

Commerce Amendment Bill (No 3)

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Electricity Industry Bill as introduced. The committee of the whole House has amended the bill and has divided it into the following bills:

- The Electricity Amendment Bill (No 2), comprising Part 1 and the Schedule
 - The Commerce Amendment Bill (No 3), comprising Part 2
 - The Electricity Industry Reform Amendment Bill, comprising Part 3
 - The Ministry of Energy (Abolition) Amendment Bill (No 2), comprising Part 4
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Key to symbols used in reprinted bill

As reported from the committee of the whole House

Struck out

~~Subject to this Act,~~

Text struck out

New

Subject to this Act,

Text inserted

Hon Pete Hodgson

Commerce Amendment Bill (No 3)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Commerce Amendment Act (No 3) **2001**.
 (2) In this Act, the Commerce Act 1986¹ is called “the principal Act”.

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¹ 1986 No 5

2 Commencement

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

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17 New Part 4A inserted

The principal Act is amended by inserting, after Part IV, the following Part:

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“Part 4A

“Provisions applicable to electricity industry

“57A Interpretation

In this subpart, unless the context otherwise requires,—

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“**electricity lines business** has the same meaning as in section 4 of the Electricity Industry Reform Act 1998

“**line owner** and **electricity distributor** have the same meaning as in section 2(1) of the Electricity Act 1992; and include any person that is or was 1 of those persons for any part of a financial year

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“**information** and **disclosed information** includes any statements, certificates, or other information required to be disclosed under **subpart 3**.

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“Subpart 1—Controlled goods or services

“57B Purpose

The purpose of this subpart is to promote the efficient operation of the markets for electricity distribution and transmission services through price control for the long-term benefit of consumers by ensuring that suppliers— 5

“(a) are limited in their ability to extract excessive profits; and

“(b) face strong incentives to improve efficiency and provide services at a quality that reflects consumer demands; and 10

“(c) share the benefits of efficiency gains with consumers,— in the electricity distribution and transmission markets.

“57C Commission, not Minister, may declare that goods or services supplied by electricity lines businesses are controlled 15

“(1) The Commission may, by notice in the *Gazette*, declare that all or any goods or services supplied by an electricity lines business are controlled.

“(2) No Order in Council may be made under Part IV in respect of goods or services supplied by an electricity lines business. 20

“(3) A declaration must be made by notice in the *Gazette*, with a copy to the electricity lines business.

“(4) The Commission must publish the declaration on the Internet and in any other manner (if any) that the Commission considers appropriate. 25

“57D Thresholds for declaration of control

“(1) The Commission must, as soon as practicable after the commencement of this subpart,—

“(a) set thresholds for the declaration of control in relation to electricity lines businesses; and 30

“(b) publish those thresholds in the *Gazette*, on the Internet, and in any other manner (if any) that the Commission considers appropriate.

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- “(2) Thresholds can be expressed in quantitative or qualitative terms.
- “57E **Process for making decisions on declaration of control**
 The Commission must—
- “(a) assess electricity lines businesses against the thresholds set under this subpart; and 5
 - “(b) identify any electricity lines business that breaches the thresholds; and
 - “(c) determine whether or not to declare all or any of the goods or services supplied by all or any of the identified electricity lines businesses to be controlled, taking into account the purpose of this subpart. 10
- “57F **Process before declaration made**
 The Commission must publish its intention to make a declaration, and, to the extent the Commission considers practicable, have regard to any view expressed to the Commission about that intention, before making a declaration under this subpart. 15
- “57G **Effect of declaration of control**
- “(1) A declaration of control under this subpart has the same effect as if it were an Order in Council made under section 53, and this Act, including (without limitation) sections 55 and 56 and Parts V, VI, and VII, applies accordingly with necessary modifications. 20
 - “(2) **Subsection (1)** does not limit or override section 62 of the Electricity Act 1992, and is not a reason under section 62(3) of that Act for ceasing to supply line function services. 25
- “57H **Priorities**
- “(1) The Commission may prioritise its duties under this Act by (without limitation)—
 - “(a) assessing 1 or any (but not necessarily all) of the electricity lines businesses; or 30
 - “(b) exercising its powers to make a declaration of control in relation to 1 or any (but not necessarily all) of the
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- electricity lines businesses that are identified as having breached any thresholds set under this subpart; or
- “(c) making temporary authorisations or accepting undertakings (rather than making final authorisations) in respect of 1 or more electricity lines businesses to which a declaration of control relates. 5
- “(2) In so prioritising, the Commission must have regard to the purpose of this subpart and may also have regard to any other factors it considers relevant, including all or any of the following: 10
- “(a) the size of the business:
- “(b) the recent performance of the business, including prices charged and the extent of any excess profits:
- “(c) the quality of the information provided to the Commission: 15
- “(d) the nature of the shareholding in the business:
- “(e) the extent to which businesses have breached the thresholds set by the Commission.
- “57I Maximum of 5 years for duration of declaration**
- “(1) Any declaration of control under this subpart expires on the earlier of— 20
- “(a) the expiry date stated in the declaration; or
- “(b) the expiry of 5 years from the date of the declaration.
- “(2) The Commission may make a further declaration of control in relation to the electricity lines business only after considering the purpose of this subpart. 25
- “57J Authorisations and undertakings**
- In exercising its powers under section 70 and section 72 concerning goods and services supplied by an electricity lines
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business, the Commission must have regard only to the purpose of this subpart, and not to the matters stated in section 73.

“57K Commission may lift control

“(1) The Commission may, by notice in the *Gazette*, revoke any declaration made under this subpart in respect of all or any of the goods or services to which the declaration relates. 5

“(2) The Commission may make a further declaration of control in relation to the electricity lines business only after considering the purpose of this subpart.

