

**Reprint**  
**as at 1 November 2010**

**Electricity Amendment Act 2004**

Public Act 2004 No 80  
Date of assent 17 October 2004

Electricity Amendment Act 2004: repealed, on 1 November 2010, by section 166 of the Electricity Industry Act 2010 (2010 No 116).

**Contents**

	Page
1 Title	4
2 Commencement	4
3 Purposes	4
4 Interpretation	4
5 New heading and section 158G inserted	5
<i>Complaints resolution system</i>	
158G Complaints resolution system	5
6 New section 172A substituted	6
172A Outline of subpart	6
7 Low fixed charge tariff option for domestic consumers	6
8 New heading and section 172CA inserted	7
<i>Regulations—Reserve energy</i>	
172CA Reserve energy	7

---

**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

**This Act is administered by the Ministry of Economic Development.**

9	New sections 172D to 172F substituted	8
	172D Electricity governance regulations	8
	172E Conditions and process for recommendations on electricity governance regulations	13
	172F Assessment of proposed electricity governance regulations	15
10	Amendments consequential on merger of sections 172D to 172G by section 9	16
11	Supplementary empowering provision for regulations and rules	16
12	New sections 172KA to 172KQ and headings inserted	16
	<i>Provisions that apply if electricity governance regulations or rules are in force</i>	
	172KA Transmission agreements	16
	172KB Party must co-operate with investigations	17
	172KC Privileges protected	18
	172KD Limits on investigation powers	18
	172KE Rulings Panel may make certain orders	19
	172KF Restriction of remedies	20
	172KG Limit on tort claims against service providers	20
	<i>Appeals</i>	
	172KH Appeals on ground of lack of jurisdiction	21
	172KI Judicial review not precluded	21
	172KJ Appeals on question of law in relation to decisions by Commission or Rulings Panel	21
	172KK Right of appeal against suspension or termination orders	21
	172KL Persons entitled to appeal	22
	172KM Determination of appeals	22
	172KN High Court may refer appeals back to Commission or Rulings Panel for reconsideration	22
	172KO Provisions pending determination of appeal	23
	172KP High Court may order proceedings be heard in private	23
	172KQ Appeal to Court of Appeal in certain cases	23
13	Purpose	24
14	New section 172M substituted	24
	172M Continuation of Commission	24
15	New section 172N substituted	25
	172N Principal objectives and specific outcomes	25
16	New section 172O substituted	25

	172O Functions of Commission	25
17	Section 172W repealed	26
18	New section 172X substituted	27
	172X Objectives of recommendations	27
19	Section 172Y repealed	27
20	New section 172Z substituted	27
	172Z Minister must have regard to recommendations	27
21	Sections 172ZA and 172ZB repealed	28
22	Levy of industry participants	28
23	New section 172ZCA inserted	29
	172ZCA Commission must consult about request for appropriation	29
24	Amendments to Ombudsmen Act 1975 and Public Finance Act 1989	29
25	New subparts 2 and 3 substituted	30
	Subpart 2—Accountability of Electricity Commission	
	172ZJ Interpretation	30
	172ZK Setting of GPS objectives and outcomes	30
	172ZL Agreement of annual performance standards	31
	172ZM Annual performance report to Minister	31
	172ZN Minister must present annual performance report to House of Representatives	32
	172ZO Assurance audit by Auditor-General	32
	172ZP Report by Parliamentary Commissioner for Environment	32
	172ZQ Functions under this subpart	33
	Subpart 3—Miscellaneous provisions	
	172ZR Specific authorisation for purposes of restrictive trade practices rules	33
26	Schedule 2A amended	34
	<b>Transitional provision relating to reserve energy</b>	
27	Minister may direct Commission to enter contract relating to Whirinaki power station	34
28	Provisions relating to direction	34
29	Provisions relating to availability of contract	34
	<b>Miscellaneous</b>	
30	Electricity Amendment Act 2001 amended	35

---

**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Electricity Amendment Act 2004.
- (2) In this Act, the Electricity Act 1992 is called “the principal Act”.

**2 Commencement**

- (1) Section 30 (which relates to Transpower’s transitional pricing methodology) is deemed to have come into force on 26 January 2004.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

**3 Purposes**

The principal purposes of this Part are—

- (a) to improve security of supply of electricity;
- (b) to provide benefits for consumers of electricity;
- (c) to rationalise and extend the electricity governance regulation-making and rule-making powers to reflect the establishment of the Electricity Commission and the conditions in the industry requiring regulation;
- (d) to give new functions to the Electricity Commission;
- (e) to otherwise facilitate a regulated electricity industry.

**4 Interpretation**

- (1) Section 2(1) of the principal Act is amended by repealing the definitions of **EGB**, **EGB’s board** or **board**, **electricity governance organisation**, **electricity governance regulations**, and **industry participant**.
- (2) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:  
“**Commission** means the Electricity Commission continued under subpart 1 of Part 15  
“**Commission’s board** or **board**, for the purposes of Part 15 and Schedule 2A, has the meaning set out in section 172Q  
“**electricity governance regulations** means regulations made under section 172D

“**industry participant** means—

- “(a) an electricity retailer:
- “(b) an electricity distributor:
- “(c) an electricity generator:
- “(d) a line owner:
- “(e) a person who uses electricity that is conveyed to the person directly from the national grid:
- “(f) a person who buys electricity on the wholesale market:
- “(g) a service provider appointed under any electricity governance regulations:
- “(h) an electricity metering equipment owner:
- “(i) a data administrator that provides data administration services to the electricity industry,—

but does not include the Commission (even to the extent that the Commission may be acting as a service provider after an appointment under electricity governance regulations)

“**lines** means works that are used or intended to be used for the conveyance of electricity

“**publicise**, in relation to a document, means—

- “(a) to make the document available to the public, at no cost, on a website maintained by or on behalf of the Commission, at all reasonable times; and
- “(b) to give notice of the document in the *Gazette*

“**reserve energy** means energy that is secured by contract (including by contracting for demand-side savings) by, or on behalf of, the Commission for the purpose of ensuring security of supply

“**Rulings Panel** means the Rulings Panel established under electricity governance regulations”

## 5 New heading and section 158G inserted

The principal Act is amended by inserting, after section 158F, the following heading and section:

*“Complaints resolution system*

### “158G Complaints resolution system

- “(1) Every electricity distributor and every electricity retailer must participate in a complaints resolution system that is approved by the Commission for the purpose of addressing complaints by any person (including potential consumers and owners and

occupiers of land) relating to electricity retailers and electricity distributors.

