

# **Mixed Ownership Model Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Government plans to sell a minority of shares in Genesis Power Limited, Meridian Energy Limited, Mighty River Power Limited, and Solid Energy New Zealand Limited. As these are currently State enterprises, it is necessary to pass legislation that enables the Crown to remove these companies from the ambit of the State-Owned Enterprises Act 1986 (the **SOE Act**), although sections 22 to 30(1) and a provision similar to section 9 of that Act will continue to apply. The companies will also be removed from the ambit of the Official Information Act 1982 and the Ombudsmen Act 1975.

The new legislation will restrict the Crown from holding less than 51% of the voting rights in each of the companies and will restrict non-Crown individuals and entities from holding more than 10% of the voting rights in each of the companies.

The Government has decided that the Bill should establish the 51% and 10% caps. Further provisions will be needed to monitor and enforce those caps, and the Government considers that these should be contained in the constitutions of the mixed ownership model companies. The provisions in the Bill establishing the 51% and 10% caps are therefore intended to work alongside these more detailed provisions. Although some consequences of breaching the 10% cap are set out in the Bill, it will not limit or prevent the constitutions of the

companies from providing for further consequences of breaching the 10% cap.

The main purpose of moving these companies to the mixed ownership model is to raise \$5 billion to \$7 billion, which the Crown will invest through the Future Investment Fund in new schools, hospitals, roads and rail, and other public assets and use to control debt.

The mixed ownership model will give New Zealanders an opportunity to invest in the market in large New Zealand companies. It will strengthen the stock market by increasing the breadth and depth of investment opportunities. It will improve the public scrutiny of the companies, creating sharper incentives to run them efficiently. And it will allow the companies to raise the capital they need without having to rely solely on the Government for equity.

It is intended that this Bill be divided into the following 2 separate Bills at the committee of the whole House stage:

- a State-Owned Enterprises Amendment Bill (consisting of *Part 1* of the Bill); and
- a Public Finance (Mixed Ownership Model) Amendment Bill (consisting of *Part 2 and Schedules 1 and 2* of the Bill).

### Regulatory impact statement

The Treasury produced a regulatory impact statement, which was considered by Cabinet on 9 May 2011, to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. *Part 2 and Schedules 1 and 2* come into force on the day after the date on which the Bill receives the Royal assent. *Part 2* establishes the mixed ownership model under *new Part 5A* of the Public Finance Act 1989. The rest of the Bill comes into force on a date to be appointed by Order in Council, and orders may be made bringing different provisions into force on differ-

ent dates. This is to enable the SOE Act (and the Official Information Act 1982 and the Ombudsmen Act 1975) to be disapplied at different times in relation to each of the 4 companies, Genesis Power Limited, Meridian Energy Limited, Mighty River Power Limited, and Solid Energy New Zealand Limited, and for the relevant company to become a mixed ownership model company under *new Part 5A* of the Public Finance Act 1989. It is the Government's intention that this will not occur for a company before a decision is made to proceed with a partial sale of shares in the company.

## **Part 1**

### **Provisions for companies to cease to be State enterprises and to become mixed ownership model companies**

#### *Amendments to State-Owned Enterprises Act 1986*

*Clause 3* provides that *clauses 4 and 5* amend the SOE Act.

*Clauses 4 and 5* remove the names of Genesis Power Limited, Meridian Energy Limited, Mighty River Power Limited, and Solid Energy New Zealand Limited (the **mixed ownership model companies**) from Schedules 1 and 2 of the SOE Act. The effect is that each company ceases to be a State enterprise and ceases to be subject to the main provisions of that Act. However, *see new section 45X* of the Public Finance Act 1989 as to the continued application of certain provisions that apply to the companies as State enterprises.

#### *Amendments to other enactments*

*Clause 6* removes the name of each mixed ownership model company from Part 2 of Schedule 1 of the Ombudsmen Act 1975 and *clause 7* removes the name of Solid Energy New Zealand Limited from Schedule 1 of the Official Information Act 1982 (because it is also separately named in that Act). The effect of these clauses is that the Ombudsmen Act 1975 and the Official Information Act 1982 cease to apply to the mixed ownership model companies.

