

AUCKLAND ENERGY BILL

EXPLANATORY NOTE

The Bill provides for the Auckland Electric Power Board to nominate a successor company, being a company all the shares in which it holds beneficially, and for its undertaking to be transferred to such company on a date to be appointed by the Governor-General in Council, such transfer of undertaking to occur within 3 months of the establishment of a consumer trust in terms of Part II of the Bill.

The Bill further provides for the Board to establish a consumer trust to represent the interests of its consumers, within 1 month of the date of commencement of the Act, the Bill presently stating the date of commencement to be 1 September 1991 (that date being of course subject to change depending upon the date of enactment), the consumer trust to hold the predominant shareholding in the company but with provision, in addition, for partial privatisation.

The Bill also provides that the company, for an interim period of up to 3 years (or longer if the directors deem it expedient), would have as its sole shareholders the consumer trust (which for this period would hold all shares but one) and the Minister of Energy (who would for the interim period only hold one, special rights, share).

During this interim period, the directors of the company would be 4 persons appointed by the trustees of the consumer trust (one such appointee to be a present member of the Board) together with the remaining 4 members of the present Board. The directors, during this period, would be responsible, not only for on-going management, but also for preparing the company for a public issue of shares, the precise timing of which would be for the directors.

The company, in anticipation of the public float, would increase its share capital by such amount as the Minister and the directors would agree, to the intent that the consumer trust will be issued such number of shares overall (but not less than 60%) as would represent the then current value of the company's undertaking. The funds raised from the public float would be additional capital to be represented by the balance of the shares to be allotted. In this manner, the company would thenceforth represent a true balance of interests, a consumer interest (being by a margin the majority shareholder interest) together with a not insignificant private shareholder interest, the object being to give the company strong commercial direction whilst at the same time safeguarding, and preserving, majority consumer ownership. At board level, the company would have an equal number of directors representing the consumer trust and the private shareholder interest respectively, neither interest to have dominance.

Once the company achieves its intended final form, the consumer trust would be enabled, from dividends received from the company, to pass on financial benefits to consumers or to participate in future share issues by the company, as

the trustees may see fit. Its workings will be governed by a trust deed, with the trustees to be elected by consumers on a regular basis. The private shareholders would receive dividends in the normal way.

The Auckland Electric Power Board Act 1978 (and other legislation pertaining to the Board) would be repealed from the date on which the Board's undertaking is transferred to its successor company, the Board itself to be dissolved from that same date. The present Auckland Electric Power Trust, constituted under the Electric Power Boards Amendment Act 1990, would be dissolved from the date of the commencement of the Act.

The Bill further provides (in Part III) for amalgamation of undertakings where a contiguous electrical supply authority resolves that it is desirous of amalgamating its undertaking with that of the company. There is provision, in such an event, for an amalgamation proposal to be advertised and for ministerial approval to be obtained, an Order in Council to set forth the terms on which the amalgamation shall then take place, with special provision for consequential restructuring of the consumer trust.

In addition, the Bill provides (in Part V) for those specific powers and duties which the company, as a public utility, requires to possess for the proper discharge of its public responsibilities (rights of entry in certain circumstances, works on roads, removal or trimming of trees, etc.). Finally, certain miscellaneous provisions are included in Part V.

Clause 1 relates to the Short Title (Auckland Energy Act 1991) and commencement (1 September 1991 being presently stipulated).

Clause 2 defines certain terms used in the Bill.

Clause 3 declares that the Act shall bind the Crown.

PART I

TRANSFER TO COMPANY

This Part sets out those provisions relating to the transfer of the Board's undertaking to its nominated successor company and for the regulation of the company, both during an interim period pending a public issue of shares and thereafter.

Clause 4 makes provision for the transfer of the Board's undertaking to the company, for the appointment of directors to hold office during the interim period pending the public issue of shares, for the adoption of a new memorandum and articles of association to apply during the interim period, and for the transfer of all the shares (excepting one special rights share to be issued to the Minister for the duration of the interim period) to the consumer trust to be established in terms of Part II of the Bill. Certain further provisions are included in relation to the application of the Companies Act and to the arrangements which are to obtain during the interim period. *Clause 4 (8)* specifies that, as from the transfer date, the principal objective of the company will be to operate as a successful business.

Clause 5 restricts the ability of the consumer trust to dispose of or charge, mortgage or pledge its shares in the company, save to the extent that the trust deed may permit the transfer or disposition of such shares to consumers. In addition, execution would not be able to be levied against the shares held by the consumer trust.

Clause 6 provides that the shares transferred to the consumer trust and to the Minister respectively shall be deemed to be fully paid up.

Clause 7 specifies that, within 3 years of the transfer date (or within such longer period as the directors may consider expedient, it being recognised that the decision requires commercial judgment), the company, by resolution of its

directors, is required to increase its share capital by such amount as the Minister and the directors shall agree, issue for no consideration to the consumer trust such percentage of the company's total capital, being not less than 60 percent, as in the opinion of the directors shall represent the then current value of the company's undertaking, and offer the balance for subscription by the public. Upon the offer to the public having been made, the company is required to apply for the listing on the New Zealand Stock Exchange of those of the shares to be held by the public. At the time of the allotment of the shares to the public, the Minister shall cease to be a member of the company and the Minister's special rights shares shall be deemed to have been cancelled.

Clause 8 imposes certain restrictions upon membership of the company. For example, no other electrical supply authority shall be eligible to hold shares in the company.

Clause 9 provides that, upon the allotment of the shares to the public, the articles of association of the company shall be further amended so as to provide, *inter alia*, that there shall always be an even number of directors, one half to be appointed by the consumer trust and the balance to be appointed by the shareholders other than the consumer trust. By this means, it is intended, at the level of the board of directors, to preserve a balance of representation as between the 2 shareholder interests.

Clause 10 makes provision for the dissolution of the present Auckland Electric Power Trust as from the commencement of the Act and for the dissolution of the Board as from the transfer date.

Clause 11 sets out detailed consequential provisions to apply on the transfer of the undertaking of the Board to the company. These include detailed provisions in relation to local authority loan stock and debentures on issue by the Board at the transfer date.

Clause 12 provides for continuity of employment for employees of the Board, and provides for all such employees to become employees of the company.

Clause 13 relates to references to the Board in other enactments, and provides that, on and after the transfer date, such references shall be read and construed as references to the company.

Clause 14 confirms the status of the company for the purposes of the Electricity Act 1968, Electrical Supply Regulations 1984, Gas Act 1982, etc.

Clause 15 relates to audit.

PART II

ESTABLISHMENT OF CONSUMER TRUST

This Part sets out those provisions relating to the establishment and regulation of the consumer trust to be formed.

Clause 16 requires the Board, not later than 1 month after the commencement of the Act, after consultation with the persons who, immediately prior to the commencement of the Act, were trustees of the Auckland Electric Power Trust, to execute a trust deed establishing a consumer trust to acquire and hold shares in the capital of the company and for the purposes specified in Part II, such trust to be named the "Auckland Energy Consumer Trust".

Clause 17 specifies that the first trustees of the consumer trust shall be named in the trust deed and shall be those persons who, immediately before the commencement of the Act, were the trustees of the Auckland Electric Power Trust. Provisions for the protection of the trustees are further set forth.

Clause 18 bars persons in certain categories (undischarged bankrupts, etc.) from being appointed, or holding office, as a trustee of the consumer trust.

Clause 19 prescribes the term of appointment of trustees, and prescribes how trustees may be removed and replaced.

Clause 20 sets out the essential purposes of the consumer trust.

Clause 21 contains financial provisions in relation to the consumer trust.

Clause 22 stipulates the matters to be specified in the trust deed of the consumer trust.

Clause 23 prescribes that the trust deed shall not be inconsistent with the provisions of the Act.