“(2) This section applies provided the Commission has approved 1 or more complaints resolution system by notice in the *Gazette*.”

## 6 New section 172A substituted

The principal Act is amended by repealing section 172A, and substituting the following section:

### “172A Outline of subpart

“(1) In this subpart, the principal regulation-making powers are as follows:

Type of regulations

How they can be made

1 Regulations on a low fixed charge tariff option or options for domestic consumers under section 172B

Can be made at any time, wh

2 Regulations on a code on access for beneficiaries of customer and community trusts under section 172C

3 First regulations on reserve energy under section 172CA

4 First regulations on distributed generation under section 172D(1)(10)

All other regulations, for example, on wholesale, generation, transmission, and retail issues

Can be made only for transit  
Commission.

“(2) This section is intended only as a guide to the general scheme and effect of the principal regulation-making powers in this Part.”

## 7 Low fixed charge tariff option for domestic consumers

(1) Section 172B(2) of the principal Act is amended by adding the following definition:

“**Low-use consumer** means a domestic consumer who purchases less than 8000 kWh per year in respect of any domestic premises”.

(2) Section 172B(3)(a) is amended by omitting the words “or proportion calculated by reference to the total charge of the average or median domestic consumer”.

- (3) Section 172B(3) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
- “(b) regulating the variable (cents per kilowatt hour) charges in those required low fixed charge tariff options to ensure that low-use consumers would pay a lower total charge on that tariff option than on any similar alternative tariff option available from that electricity provider.”
- (4) Section 172B of the principal Act is amended by inserting, after subsection (3), the following subsections:
- “(3A) No electricity provider that is a customer trust or a community trust may pay a low-use consumer who is on the required low fixed charge tariff option a different rebate only because the consumer is on that tariff option.
- “(3B) Each trustee of an electricity provider that contravenes subsection (3A) commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000.”
- (5) Section 172B is amended by repealing subsection (6).
- (6) Section 172B(7) of the principal Act is amended by adding the following paragraph:
- “(d) regulating the charging, offering, supply, and availability of delivered electricity by other electricity providers.”
- (7) Section 172B(8) is amended by repealing paragraph (b).

## **8 New heading and section 172CA inserted**

The principal Act is amended by inserting, after section 172C, the following heading and section:

### *“Regulations—Reserve energy*

#### **“172CA Reserve energy**

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations in respect of the securing and use of reserve energy, including—
- “(a) types of reserve energy to be secured and procedures to be followed in securing reserve energy; and
- “(b) conditions of securing and using reserve energy; and
- “(c) circumstances in which, and terms (including volume and price) on which, reserve energy must or may be offered on the wholesale market.

- “(2) The Minister may make a recommendation under this section in relation to the first Order in Council made under this section without the Commission having made a recommendation on the matter.
- “(3) Section 172E otherwise applies to each Order in Council made under this section as if regulations under this section were electricity governance regulations and with all necessary modifications.”

**9 New sections 172D to 172F substituted**

The principal Act is amended by repealing sections 172D to 172G, and substituting the following sections:

**“172D Electricity governance regulations**

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

*“Wholesale market*

- “(1) providing for the establishment and operation of competitive wholesale markets for electricity, including for—
- “(a) discovery of prices and determining quantities of electricity for market transactions:
- “(b) clearing, settling, and reconciling market transactions:
- “(c) scheduling and dispatching electricity:
- “(d) disclosure of market information:
- “(e) disclosure of information on hedge and contract volumes and prices:
- “(f) the promotion of hedge (including futures) markets:
- “(g) minimum prudential standards for market participation:
- “(h) minimum standards of market conduct:

*“Generation*

- “(2) providing for generation of electricity and management of supply and price risks in a competitive market, including for—



- “(a) electricity generators to hold or provide for reserve fuels (including water):
- “(b) electricity generators to offer by tender a minimum volume of contracts that enable the price risks associated with the spot market to be managed, including for the terms and conditions of those contracts (excluding prices and reserve prices):
- “(c) electricity generators to post buy and sell prices for hedge (including futures) contracts:
- “(d) disclosure of information on hydro lake levels and inflows, thermal fuel stockpiles, supply contracts for thermal fuels (excluding price), capacity to generate, and proposed outages:
- “(e) disclosure of offers into the spot market by electricity generators:
- “(f) disclosure of information on spill from hydro dams:

“*Transmission*

- “(3) setting standards and making provision for common quality and minimum real-time security on the national grid, and requiring industry participants to comply with those standards:
- “(4) setting quality and security standards for the transmission system or parts of the transmission system, or for the use of that system or part, and requiring industry participants to comply with those standards:
- “(5) prescribing reasonable terms and conditions on which Transpower must enable distribution lines, and electricity generators and users of electricity, to be connected to the national grid, and that must be complied with in connecting to the national grid:
- “(6) regulating the way in which expansions, replacements, or upgrades of the national grid or parts of the national grid must be evaluated, carried out, and funded, including specifying—
  - “(a) the circumstances in which Transpower must generally carry out expansions, replacements, or upgrades:

- “(b) particular expansions, replacements, or upgrades that Transpower must carry out:
  - “(c) the methodology on which costs for expansions, replacements, or upgrades must be allocated among industry participants, or the actual allocation of those costs, and providing for their payment by industry participants:
  - “(d) obligations for Transpower to report in relation to forecasts of medium-term system adequacy to assist in identifying opportunities for the use of alternatives to expansions, replacements, or upgrades:
- “(7) requiring the use by Transpower of a specified methodology or component of a methodology for allocating Transpower’s revenue requirement to individual electricity generators, electricity retailers, electricity distributors, line owners, customers, or consumers, or classes of any of those persons, including—
- “(a) defining the charges for any of those persons or classes of any of those persons:
  - “(b) imposing quality standards generally or in respect of the supply of transmission services to any of those persons or classes of any of those persons:
  - “(c) requiring a specified person or class of persons receiving (either directly or indirectly) goods or services from Transpower to pay a specified amount or proportion of the total price, or the total price, for those goods or services:
  - “(d) authorising a way or ways in which Trans-power may apply the methodology:
- “(8) providing for financial instruments for managing risks relating to transmission losses and constraints:
- “*Distribution and retailing*
- “(9) providing for a price methodology or methodologies for recovery of the revenue requirements of electricity distributors:

- “(10) providing for terms and conditions on which line owners and electricity distributors must enable electricity generators to be connected to distribution lines:
- “(11) providing for requirements on buyers of electricity on the wholesale market to do either or both of the following:
  - “(a) maintain minimum levels of hedge and contract cover with electricity generators:
  - “(b) maintain minimum levels of demand-side management programmes and interruptible load:
- “(12) providing for establishing and operating markets for exchange of demand-side savings:
- “(13) providing for the use of ripple control of hot water heating for security of supply or load management purposes:
- “(14) providing for the management and co-ordination of outages for security of supply purposes:
- “(15) providing for terms and conditions for the use of lines and related services by electricity retailers:
- “(16) providing for the reconciliation of, and payment for, losses of electricity from distribution lines:
- “(17) providing for the disclosure of information by electricity retailers and electricity distributors on tariffs and other charges:
- “(18) providing for arrangements to enable consumers to switch electricity retailers:
- “(19) providing for arrangements for consumers in the event of insolvency of electricity retailers:
- “(20) providing for terms and conditions for access to electricity meters by electricity retailers:
- “(21) providing for the introduction of time-of-use meters:
- “(22) providing for terms and conditions on which electricity retailers must offer prepayment meters to domestic consumers:
- “(23) providing for terms and conditions (including metering arrangements) for purchase by electricity retailers of surplus electricity generated by generating units that are owned or operated by a consumer and that have an electricity generating capacity of less than 40,000 kWh in any financial year, subject to the electricity retailer not

incurring ongoing financial losses as a result of those terms and conditions:

- “(24) providing for the provision of information on customer accounts:
- “(25) providing for minimum terms and conditions in contracts between domestic consumers and electricity retailers or electricity distributors:
- “(26) providing for the use of bonds by electricity retailers and electricity distributors:
- “(27) providing for the establishment of, and participation by electricity distributors and electricity retailers in, a complaints resolution system (which may include codes of practice) for the purpose of addressing complaints by any person (including potential consumers and owners and occupiers of land) relating to electricity retailers and electricity distributors, and setting out minimum requirements in relation to that system, including—
  - “(a) provision for compensation up to a maximum of \$20,000 to be awarded, and other actions to be taken, by the complaints resolution agency in relation to those complaints:
  - “(b) provision for rights of review, or rights of appeal on a question of law only, in relation to decisions relating to those complaints:

*“Dispute resolution procedures*

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

*“Processes*

- “(30) providing for processes for settling particular issues within the electricity industry that may result in recommendations for electricity governance regulations or rules, and requiring compliance by industry participants and the Commission with those processes, including compliance with requirements to produce documents as part of those processes:

*“Enforcement of electricity governance regulations*

- “(31) providing for compliance with electricity governance regulations and rules to be monitored and enforced by the Commission or any other person or court, and the powers and procedures of that person or court.
- “(2) In subsection (1)(2), **electricity generator** means a person who owns or operates assets that, whether taken individually or as a whole, have a rated electricity generating capacity equal to, or greater than, 10 MW.
- “(3) The Commission and the Minister must ensure, before making a recommendation for any regulations under subsection (1)(2), that those regulations do not provide for undue discrimination between electricity generators.
- “(4) In this section, unless the context otherwise requires, **terms and conditions** includes both contractual matters and other types of arrangements and requirements.

**“172E Conditions and process for recommendations on electricity governance regulations**

- “(1) The Minister may recommend electricity governance regulations under section 172D (other than the first regulations made under section 172D(1)(10)) only if the recommendation—
- “(a) implements the effect of a recommendation of the Commission; and
- “(b) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail).
- “(2) The following applies to recommendations by the Commission concerning those regulations:
- “(a) sections 172X to 172Z apply; and
- “(b) before making a recommendation, the Commission must—
- “(i) undertake an assessment under section 172F; and
- “(ii) consult with persons that the Commission thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; and
- “(iii) give those persons the opportunity to make submissions; and

- “(iv) consider those submissions; and
    - “(c) no later than 10 working days after making a recommendation, the Commission must publicise the recommendation and the assessment completed under section 172F; and
    - “(d) section 57MA(1) of the Commerce Act 1986 (which requires the Commission to advise the Commerce Commission of any recommendation that is likely to affect certain of the powers of the Commerce Commission under that Act) applies.
  - “(3) Subsection (2)(b) and section 172F (which relate to consultation and assessments) do not apply if the Commission considers that it is necessary or desirable in the public interest that the proposed regulations be made urgently, and, in this case, the recommendation must state that it is made in reliance on this subsection and then, within 6 months of those regulations being made,—
    - “(a) the Commission must—
      - “(i) comply with subsection (2)(b) and section 172F; and
      - “(ii) make a recommendation to the Minister on whether or not the regulations should be revoked, replaced, or amended; and
      - “(iii) no later than 10 working days after making the recommendation, publicise the recommendation and the assessment completed under section 172F; and
    - “(b) after receiving that recommendation, the Minister must publish a notice in the *Gazette* stating whether or not he or she decides to recommend the revocation, replacement, or amendment of the regulations and explaining the reasons for that decision, or stating where copies of that explanation may be obtained,—  
and then within a further 6 months, the Minister must make that recommendation.
- “(4) A regulation that is found by a court to be invalid solely because of a contravention of subsection (2)(b) or subsection (5) may not be declared to be invalid with effect earlier than 6 months after the date of the declaration.