*Clause 8* inserts the name of each mixed ownership model company in *new Schedule 5* of the Public Finance Act 1989. The effect is that the mixed ownership model companies become subject to the provisions set out in *new Part 5A* of that Act.

*Clauses 9 to 11* provide for the amendment of the Income Tax Act 2007 so that the name of each mixed ownership model company is shifted from *new Part A* of Schedule 36 of the Income Tax Act 2007 (which lists the names of companies that are State enterprises for the purposes of that Act) to *new Part B* (which, under *Part 2*, lists the names of the companies that will be called mixed-ownership enterprises for the purposes of that Act (a different term is used in the Income Tax Act 2007 than in the Public Finance Act 1989 because the Income Tax Act 2007 list will include Air New Zealand Limited)). See the analysis on *clause 18* below, dealing with amendments to the Income Tax Act 2007, as to the tax treatment of these entities.

## **Part 2**

### **Ongoing provision for mixed ownership model companies**

#### *Amendments to Public Finance Act 1989*

*Clause 12* provides that *clauses 13 to 17* amend the Public Finance Act 1989.

*Clause 13* amends section 1A of the Act, which deals with the purpose of the Act, to cover *new Part 5A*.

*Clause 14* inserts in section 2(1) of the Act a cross-reference to the definition of the term mixed ownership model company.

*Clause 15* inserts *new section 3B*, which provides for *new Schedule 5* to be amended by Order in Council to replace the name of any company listed in the schedule if that company changes its name.

*Clause 16* inserts *new Part 5A*, which provides as follows:

- *new section 45P* provides that a mixed ownership model company means a company that is listed in *new Schedule 5* and sets out other definitions for the purposes of the Part:
- *new section 45Q* provides that nothing in *new Part 5A* shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi. Consultation with Māori has been undertaken to gather views from Māori on how the Crown's obligations under the Treaty of Waitangi should be reflected in the Bill. Many Māori considered that the status quo under section 9 of the SOE Act should be preserved for the mixed ownership model companies. Accordingly, *new*

*section 45Q* has the same wording as section 9 of the SOE Act, but it refers to *new Part 5A* (rather than the SOE Act) because *new Part 5A* is the legislation that governs the mixed ownership model companies. In both cases, the provision binds the Crown only. The definition of the Crown in the SOE Act is also replicated in *new Part 5A* to maintain the status quo (it is understood in any case that it has the same effect as the definition of the Crown elsewhere in the Public Finance Act 1989). It is not intended that *new section 45Q* would bind any other shareholder in the company or the mixed ownership model company itself. To make this clear, *new subsection (2)* restates that the provision applies only to the Crown:

- *new section 45R* prohibits a shareholding Minister in a mixed ownership model company from disposing of any shares in the Minister's name or permitting an issue of shares or securities (or a mixed ownership model company from issuing, acquiring, or redeeming its shares or securities) if doing so would result in the Crown holding less than 51% of the voting rights in the company:
- *new section 45S* prohibits any non-Crown individual or entity from having relevant interests in securities conferring more than 10% of the voting rights of a mixed ownership model company. Under the meaning given to relevant interest (*see* sections 5 to 6 of the Securities Markets Act 1988), the securities that must be taken into account for the purposes of calculating the maximum 10% limit include securities that a person is a registered or beneficial owner of, securities that a person has the power to acquire or dispose of, or control the acquisition or disposition of, and securities in respect of which a person has the power to exercise, or control the exercise of, an attached voting right. Powers or controls exercisable through trusts, arrangements, and understandings and, in certain circumstances, securities held by other persons must also be taken into account. Certain common commercial arrangements that do not confer true voting control (eg, the holding of a proxy vote) are excluded:
- *new section 45T* sets out the effect of a person exceeding the maximum 10% limit. The person must comply with any written notice from the mixed ownership model company requir-