Clause 24 relates to the application of the Trustee Act 1956.

Clause 25 sets out provisions, in relation to the consumer trust, to apply in the event of the company, in terms of section 28 of the Act, assuming, on an amalgamation, the undertaking of an electrical supply authority other than that of the Board.

Clause 26 makes provision for the winding up of the consumer trust by the High Court on the application of the Attorney-General, if the High Court should be satisfied that it is just and equitable that the consumer trust should be wound up.

PART III

AMALGAMATION OF UNDERTAKINGS

This Part sets out provisions intended to facilitate the amalgamation of undertakings of contiguous electrical supply authorities with the undertaking of the company, should such contiguous authorities resolve in favour of any such proposed amalgamation.

Clause 27 makes detailed provision for the procedure to be followed, should a contiguous electrical supply authority wish to amalgamate its undertaking with the company's undertaking. The procedure prescribed requires a proposed amalgamation to be voted upon by the contiguous electrical supply authority, and by the company, for the public advertisement of the proposal, for the invitation of submissions thereon, for the proposal to be submitted to the Minister for approval, and for an Order in Council approving the proposal for amalgamation to be promulgated by the Governor-General upon the advice of the Minister.

Clause 28 prescribes the matters to be specified in any such Order in Council.

Clause 29 provides when compensation shall be payable upon an amalgamation.

PART IV

ADDITIONAL POWERS AND DUTIES OF COMPANY

This Part sets out those additional powers and duties which the company, as a utility operator, reasonably requires for the safe, proper, and effective performance of its duties and responsibilities.

Clause 30 provides qualified powers of entry for survey and investigation purposes.

Clause 31 sets out the company's rights of entry in relation to existing works.

Clause 32 gives the company rights of entry in emergencies.

Clause 33 relates to the company's powers to execute works on any land, and prescribes a procedure for application, in relation thereto, to a District Court.

Clause 34 makes the company liable to pay compensation for any property damage or other direct financial loss caused to the property of any person, notwithstanding that such damage was caused by the company in the lawful

execution of any of the powers conferred upon it under the Act or by any other enactment.

Clause 35 relates to the approval required for the company to conduct works on roads under the control of a local authority or other person, and in respect of works on other areas under the control of a local authority.

Clause 36 relates to alterations to works on any road.

Clause 37 stipulates that works shall not interfere with lawful traffic along any road or navigable water.

Clause 38 relates to the power of the company to trim or remove trees, shrubs, or plants, and for application to be made to a District Court in connection therewith.

Clause 39 relates to the trimming and removal of trees, etc., in emergencies.

Clause 40 relates to the temporary occupation or use of land reasonably required for the construction of works.

Clause 41 confirms the company's property in existing works on land not owned by the company.

Clause 42 provides for the installation on any land of any substation, transformer, lines, plant, or equipment, etc. A procedure is prescribed for application to be made to a District Court where agreement cannot be reached with the owner or occupier of the land concerned.

Clause 43 relates to the powers of the company (or any subsidiary or related company thereof) outside the area specified in the licence held by the company under section 20 of the Electricity Act 1968.

Clause 44 stipulates that the company may link up transmission lines, works, and systems with lines, works, and systems outside the area specified in the licence held by the company under section 20 of the Electricity Act 1968.

Clause 45 prescribes that the powers conferred by the Act shall not limit powers conferred by any other enactment or at law.

PART V

GENERAL PROVISIONS

Clauses 46 to 49 set out certain general, or miscellaneous, provisions.

Clause 46 provides that no person shall be entitled, for the enforcement of any debt owed by the company, to levy or seize in execution any lines, pipes, facilities, or other works or other property owned by the company but laid, installed, or constructed on, under, or over any land of which the company is neither the owner nor the occupier.

Clause 47 provides that no disposition of property made pursuant to the Act shall constitute a dutiable gift.

Clause 48 provides certain protections for the company against claims by consumers.

Clause 49 repeals certain enactments as from the transfer date, including the Auckland Electric Power Board Act 1978.

Hon. D. A. M. Graham

AUCKLAND ENERGY

[LOCAL]

ANALYSIS

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| <p>Title</p> <ol style="list-style-type: none">1. Short Title and commencement2. Interpretation3. Act to bind the Crown <p style="text-align: center;">PART I</p> <p style="text-align: center;">TRANSFER TO COMPANY</p> <ol style="list-style-type: none">4. Transfer of undertaking of Board to company5. Restrictions on transfer of consumer trust's shares in company6. Shares transferred to consumer trust and to the Minister deemed fully paid up7. Company to increase capital and offer shares to the public8. Certain restrictions as to membership of company9. Directors of company10. Dissolution of Auckland Electric Power Trust and of Board11. Consequential provisions on transfer of undertaking of Board to company12. Employees13. References in other enactments14. Status of company for purposes of Electricity Act 1968, Electrical Supply Regulations 1984, Gas Act 1982, etc.15. Auditor of company <p style="text-align: center;">PART II</p> <p style="text-align: center;">ESTABLISHMENT OF CONSUMER TRUST</p> <ol style="list-style-type: none">16. Board to establish consumer trust17. Trustees18. Disqualification from appointment19. Term of appointment20. Purposes of consumer trust21. Financial provisions22. Matters to be included in trust deed23. Trust deed not to be inconsistent with provisions of this Act24. Application of Trustee Act 1956 | <ol style="list-style-type: none">25. Provisions in relation to consumer trust in event of company assuming undertaking of electrical supply authority other than Board26. Winding up of consumer trust by the Court <p style="text-align: center;">PART III</p> <p style="text-align: center;">AMALGAMATION OF UNDERTAKINGS</p> <ol style="list-style-type: none">27. When contiguous electrical supply authority wishes to amalgamate its undertaking with company's undertaking28. Matters to be specified in Order in Council29. When compensation payable on amalgamation <p style="text-align: center;">PART IV</p> <p style="text-align: center;">ADDITIONAL POWERS AND DUTIES OF COMPANY</p> <ol style="list-style-type: none">30. Powers of entry for survey and investigation purposes31. Rights of entry in respect of existing works32. Rights of entry in emergency33. Power to execute works on any land34. Company liable to pay compensation for property damage35. Approval required for works on roads under control of local authority or other person, and for works on other areas under control of local authority36. Alteration to works on road37. Works not to interfere with public traffic38. Removal of trees, etc.39. Removal of trees, etc., in emergency40. Temporary occupation or use of land reasonably required for construction of works41. Existing works on land not owned by company |
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<p>42. Installation on any land of any substation, transformer, lines, plant, or equipment or other facility</p> <p>43. Powers of company outside area specified in licence held by company under section 20 of the Electricity Act 1968</p> <p>44. Company may link up transmission lines, works and systems with lines, works and systems outside area specified in licence held by company under section 20 of the Electricity Act 1968</p> <p>45. Powers conferred by this Act not to limit powers conferred by any other enactment or at law</p>	<p>PART V</p> <p>GENERAL PROVISIONS</p> <p>46. Execution against company's property restricted</p> <p>47. Exemption from gift duty</p> <p>48. Protection of company against claims by consumers</p> <p>49. Repeal of Auckland Electric Power Board Act 1978 and other enactments Schedule</p>
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A BILL INTITULED

An Act to vest the undertaking of the Auckland Electric Power Board in a company under the Companies Act 1955, to make provision for the establishment of a consumer trust to hold a majority of the shares in such company, to provide for the making of an offer for sale of a proportion of the shares in such company to the public, and for necessary ancillary matters including the dissolution of the Auckland Electric Power Board and the Auckland Electric Power Trust, and generally to promote efficiency in energy supply and distribution within the Auckland Region and elsewhere 5 10

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

1. Short Title and commencement—(1) This Act may be cited as the Auckland Energy Act 1991. 15

(2) This Act shall come into force on the 1st day of September 1991.