“(5) The Minister must, before making a recommendation concerning regulations under section 172D(1)(18) to (27), consult with the Minister of Consumer Affairs.

“**172F Assessment of proposed electricity governance regulations**

- “(1) Before making a recommendation to the Minister on an electricity governance regulation, the Commission must—
- “(a) seek to identify all reasonably practicable options for achieving the objective of the regulation; and
  - “(b) assess those options by considering—
    - “(i) the benefits and costs of each option; and
    - “(ii) the extent to which the objective would be promoted or achieved by each option; and
    - “(iii) any other matters that the Commission considers relevant; and
  - “(c) ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance); and
  - “(d) prepare a statement of the proposal for the purpose of consultation under section 172E(2)(b)(ii).
- “(2) The statement of the proposal referred to in subsection (1)(d) must contain—
- “(a) a detailed statement of the proposal; and
  - “(b) a statement of the reasons for the proposal; and
  - “(c) an assessment of the reasonably practicable options, including the proposal, identified under subsection (1); and
  - “(d) other information that the Commission considers relevant.
- “(3) The Commission is not required to comply with subsection (1) if it is satisfied that the effect of the recommendation is minor and will not adversely affect the interests of any person in a substantial way.”

**10 Amendments consequential on merger of sections 172D to 172G by section 9**

- (1) Section 172H(3) of the principal Act is amended by omitting the words “section 172E or section 172G”, and substituting the words “section 172D(3), section 172E, or section 172F”.
- (2) Section 172H of the principal Act is amended by repealing subsection (7), and substituting the following subsection:  
“(7) A rule that is found by a court to be invalid solely because of a contravention of subsection (2) may not be declared to be invalid with effect earlier than 6 months after the date of the declaration.”
- (3) Sections 172J and 172K of the principal Act are amended by omitting the words “sections 172B to 172F” where they appear, and substituting in each case the words “sections 172B to 172D”.

**11 Supplementary empowering provision for regulations and rules**

Section 172J(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

- “(aa) provide for systems, processes, and procedures (including dispute resolution procedures), and the keeping, supply, and disclosure of information, in relation to any of the matters specified in sections 172B to 172D:”.

**12 New sections 172KA to 172KQ and headings inserted**

- (1) The principal Act is amended by inserting, after section 172K, the following heading and sections:

*“Provisions that apply if electricity governance regulations or rules are in force*

**“172KA Transmission agreements**

- “(1) The Commission or the Rulings Panel, or electricity governance regulations or rules, may direct Transpower, and 1 or more industry participants, to enter into 1 or more transmission agreements for connection to, use of, and (where relevant) investment in, the national grid.



- “(2) The terms of those transmission agreements may be set by the Commission or the Rulings Panel or prescribed in those regulations or rules.
- “(3) Those transmission agreements are binding on both parties and are enforceable as if they were contracts between the parties that were freely and voluntarily entered into.
- “(4) If the parties do not comply with the direction, the terms set by the Commission or the Rulings Panel, or prescribed in those regulations or rules, are also binding on both parties and enforceable as if they were such a contract.
- “(5) The terms may be amended or replaced, but only by mutual consent of the parties.
- “(6) The consultation, dispute resolution, and other procedural provisions that apply to mandatory or default transmission agreements are contained in electricity governance regulations or rules.

“**172KB Party must co-operate with investigations**

Every industry participant must co-operate fully with any investigation carried out, for the purposes of monitoring or enforcing any electricity governance regulations or rules, by the Commission, or by an investigator appointed under those regulations,—

- “(a) by providing, within any reasonable time specified by the Commission or the investigator, all information, papers, recordings, and documents concerning the matter that are in the possession, or under the control, of the industry participant and that are requested for the purpose of the investigation; and
- “(b) by permitting its officers or other employees to be interviewed (which interview may be recorded) and by ensuring as far as possible that they are made available for interview and answer truthfully and fully any questions put to them; and
- “(c) by giving to the Commission, or any person authorised by the Commission, at all reasonable times, full access to any premises (subject to complying with any safety requirements that apply to visitors to those premises)

at which the industry participant carries on business or maintains records; and

- “(d) by giving all other assistance that may be reasonable and necessary to enable the matter to be fully investigated.

“Compare: SR 2003/374 r 79

**“172KC Privileges protected**

- “(1) Section 172KB does not limit any claim for legal professional privilege.
- “(2) A person is not excused from answering a question or giving any information or document on the ground that to do so may incriminate or tend to incriminate that person.
- “(3) However, a self-incriminating statement or document made or given—
- “(a) is not admissible as evidence in criminal or civil proceedings against that person; and
- “(b) may not be used against the person in any proceedings before the Rulings Panel, except for information provided under any self-reporting obligation under those regulations.

“Compare: SR 2003/374 r 80

**“172KD Limits on investigation powers**

- “(1) The Commission may authorise, in writing, any person or persons to exercise all or any of the powers referred to in section 172KB(b) or (c) in respect of an industry participant.
- “(2) An authorised person must, before entering premises under section 172KB(c), give reasonable notice to the owner or occupier of the premises (at least 4 days before entry) of his or her intention to enter the premises.
- “(3) An authorised person must, on first entering any premises under section 172KB(c) and, if requested, at any later time, produce to the person apparently in charge of the premises the authorisation under subsection (1).
- “(4) If an authorised person enters any premises under section 172KB(c) and is unable, despite reasonable efforts, to find

any person apparently in charge, the authorised person must, before leaving the premises, leave a written notice stating—

- “(a) the authorised person’s identity; and
- “(b) the address of premises where the authorised person may be contacted; and
- “(c) the date and time of entry; and
- “(d) the reasons for entering.

