

Reprint  
as at 1 December 2014



## Energy Companies Act 1992

Public Act 1992 No 56  
Date of assent 25 June 1992  
Commencement see section 1(2)–(4)

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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**An Act—**

- (a) to provide for the formation of energy companies, the vesting in such companies of the undertakings of Electric Power Boards and the electricity and gas undertakings of local authorities, and for the dissolution of Electric Power Boards; and
- (b) to repeal the Electric Power Boards Act 1925, the Auckland Electric Power Board Act 1978, and the Waikato Electricity Authority Act 1988

**1 Short Title and commencement**

- (1) This Act may be cited as the Energy Companies Act 1992.
- (2) Except as provided in subsections (3) to (8) and in section 80(2), this Act shall come into force on 1 July 1992.
- (3) Section 67 shall come into force on the day after the date on which this Act receives the Royal assent.
- (4) Sections 79, 89, 95, and 96 shall come into force on a date to be appointed for the commencement of those sections by the Governor-General by Order in Council; and 1 or more Orders in Council may be made bringing different sections into force on different dates.
- (5) In the case of section 79, the date appointed under subsection (4) shall be the date appointed by the Governor-General in the Order in Council made under section 76.
- (6) In the case of section 89, a date may be appointed under subsection (4) only where the Governor-General is satisfied that on the date appointed for the coming into force of that section every local authority the operations of which include an energy undertaking will have transferred the whole of its energy undertaking to 1 or more energy companies.
- (7) In the case of section 95, the date appointed under subsection (4) shall be the date appointed by the Governor-General in the Order in Council made under

section 47(1) in respect of the Auckland Electric Power Board constituted under the Auckland Electric Power Board Act 1978.

- (8) In the case of section 96, a date may not be appointed under subsection (4) until an Order in Council has been made under section 47(1) and has come into force in respect of each Board.

Section 1(4): section 95 brought into force, on 1 October 1993, by clause 3 of the Energy Companies Act Commencement Order 1993 (SR 1993/322).

Section 1(4): section 79 brought into force, on 26 October 1993, by clause 2 of the Energy Companies Act Commencement Order 1993 (SR 1993/322).

Section 1(4): sections 89 and 96 brought into force, on 7 October 1994, by the Energy Companies Act Commencement Order 1994 (SR 1994/196).

## Part 1 Preliminary provisions

### 2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**appointed day** means the date appointed by the Governor-General in an Order in Council made under section 47(1) for the vesting of the undertaking of a Board named in the order in that Board's successor company

**approved establishment plan**, in relation to an establishing authority, means an establishment plan approved pursuant to section 27 or section 28 in respect of that authority

**approved person** means any person (other than a local authority) who is identified in an approved establishment plan as a person to whom voting equity securities in an energy company should be issued and who is approved by the Minister, by notice in the *Gazette*, for the purposes of Part 4

**Board** means—

- (a) an Electric Power Board constituted under the Electric Power Boards Act 1925:
- (b) the Auckland Electric Power Board constituted under the Auckland Electric Power Board Act 1978:
- (c) the Rotorua Area Electricity Authority (which was constituted by an Order in Council made on 9 August 1971 and published in the *Gazette* on 12 August 1971 at page 1586 and which was continued as a body corporate by section 726(3)(b) of the Local Government Act 1974)

**Board's successor company**, in relation to a Board, means the energy company to which the undertaking of the Board is to be, or has been, transferred in accordance with section 47

**constituent local authority**, in relation to a Board, means a local authority the whole or any part of whose district is situated within the district of that Board

**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

**director**, in relation to an energy company, means the board of directors of that energy company

**electoral address**, in relation to an elector of a local authority, means the address in respect of which that person is registered as an elector of that local authority

**electricity undertaking**, in relation to a local authority, means the undertaking of that local authority as it relates to the generation, distribution, and supply of electricity; and includes—

- (a) the sale or supply of equipment or appliances that consume electricity; and
- (b) the sale or supply of services in relation to equipment or appliances that consume electricity; and
- (c) all the assets of the local authority used for or in connection with the electricity undertaking of that local authority, including all land, buildings, works, machinery, apparatus, fittings, appliances, contracts, and every other property, right, or interest, whether real or personal and whether legal or equitable, that is an asset of that electricity undertaking

**energy** means electricity and gas

**energy company** means a company formed and registered in accordance with section 32; and includes any subsidiary of an energy company; and also includes any company to which the energy undertaking of a Board, or all or part of any energy undertaking of a local authority, is transferred in accordance with section 47 or section 56

**energy undertaking** means—

- (a) an electricity undertaking;
- (b) a gas undertaking;
- (c) the undertaking of a Board

**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

**establishing authority** means—

- (a) a Board;
- (b) a local authority whose operations include an energy undertaking

**establishment plan**, in relation to an establishing authority, means the plan prepared by that establishing authority pursuant to section 18; and includes a revised establishment plan prepared pursuant to section 27

**financial statements**, in relation to an energy company, means—

- (a) group financial statements within the meaning of section 7 of the Financial Reporting Act 2013 for the group comprising the energy company and its subsidiaries; or
- (b) if the energy company does not have any subsidiaries, financial statements within the meaning of section 6 of the Financial Reporting Act 2013 for the energy company

**gas** has the same meaning as it has in section 2 of the Gas Act 1992

**gas undertaking**, in relation to a local authority, means the undertaking of that local authority as it relates to the manufacture, extraction, storage, processing, treatment, distribution, or supply of gas; and includes—

- (a) the sale or supply of equipment or appliances that consume gas; and
- (b) the sale or supply of services in relation to equipment or appliances that consume gas; and
- (c) all the assets of the local authority used for or in connection with the gas undertaking of that local authority, including all land, buildings, works, machinery, mains, apparatus, fittings, appliances, stocks, by-products, contracts, and every other property, right, or interest, whether real or personal and whether legal or equitable, that is an asset of that gas undertaking

**generally accepted accounting practice** has the same meaning as in section 8 of the Financial Reporting Act 2013

**Inland Revenue Acts** means the Acts specified in the Schedule of the Tax Administration Act 1994

**instrument** includes—

- (a) any instrument (other than an enactment) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed, or registered under any enactment; and
- (b) any judgment, order, or process of a court

**instrument by way of security** has the meaning assigned to it in section 2 of the Chattels Transfer Act 1924

**interim trustee**, in relation to a Board, means a person who holds office pursuant to section 4 or section 8 in respect of that Board

**land** has the meaning assigned to it in section 2 of the Land Transfer Act 1952

**liabilities** means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere)

**local authority** means a territorial authority within the meaning of the Local Government Act 2002

**Minister** means, subject to any enactment, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**property** means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and, without limiting the generality of the foregoing, includes—

- (a) choses in action and money:
- (b) goodwill:
- (c) rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective

**qualifying elector**, in relation to a local authority, means an elector of that local authority whose electoral address is within the district or, as the case may be, the part of the district of that local authority that is within a Board's district

**relevant energy company** means,—

- (a) in relation to a Board, the Board's successor company:
- (b) in relation to a local authority, an energy company to which all or part of the energy undertaking of the local authority is proposed to be transferred

**rights** means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective

**rules**, in relation to an energy company, means the constitution of the energy company

**security** means a mortgage, submortgage, charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability and in any case whether upon demand or otherwise, whether present or future and whether actual or contingent; and includes an agreement or undertaking to give or execute whether upon demand or otherwise any of the foregoing

**share allocation plan** means the recommendations of an establishing authority made pursuant to section 22 and included in an establishment plan

**special consultative procedure** means the procedure set out in section 83 of the Local Government Act 2002

**statement of corporate intent**, in relation to an energy company, means the current statement of corporate intent for the energy company prepared pursuant to section 39

**subsidiary** has the same meaning as in section 5 of the Companies Act 1993

**undertaking**, in relation to a Board, means the property, rights, and liabilities of the Board

**voting equity security**, in relation to any company, means an equity security in that company that confers a right to vote at general meetings of the company (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), not being a right to vote that, under the conditions attached to the security, is exercisable only in 1 or more of the following circumstances:

- (a) during a period in which a dividend (or part of a dividend) in respect of the security is in arrears:
- (b) on a proposal to reduce the capital of the company:
- (c) on a proposal that affects rights attached to the security:
- (d) on a proposal to put the company into liquidation:
- (e) on a proposal for the disposal of the whole of the property, business, and undertaking of the company:
- (f) during the liquidation of the company;—

and includes a security that, in accordance with the terms of the security, is convertible into a security of that kind.

- (2) For the purposes of this Act, to hold a controlling interest in an energy company means to hold equity securities in that company that carry in the aggregate 51% or more of the voting rights at any general meeting of the company.
- (3) For the purposes of subsection (2), a person holds equity securities in an energy company if that person is beneficially entitled to, or is beneficially entitled to an interest in, any equity securities in the company (whether or not the whole or any part of the legal ownership of the equity securities is vested in the person).

Section 2(1) **debt security**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **equity security**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **financial statements**: inserted, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(1) **gas**: amended, on 1 April 1993, by section 58(2) of the Gas Act 1992 (1992 No 124).

Section 2(1) **generally accepted accounting practice**: inserted, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(1) **Inland Revenue Acts**: amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 2(1) **local authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **rules**: replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(1) **special consultative procedure**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **subsidiary**: replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(1) **voting equity security** paragraph (d): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 2(1) **voting equity security** paragraph (f): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

### 3 Act to bind the Crown

This Act binds the Crown.

## Part 2 Interim trustees

### 4 Interim trustees

- (1) Subject to subsection (4), as from the commencement of the 21st day after the commencement of this section, there shall hold office, in respect of each Board, persons to be known as interim trustees.
- (2) Subject to subsection (3) and to sections 6 to 8, the interim trustees in respect of a Board shall,—
  - (a) in the case of an Electric Power Board constituted under the Electric Power Boards Act 1925, comprise—
    - (i) all the persons who, immediately before 8 August 1990 (being the date of commencement of the Electric Power Boards Amendment Act 1990), were holding office—
      - (A) as members of that Board under section 10 or section 23 of the Electric Power Boards Act 1925; or
      - (B) as members of that Board continued in office by section 3, or appointed under section 4, of the Electric Power Boards Amendment Act 1989; and
    - (ii) every person (not being a person referred to in subparagraph (i)) who was appointed as a trustee of the Electric Power Trust established in respect of that Board by a trust deed executed under section 3 of the Electric Power Boards Amendment Act 1990:
  - (b) in the case of the Auckland Electric Power Board, comprise—
    - (i) all the persons who, immediately before 8 August 1990, were holding office—
      - (A) as members of that Board elected or appointed under Part 3 or Part 4 of the Auckland Electric Power Board Act 1978; or

- (B) as members of that Board continued in office by section 8, or appointed under section 9, of the Electric Power Boards Amendment Act 1989; and
  - (ii) every person (not being a person referred to in subparagraph (i)) who was appointed as a trustee of the Electric Power Trust established in respect of that Board by a trust deed executed under section 3 of the Electric Power Boards Amendment Act 1990:
- (c) in the case of the Rotorua Area Electricity Authority, comprise—
  - (i) all the persons who, immediately before 8 August 1990, were holding office—
    - (A) as members of that Authority who were representatives of a constituent district of the Rotorua Electric Supply District; or
    - (B) as members of that Authority continued in office by section 3, or appointed under section 4, of the Electric Power Boards Amendment Act 1989 (as applied by section 6 of that Act); and
    - (ii) every person (not being a person referred to in subparagraph (i)) who was appointed as a trustee of the Electric Power Trust established in respect of that Authority by a trust deed executed under section 3 of the Electric Power Boards Amendment Act 1990.
- (3) No person shall be an interim trustee pursuant to subsection (2) unless that person has informed the Minister, within 20 days of the commencement of this section, that the person is willing to be an interim trustee.
- (4) Nothing in this section shall apply in respect of the Central Canterbury Electric Power Board.

## **5 Term of office of interim trustees**

Subject to section 8, the interim trustees holding office in respect of a Board shall continue in office until that Board is dissolved pursuant to section 47, and the interim trustees shall then vacate office; and no such interim trustee shall be entitled to any compensation in respect of loss of office.