2. Interpretation—In this Act, unless the context otherwise requires,— 20

“Board” means the Auckland Electric Power Board:

“Company” means the company nominated by the Board as its successor pursuant to section 4(1) of this Act; and, for the purposes of Parts IV and V of this Act includes any subsidiary or related company thereof: 25

“Consumer” means any person who for the time being receives a supply of electricity or of any other substantial form of energy from the Board or from the company, as the case may be, and, in relation to any electrical supply authority other than the Board 30

or the company, means a person who receives a supply of electricity from such electrical supply authority:

5 “Consumer trust” means the trust to be established in accordance with **section 16** of this Act:

“Director” means any director of the company:

“Electrical supply authority” has the same meaning as in section 2 of the Electricity Act 1968:

10 “Inland Revenue Acts” means the Acts specified in the First Schedule to the Inland Revenue Department Act 1974:

“Instrument” includes—

15 (a) Any instrument (other than an enactment) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities, or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and

(b) Any judgment, order, or process of a court:

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

25 “Local authority” has the same meaning as in section 2 (1) of the Local Government Act 1974:

“Minister” means the Minister of Energy:

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

(a) Choses in action and money; and

(b) Goodwill; and

35 (c) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective:

“Region” has the same meaning as in section 2 (1) of the Local Government Act 1974:

40 “Related company” has the same meaning as in section 2 (5) of the Companies Act 1955:

45 “Rights” means all rights, powers, privileges, and immunities, whether actual, contingent or prospective; and includes approvals, consents, benefits, and equities of any kind:

- “Shares” means the shares in the capital of the company:
 “Subsidiary” has the same meaning as in section 158 of the Companies Act 1955:
 “Transfer date” means the date specified in the Order in Council made by the Governor-General pursuant to **section 4 (2)** of this Act: 5
 “Trust deed” means the trust deed establishing the consumer trust in terms of **section 16 (1)** of this Act:
 “Trustee” means a person appointed as a trustee of the consumer trust to be established in accordance with **section 16** of this Act: 10
 “Undertaking”, in relation to a person, means the property, rights, and liabilities of that person:
 “Works” means any works for the generation, transmission, or supply and reticulation of electricity, gas, or any other substantial form of energy; and, without limiting the generality of the foregoing, includes lines, networks, systems, pylons, pipes, substations, transformers, other installations and facilities, poles, tunnels, trenches, excavations, aqueducts, flumes, and construction works (including temporary works) of any kind. 15 20

3. Act to bind the Crown—This Act shall bind the Crown.

PART I

TRANSFER TO COMPANY

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4. Transfer of undertaking of Board to company—

- (1) The Board shall forthwith nominate a company, formed and registered under the Companies Act 1955, as its successor, the company to be one in respect of which the Board, as at the commencement of this Act, is the beneficial owner of all of the shares. 30
- (2) On a date appointed by the Governor-General by Order in Council, being a date within the period of 3 months after the establishment of the consumer trust under **Part II** of this Act, the undertaking of the Board shall, by virtue of this Act, vest in the company as the Board’s successor. 35
- (3) Before the transfer date, but on a date following the establishment of the consumer trust, the Board shall—
- (a) Procure to be appointed, as the directors of the company, 8 persons, being: 40
- (i) Four persons appointed by the trustees, 1 of whom shall be a person then holding office as a

member of the Board pursuant to section 17 (1) (b) of the Electric Power Boards Amendment Act 1990; and

(ii) The 4 other persons then holding office as the members of the Board pursuant to section 17 (1) (b) of the Electrical Power Boards Amendment Act 1990; and

(b) Ensure, after consultation with the trustees, the adoption by the company of a new memorandum and articles of association:

Provided that, if any matter concerning the form of the new memorandum and articles of association cannot be agreed, such matter shall be referred to the Minister for determination; and

(c) Procure the transfer of the shares, but without any consideration to be payable therefor, as follows:

(i) All but one share to the consumer trust; and

(ii) The remaining share, which shall become a special rights share having attached to it the rights to be specified in the articles of association of the company referred to in paragraph (b) of this subsection, to the Minister.

(4) In the application of the Companies Act 1955 to the company, but only for as long as the Minister shall continue to be a member of the company, the following provisions of the Companies Act shall be construed as if references therein to 7 members were references to 2 members:

(a) Section 41, as to the prohibition of carrying on business with fewer than 7 members;

(b) Section 217 (d), as to winding up by the Court when the number of members is reduced below 7; and

(c) Section 219 (1) (a) (i), as to the filing of a proceeding for winding up by a contributory when the number of members is reduced below 7.

(5) For as long as the Minister shall continue to be a member of the company—

(a) The consumer trust shall have attaching to its shares the rights specified in the articles of association adopted by the company in terms of **subsection (3) (b)** of this section;

(b) The Minister shall have attaching to the Minister's special rights share only those rights and powers necessary to ensure the continuing effective management of the company by its directors, including the power to replace any director appointed under **subsection**

- (3) (a) (iii) of this section who may resign, die, or become incapacitated from holding office;
- (c) The trustees shall have the power to replace any director appointed by them under **subsection (3) (a) (i)** of this section who may resign, die, or become incapacitated from holding office; 5
- (d) No dividend shall be declared or paid by the company except with the consent of the Minister; and
- (e) The Minister shall have no liability for any act or omission of the company. 10
- (6) Section 188 (7) and 394E (1) (g) of the Income Tax Act 1976 shall not apply to the company.
- (7) Before the transfer date, the Board shall revalue its assets, such revaluation to have application for all purposes.
- (8) As from the transfer date, the principal objective of the company shall be to operate as a successful business. 15

5. Restrictions on transfer of consumer trust's shares in company—Subject to **section 26** of this Act, the shares to be issued to and held by the consumer trust shall not be capable of being transferred or otherwise disposed of, or of being charged, mortgaged, pledged or of having execution levied against them, except to the extent that the trust deed shall permit the transfer or disposition of any such shares to consumers. 20

6. Shares transferred to consumer trust and to the Minister deemed fully paid up—The shares transferred to the consumer trust and to the Minister respectively shall be deemed to be fully paid up. 25

7. Company to increase capital and offer shares to the public—(1) Within 3 years of the transfer date, or within such longer period as the directors may consider expedient, the company, by resolution of its directors, shall: 30

- (a) Increase its share capital by such amount as the Minister and the directors shall agree;
- (b) Issue for no consideration to the consumer trust such percentage of the company's total capital, being not less than 60 percent, as shall in the opinion of the directors represent the current value of the company's undertaking; and 35
- (c) Offer the balance for subscription by the public in accordance with **subsection (2)** of this section. 40
- (2) Within the period provided for in **subsection (1)** of this section, and in accordance with the Securities Act 1978, the

company, on such terms as the Ministers and the directors shall agree, shall offer to the public for subscription the balance of the shares being the shares not issued to the consumer trust.

5 (3) Upon offering to the public for subscription the shares not issued to the consumer trust, the company shall apply for the listing on the New Zealand Stock Exchange of those of the shares to be held by the public.

(4) Upon allotment of the shares to the public, the Minister shall cease to be a member of the company and the Minister's special rights share shall be deemed to have been cancelled.

8. Certain restrictions as to membership of company—

(1) The following persons shall not subscribe for or acquire shares in the company, whether legally or beneficially, and the company shall not accept any subscription or register a transfer of any of its shares to any such person:

- 15 (a) Electricity Corporation of New Zealand Limited, or any successor thereto or subsidiary thereof;
- (b) Any local authority, or any local authority trading enterprise within the meaning of section 594B of the Local Government Act 1974;
- 20 (c) Any other electrical supply authority; and
- (d) Any related company of any company referred to in paragraphs (a) to (c) of this subsection.