“57L Other price control provisions not affected 10

Nothing in this Part (other than **section 57C(2)**) limits or affects the exercise by any person of any power under Part IV or under any other Act to authorise the prices for, or impose controls on, goods or services supplied by electricity lines businesses. 15

“Subpart 2—Transpower’s pricing methodology

“57M Commission may be required to determine Transpower’s pricing methodology

“(1) The Governor-General may, by Order in Council, require the Commerce Commission to make a determination in respect of all or any component of Transpower’s pricing methodology. 20

“(2) The Governor-General may make an Order in Council under **subsection (1)** whether or not the Commission has made a declaration under **section 57C** that all or any of the goods or services supplied by Transpower are controlled. 25

“(3) In this subpart, **Transpower** means Transpower New Zealand Limited or any subsidiary of, or successor to, that company.

“57N Determinations in respect of Transpower’s pricing methodology

“(1) If an Order in Council is made under **section 57M**, the Commission must make a determination requiring the use of a specified methodology or component of a methodology for allocating costs to individual electricity generators, electricity 30

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retailers, electricity lines businesses, customers, or consumers, or classes of any of those persons.

“(2) The Commission may also, as part of the determination, do any of the following:

“(a) define the charges for individual electricity generators, electricity retailers, electricity lines businesses, customers, consumers, or classes of any of those persons: 5

“(b) impose quality standards generally or in respect of the supply of electricity line business activities to individual electricity generators, electricity retailers, electricity lines businesses, customers, or consumers, or classes of any of those persons: 10

“(c) require a specified person or class of persons receiving (either directly or indirectly) goods or services from Transpower to pay a specified amount or proportion of the total price, or the total price, for those goods or services. 15

“(3) This section does not limit the generality of any authorisation that may be made in respect of Transpower under this Act if goods and services have also been declared to be controlled. 20

“57O Authorisations and undertakings

In exercising its powers under sections 70 and 72 for the purpose of this subpart, the Commission need not have regard to the matters stated in section 73.

“57P Enforcement of determinations 25

“(1) If a determination is in force under this subpart, Transpower must not supply any goods or services except in accordance with the determination.

“(2) **Subsection (1)** does not limit or override section 62 of the Electricity Act 1992, and is not a reason under section 62(3) of that Act for ceasing to supply line function services. 30

“(3) This Act, including (without limitation) sections 86 and 87, applies as if a contravention of **subsection (1)** were a contravention of section 55.

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- “(4) An amount charged by Transpower in accordance with a methodology specified by the Commerce Commission determination—
- “(a) is recoverable in any court of competent jurisdiction as a debt due to Transpower; and 5
 - “(b) may be challenged in any proceedings to recover the debt on the ground that Transpower has incorrectly applied the methodology, but the methodology itself may not be challenged.
- “57Q **Revocation of determinations** 10
- “(1) The Governor-General may, by Order in Council, revoke a determination made under this subpart.
- “(2) Section 65 does not apply to revocations of determinations under this subpart.
- “Subpart 3—Information disclosure 15
- “57R **Information disclosure**
- “(1) The purpose of this section is to ensure that reliable information about financial and service performance is made publicly available.
- “(2) The Commerce Commission may— 20
- “(a) require line owners and electricity distributors to disclose information concerning their business as a line owner or as an electricity distributor:
 - “(b) require, for any disclosed information, the adoption, in the preparation or compilation of that information, of any methodology that is required by the Commerce Commission: 25
 - “(c) require any person (**person A**) that is required to disclose information under this section to include, with or in that information, information concerning the business of a person (**person B**) who is in a prescribed business relationship with person A, to the extent that person B’s business is as a line owner or electricity distributor or as a provider of prescribed related services. 30 35

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- “(3) Information required under **subsection (2)** may include (without limitation)—
- “(a) financial and pricing information:
 - “(b) contracts:
 - “(c) non-financial information: 5
 - “(d) plans and forecasts:
 - “(e) asset values:
 - “(f) transactions with related parties:
 - “(g) policies and adopted methodologies in these or other areas. 10
- “(4) The Commission must publish requirements made under this section—
- “(a) by publishing a notice in the *Gazette* that gives a brief description of the nature of the requirement, and where copies of the requirement are available for inspection and purchase; and 15
 - “(b) by making copies of the requirements available for inspection, free of charge,—
 - “(i) at the Commission (during ordinary office hours); and 20
 - “(ii) on the Internet in an electronic form that is publicly accessible (at all reasonable times); and
 - “(c) by making copies of them available for purchase at a reasonable price.
- “(5) The notice in the *Gazette* need not contain the requirement. 25
- “(6) In this section, unless the context otherwise requires,—
- “**disclose** means to publish or make publicly available or otherwise supply, as may be required by the Commission
 - “**prescribed** means prescribed by the Commission.
- “(7) The Commission may not require the disclosure of the names of the parties to, or the terms and conditions of, contracts made before 1 August 1990, but, if the contract is modified after that date, the Commission may require the disclosure of information as to the modification, the term or condition that has been modified (including its context), and the names (or characteristics) of the parties. 30 35
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- “(8) Requirements under this section may—
- “(a) prescribe the form and manner in which information is to be disclosed:
 - “(b) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner, by persons belonging to any specified class of persons: 5
 - “(c) set rules about when and for how long information must be disclosed:
 - “(d) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements: 10
 - “(e) provide for transitional provisions:
 - “(f) be made in respect of all or any line owners and electricity distributors and in respect of all or part of their business. 15

