

# DRAFT FOR CONSULTATION

## **Electricity Industry (Separation of Generation and Retail Businesses) Amendment Bill**

Member's Bill

### **Explanatory note**

#### **General policy statement**

This Bill will enable innovation and competition in both retail and generation markets and help drive down electricity prices for consumers. It will achieve this by—

- increasing access to electricity markets:
- fostering innovation and efficiency:
- preventing gentailers from cross-subsidising the supply of electricity to their retail arms at prices that cannot be replicated by independent retailers:
- clarifying the responsibilities of the Electricity Authority and enabling it to fulfil its statutory objective “to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers”:
- empowering the Minister to amend the Code if required to enact this amendment within a 3-year timeframe.

This Bill will enforce separation of generation and retail functions, to provide transparency, innovation, and competition for the benefit of consumers. There can still be common ownership but businesses must operate independently.

To electrify the economy, reduce costs to consumers, and increase resilience to climate impacts, Aotearoa needs to transition to a flexible electricity system that fosters innovation, utilising the diversity of energy assets to decarbonise and adapt.

A critical barrier to delivering change is that our energy system (including technology and markets) does not enable consumer engagement or the use of distributed resources and intelligence. This Bill will create a stronger, more transparent system. New social and environmental models of electricity retail and generation have struggled to get a foothold, when we need an electricity system fit for the 21st century.

This Bill will help ensure the energy market encourages innovation to emerge, leading to cheaper, cleaner, smarter power for our communities and a faster scaling of the sector which will help us decarbonise the economy more quickly.

### Clause by clause analysis

*Clause 1* is the title clause

*Clause 2* is the commencement clause. It provides for the Bill to come into force on the day after Royal assent.

*Clause 3* provides that the Bill amends the Electricity Industry Act 2010.

*Clause 4* inserts *new sections 42 and 43*.

*New section 42* requires the Electricity Authority to amend the Electricity Code within 1 year of the Bill coming into force to provide for 2 new matters. The matters relate to a person who is involved in a generator and a retailer (defined, in the section, as a specified person). The term ‘involved in’ has a detailed definition set out in section 6A of the Act. The 2 new matters are imposing—

- corporate separation (meaning the specified person must carry on the business of generation in a different company from the company that carries on the business of a retailer); and
- arm’s-length rules (meaning the specified person’s separate businesses may transact only on an arm’s-length basis).

To the extent that the Authority does not amend the Code to include the new matters, the Authority must deliver a report to the Minister explaining why the Code has not been amended and suggesting alternative methods of providing for the new matters.

*New section 43* provides for the Minister to amend the Code to provide for the new matters if the Minister considers the Code’s provisions for a new matter are not satisfactory or that, in light of the Authority’s report, it is necessary or desirable to include provisions for the matter in the Code. The Minister’s power to amend the Code is time-limited and ends 3 years after the Bill comes into force.

*Scott Willis*

# **Electricity Industry (Separation of Generation and Retail Businesses) Amendment Bill**

Member's Bill

## **Contents**

		Page
1	Title	1
2	Commencement	1
3	Principal Act	1
4	New sections 42 and 43 and cross-heading inserted	1
<i>Specific new matters in Code</i>		
42	Specific new matters to be in Code	2
43	Minister may amend Code to include new matters	2

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

### **1 Title**

This Act is the Electricity Industry (Separation of Generation and Retail Businesses) Amendment Act **2024**.

### **2 Commencement**

This Act comes into force on the day after Royal assent.

### **3 Principal Act**

This Act amends the Electricity Industry Act 2010.

### **4 New sections 42 and 43 and cross-heading inserted**

After section 41, insert:

*Specific new matters in Code***42 Specific new matters to be in Code**

- (1) Before the date that is 1 year after this section comes into force, the Authority must either—
  - (a) have amended the Code so that it includes all the matters described in **subsection (2)** (the **new matters**); or
  - (b) to the extent that the Code does not include all of the new matters, have delivered to the Minister a report described in **subsection (3)**.
- (2) The new matters are as follows:
  - (a) imposing corporate separation in relation to a specified person so that the person must carry on the business of generation in a different company from the company that carries on the business of a retailer; and
  - (b) imposing arm's-length rules that have the objective of ensuring that the businesses of a specified person referred to in **subsection (4)** operate at arm's length.
- (3) A report provided under **subsection (1)(b)** must—
  - (a) identify which new matters are not included in the Code; and
  - (b) explain why the Authority has not amended the Code to include those matters; and
  - (c) suggest alternative methods by which the matters are or may be provided for; and
  - (d) set out if, when, and how the Authority proposes to provide for the matters.
- (4) In this section,—
 

**ICP** means an installation control point

**specified person** means a person who is involved in—

  - (a) a generator that generates more than 50 MW of generation; and
  - (b) a retailer that retails to more than 5% of all the ICPs that consume electricity.

**43 Minister may amend Code to include new matters**

- (1) The Minister may amend the Code by including provisions for any of the new matters identified in **section 42(2)** if—
  - (a) the Minister considers that the Code's provisions for a new matter are not satisfactory; or
  - (b) the Minister considers that, in light of the Authority's report given under **section 42(1)(b)**, it is necessary or desirable for the Minister to amend the Code to include provisions for the matter in the Code.

- 
- (2) The Minister may amend the Code as if the Minister were the Authority, and sections 38 to 40 apply accordingly.
  - (3) Before amending the Code, the Minister must—
    - (a) consult with the Authority (in addition to any consultation required under section 39); and
    - (b) be satisfied that the amendments will achieve the Authority's objective in section 15.
  - (4) The power given by this section may not be exercised earlier than 1 year after, and not more than 3 years after, the date on which this section comes into force.