(2) Nothing in this section shall prejudice the application by the company for the listing of its shares on the New Zealand Stock Exchange.

9. Directors of company—Upon the allotment of the shares to the public, the articles of association of the company shall forthwith be amended to provide that—

- 30 (a) There shall always be an even number of directors, not less than 8 and not more than 10; and
- (b) The consumer trust shall be entitled to appoint one half of the directors with the balance of the directors to be appointed by the shareholders other than the consumer trust; and
- 35 (c) Pending the first annual general meeting of the company, at which the directors representing the shareholders other than the consumer trust shall be elected, the directors of the company shall be those holding office immediately prior to the date on which shares are allotted to the public.
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10. Dissolution of Auckland Electric Power Trust and of Board—(1) As from the commencement of this Act—

- (a) The Auckland Electric Power Trust, constituted pursuant to section 3 of the Electric Power Boards Amendment Act 1990, shall be dissolved and the terms of office of the trustees thereof shall cease: 5
 - (b) The trust deed for the Auckland Electric Power Trust, being an instrument executed on or about the 17th day of October 1990, shall be deemed to be cancelled and of no effect, and the trusts created thereby shall be revoked: 10
 - (c) The Minister for State Owned Enterprises shall take no further step under the Electric Power Boards Amendment Act 1990 with reference to the Board. 15
- (2) As from the transfer date—
- (a) The Board shall be dissolved and the term of office of every member of the Board shall cease: 15
 - (b) Section 2 (b) and sections 17 to 21 of the Electric Power Boards Amendment Act 1990 shall be repealed: 20
 - (c) Section 8 of the Electric Power Boards Amendment Act 1989 shall be repealed. 20

11. Consequential provisions on transfer of undertaking of Board to company—(1) On and from the transfer date, but subject to subsection (2) of this section,—

- (a) A reference (whether express or implied) to the Board in any instrument, register, record, notice, security, or other document or communication made, given, passed, signed, or executed at any time shall be read and construed, and shall be given due effect, as a reference to the company: 25 30
- (b) The relationship between the Board and a consumer shall enure and continue as the relationship between the company and that consumer and the same rights and liabilities, until varied, shall exist between the company and that consumer as existed, immediately before the transfer date, between the Board and that consumer: 35
- (c) All contracts, agreements, conveyances, deeds, leases, licences, easements, and other instruments, undertakings, and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to, the Board (whether alone or with any other person) shall be binding on and enforceable by, against, or in favour of the company as fully and 40

effectually in every respect as if, instead of the Board, the company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed as the case may be:

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(d) A security held by the Board as security for a debt or other liability to the Board incurred before the transfer date shall be available to the company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the company incurred on or after the transfer date; and, in relation to a security, the company shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the Board would have been entitled or subject if this Act had not been passed:

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(e) All the rights and liabilities of the Board as bailor or bailee of documents or chattels shall be vested in and assumed by the company:

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(f) A negotiable instrument or order for payment of money which before the transfer date is drawn on or given to or accepted or endorsed by the Board or payable at a place of business of the Board shall, unless the context otherwise requires, have the same effect on and after the transfer date as if it had been drawn on or given to or accepted or endorsed by the company instead of the Board or was payable at the place of business of the company:

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(g) Any proceeding, arbitration, or cause of action which immediately before the transfer date is pending or existing by, against, or in favour of the Board or to which the Board is a party may be prosecuted and, without the amendment of any notice, pleading or other document, continued and enforced by, against, or in favour of the company:

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(h) Nothing effected or authorised by this Act—

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(i) Shall be regarded as placing the Board or the company or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or

(ii) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract or

arrangement or to accelerate the performance of any obligation; or

(iii) Shall be regarded as placing the Board or the company or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment of transfer of any property or of the disclosure of any information; or 5

(iv) Shall release any surety wholly or in part from all or any obligation; or 10

(v) Shall invalidate or discharge any contract or security.

(2) All local authority loan stock and debentures on issue by the Board at the transfer date, being stock and debentures to which the Local Authorities Loans Act 1956 applies, shall be deemed to be converted, with effect from the transfer date, to unsecured deposits with the company for the same principal amounts, and bearing the same interest rates, and having the same provisions for repayment, as the stock or debentures from which they have been converted had immediately prior to the transfer date: 15 20

Provided that the holders of all such stock and debentures shall have the right, exerciseable within 3 months of the date on which the company shall notify such holders in writing of the provisions of this subsection, to require redemption, in full, of such stock or debentures by giving the company 1 month's notice in writing requiring repayment, whereupon the principal amount of such stock or debentures shall be repaid together with interest at the applicable rate to the date of repayment. 25

(3) Nothing in Part II of the Securities Act 1978 shall have application to the conversion of local authority loan stock or debentures to deposits as provided for in **subsection (2)** of this section. 30

(4) The District Land Registrar, on receiving a written request from the company under its seal, incorporating a reference to this section, and on payment of the prescribed fee, shall make such entries in his or her registers and on any outstanding documents of title and generally do all such things as may be necessary to give effect to the provisions of **subsection (1)** of this section in respect of land and interests in land specified in the request. 35 40

(5) For the purposes of the Inland Revenue Acts, and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge or impost—

- (a) The Board and the company shall be deemed to be the same person; and
- 5 (b) All transactions entered into by, and acts of, the Board shall be deemed to have been entered into by, or to be those of, the company and to have been entered into or performed by the company at the time when they were entered into by the Board.
- (6) Without limiting the generality of **subsection (5)** of this section, the transfer of the undertaking of the Board to the company—
- 10 (a) Shall not, for the purposes of the Income Tax Act 1976, be treated as, or as giving rise to, a sale or other disposition or distribution or transfer of any property of the Board or as a receipt of any property by the company:
- 15 (b) Shall not, for the purposes of the Goods and Services Tax Act 1985, be treated as a supply of any goods or services.

12. Employees—Notwithstanding any other provision of this Act,—

- 20 (a) On the transfer date, each employee of the Board shall become an employee of the company but, for the purposes of every enactment, rule of law, award, determination, contract, or agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and the period of that employee's service with the Board shall be deemed to have been a period of service with the company; and
- 25 (b) The terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of that employee's employment with the Board immediately before the transfer date and shall be capable of variation or termination in the same manner; and
- 30 (c) No such employee shall be entitled to receive any payment or other benefit by reason of that employee ceasing by virtue of this Act to be an employee of the Board.
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40 **13. References in other enactments**—On and after the transfer date, every reference in any enactment (other than this Act) or in any regulation, order, or notice made or given under

any enactment, to the Board, shall be read and construed as a reference to the company.

14. Status of company for purposes of Electricity Act 1968, Electrical Supply Regulations 1984, Gas Act 1982, etc.—(1) The licence under section 20 of the Electricity Act 1968 held by the Board immediately before the transfer date shall, as from the transfer date, be deemed to be held by the company. 5

(2) As from the transfer date, the company shall, by virtue of being an electrical supply authority, have all the rights, powers, and obligations of an electrical supply authority in terms of the Electricity Act 1968, the Electrical Supply Regulations 1984, and any other enactment. 10

(3) Nothing in this section shall limit or affect the right of the company to enter into an agreement under section 20B of the Electricity Act 1968. 15

(4) Nothing in this Act shall limit or preclude the right and ability of the company, whether in its own right or through a subsidiary or other related company, to apply for and hold franchises under the Gas Act 1982 or to generate, distribute, and supply other substantial forms of energy, in addition to electricity. 20

15. Auditor of company—(1) Notwithstanding sections 163 to 165 of the Companies Act 1955, the Audit Office shall be the auditor of the company, and of any subsidiary thereof, until the end of the financial year in which shares are allotted to the public. 25

(2) The company shall pay to the Audit Office, in respect of such duties and functions as it carries out under this section, fees at such rates as may be prescribed from time to time by the Minister of Finance. 30

(3) In respect of financial years following the financial year in which shares are allotted to the public, the company may, after consultation with the Audit Office, appoint any suitably qualified person or partnership to be the auditor of the company, and of any subsidiary thereof. 35

PART II

ESTABLISHMENT OF CONSUMER TRUST

16. Board to establish consumer trust—(1) Not later than 1 month after the coming into force of this Act, the Board, after consultation with the persons who, immediately prior to the commencement of this Act, were the trustees of the 40

Auckland Electric Power Trust, shall execute a trust deed establishing a trust to acquire and hold shares in the capital of the company and for the purposes specified in this Part of this Act:

5 Provided that, if any matter concerning the form of the trust deed cannot be agreed, such matter shall be referred to the Minister for determination.