“57S Information to be supplied to Commerce Commission

- “(1) Every person who is required under **section 57R** to disclose information must supply to the Commerce Commission— 20
- “(a) a copy of all information disclosed under that section, which must be supplied within 5 working days after the information is first made so available:
 - “(b) any further statements, reports, agreements, particulars, and other information requested in writing by the Commerce Commission for the purpose of monitoring the person’s compliance with the requirements issued under that section. 25
- “(2) Every person to whom a request is made under **subsection (1)(b)** must comply with that request within the period specified by the Commerce Commission. 30
- “(3) All statements, reports, agreements, particulars, and information supplied under **subsection (1)** must be verified by statutory declaration in the form and by the persons required by the Commerce Commission. 35
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“57T Reasonable charge may be imposed for providing copies of statements

- “(1) Any person who is required under **section 57R** to provide copies of statements and information, on request, to the public may charge for providing those copies.
- “(2) A charge must be no more than is reasonably required to recover the costs of providing those copies.

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“Subpart 4—Asset valuations

“57U Recalibration of asset values of electricity line owners

- “(1) The Commerce Commission must, as soon as practicable after the commencement of this section,—
 - “(a) carry out a valuation of the line business system fixed assets of every line owner, using the ODV method as set out in the current ODV Handbook; and
 - “(b) have regard to any submissions made to it by the line owner or any user of the line business system fixed assets when carrying out the valuation.
- “(2) The Commerce Commission must publish a valuation report that—
 - “(a) discloses the matters required by the information disclosure regulations to be disclosed when a line owner carries out a valuation; and
 - “(b) includes the Commission’s reasons for an alteration from the existing valuation.
- “(3) The Commission must, within 5 working days of a valuation being carried out, give a copy of the valuation to the line owner, and publish on the Internet a notice—
 - “(a) stating that the valuation has been carried out; and
 - “(b) identifying the date at which the valuation report was prepared; and
 - “(c) stating the new valuation of the line business system fixed assets.
- “(4) The information disclosure regulations, or, as the case may be, information disclosure requirements issued by the Commission under **section 57R**, apply to a valuation report carried out by the Commission under this section as if it had been carried

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out by the line owner, and (without limitation) the line owner must publicly disclose the report, modify other disclosures, and base new disclosures on the report accordingly.

“(5) In this subpart,—

“**current ODV Handbook** means the ODV Handbook that is in force under the information disclosure regulations at the time when this section comes into force 5

“**information disclosure regulations** means regulations made under section 170 of the Electricity Act 1992

“**system fixed assets** has the same meaning as in the information disclosure regulations. 10

“57V **Review of valuation methodologies**

The Commission must carry out a review of valuation methodologies for line business system fixed assets as soon as practicable after carrying out the valuations required by **section 57U**. 15

“Subpart 5—General provisions

“57W **Powers of Commission**

The Commission has, for the purpose of carrying out its functions under **subparts 1, 2, and 4**, any powers under Part V that are necessary or desirable for that purpose. 20

“57X **Powers of entry and inspection**

“(1) The purpose of this section is to provide for access to line business system fixed assets, and to information about those assets, for the purpose of carrying out a valuation under **section 57U**. 25

“(2) The Commission may authorise any person or persons to exercise all or any of the powers contained in this section in respect of a specified line owner.

“(3) An authorised person may, at any reasonable time, enter any premises— 30
 “(a) owned or occupied by the line owner; or

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- “(b) on or at which line business system fixed assets, or information relating to those assets, are situated.
- “(4) An authorised person may do anything that is reasonably incidental to carrying out a valuation of the line business system fixed assets, including— 5
- “(a) carrying out inspections:
- “(b) conducting examinations, tests, and inquiries, or directing personnel of the line owner to conduct examinations, tests, or inquiries:
- “(c) taking photographs and measurements and making sketches and recordings: 10
- “(d) requiring the line owner, or its personnel, to produce documents or information relating to the line business system fixed assets and permitting the authorised person to examine and make copies or extracts of the documents and information: 15
- “(e) requiring the line owner, or its personnel, to make or provide statements, in any form and manner the authorised person specifies, about the condition, or other matters relating to the line business system fixed assets. 20
- “(5) However, this section does not authorise an authorised person to enter a home, except with the consent of an occupier or under a warrant issued under section 98A.
- “**57Y Authorised persons to prove identity** 25
- “(1) Every authorised person who enters any place under **section 57X** must,—
- “(a) to the extent practicable, give the line owner not less than 5 working days notice of the proposed entry; and
- “(b) on first entering and, if requested, at any later time, produce to the person apparently in charge of the place the authorisation under **section 57X**. 30
- “(2) If an authorised person enters any place under the authority of this Act and is unable, despite reasonable efforts, to find any person apparently in charge, the authorised person must before leaving the place leave a written notice stating— 35
- “(a) the person’s identity; and
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- “(b) the address of a place where the authorised person may be contacted; and
- “(c) the date and time of entry; and
- “(d) the reasons for entering.

- “**57Z Offence to obstruct authorised persons** 5
- “(1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$200,000 who intentionally obstructs, delays, hinders, or deceives, or causes to be obstructed, delayed, hindered, or deceived, an authorised person while the person is lawfully doing anything under **section 57X** that is carried out for the purpose of that section. 10
- “(2) If the Commission has reason to believe that any person is committing an offence under this section, the Commission has, for the purpose of carrying out a valuation under **section 57U**, the powers of search contained in section 98A, and sections 98A to 98G apply accordingly, with necessary modifications. 15
- “**57ZA Other offences**
- “(1) Every person commits an offence who— 20
- “(a) refuses or knowingly fails to comply with any information disclosure requirements made under **section 57R**; or
 - “(b) knowingly makes a false declaration when supplying any statement, report, agreement, particulars, or information under **section 57S**; or
 - “(c) knowingly makes a false declaration when supplying any statement, report, agreement, particulars, or information for the purpose of an asset valuation under **section 57U**. 25
- “(2) Every person who commits an offence against **subsection (1)(a)** is liable on summary conviction to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued. 30
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“(3) Every person who commits an offence against **subsection (1)(b) or (c)** is liable on summary conviction to a fine not exceeding \$200,000.

