



Electricity Industry Reform Amendment Act 2001

Public Act 2001 No 42
Date of assent 7 August 2001
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Electricity Industry Reform Amendment Act 2001.
- (2) In this Act, the Electricity Industry Reform Act 1998 is called “the principal Act”.

2 Commencement

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

3 Interpretation

- (1) Section 3(1) of the principal Act is amended by repealing the definition of the term **agency**.
- (2) Section 3(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
 - “**customer co-operative** has the meaning set out in section 42
 - “**distributed generation** means a generator or generators that are connected to a local distribution network, or to an end-user load that is connected to a local distribution network, and not directly connected to the national grid
 - “**line** includes a wire or cable
 - “**nameplate** means the value derived by taking the full load output in volt amperes, as stated on the name (rating) plate of the generator (determined in accordance with *International Electro-Technical Commission Standard 60034 Part 1* or successors or any recognised equivalent), assuming a power factor of 1, and expressing the result in megawatts”.
- (3) Section 3(1) of the principal Act is amended by adding to paragraph (b) of the definition of the term **exempt person** the words “or section 46A (exemption for new distributed generation from new renewable energy source)”.
- (4) Section 3(1) of the principal Act is amended by omitting the definition of the term **settling trust**, and substituting the following definition:
 - “**settling trust** means an electricity trust that establishes a new mirror trust under the mirror trust option in sections 37 to 45”.
- (5) Section 3 of the principal Act is amended by adding the following subsection:
 - “(3) In relation to sections 4(2), 5(2), and 19,—
 - “(a) limitations, exclusions, or exemptions under those sections may be applied cumulatively; and
 - “(b) references to an activity being carried out only or solely for a particular purpose or in a particular way, or to a person having an involvement or interest only or solely

for a particular reason, must not be read as excluding reliance on any other limitation, exclusion, or exemption in any of those sections.”

4 Meaning of electricity supply business

(1) Section 5(2) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraphs:

“(e) generating electricity from distributed generation, and selling the electricity generated, where—

“(i) the generating capacity of the distributed generation is no more, at any one time, than the greater of 5 MW (determined according to nameplate or nameplates) and 2% of the maximum demand, in the immediately preceding financial year, of the system to which the distributed generation is connected; and

“(ii) the distributed generation is owned or operated by a business that also conveys electricity by line and that distributed generation is connected to those lines:

“(f) selling financial transmission rights that hedge risks arising from the effects of losses and constraints on the national grid:

“(g) owning or operating, directly or indirectly, a generator referred to in any of paragraphs (b) to (f) or subsection (3) or any other core generation assets used in connection with those generators.”

(2) Section 5 of the principal Act is amended by adding the following subsection:

“(4) For the purposes of subsection (2),—

“**financial transmission right** means a financial instrument issued by the real time co-ordinator of electricity supply and demand in New Zealand that—

“(a) is funded exclusively by the difference between purchaser payments and generator receipts on the sale and purchase of electricity in the wholesale market that arises from the effect of losses and constraints on the national grid; and

“(b) entitles the holder to receive, or requires the holder to make, payments in accordance with a formula based on

prices for quantities of electricity at 1 or more points on the national grid

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

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

“**system** means all of the works over which a business conveys or intends to convey electricity.”

5 **Repeal of section 13**

The principal Act is amended by repealing section 13 (meaning of agency).

6 **Certain businesses and involvements to be disregarded**

Section 19(1) of the principal Act is amended by inserting, after paragraph (g), the following paragraph:

“(ga) that person is involved because the person has an interest in a business that generates electricity from a geothermal energy source if—

“(i) the geothermal plant was commissioned between 1 January 1998 and the date on which this paragraph comes into force, and is currently owned by the person that commissioned it; and

“(ii) the output from the geothermal plant is less than 12 MW (determined according to nameplate or nameplates); or”.

7 **Corporate separation**

Section 24 of the principal Act is amended by inserting, after the words “(mirror trusts)”, the words “or section 46A (exemption for new distributed generation from new renewable energy source)”.