“(5) Section 172KB(c) does not authorise an authorised person to enter a home, except with the consent of an occupier or under the authority of a warrant.

“(6) An authorised person may apply for a warrant by written application on oath.

“(7) A District Court Judge, Justice, or Community Magistrate, or a Court Registrar (not being a constable) who is satisfied that there are reasonable grounds to believe that it is necessary, for the purpose of ascertaining whether or not an industry participant has breached, or may breach, the electricity governance regulations or rules, for an authorised person to search any place may, by warrant, authorise that person to search a place specified in the warrant.

“Compare: SR 2003/374 r 81

**“172KE Rulings Panel may make certain orders**

“(1) The Rulings Panel may, after considering any complaint or matter referred to it in respect of an allegation that an industry participant has breached any electricity governance regulations or rules,—

- “(a) decide that no action should be taken:
- “(b) issue a private warning or reprimand to an industry participant:
- “(c) issue a public warning or reprimand to an industry participant:
- “(d) impose additional or more stringent record-keeping or reporting requirements under or in connection with any electricity governance regulation or rule:
- “(e) order an industry participant to pay a civil pecuniary penalty not exceeding \$20,000:
- “(f) order an industry participant to pay a sum by way of compensation to any other person:

- “(g) order an industry participant that is found not to be complying with any electricity governance regulations or rules to take any action that is necessary to restore it to a position of compliance:
  - “(h) make an order terminating or suspending the rights of an industry participant under any electricity governance regulation or rule:
  - “(i) make orders regarding the reasonable costs of any investigations or proceedings:
  - “(j) propose to the Commission that it recommend to the Minister that a change should be made to a regulation or rule.
- “(2) In making any such decision, the Rulings Panel must take into account its previous decisions in respect of any similar situations previously dealt with by the Commission or the Rulings Panel.

“Compare: SR 2003/374 r 107

**“172KF Restriction of remedies**

- “(1) The remedies provided for in section 172KE and in the electricity governance regulations and rules are the only remedies in respect of a breach of those regulations or rules.
- “(2) No one can bring an action for breach of statutory duty that arises out of, or relates to, a breach of those regulations or rules by an industry participant.
- “(3) This section does not limit the recovery of—
- “(a) a debt owing under any electricity governance regulations or rules; or
  - “(b) damages in tort other than breach of statutory duty, for breach of contract, or for any other wrong, that arises from any act or omission that is also a breach of those regulations or rules.

“Compare: SR 2003/374 r 6

**“172KG Limit on tort claims against service providers**

- “(1) No industry participant may bring an action in tort against a service provider that arises out of, or relates to, any act, matter, or thing done, or required or omitted to be done, by the service provider in its role as service provider, provided that the act

or omission is not a fraudulent act or omission by the service provider.

- “(2) **Service provider** means a service provider appointed under the electricity governance regulations.

*“Appeals*

“**172KH Appeals on ground of lack of jurisdiction**

An industry participant affected by a decision of the Rulings Panel may appeal that decision to the High Court on the ground of lack of jurisdiction.

“Compare: SR 2003/374 r 184

“**172KI Judicial review not precluded**

Nothing in this Act limits access to the courts in an action for judicial review.

“Compare: SR 2003/374 r 185

“**172KJ Appeals on question of law in relation to decisions by Commission or Rulings Panel**

- “(1) There is a right of appeal to the High Court on a question of law only against a decision of the Commission or the Rulings Panel under any electricity governance regulations or rules.

- “(2) The appeal must be made by giving notice of appeal within 20 working days after the date of the decision appealed against or within any further time that the Court allows.

“Compare: SR 2003/374 r 186

“**172KK Right of appeal against suspension or termination orders**

- “(1) An industry participant in respect of which a suspension order or termination order is made may appeal to the High Court against the order.

- “(2) The appeal must be made by giving notice of appeal within 20 working days after the date of the order appealed against or within any further time that the Court allows.

“Compare: SR 2003/374 r 187

**“172KL Persons entitled to appeal**

The Commission, and the following industry participants, may exercise a right of appeal under this Part:

- “(a) an industry participant in whose favour or against whom a decision or order of the Commission or the Rulings Panel is made:
- “(b) an industry participant who was a party to a dispute that was determined by the Commission or the Rulings Panel:
- “(c) any industry participant who joined as a party to the investigation of the matter that is subject to the appeal.

“Compare: SR 2003/374 r 188

**“172KM Determination of appeals**

In its determination of any appeal (other than an appeal to the High Court by way of case stated for the opinion of the Court on a question of law only), the High Court may do any 1 or more of the following things:

- “(a) confirm, modify, or reverse the decision or any part of it:
- “(b) exercise any of the powers that could have been exercised by the Commission or the Rulings Panel in relation to the matter to which the appeal relates.

“Compare: 1986 No 5 s 93; SR 2003/374 r 189

**“172KN High Court may refer appeals back to Commission or Rulings Panel for reconsideration**

- “(1) The High Court may, in any case, instead of determining any appeal, direct the Commission or the Rulings Panel to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.
- “(2) In giving any direction under this section, the Court must—
  - “(a) advise the Commission or the Rulings Panel, as the case may be, of its reasons for doing so; and
  - “(b) give to the Commission or the Rulings Panel, as the case may be, any directions that it thinks just concerning the reconsideration or otherwise of the whole or any part of the matter that is referred back.

“(3) In reconsidering the matter, the Commission or the Rulings Panel, as the case may be, must have regard to the Court’s reasons for giving the direction, and the Court’s directions.

“Compare: 1986 No 5 s 94; SR 2003/374 r 190

“**172KO Provisions pending determination of appeal**

If an appeal is brought against any decision of the Commission or the Rulings Panel, the decision to which the appeal relates remains in full force pending the determination of the appeal, unless the High Court orders to the contrary.