## **6 Disqualification of interim trustees**

- (1) The following persons shall be incapable of being interim trustees:
  - (a) a person who is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
  - (b) a bankrupt who has not obtained an order of discharge, or whose order of discharge is suspended for a term not yet expired, or is subject to conditions not yet fulfilled:

- (c) a person to whom an order made under section 299 of the Insolvency Act 2006 applies:
  - (d) a person in respect of whom a composition or arrangement with that person's creditors is in force:
  - (e) a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988:
  - (f) a person who is convicted of an offence punishable by imprisonment for a term of 2 years or more, unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed on that person:
  - (g) a person who is convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence, unless that person has obtained a pardon or has served the sentence:
  - (h) a person who is disqualified from being appointed or holding office as a director of a company by virtue of paragraph (ba) or paragraph (c) or paragraph (d) or paragraph (e) of section 151(2) of the Companies Act 1993:
  - (i) a person who holds office as a member of the Board in respect of which the person is, or is to be, an interim trustee.
- (2) In any case to which subsection (1)(f) applies,—
- (a) the disqualification shall not take effect until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal is determined; and
  - (b) the interim trustee concerned shall be deemed to have been granted leave of absence until the expiration of that time, and shall not be capable of acting as an interim trustee during the period of that leave of absence.
- (3) In any case to which subsection (1)(g) applies,—
- (a) the disqualification shall not take effect until the expiration of the time for appealing against the conviction or the sentence and, in the event of an appeal against the conviction or against the sentence or both, until the appeal is determined; and
  - (b) the interim trustee concerned shall be deemed to have been granted leave of absence until the expiration of that time, and shall not be capable of acting as an interim trustee during the period of that leave of absence.
- (4) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who does any act as an interim trustee while incapacitated under subsection (1), except—
- (a) where the incapacity arises under paragraph (a) of that subsection; or

- (b) while on leave of absence pursuant to paragraph (f) or paragraph (g) of that subsection.

Compare: 1989 No 63 s 200

Section 6(1)(a): amended, on 1 November 1992, pursuant to section 137(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 6(1)(c): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 6(1)(h): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 6(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **7 Removal from office**

An interim trustee may be removed from office at any time by the Minister for inability to perform the functions of the office, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

Section 7: amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

## **8 Appointment to fill casual vacancies**

- (1) The office of an interim trustee shall become vacant, and the vacancy shall be deemed to be a casual vacancy, if the trustee—
- (a) dies; or
  - (b) resigns from office by written notice delivered to the Minister; or
  - (c) becomes incapable of continuing to hold office under section 6; or
  - (d) is removed from office under section 7.
- (2) In the event of a casual vacancy in the office of an interim trustee, the Minister may appoint some other qualified person to fill that vacancy.
- (3) No person shall be appointed to fill a casual vacancy in the office of an interim trustee in respect of a Board unless the remaining interim trustees holding office in respect of that Board have first approved the proposed appointment of that person.
- (4) No act or proceeding of any interim trustees, or of any person acting as an interim trustee, shall be invalidated because there was a vacancy in the office of an interim trustee at the time of the act or proceeding, or because of the subsequent discovery that there was a defect in the appointment of a person so acting, or that the person was incapable of being, or had ceased to be, an interim trustee.

## **9 Chairperson and Deputy Chairperson**

- (1) The interim trustees holding office in respect of a Board shall, at their first meeting held after the commencement of this section and thereafter from time

to time as any vacancy arises, elect one of their number to be their Chairperson, and another to be their Deputy Chairperson.

- (2) Every person elected as Chairperson or Deputy Chairperson pursuant to subsection (1) shall, unless he or she sooner vacates office as an interim trustee, hold office for such period as the interim trustees electing that person may determine at the time of the election.

#### **10 Quorum**

At a meeting of the interim trustees holding office in respect of a Board the quorum necessary for the transaction of business shall be,—

- (a) if there is an even number of interim trustees, half the number of interim trustees; or
- (b) if there is an odd number of interim trustees, a majority of the number of interim trustees,—

but in no case shall the quorum be fewer than 2 interim trustees.

#### **11 Voting at meetings**

- (1) All questions arising at a meeting of interim trustees holding office in respect of a Board shall be decided by a majority of the votes cast by the interim trustees present.
- (2) The interim trustee presiding at any such meeting has a deliberative vote, and, in the case of an equality of votes, also has a casting vote.

#### **12 Procedure**

Subject to this Act, interim trustees may regulate their procedure in such manner as they think fit.

#### **13 Application of certain Acts to interim trustees**

No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only that the person is an interim trustee.

#### **14 Trustee Act 1956, etc, not to apply to interim trustees**

The fact that a person holds or has held office as an interim trustee shall not, of itself, confer or impose on that person any of the rights, powers, duties, or liabilities of a trustee under the Trustee Act 1956 or under any other enactment or rule of law.

#### **15 Board may meet costs and expenses of interim trustees**

Subject to section 16, a Board may, out of its funds, pay the reasonable costs and reasonable expenses incurred, in the discharge of their duties, by the interim trustees holding office in respect of the Board.

**16 Salaries and allowances**

- (1) Subject to section 17, there shall be paid to interim trustees holding office in respect of a Board salaries and meeting allowances.
- (2) There shall be paid to interim trustees travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if interim trustees were members of a statutory Board within the meaning of that Act.
- (3) Sections 101ZZO and 101ZZV of the Local Government Act 1974 (which relate to the payment of meeting allowances and travelling expenses where members of a local authority attend a meeting or conference as representatives of the local authority) shall, so far as applicable and with all necessary modifications, apply with respect to the payment, pursuant to this section, of meeting allowances and travelling allowances and expenses to any person who holds office as an interim trustee in respect of a Board and who, with the authority of the interim trustees holding office in respect of that Board, attends any meeting or conference as a representative of those interim trustees.
- (4) Notwithstanding anything in any other enactment, all salaries, allowances, travelling allowances, and travelling expenses payable pursuant to this section to an interim trustee shall be paid out of the funds of the Board in respect of which that person holds office as an interim trustee.

**17 Amounts of salaries and meeting allowances**

- (1) The salary payable pursuant to section 16 to interim trustees holding office in respect of a Board shall be equal in amount to,—
  - (a) in the case of the Chairperson of those interim trustees, 75%; and
  - (b) in the case of the Deputy Chairperson of those interim trustees, 60%; and
  - (c) in the case of the other interim trustees, 50%—of the salary that, immediately before 8 August 1990, was payable, in accordance with Part 4C of the Local Government Act 1974, to members of that Board (other than the Chairperson of that Board or the Deputy Chairperson of that Board or the Chairperson of 1 or more committees of that Board).
- (2) The meeting allowance payable pursuant to section 16 to interim trustees holding office in respect of a Board shall be equal in amount to the meeting allowance that, immediately before 8 August 1990, was payable, in accordance with Part 4C of the Local Government Act 1974, to members of that Board (other than the Chairperson of that Board).
- (3) The payment, to interim trustees holding office in respect of a Board, of meeting allowances pursuant to section 16 shall be subject to the same conditions that, immediately before 8 August 1990, were imposed pursuant to Part 4C of the Local Government Act 1974 in respect of the payment of meeting allowances to members of that Board (other than the Chairperson of that Board).

- (4) Where any interim trustee holds office for only part of a year in respect of which an annual salary is payable, pursuant to section 16, to that trustee, that interim trustee shall be entitled to receive the proportion of the salary that his or her holding of that office during that year bears in relation to that full year.

### **Part 3**

#### **Establishment plans**

#### **18 Establishment plan**

- (1) Not later than 31 December 1992, each establishing authority shall prepare and submit to the Minister, for the Minister's approval, an establishment plan relating to the transfer to an energy company of the energy undertaking of that establishing authority.
- (2) The establishment plan prepared by an establishing authority shall—
- (a) identify with reasonable precision the energy undertaking that is to be vested in the relevant energy company; and
  - (b) value that energy undertaking, which valuation shall be made on such basis as is determined by the Minister after consultation by the Minister with such representatives of electrical supply authorities (within the meaning of the Electricity Act 1968) as the Minister thinks fit; and
  - (c) contain a share allocation plan; and
  - (d) indicate whether or not any equity securities (other than voting equity securities) should be issued by the relevant energy company to any person consequent upon the vesting in the company of the relevant energy undertaking, and, if so, the name of the person and the kind, number, nominal value, and terms of those securities; and
  - (e) indicate whether or not any debt securities should be issued by the relevant energy company to any person consequent upon the vesting in the company of the relevant energy undertaking, and, if so, the name of the person and the kind, number, nominal value, and terms (including interest) of those securities; and
  - (f) contain, in draft form, a memorandum of association, articles of association, and (except where section 42(1) will apply in respect of that energy company) a statement of corporate intent for the relevant energy company; and
  - (g) subject to section 32, indicate the time within which the relevant energy undertaking should be vested in the relevant energy company; and
  - (h) where the establishing authority is a local authority, identify a fair and equitable system for the transfer of appropriate employees from the local authority to the relevant energy company; and

- (i) contain such other details as the Minister may from time to time require or as the establishing authority considers appropriate.

### **19 Joint establishment plan**

- (1) Notwithstanding anything in section 18, but subject to subsection (2), an establishment plan may be prepared and submitted jointly by 2 or more establishing authorities, and the provisions of this Act shall apply accordingly with all necessary modifications.
- (2) Where—
  - (a) 2 or more Boards; or
  - (b) 1 or more local authorities and 1 or more Boards—wish to submit a joint establishment plan to the Minister, they may do so only if the share allocation plan included in that establishment plan is endorsed by the interim trustees for each such Board.
- (3) For the purposes of the preparation of a joint establishment plan, and for the purposes of the adoption of the special consultative procedure in relation to such a plan, a Board may adopt the procedures set out in section 114S of the Local Government Act 1974 (which provides for the appointment of joint committees), and that section shall apply accordingly as if a Board were a local authority.

Section 19(3): added (with effect on 1 July 1992), on 17 December 1992, by section 2 of the Energy Companies Amendment Act 1992 (1992 No 123).

### **20 Local authorities may form 1 or more energy companies**

Notwithstanding anything in section 18, an establishment plan prepared by an establishing authority that is a local authority may provide for the transfer of the energy undertaking of that authority to 1 or more energy companies, and the provisions of this Act shall apply accordingly with all necessary modifications.

### **21 Establishment plan may provide for use of existing company**

An establishment plan prepared by an establishing authority may provide for the energy undertaking of a Board, or the whole or part of the energy undertaking of a local authority, to be transferred to a company other than a company that is to be formed and registered by that establishing authority pursuant to section 32, and in any such case subsection (2) of section 18 shall apply as if for paragraph (f) of that subsection there were substituted the following paragraphs:

- (f) except where section 42(1) will apply in respect of the relevant energy company, contain, in draft form, a statement of corporate intent for that energy company; and

- (fa) specify the amendments (if any) that are intended to be made to the memorandum of association and articles of association of the relevant energy company; and

## **22 Share allocation plan**

- (1) The establishment plan prepared by an establishing authority shall set out the authority's recommendations as to the person or persons, or the class or classes of persons, to whom the voting equity securities in the relevant energy company should be allocated consequent upon the vesting in that company of the relevant energy undertaking.
- (2) Those recommendations shall indicate—
  - (a) the kind, number, nominal value, and terms of those voting equity securities; and
  - (b) the person or persons, or the class or classes of persons, to whom those equity securities should be allocated.

## **23 Consultation with interim trustees**

- (1) Where a Board prepares an establishment plan, that Board shall, before submitting the establishment plan to the Minister, send a copy of it in draft form to the interim trustees holding office in respect of the Board for comment, and shall give those trustees a reasonable opportunity to comment on the draft.
- (2) The establishment plan submitted to the Minister by a Board shall incorporate a fair and accurate summary of any comments received by the Board under subsection (1), and shall indicate—
  - (a) the extent to which those comments were taken into account in finalising the plan; and
  - (b) where any such comment has not been so taken into account, the reasons for not doing so; and
  - (c) whether or not the interim trustees endorse the share allocation plan included in the establishment plan.

## **24 Public consultation on establishment plan**

- (1) An establishing authority shall not forward an establishment plan to the Minister unless the establishing authority has adopted the special consultative procedure in relation to that plan.
- (2) For the purposes of section 83 of the Local Government Act 2002 (as applied by subsection (1) of this section), a Board shall be deemed to be a local authority.

Section 24(2): amended, on 25 December 2002, pursuant to section 267(a) of the Local Government Act 2002 (2002 No 84).

**25 Extension of time for submission of establishment plan**

- (1) Notwithstanding subsection (1) of section 18, the Minister may, on the application of any establishing authority made before the expiration of the period specified in that subsection, extend the time prescribed by that subsection in respect of the submission of an establishment plan by that authority.
- (2) Only 1 extension of time may be given under subsection (1) in respect of a particular establishing authority.
- (3) In no case may an extension of time be granted under subsection (1) in order to permit an establishing authority to submit an establishment plan after 31 March 1993.

**26 Future financial stability of company to be considered**

In making any determination for the purposes of section 18(2)(d) or section 27 or section 28 with respect to the issue, by an energy company, of any equity securities, the establishing authority or, as the case may be, the Minister shall have regard to the need to safeguard the future financial stability of the company.

