



COMMERCE COMMISSION

## **ELECTRICITY INDUSTRY REFORM ACT 1998**

### **APPLICATION FOR EXEMPTION SECTION 81**

Pursuant to section 81(1) of the Electricity Industry Reform Act 1998 (EIR Act), the Commerce Commission may:

- exempt any business or involvement or interest from the application of the EIR Act; or
- exempt any person from compliance with any provisions of any regulations made under the EIR Act.

In considering applications for exemptions in relation to section 81 of the EIR Act, the Commission will have specific regard to the particular purpose of Parts 1 to 5 of the Act as set out in section 2(2), and will also have regard to the overall purpose of the Act as set out in section 2(1).

The Commission notes that the EIR Act provides for maximum cross-ownership limits and specific structural and behavioural requirements to ensure that the purposes of the Act are met. Strict compliance with these limits and requirements is, other than in exceptional circumstances, expected.

It is recommended that persons considering applying for an exemption first read the Commission's Practice Note No. 3 which addresses the Commission's role, processes and procedures in respect of the EIR Act.

Section 58 of the EIR Act empowers the Commission to prescribe an application form for the purposes of the Act. Applications for exemptions under section 81 of the EIR Act should be made on the prescribed form set out here, with any material for which confidentiality is sought clearly marked.

Each application for exemption under section 81 of the EIR Act must be accompanied by payment of the prescribed fee.

The signed and electronic copies of the application should be sent to:

The Registrar  
Commerce Commission  
PO Box 2351  
WELLINGTON  
[registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz)

**PRESCRIBED FORM REQUIRED FOR AN APPLICATION FOR EXEMPTION  
UNDER SECTION 81 OF THE ELECTRICITY INDUSTRY REFORM ACT 1998**

September 1998

**Warning**

It is an offence to attempt to deceive or knowingly mislead the Commission in relation to any matter before the Commission. Any person who does so is liable on summary conviction to a fine of up to \$10,000 for an individual, or up to \$30,000 for a body corporate.

Section 58 of the EIR Act and section 103 of the Commerce Act 1986 refer.

**Date of Application**

Applications must be dated.

**Application**

Applicants must include the following text (as applicable):

Pursuant to section 81 of the Electricity Industry Reform Act 1998 (EIR Act), application is hereby made to the Commerce Commission for exemption from the application of the EIR Act or for exemption from compliance with a provision(s) of regulations made under the EIR Act, as described in the application.

**Details of the Person or Business Filing the Application**

State the name of the Applicant and:

- the name and position of the person in the Applicant's organisation responsible for preparing and filing the application including postal and e-mail addresses, telephone and facsimile numbers; and/or
- (if applicable) the law office and solicitor at the law office responsible for preparing and filing the application including postal and e-mail addresses, telephone and facsimile numbers.

**Confidentiality**

Section 58 of the EIR Act empowers the Commission to make confidentiality orders, in terms of section 100 of the Commerce Act 1986, in respect of exemption applications. The Commission may make an order prohibiting the publication or communication of any information or documents received by it for up to 20 working days after determination of the matter. A confidentiality order may be requested by the Applicant for specific information contained in or attached to the section 81 application. Applicants should state the reasons for the request and the period for which the order is requested. Following the

expiry of any confidentiality order made by the Commission, the Official Information Act 1982 continues to apply to that information.

Any material provided or submitted to the Commission in respect of the EIR Act for which confidentiality is sought should be clearly marked and annotated with the Applicant's grounds for confidentiality.

### **Details of the Exemption Sought**

Pursuant to section 81(1), the Commission may do either of two things:

- exempt any business or involvement or interest from the application of the EIR Act; or
- exempt any person from compliance with any provisions of any regulations made under the EIR Act.

In considering applications for exemptions, the Commission will determine whether granting an exemption would be contrary to any element of the particular purpose of Parts 1 to 5 of the EIR Act and also the overall purpose of the Act.

