

Commerce Amendment Bill (No 3)

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Electricity and Gas Industries Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and divided it as follows:

- The Electricity Amendment Bill (No 2), comprising Part 1
 - The Electricity Industry Reform Amendment Bill, comprising Part 2
 - This bill, comprising Part 3
 - The Gas Amendment Bill (No 2), comprising Part 4
 - The Crown Minerals Amendment Bill (No 2), comprising Part 5
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Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon Pete Hodgson

Commerce Amendment Bill (No 3)

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Commerce Amendment Act (No 3) **2004**.
- (2) In this Act, the Commerce Act 1986¹ is called “the principal Act”.

¹ 1986 No 5

2 Commencement

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

New (majority)

30A Interpretation

Section 2(1) of the principal Act is amended by inserting, after the definition of **document**, the following definition:

“**Electricity Commission** means the Commission continued under **section 172M** of the Electricity Act 1992”. 5

30B New section 57CA inserted

The principal Act is amended by inserting, after section 57C, the following section:

“57CA Impact of certain decisions made under Gas Act 1992 10

“(1) This section applies if—

“(a) the Commission is exercising powers under this Part or sections 70 to 72 in relation to the gas industry; and

“(b) the industry body is approved or the Energy Commission is established under **Part 4A** of the Gas Act 1992. 15

“(2) The Commission must take into account, before exercising any of its powers under this Part or sections 70 to 72,—

“(a) any gas governance regulation or rule under **Part 4A** of the Gas Act 1992, or any decision under those gas governance regulations or rules, that relates to or affects the quality standards or pricing methodologies applicable to a pipeline owner: 20

“(b) the levy payable by any pipeline owner under the Gas Act 1992.

“(3) The Commission must, if asked by the Energy Commission to do so, reconsider an existing authorisation or undertaking and, to the extent that the Commission considers it necessary or desirable to do so, vary the authorisation or accept a revised undertaking, to take account of any matter referred to in **subsection (2).**” 25 30

Struck out (majority)

31 New section 57DA inserted

(1) The principal Act is amended by inserting, after section 57D, the following section:

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“57DA Body that exercises functions and powers under this Part

- “(1) If no Order in Council is in force under this section, the Commerce Commission established under this Act is the body that exercises the functions and powers under this Part. 5
- “(2) The Governor-General may, at any time after **31 December 2005**, by Order in Council made on the recommendation of the Minister of Energy, declare that the Electricity Commission continued under **section 172M** of the Electricity Act 1992 is the body that exercises the functions and powers under this Part in relation to either Transpower or all large electricity lines businesses. 10
- “(3) The Minister of Energy may make the recommendation only if—
 - “(a) he or she has consulted with representatives of industry participants and representatives of consumers; and 15
 - “(b) he or she has sought a recommendation from the Electricity Commission and a recommendation from the Commerce Commission and has consulted with those organisations about their recommendations; and 20
 - “(c) he or she is satisfied that the transfer of functions that would occur would result in—
 - “(i) more efficient and effective achievement of the purposes of this subpart; and
 - “(ii) more efficient and effective achievement of the purposes of the Electricity Act 1992 as it applies to some or all large electricity line businesses; and 25
 - “(iii) lower compliance costs for participants in the electricity distribution and transmission markets. 30
- “(4) If an Order in Council is in force under this section,—
 - “(a) references in this Part and sections 70 to 72 to the Commission or the Commerce Commission must, in so far as they relate to either Transpower or the large electricity lines businesses as declared in the order, be read as references to the Electricity Commission (unless the context otherwise requires); and 35
 - “(b) the Electricity Commission has, for the purpose of performing its functions and powers under this Part and

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sections 70 to 72, the powers of the Commerce Commission under sections 86, 87, 88A, 91, 92, 93, 94, 98, 99, and 100; and

- “(c) despite section 172ZA of the Electricity Act 1992, the Minister of Energy may not direct the Electricity Commission on matters relating to this Part and sections 70 to 72.”

