

# **Commerce Amendment Bill**

Government Bill

As reported from the Commerce Committee

## **Commentary**

### **Recommendation**

The Commerce Committee has examined the Commerce Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

This bill amends the Commerce Act 1986. In particular it focuses on reforming the regulatory control provisions in the Act. The bill aims to provide an efficient and credible regime to address the potential exercise of market power in markets where competition is not possible. Key amendments to the principal Act in the bill as introduced include the following:

- a specific Part 4 purpose statement
- a clearer test as to when regulation may be imposed
- broadening the forms of regulation available under the Act to include information disclosure, a negotiate/arbitrate regime, and a default/customised price-quality path regime

- requiring the Commerce Commission to determine input methodologies as soon as possible, and providing for merits review of methodologies
- specific regulation for electricity lines, gas pipelines, and specified airport services.

Most submitters supported the general intent of the bill, considering that the proposed amendments to the principal Act would be likely to promote regulatory certainty and accountability.

This commentary covers the major amendments that we recommend. We also recommend minor technical amendments to clarify the intent of the bill, which are not discussed in this commentary.

### **New Part 4 purpose statement**

New section 52A sets out a purpose statement for Part 4, which is aimed at safeguarding the long-term interests of consumers in markets where there is little or no competition, by promoting outcomes consistent with competition. This requires incentives for suppliers to invest and innovate, share the benefits of efficiency gains with consumers, limit excessive profits, improve efficiency, and provide services of the quality required by consumers.

Most submitters supported the purpose statement as drafted. Others argued that the primary objective in the purpose statement should be investment. Although we agree that incentives to invest are important, we consider they need to be balanced against the need to protect consumers from excessive prices.

### **When and how regulation may be imposed**

We recommend amendments to subpart 2 of clause 4 of the bill as introduced to clarify when goods or services could be regulated and when regulation should be imposed.

### **Test for when regulation may be imposed**

As introduced, new section 52F provides a new test for when regulation may be imposed. The three criteria of the test are that the goods or services must be supplied in a market where there is little or no competition; there must be substantial scope for the exercise of market power by the supplier; and the benefits of regulation must clearly

exceed the costs of regulation. This test is clearer than the test it is intended to replace, but we consider that “clearly” in the third criterion is open to uncertain interpretation. We recommend amending new section 52F(1)(c) (clause 4) to replace “clearly” with “materially”, to make the test more precise.

We also recommend amending the second criterion, new section 52F(1)(b), to clarify that the mere existence of market power is not a problem, as firms have market power in many competitive markets. The problem occurs where there is substantial market power.

Some submitters argued that the circumstances when the Commission and the Minister “should” impose regulation should be set out, in addition to the “may” test under new section 52F. We note that the test in new section 52F is a minimum step in deciding whether regulation is permissible, and consider that the Commission and the Minister should have the discretion to consider wider issues when deciding whether to introduce regulation.

To improve clarity we recommend replacing the heading for new section 52F with the heading “When goods or services may be regulated”. New section 52H(1)(b) should make it clear that if the test under new section 52F is satisfied the Commission should then consider whether regulation should be imposed.

### **Consultation process**

Some submitters argued that more detailed and prescriptive consultation requirements should be set out in the bill. We did not agree, as the consultation provisions are extensive and additional requirements might unnecessarily constrain the work of the Commission. We note that general administrative law requires the Commission to follow good processes.

### **Publicly available information**

New section 52K sets out what is required when the Minister is considering a recommendation by the Commission to impose regulation. We recommend amending new section 52K to provide that if the Minister requested the Commission to provide additional information as to the detailed requirements that the Commission would apply under alternative regulation proposed by the Minister, the Minister’s re-

quest and the Commission's response should be made publicly available.

We recommend amending new section 52L to provide that if the Minister's decision for regulation is different from the Commission's recommendation, the reasons should be made publicly available. The bill as introduced does not require the reasons for a contrary decision by the Minister to be published.

### **Input methodologies**

We recommend the addition of new section 52S(1A) (clause 4) to ensure that input methodologies would be set out in sufficient detail to allow affected suppliers to reasonably estimate the impact on their business.

We did not agree with submitters who put forward a range of proposals for additional matters to be covered by input methodologies in new section 52S. Given that the Commission is already faced with a very large and demanding workload we consider that additional requirements would put pressure on the input-methodology process.

We recommend changing the term "pricing principles" to "pricing methodologies" in new section 52S(1)(a), and adding a definition of "pricing methodology" to new section 52C.

New section 52U sets out the Commission's process for determining input methodologies. We recommend amending new section 52U(4) to require the Commission to consult interested parties on whether earlier work meets the requirements for developing input methodologies. The Commission should not be allowed to adopt previous work on input methodologies without consultation, as any such work might be inconsistent with the legislative framework proposed by the bill.

### **Appeals**

#### **Appeals on input methodologies**

New section 52Y (clause 4) of the bill as introduced allows any person who has an interest in an input methodology determination the right to appeal to the High Court against the determination. We recommend amending new section 52Y to provide clearer guidance to the High Court on its role in considering appeals on input methodolo-

gies. In particular we recommend allowing the High Court to amend or substitute a new input methodology only if it would be “materially better” in achieving the purpose statements in new sections 52A and 52Q.

We also recommend amending new section 52X to make it clear that the seven-year timetable for reviews of input methodologies should run from the date the methodologies were published as set out under new section 52V.

### **Stages of appeal**

Most submitters argued that appeals should be permitted against final decisions by the Commission. However, they differed as to whether such appeals should replace appeals on input methodologies, or be available in addition to them.

We have concluded that there is a good case for allowing appeals on the final decisions of the Commission on customised and individual price-quality paths. We also recommend retaining the right to appeal on input methodologies. As input methodologies would affect all parties, not just those subject to customised or individual price-quality paths, certainty on the rules as soon as possible would be essential for investment in infrastructure with long-life assets. We consider that if input methodologies could be appealed only in the context of final decisions, there would be considerable delays in finalising input methodologies, appeals would be much more complicated, and there would be a risk of persisting uncertainty because decisions on the rules would be case-specific.

We were concerned about possible gaming risks associated with allowing appeals on input methodologies and certain final decisions. New section 53 provides that input methodologies cannot be stayed while under appeal, and we recommend an amendment to new section 95 of the Act to achieve the same with respect to appeals against appealable final decisions.

### **Information disclosure regulation**

We recommend amending new section 53A (clause 4) to clarify the purpose of information disclosure, which is to ensure that sufficient information would be provided to interested parties to assess whether the regulatory objectives set out in the purpose statement in new sec-

tion 52A were being met. This ties the purpose of information disclosure more clearly to the new purpose statement under new section 52A.

### **Requirements for information disclosure regulation**

New section 53C sets out regulatory provisions relating to goods and services subject to information disclosure. For the sake of clarity we recommend amending new section 53C to allow the Commission to require the disclosure of additional information, including terms and conditions relating to prices and quality performance measures and statistics, and to require independent audits of disclosed information. We recommend amending new section 53D to allow the Commission the power to require the disclosure of consolidated information and financial performance measures where a business operates more than one regulated service. The bill as introduced does not deal well with multi-network utilities, such as joint gas pipelines and electricity lines businesses, in this respect.

New section 53F of the bill as introduced provides that if information disclosure is the only regulation to be applied to goods or services, then input methodologies regarding the cost of capital and pricing principles need not apply. We recommend adding a new definition of pricing methodology to new section 52C, and amending the reference to “pricing principles” in new section 53F to “pricing methodologies”. We recommend amending new section 53F(2) to make it clear that, while this exemption exists, the Commission could still require, under new section 53C(2), that suppliers disclose their methodologies for pricing and the cost of capital they were using. New section 53P(2) has also been amended to allow the Commission to use their own input methodologies for monitoring and analysing information.

### **Negotiate/arbitrate regulation**

#### **Arbitrator**

New section 53J as introduced requires the arbitrator to determine a commercially fair and workable outcome. Submitters raised the risk that the arbitrator might focus only on the parties to the arbitration, rather than the interests of the end consumers of the regulated goods or services. We recommend amending new section 53J to make it

clear that the arbitrator's role would be to determine the outcome that promotes the purpose statement in new section 52A, rather than commercial fairness, as proposed by the bill as introduced. Furthermore we recommend that the arbitrator be required to have particular regard to the effect of arbitration on final consumers of the regulated goods or services.

New section 53I (clause 4) of the bill as introduced sets out the requirements for a determination by the Commission to apply negotiate/arbitrate regulation. Arbitration is about parties voluntarily submitting to an arbitrator to settle a dispute; and we have concerns over the potential conflicts between the various roles proposed by the bill for the Commission. We did not therefore agree with submitters to the effect that the Commission should be allowed to appoint itself as arbitrator.

#### **Requirements for negotiate/arbitrate regulation**

We recommend amending new section 53I(3)(c) to clarify that appeals to the High Court on arbitral awards would be limited to points of law, as parties do not normally have a general right to appeal on arbitral awards.

We recommend the addition of paragraph 2B to new section 53I to allow the Commission to extend the time allowed for negotiations if requested by any of the parties, as there might be good reasons for doing so.

New section 53I should also be amended so that where parties voluntarily undertook arbitration in an effort to reach a negotiated settlement, any of the Commission's requirements for the application of negotiate/arbitrate regulation would not apply. This would give the parties more flexibility to determine the timeframes and terms of reference for arbitration. However we note that if the parties failed to reach agreement by the date set by the Commission, then the Commission's rules would apply.

Submitters were concerned that new section 53J(2) specifies that nothing in the Arbitration Act 1996 applies to arbitration. We recommend clarifying this section to allow the Commission to draw on the provisions of the Arbitration Act when it is setting the terms of arbitration.

## **Default/customised price-quality regulation**

### **Default price-quality regulation**

We recommend new section 53M (clause 4) be amended to provide that for default price-paths to apply to a supplier, they must be set at least four months before they are to come into effect, as suppliers need advance notice of permitted prices in order to give notice to their customers.

We recommend deleting new section 53P(2)(c) to allow the Commission to use its statutory powers to obtain information for the purpose of setting default paths for electricity lines and gas pipelines. This restriction would no longer be required as a result of amendments clarifying that the Commission may not use comparative benchmarking on efficiency in order to set the default price-quality path.

We further recommend amending new section 53P(3)(b) to clarify that reset default prices for suppliers should be based on the suppliers' current and projected profitability.

### **Content of price-quality paths**

We recommend amending new section 53M to allow the Commission to include in price-quality paths penalties or incentives for individual suppliers to maintain and improve quality standards. Quality standards could be defined in any way the Commission considered appropriate, and might include reliability of supply, a reduction in energy losses, and voltage stability.

### **Customised price-quality regulation**

We recommend the addition of new section 53WA to clarify what would happen at the end of a customised price-quality path. In particular it would require that the supplier move to the standard default applying to other suppliers. It would also require that any new start price be set at least four months before the default price-quality path came into effect. This would minimise uncertainty for suppliers and their customers.

New section 53Z sets out what would happen if the Commission had not decided on a customised price-quality path within 150 working days. To avoid uncertainty, we recommend new section 53Z(2) be amended to require the Commission to notify the supplier that the



default price-quality path continues to apply, if the Commission considers the supplier has not complied with the Commission's request for information regarding the customised proposal.

As introduced, new section 53ZA requires the Commission to re-consider price-quality paths when a material change in input methodologies occurs as a result of an appeal. We recommend that new section 53ZA be amended to require the Commission to reset price-quality paths and to apply a claw-back of any over- or under-recovery of revenue in these circumstances.

A consequential definition of "claw-back" is provided for in new section 52CA, which specifies that where the Commission requires a supplier to lower its prices the reduction must be spread over time; and if the Commission allows a supplier to recover any shortfall of revenue, this too must be gradual. Further consequential amendments are proposed to new section 53V(2)(b) and (c).

## **Regulation of electricity lines businesses**

### **When and how regulation would apply**

We recommend the addition of new section 54JA (clause 4) to allow the Commission to provide for a claw-back, if the application of an input methodology determined after 1 April 2010 would affect the price set in the default price-quality path.

Some submitters were concerned with the transitional timetables in the bill as introduced, arguing that incentives to invest could be undermined.

In particular they were concerned about the retrospective nature of the penalties in new section 54O of the bill as introduced, which provides for the pecuniary penalties and compensation set out in the new Part 4 to apply to breaches of thresholds after 1 April 2008. Submitters argued that this was inappropriate because the thresholds were set for screening purposes rather than as a price control mechanism.

We recommend that new sections 54M to 54P be replaced to provide that the old Part 4A processes and provisions would continue to apply until new default price paths were set from 1 April 2010. We consider that it is not appropriate for the new penalties and remedies to apply to breaches of the old regulatory regime.

Five electricity lines businesses submitted that a special regime should apply to them until they obtained customised price-quality paths. We consider that the amendments recommended above would make this unnecessary, since any breaches of thresholds before 1 April 2010 would be considered under Part 4A provisions as at present. When setting the default paths from 1 April 2010, the Commission could set new start prices for individual suppliers.

Submitters were also concerned about inconsistency between the date for setting default price-quality paths (1 April 2010) under new section 53P and that on which input methodologies for electricity lines businesses must apply (30 June 2010 or 20 December 2010 if the Minister agreed to an extension) under new section 52T.

We consider that while transitional timetables are difficult because of the trade-offs between getting the benefits of a new regime and allowing enough time to exit the existing regime, we were not convinced there was a better alternative. It is important that the new regime should come into effect as soon as possible so that suppliers could make customised proposals.

### **Transfer of jurisdiction**

We recommend amending new section 54R to limit the power to transfer jurisdiction over lines services supplied by Transpower from the Commission to the Electricity Commission. As introduced, new section 54R gives the Governor-General the power to transfer jurisdiction for the regulation of all electricity lines businesses. Submitters raised a number of concerns with this provision; in particular they suggested that a lack of expertise regarding economic regulation might mean the Electricity Commission would rely on the expertise of the Commission, and problems could then arise where the Electricity Commission was considering the regulation of multi-network utilities while the Commission regulated gas pipelines.

We also recommend amending new section 54S so that when a transfer of jurisdiction took place, the Electricity Commission should apply the input methodologies determined by the Commission, except where modifications were required to meet the particular circumstances of Transpower. The need for expertise and processes would be minimised by requiring the use of input methodologies set by the Commission.

**Interface with the Electricity Act 1992**

New section 54V(2) sets out what the Commission must take into account before performing any of its functions or duties set out in new Part 4 of the bill as introduced. We recommend amending new section 54V(2) to require the Commission to take into account any obligations an electricity lines business might have to continue to supply to remote rural consumers under section 62 of the Electricity Act 1992. This would ensure that the Commission took into account the additional costs imposed by this obligation.

**Exemption for consumer-owned electricity lines businesses**

The bill as introduced provides for wholly consumer-owned electricity lines businesses to be subject only to information disclosure regulation and monitoring by the Commission. Some submitters supported the exemption for consumer-owned electricity lines businesses from price-quality regulation, while others argued that the exemption should be removed.

We consider the lighter-handed regulatory regime is suitable, as consumers own these electricity lines businesses and therefore are best placed to ensure the businesses act in their interests. We note that under new section 53B(2)(b) the Commission would be required to publish annual comparative performance information on all electricity lines business, which should ensure that consumers had the information necessary to effectively self-regulate the companies.

As introduced, new section 54C(1) defines a “consumer-owned” supplier. We recommend relaxing some of the qualifying criteria for consumer ownership of electricity lines businesses, to include multiple trust owners of electricity lines businesses, and to relax the requirement for income distribution to at least 90 percent of a supplier’s consumers. Our proposed amendments would make amalgamations of lines businesses easier, and would allow more trusts to qualify for exemption under the bill, thus reducing compliance costs and increasing benefits to consumer owners.

We recommend amendments to new section 54C(2) to the definitions of “customer trust” and “community trust”, in particular requiring that income distributions be made to at least 90 percent of a supplier’s beneficiaries. There is some uncertainty as to the scope of the definition as introduced, caused by the use of the words “substantially”

and “largely” with respect to the requirements for income distributions.

New section 54H of the bill as introduced would allow the Commission to recommend to the Minister to apply price-quality regulation to consumer-owned electricity lines businesses, if it had received a petition from specified classes of the supplier’s customers requesting price-quality regulation. We recommend adding new subsection 3A to allow the Commission to rely on a reasonable estimate of the number of customers in a class, if the exact figures are not available.

### **Regulation of gas pipeline businesses**

For the sake of clarity, we recommend that new section 55A(5) (clause 4) be amended to specify the criteria for adding or deleting gas pipelines from Schedule 6. Schedule 6 sets out specific gas pipeline exemptions from the new Part 4 regime.

#### **When and how regulation applies**

We recommend amending new section 55G to set the date for gas pipeline services, currently controlled by the Commerce (Control of Natural Gas Services) Order 2005, to transition to the new price-quality regime at 1 July 2012, or earlier if agreed with the Commission. As introduced, new section 55G provides for such gas pipeline services to continue to be regulated under Part 5 of the Commerce Act until 2016, after which time they would move to the new regime proposed by the bill. Our recommended amendments would allow those gas pipeline services to benefit from input methodologies and merits review of such methodologies at an earlier date.

New section 55F sets out how the initial default price-path would be set for gas pipeline services; in particular, if a supplier had increased its prices above the consumer price index in the period before the default price-path was set, the Commission could use its powers to determine the initial default price-path in any way that it saw fit. We recommend that new section 55F be amended, to clarify that the reference to prices in the section means weighted average prices, and to define the powers of the Commission more tightly.

## **Regulation of specified airport services**

New subpart 11 of the bill as introduced imposes information disclosure regulation on specified airport services (at Auckland, Wellington, and Christchurch international airports). Submitters were divided on whether airport services should be included under the new regulatory regime. Some submitters supported the general intent of doing so, arguing that these airports clearly have market power and therefore should be subject to a more robust regulatory regime. Others opposed the inclusion of airports in new subpart 11 of the bill as introduced, arguing that the current provisions for regulating airports in the Airport Authorities Act 1966 are effective.

We consider that the information disclosure regime currently provided for under the Airport Authorities Act is not effective because there are no detailed rules on how disclosed information must be compiled, and there is no monitoring and analysis by a regulator of the disclosed information. We support the proposed inclusion of airports in subpart 11 of the bill as introduced.

We recommend amending new section 56A(2) to exclude subsidiaries of airport companies that have no role in the operation of the airport.

## **Regulation of port activities**

We heard a proposal that particular port activities should be subject to regulation under the Commerce Act, on the grounds that some ports hold substantial market power in particular markets. As there has been no consultation and evidence is limited on the extent of any problem, we do not recommend including port activities in the bill. We note that the bill contains some generic tests and processes for considering whether regulation should be imposed and the form that regulation should take, which could be applied to port activities if necessary.