 (2) The trust shall be named the “Auckland Energy Consumer Trust”.

10 (3) Nothing in **subsection (2)** of this section shall prevent the consumer trust changing its name in accordance with the trust deed.

 (4) The consumer trust shall be a body corporate having perpetual succession and a common seal and, subject to the trust deed, shall be capable of holding real and personal property of whatsoever nature, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

15 (5) Neither the Perpetuities Act 1964 nor the rule against remoteness of vesting shall apply to the consumer trust.

17. Trustees—(1) The first trustees of the consumer trust shall be named in the trust deed and shall be those persons who, immediately prior to the commencement of this Act, were the trustees of the Auckland Electric Power Trust.

25 (2) The trustees of the consumer trust shall in good faith act in the interests of all consumers.

 (3) No trustee or former trustee shall be liable for any loss suffered by the consumer trust or by any consumer not attributable to his or her own dishonesty, or to the wilful commission or omission by the trustee or former trustee of an act known by him or her to be a breach of trust, and no trustee shall be bound to take any proceeding against a co-trustee or former trustee for alleged breach of trust committed by such co-trustee or former trustee.

30 (4) Each trustee and former trustee shall be entitled to a full and complete indemnity from the consumer trust for and in respect of any personal liability which he or she might incur arising out of or in connection with his or her acting or purporting to act as a trustee of the consumer trust, provided that such liability is not attributable to his or her own dishonesty, or to the wilful commission or omission by the trustee or former trustee of an act known by him or her to be a breach of trust.

35 (5) Each trustee and former trustee shall be entitled to a full and complete indemnity from the consumer trust for and in respect of any personal liability which he or she might incur arising out of or in connection with his or her acting or purporting to act as a trustee of the consumer trust, provided that such liability is not attributable to his or her own dishonesty, or to the wilful commission or omission by the trustee or former trustee of an act known by him or her to be a breach of trust.

40 (6) Each trustee and former trustee shall be entitled to a full and complete indemnity from the consumer trust for and in respect of any personal liability which he or she might incur arising out of or in connection with his or her acting or purporting to act as a trustee of the consumer trust, provided that such liability is not attributable to his or her own dishonesty, or to the wilful commission or omission by the trustee or former trustee of an act known by him or her to be a breach of trust.

(5) No act or omission of any trustee shall be challenged on the ground that such trustee is or was at any time material time a consumer or is or was in any way directly or indirectly involved or associated with any consumer.

18. Disqualification from appointment—The following persons shall not be capable of being appointed or reappointed, or of holding office, as a trustee of the consumer trust: 5

- (a) A bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled: 10
- (b) A person who has been convicted of any offence punishable by imprisonment for a term of 2 years or more:
- (c) A person who has been convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence: 15
- (d) A person who has been prohibited under section 188A of the Companies Act 1955 from being a director or promoter of, or in any way (whether directly or indirectly) being concerned or taking part in the management of, a company: 20
- (e) A person to whom an order made under section 189 of the Companies Act 1955 applies: 25
- (f) A person who is prohibited under section 189A of the Companies Act 1955 from being an officer or promoter of, or being concerned in or taking part (whether directly or indirectly) in the management of, any company: 30
- (g) A mentally disordered person within the meaning of the Mental Health Act 1969, or a person in respect of whose property a manager has been appointed in terms of the Protection of Personal and Property Rights Act 1988: 35
- (h) A person who is a director or officer or employee of the Electricity Corporation of New Zealand Limited, or of any successor thereto, or of any related company thereof.

19. Term of appointment—(1) The first trustees of the consumer trust shall hold office for the period specified in the trust deed. 40

(2) Every subsequent trustee shall hold office for such term not exceeding 4 years as shall be prescribed in the trust deed.

(3) A trustee may hold office on more than one occasion.

5 (4) A trustee may resign office in the manner prescribed in the trust deed.

(5) A trustee shall be deemed to have resigned office as a trustee if at any time that trustee is prohibited from acting as a trustee by virtue of **section 18** of this Act.

10 (6) A trustee may be removed from office at any time by the Minister—

(a) For disability, neglect of duty, or misconduct proved to the satisfaction of the Minister; or

15 (b) In any case where the Minister is satisfied on reasonable grounds that the trustee has acted or is acting in a manner prejudicial, or likely to be prejudicial, to the interests of the consumer trust.

(7) If any trustee dies or resigns or ceases to hold office, the office of that trustee shall become vacant and the vacancy shall be filled in the manner prescribed by the trust deed and any
20 person filling the vacancy shall hold office for the residue of the term of office of that trustee.

20. Purposes of consumer trust—(1) All property received by, vested in, or belonging to, the consumer trust shall be held, net of liabilities, on trust for the consumers for the time being
25 of the company.

(2) No consumer or past consumer of the company shall have any claim against the consumer trust except and to the extent, if at all, permitted by the trust deed.

30 (3) The consumer trust shall not be authorised to apply dividends payable to it by the company other than—

(a) By making distributions to the consumers; and

(b) In subscribing for further shares.

35 (4) The company shall afford all reasonable assistance and co-operation to the consumer trust so as to ensure that the consumer trust is able, should the trustees so elect, to make distributions to the consumers using the systems, records, and facilities of the company.

21. Financial provisions—(1) The company shall meet all
40 reasonable costs associated with the administration of the consumer trust, including the reasonable remuneration of the trustees and the reimbursement of the expenses incurred by them in their capacity as trustees; and such costs, for the

purposes of the Inland Revenue Acts, shall be deemed to be costs incurred by the company in the course of its business.

(2) The trustees shall ensure that full and correct accounts of all the financial transactions of the consumer trust and its assets, liabilities, and funds, are properly kept and maintained.

(3) The trustees shall, after the end of each financial year, have prepared financial statements including a balance sheet, an income and expenditure account and notes thereto, giving a true and fair view of the financial affairs of the consumer trust for the financial year.

(4) The financial statements shall be audited by an auditor appointed for the purpose, being a person qualified for appointment as auditor of a company under the Companies Act 1955 and not being a trustee, employee, or agent of the consumer trust.

(5) The auditor shall certify whether the financial statements are properly drawn up and give a true and fair view of the financial affairs of the consumer trust for the financial year.

(6) Unless otherwise directed by the Minister, the financial statements, together with the auditor's report thereon, shall be sent to the Minister not later than the 1st day of June in each year, and copies of the financial statements and the auditor's report shall be published by the trustees in the *Gazette* and in a principal newspaper circulating in the area specified in the licence referred to in section 14(1) of this Act:

Provided that the auditor may, if he or she sees fit, authorise the publication of the report in the newspaper in such abbreviated or condensed form as will enable the principal features of the report to be conveyed to readers thereof.