8 **Arms length rules**

Section 25(1) of the principal Act is amended by inserting, after the words “(mirror trusts)”, the words “or section 46A (new distributed generation from new renewable energy source)”.

9 Purpose of sections

- (1) Section 27 of the principal Act is amended by omitting the expression “sections 28 to 45”, and substituting the expression “sections 28 to 46B”.
- (2) Section 27 of the principal Act is amended by adding the following paragraph:

“(j) a permanent exemption for new distributed generation from a new renewable energy source and public notification requirements for electricity lines businesses that acquire or increase an ability to carry out distributed generation (sections 46A and 46B).”

10 New section 37 substituted

The principal Act is amended by repealing section 37, and substituting the following section:

37 Mirror trust option

- “(1) The mirror trust option means that an electricity trust involved in business A (**settling trust**) may establish a new trust (**mirror trust**) to acquire and hold, or to acquire and hold through a company in which the mirror trust is or will be involved, interests in business B.
- “(2) The mirror trust option is an exemption, under section 43, from the non-specific interests rule in section 20, and therefore from the ownership separation rules.
- “(3) Those exemptions are subject to the conditions in sections 38 to 41.”

11 Qualifying conditions on mirror trust option

Section 38 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

- “(1) A settling trust may use the mirror trust option if the settling trust is a customer trust or community trust or both a customer and community trust.
- “(2) If 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 sections 24 and 25 (corporate separation and arms length rules) and sections 40 and 41.”

12 Repeal of section 39

The principal Act is amended by repealing section 39 (transfer of business to mirror trust).

13 Terms of trust deeds for mirror trusts

Section 41(1) of the principal Act is amended by omitting the expression “23 June 1998”, and substituting the words “the date on which the mirror trust is established”.

14 New section 42 substituted

The principal Act is amended by repealing section 42, and substituting the following section:

“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 customer co-operatives and shareholders of customer co-operatives.

“(2) In this Act, **customer co-operative** means an electricity company that is a co-operative company and has the characteristics described in section 38(3).

“(3) The provisions relating to mirror trusts, and section 38(3), apply as if references to trusts were to co-operatives, references to beneficiaries were to shareholders, references to settling trusts were to settling co-operatives, references to mirror trusts were to mirror co-operatives, and all other necessary modifications were made.”

15 Repeal of section 44

The principal Act is amended by repealing section 44 (exemption of mirror trusts from rule limiting expansion of control by trust-like agencies).

16 New section 45 substituted

The principal Act is amended by repealing section 45, and substituting the following section:

“45 Trusts that cease to be mirror trusts

Section 43 applies to a mirror trust and its settling trust only if and as long as sections 24 and 25 and sections 38 to 41 are complied with.”

17 Repeal of section 46 and new sections 46A and 46B inserted

- (1) The principal Act is amended by repealing the heading preceding section 46 and section 46 (no expansion of control by trust-like agencies in electricity supply).
- (2) The principal Act is amended by inserting, before the Part 3 heading, the following heading and sections:

“Exemption and rules for distributed generation

“46A Exemption for new distributed generation from new renewable energy source

- “(1) The following activities do not cause any person to breach the ownership separation rules:

“(a) generating electricity from new distributed generation using only—

“(i) a new renewable energy source; or

“(ii) a new renewable energy source and fossil fuels if fossil fuels provide no more than 20% of the total fuel energy input for the generator or generators comprising the generation plant in any 12-month period or any larger amount approved by the Minister under subsection (3):

“(b) selling electricity referred to in paragraph (a):

“(c) owning or operating, directly or indirectly, new distributed generation, or any other core generation assets used in connection with new distributed generation, that is capable of generating electricity referred to in paragraph (a).

- “(2) Subsection (1) applies only if and as long as sections 24 and 25 are complied with (corporate separation and arms length rules).

- “(3) The Minister may increase the thresholds in subsection (1)(a)(ii) or in paragraph (b) of the definition of **new renewable energy source** to approve a particular activity for the purposes of subsection (1) (on the conditions, if any, he or she thinks fit) after first taking into account whether or not the generation uses new or advanced technology.