## **Penalties and remedies**

We recommend amending new sections 86(4)(b) and 87(4)(c) (clause 15) to allow the Commission and the courts to consider whether breaches were deliberate, negligent, or inadvertent, when considering the amount of pecuniary penalty to impose for certain contraventions. Some submitters were concerned that unintentional breaches,

which might not be inconsistent with the purpose statement, would be liable for the same penalties as deliberate breaches.

We recommend adding new section 79B (clause 12) to clarify the relationship between pecuniary penalties and criminal liability, so that once criminal liability proceedings had been determined an order to also pay a pecuniary penalty could not be made, and vice versa. As introduced, the bill appears to allow a supplier to be both liable for pecuniary penalties and criminally liable for the same breach.

## **Appendix**

### **Committee process**

The Commerce Amendment Bill was referred to the committee on 20 March 2008. The closing date for submissions was 9 May 2008. We received and considered 39 submissions from interested groups and individuals. We heard 28 submissions.

We received advice from the Ministry of Economic Development.

### **Committee membership**

Gerry Brownlee (Chairperson)

Gordon Copeland (Deputy Chairperson)

Dave Hereora

Hon Darren Hughes (until 2 April 2008)

Hon Luamanuvao Winnie Laban

Simon Power

Hon Mita Ririnui (from 2 April 2008)

Hon Paul Swain

Lindsay Tisch

Dr Richard Worth

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Lianne Dalziel*

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

**1 Title**

This Act is the Commerce Amendment Act **2008**.

**2 Commencement**

- (1) The following come into force on **1 April 2009**: 5
- (a) **sections 5 and 28** (which repeal Part 4A of the principal Act relating to electricity lines businesses); and
- (b) **subpart 9 of Part 4** of the principal Act (which relates to electricity lines businesses, as substituted by **section 4 of this Act**), except **sections 54C(3) and 54M to 54P 54N**. 10
- (2) The rest of this Act comes into force on the 28th day after the date on which it receives the Royal assent.

**Part 1**  
**Amendments to Commerce Act 1986**

- 3 Principal Act amended**  
This Part amends the Commerce Act 1986.
- Replacement of Parts 4 and 4A* 5
- 4 New Part 4 substituted**  
Part 4 is repealed and the following Part substituted:
- “Part 4**  
**“Regulated goods or services**  
“Subpart 1—Preliminary provisions 10
- “52 Overview of Part**  
This Part provides for the regulation of the price and quality of goods or services in markets where there is little or no competition and little or no likelihood of a substantial increase in competition. 15
- “52A Purpose of Part**
- “(1)** The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in **section 52** by promoting outcomes that are consistent with outcomes produced in competitive markets ~~so~~ such that suppliers of regulated goods or services— 20
- “(a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
- “(b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and 25
- “(c) share with consumers the benefits of efficiency gains in the supply of ~~all or any~~ the regulated goods or services, including through lower prices; and
- “(d) are limited in their ability to extract excessive profits.
- “(2)** In this Part, the purpose set out in **subsection (1)** applies in 30  
place of the purpose set out in section 1A.
- “52B Outline of Part**
- “(1)** This Part provides—

- “(a) generic provisions for imposing any 1 or more of 3 types of regulation on goods or services (*see* **subpart 2**); and
- “(b) for the Commission to determine input methodologies applying to the supply of goods or services regulated under this Part (*see* **subpart 3**). 5
- “(2) The different types of regulation under this Part are as follows:
- “(a) information disclosure regulation, under which regulated suppliers are required to disclose information in accordance with requirements determined by the Commission (*see* **subpart 4**): 10
- “(b) negotiate/arbitrate regulation, under which regulated suppliers are required to negotiate with other parties on prices and quality, and, if negotiation is unsuccessful, to enter into binding arbitration (*see* **subpart 5**):
- “(c) price-quality regulation, of which there are 2 types: 15
- “(i) default/customised price-quality regulation, under which default price-quality paths are set for regulated suppliers, but individual suppliers may seek a customised price-quality path instead (*see* **subpart 6**); and 20
- “(ii) individual price-quality regulation, under which the Commission sets a price-quality path for an individual regulated supplier (*see* **subpart 7**).
- “(3) Regulation of the following services is dealt with by **subparts 9 to 11**: 25
- “(a) electricity lines services (**subpart 9**):
- “(b) gas pipeline services (**subpart 10**):
- “(c) services at certain airports (**subpart 11**).
- “(4) This section is only a guide.
- “**52C Interpretation** 30
- In this Part, unless the context otherwise requires,—
- “**claw-back** has the meaning given to it by **section 52CA**
- “**consumer** (other than in **sections 54B, 54C, and 55A**) means a person that consumes or acquires regulated goods or services 35
- “**information disclosure requirement** means a requirement that applies to a supplier of goods or services that are subject

to information disclosure regulation, and is specified in a **section 52O** determination

“**input methodology** means a description of any methodology, process, rule, or matter that includes any of the matters listed in **section 52S** and that is published by the Commission under **section 52V**; and, in relation to particular goods or services, means any input methodology, or all input methodologies, that relate to the supply, or to suppliers, of those goods or services

“**inquiry** means an inquiry by the Commission carried out in accordance with **sections 52G to 52I**

“**price**—

“(a) means any 1 or more of individual prices, aggregate prices, or revenues (whether in the form of specific numbers, or in the form of formulas by which specific numbers are derived); and

“(b) includes any related terms of payment

“**pricing methodologies** means methodologies for setting the prices of individual goods or services, or classes of goods or services, and includes methodologies for setting different prices for different customer groups

“**publicly available**, in relation to making a document or information available, means that—

“(a) the document or information is available for inspection, free of charge, on an Internet site that is publicly accessible at all reasonable times; and

“(b) a copy of the document or information is available for inspection at all reasonable times, free of charge, at the head office of the person that is required to make it publicly available or, if the person is the Minister, at the head office of the department responsible for the administration of this Act; and

“(c) copies of the document may be purchased by any person at a reasonable price

“**publicly disclose**, in relation to information required to be disclosed under information disclosure regulation, means to disclose information to the public in the manner required by a **section 52O** determination

“**regulated** means regulated under this Part

“**regulated goods or services** means goods or services that are declared to be regulated—

“(a) by Order in Council made under **section 52M**; or

“(b) by any of **subparts 9 to 11**

“**regulated supplier** means a person to whom a **section 52O** determination applies in relation to particular goods or services 5

“**section 52O determination** means a determination by the Commission under **section 52O** that sets out how each type of regulation that applies to particular regulated goods or services applies to a supplier of those goods or services; and, in relation to particular goods or services, means every **section 52O** determination relevant to the regulation of those goods or services. 10

**“52CA Meaning and application of claw-back** 15

**“(1) A reference to the Commission applying claw-back is a reference to the Commission doing either of the following:**

**“(a) requiring a supplier to lower its prices on a temporary basis in order to compensate consumers for some or all of any over-recovery that occurred under the prices previously charged by the supplier:** 20

**“(b) allowing a supplier to recover some or all of any shortfall in its revenues that occurred under the prices previously charged by the supplier.**

**“(2) If the Commission requires a supplier to lower its prices, it must also require that the lowering of prices must be spread over time in order to minimise undue financial hardship to the supplier.** 25

**“(3) If the Commission allows a supplier to recover any shortfall, it must require that any recovery must be spread over time in order to minimise price shocks to consumers.** 30

“Subpart 2—Regulating particular goods or services

“**52D Overview of process if regulation imposed on goods or services**

- “(1) The process for imposing regulation under this subpart on particular goods or services involves the following steps:
  - “(a) the Commission holds an inquiry into whether, ~~and~~, if ~~so~~ and if so how, to regulate the goods or services, and then makes a recommendation to the Minister under **section 52J**: 10
  - “(b) the Minister considers the Commission’s recommendation and decides whether or not to recommend to the Governor-General that regulation be imposed and, if so, which type or types of regulation: 15
  - “(c) if the Minister decides to recommend regulation, an Order in Council may be made under **section 52M** that makes the goods or services subject to regulation and identifies the type or types of regulation that apply: 20
  - “(d) for each type of regulated goods or services, the Commission makes a **section 52O** determination specifying how the applicable type or types of regulation apply to a supplier of the regulated goods or services. 20
- “(2) This section is only a guide.

“**52E Effect of goods or services being subject to regulation**

- “(1) If goods or services are subject to regulation of a particular type, every regulated supplier of those goods or service must comply with— 25
  - “(a) the requirements of this Part relating to that type of regulation; and
  - “(b) every **section 52O** determination applying to the supplier. 30
- “(2) **Sections 86 to 87C** (which relate to offences and civil proceedings relating to contraventions of this Part) apply to a regulated supplier on and from the date on which the supplier is obliged to comply with a relevant **section 52O** determination. 35

“(3) The Commission is entitled to exercise any of its powers under this Act for the purpose of monitoring compliance by regulated suppliers with regulation under this Part.

“**52F Preliminary test for regulation of When goods or services may be regulated** 5

“(1) Goods or services may be regulated under this Part only if—

“(a) the goods or services are supplied in a market where there is both—

“(i) little or no competition; and

“(ii) little or no likelihood of a substantial increase in competition; and 10

“(b) there is ~~substantial~~ scope for the exercise of substantial market power in relation to the goods or services, taking into account the effectiveness of existing regulation or arrangements (including ownership arrangements); and 15

“(c) the benefits of regulating the goods or services in meeting the purpose of this Part (~~as set out in section 52A~~) clearly materially exceed the costs of regulation.

“(2) In any consideration of this test, the part of the test in **subsection (1)(c)** need not be considered unless the parts of the test in **subsection (1)(a) and (b)** are satisfied. 20

“*Commission inquiry*

“**52G How inquiry triggered**

“(1) The Commission—

“(a) must hold an inquiry if required to do so by the Minister; 25  
and

“(b) may hold an inquiry on its own initiative.

“(2) Any requirement by the Minister must—

“(a) be in writing; and

“(b) specify the date by which the Commission must make a recommendation under **section 52J** to the Minister. 30

“**52H Commission inquiry into particular goods or services**

“(1) In conducting an inquiry into particular goods or services, the Commission must consider—



- “(a) whether the test in **section 52F** is satisfied in relation to the goods or services; and
- “(b) if that test is satisfied, whether the goods or services should be regulated; and
- “(c) if so, how the goods or services should be regulated, 5 including—
  - “(i) how the goods or services should be defined; and
  - “(ii) which type or types of regulation (as set out in **section 52B(2)**) the goods or services should be subject to; and 10
  - “(iii) how that type or those types of regulation should apply to suppliers of the goods or services.
- “(2) As part of an inquiry into particular goods or services, the Commission—
  - “(a) must determine (and then apply) input methodologies 15 for the supply of the goods or services, in accordance with **subpart 3**; and
  - “(b) must, when carrying out the analysis required by **section 52F(1)(c)**, undertake a qualitative analysis of all material long-term efficiency and distributional considerations. 20
- “(3) As part of that qualitative analysis, the Commission must, as far as practicable,—
  - “(a) quantify material effects on allocative, productive, and dynamic efficiency; and 25
  - “(b) quantify material distributional and welfare consequences on suppliers and consumers; and
  - “(c) assess the direct and indirect costs and risks of any type of regulation considered, including administrative and compliance costs, transaction costs, and spill-over effects. 30
- “(4) As part of an inquiry, the Commission must, when considering which type of regulation might be imposed,—
  - “(a) assess the benefits of imposing different types of regulation in meeting the purpose of this Part ~~(as set out in~~ 35 **section 52A)** against the costs of imposing those types of regulation; and
  - “(b) consider what would be the most cost-effective type or types of regulation in the circumstances.

“(5) During an inquiry, the Commission may have regard to any other matters it considers necessary or desirable for the purpose of the inquiry.

“**52I Process of inquiry**

“(1) At the start of an inquiry, the Commission must publish in the *Gazette* a notice setting out,— 5

“(a) in the case of an inquiry required by the Minister, the Minister’s requirements; and

“(b) in the case of an inquiry on the initiative of the Commission, the terms of reference for the inquiry. 10

“(2) The notice must set out indicative time frames and key steps.

“(3) During the course of an inquiry, the Commission—

“(a) may publish, in whatever way it considers appropriate, further notices, consultation documents, or papers; and

“(b) must give interested persons a reasonable opportunity to give their views; and 15

“(c) may hold 1 or more conferences; and

“(d) must have regard to any views received from interested persons within any time frames set.

“(4) Before the end of an inquiry, the Commission must publish a proposed recommendation for consultation. 20

“**52J Commission’s recommendation following inquiry**

“(1) At the end of an inquiry, having considered the matters in **section 52H**, the Commission must make a recommendation to the Minister on whether, in its opinion, the goods or services should be regulated. 25

“(2) If the recommendation is that particular goods or services should be regulated, the recommendation must state the following:

“(a) how the goods or services should be specified: 30

“(b) which type or types of regulation should apply to the goods or services:

“(c) what input methodologies apply:

“(d) if information disclosure regulation is recommended, the material provisions of the information disclosure requirements: 35

- “(e) if negotiate/arbitrate regulation is recommended, the material provisions of the negotiation process and arbitration process:
- “(f) if default/customised price-quality regulation is recommended, the default price path and quality standards: 5
- “(g) if individual price-quality regulation is recommended, the material provisions to apply.
- “(3) The Minister must publish the Commission’s recommendation, and may do so in whatever way he or she considers appropriate. 10
- “(4) To avoid doubt, a recommendation by the Commission is not a determination of the Commission.

*“Order in Council imposing regulation*

**“52K Minister’s consideration**

- “(1) The Minister must consider any recommendation of the Commission made under **section 52J**. 15
- “(2) As part of that consideration, the Minister—
  - “(a) must consult with the relevant sector Minister (such as the Minister of Energy or the Minister of Transport); and 20
  - “(b) may request further information or advice from the Commission.
- “(3) If the Minister proposes, contrary to the recommendation of the Commission, that the goods or services should be regulated, or that they should be subject to a type of regulation not recommended by the Commission, the Minister must ask the Commission for written advice on what the material provisions of the relevant **section 52O** determination would be likely to be if the goods or services were subject to the type or types of regulation proposed by the Minister. 25 30
- “(3A) Any request by the Minister under **subsection (3)**, and the Commission’s advice given following that request, must be made publicly available.
- “(4) If the Commission receives a request under **subsection (3)**, it may, at its discretion,— 35
  - “(a) consult with interested parties; or

“(b) reopen its inquiry, in which case **section 52I** applies with all necessary modifications.

**“52L Minister’s decision and recommendation**

“(1) Having considered the Commission’s recommendation in accordance with **section 52K** and any advice given following a request under **section 52K(3)**, the Minister must— 5

“(a) decide whether, in the opinion of the Minister, the goods or services should be regulated; and

“(b) if the goods or services are to be regulated, decide which type or types of regulation are to apply; and 10

“(c) make a recommendation to that effect, if the goods or services are to be regulated.

“(2) The Minister’s decision on either matter may be the same as, or different from, the Commission’s recommendation under **section 52J** or any advice given to the Minister under **section 52K(3)**. 15

“(3) If the Minister’s decision is different from the Commission’s recommendation, the Minister must set out the reasons for the decision and make the decision, with the reasons, publicly available. 20

**“52M Order in Council imposing regulation**

“(1) The Governor-General may, on the recommendation of the Minister made under **section 52L**, make an Order in Council imposing regulation on particular goods or services.

“(2) The order must— 25

“(a) declare that the goods or services are regulated; and

“(b) state which type or types of regulation the goods or services are subject to.

“(3) The order may identify the goods or services it relates to by reference to goods or (with all necessary modifications) services— 30

“(a) supplied in or for delivery within specified regions, areas, or localities in New Zealand; or

“(b) supplied in different quantities, qualities, grades, or classes; or 35

- “(c) supplied by or to or for the use of different persons or classes of persons; or
  - “(d) any or all of **paragraphs (a) to (c)**.
  - “(4) **Subsection (3)** applies so that any part or element of goods or services can be dealt with separately. 5
  - “(5) The order must include an expiry date, which must be a date not later than 20 years after its date of commencement.
  - “(6) The order is a regulation within the meaning of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989. 10
- “**52N Revocation or amendment of Order in Council**
- “(1) An Order in Council made under **section 52M** in respect of particular goods or services may not be revoked or significantly amended unless the Commission has held an inquiry into the goods or services. 15
  - “(2) In **subsection (1), significantly amended** means amended in a way that—
    - “(a) alters the type or types of regulation applying to the goods or services; or
    - “(b) materially alters the goods or services to which the regulation applies, so that either— 20
      - “(i) the goods or services, or any of them, are no longer regulated; or
      - “(ii) goods or services that were not identified in the original order are now subject to regulation. 25
  - “(3) An Order in Council made under **section 52M** may be amended in any other material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.
- “Commission determination about how regulation applies 30*
- “**52O Determinations by Commission under this section**
- “(1) The Commission must make determinations under this section in relation specifying how the relevant forms of regulation apply to suppliers of regulated goods or services, — services. 35

- “(a) in the case of goods or services declared to be regulated by an Order in Council under **section 52M**, as soon as practicable after the Order in Council is made; and
- “(b) in the case of goods or services declared to be regulated under any of **subparts 9 to 11**, in accordance with **sections 54I, 55E, and 56E**. 5
- “(1A) Determinations must be made,—
- “(a) in the case of goods or services declared to be regulated by an Order in Council under **section 52M**, as soon as practicable after the Order in Council is made; and 10
- “(b) in the case of goods or services declared to be regulated under any of **subparts 9 to 11**, in accordance with **sections 54I, 54J, 54JA, 55E, and 56E**.
- “(2) Determinations must—
- “(a) set out, for each type of regulation to which the goods or services are subject, the requirements that apply to each regulated supplier; and 15
- “(b) set out any time frames (including the regulatory periods) that must be met or that apply; and
- “(c) ~~refer to~~ specify the input methodologies that apply; and 20
- “(d) be consistent with this Part.
- “(3) It is not necessary for a single determination to address all matters relating to particular regulated goods or services, or to a supplier of regulated goods or services, and different parts of any determination may come into effect at different times. 25
- “(4) If a determination under this section is made following an inquiry and a recommendation under **section 52J**, the requirements referred to in **subsection (2)(a)** must not differ in any material respect from the recommendation, or (if applicable) from any advice given to the Minister under **section 52K(3)**. 30
- “(5) A determination under this section may require a supplier to comply with the requirements set out in any other determination that has been made under this section in respect of regulated goods or services of the same type.
- “(6) The Commission must, as soon as practicable after making a determination under this section,— 35
- “(a) give a copy of the determination to each supplier to whom the determination relates; and

- “(b) publish a summary of it in the *Gazette*; and
- “(c) make the whole determination publicly available.
- “(7) Each supplier to whom the determination relates must comply with the requirements imposed by the determination.
- “**52P Amendment of section 52O determination** 5
- “(1) A **section 52O** determination may be amended in a material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.
- “(2) However, the Commission is not required to conduct an inquiry before amending a determination. 10
- “(3) An amendment forms part of the determination it amends.
- “(4) An amendment comes into force on the date specified in the amendment, which must be (except in the case of an amendment relating to a customised price-quality path that takes effect under **section 53Z(3)**) a date on or after the date on which it, or a summary of it, is published in the *Gazette*. 15
- “(5) The Commission must, as soon as practicable after making an amendment,—
- “(a) give a copy of the amendment to each supplier to whom the determination relates; and 20
- “(b) publish the amendment, or a summary of the amendment, in the *Gazette*; and
- “(c) make a copy of the determination, as amended by the amendment, publicly available. 25

“Subpart 3—Input methodologies

- “**52Q Purpose of input methodologies**
- The purpose of input methodologies is to promote certainty for suppliers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of goods or services under this Part. 30
- “**52R How published input methodologies apply**
- Every relevant input methodology relating to the supply of particular goods or services that is published under **section 52V** must be applied,— 35

- “(a) if the goods or services are regulated, by every regulated supplier of the goods or services in accordance with the relevant **section 520** determination; and
- “(b) in all cases, by every person entitled or required under this Act to recommend ~~on~~, decide, or determine— 5
- “(i) whether or how regulation under this Part should apply to the goods or services; or
- “(ii) the prices or quality standards applying to the goods or services.
- “**52S Matters covered by input methodologies** 10
- “(1) The input methodologies relating to particular goods or services must include, to the extent applicable to the type of regulation under consideration,—
- “(a) methodologies for evaluating or determining the following matters in respect of the supply of the goods or services: 15
- “(i) cost of capital:
- “(ii) valuation of assets, including depreciation, and treatment of revaluations:
- “(iii) allocation of common costs, including between 20 activities, businesses, consumer classes, and geographic areas:
- “(iv) treatment of taxation; and
- “(v) ~~pricing principles; and~~
- “(ab) pricing methodologies; and 25
- “(b) regulatory processes and rules, such as—
- “(i) the specification and definition of prices, including identifying any costs that can be passed through to prices; and
- “(ii) identifying circumstances in which price-quality 30 paths may be reconsidered within a regulatory period; and
- “(c) matters relating to proposals by a regulated supplier for a customised price-quality path, including—
- “(i) requirements that must be met by the regulated 35 supplier, including the scope and specificity of information required, the extent of independent



verification and audit, and the extent of consultation and agreement with consumers; and

“(ii) the criteria that the Commission will use to evaluate any proposal.