**27 Approval of establishment plan**

- (1) Subject to subsection (2) and to section 29, as soon as practicable after receiving an establishment plan submitted by an establishing authority under section 18, the Minister shall approve the plan by notice in writing to the establishing authority.
- (2) If the Minister considers that an establishment plan submitted by an establishing authority that is a Board should be varied, the Minister may decline to approve the plan and direct the authority to prepare and submit a revised plan.
- (3) Where, pursuant to subsection (2), the Minister declines to approve an establishment plan and directs the establishing authority to prepare and submit a revised plan, the Minister shall inform the establishing authority of the reasons for the direction, and may indicate any specific matter that the Minister requires to be dealt with in the revised plan.
- (4) Where, pursuant to subsection (2), the Minister declines to approve an establishment plan submitted by an establishing authority, the establishing authority shall submit a revised establishment plan to the Minister not later than 6 weeks after the date on which that approval was declined or such later date as the Minister in any particular case may allow.
- (5) The provisions of sections 18 to 22 and (where applicable) section 23 shall apply in respect of a revised establishment plan required to be submitted to the Minister under subsection (4).
- (6) Nothing in section 24 or section 25 shall apply in respect of any such revised establishment plan.

**28 Approval of revised establishment plan**

- (1) As soon as practicable after receiving a revised establishment plan submitted by an establishing authority under section 27(4), the Minister shall, subject to section 29,—
  - (a) approve the plan by notice in writing to the establishing authority; or
  - (b) if the Minister considers that the revised plan requires further amendment,—
    - (i) make such amendments to the plan as the Minister considers necessary; and
    - (ii) approve the plan (as amended) by notice in writing to the establishing authority, which notice shall be accompanied by a copy of the plan as approved.
- (2) Before making any amendments to an establishment plan under subsection (1)(b), the Minister shall advise the establishing authority of the Minister's intention to do so, and shall give the establishing authority a reasonable opportunity to make submissions on the matter.

**29 Establishment plan not to be approved unless share allocation plan endorsed**

- (1) Subject to subsection (2), the Minister shall not approve an establishment plan under section 27 or section 28 in any case where, in the case of a plan submitted (whether alone or jointly with any other establishing authority) by an establishing authority that is a Board, the share allocation plan (including a share allocation plan that has been amended pursuant to section 28(1)(b)(i)) included in that plan is not endorsed by the interim trustees for that Board.
- (2) Where, but for the provisions of subsection (1), the Minister could approve, or would be required to approve, an establishment plan, the Minister may or, as the case may require, shall approve the establishment plan except for the share allocation plan included in that plan, and in any such case section 30 shall apply in respect of that establishment plan.

**30 Allocation of shares where share allocation plan not endorsed**

Where section 29(2) applies in respect of any establishment plan, there shall be deemed to be included in that establishment plan a share allocation plan that provides for the voting equity securities in the energy company to which the establishment plan relates to be allocated in accordance with the following provisions:

- (a) the securities shall be allocated to each constituent local authority of the relevant Board;
- (b) each constituent local authority to which the securities are required to be so allocated shall be entitled to receive such proportion of the total voting equity securities in the relevant energy company as the number of

qualifying electors of that constituent local authority bears to the aggregate number of qualifying electors of all the constituent local authorities of that Board.

### **31 Failure to submit establishment plan**

- (1) In any case where an establishing authority has not submitted an establishment plan in accordance with section 18 within the time required by subsection (1) of that section (including, where that time has been extended under section 25, that extension of time), the Minister shall cause such a plan to be prepared, and shall have all such powers as are necessary or desirable for that purpose; and the provisions of sections 18(2), 26, and 27 shall apply as if the plan were prepared by the establishing authority.
- (2) Where, as a result of the default of any establishing authority, the Minister acts under subsection (1), the Minister shall be entitled to be reimbursed by the establishing authority for any costs and expenses incurred in the taking of the action.
- (3) In any case where, pursuant to subsection (2) of section 27, the Minister has declined to approve an establishment plan submitted by a Board, and the Board has not submitted a revised establishment plan in accordance with subsection (4) of that section within the period referred to in subsection (4) of that section (including, where that time has been extended, that extension of time), section 28 shall apply as if the original establishment plan submitted by the Board to the Minister were a revised establishment plan submitted under section 27, but nothing in section 28(2) shall apply in any such case.
- (4) Where, pursuant to subsection (1), the Minister causes an establishment plan to be prepared,—
  - (a) in the case of an establishment plan prepared as the result of the default of a Board, the share allocation plan included in that establishment plan shall provide for the voting equity securities in the relevant energy company to be allocated on the same basis as they would be allocated if the establishment plan were a plan to which section 29(2) applies;
  - (b) in the case of an establishment plan prepared as the result of the default of a local authority, the share allocation plan included in that establishment plan shall provide for the voting equity securities in the relevant energy company to be allocated to that local authority.

## Part 4 Energy companies

### *Formation of energy companies*

#### **32 Formation and registration of energy company**

- (1) Notwithstanding anything in the Electric Power Boards Act 1925, but subject to section 33 of this Act, each Board shall, not later than 1 April 1993 or such later date as the Minister in any particular case may allow, form and register under the Companies Act 1955, in respect of that Board, a public company limited by shares in which the subscriber is the Board.
- (1A) Where any Board has not by 1 July 1994, in accordance with subsection (1), formed and registered a company under the Companies Act 1955, in respect of that Board, it shall not later than such date as the Minister in any particular case may allow, form and register a company under the Companies Act 1993 in which the liability of the shareholders is limited and in which the shares shall, on registration, be issued to the Board.
- (2) Notwithstanding anything in the Local Government Act 1974, but subject to section 33 of this Act, every local authority the operations of which include an energy undertaking shall, not later than 1 April 1993 or such later date as the Minister in any particular case may allow, form and register under the Companies Act 1955, in respect of that local authority, 1 or more public companies limited by shares in which the subscriber is the local authority.
- (3) No company shall be formed and registered under this section except in accordance with the terms of an approved establishment plan.
- (4) Nothing in section 13(1) of the Companies Act 1955 relating to the minimum number of persons who may form a company shall apply to the formation of a company under this section.
- (5) Except as provided in this Act, the Companies Act 1993 applies to every company formed and registered in accordance with this section.
- (6) *[Repealed]*
- (7) Every Board and every local authority shall have such powers as may be necessary or desirable for the purposes of this section.

Section 32 heading: amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 32(1A): inserted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 32(5): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 32(6): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

**33 Use of existing company**

Notwithstanding anything in section 32, where an approved establishment plan provides that the energy undertaking of a Board, or the whole or part of the energy undertaking of a local authority, is to be transferred, pursuant to Part 5, to a company other than a company that is to be formed and registered by that Board or, as the case may be, that local authority, then, in relation to that energy undertaking that is to be so transferred, nothing in section 32 shall require that Board or, as the case requires, that local authority to form and register any company.

**34 Board and local authority may jointly form energy company**

Notwithstanding anything in subsection (1) or subsection (2) of section 32, but subject to subsection (3) of that section, 2 or more establishing authorities may jointly form and register an energy company in which the subscribers are those establishing authorities, and the provisions of this Act shall apply accordingly with all necessary modifications.

**35 Minister may act in default of Board or local authority**

- (1) In any case where a company has not been formed and registered by a Board or a local authority in accordance with section 32 within the time required by subsection (1) or, as the case requires, subsection (2) of that section (including, where that time has been extended under that section, that extension of time), the Minister may form and register the company and shall have all such powers as are necessary or desirable for that purpose, including, without limitation, the power to appoint the first directors of the company and the power to issue and allot shares in the capital of the company to the Board or, as the case requires, the local authority.
- (2) Subsections (4) to (6) of section 32 shall apply with all necessary modifications with respect to the formation of a company pursuant to subsection (1) of this section and with respect to any such company so formed.
- (3) Where, as a result of the default of any Board or any local authority, the Minister acts under subsection (1), the Minister shall be entitled to be reimbursed by the Board or, as the case requires, the local authority for any costs and expenses incurred in the taking of the action.

*Operation of energy companies***36 Principal objective to be successful business**

- (1) The principal objective of an energy company shall be to operate as a successful business.

- (2) In seeking to attain its principal objective, an energy company shall have regard, among other things, to the desirability of ensuring the efficient use of energy.

Compare: 1974 No 66 s 594Q; 1988 No 91 s 5; 1989 No 29 s 34(1)

### **37 Directors and their role**

- (1) The directors of an energy company shall be persons who, in the opinion of those appointing them, will assist the company to achieve its principal objective.
- (2) Notwithstanding anything in subsection (1), the articles of association of every energy company shall provide that not more than 2 members of the directorate of the energy company may be persons who are members or employees of any local authority that holds voting equity securities in that company.
- (3) All decisions relating to the operation of an energy company shall be made by or pursuant to the authority of the directorate of the company in accordance with the statement of corporate intent (if any).
- (4) For the avoidance of doubt, it is hereby declared that no director of an energy company is, by virtue of holding that office, a statutory officer within the meaning of the Local Government Official Information and Meetings Act 1987.

Compare: 1974 No 66 s 594R; 1988 No 91 s 6; 1989 No 29 s 34(1)

### **38 First directors of energy company formed by Board**

- (1) This section applies in respect of any energy company that is formed and registered by a Board in accordance with section 32(1), other than an energy company that is formed by a Board jointly with 1 or more local authorities.
- (2) The first directors of an energy company to which this section applies shall be appointed by the Minister.
- (3) Subject to subsection (4), the first directors of an energy company to which this section applies shall comprise or include all the persons who, immediately before the date of incorporation of the company, were holding office as members of the Board that formed and registered that energy company and who are willing to accept appointment as directors of that company.
- (4) Subsection (3) shall not apply in respect of an energy company in any case where, as a result of the default of the Board in respect of which that energy company is established, the Minister has been required to act pursuant to section 31 or section 35.
- (5) Subject to subsection (3), during the interim period the Minister shall have the sole right to appoint the directors of an energy company to which this section applies.
- (6) Notwithstanding anything in section 199H of the Companies Act 1955 or section 156 of the Companies Act 1993, as the case may be, or the rules of an en-

ergy company, a person who is appointed pursuant to this section, by the Minister, as a director of an energy company shall not be removed from office by the energy company during the interim period unless the Minister consents to his or her removal.

- (7) In this section, the term **interim period**, in relation to an energy company, means the period of 12 months beginning with the date on which an energy undertaking of an establishing authority vests in that energy company pursuant to Part 5.

Section 38(6): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

### **38A Directors of existing company**

- (1) This section applies in respect of any company (other than a company to which section 38 applies) to which the energy undertaking of a Board has been, or is to be, transferred in accordance with an approved establishment plan, where that plan does not provide for the transfer, to that company, of the whole or any part of an energy undertaking of a local authority.
- (2) This section applies notwithstanding anything in the Companies Act 1955 or the memorandum of association or articles of association of any company.
- (3) During the interim period, only those persons who have been approved or appointed by the Minister pursuant to this section shall hold office as directors of a company to which this section applies.
- (4) The Minister shall, before the commencement of the interim period in relation to a company to which this section applies, approve such number of persons as the Minister thinks fit to be directors of the company at the commencement of the interim period.
- (5) Subject to subsection (6), the persons who are approved by the Minister pursuant to subsection (4) in respect of a company shall comprise or include all the persons who—
- (a) on the appointed day in relation to the Board the undertaking of which is to be transferred to that company, will vacate office as members of that Board; and
  - (b) are willing to hold office as directors of that company.
- (6) Subsection (5) shall not apply in respect of any company in any case where, as a result of the default of the Board the undertaking of which is to be transferred to that company, the Minister has been required to act pursuant to section 31.
- (7) Where any person who is approved pursuant to subsection (4) is not already a director of the company, the Minister shall appoint that person to be a director as from the commencement of the interim period, and the Minister shall have all such powers as are necessary or desirable for that purpose.
- (8) Every person who,—

- (a) immediately before the commencement of the interim period, is holding office as a director of a company to which this section applies; and
  - (b) is not approved, pursuant to subsection (4), as a director of that company before the commencement of that period—
- shall, on the commencement of that period, vacate office as a director of the company; and no such person shall be entitled to any compensation in respect of loss of office.
- (9) Subject to subsection (5), during the interim period the Minister shall have the sole power to appoint the directors of a company to which this section applies.
  - (10) A person who is approved or appointed pursuant to this section as a director of a company shall not be removed from office by the company during the interim period unless the Minister consents to his or her removal.
  - (11) In this section, the term **interim period**, in relation to a company to which this section applies, means the period of 12 months beginning on the date on which an energy undertaking of a Board vests in that company pursuant to Part 5.

Section 38A: inserted (with effect on 1 July 1992), on 17 December 1992, by section 3 of the Energy Companies Amendment Act 1992 (1992 No 123).

