

STATUTORY DECLARATION THAT A SUPPLIER IS CONSUMER-OWNED

For the purposes of section 54D of the Commerce Act 1986 (“the Act”)

I, *(insert full name),*

of *(insert place of abode and occupation),*

solemnly and sincerely declare that –

1. I am the chairperson of trustees/a trustee* of
(insert name of trust) (the “Trust”).
2. Attached to this declaration is an accurate and a complete copy of the current trust deed of the Trust.
3. The Trust –
 - (a) has been a “community trust”/”customer trust”* (as defined in section 54D(2) of the Act);
 - (b) has been an income beneficiary/shareholder* in
(insert name of supplier) (the “Supplier”); and
 - (c) has held –
 - (i) all the “control rights” (as defined in section 54D(1)(a) of the Act) in the Supplier; and
 - (ii) all the “equity return rights” (as defined in section 54D(1)(a) of the Act) in the Supplier.
4. Other than any advisory or custodian trustees (consistent with sections 49 and 50 of the Trustee Act 1956) who have not held any decision-making powers, all the trustees of the Trust were elected in accordance with section 54D of the Act.
5. At least 90% of the persons who were “consumers” (as defined in section 54D(2) of the Act) of the Supplier as at an “income distribution resolution date” (as defined in section 54D(2) of the Act) benefitted from that income distribution.
6. The Supplier has had fewer than 150,000 “ICPs” (as defined in section 54D(2) of the Act).
7. The register of Consumers eligible to vote was determined as close as reasonably practicable to the election date.

8. Accordingly, the Supplier is consumer-owned within the meaning of section 54D of the Act.
9. My declaration of the matters in paragraphs 3 to 8 is made –
 - 9.1 to the best of my knowledge and belief; and
 - 9.2 after making all appropriate enquiries.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Signature of person making the declaration

Chair

(insert name of trust)

DECLARED at this day of 20

Justice of the Peace, Solicitor, or other person

authorised to take a statutory declaration

* Delete whichever is inapplicable.

EXPLANATORY NOTE

1. This statutory declaration relates to whether a supplier considers itself to have met the section 54D criteria set out in the Commerce Act 1986 and to therefore be ‘consumer-owned’.
2. The Commission does not propose to require suppliers that have completed this statutory declaration to complete another declaration in future. Under section 54H, a supplier must give written notice to the Commission within 10 working days of becoming aware that it has ceased to be consumer-owned.
3. Paragraph 2 – other documents or information, in addition to the current trust deed of the Trust, may also be appended in support of the declaration.
4. Should a trust amend its trust deed at a future date a copy of the amended trust deed, with the amendments noted, must be provided to the Commission. The Commission proposes to incorporate this requirement into the revised electricity information disclosure requirements to be set under Part 4.
5. This statutory declaration does not apply to customer co-operatives. The Commission is not aware of any EDBs that are customer cooperatives, as defined under section 54D(2). Hence, the statutory declaration has been drafted for customer/community trusts. Should the Commission become aware of a customer cooperative, an appropriate statutory declaration will be provided.

Relevant Statutory Definitions

6. **Section 54D(2) of the Commerce Act 1986** provides as follows:

(2) In this section, unless the context otherwise requires,—

community trust, in relation to a supplier, is a trust in respect of which—

- (a) at least 90% of the income beneficiaries comprise persons who are a class or classes identified by reference to their domicile or location or operation within the geographic area or areas of operation of the supplier; and
- (b) at least 90% of its income distributions are paid to those beneficiaries or for purposes related to that geographic area or areas

consumer has the same meaning as in section 2(1) of the Electricity Act 1992, and includes, for the purposes of references to the election of trustees in this section and section 54H, any person who is listed on an electoral roll as a resident of an address that consumes the electricity in question

customer co-operative, in relation to a supplier means a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996) that has characteristics described in the definition of customer trust in this subsection, applied as if references to trusts were to co-operatives, references to income

beneficiaries were to shareholders, and all other necessary modifications were made

customer trust, in relation to a supplier, means a trust in respect of which—

- (a) at least 90% of the income beneficiaries comprise persons who are a class or classes identified by reference to any of—
 - (i) the person's connection to the lines of the supplier:
 - (ii) the person's receipt of electricity from the supplier:
 - (iii) the person's liability for payment for supply of electricity from the supplier:
 - (iv) the person's liability for payment for the connection to the lines of the supplier:
 - (v) the person's liability for payment for line services supplied by the supplier; and
- (b) at least 90% of its income distributions are paid to those beneficiaries

ICP means a point of connection on a local or an embedded network at which a retailer supplies electricity to a consumer

income distribution resolution date means the date that a supplier, or the trust or cooperative that owns a supplier, as the case may be, resolves to make an income distribution to beneficiaries.

- 7. “Equity return right” is defined in section 54D(1)(a) of the Act by reference to clause 6 of Schedule 2 of the Electricity Industry Act 2010.
- 8. “Control right” is defined in section 54D(1)(a) of the Act by reference to clause [5] of Schedule 2 of the Electricity Industry Act 2010 (whereas the section refers, in error, to clause 6 of that Schedule).
- 9. **Section 2(1) of the Electricity Act 1992** provides as follows:

Consumer –

- (a) Means any person who is supplied, or who applies to be supplied, with electricity; but
- (b) Does not include any electricity generator or any electricity distributor or electricity retailer, except where the electricity generator or, as the case may be, the electricity distributor or electricity retailer is supplied,

or applies to be supplied, with electricity for its own consumption and not for the purposes of resupply to any other person.