“(1A) Every input methodology must, as far as is reasonably practicable,— 5

“(a) set out the matters listed in **subsection (1)** in sufficient detail so that each affected supplier is reasonably able to estimate the material effects of the methodology on the supplier; and 10

“(b) set out how the Commission intends to apply the input methodology to particular types of goods or services; and

“(c) be consistent with the other input methodologies that relate to the same type of goods or services. 15

“(2) Any methodologies ~~under~~ referred to in **subsection (1)(a)(iii)** must not unduly deter investment by a supplier of regulated goods or services in the provision of other goods or services.

“**52T When input methodologies must be determined** 20

“(1) The Commission must determine input methodologies for the goods or services regulated under **subparts 9 to 11** no later than **30 June 2010**.

“(2) The Minister may, on the written request of the Commission, extend the deadline referred to in **subsection (1)** once, by a period of up to 6 months, in which case notice of the extension must be given in the *Gazette*. 25

“(3) The Commission must determine input methodologies for any goods or services that are the subject of an inquiry as soon as practicable after the Commission is satisfied that the parts of the test for the regulation of goods or services set out in **paragraphs (a) and (b) of section 52F(1)** are satisfied. 30

“**52U Commission process for determining input methodologies**

“(1) When the Commission begins work on an input methodology, it must publish a notice of intention to do so that— 35

“(a) outlines the process that will be followed; and

- “(b) sets out the proposed time frames.
- “(2) During the course of its work on an input methodology, the Commission—
- “(a) must publish a draft methodology; and
- “(b) must give interested persons a reasonable opportunity to give their views on that draft methodology; and 5
- “(c) may hold 1 or more conferences; and
- “(d) must have regard to any views received from interested persons within any time frames set.
- “(3) Despite **subsections (1) and (2)**, any work done or action taken (including any consultation) by the Commission on input methodologies before the commencement of this section may be treated by the Commission and any person consulted as work done or action taken under this section. 10
- “(4) The Commission must consult with interested parties before deciding to treat earlier work or action as work or action done under this section. 15

“**52V Publication of input methodologies**

- “(1) The Commission must publish every input methodology, and every amendment to an input methodology,— 20
- “(a) within 10 working days after the Commission determines the input methodology or amendment; ~~or~~ and
- “(b) if the input methodology or an amendment is determined by the High Court on appeal, within 10 working days after the Commission receives a copy of the decision of the High Court. 25
- “(2) The publication must be by way of a notice in the *Gazette* setting out—
- “(a) a brief description of the nature of the methodology; and the goods or services to which it applies; and 30
- “(b) the reasons for determining that methodology; and
- “(c) how it is publicly available.
- “(3) The Commission must make every input methodology, and every amended input methodology, publicly available as soon as the input methodology or amendment is published. 35

**“52W Amendment of input methodologies**

If the Commission proposes to amend an input methodology by making a material change, **section 52U** applies as if the amendment were a new input methodology.

**“52X Review and date of publication of input methodologies** 5

“(1) The Commission must review each input methodology no later than 7 years after ~~the date on which it is first published~~ its date of publication and, after that, at intervals of no more than 7 years.

“(1A) The date of publication of an input methodology is the date on which it is published under **section 52V(1)(a)** or, if it is subsequently published under **section 52V(1)(b)**, the date of that later publication. 10

“(2) **Section 52U** applies, with all necessary modifications, as if the review were a new input methodology. 15

“(3) **Section 52V** applies if, following a review, an input methodology is replaced or amended.

*“Appeals of against input methodology determinations*

**“52Y Appeals of against input methodology determinations** 20

“(1) Any person who gave views on an input methodology determination to the Commission as part of the process under **section 52U**, and who, in the opinion of the Court, has a significant interest in the matter, may appeal to the High Court against the determination. 25

“(2) In this section and **section 52Z**, **input methodology determination** means any of the following:

“(a) the initial determination of an input methodology:

“(b) any determination by the Commission that amends the input methodology: 30

“(c) any determination by the Commission of an input methodology following a review of the input methodology.

“(3) In determining an appeal against an input methodology determination, the High Court may do any of the following:

“(a) decline the appeal and confirm the input methodology set out in the determination: 35

- “(b) allow the appeal by—
- “(i) amending the input methodology; or
  - “(ii) revoking the input methodology and substituting a new one; or
  - “(iii) referring the input methodology determination back to the Commission with directions as to the particular matters that require amendment. 5
- “(3A) The Court may only exercise its powers under **subsection (3)(b)** if it is satisfied that the amended or substituted input methodology is (or will be, in the case of **subsection (3)(b)(iii)**) materially better in meeting the purpose of this Part, the purpose in **section 52Q**, or both. 10
- “(4) If the Court allows an appeal, the Commission may seek clarification from the Court on any matter for the purpose of implementing the Court’s decision. 15
- “(5) ~~Any~~ There is a right of appeal under section 97 to the Court of Appeal from any decision or order of the High Court under this section ~~may be~~ on a point of law only.
- “**52Z Process for appeals in respect of input methodology**
- “(1) Any appeal under **section 52Y** must be brought within 20 working days after the date on which the input methodology determination is published. 20
- “(2) The appeal must be by way of rehearing and must be conducted solely on the basis of the documentary information and views that were before the Commission when it made its determination, and no party may introduce any new material during the appeal. 25
- “(3) The High Court must sit with 2 lay members (unless the Court considers that only 1 is required).
- “(4) Each of the lay members must have relevant experience and be appointed from the pool of people appointed under section 77 to be members of the Court for the purpose of hearing the appeal. 30
- “(5) Section 77 applies, and section 77(14) is not limited by **subsection (3)** of this section. 35

**“53 Input methodology applies pending outcome of appeal**

“(1) The High Court may not stay the application of **section 52R** with respect to any input methodology published under **section 52V** until any appeal against it is finally determined.

“(2) **Section 52R** continues to apply with respect to every input methodology published under **section 52V** until any appeal against ~~it~~ the input methodology is finally determined. 5

“Subpart 4—Information disclosure regulation

**“53A Purpose of information disclosure regulation 10**

The purpose of information disclosure regulation is to ensure that ~~every supplier of goods or services that are subject to this type of regulation publicly discloses reliable and timely information; so that interested persons are informed about matters relating to the supply of the regulated goods or services~~ sufficient information is readily available to interested persons to assess whether the purpose of this Part is being met. 15

**“53B Effect of being subject to information disclosure regulation**

“(1) Every supplier of goods or services that are subject to information disclosure regulation must— 20

“(a) publicly disclose information in accordance with the information disclosure requirements set out in the relevant **section 52O** determination; and

“(b) supply to the Commission a copy of all information disclosed in accordance with the **section 52O** determination, within 5 working days after the information is first made publicly available; and 25

“(c) supply to the Commission, in accordance with a written notice by the Commission, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring the supplier’s compliance with the **section 52O** determination. 30

“(2) If a supplier of goods or services is subject to information disclosure regulation, the Commission— 35

- “(a) may monitor and analyse all information disclosed in accordance with the information disclosure requirements; and
- “(b) must, as soon as practicable after any information is publicly disclosed, publish a summary and analysis of that information for the purpose of promoting greater understanding of the relative performance of individual regulated suppliers, their relative performance, and the changes in performance over time. 5
- “**53C Section 52O determination to set out information disclosure requirements** 10
- “(1) A **section 52O** determination relating to goods or services that are subject to information disclosure regulation must—
- “(a) specify the goods or services to which it applies; and
- “(b) specify the suppliers to which it applies; and 15
- “(c) specify the information to be disclosed; and
- “(d) specify the manner in which the information is to be disclosed; and
- “(e) specify the form of disclosure; and
- “(f) specify when, and for how long, information must be disclosed; and 20
- “(g) ~~refer to~~ specify the input methodologies that apply; and
- “(h) specify any other methodologies that are required in the preparation or compilation of the information.
- “(2) Information required to be disclosed may include (without limitation) any or all of the following: 25
- “(a) financial statements (including projected financial statements):
- “(b) asset values and valuation reports:
- “(c) prices, terms and conditions relating to prices, and pricing methodologies: 30
- “(d) contracts:
- “(e) transactions with related parties:
- “(f) financial and non-financial performance measures:
- “(g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, and revenues, and quality and service levels, capacity and spare capacity, and efficiency improvements: 35

- “(h) asset management plans:
- “(ha) quality performance measures and statistics:
- “(i) policies and methodologies assumptions, policies, and methodologies used or applied in these or other areas:
- “(j) consolidated information that includes information 5  
about unregulated goods or services, in which case **section 53D** applies.
- “(3) The **section 520** determination may do all or any of the following:
  - “(a) require disclosed information, or information from 10  
which disclosed information is derived (in whole or in part), to be verified by statutory declaration:
  - “(ab) require independent audits of disclosed information:
  - “(ac) require the retention of data on which disclosed information is based, and associated documentation: 15
  - “(b) exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions:
  - “(c) provide for transitional provisions:
  - “(d) impose any other requirements that the Commission 20  
considers necessary or desirable to promote the purpose of information disclosure regulation.
- “(4) The **section 520** determination may not require a supplier to publicly disclose any provision of an existing contract that, immediately before the goods or services became subject to information disclosure regulation, was not required by or under 25  
Part 4A (as defined in **section 54AA**) or any other enactment to be publicly disclosed.
- “**53D Consolidated information may also be required**
- “(1) The purpose of this section is to enable the Commission to 30  
monitor compliance with information disclosure regulation applying to regulated goods or services.
- “(2) A **section 520** determination may require information referred to in **subsection (3)** to be disclosed only to the extent required to enable the purpose in **subsection (1)** to be met. 35
- “(3) If a regulated supplier provides goods or services that are not subject to regulation under this Part (**unregulated goods or services**), the supplier may be required to disclose—

- “(a) consolidated financial statements, and any other information referred to in **section 53C**, for all businesses (including those related to the supply of unregulated goods or services) undertaken by that supplier; and
- “(b) consolidated financial statements, and any other information referred to in **section 53C**, for the supply of all unregulated goods or services in aggregate; and
- “(c) reconciliation between information provided under **paragraphs (a) and (b)** with information disclosed in accordance with information disclosure requirements applying to the regulated goods or services. 10
- “(4) If a supplier supplies more than 1 kind of regulated goods or services, the Commission may require the supplier to provide consolidated information and performance measures relating to all, or any combination of, the regulated goods or services. 15
- “53E Charge for providing copies to public**
- “(1) A person who is required, by a **section 520** determination, to provide copies of statements and information to the public on request may charge for providing those copies.
- “(2) The charge must be no more than is reasonably required to recover the costs of providing those copies. 20
- “53F Input methodologies on cost of capital and pricing principles**
- “(1) This section applies to input methodologies for—
- “(a) evaluating or determining the cost of capital; and 25
- “(b) pricing principles.
- “(2) Those input methodologies are applicable in respect of information disclosure regulation as follows:
- “(a) the Commission may apply them for the purposes of monitoring and analysis; but 30
- “(b) if information disclosure regulation is the only type of regulation to which the goods or services are subject, the supplier is not required to apply them for any purpose related to that regulation.
- ~~“(3) Subsection (2)(b) overrides section 52R: 35~~



**“53F Limited exception to obligation to apply input methodologies**

- “(1) Despite **section 52R**, suppliers that are subject only to information disclosure regulation do not have to apply the following input methodologies in accordance with that section: 5
  - “(a) pricing methodologies:
  - “(b) methodologies for evaluating or determining the cost of capital.
- “(2) However, to avoid doubt, **subsection (1)** does not affect anything else in this subpart, and in particular does not affect— 10
  - “(a) **section 53B(2)** (which means the Commission may use the input methodologies referred to in **subsection (1)** to monitor and analyse information); and
  - “(b) **section 53C(2)** (which means that suppliers may still be required to disclose information about the pricing methodologies, and methodologies for evaluation or determining the cost of capital, that they do in fact use). 15

“Subpart 5—Negotiate/arbitrate regulation

**“53G Purpose of negotiate/arbitrate regulation**

The purpose of negotiate/arbitrate regulation is to encourage a supplier and its customers to reach agreement, through negotiation, on the supplier’s prices and quality standards during a specified regulatory period, and to provide for binding arbitration if negotiation is unsuccessful. 20

**“53H Overview of negotiate/arbitrate regulation**

- “(1) If a regulated supplier is subject to negotiate/arbitrate regulation,— 25
  - “(a) the supplier must enter into negotiations with parties identified by the Commission in order to reach agreement on the matters identified by the Commission (being the prices and quality standards associated with regulated goods or services) that will apply for the regulatory period specified by the Commission; and 30
  - “(b) if the negotiations fail to reach a settlement of all the matters within the time frames set by the Commission, 35

- the parties must enter into arbitration to resolve the outstanding matters; and
- “(c) the terms of the arbitration are set by the Commission, and the arbitral award is binding on the parties unless or until they agree to vary it. 5
- “(2) This section is only a guide.
- “**53I Section 52O determination to set out requirements for application of negotiate/arbitrate regulation**
- “(1) If negotiate/arbitrate regulation applies to regulated goods or services, the **section 52O** determination must set out the following: 10
- “(a) the parties to the negotiation or arbitration:
- “(b) the matters (including the prices and quality standards associated with the regulated goods or services) that the parties must agree to by negotiation, or are bound to by arbitral award: 15
- “(c) the period or periods for which any negotiated settlement or arbitral award applies:
- “(d) a reference to the input methodologies that apply:
- “(e) the information that the parties must provide to the other parties and, if necessary, the arbitrator, and the time frames for that provision: 20
- “(f) the processes for negotiations, including the form of involvement by the parties, and the form, scope, and coverage of any negotiated settlement: 25
- “(g) the time frames for the negotiations (including stages in negotiations) and, in particular, the date by which, if negotiations are not complete, the parties must enter into arbitration to settle any remaining unresolved matters:
- “(h) the terms of any compulsory arbitration that takes place under section 53J, including its form, procedures, the allocation of costs, and powers of the arbitrator: 30
- “(i) the date by which the arbitral award must be made:
- “(j) the manner in which the parties must make publicly available any negotiated settlement, arbitral award, or both. 35

- “(2) The Commission may include in the determination any other matters it considers necessary or desirable to promote the purpose of negotiate/arbitrate regulation.
- “(2A) If the parties to a negotiation agree to arbitration, the arbitration may be on whatever terms they agree to, but must be completed within the time frames set for the negotiation. 5
- “(2B) The Commission may extend any time frames set out in a **section 520** determination.
- “(3) The terms of arbitration set by the Commission must—
- “(a) allow the parties a reasonable period within which to agree on an arbitrator but, if agreement is not reached within that period (or any extended period allowed under **subsection (2B)**), the terms must provide that the Commission must appoint the arbitrator (and may not appoint itself as the arbitrator); and 10 15
  - “(b) ~~require the arbitral award to include provisions requiring and enabling the parties to enforce it; and~~
  - “(b) include provisions enabling the parties to enforce the arbitral award; and
  - “(c) include a right or rights of recourse of appeal to the High Court, exercisable by any party to the arbitration, on a point of law only. 20
- “**53J Compulsory arbitration**
- “(1) ~~If a negotiated settlement is not reached (whether by negotiation or voluntary arbitration) within the time frame set by the Commission, the parties must enter into arbitration under this section on the terms set out in the **section 520** determination.~~ 25
- “(2) ~~Nothing in the Arbitration Act 1996 applies to the arbitration, except to the extent that the Commission applies particular provisions of that Act to the arbitration.~~ 30
- “(2) The Arbitration Act 1996 does not apply to arbitration under this section, but the Commission may, in setting out the terms of the arbitration in the **section 520** determination, apply any provisions of that Act to the arbitration.
- “(3) ~~The arbitrator’s role is to determine a commercially fair and workable outcome in light of the fact that the parties cannot~~ 35

agree make an arbitral award that promotes the purpose of this Part.

“(3A) If final consumers of regulated goods or services are not directly represented as parties in the arbitration, the arbitrator must have particular regard to the effect of the outcome of the arbitration on those final consumers. 5

“(4) The arbitral award is binding on the parties to the arbitration unless or until the parties agree to vary it.