22. Matters to be included in trust deed—Subject to this Act, the trust deed shall contain provisions—

- (a) For specifying the number of trustees; and
- (b) For the holding of, and voting at, meetings of trustees and for specifying the quorum necessary for the holding of meetings of trustees; and
- (c) For specifying the manner in which a vacancy in the office of trustee shall be filled; and
- (d) For the appointment of officers, employees, managers, solicitors, bankers, and other agents; and
- (e) For the appointment of the directors of the company, being the directors whom the trustees, in terms of section 9 of this Act, are entitled to appoint; and

- (f) For specifying the manner in which the trustees shall receive, deal with, distribute, or expend property; and
- 5 (g) For specifying the circumstances in which the consumer trust may transfer or otherwise dispose of its shares, or any of them, to consumers; and
- (h) For specifying the powers of investment and management of the trustees in relation to the property of the consumer trust; and
- 10 (i) For the keeping of accounts; and
- (j) For specifying the manner in which the trust deed may be varied; and
- (k) For specifying such other matters (if any) as the Minister may consider appropriate.

15 **23. Trust deed not to be inconsistent with provisions of this Act**—(1) No provision of the trust deed shall be inconsistent with the provisions of this Act and the trust deed shall not be varied in a manner which is inconsistent with the provisions of this Act.

20 (2) Any provision of the trust deed which is inconsistent with the provisions of this Act and any variation of the trust deed which is inconsistent with the provisions of this Act shall be unenforceable and of no effect.

25 **24. Application of Trustee Act 1956**—(1) The Trustee Act 1956 applies to the consumer trust established under this Act.

30 (2) Notwithstanding section 2 (4) of the Trustee Act 1956, the powers conferred by or under the Trustee Act 1956 on a trustee are in addition to the powers given by this Act and by the trust deed; but the powers conferred on a trustee by the Trustee Act 1956, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in this Act or in the trust deed, and have effect subject to the terms of this Act and the trust deed.

35 **25. Provisions in relation to consumer trust in event of company assuming undertaking of electrical supply authority other than Board**—(1) In the event of the company, in terms of **section 28** of this Act, assuming, on an amalgamation, the undertaking of an electrical supply authority other than that of the Board, the consumers of the electrical supply authority concerned shall, from the appointed day referred to in **section 28** of this Act, become consumers of the company and beneficiaries of the consumer trust.

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(2) Following any assumption by the company, on an amalgamation, of any other undertaking as referred to in **subsection (1)** of this section, the trustees shall at their next meeting consider whether, in terms of the trust deed, additional trustees should be appointed, having regard to the increase in the number of consumers of the company, any relevant geographical considerations affecting representation, and any other matters which the trustees may deem relevant in the circumstances then obtaining.

26. Winding up of consumer trust by the Court—

(1) The consumer trust may be wound up by the High Court on the application of the Attorney-General, if the High Court is satisfied that it is just and equitable that the consumer trust should be wound up.

(2) All costs incurred by the Attorney-General in making application for the winding up of the consumer trust shall, unless the High Court otherwise orders, be a first charge on the property of the consumer trust.

(3) Any application to the High Court by the Attorney-General for the winding up of the consumer trust, and any winding up then effected, shall be governed by the same rules as in the case of the winding up of a company by the High Court under the Companies Act 1955.

(4) In the event of the consumer trust being wound up, the shares in the company held by the consumer trust shall be transferred to and held by the Public Trustee on trust for the company's consumers for the time being, and the Public Trustee, in that event, shall have the same powers, rights, obligations, and duties as the trustees possessed and were subject to in terms of this Act, the trust deed, and at law, prior to the winding up of the consumer trust, and the Public Trustee shall be entitled to such remuneration, from income received on trust for the consumers, as may be prescribed from time to time by the Minister.

PART III

AMALGAMATION OF UNDERTAKINGS

27. When contiguous electrical supply authority wishes to amalgamate its undertaking with company's undertaking—(1) Where, by a resolution passed by its members (or, in the case of a company, its directors), a contiguous electrical supply authority resolves that it is desirous of amalgamating its undertaking with the undertaking of the company, and where the company by a majority of its directors

resolves in favour of the proposed amalgamation, the proposal for amalgamation shall be submitted jointly by the company and by the electrical supply authority concerned to the Minister for approval.

5 (2) Before submitting the proposal for amalgamation to the Minister under **subsection (1)** of this section, the company and the electrical supply authority concerned shall jointly—

(a) Cause to be published in the *Gazette* and in the principal
10 daily newspapers circulating in the region or regions concerned, a notice—

(i) Stating that the company and the electrical supply authority are together intending to submit a proposal for amalgamation to the Minister; and

15 (ii) Specifying sufficient details of the proposed amalgamation to convey its main features; and

(iii) Stating that any consumer of either the company or the electrical supply authority concerned may, within 28 days after the last publication of the notice (which date shall be specified), make
20 submissions to the company and to the electrical supply authority concerned in writing regarding the proposed amalgamation; and

(b) Have regard to any submissions received within the time limited for receipt of such submissions.

25 (3) After receiving the proposal for amalgamation, the Minister, if he or she requires no aspect of the proposal to be reconsidered by the company and the electrical supply authority, and is otherwise satisfied that the proposed amalgamation should proceed, shall signify his or her approval
30 in writing to the company and to the electrical supply authority concerned.

(4) The Governor-General may, on the advice of the Minister, by Order in Council approve the proposal for amalgamation.

28. Matters to be specified in Order in Council—Any
35 Order in Council made under **section 27 (4)** of this Act shall—

(a) Appoint a day upon which the company shall assume the undertaking of the electrical supply authority concerned, which undertaking shall thenceforth be part of the undertaking of the company, and shall
40 prescribe all consequential provisions in that behalf; and

(b) In the case of an electrical supply authority that is an electric power board, provide for the dissolution thereof; and

- (c) Provide for the licence held by the company under section 20 of the Electricity Act 1968 to be reissued so as to specify the revised area; and
- (d) Provide for any increase in the capital of the company and for such percentage of the increased capital as shall represent the current value of the undertaking of the electrical supply authority concerned to be issued to the consumer trust for no consideration, with any balance of such increased capital (if any) to be made available for public subscription; and
- (e) Provide for such compensation (if any) to be payable by the company in terms of **section 29** of this Act; and
- (f) Provide for the winding up of any consumer or other trust holding shares in the capital of the contiguous electrical supply authority, or for the winding up of any electric power trust constituted pursuant to the Electric Power Boards Amendment Act 1990 in respect of the contiguous electrical supply authority concerned, and for the vesting of any assets held by such trust in the consumer trust.

29. When compensation payable on amalgamation—

(1) On a proposal for amalgamation being approved, the undertaking of the electrical supply authority concerned, where that electrical supply authority is an electric power board, shall vest in the company as from the day appointed in the Order in Council, with the company not being required to provide any money or other consideration therefor, given the public character of the transaction and the extent of the consumer ownership of the company.

(2) Where the electrical supply authority concerned is a municipal electricity department of a local authority or is otherwise owned and operated by a local authority, the local authority shall be paid by the company, in full compensation for the transfer to the company of the electricity undertaking concerned, such amount as may be specified in the Order in Council, the payment to be made to the local authority by a date likewise to be specified in the Order in Council.

PART IV

ADDITIONAL POWERS AND DUTIES OF COMPANY

30. Powers of entry for survey and investigation purposes—(1) Where the company wishes to undertake a survey or other investigation on any land for the purpose of gathering information necessary for any application for any

right, consent, or permit, or for the preparation of any report required for any proposed development, the company may, upon giving the owner and occupier of the land not less than 10 working days' notice of its intention to do so, apply to the
5 District Court nearest to the location of the land for an order under this section.

(2) On being satisfied that the proposed survey or investigation is necessary for the purposes of the proposed development, that the proposed development may properly be
10 undertaken by the company, and that the company has taken all reasonable steps to negotiate an agreement for entry, the District Court may make an order authorising the company to:

(a) Enter and re-enter the land at reasonable times, with such
15 persons as may reasonably be required, and by such means of conveyance as may be appropriate, together with such appliances, machinery, plant, equipment and materials as are reasonably necessary for making the survey or investigation required; and

(b) Excavate and bore into the land and remove samples
20 therefrom.