### 39 Statement of corporate intent

- (1) The directorate of every energy company shall deliver to its shareholders a draft statement of corporate intent not later than 1 month after the commencement of each financial year of the energy company.
- (2) Each statement of corporate intent shall specify for the group comprising the energy company and its subsidiaries (if any), and in respect of the financial year in which it is delivered and each of the following 2 financial years, the following information:
  - (a) the objectives of the group:
  - (b) the nature and scope of the activities to be undertaken:
  - (c) the ratio of consolidated shareholders' funds to total assets, and definitions of those terms:
  - (d) the accounting policies:
  - (e) the performance targets and other measures (including the rate of return on shareholders' funds after payment of tax) by which the performance of the group may be judged in relation to its objectives:
  - (f) an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholders:
  - (g) the kind of information to be provided to the shareholders by the group during the course of those financial years, including the information to be included in each half-yearly report:

- (h) the procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organisation:
  - (i) the details of all transactions intended to be entered into between any member of the group and—
    - (i) any local authority that is a shareholder in any member of the group:
    - (ii) every company that, in relation to any member of the group, is a related company (as defined in section 2(3) of the Companies Act 1993):
    - (iii) every company in relation to which any member of the group is a related company (as so defined):
    - (iv) every company that, in relation to any local authority that is a shareholder in any member of the group, would be a related company (as so defined) if the local authority were a company:
  - (j) such other matters as are agreed by the shareholders and the directorate.
- (3) The directorate—
- (a) shall consider any comments on the draft statement of corporate intent that are made to it within 2 months of the commencement of the financial year by the shareholders; and
  - (b) shall deliver the completed statement of corporate intent to such shareholders within 3 months of the commencement of the financial year.

Compare: 1974 No 66 ss 594S–594U; 1989 No 29 s 34(1)

Section 39(2)(i)(ii): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

#### **40 Modifications of statement of corporate intent**

- (1) A statement of corporate intent for an energy company may be modified at any time by written notice from the directorate, so long as the directorate has first—
  - (a) given written notice to the shareholders of the proposed modification; and
  - (b) considered any comments made on the proposed modification by the shareholders within—
    - (i) 1 month after the date on which the notice under paragraph (a) was given; or
    - (ii) such shorter period as the shareholders may agree.
- (2) Notwithstanding any other provision of this Act or of the rules of any energy company, but subject to section 42, the shareholders may from time to time, by resolution passed at any general meeting of the company, require the director-

ate to modify the statement of corporate intent by including or omitting any provision or provisions of a kind referred to in paragraphs (a) to (i) of section 39(2); and any directorate to whom such a notice is given shall comply with the notice.

- (3) Before giving any notice under subsection (2), the shareholders shall—
  - (a) have regard to sections 36 and 44; and
  - (b) consult the directorate concerned as to the matters to be referred to in the notice.

Compare: 1974 No 66 s 594V; 1989 No 29 s 34(1)

#### **41 Obligation to make statement of corporate intent available**

Where—

- (a) a completed statement of corporate intent for an energy company is delivered to the shareholders by the directorate; or
- (b) any modification is adopted to a statement of corporate intent for any energy company,—

the directorate shall, not later than 1 month after that completed statement of corporate intent is delivered to the shareholders or, as the case may be, the modification is adopted, make that completed statement of corporate intent or, as the case may be, that modification available to the public.

Compare: 1974 No 66 s 594W; 1989 No 29 s 34(1)

#### **42 Circumstances in which accountability provisions not to apply**

- (1) Nothing in sections 36 to 41 shall apply in respect of an energy company in any case where the establishment plan approved in respect of that energy company does not provide for a controlling interest in that energy company to be held by any local authority or local authorities, or any approved person or approved persons, or any combination of 1 or more local authorities and 1 or more approved persons.
- (2) Upon a controlling interest in any energy company ceasing to be held by any local authority or local authorities, or any approved person or approved persons, or any combination of 1 or more local authorities and 1 or more approved persons,—
  - (a) sections 36 to 38 shall cease to apply in respect of that energy company; and
  - (b) the energy company shall no longer be required to comply with sections 39 to 41, and the current statement of corporate intent shall cease to be of continuing effect.
- (3) Where, in accordance with this section, any provision of this Act does not apply or is made inapplicable in respect of an energy company, that provision shall, notwithstanding any subsequent change in the shareholding of the com-

pany, have no or, as the case may be, no further application to that company at any time.

#### **43 Savings of certain transactions**

A failure by an energy company to comply with—

- (a) any provision of sections 36 to 41; or
- (b) any provision contained in any statement of corporate intent—

shall not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by the energy company.

Compare: 1974 No 66 s 594Y; 1989 No 29 s 34(1)

#### **44 Reports and financial statements**

- (1) Within 3 months after the end of the first half of each financial year of an energy company, the directorate of the energy company shall deliver to the shareholders a report of the company's operations during that half-year.
- (2) Each report required by subsection (1) shall include the information required by the statement of corporate intent to be included therein.
- (3) Within 3 months after the end of each financial year of an energy company, the directorate shall deliver to the shareholders—
  - (a) a report of the operations of the energy company and those of its subsidiaries (if any) during the financial year; and
  - (b) audited financial statements for that financial year prepared in accordance with generally accepted accounting practice; and
  - (c) the auditor's report on—
    - (i) those financial statements; and
    - (ii) the performance targets and other measures by which performance has been judged in relation to the objectives.
- (4) Every report under subsection (3)(a) shall—
  - (a) contain such information as is necessary to enable an informed assessment of the operations of the energy company and its subsidiaries (if any), including a comparison of the performance of the energy company and its subsidiaries (if any) with any relevant statement of corporate intent; and
  - (b) state the maximum dividend (if any) recommended to be payable by the energy company in respect of its equity securities (other than fixed interest securities) for the financial year to which the report relates.
- (5) *[Repealed]*
- (6) If, at any time, section 39 does not apply or ceases to apply in respect of any energy company, the company shall not be required or, as the case may be, shall no longer be required to comply with this section, and, notwithstanding

any subsequent change in the shareholding of the energy company, this section shall have no or, as the case may be, no further application to that company at any time.

Compare: 1974 No 66 s 594Z; 1989 No 29 s 34(1)

Section 44 heading: amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 44(3)(b): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 44(5): repealed, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

#### **45 Auditor-General to be auditor of energy companies and subsidiaries**

- (1) Despite sections 207P to 207V of the Companies Act 1993 and subject to subsection (3), every energy company and every subsidiary of every energy company is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.
- (2) Without limiting the provisions of this section, the directors of an energy company may, after consultation with the Auditor-General, appoint a person or firm that is qualified for appointment as an auditor of a company to be an additional auditor of the energy company or any subsidiary of it.
- (3) If an energy company is not a public energy company,—
  - (a) the company is not a public entity under subsection (1); and
  - (b) the Auditor-General is not the auditor of the company; and
  - (c) the directors of the company and of every subsidiary of the company must appoint an auditor or auditors of the company and of every subsidiary of the company and, where such appointment is made consequent on the Auditor-General ceasing to be the auditor of the energy company, every such appointment must be treated as having been made by the directors to fill a casual vacancy in the office of auditor under section 207R(3) of the Companies Act 1993.
- (4) Despite subsection (3), if, in respect of any energy company that has ceased to be a public energy company, and its subsidiaries (if any), financial statements have been submitted to the Auditor-General for audit, the Auditor-General is to continue to be the auditor of the company and every subsidiary of the company until that audit has been completed.
- (5) In this section, **public energy company** means an energy company in which a controlling interest is held by any local authority or local authorities, or any approved person or approved persons, or any combination of 1 or more local authorities and 1 or more approved persons.

Section 45: substituted, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

Section 45(1): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 45(3)(c): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 45(4): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

#### 46 Protection from disclosure of sensitive information

Nothing in this Act shall be construed as requiring the inclusion, in any statement of corporate intent, annual report, financial statement, or half-yearly report required to be produced under this Act in relation to an energy company, of any information that could be properly withheld if the Local Government Official Information and Meetings Act 1987 applied to energy companies and a request for that information were made under that Act.

Compare: 1988 No 91 s 17

#### *Auditing of approved persons*

Heading: inserted (with effect on 1 July 1992), on 17 December 1992, by section 4 of the Energy Companies Amendment Act 1992 (1992 No 123).

#### 46A Auditing of approved persons

- (1) While an approved person holds equity securities in an energy company,—
- (a) the approved person shall cause to be kept proper accounts relating to the equity securities so held; and
  - (b) the approved person shall, within 5 months after the end of each financial year of the approved person, cause to be prepared, with respect to the affairs of the approved person as they relate to those equity securities, a yearly statement of financial position, a statement of financial performance, and a statement of cash flows, together with such other statements of account as may be necessary to give a true and fair view of the financial position of the approved person as it relates to those equity securities; and
  - (c) as soon as practicable after the preparation of the yearly statement of financial position, a statement of financial performance, and statements in accordance with paragraph (b), the approved person shall submit them to an auditor for audit; and
  - (d) the approved person shall make available to the public—
    - (i) the auditor's report prepared under paragraph (c); and
    - (ii) the statement of financial position and account to which the report relates,—

and section 85 shall apply accordingly with all necessary modifications.
- (2) In this section, **auditor** means a qualified auditor within the meaning of section 35 of the Financial Reporting Act 2013.
- (3) Nothing in this section limits any other enactment or rule of law relating to the maintenance and auditing of the accounts of an approved person.

- (4) This section is subject to section 104 of the Electricity Industry Act 2010.
- Section 46A: inserted (with effect on 1 July 1992), on 17 December 1992, by section 4 of the Energy Companies Amendment Act 1992 (1992 No 123).
- Section 46A(1)(b): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).
- Section 46A(1)(c): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).
- Section 46A(1)(d)(ii): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).
- Section 46A(2): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).
- Section 46A(4): added, on 1 November 2010, by section 166 of the Electricity Industry Act 2010 (2010 No 116).

## **Part 5**

### **Transfer of energy undertakings to energy companies**

#### *Transfer of undertaking of Boards*

#### **47 Transfer of undertaking of Board to successor company**

- (1) On a date appointed by the Governor-General by Order in Council made on the recommendation of the Minister,—
- (a) the undertaking of a Board named in the order (other than the shares referred to in paragraph (b)) shall, by virtue of this section, vest in the Board's successor company; and
- (b) all of the shares (if any) held by that Board in the Board's successor company shall, by virtue of this section, vest in such person or persons as are specified in the order, which for that purpose shall give effect to the provisions of the establishment plan approved in respect of that Board.
- (2) On the appointed day in relation to a Board,—
- (a) the Board shall be deemed to be dissolved; and
- (b) every person holding office as a member of the Board shall cease to hold that office; and no such member shall be entitled to any compensation in respect of loss of office.
- (3) An Order in Council shall be made under subsection (1) in relation to a Board and its successor company not later than 1 month after the date on which that successor company is incorporated or such later date as the Minister in any particular case determines.
- (4) In the application of subsection (3) in relation to a Board whose undertaking is to be transferred, in accordance with an approved establishment plan, to a successor company other than a company that is to be formed and registered pursuant to section 32, subsection (3) shall be read as if the reference to 1 month

after the date of the incorporation of that successor company were a reference to 1 month after the date of the approval of that establishment plan.

#### **48 Issue of equity securities and debt securities**

- (1) Every Order in Council made under section 47(1) in relation to a Board and its successor company shall—
  - (a) specify—
    - (i) the kind, number, terms, and consideration for the issue of any equity securities that shall be issued by the successor company consequent upon the vesting in it of the undertaking of the Board; and
    - (ii) the names of the persons, or the class or classes of the persons, to whom those equity securities shall be issued; and
  - (b) specify—
    - (i) the kind, number, nominal value, and terms (including interest) of any debt securities that shall be issued by the successor company consequent upon the vesting in it of the undertaking of the Board; and
    - (ii) the names of the persons to whom those debt securities shall be issued; and
  - (c) specify the date on which the equity securities and debt securities shall be issued.
- (2) In respect of the matters required by subsection (1) to be specified in an Order in Council made in relation to a Board and its successor company, the Order in Council shall give effect to the provisions of the establishment plan approved in respect of that Board.
- (3) On the date specified in the Order in Council pursuant to subsection (1)(c), the company shall—
  - (a) issue to such persons as are specified in the order in that behalf, and as fully paid up, equity securities of such kind, number and terms, and of such nominal value or for such consideration, as the case may be, as are specified in the order:
  - (b) issue to such persons as are specified in the order in that behalf, debt securities of such kind, number, nominal value, and terms as are specified in the order.
- (4) *[Repealed]*

Compare: 1987 No 195 s 6(4), (5), (8)

Section 48(1)(a)(i): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 48(1)(a)(i): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 48(3)(a): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 48(4): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

#### **49 Depreciation funds to vest in energy company free of all trusts**

- (1) On the appointed day in relation to a Board,—
- (a) all investments made by the Board pursuant to section 23 of the Electric Power Boards Amendment Act 1927, and all interest accrued on those investments; and
  - (b) all money held, pursuant to section 24 of that Act, by Depreciation Fund Commissioners, or by the Public Trustee as a sole Depreciation Fund Commissioner, upon trust for the Board,—
- shall, notwithstanding anything in sections 23A to 28 of that Act, vest in the Board's successor company freed and discharged from all trusts and restrictions affecting those investments or, as the case may be, that money.
- (2) On the appointed day in relation to a Board, any person holding office in respect of that Board as a Depreciation Fund Commissioner pursuant to section 21 of the Electric Power Boards Amendment Act 1927 shall cease to hold that office; and no such person shall be entitled to any compensation in respect of loss of office.