#### “Subpart 6—Default/customised price-quality regulation 10

##### “53K Purpose of default/customised price-quality regulation

The purpose of default/customised price-quality regulation is to provide a relatively low-cost way of setting price-quality paths for suppliers of regulated goods or services, while allowing the opportunity for individual regulated suppliers to have alternative price-quality paths that better meet their particular circumstances. 15

##### “53L Overview of default/customised price-quality regulation

“(1) If goods or services are subject to default/customised price-quality regulation,— 20

“(a) the Commission sets default price-quality paths that apply for a regulatory period, and all regulated suppliers must apply those default price-quality paths; but

“(b) individual suppliers may make a proposal to the Commission for a customised price-quality path; and 25

“(c) the Commission may set a customised price-quality path for the supplier, and that then applies for a set period instead of a specified default price-quality path.

“(2) This section is only a guide.

##### “53M Content and timing of price-quality paths 30

“(1) Every price-quality path (whether a default price-quality path or a customised price-quality path under this subpart, or an individual price-quality path under **subpart 7**) must specify,—

“(a) in relation to prices, either or both of the following with respect to a specified regulatory period: 35

- “(i) the maximum price or prices that may be charged by a regulated supplier:
- “(ii) the maximum revenues that may be recovered by a regulated supplier; and
- “(b) the quality standards that must be met by the regulated supplier; and 5
- “(c) the regulatory period.
- “(1A) A price-quality path may include incentives for an individual supplier to maintain or improve its quality of supply, and those incentives may include (without limitation) any of the following: 10
  - “(a) penalties by way of a reduction in the supplier’s maximum prices or revenues based on whether, or by what amount, the supplier fails to meet the required quality standards: 15
  - “(b) rewards by way of an increase in the supplier’s maximum prices or revenue based on whether, or by what amount, the supplier meets or exceeds the required quality standards:
  - “(c) consumer compensation schemes that set minimum standards of performance and require the supplier to pay prescribed amounts of compensation to consumers if it fails to meet those standards: 20
  - “(d) reporting requirements, including special reporting requirements in asset management plans, if the supplier fails to meet the quality standards. 25
- “(1B) Quality standards may be prescribed in any way the Commission considers appropriate (such as targets, bands, or formulae) and may include (without limitation)—
  - “(a) responsiveness to consumers; and 30
  - “(b) in relation to electricity lines services, reliability of supply, reduction in energy losses, and voltage stability or other technical requirements.
- “(2) A regulatory period must be 5 years.
- “(3) However, the Commission may set a shorter period than 5 years if it considers that it would better meet the purposes of this Part, but in any event may not set a term less than 4 years. 35
- “(4) **Subsections (2) and (3)** are subject to **section 53W**.

“(5) No default price-quality path applies to a supplier until the date specified in the relevant **section 520** determination, which must be a date at least 4 months after a summary of the determination is published in the *Gazette* under **section 520(6)(b)**.

**“53N Monitoring compliance with price-quality paths** 5

For the purpose of monitoring compliance with a price-quality path (whether a default price-quality path or a customised price-quality path under this subpart, or an individual price-quality path under **subpart 7**), the Commission may, in addition to exercising its powers under section 98, issue a written notice to a regulated supplier requiring it to provide any or all of the following: 10

- “(a) a written statement that states whether or not the supplier has complied with the price-quality path applying to that supplier: 15
- “(b) a report on the written statement referred to in **paragraph (a)** that is signed by an auditor in accordance with any form specified by the Commission: 20
- “(c) sufficient information to enable the Commission to properly determine whether all applicable price-quality paths have been complied with: 25
- “(d) a certificate, in the form specified by the Commission and signed by at least one director of the supplier, confirming the truth and accuracy of any information provided under this section. 25

*“Default price-quality path*

**“53O Section 520 determination to set out requirements of default price-quality paths**

If default price-quality regulation applies to regulated goods or services, the **section 520** determination must set out a default price-quality path that includes— 30

- “(a) the starting prices that apply to the supply of the goods or services during the first regulatory period; and
- “(b) the rate or rates of change in prices, relative to the consumer price index, ~~required~~ allowed during the first regulatory period; and 35

- “(c) the quality standards that apply during the first regulatory period; and
- “(d) the date or dates on which the default price-quality path (or any part of it) takes effect; and
- “(e) the annual date by which any proposal for a customised price-quality path must be received; and 5
- “(f) the annual date by which compliance must be demonstrated in accordance with **section 53N**.

“**53P Resetting default starting prices, rates of change, and quality standards** 10

- “(1) Before the end of the first and every subsequent regulatory period, the Commission must amend the **section 520** determination by setting out the ~~reset default prices, rate or rates of changes in prices, and quality standards~~ starting prices (as referred to in **section 530(a)**), rates of change (as referred to in **section 530(b)**), and quality standards (as referred to in **section 530(c)**) that apply for the following regulatory period. 15
- “(2) ~~In resetting default prices, rates of change, and quality standards, the Commission—~~
  - “(a) ~~must consult with interested parties; and~~ 20
  - “(b) ~~may consider all or any of the following:~~
    - “(i) ~~information disclosed in accordance with information disclosure regulation;~~
    - “(ii) ~~information obtained from the consultation with interested parties;~~ 25
    - “(iii) ~~information obtained by the Commission under **section 53N**;~~
    - “(iv) ~~other information in the public domain, including the annual reports of suppliers, submissions, and Internet sites.~~ 30
  - “(c) ~~may not use its powers under **sections 53ZG** or 98 to obtain information except to verify information relating to the current or previous years.~~
- “(2) In resetting starting prices, rates of change, and quality standards, the Commission must consult with interested parties. 35
- “(3) The ~~reset default starting prices~~ must be either—
  - “(a) the prices that applied at the end of the preceding regulatory period; or

- “(b) ~~prices determined by the Commission after considering information referred to in **subsection (2)(b)**:~~
- “(b) prices, determined by the Commission, that are based on the current and projected profitability of each supplier. 5
- “(3A) Starting prices set in accordance with **subsection (3)(b)** must not seek to recover any excessive profits made during any earlier period.
- “(4) Subject to **subsections (6) and (7)**, the Commission must set only one ~~reset default rate of change~~ per type of regulated goods or services (for example, if the ~~default rate of change (x)~~ is 1% in a CPI-x path, 1% must be the rate for all goods or services of that type). 10
- “(5) The ~~reset default rate of change~~ must be based on the long-run average productivity improvement rate achieved by either or both of suppliers in New Zealand, and suppliers in other comparable countries, of the relevant goods or service, using whatever measures of productivity the Commission considers appropriate. 15
- “(6) ~~In order to provide incentives for suppliers to improve quality, the Commission may provide for a differing rate or rates in the reset default rate to apply to all suppliers within a class to which any quality standards apply (for example, there may be other rates, for example, 0.75%, that apply to all suppliers who meet specified quality improvement targets).~~ 20
- “(7) The Commission may set alternative reset default rates for a particular supplier as an alternative, in whole or in part, to the reset default prices set under **subsection (3)(b)** if, in the Commission’s opinion, this is necessary or desirable to minimise any undue financial hardship to the supplier or to minimise price shocks to consumers. 25
- “(6) The Commission may set alternative rates of change for a particular supplier—
- “(a) as an alternative, in whole or in part, to the starting prices set under **subsection (3)(b)** if, in the Commission’s opinion, this is necessary or desirable to minimise any undue financial hardship to the supplier or to minimise price shock to consumers; or 30



- “(b) as an incentive (under **section 53M(1A)**) for the supplier to improve its quality of supply.
- “(7) Any alternative rates of change set under **subsection (6)** may include step changes.
- “(7A) The Commission may not, for the purposes of this section, use comparative benchmarking on efficiency in order to set starting prices, rates of change, quality standards, or incentives to improve quality of supply. 5
- “(8) If ~~reset default~~ starting prices, rates of change, and quality standards have not been set by way of an amendment to the relevant **section 520** determination by the end of the regulatory period to which it applies, the ~~default~~ starting prices, rates of change, and quality standards ~~applying to that that apply~~ at the end of the regulatory period continue to apply until the ~~reset default~~ starting prices, rates of change, and quality standards are set. 10 15

*“Customised price-quality paths*

“**53Q Supplier may propose customised price-quality path**

- “(1) At any time after a default price-quality path is set by the Commission, a supplier that is (or is likely to be) subject to the default price-quality path may make a proposal to the Commission for a customised price-quality path to apply to that supplier. 20
- “(2) Every proposal must—
- “(a) comply with the input methodologies referred to in **section 52S(1)(c)** relating to the process for, and content of, customised price-quality path proposals; and 25
- “(b) be made within the period, or by the annual date, specified for the purpose in the **section 520** determination; and 30
- “(c) include the standard application fee for customised price-quality path proposals; and
- “(d) apply or adopt all relevant input methodologies.
- “(3) A supplier may make only 1 proposal during a regulatory period, and may not make a proposal within the 12 months before a default price-quality path is due to be reset. 35

“(4) A supplier that makes a proposal must make it publicly available as soon as practicable after it has been made to the Commission.

“**53R Effect of making proposal for customised price-quality path**

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A supplier that makes a proposal to the Commission—

“(a) cannot withdraw the proposal; and

“(b) is bound, for the regulatory period to which it applies, by any customised price-quality path that the Commission subsequently sets for the supplier.

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“**53S Preliminary assessment of proposal**

“(1) Within 40 working days after receiving a proposal, the Commission must determine whether the proposal complies with the input methodologies ~~under~~ referred to in section 52S(1)(c) relating to the process for, and content of, customised price-quality path proposals.

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“(2) If the proposal does not comply with those requirements, the Commission may, at its discretion,—

“(a) discontinue any consideration of the proposal; or

“(b) request the supplier to remedy the deficiencies in the proposal by providing additional information within 40 working days.

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“(3) If the supplier fails to provide any additional information requested by the Commission under **subsection (2)(b)**, the Commission may discontinue any consideration of the proposal.

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“(4) If a proposal is discontinued under **subsection (2) or (3)**, **section 53Q(3)** does not apply and the supplier may make another proposal within the regulatory period (except in the 12 months before the default price-quality path is due to be reset).

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“**53T Process and timing for assessing proposal**

“(1) Once the Commission decides that a proposal complies with the input methodologies relating to the process for, and content of, customised price-quality path proposals, it must—

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- “(a) give notice that the proposal is under consideration, and how copies of the proposal may be obtained; and
  - “(b) set a date for interested persons to make submissions on the proposal; and
  - “(c) have regard to any submissions made by that date. 5
- “(2) The Commission must make a determination on a proposal for a customised price-quality path within 150 working days of receiving a complete proposal, subject to **sections 53U and 53Y**.
- “**53U Extension of time frames** 10  
 The time frames specified in **sections 53S and 53T** may, with the agreement of the supplier and the Commission, each be extended by a total of up to 30 working days.
- “**53V Determination setting customised price-quality path**
- “(1) The Commission may determine any customised price-quality path that the Commission considers appropriate for a supplier that has made a proposal. 15
  - “(2) To avoid doubt, and without limitation, the determination may in determining a customised price-quality path that complies with **section 53M** the Commission may do any of the following: 20
    - “(a) set a price-quality path that is lower, or otherwise less favourable to the regulated supplier, than the default price-quality path that would otherwise apply:
    - “(b) ~~if the Commission sets a lower price than applied under the default price-quality path, the Commission may require the supplier to lower its prices below the customised price on a temporary basis in order to refund consumers for some or all of any over-recovery of revenues that occurred while the default price-path applied; but, in this case, any lowering of price must be spread over time to minimise undue financial hardship to the supplier;~~ 25 30
    - “(c) ~~if the Commission sets a higher price than applied under the default price-quality path, the Commission may allow the supplier to recover some or all of any shortfall in its revenues while the default price-path applied; but,~~ 35

- in this case, the recovery must be spread over time to minimise price shocks to consumers.
- “(b) if it sets a lower or a higher price than applied under the default price-quality path, apply claw-back:
- “(c) with the agreement of the supplier, vary an input methodology that would otherwise apply to the supplier. 5
- “(3) A customised price-quality path for a supplier is imposed by way of an amendment to the **section 520** determination relating to the default/customised price-quality regulation applying to the supplier; and **section 52P** applies accordingly. 10
- “53W Terms of customised price-quality paths**
- “(1) A customised price-quality path applies for 5 years.
- “(2) However, the Commission may set a shorter period than 5 years if it considers this would better meet the purpose of this Part, but in any event may not set a term less than 3 years. 15
- ~~“(3) At the end of the period, the supplier is subject to a default price-quality path that must be determined by the Commission, in a **section 520** determination for that supplier, using the process used under **section 53P** for resetting default price-quality paths.~~ 20
- “53WA What happens when customised price-quality path ends**
- “(1) When the customised price-quality path of a supplier of goods or services ends, the supplier is subject to the default price-quality path that is generally applicable to other suppliers of those goods or services. 25
- “(2) The start prices that apply at the beginning of the default price-quality path are those that applied at the end of the customised price-quality path unless, at least 4 months before the end of the customised price-quality path, the Commission advises the supplier that different start prices must apply. 30
- “(3) The supplier remains subject to the default price-quality path until—
- “(a) the end of the period for which it applies to other suppliers; or
- “(b) a new customised price-quality path begins to apply to the supplier. 35

“(4) To avoid doubt, a supplier who is or was subject to a customised price-quality path may apply in accordance with **section 53Q** for another customised price-quality path.

**“53X Commission’s costs in setting customised price-quality path** 5

“(1) The Commission’s costs in setting a customised price-quality path must be met by the person who makes the proposal for a customised price-quality path.

“(2) The costs may be recovered in whatever manner the Commission determines. 10

**“53Y Prioritisation by Commission**

“(1) The Commission is not required to consider any more than 4 proposals for a customised price-quality path relating to the same type of regulated goods or services in any one year.

“(2) If the Commission receives more than 4 proposals for a customised price-quality path relating to the same type of regulated goods or services in any one year, the Commission— 15

“(a) may defer the additional proposals to a subsequent year; but

“(b) must prioritise its consideration of the proposals in accordance with the criteria in **subsection (3)**. 20

“(3) The criteria for Commission decisions on priorities ~~are~~ are as follows:

“(a) quality and completeness of the initial proposal:

“(b) urgency of any proposed additional investment (compared to historic rates of investment) required to meet consumer requirements on quality: 25

“(c) materiality of the proposal relative to the size and revenues of the supplier.

**“53Z What happens if Commission does not make decision within time frame** 30

“(1) This section applies if the Commission does not make a determination within 150 working days of receiving a complete proposal (or within any extended time agreed under **section 53U**). 35

- “(2) If the regulated supplier has not complied, in the Commission’s opinion, with any reasonable exercise by the Commission of its information-gathering powers under **section 53ZC** or 98, the default price-quality path continues in effect at the close of that period, and the Commission must notify the supplier accordingly. 5
- “(3) If the regulated supplier has so complied, the customised proposal made under **section 53Q** takes effect at the close of that period.
- “(4) If a customised price-quality path proposal takes effect under **subsection (3)**, the Commission must immediately prepare an amendment to the relevant **section 52O** determination, setting out the customised price-quality path applying to the supplier. 10
- “What happens to price-quality paths if input methodologies change 15*
- “53ZA What happens to price-quality paths if input methodologies change**
- “(1) Default or customised price-quality paths may not be reopened within a regulatory period on the grounds of a change in an input methodology, except as provided in **subsection (2)**. 20
- “(2) Every default and customised price-quality path must be ~~re-considered~~ reset by the Commission in accordance with **section 53P** if—
- “(a) an input methodology changes as a result of an appeal under **section 52Y**; and 25
- “(b) had the changed methodology applied at the time the price-quality path was set, it would have resulted in a materially different path being set.
- “(3) ~~In considering a proposal by a supplier, and making a determination, the Commission may vary an input methodology applying to that supplier with the agreement of the supplier.~~ 30
- “(3) When resetting a default or customised price-quality path under **subsection (2)**, the Commission must apply claw-back. 35

“Subpart 7—Individual price-quality regulation

“**53ZB Price-quality path for individual businesses**

- “(1) If individual price-quality regulation applies to goods or services supplied by a supplier, the Commission may set the price-quality path for that supplier using any process, and in any way, it thinks fit, but must use the input methodologies that apply to the supply of those goods or services. 5
- “(2) The following provisions of **subpart 6** apply (with all necessary modifications) where individual price-quality regulation is imposed: 10
  - “(a) **sections 53M and 53N:**
  - “(b) **section 53ZA.**

“Subpart 8—Miscellaneous provisions

“**53ZC Powers of Commission under this Part**

- “ For the purpose of carrying out its functions and exercising its powers under this Part, the Commission may, in addition to exercising its powers under section 98, do any of the following: 15
  - “(a) consult with any person the Commission considers may assist it: 20
  - “(b) investigate any of the following:
    - “(i) how effectively and efficiently any supplier of the goods or services is supplying the goods or services: 25
    - “(ii) how any formula, methodology, or price-quality path being considered by the Commission may be applied, or how any formula, methodology, or price-quality provision determined or authorised by the Commission has been applied, in considering proposed prices or quality standards: 30
    - “(iii) how any conditions relating to the quality of the goods or services may be, or are being, fulfilled:
  - “(c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years: 35

- “(d) by notice in writing, require any supplier of the goods or services—
- “(i) to prepare and produce forecasts, forward plans, or other information; and
  - “(ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information: 5
- “(e) by notice in writing, require any supplier of the goods or services, or any previous supplier of them that the Commission has reason to believe may have information or documents relevant to the investigation, audit, or inquiry, at the time and place specified in the notice, to do either or both of the following: 10
- “(i) produce or supply to the Commission documents and information in relation to the goods or services, or the prices or operations of the person in respect of the goods or services: 15
  - “(ii) to answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry: 20
- “(f) by notice in writing, require any supplier of the goods or services, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or from a member of a class of appropriately qualified persons, as determined by the Commission in relation to the matters in **paragraph (b), (c), (d), or (e)(i)**. 25
- “(2) ~~This section is subject to **section 53P(2)(c)**:~~
- “Compare: 1986 No 5 s 70E
- “**53ZD Levies** 30
- “(1) Every supplier of regulated goods or services (or prescribed class of suppliers of regulated goods or services) must pay to the Minister the levy determined in accordance with regulations made under **subsection (2)**.
- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations— 35
- “(a) specifying the amount of levies, or method of calculating or ascertaining the amount of levies, on the basis that



the estimated costs of performing the Commission’s functions, powers, and duties under this Part, and of collecting the levy money, should be met fully out of levies:

- “(b) including ~~in levies~~, or providing for ~~the inclusion~~, in levies of; any shortfall in recovering those actual costs: 5
  - “(c) refunding, or providing for refunds of, any over-recovery of those actual costs:
  - “(d) providing different levies for different classes of suppliers or goods or services: 10
  - “(e) specifying the financial year or part financial year to which those levies apply, and applying to that financial year or part financial year and each subsequent financial year until revoked or replaced:
  - “(f) providing for the payment and collection of those levies: 15
  - “(g) for the first financial year to which the levy applies to a supplier or class of suppliers, including in the levy amount or method costs incurred by the Commission in connection with preparing itself to perform, and performing, its functions, powers, and duties under this Part, irrespective of the fact— 20
    - “(i) that the regulations are made and come into effect after that year; or
    - “(ii) that the goods or services become regulated after the costs were incurred (for example, costs incurred by the Commission in preparing input methodologies): 25
  - “(h) requiring payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced: 30
  - “(i) exempting or providing for exemptions from, and providing for waivers of, the whole or any part of the levy for any case or class of cases. 35
- “(3) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Crown.
- “(4) The Minister must consult with the suppliers of regulated goods or services, or representatives of those suppliers, before

making a recommendation for the purposes of **subsection (2)**.