(3) Every order made under this section shall specify—

(a) How and when entry is to be made; and

(b) The specific powers to be exercised; and

(c) Such other conditions as the District Court thinks fit to
25 impose.

(4) Before exercising any powers authorised by an order made under this section, the company shall serve a sealed copy of the order on the owner and occupier of the land to which the order relates.

30 (5) Every officer, employee, or agent of the company acting pursuant to an order made under this section shall carry evidence of his or her authority and identity, or be working under the immediate control of a person holding such evidence, which evidence shall be produced if requested.

35 **31. Rights of entry in respect of existing works—**

(1) Subject to **subsection (2)** of this section, the company may enter upon any land (including land owned by the Crown) for the purpose of gaining access to any existing works owned by the company and may thereon perform any operation or task
40 necessary for the purpose of inspecting, maintaining, repairing, altering or removing such existing works.

(2) The power to enter upon land conferred by **subsection (1)** of this section shall be subject to the following conditions:

- (a) Entry to the land shall only be made by an officer, employee, or agent of the company authorised by the company in that behalf in writing; and
 - (b) Reasonable notice of an intention to enter shall be given; and 5
 - (c) Entry shall only be made at a reasonable time or times; and
 - (d) The person in charge of those entering shall carry with him or her and shall produce on initial entry, and later if required to do so, evidence of his or her authority and identify. 10
- (3) A certificate under the seal of the company that any specified works are existing works and are owned by the company shall be admissible in evidence in any proceeding and, in the absence of proof to the contrary, shall constitute proof of any statement to such effect. 15

32. Rights of entry in emergency—(1) In circumstances of emergency, whether involving probable danger to life or property or any reasonable apprehension to such effect, the company may enter upon any land (including land owned by the Crown) for the purpose of gaining access to any works owned by the company and may perform thereon any operation or task necessary for the purpose of removing or ameliorating any danger or avoiding any apprehended danger. 20

(2) Every officer, employee, or agent of the company entering land under subsection (1) of this section shall carry evidence of his or her authority and identity, or be working under the immediate control of a person holding such evidence, which evidence shall be produced if requested. 25

(3) As soon as practicable after any entry is made under subsection (1) of this section, the company shall advise the occupier of the land, in writing, of the entry effected and the reasons for it. 30

33. Power to execute works on any land—(1) Where the company wishes to enter upon any land (including land owned by the Crown) for the purposes of constructing or adding to any works, the company may, upon giving the owner and occupier of the land not less than 10 working days' notice of its intention to do so, apply to the District Court nearest to the location of the land for an order under this section. 35

(2) On being satisfied that the works are necessary for the purposes of supplying electricity, gas, or other substantial form of energy, as the case may be, to the owner or occupier or 40

other consumer and that the company has taken all reasonable steps to negotiate an agreement for entry in relation to the execution of the proposed works, the District Court may make an order authorising the company to—

- 5 (a) Enter and re-enter the land at reasonable times with such persons as may reasonably be required and by such means of conveyance as may be appropriate, together with such appliances, machinery, plant, equipment, and materials as are reasonably necessary for the purpose of effecting the works in question; and
- 10 (b) Execute such works as may be necessary.
- (3) Every order under this section shall specify—
- 15 (a) How and when entry is to be made; and
- (b) The specific powers to be exercised; and
- (c) Such other conditions as the District Court thinks fit to impose.
- (4) Before exercising any powers authorised by an order made under this section, the company shall serve a sealed copy of the order on the owner and occupier of the land to which the order relates.
- 20 (5) Every officer, employee, or agent of the company acting pursuant to an order made under this section shall carry evidence of his or her authority and identity, or be working under the immediate control of a person holding such evidence, which evidence shall be produced if requested.

34. Company liable to pay compensation for property damage—The company shall be liable in damages for any property damage or other direct financial loss caused to the property of any person, notwithstanding that the damage was caused by the company in the lawful exercise of any of the powers conferred upon it under this Act or any other enactment.

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35. Approval required for works on roads under control of local authority or other person, and for works on other areas under control of local authority—

35 (1) Subject to subsections (2) to (4) of this section, the company may from time to time construct, maintain, repair, alter, and remove works in, on, along, over, across, or under any road (including any private road or way) under the control of a local authority or other person, or other area under the control of a local authority, and for such purpose may open or break up any

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road and alter the position thereunder of any pipe (not being a main).

(2) The company shall not exercise the powers conferred by **subsection (1)** of this section otherwise than in accordance with such reasonable conditions as the local authority or other person having control of the road or way, or the local authority in the case of any other area under its control, may prescribe. 5

(3) Before proceeding to execute any works referred to in **subsection (1)** of this section, the company shall give to the local authority or other person as the case may be, at least 7 days' written notice of its intention to undertake the works or such lesser period of notice as may be agreed by the local authority or other person, as the case may be; and every such notice shall specify the location of the proposed works, the general nature of the operation or task to be undertaken, and in summary the reasons therefor. 10 15

(4) Where the execution of the works is urgent and necessary in the opinion of an engineer or foreman employed by the company, the company shall be excused from complying with the requirements in relation to a notice specified in **subsection (3)** of this section before commencing to undertake the works, but shall give the information required by **subsection (3)** of this section as soon as practicable thereafter. 20

(5) If the company fails to comply with the requirements of **subsection (3)** or **subsection (4)** of this section, it commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$1,000. 25

(6) The company shall have a right of appeal to the District Court against any and all conditions prescribed pursuant to **subsection (2)** of this section by the local authority or other person as the case may be. 30

(7) Every such appeal shall be made by giving notice of appeal within 20 working days after the date of notification of the conditions prescribed or within such further time as the District Court may allow. 35

(8) In its determination of any such appeal, the District Court may confirm or modify or cancel any or all of the conditions prescribed.

36. Alteration to works on road—(1) Where an alteration to any works on a road is reasonably requested by an owner or occupier of any land, so as to afford or improve access to such land or so as to enhance the reasonable enjoyment of the land, the company may require the person making the request to 40

meet the costs and expenses necessitated by the alteration so requested.

5 (2) On the works being completed, the costs and expenses concerned shall constitute a liquidated debt and be recoverable as such by the company from the person who requested the alteration.

37. Works not to interfere with public traffic—

10 (1) Where the company constructs works in, on, along, over, across, or under any road or navigable waters, such works shall not be constructed so as to interfere with lawful traffic along the road or navigable waters.

15 (2) The company, in maintaining, repairing, altering, or removing any works, shall cause no unnecessary or avoidable interference to traffic lawfully using any road or navigable waters.

38. Removal of trees, etc.—

20 (1) Where any tree, shrub, or plant on any land or road menaces or obstructs any electric line, or other works, or interferes with or is likely to interfere with any electric line or other works, the company may request the owner or occupier of the land, or the local authority or other person having control of the road, to remove or trim any such tree, shrub, or plant.

25 (2) Where the owner, occupier, local authority, or other person fails to comply with any request made under subsection (1) of this section, the company may, upon giving such owner, occupier, local authority, or other person not less than 10 working days' notice of its intention to do so, apply to the District Court nearest to the location of the land or road for an order authorising the company to remove or trim the tree, shrub, or plant, in respect of which the request was made, and the District Court may make such order, on such terms and conditions (including conditions relating to notice and as to the time of removal or trimming) as the District Court thinks fit.

30 (3) Where the company removes or trims a tree, shrub, or plant on any land or road under the authority of an order made under subsection (2) of this section, the owner, occupier, local authority, or other person to whom notice of the application under that subsection was given shall be liable for the reasonable costs incurred by the company in obtaining the order and in carrying out the removal or trimming operation.

