodation:

(i) Premises that constitute part of any camping ground, motor camp, or marina.

Cf. 1992, No. 122, s. 64

91. Offences—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding $500,000 who, without lawful justification or excuse, acts in contravention of, or fails to comply in any respect with, any provision of any regulations made under section 88.

(2) Where—

(a) A person is convicted of an offence against this section; and

(b) The offence consists of or includes charging for line function services to domestic premises or rural consumers in excess of the charge that is authorised or permitted by regulations made under section 88,—

the Court, in addition to or instead of passing any other sentence or making any other order, may make an order for the payment by the defendant of an amount not exceeding the difference (to be ascertained and specified by the Court) between the amount charged for the line function services and the amount so authorised or permitted.

(3) All money payable pursuant to an order made under subsection (2) is recoverable, in accordance with the Summary Proceedings Act 1957, in the same manner as fines are recoverable.

(4) Where, in any case to which subsection (2) applies, the Court is satisfied that the whole or any part of the charge has been paid to the defendant by any other person, the Court, if it considers that it is just and equitable, may make an order authorising the payment to that other person of the whole or such part of any amount paid by the defendant under that subsection, as the Court thinks fit.

(5) An order under subsection (4) is sufficient authority to the Registrar of the Court to pay the amount so authorised.

Cf. 1992, No. 122, s. 65

92. Other Acts relating to price control not affected—Nothing in this Part of this Act limits or affects Part IV of the Commerce Act 1986 (which relates to the control of prices) or any other enactment relating to price restraint or price control.

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

PART 7

AMENDMENTS TO ELECTRICITY ACT 1992

94. Regulations relating to information disclosure—Section 170 (1) of the Electricity Act 1992 is amended by inserting, after paragraph (k), the following paragraph:

"(l) Providing for the revocation of any exemption of any person or class of persons from all, or any, of the requirements of any regulations made under this section."

95. Regulations—The Electricity Act 1992 is amended by inserting, after section 170, the following heading and section:

"*Regulations—Consumer Choice of Electricity Retailer*

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

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

"(b) 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 elect to choose, and alternate between, competing electricity retailers:

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

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

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

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

96. Offences—(1) Section 172 (1) of the Electricity Act 1992 is amended by omitting from paragraph (a), and also from paragraph (b), the words ", without reasonable excuse".

(2) Section 172 (1) of the Electricity Act 1992 is amended by adding the following paragraph:

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

PART 8

SPLIT OF ELECTRICITY CORPORATION OF NEW ZEALAND

97. Interpretation—(1) In this Part,—

"Assets" has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:

"Board" means the board of directors of ECNZ:

"ECNZ" means Electricity Corporation of New Zealand Limited:

"Liabilities" has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:

"Rights" has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:

"Shareholding Ministers" means the Minister of Finance and the Minister for State Owned Enterprises:

"State enterprise" means an organisation that is named in the First Schedule of the State-Owned Enterprises Act 1986; and includes a subsidiary of such an organisation:

"Transfer" includes—

(a) Assign and convey; and

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

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

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

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

(a) A direction that any or all of the assets and liabilities of ECNZ, or of any wholly-owned subsidiary of ECNZ, being assets or liabilities (or both) referred to in the direction, be transferred to any one or more of the Crown and any State enterprise or State enterprises specified in the direction:

(b) A direction specifying terms and conditions of any transfer directed under paragraph (a) (which may be some or all of the terms and conditions of transfer).

(2) The shareholding Ministers—

(a) May at any time, by written notice to the Board, advise the Board of their intentions or expectations with regard to directions to be given under this section; and

(b) Must advise the Board, by written notice to the Board, of the matters to be referred to in a direction to be given under this section at least 14 days before the direction is given; and

(c) Must consider any comments relating to the direction that the Board makes to them within 10 days of the date on which the Board receives the advice under paragraph (b).

(3) The shareholding Ministers may give a direction under this section despite anything to the contrary in sections 4 to 7 of the State-Owned Enterprises Act 1986 or in the Companies Act 1993 or any other Act or rule of law.

(4) The Board must comply with a direction given to it under this section despite anything to the contrary in the State-Owned Enterprises Act 1986, the Companies Act 1993, or any other Act or rule of law.

(5) Neither the Crown nor any shareholding Minister is in breach of, or liable to any person under, sections 4 to 7 of the State-Owned Enterprises Act 1986, the Companies Act 1993, or any other Act or rule of law by reason of the giving of a direction under subsection (1) or advice under subsection (2).