**“53ZE Material may be incorporated by reference**

**Schedule 5** applies if the Commission wishes to incorporate material by reference in any of the following documents: 5

“(a) a **section 520** determination:

“(b) an input methodology.

**“53ZF Power to exempt disclosure of commercially sensitive information**

“(1) The Commission may, on application, exempt any person or class of persons, in respect of any information or class of information that the Commission considers to be commercially sensitive, from any obligation to make that information publicly available as part of the requirements of information disclosure regulation, negotiate/arbitrate regulation, or customised price-quality regulation. 10 15

“(2) The Commission may grant the exemption on any terms and conditions that it thinks fit.

“(3) The exemption must be granted by notice in the *Gazette*, and takes effect from the date specified in the exemption (which must not be earlier than the date of the *Gazette* notice). 20

“(4) The Commission may, in like manner, vary or revoke any exemption.

“(5) The Commission must keep a list of all current exemptions made by it under this section available for public inspection free of charge during normal office hours of the Commission at the offices of the Commission. 25

“(6) An exemption under this section is not a regulation within the meaning of the Regulations (Disallowance) Act 1989 or the Acts and Regulations Publication Act 1989. 30

**“Subpart 9—Electricity lines services**

*“Application, overview, and interpretation*

**“54 Overview of how this subpart applies**

“(1) This subpart provides—

- “(a) that all suppliers of electricity lines services are subject to information disclosure regulation; and
  - “(b) that suppliers of electricity lines services that are not consumer-owned are also subject to price-quality regulation; and 5
  - “(c) for the transition to the new regime provided for in this Part.
- “(2) This section is only a guide.
- “**54A Overview of when this subpart applies**
- “(1) This subpart applies on and after **1 April 2009**. 10
  - “(2) However, **sections 54C(3) and 54M to 54P 54N** apply as soon as the rest of this Part comes into force.
  - “(3) This section is only a guide.
- “**54AA Interpretation for subpart**
- In this subpart, unless the context otherwise requires,— 15
  - “administrative settlement means a deed entered into by the Commission and a supplier of electricity lines services in respect of a breach of a threshold or a breach of a default price-quality path referred to in **section 54J**
  - “consumer-owned has the meaning given in **section 54C** 20
  - “electricity lines services has the meaning given in **section 54B**
  - “Part 4A means Part 4A of this Act as in force immediately before its repeal by the **Commerce Amendment Act 2008**
  - “threshold means a threshold set by the Commission under Part 4A for the declaration of control in relation to large electricity lines businesses 25
  - “Transpower means Transpower New Zealand Limited or any subsidiary of, or successor to, that company.
- “**54B Meaning of electricity lines services** 30
- “(1) In this subpart, unless the context otherwise requires, **electricity lines services** means the conveyance of electricity by line in New Zealand.
  - “(2) However, none of the following are electricity lines services:

- “(a) conveying electricity solely for the supplier’s own consumption or for the consumption of the supplier’s associates:
- “(b) conveying electricity only from a generator to the national grid or from the national grid to a generator: 5
- “(c) conveying electricity (other than via the national grid) only from a generator to a local distribution network or from a local distribution network to a generator:
- “(d) conveying electricity by lines that are not connected, directly or indirectly, to the national grid: 10
- “(e) conveying electricity only by a line or lines that are mostly in competition with a line or lines operated by another supplier of electricity lines services that is not an associate of the person, provided that the competition is actual competition and not potential competition: 15
- “(f) conveying electricity if the total circuit length of the prescribed voltage electric lines provided by the supplier (or over which electricity is conveyed by the supplier, as the case may be) is less than 25 kilometres:
- “(g) conveying electricity of less than 20 gigawatt hours per annum: 20
- “(h) conveying electricity to less than 500 consumers.
- “(3) In this section, unless the context otherwise requires,—
- “**associate** has the same meaning as in section 12 of the Electricity Industry Reform Act 1998 25
- “**consumer** has the same meaning as in section 2(1) of the Electricity Act 1992
- “**lines** has the same meaning as in section 2(1) of the Electricity Act 1992
- “**national grid** has the same meaning as in section 2(1) of the Electricity Act 1992 30
- “**prescribed voltage electric line** means a line that is capable of conveying electricity at a voltage equal to or greater than 3.3 kilovolts.

**“54C Definition of consumer-owned**

**“(1)** In this subpart, unless the context otherwise requires, a supplier is **consumer-owned** if it is a supplier that meets the following criteria:

- “(a)** 100% of the control rights and 100% of the equity return rights (within the meaning of section 3 of the Electricity Industry Reform Act 1998) in the supplier are held by either—
  - “(i)** a customer trust or a community trust within the meaning of **subsection (2)**; or
  - “(ii)** a customer co-operative within the meaning of **subsection (2)**; and
- “(b)** the trustees of the customer trust or community trust, or the directors of the customer co-operative, as the case may be, that is referred to in **paragraph (a)** are elected or appointed solely by the persons who are consumers of the supplier, and at least 90% of the persons who are consumers of the supplier at the time of the election or appointments are eligible to vote in those elections or to participate in those appointments; and
- “(c)** all of the persons who are consumers of the supplier as at an income distribution resolution date benefit from that income distribution; and
- “(d)** the supplier has fewer than 100,000 ICPs.

**“(2)** In this section, unless the context otherwise requires,—

**“community trust** is a trust—

- “(a)** whose income beneficiaries substantially comprise persons who are a class or classes identified by reference to their domicile or location or operation within, or connection to, a prescribed geographic area; and
- “(b)** that has confined distributions largely to those beneficiaries or for purposes related to a prescribed geographic area

**“consumer** has the same meaning as in section 2(1) of the Electricity Act 1992

**“customer co-operative** means a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996) that has the characteristics described in the definition of customer trust in this subsection, applied as if references to

trusts were to co-operatives; references to beneficiaries were to shareholders; and all other necessary modifications were made

“**customer trust** is a trust—

“(a) whose income beneficiaries substantially comprise persons who are a class or classes identified by reference to any of— 5

“(i) the person’s connection to the lines of the supplier;

“(ii) the person’s receipt of electricity from the supplier; 10

“(iii) the person’s liability for payment for supply of electricity from the supplier;

“(iv) the person’s liability for payment for the connection;

“(v) the person’s liability for payment for line services; and 15

“(b) that has confined distributions largely to those beneficiaries

“**ICP** means a point of connection on a local or an embedded network at which a retailer supplies electricity to a consumer 20

“**income distribution resolution date** means the date that a supplier, or the trust or co-operative that owns a supplier, as the case may be, resolves to make an income distribution to beneficiaries.

“(1) In this subpart, unless the context otherwise requires, a supplier is **consumer-owned** if it is a supplier that meets the following criteria: 25

“(a) all the control rights and all the equity return rights (within the meaning of section 3 of the Electricity Industry Reform Act 1998) in the supplier are held by 1 or more customer trusts, community trusts, or customer co-operatives; and 30

“(b) the trustees of each customer trust or community trust, or the directors of each customer co-operative, as the case may be, that is referred to in **paragraph (a)** are elected solely by the persons who are consumers of the supplier, and at least 90% of the persons who are consumers of the supplier at the time of the election are eligible to vote in those elections; and 35

- “(c) at least 90% of the persons who are consumers of the supplier as at an income distribution resolution date benefit from that income distribution; and
- “(d) the supplier has fewer than 150 000 ICPs.
- “(2) In this section, unless the context otherwise requires,— 5
- “community trust, in relation to a supplier, is a trust in respect of which—
- “(a) at least 90% of the income beneficiaries comprise persons who are a class or classes identified by reference to their domicile or location or operation within the geo- 10
- graphic area or areas of operation of the supplier; and
- “(b) at least 90% of its income distributions are paid to those beneficiaries or for purposes related to that geographic area or areas
- “consumer has the same meaning as in section 2(1) of the Electricity Act 1992, and includes, for the purposes of refer- 15
- ences to the election of trustees in this section and section 54H, any person who is listed on an electoral roll as a resident of an address that consumes the electricity in question
- “customer co-operative, in relation to a supplier, means a 20
- co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996) that has the characteristics de-
- scribed in the definition of customer trust in this subsection, applied as if references to trusts were to co-operatives, refer-
- ences to income beneficiaries were to shareholders, and all 25
- other necessary modifications were made
- “customer trust, in relation to a supplier, means a trust in respect of which—
- “(a) at least 90% of the income beneficiaries comprise persons who are a class or classes identified by reference 30
- to any of—
- “(i) the person’s connection to the lines of the sup-
- plier:
- “(ii) the person’s receipt of electricity from the sup- 35
- plier:
- “(iii) the person’s liability for payment for supply of
- electricity from the supplier:
- “(iv) the person’s liability for payment for the connec-
- tion to the lines of the supplier:

- “(v) the person’s liability for payment for line services supplied by the supplier; and
- “(b) at least 90% of its income distributions are paid to those beneficiaries
- “**ICP** means a point of connection on a local or an embedded network at which a retailer supplies electricity to a consumer
- “**income distribution resolution date** means the date that a supplier, or the trust or co-operative that owns a supplier, as the case may be, resolves to make an income distribution to beneficiaries.
- “(3) As soon as practicable after this subsection comes into force, the Minister must publish a notice in the *Gazette* stating the names of the suppliers that are consumer-owned as at that date.
- “(4) The notice in **subsection (3)** is only for information purposes and has no legal effect.
- “**54D Further interpretation for this subpart**  
 In this subpart, unless the context otherwise requires,—
- “**existing administrative settlement** means any deed agreed between the Commission and a supplier of electricity lines services before **1 April 2009** in respect of a breach of a threshold
- “**Part 4A** means Part 4A of this Act as in force immediately before its repeal by the **Commerce Amendment Act 2008**
- “**threshold** means a threshold set under Part 4A for the declaration of control in relation to large electricity lines businesses
- “**Transpower** means Transpower New Zealand Limited or any subsidiary of, or successor to, that company.
- “Imposition of regulation under this Part*
- “**54E Electricity lines services declared to be regulated**  
 Electricity lines services are regulated under this Part.
- “**54F All electricity lines services are subject to information disclosure regulation**  
 All electricity lines services are subject to information disclosure regulation under this Part.



“**54G Certain electricity lines services are also subject to default/customised price-quality path regulation**

“(1) All electricity lines services (other than those supplied by Transpower) are subject to default/customised price-quality regulation under this Part unless they are exempt. 5

“(2) All electricity lines services that are supplied by a supplier that is consumer-owned are exempt (unless an Order in Council has been made in respect of the service under **section 54H**).

“**54H How exempt status can be lost and default/customised price-quality regulation can be applied to consumer-owned suppliers** 10

“(1) Electricity lines services that are supplied by a supplier that is consumer-owned cease to be exempt for the purpose of **section 54G** (and therefore become subject to default/customised price-quality regulation under this Part) if the Governor-General, by Order in Council, declares that this section applies. 15

“(2) The Minister may make a recommendation only if the Minister is satisfied that either—

“(a) the Commission has advised the Minister that a supplier has ceased to be consumer-owned within the meaning of **section 54C**; or 20

“(b) the Commission has recommended to the Minister that the purpose of this Part would be better met if price-quality regulation were imposed on the supplier under this Part. 25

“(3) The Commission may make a recommendation under **subsection (2)(b)** only following consideration of a petition made by 1 or more of the following:

“(a) 15% of the persons who are residential consumers of the supplier as at the date of the petition who are eligible to vote in elections for trustees of the customer trust or community trust, or for directors of the customer co-operative: 30

“(b) 20% of the persons who are residential consumers of the supplier as at that date who are not eligible to vote in elections for trustees of the customer trust or community trust, or for directors of the customer co-operative: 35

- “(c) 25% of the persons who are non-residential consumers (either by number or by consumption of that class of consumer) of the supplier as at that date ~~who are not eligible to vote in elections for trustees of the customer trust or community trust, or for directors of the customer co-operative.~~ 5
- “(3A) If exact figures are not available as to the number of persons in a class referred to in **subsection (3)**, the Commission may rely on any estimate that the Commission considers to be a reasonable estimate. 10
- “(4) **Petition** means a petition to the Commission seeking the application of price-quality regulation to all or any of the electricity lines services of the relevant supplier, and that records the signatures of the signatories.
- “(5) The Governor-General may, on the recommendation of the Minister, make an Order in Council in accordance with this section. 15
- “**54I Commission must make section 52O determination specifying how this subpart applies**
- “(1) The **section 52O** determinations that specify how information disclosure regulation applies ~~in respect of~~ to each supplier of electricity lines services must be made as soon as practicable after **1 April 2009**. 20
- “(2) The **section 52O** determinations that specify how default/customised price-quality regulation applies ~~in respect of~~ to each supplier of electricity lines services that ~~are~~ is subject to that form of regulation as at **1 April 2009** ~~must be~~ are made as soon as practicable after ~~that date~~ set out in **section 54J**. 25
- “(3) The **section 52O** determinations that specify how default/customised price-quality regulation applies ~~in respect of~~ to each supplier of electricity lines services that becomes subject to that form of regulation as a result of an Order in Council made under **section 54H** must be made as soon as practicable after the order comes into force. 30

*“When and how price-quality regulation applies*

**“54J Initial default price-quality paths**

**“(1)** The **section 52O** determinations required in respect of each supplier of electricity lines services that are subject to default/customised price-quality regulation under **section 54G** 5 must set default price-quality paths as follows:

**“(a)** the default price-quality path that applies for the period commencing on **1 April 2009** and ending with the close of **31 March 2010** must be the thresholds for large electricity lines businesses that were set by the Commission 10 under Part 4A and that expire on **31 March 2009**; and

**“(b)** the default price-quality path that applies for the period commencing on **1 April 2010** must be set by the Commission using the process used under **section 53P** for resetting default price-quality paths. 15

**“(2)** This section is subject to **section 54K**:

**“54J Section 52O determinations setting out default price-quality paths applying from 1 April 2009**

**“(1)** This section applies in respect of suppliers of electricity lines services that are subject to default/customised price-quality regulation on and after **1 April 2009**. 20

**“(2)** On and after **1 April 2009**, the thresholds for large electricity lines businesses that expire on 31 March 2009 are deemed to be **section 52O** determinations that—

**“(a)** apply those thresholds to each supplier as if the thresholds were default price-quality paths; and 25

**“(b)** state that the regulatory period for each supplier ends on **31 March 2010**; and

**“(c)** comply with **sections 52O and 53O**; and

**“(d)** were notified in the *Gazette* under **section 52O(6)(b)** at least 4 months before **1 April 2009**. 30

**“(3)** However, a breach of a default price-quality path before the close of **31 March 2010** must be dealt with in accordance with **section 54N** and not under Part 6.

**“(4)** Nothing in this section affects **sections 54N and 54O**. 35

**“54JA Section 52O determinations setting out default price-quality paths applying from 1 April 2010**

**“(1) Before 1 April 2010, the Commission must reset the default price-quality paths for each supplier that apply on and after that date, using the process set out in section 53P.**

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**“(2) The Commission may reset the default price-quality paths even if all or any of the relevant input methodologies have not been determined.**

**“(3) If an input methodology is published after 1 April 2010 and if, had that methodology applied at the time the default price-quality paths were reset as required by subsection (1), it would have resulted in a materially different path being set, then the Commission may reset the default price-quality paths in accordance with section 53P and may apply claw-back, despite section 53ZA(1).**

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**“(4) However, the Commission may not exercise its powers in subsection (3) later than 9 months after the date of publication of the input methodology.**

**“(5) Nothing in this section affects sections 54N and 54O.**

**“54K How regulation applies to suppliers with administrative settlements under Part 4A (other than Transpower)**

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**“(1) The enactment of the Commerce Amendment Act 2008 does not limit or affect any existing administrative settlement that applies for electricity lines services.**

**“(2) Price-quality regulation under this Part applies to the supplier until the expiry of the existing administrative settlement as if the settlement were a section 52O determination setting out the requirements of this Part.**

25

**“(3) As soon as practicable after the expiry of the existing administrative settlement, the supplier is subject to a default price-quality path determined by the Commission, in a section 52O determination for that supplier, using the process used under section 53P for resetting default price-quality paths.**

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**“(4) This section does not apply to services supplied by Transpower.**

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“Transitional arrangements“54K Administrative settlements made before 1 April 2009  
(other than with Transpower)

- “(1) This section applies to every administrative settlement accepted by the Commission before 1 April 2009 in respect of a breach of a threshold other than an administrative settlement with Transpower. 5
- “(2) The enactment of the **Commerce Amendment Act 2008** does not limit or affect an administrative settlement to which this section applies, except as provided in this section. 10
- “(3) Any breach of the administrative settlement must be dealt with in accordance with the terms of the settlement.
- “(4) The expiry of the administrative settlement must be treated as if it were the end of a customised price-quality path, and **section 53WA** applies accordingly (unless the supplier concerned would not otherwise be subject to default/customised price-quality regulation after the expiry of the settlement). 15

“54L How regulation applies to Transpower Administrative settlements with Transpower made before 1 April 2009

- “(1) The enactment of the **Commerce Amendment Act 2008** does not limit or affect any existing administrative settlement that applies to Transpower. 20
- “(2) Any threshold for Transpower set as part of an administrative settlement before 1 April 2009 must be regarded after 1 April 2009 as if it were a customised price-quality path set under **section 53V**. 25
- “(1) This section applies to any administrative settlement with Transpower that is accepted by the Commission before 1 April 2009 in respect of a breach of a threshold.
- “(2) Any breach of an administrative settlement with Transpower may be dealt with under Part 6 as if it were a breach of a customised price-quality path, despite anything in the terms of the settlement. 30
- “(3) Before the expiry of any authorisation or undertaking or any existing administrative settlement that applies to Transpower under Part 4A or 5 the administrative settlement, the Commis- 35

sion must recommend to the Minister that an Order in Council be made under **section 52M** declaring that either—

“(a) Transpower is subject to default/customised price-quality regulation under **subpart 6**; or

“(b) Transpower is subject to individual price-quality path regulation under **subpart 7**. 5

“(4) **Subpart 2**, except the provisions relating to inquiries, applies to the process for imposing that regulation and making the **section 52O** determination.