Compare: 1992 No 122 s 172

“57ZB Levy of electricity lines businesses

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“(1) Every electricity lines business must pay to the Minister, in each financial year, a levy of an amount stated in, or calculated in accordance with, regulations under **subsection (3)** for the performance of the Commission’s functions under this Part.

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“(2) The Minister must, before recommending the making of regulations, calculate the amount of the levies to be paid so as to ensure that the estimated costs of performing those functions can be met fully out of levies, and may recalculate that amount for any subsequent financial year.

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“(3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the amounts of the levies under this section or the method by which those levies are to be calculated, the financial year to which those levies apply, and the payment of those levies.

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“(4) The Minister may exempt any person or class of persons from paying levies, and may amend or revoke that exemption.

“(5) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Crown.”

18 Appeals in relation to determinations by Commission

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(1) Section 91 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to sections 92 to 95, and to subsection (2),—

“(a) there is a right of appeal to the High Court against any determination of the Commission under this Act other than—

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“(i) a declaration under **section 57C**:

“(ii) an authorisation under section 70 in respect of any goods or services supplied by an electricity lines business:

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- “(iii) a determination under **section 57N** concerning Transpower’s pricing methodology:
- “(b) there is a right of appeal to the High Court by way of case stated for the opinion of the court on a question of law only against— 5
- “(i) an authorisation under section 70 in respect of any goods or services supplied by an electricity lines business:
- “(ii) a determination under **section 57N** concerning Transpower’s pricing methodology.” 10
- (2) Section 93 of the principal Act is consequentially amended by inserting, after the word “appeal” in the first place where it appears, the words “other than an appeal under **section 91(1)(b)**”.

New

- 17 New Part 4A inserted** 15
- The principal Act is amended by inserting, after Part IV, the following Part:
- “Part 4A**
- “Provisions applicable to electricity industry**
- “57D Interpretation** 20
- “(1) In this Part, unless the context otherwise requires,—
- “**consumer** has the same meaning as in section 2(1) of the Electricity Act 1992
- “**electricity business** has the same meaning as in section 3 of the Electricity Industry Reform Act 1998 25
- “**electricity lines business** has the same meaning as in section 4 of the Electricity Industry Reform Act 1998
- “**information and disclosed information** includes any statements, certificates, or other information required to be disclosed under **subpart 3** 30
- “**involved** has the same meaning as in section 7 of the Electricity Industry Reform Act 1998

New

“**large electricity distributor** means an electricity distributor other than a small lines business

“**large electricity lines business** means an electricity lines business other than a small lines business

“**large line owner** means a line owner other than a small lines business 5

“**line owner** and **electricity distributor** have the same meaning as in section 2(1) of the Electricity Act 1992; and include any person that is or was one of those persons for any part of a financial year 10

“**national grid** means the assets used or owned by Transpower for the purpose of conveying electricity

“**prescribed voltage electric line** means an electric line that is capable of conveying electricity at a voltage equal to or greater than 3.3 kilovolts 15

“**small lines business** means a person (other than Transpower) if—

“(a) the total circuit length of the prescribed voltage electric lines owned by the person (or over which electricity is conveyed by the person, as the case may be) is less than 25 kilometres; or 20

“(b) the electricity conveyed by the person (or the electricity conveyed over lines owned by the person, as the case may be) is less than 20 gigawatt hours per annum; or

“(c) the electricity conveyed by the person (or the electricity conveyed over lines owned by the person, as the case may be) is conveyed to less than 500 consumers; or 25

“(d) the lines owned by the person (or over which electricity is conveyed by the person, as the case may be) are not connected, directly or indirectly, to the national grid 30

“**Transpower** means Transpower New Zealand Limited or any subsidiary of, or successor to, that company.

“(2) The prescribed voltage electric lines, the electricity conveyed, or the number of consumers to whom electricity is conveyed, when measured in relation to a person (**person A**) include, for the purposes of **subsection (1)**, the lines owned by, electricity conveyed by, or number of consumers of, any person (**person** 35

New

B) who carries on an electricity business in which person A is involved or who is involved in the electricity business carried on by person A.

“Subpart 1—Controlled goods or services

- “57E Purpose** 5
- The purpose of this subpart is to promote the efficient operation of markets directly related to electricity distribution and transmission services through targeted control for the long-term benefit of consumers by ensuring that suppliers—
- “(a) are limited in their ability to extract excessive profits; 10
and
- “(b) face strong incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
- “(c) share the benefits of efficiency gains with consumers, 15
including through lower prices.
- “57F Commission, not Minister, may declare that goods or services supplied by large electricity lines businesses are controlled**
- “(1) The Commission may, by notice in the *Gazette*, declare that 20
all or any goods or services supplied by a large electricity lines business in markets directly related to electricity distribution and transmission services are controlled.
- “(2) No Order in Council may be made under Part IV in respect of 25
goods or services supplied by a large electricity lines business in markets directly related to electricity distribution and transmission services.
- “(3) A declaration must be made by notice in the *Gazette*, with a copy to the electricity lines business.
- “(4) The Commission must publish the declaration on the Internet 30
and in any other manner (if any) that the Commission considers appropriate.
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New

“57G Thresholds for declaration of control

- “(1) The Commission must, as soon as practicable after the commencement of this subpart, and may from time to time—
- “(a) consult with participants in the electricity distribution and transmission markets and with consumers as to possible thresholds for the declaration of control in relation to large electricity lines businesses; and 5
 - “(b) set thresholds for the declaration of control in relation to large electricity lines businesses; and
 - “(c) publish those thresholds in the *Gazette*, on the Internet, and in any other manner (if any) that the Commission considers appropriate. 10
- “(2) Thresholds can be expressed in quantitative or qualitative terms.