#### **50 Consequential provisions on transfer of undertaking of Board to successor company**

Without limiting the generality of section 47, on and from the appointed day in relation to a Board,—

- (a) a reference (express or implied) to the Board in any instrument made, given, passed, or executed before the appointed day shall be read and construed as a reference to its successor company:
- (b) all contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices, (whether or not in writing), entered into by, made with, given to or by, or addressed to the Board (whether alone or with any other person) before the appointed day and subsisting immediately before the appointed day shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the Board, be binding on and enforceable by, against, or in favour of its successor company as fully and effectually in every respect as if, instead of the Board, the company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be:
- (c) nothing effected or authorised by this Act—

- (i) shall be regarded as placing the Board or its successor company or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
  - (ii) shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
  - (iii) shall be regarded as placing the Board or its successor company or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
  - (iv) shall release any surety wholly or in part from all or any obligation; or
  - (v) shall invalidate or discharge any contract or security:
- (d) any action, arbitration, proceedings, or cause of action which, immediately before the appointed day, is pending or existing by, against, or in favour of the Board or to which the Board is a party may be prosecuted, and without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of its successor company.

Compare: 1988 No 90 s 7(a), (c), (i), (j)

## **51 Employees of Board**

Notwithstanding any other provision of this Act,—

- (a) on the appointed day in relation to a Board, each employee of the Board shall become an employee of its successor company but, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and the period of service of that employee with the Board, and every other period of service of that employee that is recognised as continuous service by the Board, shall be deemed to have been a period of service with the company:
- (b) the terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of that employee's employment with the Board immediately before the appointed day and be capable of variation in the same manner:
- (c) no such employee shall be entitled to receive any payment or other benefit by reason only of that employee ceasing by virtue of this Act to be an employee of the Board:
- (d) property held on trust or vested in any person under any provident, benefit, superannuation, or retirement fund or scheme for the employees of a Board or their dependants or other persons immediately before the ap-

pointed day shall, on and after the appointed day, be deemed to be held on trust or vested in that person for those employees in their capacity as employees of the Board's successor company or their dependants or other persons on the same terms and conditions; and every reference in any instrument constituting that fund or scheme to the Board or an employee of the Board or a dependant of that employee or any other person shall be read and construed as a reference to the Board's successor company or an employee of that company, or a dependant of that employee or any other person, as the case may be; and any superannuation scheme that was, immediately before the appointed day, a registered superannuation scheme within the meaning of the Superannuation Schemes Act 1989 shall continue to be a registered superannuation scheme on and after the appointed day.

Compare: 1988 No 90 s 9

## 52 Books and documents to remain evidence

- (1) Any document, matter, or thing, which, if this Act had not been passed, would have been admissible in evidence in respect of any matter for or against a Board shall, on and after the appointed day in relation to that Board, be admissible in evidence in respect of the same matter for or against that Board's successor company.
- (2) In this section, **document** has the same meaning as in section 2(1) of the Evidence Amendment Act (No 2) 1980.

Compare: 1988 No 90 s 10

## 53 Registers

- (1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the provisions of this Act to change the name of a Board to that of its successor company in those books or registers or in any document.
- (2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by a Board's successor company,—
  - (a) executed or purporting to be executed by the company; and
  - (b) relating to any property held immediately before the appointed day in relation to the Board by that Board; and
  - (c) containing a recital that that property has become vested in the company by virtue of the provisions of this Act—

shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the company.

Compare: 1988 No 90 s 11

**54 Taxes and duties**

- (1) For the purposes of the Inland Revenue Acts, and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge, a Board and its successor company shall be deemed to be the same person.
- (2) For the purposes of section IA 5 of the Income Tax Act 2007, the person or persons on whom voting interests or, in any case where a market value circumstance exists, market value interests in a Board's successor company are conferred—
  - (a) by reason of the vesting in that person or those persons, by virtue of section 47(1)(b), of shares in that company; or
  - (b) by reason of the issue to that person or those persons, pursuant to section 48(3), of equity securities in that company—

shall be deemed to be the same persons as those persons who, immediately before the appointed day in relation to that Board, were treated by the Income Tax Act 2007 as holding shares in that Board.

- (3) Neither—
  - (a) the vesting of shares by virtue of section 47(1)(b); nor
  - (b) the issue of equity securities or debt securities pursuant to section 48(3)—

shall constitute a dutiable gift for the purposes of the Estate and Gift Duties Act 1968.

- (4) In this section, the terms **voting interest**, **market value circumstance**, and **market value interest** have the same meanings as they have in the Income Tax Act 2007.

Section 54: substituted (with effect on 1 July 1992), on 17 December 1992, by section 5 of the Energy Companies Amendment Act 1992 (1992 No 123).

Section 54(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 54(4): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**55 Savings as to Board's special rates**

- (1) Where, before 29 June 1988 (being the date of commencement of section 209 of the Rating Powers Act 1988), any Board (other than the Auckland Electric Power Board) has pledged a special rate as security for any special loan, that rate may be made and levied by the Board's successor company as if that company were the Board.
- (2) For the purposes of subsection (1), the provisions of sections 57 to 64 of the Electric Power Boards Act 1925, so far as applicable and with all necessary modifications, shall (notwithstanding the repeal of those sections by section

- 209(1) of the Rating Powers Act 1988) apply with respect to any special rate that may be made and levied by an energy company pursuant to subsection (1).
- (3) Where, before the appointed day in relation to the Auckland Electric Power Board, that Board has pledged a special rate as security for any special loan, that rate may be made and levied by that Board's successor company as if that company were the Board.
  - (4) For the purposes of subsection (3), the provisions of sections 47 to 54 of the Auckland Electric Power Board Act 1978, so far as applicable and with all necessary modifications, shall (notwithstanding the repeal of those sections by section 95(1) of this Act) apply with respect to any special rate that may be made and levied by the Auckland Electric Power Board's successor company pursuant to subsection (3).

*Transfer of undertaking of local authorities*

**56 Local authorities to transfer energy undertakings to energy companies**

- (1) Notwithstanding anything in the Local Government Act 1974, every local authority the operations of which include an energy undertaking shall, not later than 1 April 1993 or such later date as the Minister in any particular case may allow, transfer that energy undertaking to 1 or more energy companies.
- (2) No local authority shall transfer any part of its energy undertaking to an energy company pursuant to subsection (1) except in accordance with the terms of an approved establishment plan.
- (3) In any case where an energy undertaking has not been transferred by a local authority to an energy company in accordance with this section within the time required by this section (including, where that time has been extended under this section, that extension of time), the Minister may transfer the energy undertaking to an energy company, and the Minister shall have all such powers as are necessary or desirable for that purpose.
- (4) Where, as a result of the default of any local authority, the Minister acts under subsection (3), the Minister shall be entitled to be reimbursed by the local authority for any costs and expenses incurred in the taking of the action.

**57 Liabilities in respect of undertakings**

- (1) Where any energy undertaking is to be transferred to an energy company by a local authority, the liabilities of the local authority that relate to the undertaking shall be identified by the local authority and the person or persons to whom the liabilities are owed.
- (2) In the absence of agreement between the local authority and the person or persons to whom the liabilities are owed as to the extent of the liabilities of the local authority that relate to the undertaking, the matter shall be referred to arbitration under the Arbitration Act 1996, with 1 arbitrator to be appointed by

each party and an umpire to be appointed by those arbitrators before entering upon their reference.

- (3) The liabilities so identified shall remain liabilities of the local authority except to the extent of any written agreement to the contrary between all of the following:
- (a) the local authority;
  - (b) the energy company;
  - (c) the person or persons to whom the liability is owed;
  - (d) any guarantor of the liability.
- (4) The directorate and members of the energy company shall ensure that sufficient debt securities are issued by the energy company to the local authority as will ensure that the local authority receives from the energy company funds sufficient to meet the liabilities that it is to retain and that relate to the undertaking transferred to the energy company.

Compare: 1974 No 66 s 594ZI; 1989 No 29 s 34(1)

Section 57(2): amended, on 1 July 1997, pursuant to section 18 of the Arbitration Act 1996 (1996 No 99).

### **58 Certain matters not affected by transfer of undertaking to energy company**

No transfer of any energy undertaking of a local authority to an energy company—

- (a) shall be regarded as placing the local authority, the energy company, or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
- (c) shall be regarded as placing the local authority, the energy company, or any other person in breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
- (d) shall release any surety wholly or in part from all or any obligation; or
- (e) shall invalidate or discharge any contract or security,—

unless there is in force an express commitment by the local authority that the undertaking will not be transferred to any such energy company.

Compare: 1974 No 66 s 594ZJ; 1989 No 29 s 34(1)

**59 Consequential provisions on transfer of undertaking of local authority to energy company**

- (1) Where any energy undertaking is transferred from a local authority to an energy company, thenceforth—
  - (a) a reference (express or implied) to the local authority in any Act or instrument relating to the undertaking shall be read and construed as a reference to the energy company:
  - (b) all contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices, (whether or not in writing) relating to the undertaking entered into by, made with, given to or by, or addressed to the local authority (whether alone or with any other person) subsisting immediately before the transfer shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the local authority, be binding on and enforceable by, against, or in favour of the energy company as fully and effectually in every respect as if, instead of the local authority, the energy company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be.
- (2) For the purposes of this section, an Act, instrument, contract, agreement, conveyance, deed, lease, licence, or other instrument or undertaking or notice shall be deemed to be related to the undertaking if it is acknowledged by both the local authority and the energy company as being so related.
- (3) Nothing in this section shall apply in respect of the liabilities of the local authority in relation to any energy undertaking except as may be necessary to give effect to any agreement referred to in section 57(3).
- (4) This section shall apply in relation to any company or entity to which section 81 applies as if it were an energy company.

Compare: 1974 No 66 s 594ZK; 1989 No 29 s 34(1)

Section 59(4): added (with effect on 1 July 1992), on 17 December 1992, by section 6 of the Energy Companies Amendment Act 1992 (1992 No 123).

**60 Protection of conditions of employment upon transfer**

- (1) Where any employee of a local authority is transferred to an energy company to do substantially the same work as that person was doing before the transfer, the employment of that person by the energy company shall be on terms and conditions of employment no less favourable than the terms and conditions of employment applying to that person immediately before the date of the transfer.
- (2) Subsection (1) shall continue to apply to the terms and conditions of employment of each transferred employee until such time as any of the terms and conditions of employment that apply under the employment contract applying to that employee at the date of the transfer are varied.

- (3) The terms and conditions of employment of each transferred employee shall, from the date of any such variation, be determined in accordance with the employment contract applying to that employee in the energy company in which the transferred employee is then employed.
- (4) Nothing in subsection (1) shall continue to apply to any transferred employee who receives any subsequent appointment within the energy company to which that employee was transferred.

Compare: 1988 No 20 s 61B; 1991 No 31 s 6

### **61 Employment of transferred employees deemed to be continuous**

- (1) Every employee of a local authority who is transferred to an energy company shall, on the date of the transfer, become an employee of the energy company, but, for the purposes of every enactment, determination, contract, and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and that employee's period of service with that local authority, and every other period of service of that employee that is recognised as continuous service by that local authority, shall be deemed to have been a period of service with the energy company.
- (2) No employee of a local authority who is transferred to an energy company shall be entitled to receive any payment or other benefit by reason only of that person ceasing by virtue of that transfer to be an employee of that local authority.

### **62 Taxes and duties**

- (1) Where any energy undertaking of a local authority is transferred to an energy company in accordance with this Act, then, for the purposes of the Inland Revenue Acts, and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge, that local authority (in its capacity as an energy trading operator within the meaning given to that term by section OB 1 of the Income Tax Act 1994 immediately before the repeal of that Act) and that energy company shall be deemed to be the same person.
- (2) Where an energy undertaking of a local authority is transferred to an energy company in accordance with this Act, then, for the purposes of section IA 5 of the Income Tax Act 2007, the person or persons on whom voting interests or, in any case where a market value circumstance exists, market value interests in that energy company are conferred by reason of the allocation, to that person or those persons, in accordance with an approved establishment plan, of equity securities in that company shall be deemed to be the same persons as those persons who, immediately before the transfer of that undertaking to that energy company, were treated by the Income Tax Act 2007 as holding shares in that local authority (in its capacity as an energy trading operator within the meaning given to that term by section OB 1 of the Income Tax Act 1994 immediately before the repeal of that Act).