“Compare: 1986 No 5 s 9.5; SR 2003/374 r 191

“**172KP High Court may order proceedings be heard in private**

“(1) The High Court may, in its discretion, order that the hearing or any part of the hearing of any proceedings under this Part be held in private.

“(2) The High Court may make an order prohibiting the publication of any report or description of proceedings or any part of proceedings (whether heard in public or in private), but no order may prohibit the publication of any determination of the Court.

“Compare: 1986 No 5 s 96; SR 2003/374 r 192

“**172KQ Appeal to Court of Appeal in certain cases**

“(1) Any party to any appeal before the High Court against any decision of the Commission or the Rulings Panel, as the case may be, who is dissatisfied with any decision or order of the High Court may, with the leave of the High Court or of the Court of Appeal, appeal to the Court of Appeal.

“(2) Section 66 of the Judicature Act 1908 applies to the appeal.

“(3) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made must have regard to the following matters:

“(a) whether any question of law or general principle is involved:

“(b) the importance of the issues to the parties:

“(c) the amount of money in issue:

“(d) any other matters that in the particular circumstances the court thinks fit.

“(4) The court granting leave may, in its discretion, impose any conditions that it thinks fit, whether as to costs or otherwise.

“Compare: 1986 No 5 s 97; SR 2003/374 r 193”.

(2) The Electricity Governance Regulations 2003 (SR 2003/374) are consequentially amended by revoking regulations 6, 79, 80, 81, 107, and Part 9.

### **13 Purpose**

(1) Section 172L(a) of the principal Act is amended by omitting the words “enable the establishment of the Electricity Governance Board”, and substituting the words “provide for the Electricity Commission”.

(2) Section 172L(a)(i) of the principal Act is amended by omitting the words “promote its principal objective”, and substituting the words “give effect to its principal objectives and specific outcomes”.

### **14 New section 172M substituted**

(1) The principal Act is amended by repealing section 172M, and substituting the following section:

#### **“172M Continuation of Commission**

“(1) There continues to be an organisation to be called the Electricity Commission.

“(2) The Commission is a Crown entity for the purposes of the Public Finance Act 1989.

“(3) The Commission is the same body as the Electricity Governance Board established under section 172M as in force immediately before its substitution by section 14 of the Electricity Amendment Act 2004.”

(2) The principal Act is amended by omitting every reference to “EGB”, and substituting in each case a reference to “the Commission”.

(3) Section 172I(4) of the principal Act is amended by omitting the words “, if it is established,”.

(4) Sections 3 to 5 of the Electricity Amendment Act 2001 are repealed.



**15 New section 172N substituted**

The principal Act is amended by repealing section 172N, and substituting the following section:

**“172N Principal objectives and specific outcomes**

- “(1) The principal objectives of the Commission in relation to electricity are—
- “(a) to ensure that electricity is produced and delivered to all classes of consumers in an efficient, fair, reliable, and environmentally sustainable manner; and
  - “(b) to promote and facilitate the efficient use of electricity.
- “(2) Consistent with those principal objectives, the Commission must seek to achieve, in relation to electricity, the following specific outcomes:
- “(a) energy and other resources are used efficiently:
  - “(b) risks (including price risks) relating to security of supply are properly and efficiently managed:
  - “(c) barriers to competition in the electricity industry are minimised for the long-term benefit of end-users:
  - “(d) incentives for investment in generation, transmission, lines, energy efficiency, and demand-side management are maintained or enhanced and do not discriminate between public and private investment:
  - “(e) the full costs of producing and transporting each additional unit of electricity are signalled:
  - “(f) delivered electricity costs and prices are subject to sustained downward pressure:
  - “(g) the electricity sector contributes to achieving the Government’s climate change objectives by minimising hydro spill, efficiently managing transmission and distribution losses and constraints, promoting demand-side management and energy efficiency, and removing barriers to investment in new generation technologies, renewables, and distributed generation.”

**16 New section 172O substituted**

The principal Act is amended by repealing section 172O, and substituting the following section:

**“172O Functions of Commission**

- “(1) The functions of the Commission are to—

- “(a) formulate and make recommendations concerning electricity governance regulations and rules in accordance with this Act:
  - “(b) administer, monitor compliance with, investigate, enforce, and apply penalties or other remedies for contraventions of electricity governance regulations and rules:
  - “(c) establish, operate, and facilitate the operation of markets for industry participants or consumers, or both:
  - “(d) use reasonable endeavours to ensure security of supply (including contracting for reserve energy), without assuming any reduction in demand from emergency conservation campaigns, while minimising distortions to the normal operation of the market:
  - “(e) undertake forecasting and modelling of future electricity supply and demand:
  - “(f) promote and facilitate the efficient use and conservation of electricity (including funding programmes that provide incentives for cost-effective energy efficiency and conservation):
  - “(g) manage emergency conservation campaigns to avoid material risk of supply shortages:
  - “(h) approve 1 or more complaints resolution system for the purpose of section 158G:
  - “(i) develop best practice methodologies and other standards and model agreements for use by industry participants:
  - “(j) give effect to GPS objectives and outcomes:
  - “(k) provide advice to the Minister on matters concerning the electricity industry.
- “(2) The Commission’s functions may be carried out by contracting with other parties, entering into a joint venture or contractual arrangement in respect of reserve energy and other things, or other means.”

#### 17 Section 172W repealed

The principal Act is amended by repealing section 172W.

**18 New section 172X substituted**

The principal Act is amended by repealing section 172X, and substituting the following section:

**“172X Objectives of recommendations**

In formulating recommendations for electricity governance regulations and rules, the Commission must give effect to its principal objectives and specific outcomes and its GPS objectives and outcomes.”

**19 Section 172Y repealed**

The principal Act is amended by repealing section 172Y.