“57H Process for making decisions on declaration of control 15

The Commission must—

- “(a) assess large electricity lines businesses against the thresholds set under this subpart; and
- “(b) identify any large electricity lines business that breaches the thresholds; and 20
- “(c) determine whether or not to declare all or any of the goods or services supplied by all or any of the identified large electricity lines businesses to be controlled, taking into account the purpose of this subpart; and
- “(d) in respect of each identified large electricity lines business,— 25
 - “(i) make a control declaration; or
 - “(ii) publish the reasons for not making a control declaration in the *Gazette*, on the Internet, and in any other manner (if any) that the Commission considers appropriate. 30

“57I Process before declaration made

- “(1) Before making any declaration of control under **section 57F**, the Commission must—
- “(a) publish its intention to make a declaration and invite interested persons to give their views on the matter; and 35

New

“(b) give a reasonable opportunity to interested persons to give those views; and

“(c) have regard to those views.

“(2) The notice of intention to declare must—

“(a) be published in the *Gazette* and in any other manner (if any) that the Commission considers appropriate; and 5

“(b) specify that the matter relates to the making of a declaration; and

“(c) invite interested persons to give their views on that matter to the Commission and specify the time and manner within which they may do so. 10

“57J Effect of declaration of control

“(1) A declaration of control under this subpart has the same effect as if it were an Order in Council made under section 53, and this Act, including (without limitation) sections 55 and 57B and Parts V, VI, and VII, applies accordingly with necessary modifications. 15

“(2) **Subsection (1)** does not limit or override section 62 of the Electricity Act 1992, and is not a reason under section 62(3) of that Act for ceasing to supply line function services. 20

“57K Priorities

“(1) The Commission may prioritise its duties under this subpart by (without limitation)—

“(a) assessing 1 or any (but not necessarily all) of the large electricity lines businesses; or 25

“(b) exercising its powers to make a declaration of control in relation to 1 or any (but not necessarily all) of the large electricity lines businesses that are identified as having breached any thresholds set under this subpart; or

“(c) making provisional authorisations or accepting undertakings (rather than making final authorisations) in respect of 1 or more large electricity lines businesses to which a declaration of control relates. 30

“(2) In so prioritising, the Commission must have regard to the purpose of this subpart and may also have regard to any other 35

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factors it considers relevant, including (without limitation) all, any, or none of the following:

“(a) the size of the business:

“(b) the recent performance of the business, including prices charged and the extent of any excess profits: 5

“(c) the quality of the information provided to the Commission:

“(d) the extent to which businesses have breached the thresholds set by the Commission.

“57L Maximum of 5 years for duration of declaration 10

“(1) Any declaration of control under this subpart expires on the earlier of—

“(a) the expiry date stated in the declaration; or

“(b) the expiry of 5 years from the date of the declaration.

“(2) The Commission may make a further declaration of control in relation to the electricity lines business only after considering the purpose of this subpart. 15

“57M Authorisations and undertakings

In exercising its powers under sections 70 to 72 concerning goods and services supplied by a large electricity lines business, the Commission must have regard only to the purpose of this subpart, and not to the matters stated in section 70A, and sections 70 to 72 apply with necessary modifications. 20

“57N Commission may lift control

“(1) The Commission may, by notice in the *Gazette*, revoke any declaration made under this subpart in respect of all or any of the goods or services to which the declaration relates. 25

“(2) The Commission may make a further declaration of control in relation to the electricity lines business only after considering the purpose of this subpart. 30

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“Subpart 2—Transpower’s pricing methodology

“57O **Commission may be required to authorise
Transpower’s pricing methodology**

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Energy, require the Commerce Commission to make an authorisation in respect of all or any component of Transpower’s pricing methodology. 5
- “(2) The Governor-General may make an Order in Council under **subsection (1)** whether or not the Commission has made a declaration under **section 57F** that all or any of the goods or services supplied by Transpower are controlled. 10
- “(3) The Minister of Energy must consult with Transpower and other affected parties before making a recommendation.

“57P **Authorisations in respect of Transpower’s pricing methodology**

- “(1) If an Order in Council is made under **section 57O**, the Commission must make an authorisation requiring the use of a specified methodology or component of a methodology for allocating Transpower’s revenue requirement to individual electricity generators, electricity retailers, electricity lines businesses, customers, or consumers, or classes of any of those persons. 15 20
- “(2) The Commission may also, as part of the authorisation, do any of the following:
- “(a) define the charges for individual electricity generators, electricity retailers, electricity lines businesses, customers, consumers, or classes of any of those persons: 25
- “(b) impose quality standards generally or in respect of the supply of electricity line business activities to individual electricity generators, electricity retailers, electricity lines businesses, customers, or consumers, or classes of any of those persons: 30
- “(c) require a specified person or class of persons receiving (either directly or indirectly) goods or services from Transpower to pay a specified amount or proportion of 35
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the total price, or the total price, for those goods or services:

“(d) authorise a way or ways in which Transpower may apply the methodology.