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New (majority)**31 New sections 57DA to 57DF inserted**

- (1) The principal Act is amended by inserting, after section 57D, the following sections:

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“57DA Body that exercises jurisdiction under this Part

- “(1) The Commerce Commission established under this Act is the body that exercises jurisdiction under this Part in respect of a large electricity lines business unless an Order in Council is in force under **section 57DB** or **section 57DC** in respect of that business.

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- “(2) **Jurisdiction under this Part**, in this section and **sections 57DB to 57DF**, includes all of the functions, powers, and duties of the Commerce Commission under this Part and sections 70 to 72.

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“57DB Transfer of jurisdiction in respect of Transpower

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Energy, at any time, transfer to the Electricity Commission the jurisdiction under this Part in respect of Transpower.

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- “(2) **Section 57DD** applies before an order can be made.

“57DC Transfer of jurisdiction relating to other large electricity lines businesses

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Energy, transfer to the Electricity Commission the jurisdiction under this Part in respect of all other large electricity lines businesses.

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New (majority)

“(2) The order may be made no earlier than 30 September 2007 .	
“(3) The order may transfer different parts of that jurisdiction on different dates, provided that the transfer of the jurisdiction to administer thresholds, and to make and enforce declarations of control, may not take effect before the later of—	5
“(a) 18 months after the order is made; or	
“(b) 1 April 2009 .	
“(4) The order may also specify the extent to which, or the purposes for which, references in sections 86, 87, 88, 88A, 91, 92, 93, 94, 98, 99, and 100, to the Commission or the Commerce Commission apply to the Electricity Commission, in so far as they relate to any business to which the order applies.	10
“(5) Section 57DD applies before an order can be made.	
“57DD Procedure before jurisdiction order can be made	
“(1) The Minister of Energy may make a recommendation for the purpose of section 57DB or section 57DC only if—	15
“(a) he or she has consulted with representatives of industry participants and representatives of consumers; and	
“(b) he or she has consulted with the Electricity Commission and the Commerce Commission and has sought a recommendation from them; and	20
“(c) he or she is satisfied that the transfer of jurisdiction that would occur would result in—	
“(i) more efficient and effective achievement of the purposes of this Part; and	25
“(ii) more efficient and effective achievement of the purposes of the Electricity Act 1992 as it applies to some or all large electricity line businesses; and	
“(iii) lower compliance costs for industry participants in the electricity distribution and transmission markets.	30
“(2) Industry participant has the same meaning as in the Electricity Act 1992.	

New (majority)**“57DE Levies during transition in jurisdiction**

“(1) The costs of the Commerce Commission during any period after an order is made to transfer jurisdiction under this Part may continue to be met via levy regulations under section 57ZK or section 74.

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

“57DF Ministerial powers

The Minister of Energy may not set objectives and outcomes under **section 172ZK** of the Electricity Act 1992 that amount to a direction to the Electricity Commission on matters relating to its jurisdiction under this Part.”

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Struck out (majority)**32 Thresholds for declaration of control**

Section 57G of the principal Act is amended by adding the following subsections:

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“(3) The Commission may incorporate by reference in a threshold any document that is publicly available (at all reasonable times) on the Internet.

“(4) That other document (as it existed on the date of the inclusion but with any additions or variations (if any) as are specified in the threshold published in the *Gazette*) forms part of the threshold.”

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New (majority)**32 New sections 57GA to 57GG inserted**

The principal Act is amended by inserting after section 57G, the following sections:

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“57GA Incorporation by reference of material in thresholds

“(1) The Commission may incorporate by reference in a threshold any written material that deals with technical matters and is

New (majority)

too large or impractical to include in, or print as part of, the threshold.

- “(2) Material may be incorporated by reference in a threshold—
 - “(a) in whole or in part; and
 - “(b) with modifications, additions, or variations specified in the threshold. 5
- “(3) Material incorporated by reference in a threshold has legal effect as part of the threshold.