“(5) If an Order in Council declares that Transpower is subject to default/customised price-quality regulation, the **section 52O** determination must set the price-quality path that applies for the regulatory period commencing with the date on which the Order in Council comes into force, using the process under **section 53P** for resetting default price-quality paths. 10 15

“(6) The only requirements that may be included in a **section 52O** determination in respect of the quality standards of Transpower are requirements that give effect to quality standards set by the Electricity Commission.

*“Other transitional provisions”* 20

**“54M Certain breaches of thresholds before 1 April 2008 expire if no intention to declare control is published before cut-off date**

“(1) The Commission may not commence or continue any action in respect of a breach of a threshold; and must treat it in all respects as if it had never occurred; if— 25

“(a) the breach occurred before the close of **31 March 2007** and the Commission has not published a notice of intention to declare control under Part 4A before the cut-off date of **1 October 2008**; or 30

“(b) the breach occurs between **1 April 2007** and the close of **31 March 2008** and the Commission has not published a notice of intention to declare control before the cut-off date of **1 April 2009**;

“(2) This section applies regardless of when the breach is identified. 35

**“54N Old law applies to breaches of thresholds before 1 April 2008 if intention to declare control is published before cut-off date**

- “(1) If, before the applicable cut-off date referred to in **section 54M(1)** in respect of a breach, the Commission has published a notice of intention to declare control under Part 4A, the enactment of the **Commerce Amendment Act 2008** does not—
- “(a) limit or affect any action that may be commenced or continued in respect of the breach under any existing administrative settlement; or
- “(b) limit or affect the power of the Commission, before **1 April 2010**, to—
- “(i) make a control declaration under Part 4A; or
- “(ii) grant an authorisation or accept an undertaking in respect of the breach under Part 5; or
- “(c) limit or affect the power of the Commission, before or after **1 April 2010**, to commence or continue any action under Part 5 in respect of a breach of any such authorisation or undertaking.
- “(2) To avoid doubt, **subsection (1)** applies as if Parts 4A to 6 had not been amended or repealed by the **Commerce Amendment Act 2008**.
- “(3) If the Commission imposes control under section 57F after **1 April 2009**, then the Commission must determine requirements for that electricity lines business under Part 5 as if sections 70 to 74 had not been repealed.
- “(4) However, the content of the requirements (but not the process) under **subsection (3)** must be determined as if the electricity lines business were subject to customised price-quality regulation under this Part, and the customised price-quality path applies as if **section 53W** applies.
- “(5) **Sections 87 and 87A** (pecuniary penalty and compensation) apply to the electricity lines business as if the breach of the requirement under Part 5 were a contravention of price-quality regulation under this Part.

**“54O Transitional penalties for breaches after 1 April 2008**

**“(1)** This section applies to a breach of a threshold that occurs on or after **1 April 2008** (whether or not the breach is identified before or after that date):

**“(2)** **Sections 87 and 87A** (pecuniary penalty and compensation) 5  
apply to the electricity lines business in respect of the breach as if—

**“(a)** the breach of the threshold were a contravention of price-quality regulation under this Part; and

**“(b)** **sections 87 and 87A** were in force from the date of the breach. 10

**“54N Breaches of thresholds and default price-quality paths before 1 April 2010**

**“(1)** This section applies to—

**“(a)** any breach of a threshold that occurred before the close of **31 March 2007**; and 15

**“(b)** any breach of a threshold that occurs on or after **1 April 2007** and before the close of **31 March 2009**; and

**“(c)** any breach of a default price-quality path that occurs on or after **1 April 2009** and before the close of **31 March 2010**. 20

**“(2)** The Commission may not publish a notice of intention to declare control under Part 4A,—

**“(a)** in respect of a breach referred to in **subsection (1)(a)**, at any time after **1 October 2008**; and 25

**“(b)** in respect of a breach referred to in **subsection (1)(b) or (c)**, at any time after the expiry of 12 months after the end of the financial year in which the breach occurs.

**“(3)** The Commission may, at any time before the expiry of 12 months after the date on which the Commission publishes a notice of intention to declare control under **subsection (2)** in respect of the breach,— 30

**“(a)** make a control declaration under Part 4A; or

**“(b)** enter into an administrative settlement in respect of the breach under Part 4A. 35

**“(4)** The Commission may do anything under **subsections (2) and (3)** as if the **Commerce Amendment Act 2008** had not



been enacted, except that the purpose in **section 52A** must be taken to be the purpose of Part 4A.

“(5) To avoid doubt, the Commission may, but need not, apply input methodologies in acting under **subsection (3)**.

“(6) Despite anything in Part 4A, any control imposed, or administrative settlement entered into, under Part 4A in accordance with **subsection (3)** is subject to the following:

“(a) the term of control, or of the settlement, must be not more than 5 years:

“(b) the expiry of the term must be treated as if it were the expiry of a customised price-quality path, and **section 53WA** applies accordingly (unless the supplier concerned would not otherwise be subject to default/customised price-quality regulation after the expiry of the term).

“**54O Breaches of control imposed, or administrative settlements entered into, after 1 April 2009**

“(1) If a supplier breaches control imposed, or an administrative settlement entered into, in accordance with **section 54N(3)**, the breach may be dealt with under Part 6 as if it were a breach of a customised price-quality path, despite anything in the terms of the control or settlement.

“(2) To avoid doubt, this section applies whether or not the supplier is, after **1 April 2009**, subject to default/customised price-quality regulation.

“**54P Transitional provision for proposals for customised price-quality paths**

“(1) A supplier of electricity lines services may propose a customised price-quality path at any time—

“(a) after the Commission gives notice of the requirements and criteria that will apply in relation to a proposal for a customised price-quality path for electricity lines services, as required by **section 52S(1)(c)**; and

“(b) before **31 March 2013** (see **section 53Q(3)** for how that date is calculated).

~~“(2) A customised price-quality path may apply at any time on or after **1 April 2010**; notwithstanding that the proposal may be made after that date.~~

**“54P Proposals for customised price-quality paths**

“(1) A supplier of electricity lines services may not propose a customised price-quality path until a **section 52O** determination setting out the requirements and criteria for proposals for customised price-quality paths (as required by **section 52S(1)(c)** is made. 5

“(2) However, in accordance with **section 53V(2)**, the Commission may apply claw-back when setting any customised price-quality path. 10

*“Energy efficiency*

**“54Q Energy efficiency**

The Commission must provide incentives to improve energy efficiency and demand side management, and to reduce energy losses, when applying this Part in relation to electricity lines services. 15

**“54Q Energy efficiency**

The Commission must promote incentives, and must avoid imposing disincentives, for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses, when applying this Part in relation to electricity lines services. 20

*“Jurisdiction issues and interface with  
Electricity Commission and Electricity Act 1992*

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**“54R Transfer of jurisdiction relating to suppliers of electricity lines services supplied by Transpower**

The Governor-General may, by Order in Council made on the recommendation of the Minister of Energy, transfer to the Electricity Commission the jurisdiction under this Part in respect of all or any electricity lines services of the electricity lines services supplied by Transpower. 30

**“54S Effect of transfer of jurisdiction**

- “(1) If an Order in Council is made under **section 54R**,—
- “(a) the Electricity Commission, and not the Commerce Commission, has all the powers, duties, and functions under this Part in respect of the electricity lines services in respect of which the jurisdiction has been transferred; and 5
  - “(b) the Electricity Commission must exercise or perform those powers, duties, and functions, and be treated in that exercise or performance, as if it were an independent Crown entity; and 10
  - “(c) the Electricity Commission must apply any input methodologies determined by the Commerce Commission for services regulated under this subpart (except to the extent that the Electricity Commission considers that modifications are required to meet the particular circumstances of Transpower). 15
- “(2) Without limiting **subsection (1)(b)**, if an Order in Council is made under **section 54R**, the Minister of Energy may not—
- “(a) set objectives and outcomes under section 172ZK of the Electricity Act 1992 on any matter relating to ~~its~~ the jurisdiction under this Part; or 20
  - “(b) direct the Electricity Commission to give effect to or have regard to any government policy that relates to the jurisdiction under this Part; or 25
  - “(c) direct the Electricity Commission to amend any provision that is included in its statement of intent that relates to the jurisdiction under this Part; or
  - “(d) remove any member of the Electricity Commission for a reason related to the exercise of the jurisdiction under this Part. 30
- “(3) The Order in Council under **section 54R** may contain any other provisions that are necessary or desirable to ensure that the Electricity Commission exercises or performs the powers, duties, and functions under this Part, and is treated in that exercise or performance, as if it were an independent Crown entity. 35

**“54T Procedure before jurisdiction order can be made**

“(1) The Minister of Energy may make a recommendation for the purpose of **section 54R** only if—

“(a) he or she has consulted with representatives of industry participants and representatives of consumers; and 5

“(b) he or she has consulted with the Electricity Commission and the Commerce Commission and has sought a recommendation from them; and

“(c) he or she is satisfied that the transfer of jurisdiction that would occur would result in— 10

“(i) more efficient and effective achievement of the purpose of this Part; and

“(ii) more efficient and effective achievement of the purposes of the Electricity Act 1992 as it applies to some or all suppliers of electricity lines services; and 15

“(iii) lower compliance costs for industry participants in the electricity distribution and transmission markets.

“(2) **Industry participant** has the same meaning as in section 2(1) of the Electricity Act 1992. 20

**“54U Levies during transition in jurisdiction**

“(1) The costs of the Commerce Commission during any period after any transfer of jurisdiction under this Part may continue to be met via levy regulations under **section 53ZD**. 25

“(2) The costs of the Electricity Commission in respect of jurisdiction that is transferred to it must be met via levy regulations under the Electricity Act 1992.

**“54V Impact of certain decisions made under Electricity Act 1992**

“(1) The Electricity Commission must advise the Commerce Commission as soon as practicable after making any recommendation for an electricity governance regulation or rule under subpart 2 of Part 14 of the Electricity Act 1992, or after making any decision under electricity governance regulations or rules, or after issuing any guidelines, that is or are likely to be 30 35

relevant to the powers, duties, or functions of the Commerce Commission under this Part.

- “(2) The Commerce Commission must take into account, before exercising or performing any of its powers, duties, or functions under this Part,— 5
  - “(a) any electricity governance regulation or rule, or decision made under them, that relates to or affects the quality standards or pricing methodologies applicable to Transpower: 5
  - “(b) any electricity governance regulation or rule, or decision made under them, that relates to or affects the pricing methodologies applicable to any other line owner: 10
  - “(c) any guidelines of which it receives advice under **subsection (1)** that are likely to be relevant to the exercise or performance of the powers, duties, or functions of the Commerce Commission under this Part: 15
  - “(d) the levy payable by Transpower or any other line owner under section 172ZC of the Electricity Act 1992: 15
  - “(e) the continuance of supply obligations imposed by section 62 of the Electricity Act 1992. 20
- “(3) The Commerce Commission must, if asked by the Electricity Commission to do so, reconsider a **section 520** determination and, to the extent that the Commerce Commission considers it necessary or desirable to do so, amend the determination, to take account of any matter referred to in **subsection (2)**. 25

*“Savings provisions*

- “54W **Savings provision relating to existing information disclosure requirements** 30
 

Any information disclosure requirements published by the Commission under subpart 3 of Part 4A before **1 April 2009** continue to apply to each supplier of electricity lines services in respect of every financial year that precedes the first financial year to which a determination made by the Commission under **section 541(1)** applies to that supplier. 35

**“54X Savings provision for existing levy regulations for electricity lines businesses**

“(1) Any regulations made pursuant to section 57ZK before the repeal of Part 4A continue to apply to each person who is a large line owner in respect of every financial year that precedes the first financial year to which levy regulations made under **section 53ZD** apply to that supplier. 5

“(2) **Subsection (1)** applies as if—

“(a) references in those regulations to the Commission’s costs included references to the costs of exercising and performing the Commission’s powers, duties, and functions under this Part, and enforcing the obligations under this Part, in respect of those persons, and with all other necessary modifications; and 10

“(b) terms used in **subsection (1)** have the same meaning as they do in those regulations. 15

“Subpart 10—Gas pipeline services

“*Overview and interpretation*

**“55 Overview of this subpart**

“(1) This subpart provides— 20

“(a) that certain gas pipeline services are subject to information disclosure regulation and price-quality regulation; and

“(b) for the transition to the new regime provided for in this Part. 25

“(2) This section is only a guide.

**“55A Meaning of gas pipeline services**

“(1) In this subpart, unless the context otherwise requires, **gas pipeline services** means the conveyance of natural gas by pipeline, including the assumption of responsibility for losses of natural gas. 30

“(2) However, none of the following are gas pipeline services:

“(a) conveying natural gas to a gas processing facility:

“(b) conveying natural gas of less than 75 000 gigajoules per annum per pipeline: 35

- “(c) conveying natural gas for supply to industrial and commercial consumers located within 1 kilometre of a gas station or existing gas pipeline:
- “(d) conveying natural gas by a pipeline that is listed in the **second column of Schedule 6.** 5
- “(3) In this section, unless the context otherwise requires,—
- “**consumer** has the same meaning as in section 2(1) of the Gas Act 1992
- “**container** has the same meaning as in section 2(1) of the Gas Act 1992 10
- “**gas refueller** has the same meaning as in section 2(1) of the Gas Act 1992
- “**pipeline**—
- “(a) means everything used, or designed or intended for use, (whether above or below ground) in or in connection with the conveyance of natural gas between— 15
- “(i) the boundary of the gas field or gas processing facility to the point of supply to a consumer or gas refueller; or
- “(ii) the outlet of the container in which gas is stored to the point of supply to a consumer or gas refueller; but 20
- “(b) excludes meters.
- “(4) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend **Schedule 6** by— 25
- “(a) adding any pipeline:
- “(b) deleting any pipeline:
- “(c) changing the description of any pipeline or its owner.
- ~~“(5) The Minister may not make a recommendation for the purpose of **subsection (4)** unless the Commission has made a recommendation to the same effect. 30~~
- “(5) The Minister may make a recommendation for the purpose of **subsection (4)** only if the Minister is satisfied that—
- “(a) the Commission has made a recommendation to the same effect; and 35
- “(b) in the case of a recommendation to add a pipeline, the gas pipeline services are supplied in a market where the

- owner of the pipeline does not have a substantial degree of market power; and
- “(c) in the case of a recommendation to delete a pipeline, the gas pipeline services are supplied in a market where the owner of the pipeline has a substantial degree of market power; and 5
- “(d) the Commission has consulted (without necessarily holding an inquiry) with interested parties.
- “Imposition of regulation under this Part*
- “55B Gas pipeline services declared to be regulated** 10  
Gas pipeline services are regulated under this Part.
- “55C All gas pipeline services are subject to information disclosure regulation**  
Gas pipeline services are subject to information disclosure regulation under this Part. 15
- “55D All gas pipeline services are subject to price-quality regulation**  
Gas pipeline services are subject to default/customised price-quality regulation under this Part on and after **1 July 2010**.
- “55E Commission must make section 52O determination specifying how this subpart applies** 20
- “(1) The section 52O determinations that specify how information disclosure regulation applies in respect of to each supplier of gas pipeline services must be made as soon as practicable after this subpart commences to apply comes into force.** 25
- “(2) The section 52O determinations that specify how default/customised price-quality regulation applies in respect of to each supplier of gas pipeline services must be made as soon as practicable after 1 July 2010, in the manner set out in section 55F.** 30
- “(3) The section 52O determinations that specify how default/customised price-quality regulation applies in respect of to each supplier of gas pipeline services that become subject to that form of regulation as a result of an Order in Council**



made under **section 55A(4)(a)** must be made as soon as practicable after the order comes into force.

*“When and how price-quality regulation applies generally*

**“55F How initial price-path set**

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The **section 520** determinations required in respect of each supplier of gas pipeline services must set the default price quality path as follows:

“(a) if the supplier has increased its prices by more than the movement, or forecast movement, in the all groups index number of the New Zealand Consumer Price Index in the period beginning **1 January 2008** and ending with the date that the determination is made, the Commission may use its powers under **section 53ZG** or 98 and may determine the initial default price-path in any way that it thinks fit:

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“(b) in any other case, **section 53P** applies, and the Commission must set the initial default price-path as if it were resetting prices and rates and quality standards under that section.

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**“55F Section 520 determinations setting out first default price-quality paths**

“(1) The Commission must use the processes set out in **section 53P** in making the first **section 520** determinations that set out how default price-quality regulation applies to suppliers of gas pipeline services as if **30 June 2010** were the end of the previous regulatory period.

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“(2) However, if a supplier has increased its weighted average prices by more than the movement, or forecast movement, in the all groups index number of the New Zealand Consumer Price Index in the period beginning **1 January 2008** and ending with the date that the determination is made, the Commission may apply claw-back to the extent of requiring the supplier to lower its prices in order to compensate consumers for some or all of any over-recovery of revenues that occurred during that period.

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“(3) The Commission may set a default price-quality path in respect of suppliers of gas pipeline services even if all or any of the relevant input methodologies have not been determined.

“(4) If an input methodology is published after a **section 520** determination referred to in **subsection (1)** is made, and if, had that methodology applied at the time the default price-quality paths were set as required by **subsection (1)**, it would have resulted in a materially different path being set, then the Commission may reset the default price-quality paths and may apply claw-back, despite **section 53ZA(1)**. 5 10

“(5) However, the Commission may not exercise its powers in **subsection (4)** later than 9 months after the date of publication of the input methodology.