“(3) This section does not limit the generality of any authorisation that may be made in respect of Transpower under this Act if goods and services have also been declared to be controlled. 5

“57Q Authorisations and undertakings

In exercising its powers under sections 70 and 72 for the purpose of this subpart, the Commission need not have regard to the matters stated in section 70A, but must have regard to any efficiencies that the Commission considers will result, or will be likely to result, from the exercise of those powers. 10

“57R Enforcement of authorisations

“(1) If an authorisation is in force under this subpart, Transpower must not supply any goods or services to which the authorisation applies except in accordance with the authorisation (or with an undertaking given under section 72). 15

“(2) **Subsection (1)** does not limit or override section 62 of the Electricity Act 1992, and is not a reason under section 62(3) of that Act for ceasing to supply line function services. 20

“(3) This Act, including (without limitation) sections 86 and 87, applies as if a contravention of **subsection (1)** were a contravention of section 55.

“(4) The authorisation has the same effect as if it were made under section 70, and this Act, including (without limitation) section 57B and Parts V, VI, and VII, applies accordingly with necessary modifications. 25

“(5) An amount charged by Transpower in accordance with a methodology specified by the Commerce Commission authorisation (or by an undertaking given under section 72)— 30

“(a) is recoverable in any court of competent jurisdiction as a debt due to Transpower; and

“(b) may be challenged in any proceedings to recover the debt on the ground that Transpower has incorrectly 35

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applied the methodology in a manner that is adverse to the payer and that was not authorised by the Commission, but the methodology itself may not be challenged.

“57S Revocation of authorisations

- “**(1)** The Governor-General may, by Order in Council, revoke an authorisation made under this subpart. 5
- “**(2)** Section 65 does not apply to revocations of authorisations under this subpart.

“Subpart 3—Information disclosure**“57T Information disclosure**

- “**(1)** The purpose of this subpart is to promote the efficient operation of markets directly related to electricity distribution and transmission services by ensuring that large line owners and large electricity distributors make publicly available reliable and timely information about the operation and behaviour of those businesses, so that a wide range of people are informed about such factors as profits, costs, asset values, price (including terms and conditions of supply), quality, security, and reliability of supply of those businesses. 10
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- “**(2)** The Commerce Commission— 20
- “**(a)** must require large line owners and large electricity distributors to disclose information concerning their business as a line owner or as an electricity distributor:
- “**(b)** may require, for any disclosed information, the adoption, in the preparation or compilation of that information, of any methodology that is required by the Commerce Commission: 25
- “**(c)** may require any person (**person A**) that is required to disclose information under this section to include, with or in that information, information concerning the business of a person (**person B**) who is in a prescribed business relationship with person A, to the extent that person B’s business is as a line owner or electricity distributor or as a provider of prescribed related services. 30
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| <p>“(3) Information required under subsection (2) may include (without limitation)—</p> <p> “(a) financial statements:</p> <p> “(b) asset values and valuation reports:</p> <p> “(c) prices and pricing methodologies:</p> <p> “(d) contracts:</p> <p> “(e) transactions with related parties:</p> <p> “(f) financial and non-financial performance measures:</p> <p> “(g) plans and forecasts:</p> <p> “(h) policies and methodologies in these or other areas.</p> <p>“(4) The Commission must publish requirements made under this section—</p> <p> “(a) by publishing a notice in the <i>Gazette</i> that gives a brief description of the nature of the requirement, and where copies of the requirement are available for inspection and purchase; and</p> <p> “(b) by making copies of the requirements available for inspection, free of charge,—</p> <p> “(i) at the Commission (during ordinary office hours); and</p> <p> “(ii) on the Internet in an electronic form that is publicly accessible (at all reasonable times); and</p> <p> “(c) by making copies of them available for purchase at a reasonable price.</p> <p>“(5) The notice in the <i>Gazette</i> need not contain the requirement.</p> <p>“(6) In this section, unless the context otherwise requires,—</p> <p> “disclose means to publish or make publicly available or otherwise supply, as may be required by the Commission</p> <p> “prescribed means prescribed by the Commission.</p> <p>“(7) The Commission may not require the disclosure of the names of the parties to, or the terms and conditions of, contracts made before 1 August 1990 but, if the contract is modified after that date, the Commission may require the disclosure of information as to the modification, the term or condition that has been modified (including its context), and the names (or characteristics) of the parties.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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- “(8) Requirements under this section may—
- “(a) prescribe the form and manner in which information is to be disclosed:
 - “(b) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner, by persons belonging to any specified class of persons: 5
 - “(c) set rules about when and for how long information must be disclosed:
 - “(d) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements: 10
 - “(e) provide for transitional provisions:
 - “(f) be made in respect of all or any large line owners and large electricity distributors and in respect of all or part of their business. 15