- (3) Notwithstanding anything in subsection (1), where an energy undertaking of a local authority is transferred to 2 or more energy companies in accordance with this Act, then, for the purposes of section IA 5 of the Income Tax Act 2007, if any net loss as defined in section YA 1 of the Income Tax Act 2007 of that local authority (in its capacity as an energy trading operator within the meaning given to that term by section OB 1 of the Income Tax Act 1994 immediately before the repeal of that Act) is taken into account in the accounts of 1 of the energy companies to which that energy undertaking is so transferred, that net loss as defined in section YA 1 of the Income Tax Act 2007 may not be taken into account in the accounts of any other energy company.
- (4) This section shall apply in relation to any company or entity to which section 81 applies as if it were an energy company.
- (5) In this section, the terms **voting interest**, **market value circumstance**, and **market value interest** have the same meanings as they have in the Income Tax Act 2007.

Section 62: substituted (with effect on 1 July 1992), on 17 December 1992, by section 7 of the Energy Companies Amendment Act 1992 (1992 No 123).

Section 62(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 62(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 62(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 62(3): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 62(3): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 62(3): amended, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 62(5): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **63 Transfer of leases, licences, etc, to energy company**

- (1) A local authority may grant to any energy company any lease, licence, easement, permit, or interest of any kind in relation to any energy undertaking transferred by the local authority to the energy company.
- (2) Notwithstanding anything in any enactment or rule of law, property that is fixed to, or under or over, any land may be transferred pursuant to this Act by a local authority to an energy company, whether or not any interest in the land is also transferred. Where any such property is so transferred, the property and

the land shall be regarded as separate property each capable of separate ownership.

Compare: 1974 No 66 s 594ZE; 1989 No 29 s 34(1)

#### **64 Exclusion of Public Bodies Leases Act 1969**

Nothing in the Public Bodies Leases Act 1969 shall apply to any lease granted by a local authority to an energy company to which that local authority transfers an energy undertaking pursuant to this Act.

Compare: 1974 No 66 s 594ZH; 1989 No 29 s 34(1)

#### **65 Prohibition on guarantees, etc**

No local authority shall give any guarantee, indemnity, or security in respect of the performance of any obligation by an energy company in which that local authority is a shareholder.

Compare: 1974 No 66 s 594ZP; 1989 No 29 s 34(1)

#### **65A Restriction on power of local authority to lend to energy company**

Where a local authority is a shareholder in an energy company, that local authority shall not lend money to, or provide any other financial accommodation to, that energy company on terms and conditions that are more favourable to the energy company than those that would apply if the local authority were (without charging any rate or rate revenue as security) borrowing the money or obtaining the financial accommodation.

Section 65A: inserted, on 1 July 1998, by section 16(1) of the Local Government Amendment Act (No 3) 1996 (1996 No 83).

#### **66 Prohibition on transfer of regulatory functions**

- (1) Except with the prior approval of the Minister, no local authority shall transfer or attempt to transfer any regulatory function to an energy company, whether or not that function is ordinarily carried out in conjunction with any energy undertaking that is being or has been so transferred.
- (2) Any approval given under subsection (1) may be given either unconditionally or subject to such conditions as the Minister thinks fit.
- (3) Any approval given under subsection (1) may at any time be withdrawn by the Minister; and any condition subject to which any such approval is given may from time to time be revoked, varied, or added to by the Minister.

Compare: 1974 No 66 s 594E; 1989 No 29 s 34(1)

#### **67 Duty to act in furtherance of objectives of this Part**

- (1) Every local authority shall at all times do everything in its power to achieve the objectives of this Part, (in so far as those objectives relate to the local authority), and for that purpose, but without limitation, shall do everything in its power—

- (a) to preserve and maintain the energy undertaking of the local authority pending the transfer of that undertaking to an energy company:
  - (b) to facilitate the transfer of its energy undertaking to an energy company:
  - (c) to assist in the transfer of the staff of its energy undertaking to an energy company.
- (2) No local authority shall, without the prior written consent of the Minister,—
- (a) dispose of or charge any of its energy undertaking; or
  - (b) enter into or grant any lease, licence, concession, or other franchise agreement or arrangement of more than 12 months' duration relating to its energy undertaking; or
  - (c) extend the term of any lease, licence, concession, or other franchise agreement or arrangement relating to its energy undertaking for a period exceeding 12 months,—
- except in accordance with an approved establishment plan.
- (3) The Minister, upon being satisfied that the energy undertaking of a local authority has been transferred to an energy company, shall advise the local authority in writing that the consent of the Minister to any action referred to in subsection (2) is no longer required.

Compare: 1988 No 91 s 33

### *General*

#### **68 Issue of shares on incorporation of energy company**

- (1) On the appointed day in relation to a Board, the shares subscribed or applied for in the capital of the Board's successor company on its incorporation shall be deemed,—
- (a) *[Repealed]*
  - (b) in the case of a company registered under the Companies Act 1993, to have been issued in satisfaction of the liability of the applicant for the shares under the constitution or the terms of issue.
- (2) On the transfer by a local authority to an energy company of an energy undertaking of the local authority, the shares subscribed or applied for in the capital of the energy company on its incorporation shall be deemed,—
- (a) *[Repealed]*
  - (b) in the case of a company registered under the Companies Act 1993, to have been issued in satisfaction of the liability of the applicant for the shares under the constitution or the terms of issue.
- (3) Nothing in subsection (1) or subsection (2) shall apply in respect of any company that has been incorporated otherwise than pursuant to section 32.
- (4) *[Repealed]*

Section 68: substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 68(1)(a): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 68(2)(a): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 68(4): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

### **69 Modification of provisions of Public Works Act 1981**

- (1) Nothing in sections 40 to 42 of the Public Works Act 1981 shall apply to the vesting of land in, or the transfer of land to, an energy company pursuant to this Act, but sections 40 and 41 of that Act shall, after the vesting or transfer, apply to that land as if the energy 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 energy company pursuant to this Act, an offer made under subsection (2) of section 40 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 energy 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 energy 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.

Compare: 1974 No 66 s 594ZF; 1989 No 29 s 34(1)

### **69A Preparation of accounts**

- (1) Where—
  - (a) under section 47(1), the date appointed for the vesting in an energy company of the undertaking of a Board or Boards occurs after the end of the 1993 financial year of the Board or Boards; or
  - (b) under section 56, the date of transfer to an energy company of the energy undertaking of a local authority or local authorities occurs after the end of the 1993 financial year of the local authority or local authorities—

the energy company in which such undertaking or undertakings has vested, or to which such undertaking or undertakings has been transferred, as the case may be, shall, not later than 6 months after the date of vesting or transfer, prepare financial statements for the Board or Boards or the energy undertaking of the local authority or local authorities, as the case may be, for the period from

the end of the last financial year of the Board or local authority to the date of vesting or transfer, as the case may be, and shall have such financial statements audited.

- (2) The Auditor-General shall be the auditor of the financial statements prepared under the authority of subsection (1); and for that purpose shall have and may exercise all of the functions, duties, and powers that it has under the Public Audit Act 2001 in respect of public money.

Section 69A: inserted, on 28 September 1993, by section 2 of the Energy Companies Amendment Act 1993 (1993 No 142).

Section 69A(2): amended, on 1 July 2001, pursuant to section 52 of the Public Audit Act 2001 (2001 No 10).

Section 69A(2): amended, on 1 July 2001, pursuant to section 54(1)(a) of the Public Audit Act 2001 (2001 No 10).

## **Part 6**

### **Waikato Electricity Authority**

#### **70 Waikato Electricity Authority**

The provisions of sections 71 to 78 shall apply notwithstanding anything to the contrary in the Waikato Electricity Authority Act 1988.

#### **71 Waikato Electricity Authority to prepare share allocation plan**

- (1) Not later than 6 months after the commencement of this section or such later date as the Minister may allow (but in no case later than 31 March 1993), the Waikato Electricity Authority shall prepare and submit to the Minister, for the Minister's approval, a plan setting out the Authority's recommendations as to the person or persons to whom the voting equity securities held by the Authority in WEL Energy Group Limited should be allocated consequent upon the dissolution of the Authority.
- (2) The Waikato Electricity Authority shall not forward a share allocation plan to the Minister unless the Authority has adopted the special consultative procedure in relation to that plan.
- (3) For the purposes of section 716A of the Local Government Act 1974 (as applied by subsection (2)), the Waikato Electricity Authority shall be deemed to be a local authority.

#### **72 Approval of plan**

- (1) Subject to subsection (2), as soon as practicable after receiving the plan submitted by the Authority under section 71, the Minister shall approve the plan by notice in writing to the Authority.
- (2) If the Minister considers that the plan should be varied, the Minister may decline to approve the plan and direct the Authority to prepare and submit a revised plan.

- (3) Where, pursuant to subsection (2), the Minister declines to approve the plan and directs the Authority to prepare and submit a revised plan, the Minister shall inform the Authority of the reasons for the direction, and may indicate any specific matter that the Minister requires to be dealt with in the revised plan.
- (4) Where, pursuant to subsection (2), the Minister declines to approve the plan submitted by the Authority, the Authority shall submit a revised plan to the Minister not later than 6 weeks after the date on which that approval was declined or such later date as the Minister may allow.
- (5) The provisions of section 71(1) shall apply in respect of a revised plan required to be submitted to the Minister under subsection (4) of this section.

### **73 Approval of revised plan**

- (1) As soon as practicable after receiving a revised plan submitted by the Waikato Electricity Authority under section 72(4), the Minister shall—
  - (a) approve the plan by notice in writing to the Authority; or
  - (b) if the Minister considers that the revised plan requires further amendment,—
    - (i) make such amendments to the plan as the Minister considers necessary; and
    - (ii) approve the plan (as amended) by notice in writing to the Authority, which notice shall be accompanied by a copy of the plan as approved.
- (2) Before making any amendments to the plan under subsection (1)(b), the Minister shall advise the Authority of the Minister's intention to do so, and shall give the Authority a reasonable opportunity to make submissions on the matter.

### **74 Failure to submit plan**

- (1) If the Waikato Electricity Authority has not submitted a plan in accordance with section 71 within the time required by subsection (1) of that section (including, where that time has been extended under that subsection, that extension of time), the Minister shall cause such a plan to be prepared, and shall approve that plan, and shall have all such powers as are necessary or desirable for that purpose.
- (2) Where, as a result of the default of the Authority, the Minister acts under subsection (1), the Minister shall be entitled to be reimbursed by the Authority for any costs and expenses incurred in the taking of the action.
- (3) In any case where, pursuant to subsection (2) of section 72, the Minister has declined to approve the plan submitted by the Authority, and the Authority has not submitted a revised plan in accordance with subsection (4) of that section within the period referred to in subsection (4) of that section (including, where that time has been extended, that extension of time), section 73 shall apply as if

the original plan submitted by the Authority to the Minister were a revised plan submitted under section 73, but nothing in section 73(2) shall apply in any such case.

- (4) Where, pursuant to subsection (1), the Minister causes a plan to be prepared, the plan shall provide for the voting equity securities held by the Authority in WEL Energy Group Limited to be allocated to the local authorities referred to in section 6(1) of the Waikato Electricity Authority Act 1988 (or the successors to those local authorities) in such proportions as the Minister determines, but in making that determination the Minister shall take into account the relative number of members of the Waikato Electricity Authority that the electors within the district of each such local authority (or its successor) would, but for section 6(2) of that Act and section 14 of the Electric Power Boards Amendment Act 1989, be entitled to elect to the Waikato Electricity Authority.

#### **75 Valuation to be submitted with plan**

- (1) Before submitting to the Minister the plan required by section 71, the Waikato Electricity Authority shall value the undertaking of WEL Energy Group Limited.
- (2) The valuation required by subsection (1) shall be made on the same basis as valuations made for the purposes of section 18(2)(b).
- (3) The plan submitted to the Minister in accordance with section 71 shall state, in an appendix to that plan, the value of WEL Energy Group Limited, as that value is determined in accordance with this section.

#### **76 Transfer of assets and shares**

- (1) On a date appointed by the Governor-General by Order in Council made on the recommendation of the Minister,—
  - (a) both—
    - (i) all shares held by the Waikato Electricity Authority in WEL Energy Group Limited; and
    - (ii) all money and other debt securities that are part of the undertaking of the Waikato Electricity Authority—

shall, by virtue of this section, vest in such person or persons as are specified in the order, which for that purpose shall give effect to the provisions of the plan approved pursuant to section 72 or section 73; and
  - (b) the undertaking of the Waikato Electricity Authority (other than the shares referred to in paragraph (a)(i), and the money and debt securities referred to in paragraph (a)(ii)) shall, by virtue of this section, vest in WEL Energy Group Limited.
- (2) On the date appointed under subsection (1) in relation to the Waikato Electricity Authority,—
  - (a) the Authority shall be deemed to be dissolved; and

- (b) every person holding office as a member of the Authority shall cease to hold that office; and no such member shall be entitled to any compensation in respect of loss of office.
- (3) An Order in Council shall be made under subsection (1) in relation to the Waikato Electricity Authority not later than 2 months after the date on which the plan required by section 71 is approved by the Minister or such later date as the Minister may determine.
- (4) Neither—
  - (a) the vesting of shares by virtue of paragraph (a)(i) of subsection (1); nor
  - (b) the vesting of money and debt securities by virtue of paragraph (a)(ii) of that subsection—

shall constitute a dutiable gift for the purposes of the Estate and Gift Duties Act 1968.