“57GB Effect of amendments to, or replacement of, material incorporated by reference in thresholds 10

An amendment to, or replacement of, material incorporated by reference in a threshold (**threshold A**) has legal effect as part of threshold A only if a threshold made under section 57G after the making of threshold A states that the particular amendment or replacement has that effect. 15

“57GC Amendments to, or replacement of, material incorporated by reference to be of same general character as original material

A threshold may not be made under section 57G that states that an amendment to, or replacement of, material incorporated by reference has effect as part of threshold A unless the amendment or replacement material is of the same general character as the material amended or replaced. 20

“57GD Proof of material incorporated by reference

- “(1) A copy of material incorporated by reference in a threshold, including any amendment to, or replacement of, the material, (**material**) must be— 25
 - “(a) certified as a correct copy of the material by the Chairman; and
 - “(b) retained by the Chairman. 30
- “(2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the threshold of the material.

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- “57GE Effect of expiry of material incorporated by reference**
 Material incorporated by reference in a threshold that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the threshold only if a threshold made under section 57G states that the material ceases to have legal effect. 5
- “57GF Requirement to consult**
- “(1) This section applies to—
- “(a) a threshold under section 57G that incorporates material by reference: 10
- “(b) a threshold under section 57G that states that an amendment to, or replacement of, material incorporated by reference in a threshold has legal effect as part of the threshold.
- “(2) Before a threshold to which this section applies is made, the Chairman must— 15
- “(a) make copies of the material proposed to be incorporated by reference or the proposed amendment to, or replacement of, material incorporated by reference (**proposed material**) available for inspection during working hours for a reasonable period, free of charge, at the head office of the Commission; and 20
- “(b) make copies of the proposed material available for purchase at a reasonable price at the head office of the Commission; and 25
- “(c) make copies of the proposed material available free of charge on an Internet website maintained by, or on behalf of, the Commission; and
- “(d) give notice in the *Gazette* stating that— 30
- “(i) the proposed material is available for inspection during working hours free of charge, the place at which it can be inspected, and the period during which it can be inspected; and
- “(ii) copies of the proposed material can be purchased and the place at which they can be purchased; and 35
- “(e) allow a reasonable opportunity for persons to comment on the proposal to incorporate the proposed material by reference; and

New (majority)

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|---|----|
| “(f) consider any comments they make. | |
| “(3) The reference in subsection (1) to the proposed material includes, if the material is not in an official New Zealand language, an accurate translation in an official New Zealand language of the material. | 5 |
| “(4) A failure to comply with this section does not invalidate regulations that incorporate material by reference. | |
|
“57GG Access to material incorporated by reference | |
| “(1) The Chairman must— | |
| “(a) make the material referred to in subsection (2) (material) available for inspection during working hours for a reasonable period, free of charge at the head office of the Commission; and | 10 |
| “(b) make copies of the material available for purchase at a reasonable price at the head office of the Commission; and | 15 |
| “(c) make copies of the material available on an Internet website maintained by, or on behalf of, the Commission; and | |
| “(d) give notice in the <i>Gazette</i> stating that— | 20 |
| “(i) the material is incorporated in the threshold and the date on which the threshold was made; and | |
| “(ii) the material is available for inspection during working hours free of charge and the place at which it can be inspected; and | 25 |
| “(iii) copies of the material can be purchased and the place at which they can be purchased; and | |
| “(iv) the material is available on the Internet, free of charge, and the website address. | |
| “(2) The material is— | 30 |
| “(a) material incorporated by reference in a threshold under section 57GA: | |
| “(b) any amendment to, or replacement of, that material that is incorporated in the threshold or the material referred to in paragraph (a) with the amendments or replacement material incorporated: | 35 |

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- “(c) if the material referred to in **paragraph (a)** or **paragraph (b)** is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.
- “(3) A failure to comply with this section does not invalidate regulations that incorporate material by reference.”

33 Priorities

Section 57K(1) of the principal Act is amended by—

- (a) omitting from paragraph (b) the word “; or”; and
 (b) repealing paragraph (c).

34 Authorisations and undertakings

Section 57M of the principal Act is amended by adding, as subsection (2), the following subsection:

- “(2) The Commission may not make an authorisation, or accept an undertaking, in respect of all or any component of the quality standards of Transpower.”