The Commission will obtain and evaluate objective answers to the following three primary questions in relation to the particular purpose of Parts 1 to 5 of the EIR Act:

1. Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to inhibit competition in the electricity industry?
2. Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to cross-subsidise generation activities from electricity lines businesses?
3. Would the Commission permit, by granting an exemption in respect of a business or involvement or interest, a relationship between an electricity lines business and an electricity supply business which is not at arms length?

In relation to these questions, the Commission will consider factors such as:

- The relevant market(s)<sup>1</sup> within the electricity industry;
- The nature of any incentives or opportunities created;
- The temporal nature of any incentives or opportunities created;
- The nature of any relationship which is not at arms length; and
- The temporal nature of any relationship which is not at arms length.

The Applicant must provide sufficient and specific information to enable the Commission to understand the nature of the exemption sought under section 81 and the reasons the Applicant believes an exemption should be approved. The quality and clarity of information provided with the section 81 application will also be a factor in the time taken by the Commission to consider the application.

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<sup>1</sup> Defined using the same process as used for Commerce Act market definitions.

The Commission is required to publish any exemption by notice in the *Gazette*. While any exemption granted by the Commission will take effect from the date specified in the exemption, this date will not be earlier than the date of the *Gazette* notice.

### *Specific Information*

Applicants should provide specific information on:

1. The particular section(s) of the EIR Act or provision(s) of the associated regulation(s) in respect of which exemption is sought. Applicants must be very clear as to the exact exemption being applied for.
2. Whether the Applicant is an electricity supply business, an electricity lines business, both, or neither. The Applicant must provide details of its categorisation based on sections 4 to 13 of the EIR Act.
3. The nature of the relevant business or involvement or interest of the Applicant.
4. The legal form of the Applicant's business (eg company, trust), including details of any associates in terms of section 12 of the EIR Act.
5. The Applicant's arguments and objective evidence in response to the Commission's three primary questions in relation to the particular purpose of Parts 1 to 5 of the EIR Act.

The Applicant must attach a completed declaration to each application in the following form. This declaration is to be made only by the Applicant, not by a solicitor or other adviser acting on the Applicant's behalf. The wording in this declaration may not be varied by the Applicant. If this declaration is not completed, the Commission may decline to register the application for consideration.

### **Section 81 Adjudication Fee**

Pursuant to the Electricity Industry Reform Act (Fees) Regulations 1998, a fee of \$11,250 (inclusive of Goods and Services Tax), is payable to the Commission by any applicant for an exemption under section 81(1) of the EIR Act.

In addition, the Regulations provide that the Commission must make a refund to an applicant who has paid the above fees where the actual cost of processing the application and refund is materially less than the fee paid.

**DECLARATION**

A declaration in this form must be attached to all applications for exemptions in respect of section 81

THIS APPLICATION is made by

*[name of individual(s)/company]*

[The company/I/We] hereby confirm(s) that:

- all information requested by the Commerce Commission has been supplied;
- all information known to the applicant(s) which is relevant to the consideration of this application has been supplied to the Commerce Commission; and
- all information supplied by the applicant(s) to the Commerce Commission is correct as at the date of this application.

[The company/I/We] undertake(s) to advise the Commerce Commission immediately of any material change in circumstances relating to the application.

Date:

Signed by: *(name of applicant company)*

\_\_\_\_\_  
*[Director/Chief Executive Officer/Other (specify)]*

I am a Director/Officer of the company and am duly authorised to make this application

**OR**

Signed by: *(name of applicant(s) where applicant(s) is/are not a company)*

\_\_\_\_\_  
Applicant

**Please Note:**

- This declaration is to be made only by the Applicant. It may not be made by a solicitor or other adviser acting on the Applicant's behalf.
- The wording in this declaration may not be varied by the Applicant.
- If this declaration is not completed, the Commerce Commission may decline to register the application for consideration.