**20 New section 172Z substituted**

The principal Act is amended by repealing section 172Z, and substituting the following section:

**“172Z Minister must have regard to recommendations**

- “(1) The Minister must have regard to a recommendation by the Commission in exercising any of his or her functions or powers in relation to electricity governance regulations or rules.
- “(2) Section 172E applies to the Minister’s power to recommend electricity governance regulations.
- “(3) In addition, the Minister may, if he or she considers that the principal objectives and specific outcomes of the Commission will be better given effect to by doing so, within 90 working days of receiving the recommendation, do either or both of the following:
- “(a) decide not to act on that recommendation:
- “(b) refer the Commission’s recommendation back to the Commission for further consideration by the Commission.
- “(4) The Minister must publish a notice in the *Gazette*, within 10 working days of deciding what to do with a Commission recommendation, explaining the reasons for the decision or where copies of that explanation may be obtained.”

**21 Sections 172ZA and 172ZB repealed**

The principal Act is amended by repealing sections 172ZA and 172ZB and the heading above section 172ZA.

**22 Levy of industry participants**

(1) Section 172ZC of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

“(1) Every industry participant (or prescribed class of industry participant) must pay to the Commission on behalf of the Crown a levy prescribed by regulations under section 172ZE.

“(1A) The levy must be prescribed on the basis that the following costs should be met fully out of the levy:

“(a) the estimated costs of performing the Commission’s functions, powers, and duties under this Act and any other Act, including the Commission’s costs in relation to endeavouring to ensure security of supply (which includes any costs incurred by the Commission as a result of any contract entered into under section 27 of the Electricity Amendment Act 2004 in respect of reserve energy); and

“(b) the costs incurred by Transpower to fund the MACQS reform process (including establishment of MACQS, grid security committee costs, and related rule development) together with interest at the rate of 8% per annum calculated and capitalised annually; and

“(c) the costs of collecting the levy money.

“(1B) The levy may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.”

(2) Section 172ZC(2) of the principal Act is amended by omitting the words “under that section”.

(3) Section 172ZC(2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) specify the amount of levies or method of calculating or ascertaining the amount of levies:”.

(4) Section 172ZC of the principal Act is amended by inserting, after subsection (2), the following subsection:

- “(2A) The levy for a financial year that starts after the Commission begins to carry out any additional function under this Act or any other Act may cover the costs of performing that additional function, irrespective of the fact that the regulations may be made and come into effect after that date.”
- (5) Section 172ZC(3) of the principal Act is amended by omitting the words “debt due to the Crown”, and substituting the words “debt due to the Commission on behalf of the Crown”.
- (6) Section 172ZC of the principal Act is amended by repealing subsection (4).
- (7) Section 172ZC is amended by adding the following subsection:
- “(5) The Commission must, as soon as practicable after receiving any levy payment, pay it into the Crown Bank Account and separately account for each payment.”

### **23 New section 172ZCA inserted**

The principal Act is amended by inserting, after section 172ZC, the following section:

#### **“172ZCA Commission must consult about request for appropriation**

- “(1) The Commission must, before submitting a request to the Minister seeking an appropriation of public money for the following year, or any change to an appropriation for the current year, consult with those industry participants who are liable to pay a levy under section 172ZC about that request.
- “(2) The Commission must, at the time when the request is submitted, report to the Minister on the outcome of that consultation.”

### **24 Amendments to Ombudsmen Act 1975 and Public Finance Act 1989**

- (1) The Ombudsmen Act 1975 is amended by omitting from Part 2 of Schedule 1 the item relating to the Electricity Governance Board, and substituting, in its appropriate alphabetical order, the following item:
- “Electricity Commission and every subsidiary of the Electricity Commission.”

- (2) The Public Finance Act 1989 is amended by omitting from Schedules 4, 5, and 6 the item relating to the Electricity Governance Board, and substituting, in each case in its appropriate alphabetical order, the following item:  
“Electricity Commission.”
- (3) The principal Act is amended by repealing sections 172ZG and 172ZH.

**25 New subparts 2 and 3 substituted**

The principal Act is amended by repealing subpart 2 of Part 15, and substituting the following subparts:

“Subpart 2—Accountability of Electricity  
Commission

**“172ZJ Interpretation**

In this subpart, unless the context otherwise requires,—

“**GPS objectives and outcomes** means the objectives and outcomes that apply to the Commission under section 172ZK

“**performance standards** means the performance targets and measures agreed for the Commission under section 172ZL

“**report date** means the close of 30 June in each calendar year

“**reporting period** means—

- “(a) the period beginning on 15 September 2003 and ending on 30 June 2004; and  
“(b) each subsequent 12-month period ending on 30 June.

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

- “(1) The Minister must set objectives and outcomes that the Government wants the Commission to give effect to in relation to the governance of the electricity industry, and against which the Commission must report and be examined in accordance with this subpart.
- “(2) The Minister must set those objectives and outcomes by—  
“(a) giving the Commission a statement of government policy containing those objectives and outcomes; or  
“(b) giving the Commission an amendment to, or replacement of, that statement.

- “(3) Each statement (or amendment to, or replacement of, a statement) under subsection (2) must be published in the *Gazette* and presented to the House of Representatives by the Minister as soon as practicable after it is given to the Commission.
- “(4) GPS objectives and outcomes must be consistent with the purpose of this Part and the functions, principal objectives, and specific outcomes of the Commission.
- “(5) GPS objectives and outcomes must not require the Commission, in respect of a particular person, to make a particular decision, or to do or refrain from doing a particular act, or to bring about a particular result (other than in relation to Transpower).
- “(6) The Minister must consult with the Commission before giving a statement under this section.

**“172ZL Agreement of annual performance standards**

- “(1) The Commission must, within 3 months after the commencement of each reporting period beginning on or after 1 July 2004, agree performance standards with the Minister for that reporting period.
- “(2) The performance standards—
  - “(a) must include the performance targets and other measures by which the performance of the Commission may be judged; and
  - “(b) must be matters against which the Commission’s actual performance may be reported and audited; and
  - “(c) must relate to all of the GPS objectives and outcomes.
- “(3) Before agreeing the performance standards, the Minister must consult with the Auditor-General on whether the proposed performance standards meet the requirements in subsection (2)(b) and (c).