35 New section 57MA inserted

The principal Act is amended by inserting, after section 57M, the following section:

“57MA Impact of certain decisions made under Electricity Act 1992 20

- “(1) The Electricity Commission *<continued under section 172M of the Electricity Act 1992>* must advise the Commerce Commission as soon as practicable after making any recommendation for an electricity governance regulation or rule under subpart 2 of Part XIV of the Electricity Act 1992~~, or after making any decision under electricity governance regulations or rules,~~ that is likely to affect the powers of the Commerce Commission under this Part or sections 70 to 72.

- “(2) The Commission must take into account, before exercising any of its powers under this Part or sections 70 to 72,—
- “(a) any electricity governance regulation or rule~~, or decision made under them,~~ that relates to or affects the quality standards or pricing methodologies applicable to Transpower:

“(b) any electricity governance regulation or rule~~, or decision made under them,~~ that relates to or affects the pricing methodologies applicable to any other line owner:

“(c) the levy payable by Transpower or any other line owner under section 172ZC of the Electricity Act 1992. 5

“(3) The Commission must, if asked by the Electricity Commission to do so, reconsider an existing authorisation or undertaking and, to the extent that the Commission considers it necessary or desirable to do so, vary the authorisation or accept a revised undertaking, to take account of any matter referred to in **subsection (2).**” 10

36 Subpart ~~2~~ repealed

(1) Part 4A of the principal Act is amended by repealing subpart 2. 15

(2) Section 91(1)(a) of the principal Act is ~~consequentially~~ amended by repealing subparagraph (iii).

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(3) Section 91(1)(b) of the principal Act is ~~consequentially~~ amended by repealing subparagraph (ii).

37 Sections relating to recalibration of asset values of large electricity line owners repealed 20

(1) The principal Act is amended by repealing sections 57X to 57ZC, and the heading above section 57X.

(2) Section 57ZJ(1) of the principal Act is ~~consequentially~~ amended by— 25

- (a) omitting from paragraph (b) the word “; or”; and
- (b) repealing paragraphs (c) and (d).

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(2A) Section 57ZJ(2) is ~~consequentially~~ amended by omitting the words “or subsection (1)(d)”.

(2B) Section 57ZJ(3) is ~~consequentially~~ amended by omitting the words “or subsection (1)(c)”. 30

- (3) Section 91(1)(a) of the principal Act is <consequentially> amended by repealing subparagraph (iv).

Struck out (majority)

38 New section 57CA inserted

The principal Act is amended by inserting, after section 57C, the following section:

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“57CA Impact of certain decisions made under Gas Act 1992

“(1) This section applies if—

“(a) the Commission is exercising powers under Part IV or sections 70 to 72 in relation to the gas industry; and

“(b) the Energy Commission is established and makes any recommendation for a gas governance regulation or rule under **Part 4A** of the Gas Act 1992 that is likely to affect the exercise of those powers.

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“(2) The Commission must take into account, before exercising any of its powers under Part IV or sections 70 to 72,—

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“(a) any gas governance regulation or rule that relates to or affects the quality standards or pricing methodologies applicable to a pipeline owner:

“(b) the levy payable by any pipeline owner under **section 43V** of the Gas Act 1992.

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“(3) The Commission must, if asked by the Energy Commission to do so, reconsider an existing authorisation or undertaking and, to the extent that the Commission considers it necessary or desirable to do so, vary the authorisation or accept a revised undertaking, to take account of any matter referred to in **subsection (2).**”

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39 Consequential amendments to Ministry of Energy (Abolition) Act 1989

(1) The heading to section 13 of the Ministry of Energy (Abolition) Act 1989 is amended by omitting the word “**prices**”, and substituting the words “**goods or services**”.

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(2) Section 13(1) of the Ministry of Energy (Abolition) Act 1989 is amended by omitting the words “the prices of”.

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Legislative history

12 October 2004

Divided from Electricity and Gas Industries Bill
(Bill 86–2) as Bill 86–3C