35 (4) Where the company removes or trims a tree, shrub, or plant on any land or road under the authority of an order made under subsection (3) of this section, the owner, occupier, local authority, or other person to whom notice of the application under that subsection was given shall be liable for the reasonable costs incurred by the company in obtaining the order and in carrying out the removal or trimming operation.

39. Removal of trees, etc., in emergency—

40 (1) Where in the opinion of an engineer or foreman employed by the

company, there is imminent danger to, or the prospect of serious interference with, any line or other works arising from any tree, shrub, or plant on any land or road, the company may, on giving such oral notice to the occupier of the land or to the local authority or other person having control of the road as may be possible in the circumstances, enter upon the land or road where the tree, shrub, or plant is rooted or overhangs and there do such work in respect of the tree, shrub, or plant as may be necessary and sufficient, in the opinion of the engineer or foreman concerned, to remove or minimise the imminent danger or prospective serious interference. 5 10

(2) Every officer, employee, or agent of the company acting in terms of the powers conferred by **subsection (1)** of this section shall carry evidence of his or her authority and identity, or be working under the immediate control of a person holding such evidence, which evidence shall be produced if requested. 15

(3) Where the company removes or trims a tree, shrub, or plant on any land or road, under the authority of the powers conferred by **subsection (1)** of this section, the occupier of the land or local authority or other person having control of the road, as the case may be, shall be liable for the reasonable costs incurred by the company in undertaking the work properly required. 20

(4) Where there is no person to whom oral notice can reasonably be given in the circumstances, as required by **subsection (1)** of this section, the engineer or foreman employed by the company may nevertheless order that the work properly required proceed if, in his or her judgment, any delay would increase the danger or exacerbate the problem. 25

40. Temporary occupation or use of land reasonably required for construction of works—(1) The company may temporarily occupy or use any land reasonably required, in the opinion of the engineer in charge of the works, for the purpose of constructing, maintaining, repairing, altering, or removing any works. 30 35

(2) The engineer in charge of the works shall, before directing the occupation or use of any land pursuant to this section, give to the owner and occupier thereof not less than 20 working days' notice in writing of the company's intention to occupy or use the land in question, and shall state in such notice the nature of the proposed occupation or the use proposed to be made of such land. 40

(3) The owner or occupier may, within 10 working days after receiving such notice, and after having given notice to the

engineer in charge of the works of his or her intention to do so, apply to the District Court nearest to the location of the land for an order barring the proposed occupation or use of the land in question.

5 (4) Pending the determination by the District Court of such application, the company shall not occupy or use the land in question.

10 (5) If it appears to the District Court that the occupation or use proposed to be made of the land in question is unreasonable or unnecessary, or that other neighbouring lands are more fitting to be used for the purpose proposed, the District Court may order that the land in question shall not be occupied or used in the manner proposed.

15 (6) If it appears to the District Court that the occupation or use proposed to be made of the land in question is reasonable and necessary, the District Court may order that that land in question be so occupied or used, or materials be taken therefrom, in such manner and to such extent and subject to such limitations and restrictions as the District Court determines, and may provide for compensation, for
20 reinstatement, and for the duration of the proposed occupation or use.

41. Existing works on land not owned by company—All existing works on, over or under any land that is not owned by
25 the company shall be deemed to be lawfully fixed, installed, or erected thereon, and no person other than the company shall have any interest in any such works by reason only of having an interest in the land.

42. Installation on any land of any substation, transformer, lines, plant, or equipment or other facility—(1) Where, in the opinion of a senior engineer employed by the company, the installation on any land (including premises thereon) of any substation, transformer, lines, plant, or equipment or other facility is necessary to
30 ensure that an adequate supply of electricity or other substantial form of energy can be provided to a consumer who is desirous of receiving such supply and who is the owner or occupier of such land, and whether or not it is also desirable, in the view of the senior engineer, to service the reasonable
35 requirements of consumers on other land or premises therefrom, the company may, upon giving the owner and occupier of the land in question not less than 10 working days' notice of its intention to do so, apply to the District Court
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nearest to the location of the land in question for an order under this section.

(2) On being satisfied that the installation is reasonably necessary for the purposes of making available a satisfactory supply of electricity or other substantial form of energy (as the case may be) to the owner or occupier of the land and to any other consumer (as the case may be), and that the company has taken all reasonable steps to negotiate an agreement in that behalf, the District Court may make an order authorising the company to—

- (a) Install the substation, transformer, lines, plant, or equipment or other facility, as the case may be; and
- (b) Make all necessary arrangements, and take all ancillary steps, which may be appropriate.

(3) Every order made under this section shall specify—

- (a) The terms on which the installation shall be effected; and
- (b) The time when the work is to be carried out; and
- (c) Such other conditions as the Court thinks fit to impose.

(4) Before exercising any powers authorised by an order made under this section, the company shall serve a copy of the order on the owner and occupier of the land to which the order relates.

(5) Every officer, employee, or agent of the company acting pursuant to an order made under this section shall carry evidence of his or her authority and identity, or be working under the immediate control of a person holding such evidence, which evidence shall be produced if requested.

43. Powers of company outside area specified in licence held by company under section 20 of the Electricity Act 1968—Nothing in this Act shall prevent the company from acquiring land outside the area specified in the licence held by the company under section 20 of the Electricity Act 1968 or from constructing works thereon or from supplying electricity, gas, or other substantial forms of energy to consumers outside such area to the extent to which it may otherwise be lawful for it to do so.

44. Company may link up transmission lines, works, and systems with lines, works and systems outside area specified in licence held by company under section 20 of the Electricity Act 1968—The company may, by agreement with any other electrical supply authority, franchise holder or person responsible for the supply of electricity, gas, or any other substantial form of energy, link up any transmission lines,

pipelines, networks or systems or other works with those of such electrical supply authority, franchise holder, or other person, as the case may be.

- 5 **45. Powers conferred by this Act not to limit powers conferred by any other enactment or at law**—Nothing in this Act shall be construed so as to limit or derogate from any power conferred upon the company by any other enactment, or otherwise at law.

PART V

10 GENERAL PROVISIONS

- 15 **46. Execution against company's property restricted**—Notwithstanding any enactment or rule of law, no person shall be entitled, for the enforcement of any debt owed by the company, to levy or seize in execution any lines, pipes, facilities, or other works or other property owned by the company but laid, installed or constructed on, under, or over any land of which the company is neither the owner nor the occupier.

- 20 **47. Exemption from gift duty**—(1) No disposition of property made pursuant to this Act shall constitute a dutiable gift.

(2) For the purposes of this section, the expressions “disposition of property” and “dutiable gift” shall have the meanings assigned in the Estate and Gift Duties Act 1968.

- 25 **48. Protection of company against claims by consumers**—No consumer shall have any claim against the company in the event of any failure in the supply of electricity, gas, or any other substantial form of energy provided by the company which occurs as a result of accident, strike or labour disturbance, drought, or other unavoidable cause, including the failure or default of any third party.

- 30 **49. Repeal of Auckland Electric Power Board Act 1978 and other enactments**—(1) The enactments specified in the Schedule to this Act are repealed as from the transfer date.

- 35 (2) The Minister shall cause to be published in the *Gazette* the date of repeal of the enactments specified in the Schedule to this Act.
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Section 49 (1)**SCHEDULE****ENACTMENTS REPEALED**

1900, No. 17 (Local)—The Auckland Electric Lighting Act 1900.

1911, No. 28 (Local)—The Auckland Electric-power Station Site Act 1911.

1978, No. 11 (Local)—The Auckland Electric Power Board Act 1978.

1979, No. 16 (Local)—The Auckland Electric Power Board Amendment Act 1979.

1981, No. 4 (Local)—The Auckland Electric Power Board Amendment Act 1981.