“57U Information to be supplied to Commerce Commission

- “(1) Every person who is required under **section 57T** to disclose information must supply to the Commerce Commission— 20
- “(a) a copy of all information disclosed under that section, which must be supplied within 5 working days after the information is first made so available:
 - “(b) any further statements, reports, agreements, particulars, and other information requested in writing by the Commerce Commission for the purpose of monitoring the person’s compliance with the requirements issued under that section. 25
- “(2) Every person to whom a request is made under **subsection (1)(b)** must comply with that request within the period specified by the Commerce Commission. 30
- “(3) The Commission may require all or any statements, reports, agreements, particulars, and information supplied under **subsection (1)** to be verified by statutory declaration by the persons and in the form required by the Commerce Commission. 35
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- “57V Commerce Commission to publish summaries**
 The Commerce Commission must, as soon as practicable after information is publicly disclosed under this subpart, publish a summary and analysis of the publicly disclosed information for the purpose of promoting greater understanding of the relative performance of individual line owners and electricity distributors, and the changes in performance over time. 5
- “57W Reasonable charge may be imposed for providing copies of statements**
- “(1)** Any person who is required under **section 57T** to provide copies of statements and information, on request, to the public may charge for providing those copies. 10
- “(2)** A charge must be no more than is reasonably required to recover the costs of providing those copies.
- “Subpart 4—Asset valuations** 15
- “Recalibration of asset values of large electricity line owners*
- “57X Purpose of recalibrations**
 The purpose of **sections 57Z to 57ZC** is to ensure that valuations of the line business system fixed assets of every large line owner reflect a rigorous and accurate application of the ODV method as set out in the current ODV Handbook. 20
- “57Y Interpretation**
 In this subpart,—
- “current ODV Handbook** means the ODV Handbook that is in force under the information disclosure regulations at the time when this section comes into force 25
- “information disclosure regulations** means regulations under section 170 of the Electricity Act 1992 that are in force at the time when this section comes into force 30
- “system fixed assets** has the same meaning as in the information disclosure regulations.
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- “57Z Large electricity line owners must supply valuation to Commerce Commission**
- “(1) Every large electricity line owner must supply a copy of a valuation report relating to its line business system fixed assets to the Commerce Commission no later than **31 August 2001** (or, in the case of Transpower, no later than **30 November 2001**). 5
- “(2) The report must be the most recent report, with a valuation date on or before **31 March 2001** (or, in the case of Transpower, on or before **30 June 2001**), carried out for the purpose of regulation 20 of the information disclosure regulations. 10
- “(3) A copy of the certificate in form 7 of those regulations, duly signed by 2 directors or principals of the line owner, must be appended to the valuation report.
- “57ZA Comprehensive audit of asset values of large electricity line owners** 15
- “(1) The Commerce Commission must, as soon as practicable after receiving a valuation report from a large line owner, carry out a comprehensive audit of the valuation of the line business system fixed assets of the line owner, using the ODV method as set out in the current ODV Handbook. 20
- “(2) The Commission must publish a document outlining the processes that will be involved in a comprehensive audit, the form that the audit will take, and the circumstances under which the valuation report will be approved. 25
- “(3) The Commission must have regard to the purpose of this subpart when preparing that document.
- “57ZB Procedure after audit of asset values carried out**
- “(1) The Commission must, as soon as practicable after completing an audit, notify the line owner whether or not it will approve the valuation report. 30
- “(2) If the Commission does not approve the valuation report, the notification in **subsection (1)** must—
- “(a) give the reasons why the report was not approved; and
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- “(b) specify the date by which a revised valuation report must be given to the Commission.
- “(3) The Commission must, as soon as practicable after receiving a revised valuation report, consider the valuation report and notify the line owner of its decision as in **subsections (1) and (2)**. 5
- “(4) If the line owner does not comply with a requirement to give a revised valuation report that meets the Commission’s requirements to the Commission by the specified date, the Commission may revise the valuation report itself.
- “(5) The Commission must have regard to any submissions made to it by the line owner or any user of the line business system fixed assets or any other person when carrying out the audit. 10
- “57ZC Outcome of audit of asset values**
- “(1) Every large line owner must publicly disclose, by **31 March 2002**, a valuation report that has been approved by the Commission. 15
- “(2) The line owner must also, within 5 working days of publicly disclosing that valuation report, publish on the Internet a notice stating—
- “(a) that the valuation has been publicly disclosed; and 20
- “(b) the valuation date of the valuation report; and
- “(c) the valuation of the line business system fixed assets as stated in the report; and
- “(d) whether the valuation of the line business fixed assets has changed as a result of the comprehensive audit process under this Act and, if so, by how much. 25
- “(3) The information disclosure regulations or, as the case may be, information disclosure requirements issued by the Commission under **section 57T**, apply to a valuation report under this section as if it had been carried out by the line owner under those regulations, and (without limitation) the line owner must base new disclosures on that report accordingly. 30
- “(4) The Commission may require a line owner to modify previous disclosures made under the information disclosure regulations so that they are consistent with the new valuation report. 35

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“(5) The Commission may specify the terms and conditions on which those modifications must be made.

“Review of valuation methodologies

“57ZD Review of valuation methodologies

The Commission must carry out a review of valuation methodologies for line business system fixed assets as soon as practicable. 5

“57ZE Process when carrying out review of valuation methodologies

“(1) When carrying out its review of valuation methodologies under **section 57ZD**, the Commission must— 10

“(a) publish its intention to carry out a review of valuation methodologies and invite interested persons to give their views on the matter; and

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

“(c) have regard to those views.

“(2) The notice of intention to carry out a review must—

“(a) be published in the *Gazette* and in any other manner (if any) that the Commission considers appropriate; and 20

“(b) specify that the matter relates to the carrying out of a review of valuation methodologies; and

“(c) invite interested persons to give their views on that matter to the Commission and specify the time and manner in which they may do so. 25

“Subpart 5—General provisions

“57ZF Powers of Commission

The Commission has, for the purpose of carrying out its functions under this Part, any powers under this Act that it considers are necessary or desirable for that purpose. 30

“57ZG Powers of entry and inspection

“(1) The purpose of this section is to provide for access to line business system fixed assets, and to information about those