Section 76(1): substituted (with effect on 1 July 1992), on 17 December 1992, by section 8(1) of the Energy Companies Amendment Act 1992 (1992 No 123).

Section 76(4): added (with effect on 1 July 1992), on 17 December 1992, by section 8(2) of the Energy Companies Amendment Act 1992 (1992 No 123).

## **77 Provisions to apply in respect of Waikato Electricity Authority and WEL Energy Group Limited**

For the purposes of Part 5,—

- (a) the Waikato Electricity Authority shall be deemed to be an Electric Power Board constituted under the Electric Power Boards Act 1925; and
- (b) on and after the date appointed under section 76(1), WEL Energy Group Limited shall be deemed to be an energy company formed and registered in accordance with section 32 as the Waikato Electricity Authority's successor company; and
- (c) the Order in Council made under section 76(1) shall be deemed to be an Order in Council made under section 47(1),—

and, subject to sections 71 to 76, the provisions of Part 5 shall, so far as applicable and with all necessary modifications, apply accordingly.

## **78 WEL Energy Group Limited deemed to be energy company for certain purposes**

For the purposes of sections 36, 37, 39 to 46, 85, 87, and 88, WEL Energy Group Limited shall be deemed to be an energy company.

## **79 Repeal of Waikato Electricity Authority Act 1988 and amendments**

- (1) The following enactments are hereby repealed, namely,—
  - (a) the Waikato Electricity Authority Act 1988:
  - (b) sections 11 to 15 of the Electric Power Boards Amendment Act 1989:

- (c) the Waikato Electricity Authority Amendment Act 1990:
  - (d) section 7(2)(b) of the Local Government Official Information and Meetings Amendment Act 1991:
  - (e) section 92.
- (2) The enactments specified in Schedule 1 are hereby consequentially amended in the manner indicated in that schedule.
- (3) The repeal, by subsection (1), of the Waikato Electricity Authority Amendment Act 1990 shall not affect the amendment made by section 6 of that Act.

**80 WEL Energy Group Limited declared to be administering body**

- (1) WEL Energy Group Limited is declared to be an administering body within the meaning of section 2 of the Reserves Act 1977 in relation to every reserve, within the meaning of that Act, vested in it pursuant to the Waikato Electricity Authority Act 1988.
- (1A) Notwithstanding subsection (1), WEL Energy Group Limited shall be a local authority for the purposes of the Local Government Official Information and Meetings Act 1987—
- (a) for the purposes of Parts 1 to 6 and 8 of that Act, only in relation to any document, official information, or personal information (within the meaning of that Act) which relates to its activities, powers, and responsibilities as an administering body within the meaning of section 2 of the Reserves Act 1977; and
  - (b) for the purposes of Part 7 of that Act, only in relation to any portion of any meeting (within the meaning of that Act) at which consideration is given to any resolution or decision on any matter which relates to its activities, powers, and responsibilities as an administering body within the meaning of section 2 of the Reserves Act 1977.
- (2) This section shall come into force on the date on which section 79 comes into force.

Section 80(1A): inserted, on 28 September 1993, by section 3 of the Energy Companies Amendment Act 1993 (1993 No 142).

**Part 7**

**Miscellaneous provisions**

*General*

**81 Undertakings transferred before commencement of this Act**

- (1) Notwithstanding anything in any other enactment, where any local authority has, before the commencement of this section, transferred all or any of its energy undertaking to any company or any other entity in which shares that carry 51% or more of the voting rights at any general meeting of the company or en-

tity are held by or on behalf of the local authority or other local authorities, that company or other entity (hereafter in this section referred to as an existing company) shall be deemed, for the purposes of sections 36, 37, 39 to 46, 85, 87, and 88, to be an energy company.

- (2) Every existing company shall, not later than 31 December 1992 or such later date as the Minister in any particular case may allow, cause a valuation of the undertaking of the company to be undertaken, which valuation shall be determined on the same basis as valuations are made for the purposes of section 18(2)(b).
- (3) For the purposes of the application of section 197C(8) of the Income Tax Act 1976 to an existing company during the period beginning on the date on which any local authority transferred all or any of its energy undertaking to that company and ending with the close of the day before the date of commencement of this section, an existing company shall be deemed to be an energy trading operator within the meaning of section 197C of that Act.

## **82 Validation of transfer of certain energy undertakings**

- (1) The following actions are hereby validated and declared to have been lawful, namely,—
  - (a) the formation and registration, under the Companies Act 1955, by the Dunedin City Council, of the company named “Waipori Power Generation Limited” (which company was incorporated on or about 16 March 1990), and the transfer on or about 19 March 1990, by the Dunedin City Council to Waipori Power Generation Limited, of such part of the electricity undertaking of the Dunedin City Council as relates to the generation of electricity; and
  - (b) the formation and registration, under the Companies Act 1955, by the Dunedin City Council, of the company named “Dunedin Electricity Limited” (which company was incorporated on or about 26 June 1990), and the transfer on or about 1 July 1990, by the Dunedin City Council to Dunedin Electricity Limited, of such part of the electricity undertaking of the Dunedin City Council as relates to the distribution of electricity; and
  - (c) the formation and registration, under the Companies Act 1955, by the Dunedin City Council, of the company named “Otago Citigas Limited” (which company was incorporated on or about 15 January 1990), and the transfer on or about 1 December 1990, by the Dunedin City Council to Otago Citigas Limited, of the gas undertaking of the Dunedin City Council,—

and section 81 shall apply in respect of Waipori Power Generation Limited, Dunedin Electricity Limited, and Otago Citigas Limited accordingly.

- (2) The formation and registration, under the Companies Act 1955, by the Palmerston North City Council, of the company named “Progas Systems Limited” (which company was incorporated on or about 5 August 1991), and the transfer on or about 31 December 1991, by the Palmerston North City Council to Progas Systems Limited, of the gas undertaking of the Palmerston North City Council, are hereby validated and declared to have been lawful, and section 81 shall apply in respect of Progas Systems Limited accordingly.
- (3) The formation and registration, under the Companies Act 1955, by the Invercargill City Council, of the company named “Electricity Invercargill Limited” (which company was incorporated on or about 26 June 1991), and the transfer on or about 1 July 1991, by the Invercargill City Council to Electricity Invercargill Limited, of the electricity undertaking of the Invercargill City Council, are hereby validated and declared to have been lawful, and section 81 shall apply in respect of Electricity Invercargill Limited accordingly.
- (4) The formation and registration, under the Companies Act 1955, by the Invercargill City Council, of the company named “Invergas Limited” (which company was incorporated on or about 26 June 1991), and the transfer on or about 1 July 1991, by the Invercargill City Council to Invergas Limited, of the gas undertaking of the Invercargill City Council, are hereby validated and declared to have been lawful, and section 81 shall apply in respect of Invergas Limited accordingly.

### **83 Electric Power Trusts dissolved**

Where, before the commencement of this section, an Electric Power Trust has been established in respect of a Board by a trust deed executed under section 3 of the Electric Power Boards Amendment Act 1990, then, on the commencement of this section, the following provisions shall apply:

- (a) the property, rights, assets, and liabilities (if any) of the trust shall vest in the Board freed and discharged of all trusts and restrictions affecting the property, rights, assets, or liabilities; and
- (b) the trust shall be deemed to be dissolved; and
- (c) the trustees of the trust shall cease to hold office as trustees of that trust; and no such trustee shall be entitled to any compensation in respect of loss of office.

### **84 Remuneration of trustees appointed under Electric Power Boards Amendment Act 1990**

- (1) Every person who, at any time before the commencement of this section, was appointed to be a trustee of an Electric Power Trust established in respect of a Board by a trust deed executed under section 3 of the Electric Power Boards Amendment Act 1990 shall be entitled to receive a salary calculated in accordance with subsection (2) of this section.
- (2) The salary to which a person to whom subsection (1) applies is entitled—

- (a) shall be payable in respect of the period—
    - (i) that begins on the date of the appointment of that person as a trustee of an Electric Power Trust; and
    - (ii) that ends with the close of the 20th day after the commencement of this section, or the date on which that person vacated office as a trustee of that trust (other than by virtue of section 83 or by virtue of the earlier failure or determination of the trust for any reason whatever), whichever is the earlier; and
  - (b) shall be equal in amount to 50% of the salary that, immediately before 8 August 1990, was payable, in accordance with Part 4C of the Local Government Act 1974, to ordinary members of the Board in respect of which the Electric Power Trust of which that person was a member was established; and for the purposes of this paragraph an ordinary member of a Board does not include the Chairperson of a Board or the Deputy Chairperson of a Board or the Chairperson of 1 or more committees of a Board; and
  - (c) shall, in respect of any period in respect of which that person is entitled to receive that salary but which is not a complete year, be reduced in proportion to that period; and
  - (d) shall be paid out of the funds of the Board in respect of which the Electric Power Trust of which the person was a member was established.
- (3) For the purposes of this section, a person who, pursuant to section 4(3) of the Electric Power Boards Amendment Act 1990, informed the Minister for State Owned Enterprises that the person was willing to accept appointment as a trustee of an Electric Power Trust shall be deemed to have been appointed as such a trustee on the day after the date on which that notification was received by that Minister, notwithstanding that, by reason of the failure or determination of the Electric Power Trust to which that notification related, that person did not actually become a trustee of that trust.

#### **84A Continuation in office of members of Central Canterbury Electric Power Board**

During the period beginning on 1 July 1992 and ending with the close of the day before the appointed day in relation to the Central Canterbury Electric Power Board, sections 2 to 4 of the Electric Power Boards Amendment Act 1989 shall, in relation to that Board, have effect as if, for the expression “30 June 1992” wherever it appears in those sections, there were substituted in each case the words “day before the appointed day (within the meaning of the Energy Companies Act 1992) in relation to the Central Canterbury Electric Power Board”.

Section 84A: inserted (with effect on 1 July 1992), on 17 December 1992, by section 9(1) of the Energy Companies Amendment Act 1992 (1992 No 123).

**85 Public availability of documents**

Where any Board, local authority, or energy company is required under this Act to make any document available to the public, it shall—

- (a) make sufficient copies of that document available for public inspection, free of charge; and
- (b) make sufficient copies of that document available for purchase at a reasonable price during normal office hours at every office of the Board, local authority, or energy company, as the case may require; and
- (c) notify by advertisement in a newspaper circulating in the district the fact that copies are so available.

Compare: 1988 No 91 s 35

**86 Supply of information**

The Minister may, from time to time, for the purposes of this Act, require any establishing authority to make available to the Minister information in its possession or over which it has control relating to its energy undertaking; and the establishing authority shall make that information available in a form in which it may be readily understood.

**86A Supply of computer compiled lists and computer tapes containing electoral information to Electric Power Boards and energy companies**

- (1) Where any officer, member, or employee of an Electric Power Board (within the meaning of the Electric Power Boards Act 1925), or of an energy company (within the meaning of this Act), or of any trust that has a substantial share holding in such a company, wishes to obtain a computer compiled list or computer tape, disk, or diskette containing any of the information specified in subsection (2), for the purposes of—
  - (a) any election or poll to be conducted by or on behalf of that Board or company or trust; or
  - (b) any distribution of shares—the Electoral Commission may give that member, officer, or employee, a computer compiled list or computer tape, disk, or diskette containing that information.
- (2) For the purposes of subsection (1), the following information may be recorded on a computer compiled list or computer tape, disk, or diskette for any electoral district:
  - (a) the name of each elector, including first names and surname:
  - (b) the residential address of each elector, and postal address (if different):
  - (c) the occupation (if any) of each elector:
  - (d) statistical meshblock details of each elector.

- (3) The provisions of sections 116 and 117 of the Electoral Act 1993 and any regulations made under the Electoral Act 1993 prescribing requirements in respect of computer tapes, disks, or diskettes, or prescribing fees, shall apply, with any necessary modifications, as if—
- (a) the information sought or supplied under this section had been sought or supplied pursuant to section 113(9) of the Electoral Act 1993; and
  - (b) the persons to whom information may be supplied under this section were persons to whom section 113(9) of the Electoral Act 1993 applied; and
  - (c) the purposes described in paragraphs (a) and (b) of subsection (1) were purposes for which the supply of information was authorised under section 113(9) of the Electoral Act 1993.
- (3A) **Electoral Commission**, in this section, means the Electoral Commission established by section 4B of the Electoral Act 1993.
- (4) In this section, expressions (other than Electoral Commission) defined in the Electoral Act 1993 have the meanings so defined.