*“When and how price-quality regulation applies to services controlled by virtue of the Commerce (Control of Natural Gas Services) Order 2005” 15*

“**55G Existing Order, authorisations, and undertakings continue to apply until 2 September 2016 1 July 2012 (or earlier expiry)** 20

“(1) This section provides how price-quality regulation under this Part applies to services that are controlled by virtue of the Commerce (Control of Natural Gas Services) Order 2005 (the **Order**)

“(2) The Order continues in force, despite the repeal of Part 4 (as it was before its repeal by the **Commerce Amendment Act 2008**), until the date on which the Order expires or is revoked (the **expiry date**). 25

“(3) The enactment of the **Commerce Amendment Act 2008** does not limit or affect, before the expiry date, any of the following in respect of the gas pipeline services that are controlled by virtue of the Order: 30

“(a) any existing authorisation made authorisation made (including the ability to amend or revoke an authorisation), or any undertaking obtained or accepted, under Part 5 before **1 April 2009**; or 35

- “(b) the power of the Commission to obtain or accept any further undertakings under Part 5; or
- “(c) any action that may be commenced or continued in respect of a breach of any authorisation or undertaking.
- “(4) To avoid doubt, **subsection (3)** applies as if the provisions of Parts 4 to 6 had not been amended or repealed by the **Commerce Amendment Act 2008**. 5
- “(5) Price-quality regulation under this Part applies until the expiry date as if every authorisation or undertaking referred to in **subsection (3)** were a **section 520** determination setting out the requirements under this Part. 10
- “(5) However, any breach of the Order after **1 April 2009** may be dealt with under Part 6 as if it were a breach of a customised price-quality path.
- “**55H How price-quality regulation under this Part applies after ~~2 September 2016~~ 1 July 2012 (or earlier expiry)** 15
- “(1) This section provides how price-quality regulation under this Part applies to a gas pipeline service after it ceases to be controlled by virtue of the Commerce (Control of Natural Gas Services) Order 2005 (the **Order**). 20
- “(2) **Section 53W(3)** applies (with all necessary modifications) to the setting of the default price-quality path in respect of the gas pipeline service with effect on and after the expiry date:
- “(2) The expiry of the Order must be treated as if it were the expiry of a customised price-quality path, and **section 53WA** applies accordingly. 25
- “(3) In this section, **expiry date** means— the date on which the Order expires is—
- “(a) the expiry date referred to in **section 55G**; or
- “(b) if an undertaking is obtained or accepted from a supplier in respect of a service that expires on an earlier date, that earlier date, provided that the Order ceases to apply to that service on or before that date (by revocation of the Order or otherwise). 30

*“Interface with Gas Act 1992***“55I Impact of certain decisions made under Gas Act 1992**

- “(1) The recommending body must advise the Commerce Commission as soon as practicable after making any recommendation for a gas governance regulation or rule under Part 4A of the Gas Act 1992, or after making any decision under gas governance regulations or rules, or after issuing any guidelines, that is or are likely to be relevant to the powers of the Commerce Commission under this Part. 5
- “(2) The Commission must take into account, before exercising any of its powers under this Part,— 10
- “ (a) any gas governance regulation or rule under Part 4A of the Gas Act 1992, or decision under those gas governance regulations or rules, that relates to or affects the quality standards or pricing methodologies applicable to a pipeline owner: 15
- “ (b) any guidelines issued by the recommending body of which it is advised under **subsection (1)** that ~~is~~ are likely to be relevant to the powers of the Commerce Commission under this Part: 20
- “ (c) the levy payable by any pipeline owner under the Gas Act 1992.
- “(3) The Commission must, if asked by the recommending body to do so, reconsider any **section 520** determination ~~made under this Part~~ and, to the extent that the Commission considers it necessary or desirable to do so, amend the determination, to take account of any matter referred to in **subsection (2)**. 25
- “(4) In this section, **recommending body** has the same meaning as in section 43D of the Gas Act 1992.

*“Savings provisions*

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**“55J Savings provision until Commission publishes information disclosure requirements**

- “(1) The Gas (Information Disclosure) Regulations 1997 continue to apply to each supplier of gas pipeline services in respect of every financial year that precedes the first financial year to which a determination made by the Commission referred to in **section 55E(1)** applies to that supplier. 35

“(2) After that, no regulations made under section 55 of the Gas Act 1992 apply to the supplier of gas pipeline services.

“**55K Savings provision for existing levy regulations for services controlled under Commerce (Control of Natural Gas Services) Order 2005** 5

“(1) Any regulations made pursuant to section 74 before the repeal of that section continue to apply to each person that is a supplier of controlled services under the Commerce (Control of Natural Gas Services) Order 2005 in respect of every financial year that precedes the first financial year to which levy regulations made under **section 53ZD** apply to that supplier. 10

“(2) **Subsection (1)** applies as if—  
 “(a) references in those regulations to the Commission’s costs include references to the costs of exercising the Commission’s powers and performing its duties under this Part, and enforcing the obligations under this Part, in respect of those persons, and with all other necessary modifications; and 15  
 “(b) terms used in **subsection (1)** have the same meaning as they do in those regulations. 20

“Subpart 11—Airport services

“*Overview and interpretation*

“**56 Overview of subpart**

“(1) This subpart provides—  
 “(a) that specified airport services (at Auckland, Wellington, and Christchurch airports) are subject to information disclosure under this Part; and 25  
 “(b) for the transition to the new regime provided for in this Part; and  
 “(c) for a review of the new regime as soon as any new price is set in 2012 for specified airport services. 30

“(2) This section is only a guide.

“**56A Meaning of specified airport services**

“(1) In this Part, unless the context otherwise requires, **specified airport services** means all of the services supplied by the com- 35

- panies referred to in **subsection (2)** in markets directly related to the following activities (whether for international and domestic flights):
- “(a) aircraft and freight activities: 5
  - “(b) airfield activities: 5
  - “(c) specified passenger terminal activities:
  - “(d) any other services that are determined by the Governor-General, by Order in Council made on the recommendation of the Minister under **subsection (4)**, to be specified airport services for the purposes of this Part. 10
- “(2) The companies are—
- “(a) the company (as defined in section 2 of the Auckland Airport Act 1987) that operates Auckland International Airport or any subsidiary of, or successor to, that company that operates all or part of the airport: 15
  - “(b) the company (as defined in section 2 of the Wellington Airport Act 1990) that operates Wellington International Airport or any subsidiary of, or successor to, that company that operates all or part of the airport: 20
  - “(c) the airport company (as defined in section 2 of the Airport Authorities Act 1966) that operates Christchurch International Airport or any subsidiary of, or successor to, that company that operates all or part of the airport. 20
- “(3) Terms used in **subsection (1)(a) to (c)** have the same meanings as in section 2 of the Airport Authorities Act 1966. 25
- “(4) The Minister may recommend that an Order in Council be made under **subsection (1)(d)** only if the Minister is satisfied that—
- “(aa) the Commission has made a recommendation to the same effect; and 30
  - “(a) the services are supplied in a market where any or all of the companies referred to in **subsection (2)** have a substantial degree of market power; and
  - “(b) the Commission has consulted (without necessarily holding an inquiry) with interested parties ~~(however, the Commission is not required to conduct an inquiry).~~ 35

*“Imposition of regulation under this Part*

**“56B Specified airports services declared to be regulated**

Specified airport services are regulated under this Part.

**“56C Specified airport services are subject to information disclosure regulation**

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Specified airport services are subject to information disclosure regulation under this Part.

**“56D Duty to also disclose to Secretary of Transport**

Each supplier of specified airport services must supply to the Secretary of Transport a copy of any information disclosed under this Part, as soon as practicable after so disclosing it.

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**“56E Commission must make determination specifying how this subpart applies**

The **section 52O** determinations that specify how information disclosure regulation applies ~~in respect of~~ to each supplier of specified airport services must be made no later than **1 July 2010** (or, if the deadline for determining input methodologies is extended under **section 52T(2)**, no later than the day after the date to which that deadline is extended).

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*“How information disclosure regulation applies*

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**“56F Transitional provision until Commission publishes information disclosure requirements**

**“(1)** The Airport Authorities (Airport Companies Information Disclosure) Regulations 1999 continue to apply to each supplier of specified airport services in respect of every financial year that precedes the first financial year to which a determination made by the Commission under **section 56E** applies to that supplier.

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**“(2)** After that, no regulations made under section 9A of the Airport Authorities Act 1966 apply to that supplier.

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**“(3)** Each supplier of specified airport services must supply to the Commission a copy of any information disclosed under those regulations, as soon as practicable after so disclosing.

“(4) The Commission may monitor and analyse any information supplied to it under this section.

**“56G Transitional provision requiring review after new prices set**

“(1) As soon as practicable after any new price for a specified airport service is set in or after 2012 by a supplier of the service, the Commission must— 5

“(a) review the information that has been disclosed by suppliers of specified airport services under **subpart 4**; and

“(aa) consult (without necessarily holding an inquiry) with interested parties; and 10

“(b) report to the Ministers of Commerce and Transport as to how effectively information disclosure regulation under this Part is promoting the purpose in **section 52A** in respect of the specified airport services. 15

“(2) To avoid doubt, **subsection (1)** applies regardless of whether or not any new price for a specified airport service is set before 2012.”

**5 Part 4A repealed**

(1) Part 4A is repealed. 20

(2) However, Part 4A may continue to be applied under **Part 4** in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal.

*Amendments to Part 5* 25

**6 Commission to prepare draft determination in relation to restrictive trade practices**

(1) Section 62 is amended by repealing subsections (5) and (6) and substituting the following subsections:

“(5) If any of the persons to whom a draft determination was sent under subsection (2) notifies the Commission, in writing, within the period of 10 working days prescribed in subsection (3) that he or she wishes the Commission to hold a conference in relation to the draft determination, the Commission must appoint a date, time, and place for the holding of the confer- 35



ence and give notice of the date, time, and place so appointed to each of the persons to whom a draft determination was sent under subsection (2).

“(6) The Commission may, of its own motion, determine to hold a conference in relation to the draft determination and must appoint a date, time, and place for the holding of the conference and give notice of the date, time, and place so appointed to each of the persons to whom the draft determination was sent under subsection (2).”

(2) **Section 62(5) and (6)** of the principal Act (as amended by this section) apply in respect of every application for an authorisation under section 58 of the principal Act that is made after the commencement of this section.

**7 New sections 69AB and 69AC inserted**

(1) The following sections are inserted after section 69A:

**“69AB Authorisation or clearance void if undertaking contravened**

“(1) If a person contravenes an undertaking accepted under section 69A, the clearance given or the authorisation granted in relation to the acquisition to which the undertaking relates is void and of no effect from the date it was given or granted.

“(2) **Subsection (1)** does not prevent the Court from making an order under **sections 85A to 85C** in relation to the undertaking.

**“69AC Variation of undertaking**

“(1) The Commission may, on an application made under **subsection (2)**, accept a variation of an undertaking given under section 69A if it considers that the variation would not have materially affected its decision to give the clearance or grant the authorisation in relation to the acquisition to which the undertaking relates if the variation had been proposed at the time of the decision.

“(2) An application for a variation under **subsection (1)**—

“(a) may be made only by the person who gave the undertaking or on whose behalf the undertaking was given; and

- “(b) must be made no later than 20 working days before the date on which the relevant obligation under the undertaking must be met.
- “(3) The Commission must notify the person who made the application of its decision on the application no later than 3 working days before the relevant obligation under the undertaking must be met. 5
- “(4) A variation under **subsection (1)**—
- “(a) comes into force on a date specified in the variation (being a date that is on or after the date on which the variation is accepted); and 10
- “(b) is deemed to form part of the undertaking (and, accordingly, is deemed under section 69A(3) to form part of the clearance given or the authorisation granted in relation to the acquisition to which the undertaking relates).” 15
- (2) **Section 69AB** of the principal Act (as inserted by this section) applies only to undertakings under section 69A of the principal Act that are accepted in relation to clearances given or authorisations granted on notices under section 66 or 67 of the principal Act that are registered after the commencement of this section. 20
- (3) **Section 69AC** of the principal Act (as inserted by this section) applies to—
- (a) every undertaking accepted under section 69A of the principal Act before the commencement of this section, if the period for giving effect to the undertaking has not expired at the time of that commencement; and 25
- (b) every undertaking accepted under section 69A of the principal Act after the commencement of this section. 30
- 8 Heading and sections 70 to 74 repealed**  
Sections 70 to 74 and the heading above section 70 are repealed.

*Amendments to Part 6*

**9 Jurisdiction of High Court**

(1) Section 75(1) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) in the case of contraventions relating to **Part 4**,— 5

“(i) proceedings for the recovery of pecuniary penalties under **section 86 or 87**:

“(ii) applications for orders under **section 86A, 86C, or 87A**:

“(iii) applications for injunctions under **section 87C**.” 10

(2) Section 75(1) is amended by adding the following paragraph:

“(i) applications for orders under **section 85A or 85B**.”

**10 Jurisdiction of District Courts**

Section 76 is amended by omitting “86” and substituting “**86B, 87B**”. 15

**11 Evidence not otherwise admissible**

Section 79 is amended by omitting “under section 80 or section 83” and substituting “for pecuniary penalties”.

**12 New heading and sections 79A and 79B inserted** 20

(1) The following heading and sections are inserted after section 79:

*“Proceedings for pecuniary penalties*

**“79A Proceedings for pecuniary penalties**

In any proceedings under this Part for a pecuniary penalty— 25

“(a) the standard of proof is the standard of proof applying in civil proceedings; and

“(b) the Commission may, by the order of the Court, obtain discovery and administer interrogatories.

**“79B Relationship between pecuniary penalties and criminal liability** 30

“(1) Once criminal proceedings against a person for an offence under **section 86B or 87B** are determined, the High Court may not order the person to pay a pecuniary penalty in respect

of the conduct, events, transactions, or other matters that were the subject of the criminal proceedings.

“(2) Once civil proceedings against a person for a pecuniary penalty under this Part are determined, the person may not be convicted of an offence under **section 86B or 87B** in respect of the conduct, events, transactions, or other matters that were the subject of the civil proceedings.” 5

(2) The following provisions are consequentially repealed:

(a) section 74D(3) and (4):

(b) section 80(3) and (4): 10

(ba) section 80B(3) and (4):

(c) section 83(3) and (4).

### **13 Injunctions may be granted by Court for contravention of Part 3**

(1) The heading to section 84 is amended by adding “**or undertaking**”. 15

(2) Section 84 is amended by adding the following subsection as subsection (2):

“(2) If it appears to the Court, on the application of the Commission, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes or would constitute a contravention of an undertaking accepted under section 69A, the Court, by order, may do all or any of the following things: 20

“(a) grant an injunction restraining any person from engaging in conduct that constitutes or would constitute— 25

“(i) a contravention of that undertaking:

“(ii) any attempt to contravene that undertaking:

“(iii) aiding, abetting, counselling, or procuring any other person to contravene that undertaking:

“(iv) inducing or attempting to induce any other person, whether by threats, promises, or otherwise, to contravene that undertaking: 30

“(v) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that undertaking: 35

“(vi) conspiring with any other person to contravene that undertaking:

- “(b) impose on any person obligations to be observed in the carrying on of any business or the safeguarding of any business or any assets of any business:
  - “(c) provide for the carrying on of any business or the safeguarding of any business or assets of any business, either by the appointment of a person to conduct or supervise the conduct of any business (on the terms and with the powers as may be specified or described in the order), or in any other manner, as it thinks necessary in the circumstances of the case.”
- (3) **Section 84(2)** of the principal Act (as inserted by this section) applies only to undertakings under section 69A of the principal Act that are accepted in relation to clearances given or authorisations granted on notices under section 66 or 67 of the principal Act that are registered after the commencement of this section.

**14 New sections 85A to 85C inserted**

- (1) The following sections are inserted after section 85:
- “85A Pecuniary penalties for contravention of undertaking**
- “(1) The Court may, on the application of the Commission, order a person to pay a pecuniary penalty to the Crown if the Court is satisfied that the person—
- “(a) has contravened an undertaking accepted under section 69A; or
  - “(b) has attempted to contravene an undertaking accepted under section 69A; or
  - “(c) has aided, abetted, counselled, or procured any other person to contravene an undertaking accepted under section 69A; or
  - “(d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene an undertaking accepted under section 69A; or
  - “(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of an undertaking accepted under section 69A; or
  - “(f) has conspired with any other person to contravene an undertaking accepted under section 69A.

- “(2) However, the Court may only make an order under **subsection (1)** if the acquisition to which the undertaking relates has proceeded.
- “(3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000. 5
- “(4) In setting the amount of pecuniary penalty, the Court must take into account all of the following matters:
- “(a) the nature and extent of the contravention:
- “(b) the circumstances in which the contravention took place: 10
- “(c) whether the person has obstructed or hindered the Commission in any attempt of the Commission to obtain compliance with the undertaking:
- “(d) whether the person has taken any steps with the intention of— 15
- “(i) impeding the disposal of assets or shares in accordance with the undertaking; or
- “(ii) limiting the effectiveness of the undertaking in preventing a substantial lessening of competition in a market: 20
- “(e) whether the person or an interconnected body corporate has previously been found by the Court in proceedings under this Part to have engaged in similar conduct.
- “(5) **Subsection (4)** is subject to **section 85C**.
- “(6) A person may not be liable to more than 1 pecuniary penalty in respect of the same conduct. 25
- “(7) An application under this section may be made at any time within 12 months from the date on which the relevant obligation under the undertaking was required to be met.
- “**85B Court may order divestiture of assets or shares in respect of contravention of undertaking** 30
- “(1) If the Court, on the application of the Commission, is satisfied that any person has contravened an undertaking accepted under section 69A and the acquisition to which the undertaking relates has proceeded, the Court may, by order, give directions for the disposal by that person of any assets or shares in accordance with the undertaking. 35

“(2) An application under this section may be made at any time within 12 months from the date on which the relevant obligation under the undertaking was required to be met.

“**85C Matters Court must not take into account under sections 85A and 85B** 5

For the purposes of **sections 85A and 85B**, the Court must not take into account any of the following:

“(a) whether it was appropriate for the Commission to accept the undertaking under section 69A:

“(b) whether the undertaking under section 69A is still necessary or desirable: 10

“(c) whether any of the terms of the undertaking under section 69A are still necessary or desirable:

“(d) the extent to which the contravention of the undertaking under section 69A may have lessened competition in a market.” 15

(2) **Sections 85A to 85C** of the principal Act (as inserted by this section) apply only to undertakings under section 69A of the principal Act that are accepted in relation to clearances given or authorisations granted on notices under section 66 or 67 of the principal Act that are registered after the commencement of this section. 20

**15 New heading and sections 86 to 87C substituted**

Sections 86 and 87 and the heading above section 86 are repealed and the following heading and sections substituted: 25

*“Regulated goods or services*

“**86 Pecuniary penalty for contravening information disclosure requirement**

“(1) The Court may, on application by the Commission, order any person to pay a pecuniary penalty to the Crown if the Court is satisfied that the person— 30

“(a) has contravened any information disclosure requirement (as defined in **section 52C**); or

“(b) has attempted to contravene any such requirement; or

“(c) has aided, abetted, counselled, or procured any other person to contravene any such requirement; or 35

- “(d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any such requirement; or
- “(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or 5
- “(f) has conspired with any other person to contravene any such requirement.
- “(2) In **subsection (1)** and **section 86B**, a reference to **contravening an information disclosure requirement** includes all or any of the following: 10
- “(a) failing to disclose information required to be disclosed:
- “(b) failing to disclose information in the form or within the time required:
- “(c) disclosing information under an information disclosure requirement that is false or misleading. 15
- “(3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or \$5,000,000 in the case of a body corporate.
- “(4) In determining the amount of pecuniary penalty, the Court must have regard to all relevant matters, including— 20
- “(a) the nature and extent of the contravention; and
- “(b) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and 25
- “(c) whether the person has previously been found by the Court in proceedings under this Part to have engaged in similar conduct.
- “(5) A supplier may not be liable to more than 1 pecuniary penalty in respect of the same conduct. 30
- “(6) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.
- “**86A Order requiring information disclosure requirement to be complied with**
- “(1) The Court may, on application by the Commission, order a supplier of regulated goods or services to comply with an information disclosure requirement that applies to the supplier. 35



“(2) An order under this section must specify the date by which, or period within which, the supplier must comply with the requirement.