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assets, for the purpose of carrying out activities under subpart 4 .	
“(2) The Commission may authorise any person or persons to exercise all or any of the powers contained in this section in respect of a specified line owner.	5
“(3) An authorised person may, at any reasonable time, enter any premises—	
“(a) owned or occupied by the line owner; or	
“(b) on or at which line business system fixed assets, or information relating to those assets, are situated.	10
“(4) An authorised person must give reasonable notice to the owner or occupier of the premises (at least 5 working days before entry) of his or her intention to enter the premises.	
“(5) An authorised person may do anything that is reasonably incidental to activities under subpart 4 (but not inconsistent with the line owner’s obligations under the Electricity Act 1992 or the Health and Safety in Employment Act 1992), including—	15
“(a) carrying out inspections:	
“(b) conducting examinations, tests, and inquiries, or directing personnel of the line owner to conduct examinations, tests, or inquiries:	20
“(c) taking photographs and measurements and making sketches and recordings:	
“(d) requiring the line owner, or its personnel, to produce documents or information relating to the line business system fixed assets and permitting the authorised person to examine and make copies or extracts of the documents and information:	25
“(e) requiring the line owner, or its personnel, to make or provide statements, in any form and manner the authorised person specifies, about the condition, or other matters relating to the line business system fixed assets.	30
“(6) However, this section does not authorise an authorised person to enter a home, except with the consent of an occupier or under a warrant issued under section 98A.	35

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“57ZH Authorised persons to prove identity

“(1) Every authorised person who enters any place under **section 57ZG** must,—

- “(a) to the extent practicable, give the line owner not less than 5 working days’ notice of the proposed entry; and 5
- “(b) on first entering and, if requested, at any later time, produce to the person apparently in charge of the place the authorisation under **section 57ZG**.

“(2) If an authorised person enters any place under the authority of this Act and is unable, despite reasonable efforts, to find any person apparently in charge, the authorised person must before leaving the place leave a written notice stating— 10

- “(a) the person’s identity; and
- “(b) the address of a place where the authorised person may be contacted; and 15
- “(c) the date and time of entry; and
- “(d) the reasons for entering.

“57ZI Offence to obstruct authorised persons

“(1) Every large line owner or large electricity distributor commits an offence, and is liable on summary conviction to a fine not exceeding \$200,000 who intentionally obstructs, delays, hinders, or deceives, or causes to be obstructed, delayed, hindered, or deceived, an authorised person while the person is lawfully doing anything under **section 57ZG** that is carried out for the purpose of that section. 20 25

“(2) If the Commission has reason to believe that any large line owner or large electricity distributor is committing an offence under this section, the Commission has, for the purpose of carrying out its activities under **subpart 4**, the powers of search contained in section 98A, and sections 98A to 98G apply accordingly, with necessary modifications. 30

“57ZJ Other offences

“(1) Every person commits an offence who—

- “(a) refuses or knowingly fails to comply with any information disclosure requirements made under **section 57T**; or 35

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“(b) knowingly makes a false declaration when supplying any statement, report, agreement, particulars, or information under section 57U ; or	
“(c) knowingly makes a false declaration when supplying any statement, report, agreement, particulars, or information for the purpose of an asset valuation under section 57Z ; or	5
“(d) fails to publicly disclose a valuation report under section 57ZC(1) .	
“(2) Every person who commits an offence against subsection (1)(a) or subsection (1)(d) is liable on summary conviction to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.	10
“(3) Every person who commits an offence against subsection (1)(b) or subsection (1)(c) is liable on summary conviction to a fine not exceeding \$200,000.	15
Compare: 1992 No 122 s 172	
“57ZK Levy of electricity lines businesses	
“(1) Every large electricity lines business (or prescribed class of large electricity lines businesses) must pay to the Minister of Energy the levy prescribed by regulations made under subsection (2) .	20
“(2) The Governor-General may, by Order in Council made on the recommendation of the Minister of Energy, make regulations—	25
“(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:	30
“(b) including in levies, or providing for inclusion in levies of, any shortfall in recovering those actual costs:	
“(c) refunding, or providing for refunds of, any over-recovery of those actual costs:	35

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| <p>“(d) providing different levies for different classes of large electricity lines businesses:</p> <p>“(e) specifying the financial year or part financial year to which those levies apply, and applying to that financial year or part and each subsequent financial year until revoked or replaced:</p> <p>“(f) providing for the payment and collection of those levies:</p> <p>“(g) for the first financial year to which the levy applies, including in the levy amount or method costs incurred from 13 December 2000 by the Commission in connection with preparing itself to perform, and performing, its functions, powers, and duties under this Part, irrespective of the fact that the regulations are made and come into effect after that date:</p> <p>“(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:</p> <p>“(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.</p> <p>“(3) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Crown.”</p> <p>18 Appeals in relation to determinations by Commission</p> <p>(1) Section 91 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:</p> <p>“(1) Subject to sections 92 to 95, and to subsection (2),—</p> <p>“(a) there is a right of appeal to the High Court against any determination of the Commission under this Act other than—</p> <p>“(i) a declaration under section 57F:</p> <p>“(ii) an authorisation under section 70 or a provisional authorisation under section 71:</p> <p>“(iii) an authorisation under section 57P concerning Transpower’s pricing methodology:</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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- “(iv) a decision of the Commission whether or not to approve a valuation report under **section 57ZB**;
- “(b) there is a right of appeal to the High Court by way of case stated for the opinion of the court on a question of law only against—
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- “(i) an authorisation under section 70 or a provisional authorisation under section 71;
- “(ii) an authorisation under **section 57P** concerning Transpower’s pricing methodology.”
- (2) Section 93 of the principal Act is consequentially amended by inserting, after the word “appeal” in the first place where it appears, the words “(other than an appeal under **section 91(1)(b))**”.
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Legislative history

25 July 2001

Divided from Electricity Industry Bill (Bill 86–1),
(Bill 86–2B)