**“172ZM Annual performance report to Minister**

- “(1) The Commission must, within 3 months after each of the Commission’s report dates on and after 30 June 2004, deliver to the Minister a report on its operations during the last reporting period, and submit that annual report to the Auditor-General for an assurance audit under section 172ZO.

- “(2) The annual report—
- “(a) must contain the information that is necessary to enable an informed assessment to be made of the performance of the Commission against the GPS objectives and outcomes and against the performance standards; but
  - “(b) need not contain information on the Commission’s financial performance.

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

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

**“172ZO Assurance audit by Auditor-General**

- “(1) The Auditor-General—
- “(a) must examine the annual report provided to the Auditor-General under section 172ZM and report to the Minister and the House of Representatives as soon as practicable after receiving the annual report;
  - “(b) may, at any time, examine the information to be contained in the annual report and the systems of the Commission, and report on that examination to the Minister and the House of Representatives.
- “(2) The Auditor-General’s report under subsection (1) must provide assurance on—
- “(a) the appropriateness, adequacy, and accuracy of the information contained, or to be contained, in the annual report; and
  - “(b) whether the annual report enables, or is likely to enable, an informed assessment to be made of the matters stated in section 172ZM(2)(a).

**“172ZP Report by Parliamentary Commissioner for Environment**

- “(1) The Parliamentary Commissioner for the Environment must examine, in accordance with subsection (2), the extent to which the Commission is meeting the GPS objectives and outcomes concerning the environment.



- “(2) The Parliamentary Commissioner for the Environment—
- “(a) must, as soon as practicable after each report date of the Commission, carry out that examination in respect of the last reporting period and report to the House of Representatives on the results of the examination:
  - “(b) in addition, may carry out the examination under subsection (1) and report to the House of Representatives on the results of the examination at any other time.

**“172ZQ Functions under this subpart**

- “(1) The Parliamentary Commissioner for the Environment may exercise all of the Commissioner’s powers under the Environment Act 1986 in relation to the functions in this subpart, and that Act applies to those functions as if they were functions conferred under that Act.
- “(2) The functions conferred on the Auditor-General and the Parliamentary Commissioner for the Environment by this subpart are additional to, and do not limit, the Auditor-General’s or the Commissioner’s functions, powers, and duties under the Public Audit Act 2001 or the Environment Act 1986 (as the case may be).”

“Subpart 3—Miscellaneous provisions

**“172ZR Specific authorisation for purposes of restrictive trade practices rules**

The following are specifically authorised for the purpose of section 43 of the Commerce Act 1986:

- “(a) anything done or omitted to be done by the Commission for the purpose of carrying out its functions, powers, and duties in relation to reserve energy under this Act; and
- “(b) anything done, or omitted to be done, by the Commission, the Rulings Panel, or an industry participant, that is reasonably necessary to comply with, enforce, or otherwise administer any electricity governance regulations or rules”.

**26 Schedule 2A amended**

- (1) Clause 23(2) of Schedule 2A of the principal Act is amended by omitting the expression “7”, and substituting the expression “2”.
- (2) Clause 23 of Schedule 2A of the principal Act is amended by adding the following subclause:  
“(4) Any irregularity regarding the notice of meeting, including the period for calling a meeting, is waived if all members attend the meeting without protest as to the irregularity or if all members agree to the waiver.”

**Transitional provision relating to reserve energy****27 Minister may direct Commission to enter contract relating to Whirinaki power station**

- (1) The Minister may, no later than 3 months after this section comes into force, direct the Commission to enter into a contract providing for the power station located at Whirinaki, and the associated assets, rights, and liabilities, to be available for the purposes of reserve energy.
- (2) The direction must specify the terms of the contract.
- (3) The contract entered into under the direction is binding on the parties to it, and is enforceable as if it were a contract that was freely and voluntarily entered into.
- (4) The contract may be amended or replaced or terminated, but only by mutual consent of the parties.

**28 Provisions relating to direction**

- (1)
- (2)
- (3)
- (4) The direction may not be amended, revoked, or replaced.  
Subsections (1) to (3) were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

**29 Provisions relating to availability of contract**

- (1) The Commission must—

- (a) make the contract that is entered into by the Commission under section 27 available for inspection, during working hours, free of charge at the head office of the Commission; and
  - (b) make copies of that contract available for purchase at a reasonable price at the head office of the Commission; and
  - (c) make copies of that contract available free of charge, at all reasonable times, on an Internet website maintained by, or on behalf of, the Commission; and
  - (d) give notice in the *Gazette* stating that—
    - (i) the contract has been entered into and the date on which the contract was entered into; and
    - (ii) the contract is available for inspection during working hours free of charge and the place at which it can be inspected; and
    - (iii) copies of the contract can be purchased and the place at which they can be purchased; and
    - (iv) the contract is available on the Internet, free of charge, and the website address.
- (2) This section also applies to any amendment or replacement of the contract.

### **Miscellaneous**

#### **30 Electricity Amendment Act 2001 amended**

Section 19 of the Electricity Amendment Act 2001 is amended by repealing subsections (5) and (6), and substituting the following subsection:

- “(5) The **transitional period** ends on the close of 6 April 2004.”
-

**Contents**

- 1 General
  - 2 About this eprint
  - 3 List of amendments incorporated in this eprint (most recent first)
- 

**Notes****1 General**

This is an eprint of the Electricity Amendment Act 2004. The eprint incorporates all the amendments to the Act as at 1 November 2010. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

**2 About this eprint**

This eprint has not been officialised. For more information about eprints and officialisation, please *see* <http://www.pco.parliament.govt.nz/eprints/>.

**3 List of amendments incorporated in this eprint (most recent first)**

Electricity Industry Act 2010 (2010 No 116): section 166

---