(6) No director of ECNZ is in breach of, or liable to any person under, the State-Owned Enterprises Act 1986, the Companies Act 1993, or any other Act or rule of law by reason of any act or omission reasonably believed by the director to be necessary or desirable—

(a) To give effect to, or as a consequence of, a direction given under subsection (1); or

(b) As a result of any advice given under subsection (2).

(7) The Minister for State Owned Enterprises must—

(a) Present a copy of the direction to the House of Representatives within 12 sitting days after a direction is given to the Board under this section; and

(b) Publish a copy of it in the *Gazette* as soon as practicable after the giving of the direction.

99. Principal objective of ECNZ—(1) Sections 4 and 5 (1) of the State-Owned Enterprises Act 1986 do not apply to ECNZ from the date on which this subsection comes into force.

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

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

(a) One or more directions have been given under section 98; and

(b) The shareholding Ministers consider that the principal objective specified in section 4 of the State-Owned Enterprises Act 1986 is not likely to be appropriate

for ECNZ following the implementation of those directions.

100. Enactments amended—The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

101. Amendment to Electricity Act 1992—The Electricity Act 1992 is amended by inserting, after section 4, the following section:

"4A. **Order in Council declaring electricity supply business to be electricity operator**—(1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister and published 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.

"(2) The Minister may make a recommendation under subsection (1) only if he or she is satisfied that the interests of the electricity supply business in respect of which the recommendation is made are confined to any or all of the activities set out in section 4 (2) of the Electricity Industry Reform Act 1998.

"(3) Where the Minister is satisfied that an electricity supply business that has been declared to be an electricity operator has ceased to carry on activities within the meaning of section 4 (2) of the Electricity Industry Reform Act 1998, the Minister must, as soon as reasonably practicable, make a recommendation under subsection (4).

"(4) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister and published in the *Gazette*, revoke a declaration made under subsection (1).

"(5) For the purposes of this section, an 'electricity supply business' has the meaning set out in section 5 (1) (a) (iii) of the Electricity Industry Reform Act 1998."

SCHEDULES

SCHEDULE 1

Section 25

ARMS LENGTH RULES

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

(a) Persons carrying on an electricity business or businesses, and any common parent of those businesses, have not complied with the ownership separation rules:

(b) A settling trust and a mirror trust are involved in electricity businesses,—

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

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

(a) Do not include elements that parties in their respective positions would usually omit; or

(b) Do not omit elements that parties in their respective positions would usually include,—

if the parties were—

(c) Connected or related only by the transaction or dealing in question; and

(d) Acting independently; and

(e) Each acting in its own best interests.

2. Arms length rules—The arms length rules are as follows:

Duty to Ensure Arms Length Objective Is Met

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

Arms Length Terms

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

Duty Not to Prefer Interests of Business B

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

Duty Not to Discriminate in Favour of Business B

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

Duty to Focus on Interests of Right Ultimate Owners

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

SCHEDULE 1—*continued*

ARMS LENGTH RULES—*continued*

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

Duty of Managers of Parents of Business A

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

Requirement for Separate Management

7. A manager of business A must not be a manager of business B.

8. A manager of business A must not be an associate of business B, other than by virtue of being a manager of business A.

9. A manager of business A must not be involved in the business of business B.

10. (1) Subject to subclause (2), no person may place the manager of business A under an obligation, whether enforceable or not, to act in accordance with the directions, instructions, or wishes of business B, or any manager or associate of business B, or any parent of business B, and no manager may submit to any such obligation.

(2) A common parent of both business A and business B may place a manager under such an obligation if doing so does not contravene another of the arms length rules.

Restriction on Use of Information

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

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

"Restricted information" is information received or generated, and held, by business A or trust A connected with its business, being information which—

(a) Is not available to the competitors or potential competitors of business B or trust B; and

(b) If disclosed to business B or trust B, would put, or be likely to put, business B or trust B in a position of material advantage in relation to any competitor or potential competitor.

Records

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

SCHEDULE 1—*continued*

ARMS LENGTH RULES—*continued*

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

Practical Considerations

14. Business A and every parent of business A must ensure that its practical arrangements, such as use of accommodation, equipment, and services, do not contravene this schedule.

15. Business A and every parent of business A must ensure that its selection and appointment of advisors does not prejudice compliance with rules 7 to 11.