Section 86A: inserted, on 28 September 1993, by section 4 of the Energy Companies Amendment Act 1993 (1993 No 142).

Section 86A(1): amended, on 1 July 2012, by section 56(2) of the Electoral (Administration) Amendment Act 2011 (2011 No 57).

Section 86A(3): amended, on 1 July 2012, by section 56(3)(a) of the Electoral (Administration) Amendment Act 2011 (2011 No 57).

Section 86A(3): amended, on 1 July 2012, by section 56(3)(b) of the Electoral (Administration) Amendment Act 2011 (2011 No 57).

Section 86A(3)(a): amended, on 1 July 2012, by section 56(3)(c) of the Electoral (Administration) Amendment Act 2011 (2011 No 57).

Section 86A(3)(b): amended, on 1 July 2012, by section 56(3)(c) of the Electoral (Administration) Amendment Act 2011 (2011 No 57).

Section 86A(3)(c): amended, on 1 July 2012, by section 56(3)(c) of the Electoral (Administration) Amendment Act 2011 (2011 No 57).

Section 86A(3A): inserted, on 1 July 2012, by section 56(4) of the Electoral (Administration) Amendment Act 2011 (2011 No 57).

Section 86A(4): amended, on 1 July 2012, by section 56(5) of the Electoral (Administration) Amendment Act 2011 (2011 No 57).

## 87 Local authority shareholding in energy companies

- (1) Local authorities are hereby authorised to subscribe for, otherwise acquire, hold, or dispose of, equity securities in energy companies.
- (2) Nothing in subsection (1) limits or prevents any other person from subscribing for, otherwise acquiring, holding, or disposing of, equity securities in energy companies.

Compare: 1989 No 91 s 7; 1990 No 120 s 4

**88 Relinquishment by local authority of controlling interest in energy company**

Notwithstanding anything in section 87(1), where a local authority that holds a controlling interest in an energy company—

- (a) proposes to reduce its shareholding in that energy company with the effect that the local authority would no longer hold a controlling interest in that energy company; or
- (b) proposes to take any action or not to take any action with the effect that the local authority would no longer hold a controlling interest in that energy company,—

the local authority may deal with that proposal only in accordance with the special consultative procedure.

Compare: 1974 No 66 s 594F; 1989 No 29 s 34(1)

*Amendments to other enactments*

**89 Amendments to Local Government Act 1974**

(1), (2) *Amendment(s) incorporated in the Act(s).*

(3) The following enactments are hereby consequentially repealed:

- (a) section 43(2) of the Local Government Amendment Act 1980:
- (b) section 23 of the Local Government Amendment Act (No 2) 1982:
- (c) section 10 of the Local Government Amendment Act (No 3) 1986.

**89A Further amendment to Local Government Act 1974**

*[Repealed]*

Section 89A: repealed, on 1 July 2003, by section 266 of the Local Government Act 2002 (2002 No 84).

**90 Amendment to Immigration Act 1987**

*Amendment(s) incorporated in the Act(s).*

**91 Amendment to Electric Power Boards Act 1925**

*Amendment(s) incorporated in the Act(s).*

**92 Amendments to Waikato Electricity Authority Act 1988**

*[Repealed]*

Section 92: repealed, on 26 October 1993, by section 79(1)(e).

**93 Amendments to Electric Power Boards Amendment Act 1989**

*Amendment(s) incorporated in the Act(s).*

**94 Amendment to Electric Power Boards Amendment Act 1990**

*Amendment(s) incorporated in the Act(s).*

*Consequential amendments and repeals*

**95 Repeal of Auckland Electric Power Board Act 1978 and related amendments**

- (1) The following enactments are hereby repealed, namely,—
  - (a) the Auckland Electric Power Board Act 1978;
  - (b) the Auckland Electric Power Board Amendment Act 1979;
  - (c) the Auckland Electric Power Board Amendment Act 1981;
  - (d) so much of Part 3 of Schedule 3 of the Local Government Amendment Act 1985 as relates to—
    - (i) the Auckland Electric Power Board Act 1978;
    - (ii) the Auckland Electric Power Board Amendment Act 1979;
    - (iii) the Auckland Electric Power Board Amendment Act 1981;
  - (e) so much of Schedule 1 of the Local Government Amendment Act 1986 as relates to the Auckland Electric Power Board Act 1978;
  - (f) sections 7 to 10 of the Electric Power Boards Amendment Act 1989;
  - (g) sections 17 to 21 of the Electric Power Boards Amendment Act 1990.
- (2) The enactments specified in Schedule 2 are hereby consequentially amended in the manner indicated in that schedule.

**96 Consequential amendments and repeals**

- (1) The enactments specified in Schedule 3 are hereby amended in the manner indicated in that schedule.
- (2) The enactments specified in Schedule 4 are hereby repealed.
- (3) The repeal, by subsection (2), of the enactments specified in Schedule 4 does not affect the validity of anything validated by any of the provisions of any of those enactments.
- (4) The Electric Power Boards Accounting Regulations 1977 (SR 1977/66) are hereby revoked.

**Schedule 1**  
**Amendments consequential on repeal of Waikato Electricity  
Authority Act 1988**

s 79(2)

**(Which amendments take effect on the commencement of section 79)**

**Local Authorities (Members' Interests) Act 1968 (1968 No 147) (RS Vol 24,  
p 463)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Act 1974 (1974 No 66) (RS Vol 25, p 1)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Official Information and Meetings Act 1987 (1987 No 174)**

*Amendment(s) incorporated in the Act(s).*

**Ombudsmen Act 1975 (1975 No 9) (RS Vol 21, p 65)**

*Amendment(s) incorporated in the Act(s).*

**Public Bodies Contracts Act 1959 (1959 No 98) (RS Vol 27, p 795)**

*Amendment(s) incorporated in the Act(s).*

**Schedule 2**  
**Amendments consequential on repeal of Auckland Electric Power  
Board Act 1978**

s 95(2)

**(Which amendments take effect on the commencement of section 95)**

**Local Authorities Loans Act 1956 (1956 No 63) (RS Vol 24, p 369)**

*Amendment(s) incorporated in the Act(s).*

**Local Authorities (Members' Interests) Act 1968 (1968 No 147) (RS Vol 24,  
p 463)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Act 1974 (1974 No 66) (RS Vol 25, p 1)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Official Information and Meetings Act 1987 (1987 No 174)**

*Amendment(s) incorporated in the Act(s).*

**Public Bodies Contracts Act 1959 (1959 No 98) (RS Vol 27, p 795)**

*Amendment(s) incorporated in the Act(s).*

### Schedule 3 Consequential amendments

s 96(1)

#### **(Which amendments take effect on the commencement of section 96)**

**Environment Act 1986 (1986 No 127)**

*Amendment(s) incorporated in the Act(s).*

**Local Authorities Loans Act 1956 (1956 No 63) (RS Vol 24, p 369)**

*Amendment(s) incorporated in the Act(s).*

**Local Authorities (Members' Interests) Act 1968 (1968 No 147) (RS Vol 24, p 463)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Act 1974 (1974 No 66) (RS Vol 25, p 1)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Official Information and Meetings Act 1987 (1987 No 174)**

*Amendment(s) incorporated in the Act(s).*

**Ombudsmen Act 1975 (1975 No 9) (RS Vol 21, p 65)**

*Amendment(s) incorporated in the Act(s).*

**Public Bodies Contracts Act 1959 (1959 No 98) (RS Vol 27, p 795)**

*Amendment(s) incorporated in the Act(s).*

**Rating Powers Act 1988 (1988 No 97)**

*Amendment(s) incorporated in the Act(s).*

**Stamp and Cheque Duties Act 1971 (1971 No 51) (RS Vol 23, p 771)**

*Amendment(s) incorporated in the Act(s).*

**Trustee Amendment Act 1988 (1988 No 119)**

*Amendment(s) incorporated in the Act(s).*

## Schedule 4

### Enactments repealed

s 96(2)

**(Which repeals take effect on the commencement of section 96)**

**Central Canterbury Electric Power Board Empowering Act 1962 (1962 No 6 (L))**

**Electric Power Boards Act 1925 (1925 No 38) (Reprinted 1976, Vol 4, p 3465)**

**Electric Power Boards Amendment Act 1927 (1927 No 76) (Reprinted 1976, Vol 4, p 3536)**

**Electric Power Boards Amendment Act 1928 (1928 No 41) (Reprinted 1976, Vol 4, p 3547)**

**Electric Power Boards Amendment Act 1947 (1947 No 20) (Reprinted 1976, Vol 4, p 3554)**

**Electric Power Boards Amendment Act 1952 (1952 No 74) (Reprinted 1976, Vol 4, p 3558)**

**Electric Power Boards Amendment Act 1953 (1953 No 39) (Reprinted 1976, Vol 4, p 3559)**

**Electric Power Boards Amendment Act 1955 (1955 No 41) (Reprinted 1976, Vol 4, p 3559)**

**Electric Power Boards Amendment Act 1958 (1958 No 25) (Reprinted 1976, Vol 4, p 3560)**

**Electric Power Boards Amendment Act 1961 (1961 No 30) (Reprinted 1976, Vol 4, p 3561)**

**Electric Power Boards Amendment Act 1963 (1963 No 40) (Reprinted 1976, Vol 4, p 3561)**

**Electric Power Boards Amendment Act 1964 (1964 No 85) (Reprinted 1976, Vol 4, p 3562)**

**Electric Power Boards Amendment Act 1965 (1965 No 81) (Reprinted 1976, Vol 4, p 3563)**

**Electric Power Boards Amendment Act 1969 (1969 No 61) (Reprinted 1976, Vol 4, p 3563)**

**Electric Power Boards Amendment Act 1972 (1972 No 128) (Reprinted 1976, Vol 4, p 3565)**

**Electric Power Boards Amendment Act 1979 (1979 No 60)**

**Electric Power Boards Amendment Act 1980 (1980 No 57)**

**Electric Power Boards Amendment Act 1988 (1988 No 59)**

**Electric Power Boards Amendment Act 1989 (1989 No 34)**

**Electric Power Boards Amendment Act 1990 (1990 No 94)**

**Finance Act (No 2) 1933 (1933 No 41) (Reprinted 1976, Vol 4, p 3549)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Amendment Act 1979 (1979 No 59) (RS Vol 25, p 609)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Amendment Act 1985 (1985 No 60)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Amendment Act 1986 (1986 No 21) (RS Vol 25, p 659)**

*Amendment(s) incorporated in the Act(s).*

**Otago Central Electric Power Board Empowering Act 1959 (1959 No 15 (L))**

**Stamp and Cheque Duties Amendment Act 1974 (1974 No 36)**

**Statutes Amendment Act 1938 (1938 No 20) (Reprinted 1976, Vol 4, p 3550)**

*Amendment(s) incorporated in the Act(s).*

**Statutes Amendment Act 1941 (1941 No 26) (Reprinted 1976, Vol 4, p 3552)**

*Amendment(s) incorporated in the Act(s).*

## Reprints notes

### 1 *General*

This is a reprint of the Energy Companies Act 1992 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Companies Amendment Act 2013 (2013 No 111): section 14  
Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126  
Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150  
Criminal Procedure Act 2011 (2011 No 81): section 413  
Electoral (Administration) Amendment Act 2011 (2011 No 57): section 56  
Electricity Industry Act 2010 (2010 No 116): section 166  
Income Tax Act 2007 (2007 No 97): section ZA 2(1)  
Insolvency Act 2006 (2006 No 55): section 445  
Income Tax Act 2004 (2004 No 35): section YA 2  
Local Government Act 2002 (2002 No 84): sections 262, 266, 267(a)  
Human Rights Amendment Act 2001 (2001 No 96): section 70(1)  
Public Audit Act 2001 (2001 No 10): sections 52, 53, 54(1)(a)  
Financial Reporting Amendment Act 1997 (1997 No 17): section 6  
Arbitration Act 1996 (1996 No 99): section 18  
Local Government Amendment Act (No 3) 1996 (1996 No 83): section 16(1)  
Taxation (Core Provisions) Act 1996 (1996 No 67): section 484  
Income Tax Act 1994 (1994 No 164): section YB 1  
Energy Companies Act Commencement Order 1994 (SR 1994/196)  
Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16): section 2  
Energy Companies Act Commencement Order 1993 (SR 1993/322)  
Energy Companies Amendment Act 1993 (1993 No 142)  
Gas Act 1992 (1992 No 124): section 58(2)

Energy Companies Amendment Act 1992 (1992 No 123)

Energy Companies Act 1992 (1992 No 56): section 79(1)(e)

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46): section 137(1)