- “(4) In this section,—

“**new distributed generation** means distributed generation that is not existing on the date on which this section comes into force

“new renewable energy source—

“(a) means an energy source that occurs naturally and the use of which will not permanently deplete New Zealand’s energy sources of that kind, because those sources are generally expected to be replenished by natural processes within 50 years or less of being used; but

“(b) does not include hydro or geothermal energy sources at a generator or generators comprising a generation plant that has an aggregate generating capacity (determined according to nameplate or nameplates) of more than 5 MW, unless approved by the Minister under subsection (3).

“(5) This section does not limit section 5(2)(e) (exclusion from definition of electricity supply business).

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

“(1) The purpose of this section is to require an electricity lines business that proposes to acquire or increase distributed generation, in reliance on section 5(2)(e) (exclusion from definition of electricity supply business) or on section 46A, to give public notice of its proposal.

“(2) A person who is carrying on an electricity lines business must not, without first publicly notifying the proposal to do so in accordance with subsection (3), acquire or increase (directly or indirectly through any other person) an ability to generate electricity from distributed generation or an interest in a person that has that ability.

“(3) The person must publish the following matters in each major daily newspaper in Auckland, Hamilton, Wellington, Christchurch, and Dunedin at least 30 days before the person enters into the first contract to acquire or increase that ability or interest:

“(a) the type of generation proposed (for example, windfarm, co-generation, or other) and the alternative types of generation and alternative methods for reducing demand for electricity considered by the person (if any); and

- “(b) the date on which the person will acquire or increase an ability to generate electricity or that interest; and
 - “(c) the estimated increase in direct or indirect generating capacity of the person, determined according to name-plate, as a result of the acquisition or increase; and
 - “(d) the estimated cost of acquiring or increasing the ability to carry out the generation or that part of the cost of acquiring or increasing the interest that is attributable to that ability; and
 - “(e) the relative efficiency of the proposed generation and each alternative referred to in paragraph (a) considered by the person (if any); and
 - “(f) the address of the person, a statement to the effect that any person may make a submission on the proposal by sending a written submission to that address, and a closing date for submissions.
- “(4) The person must also provide a copy of the public notification to the Commerce Commission as soon as practicable after publishing it.
- “(5) This section does not apply to the acquisition by a person of an interest in another person that carries on an electricity lines business.”

18 New section 56A inserted

The principal Act is amended by inserting, after section 56, the following section:

- “56A **Limits on defences and penalties for failure to publicly notify acquisition or increase of distributed generation**
Sections 48, 52(b) and (c), 53, 54, 55, and 56 do not apply in relation to a contravention of section 46B (electricity lines business to publicly notify acquisition or increase of distributed generation).”

19 Mirror co-operatives

- (1) Section 61 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) This section applies if a customer co-operative establishes a mirror company (**mirror co-operative**) and, for the purpose of using the mirror trust option in section 37, transfers assets and liabilities that would (alone or together with other assets

and liabilities) comprise all or part of an electricity lines business or electricity supply business for a consideration less than their market value.”

- (2) Section 67(2)(b) of the principal Act is amended by omitting the expression “61(1)(a)”, and substituting the expression “61(1)”.

20 Mirror trusts

Section 62 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) This section applies if—

- “(a) 1 or more electricity trusts owns or own all of the voting interests and market value interests (if any) in an electricity company (**existing company**) carrying on either an electricity lines business or 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 (**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) for the purpose of the trust using the mirror trust option in section 37, the existing company transfers assets and liabilities that would (alone or together with other assets and liabilities) comprise all or part of an electricity lines business or an electricity supply business to the mirror trust company for a consideration less than their market value.”

21 Shareholders of lines co-operatives

Section 73 of the principal Act is amended by omitting the words “Electricity Ashburton Limited and Otago Power Limited”, and substituting the words “customer co-operatives”.

22 Exemptions

Section 81 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsection:

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

Legislative history

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

This Act is administered in the Ministry of Economic Development.