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

4. Interpretation—(1) In this schedule,—

(a) "Parent", in relation to a business, means every person that is involved in the business:

(b) "Common parent", in relation to business A and business B, means a person that is involved in both business A and business B.

(2) In this schedule, a person is "interested" in a transaction if the person, or an associate of that person,—

(a) Is a party to, or will derive a material financial benefit from the transaction; or

(b) Has a material financial interest in a party to the transaction; or

(c) Is a manager of a party to, or a person who will or may derive a material financial benefit from the transaction; or

(d) Is otherwise directly or indirectly materially interested in the transaction.

(3) References in this schedule to business A or trust A apply equally to business B or trust B and vice versa.

5. Terms refer only to related companies—The terms "business A" and "business B" refer to electricity lines businesses and electricity supply businesses—

(a) Which are carried on by electricity companies in which a mirror trust and its settling trust are involved; or

(b) Which are carried on by electricity companies which have a common parent.

6. These duties are additional to other duties—The requirements of this schedule are additional to the requirements of the Electricity (Information Disclosure) Regulations 1994 and any other regulations from time to time made under the Electricity Act 1992.

Section 100

SCHEDULE 2

AMENDMENTS CONSEQUENTIAL UPON SPLIT OF ECNZ

Enactment	Amendment
1959, No. 90—The Maori Purposes Act 1959 (R.S. Vol. 36, p. 441)	By repealing paragraph (l) of section 4 (7), and substituting the following paragraph: "(l) Any officer, employee, or agent of a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 that is a generator of electricity."
1963, No. 23—The Manapouri - Te Anau Development Act 1963 (R.S. Vol. 16, p. 389)	By inserting in section 2, in its appropriate alphabetical order, the following definition: " 'Corporation' means a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 that is for the time being the owner of the assets known as Manapouri Power Station." By omitting from sections 4 (1), 4 (3), 4A (1), and 5 the words "Electricity Corporation of New Zealand Limited", and substituting in each case the word "corporation".
1987, No. 65—The Conservation Act 1987 (R.S. Vol. 36, p. 1)	By omitting from section 24 (1) (c) the words "(not being a canal under the control of the Electricity Corporation of New Zealand Limited used by the Corporation for, or as part of any scheme for, the generation of electricity)", and substituting the words "(not being a canal under the control of a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 and used by the State enterprise for, or as part of any scheme for, the generation of electricity)". By omitting from section 24B (4) (a) the words "the Electricity Corporation of New Zealand Limited", and substituting the words "a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 that is a generator of electricity". By omitting from section 24B (5) the word "Corporation", and substituting the words "State enterprise".

SCHEDULE 2—*continued*

AMENDMENTS CONSEQUENTIAL UPON SPLIT OF ECNZ—*continued*

Enactment	Amendment
1987, No. 65—The Conservation Act 1987 (R.S. Vol. 36, p. 1)—*continued*	By omitting from section 24B (6) (a) the words "used by the Electricity Corporation of New Zealand Limited for or in connection with the generation, transmission, or supply of electricity", and substituting the words "used by a State enterprise within the meaning of the State-Owned Enterprises Act 1986 for or in connection with the generation, transmission, or supply of electricity".
1991, No. 22—The Employment Contracts Act 1991	By omitting from the Third Schedule, Part A, paragraph 3 the words "the Electricity Corporation of New Zealand Limited", and substituting the words "a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 that has electricity generation within the definition of the nature and scope of its business in its Statement of Corporate Intent".
1992, No. 122—The Electricity Act 1992	By repealing the definition of the term "Corporation" in section 2 (1), and substituting the following definition: " 'Corporation' means a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 that is a generator of electricity and includes any subsidiary of any such State enterprise:". By repealing the definition of the term "electricity operator" in section 2 (1), and substituting the following definition: " 'Electricity operator' means— "(a) Any body or person that, immediately before 1 April 1993, was the holder of a licence issued under section 20 of the Electricity Act 1968 and in force immediately before that date; and

SCHEDULE 2—*continued*

AMENDMENTS CONSEQUENTIAL UPON SPLIT OF ECNZ—*continued*

Enactment	Amendment
1992, No. 122—The Electricity Act 1992—*continued*	"(b) Any person declared by the Governor-General by Order in Council under section 4 or section 4A of this Act to be an electricity operator for the purposes of this Act or any provision or provisions of this Act:". By repealing section 176.

This Act is administered in the Ministry of Commerce.