“**86B Offences relating to information disclosure regulation**

“(1) A person commits an offence if— 5  
 “(a) the person, knowing that particular goods or services are subject to information disclosure regulation, intentionally contravenes any information disclosure requirement relating to those goods or services; or  
 “(b) the person is subject to an order under **section 86A** and fails to comply with the order by the date, or within the period, specified. 10

“(2) A person who commits an offence under **subsection (1)** is liable on summary conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate. 15

“(3) Despite section 14 of the Summary Proceedings Act 1957, proceedings for an offence under **subsection (1)(a)** may be commenced at any time within 3 years after the contravention occurred. 20

“**86C Orders where negotiate/arbitrate regulation applies**

“(1) The Court may, on the application of a party (**party A**) to negotiation or arbitration in respect of goods or services that are subject to negotiate/arbitrate regulation, make either or both of the following orders: 25

“(a) an order requiring another party to the negotiation or arbitration (**party B**) to comply with the relevant **section 520** determination in the manner specified by the Court:

“(b) an order requiring party B to pay party A an amount to compensate party A for loss or damage suffered as a result of party B failing to co-operate, or inadequately co-operating with, the negotiation or arbitration. 30

“(2) Any application for an order under **subsection (1)(b)** must be made within 1 year after the date on which the failure to co-operate, or inadequate co-operation, occurred. 35

- “(3) In setting an amount under **subsection (1)(b)**, the Court must have regard to all relevant factors, including—
- “(a) the nature and extent of the failure to co-operate; and
  - “(b) the extent to which the failure was the result of factors outside the control of party B; and 5
  - “(c) whether party B has previously been ordered to pay compensation for a similar failure in proceedings under this section.
- “**87 Pecuniary penalty for contravening price-quality requirements** 10
- “(1) The Court may, on application by the Commission, order a person to pay a pecuniary penalty to the Crown if the Court is satisfied that the person—
- “(a) has contravened any price-quality requirement applying to the regulated goods or services; or 15
  - “(b) has attempted to contravene any such requirement; or
  - “(c) has aided, abetted, counselled, or procured any other person to contravene any such requirement; or
  - “(d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contra- 20
  - “(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or
  - “(f) has conspired with any other person to contravene any such requirement. 25
- “(2) In **subsection (1)** and **sections 87A to 87C**, a reference to **contravening a price-quality requirement**—
- “(a) refers to a requirement imposed by a determination made under **section 520** in relation to goods or services that are subject to default/customised price-quality regulation or to individual price-quality regulation imposed under **Part 4**; and 30
  - “(b) means either or both of the following:
    - “(i) failing to comply with the requirements for prices, whether by charging a price for the goods or services that is higher than the maximum price permitted ~~under the price-quality~~, or by 35

- receiving more revenue than is permitted, or in any other way:
- “(ii) refusing or failing to comply with any quality standards required under the price-quality regulation. 5
  - “(3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or \$5,000,000 in the case of a body corporate.
  - “(4) In setting the amount of pecuniary penalty, the Court must take into account all of the following matters: 10
    - “(a) the nature and extent of the contravention:
    - “(b) the nature and extent of any loss or damage suffered by any person as a result of the contravention:
    - “(c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence): 15
    - “(d) whether or not the person has previously been found by the Court in proceedings under this Part to have engaged in similar conduct.
  - “(5) A supplier may not be liable to more than 1 pecuniary penalty in respect of the same conduct. 20
  - “(6) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.
- “**87A Compensation for contravention of price-quality requirement** 25
- “(1) If the Court orders a person to pay a pecuniary penalty under **section 87** in respect of the contravention of a price-quality requirement, the Court may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (an **aggrieved person**). 30
  - “(2) An application for orders under this section may be made by the Commission or any aggrieved person.
  - “(3) The application must be made within 1 year of the date of the pecuniary penalty order. 35
  - “(4) The Court may make an order under this section whether or not any aggrieved person is party to the proceedings.

“(5) In proceedings under this section, the Court may make such orders as to cost as it thinks fit.

**“87B Offence relating to price-quality regulation**

“(1) A person commits an offence if—

“(a) the person, knowing that particular goods or services are subject to price-quality regulation, intentionally contravenes a price-quality requirement in respect of the goods or services; or

“(b) the person is subject to an order under **section 87C(1)(b)** and fails to comply with the order.

“(2) A person who commits an offence under **subsection (1)** is liable on summary conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate.

“(3) Despite section 14 of the Summary Proceedings Act 1957, proceedings for an offence under **subsection (1)(a)** may be commenced at any time within 3 years after the contravention occurred.

**“87C Injunction and other orders relating to price-quality regulation**

“(1) If the Court is satisfied that goods or services that are subject to price-quality regulation are being supplied, or are likely to be supplied, in contravention of any price-quality requirement applying with respect to those goods or services, the Court may do either or both of the following:

“(a) grant an injunction restraining any supplier of those goods or services from supplying them in contravention of the price-quality requirement:

“(b) requiring the supplier to supply the goods or services in accordance with the price-quality requirement applying to them.

“(2) An application for an order under this section may be made by any person.”

**16 Other orders**

Section 89 is amended by adding the following subsection: 35

“(7) In this section, a reference to a contravention of this Act includes a reference to contravening the requirements of any type of regulation under **Part 4**.”

**17 Appeals in relation to determinations by Commission**

Section 91 is amended by repealing subsection (1) and substituting the following subsections: 5

“(1) ~~There is a right of appeal to the High Court under this subsection against any determination of the Commission under this Act, other than the following:~~

“(a) ~~a determination made under **section 52O** (a **section 52O** determination):~~ 10

“(b) ~~an input methodology determination (as defined in **section 52Y**, and for which a separate appeal right is given under that section):~~

“(1) There is a right of appeal to the High Court under this subsection against any determination of the Commission under this Act, other than the following: 15

“(a) a determination, or any part of a determination, made under **section 52O** (a **section 52O** determination) that sets out— 20

“(i) how information disclosure regulation or negotiate/arbitrate regulation applies to regulated suppliers; or

“(ii) the default price-quality path that applies to regulated suppliers: 25

“(b) an input methodology determination (as defined in **section 52Y**, and for which a separate appeal right is given under that section).

“(1AA) An appeal against a **section 52O** determination may not include an appeal against all or part of an input methodology, whether on a point of law or any other ground. 30

“(1A) There is a right of appeal to the High Court on a question of law against any determination of the Commission under this Act (including a determination referred to in **subsection (1)**).” 35

**18 Persons entitled to appeal**

Section 92 is amended by ~~omitting~~ repealing paragraphs (d) and (e) and substituting the following paragraph:

“(d) in the case of an appeal against a determination made under **section 520**, any supplier or consumer (as defined in **section 52C**) of goods or services to which the determination relates.” 5

**19 Determination of appeals**

Section 93 is amended by omitting all the words above paragraph (a) and substituting “In determining an appeal under section 91(1), the Court may do any of the following:” 10

**19A Provisions pending determination of appeal**

Section 95 is amended by adding the following subsection as subsection (2):

“(2) However, the Court may not stay the application of a determination made under **section 520** in respect of which an appeal is brought under **section 91(1) or 91(1A)**.” 15

**19B Appeal to Court of Appeal in certain cases**

Section 97 is amended by adding the following subsection:

“(5) An appeal to the Court of Appeal under this section may be made against either of the following only on a point of law:  
 “(a) a decision or order of the High Court under **section 52Y**;  
 “(b) a decision or order of the High Court on an appeal under **section 91(1) or (1A)** against a determination of the Commission made under **section 520**.” 20 25

*Amendments to Part 7***20 Power to search**

Section 98A is amended by adding the following subsection:

“(4) In this section, a reference to a contravention of this Act includes a reference to contravening the requirements of any type of regulation under **Part 4**.” 30

- 21 Offences**  
 Section 103(1)(a) is amended by omitting “section 70E or section 98” and substituting “sections 53B(1)(c), 53N, 53ZC, and 98”.
- 22 Restriction on delegation** 5  
 (1) Section 105(1) is amended by omitting “, except in accordance with subsection (2)”.  
 (2) Section 105 is amended by repealing subsections (2) and (3).
- 23 Proceedings privileged**  
 (1) Section 106(4) is amended by omitting “or that person’s spouse”. 10  
 (2) Section 106(5) is amended by omitting “under section 80 or section 83” and substituting “for pecuniary penalties”.  
 (3) Section 106(5) is amended by omitting “, or that person’s spouse”. 15  
 (4) Section 106(6)(b) is amended by omitting “103(1)(b)” and substituting “103”.
- 24 Regulations**  
 Section 108 is amended by repealing paragraph (cb) and substituting the following paragraph: 20  
 “(cb) authorising the Commission to refund a part of a prescribed fee paid by a person in any case where a written undertaking is obtained or accepted from that person.”
- 25 Sections 116 to 118 repealed** 25  
 Sections 116 to 118 are repealed.
- New Schedules 5 and 6 added*
- 26 New Schedules 5 and 6 added**  
 The Schedules 5 and 6 set out in the Schedule of this Act are added.

## Part 2

### **Amendments to other Acts and order**

#### **27 Amendments to Electricity Act 1992**

- (1) This section amends the Electricity Act 1992.
- (2) The definition of **consumer** in section 2(1) is amended by— 5
  - (a) omitting “the Corporation” in the first place where it appears and substituting “any electricity generator”; and
  - (b) omitting “the Corporation” in the second place where it appears and substituting “the electricity generator”.
- (3) Section 172E(2)(d) is amended by omitting “section 10 57MA(1)” and substituting “**section 54V**”.

#### **28 Amendment to Electricity Industry Reform Act 1998**

- (1) This section amends the Electricity Industry Reform Act 1998.
- (2) Section 92 is amended by omitting “and Part 4A”.

#### **29 Amendments to Gas Act 1992**

15

- (1) This section amends the Gas Act 1992.
- (2) The definition of **consumer** in section 2(1) is amended by—
  - (a) omitting “the Corporation” in the first place where it appears and substituting “any gas producer”; and
  - (b) omitting “the Corporation” in the second place where it 20 appears and substituting “the gas producer”.

#### **30 Amendments to Airport Authorities Act 1966**

- (1) This section amends the Airport Authorities Act 1966.
- (2) Section 4A is amended by adding the following subsection:
- “(4) This section does not limit the application of regulation under **Part 4** of the Commerce Act 1986.” 25
- (3) Section 9A is amended by inserting the following subsections before subsection (1):
  - “(1AAA) This section applies to each of the following airport companies until the end of the last day of the financial year that 30 is referred to in **section 56F** of the Commerce Act 1986 in relation to that company:
    - “(a) the company (as defined in section 2 of the Auckland Airport Act 1987) that operates Auckland International



Airport (including any subsidiary of, or successor to, that company that operates all or part of the airport):

“(b) the company (as defined in section 2 of the Wellington Airport Act 1990) that operates Wellington International Airport (including any subsidiary of, or successor to, that company that operates all or part of the airport): 5

“(c) the airport company (as defined in section 2 of the Airport Authorities Act 1966) that operates Christchurch International Airport (including any subsidiary of, or successor to, that company that operates all or part of the airport). 10

“(1AAB) After the end of that day, this section does not apply to that company, and references in this section to every airport company are references to every company other than that company.” 15

**31 Amendment to Commerce (Control of Natural Gas Services) Order 2005**

Clause 3 of the Commerce (Control of Natural Gas Services) Order 2005 is amended by omitting “1 September 2016” and substituting “1 July 2012”. 20

	<b>Schedule</b>	<b>s 26</b>
	<b>New Schedules <u>5 and 6</u></b>	
	<b>Schedule 5</b>	<b>s 53ZE</b>
	<b>Material incorporated by reference</b>	<b>5</b>
<b>1</b>	<b>Definitions</b>	
	In this schedule, unless the context otherwise requires,—	
	<b>material</b> means written material that is set out in a document other than a Part 4 determination	
	<b>Part 4 determination</b> means either of the following:	10
	(a) a determination made under <b>section 52O</b> ;	
	(b) an input methodology published under <b>section 52V</b> .	
<b>2</b>	<b>Material incorporated by reference into Part 4 determinations</b>	
(1)	The Commission may incorporate by reference any material into a Part 4 determination if—	15
	(a) the material deals with technical matters; and	
	(b) it is impractical to include it in, or publish it as part of, the determination.	
(2)	Material may be incorporated by reference into a Part 4 determination—	20
	(a) in whole or in part; and	
	(b) with any modifications, additions, or variations specified in the Part 4 determination.	
(3)	Material incorporated by reference—	25
	(a) is the material as it exists at the time the Part 4 determination is published; and	
	(b) has legal effect as part of the Part 4 determination for all purposes, except as provided in <b>clauses 8 and 9</b> .	
<b>3</b>	<b>Proof of material incorporated by reference</b>	30
(1)	A copy of any material incorporated by reference in a Part 4 determination must be—	
	(a) certified by the chairperson as a correct copy of the material; and	
	(b) retained by the chairperson.	35

Schedule 5—*continued*

- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material into the Part 4 determination.
- 4 Access to material incorporated by reference** 5
- (1) The Commission—
- (a) must make copies of all material incorporated by reference in a Part 4 determination available for inspection during normal working hours at the head office of the Commission; and 10
  - (b) must make copies of the material available for purchase at a reasonable price from the head office of the Commission; and
  - (c) may make copies of the material available in any other way that the chairperson considers appropriate in the circumstances (such as on an Internet site); and 15
  - (d) must give notice in the *Gazette* of how the material is available for inspection and purchase.
- (2) **Subclause (1)** applies to material when it is first incorporated into a Part 4 determination, and to any subsequent amendment or replacement of the material that is incorporated into the determination. 20
- (3) A failure to comply with this clause does not invalidate a Part 4 determination.
- 5 Effect of amendments to, or replacements of, material incorporated by reference** 25
- An amendment to, or replacement of, material incorporated by reference in a Part 4 determination has legal effect as part of the determination only if—
- (a) the amendment or replacement material is made by the person or organisation that made the original material; and 30
  - (b) the amendment or replacement material is of the same general character as the original material; and
  - (c) either— 35

Schedule 5—*continued*

- (i) a subsequent Part 4 determination states that the particular amendment or replacement material has legal effect as part of the determination; or
  - (ii) the chairperson, by notice in the *Gazette*, adopts the amendment or replacement material as having legal effect as part of the determination. 5
  
- 6 **Effect of expiry of material incorporated by reference**

Material incorporated by reference in a Part 4 determination that expires, is revoked, or ceases to have effect, ceases to have legal effect as part of the Part 4 determination only if— 10

  - (a) a subsequent Part 4 determination states that the material ceases to have that legal effect; or
  - (b) the chairperson, by notice in the *Gazette*, states that the material ceases to have that legal effect.
  
- 7 **Consultation before material incorporated by reference** 15
  - (1) This clause applies if—
    - (a) the Commission proposes to incorporate material by reference into any Part 4 determination; or
    - (b) the Commission proposes to make a Part 4 determination adopting amended or replacement material; or 20
    - (c) the chairperson proposes to publish a notice in the *Gazette* adopting amended or replacement material.
  - (2) If any of the things referred to in **subclause (1)** are proposed, the Commission—
    - (a) must make copies of the material (which in this subclause includes any amended or replacement material) proposed to be incorporated by reference available for inspection during normal working hours at the head office of the Commission; and 25
    - (b) must make copies of the material available for purchase at a reasonable price from the head office of the Commission; and 30
    - (c) may make copies of the material available in any other way that the chairperson considers appropriate in the circumstances (such as on an Internet site); and 35

Schedule 5—*continued*

- (d) must give notice in the *Gazette* of how copies of the material may be inspected and purchased, and how people may make comments on the proposal; and
  - (e) must allow a reasonable opportunity for people to comment on the proposal; and 5
  - (f) must consider any comments made within the time allowed.
- (3) A failure to comply with this clause does not invalidate a Part 4 determination.
- 8 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference** 10  
 The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in a Part 4 determination, or to any amendment to, or replacement of, the material.
- 9 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference** 15
- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material incorporated by reference in a Part 4 determination to be laid before the House of Representatives.
- (2) However, in all other respects the Regulations (Disallowance) Act 1989 applies to material incorporated by reference in a Part 4 determination. 20
- 9 Regulations (Disallowance) Act 1989 not applicable**  
The Regulations (Disallowance) Act 1989 does not apply to material incorporated by reference in a Part 4 determination, or to any amendment to, or replacement of, the material. 25

**Schedule 6** **s 55A(2)(d), (4)**  
**Exemptions from Part 4 in respect of  
specific pipelines**

<b>Pipeline owner</b>	<b>Pipeline</b>
Todd Taranaki Limited	McKee Production Station—Tikorangi gas pipelines
Swift Energy New Zealand Limited	Waihapa—New Plymouth gas pipeline
Methanex New Zealand Limited	<ul style="list-style-type: none"> <li>• Bertrand Road—Waitara Valley Plant gas pipeline (via Faull Road Mixing station)</li> <li>• Tikorangi—Faull Road Mixing Station gas pipeline</li> <li>• <del>Faull Road Mixing Station—Motunui Plant main process gas process gas pipeline</del></li> <li>• Faull Road Mixing Station—Waitara Valley Plant minor gas pipeline</li> </ul>
<u>Energy Infrastructure Limited and Petroleum Infrastructure Limited</u>	<u>The 032 pipeline running from the T-junction on the Maui Pipeline at Ngatimaru Road to the Pohokura Production Station and the Methanex Motunui Methanol Plant</u>
Vector Limited	Kapuni—Faull Road Mixing Station low temperature separator gas pipeline
Nova Gas Limited	All gas pipelines

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**Commerce Amendment Bill**

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**Legislative history**

13 March 2008  
20 March 2008

Introduction (Bill 201-1)  
First reading and referral to Commerce Committee

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