ing the person to sell down or dispose of securities or take any other action needed (eg, terminate any voting agreement) to ensure that the person does not exceed the limit. Regardless of whether the company gives such a notice, the person must take whatever steps are necessary to ensure that the contravention is remedied within 60 days. The person is also prohibited from exercising any voting rights attaching to securities in excess of the maximum 10% limit, and any purported exercise of those voting rights is of no effect and must be disregarded. *New subsection (3)* clarifies that the section does not change the position that normally applies under company law concerning what may be contained in the constitution of the company. The constitution may replicate the 10% limit and contain provisions dealing with the consequences of a person exceeding the 10% limit (which may be in addition to those set out in the Bill), and nothing in the section limits how this may be done:

- *new section 45U* provides an exemption from the maximum 10% limit for persons holding interests on behalf of another person in the ordinary course of business as a trustee corporation or nominee company. The exempt persons must monitor the holdings of those for whom they hold the interests and can lose the exemption under *new section 45V* if designated as no longer exempt by the Financial Markets Authority on the grounds set out in that section. *New section 45W* enables the Financial Markets Authority to use its existing information-gathering powers for the purposes of these new functions:
- *new section 45X* continues to apply sections 22 to 30(1) of the SOE Act and provisions in certain other enactments to mixed ownership model companies, despite those companies ceasing to be State enterprises. These provisions deal with—
  - Ministers' shareholdings, including Ministers' powers to exercise the rights and powers attaching to shares and to authorise other persons to act as their representatives at meetings of shareholders (section 22 of the SOE Act):
  - the transfer by the Crown to State enterprises of land, other assets, and liabilities (sections 23 to 29A of the SOE Act). In broad terms, the continued application of sections 23 to 29A has the effect of ensuring that all pro-

cesses for the transfer of assets to these companies can be completed, despite the companies no longer being State enterprises. The continued application of those sections also ensures that the Crown's obligations to resume land or interests in land and return it to Māori in certain circumstances (provided for in sections 27A to 27D of the SOE Act) continue to apply:

- the application of certain provisions of the Companies Act 1993 relating to company names and registration (section 30(1) of the SOE Act):
- the requirement for the reservation of marginal strips from certain land disposed of by the Crown to State enterprises and the Minister of Conservation's power to declare certain dispositions exempt from reservation (including dispositions of land that is part of the core assets of a State enterprise that is a generator of electricity or land that is required in connection with electricity works) (sections 24(1) and (6), 24B(4) to (6), and 61(2) of the Conservation Act 1987):
- the granting of renewable leases of land vested in a State enterprise in exchange for pastoral leases (section 11 of the Crown Pastoral Land Act 1998):
- recommendations of the Waitangi Tribunal in respect of land transferred to, or vested in, a State enterprise (sections 8A to 8H of the Treaty of Waitangi Act 1975).

*Clause 17* inserts *new Schedule 5*, which will list the mixed ownership model companies when each name is inserted by *clause 8*.

#### *Amendments to other enactments*

*Clause 18* provides for amendments to other enactments to ensure that they continue to apply to mixed ownership model companies in order to preserve the rights of the companies, the rights of third parties, or the general intent of those Acts. These include amendments to—

- the Employment Relations Act 2000. The effect of the amendment made to Schedule 1 of that Act is to ensure that the operational management of the mixed ownership model companies whose business covers electricity generation remains an es-

sential service and therefore that the requirements as to notice (set out in sections 90 and 91 of that Act) that must be given in order for participation in a strike or lockout not to be unlawful under section 86 of that Act continue to apply:

- the Income Tax Act 2007. The amendments made to Schedule 36 of that Act, which currently lists State enterprises for the purposes of the Act, result in that schedule being divided into 2 parts dealing with government enterprises. *New Part A* lists State enterprises for the purposes of the Act and *new Part B* lists enterprises that are called mixed-ownership enterprises for the purposes of the Act. After the name of each mixed ownership model company is moved from *new Part A* to *new Part B* of Schedule 36 (*see clauses 9 to 11*), the specific tax rules for State enterprises and for special corporate entities will no longer apply to the company. Air New Zealand is listed in *new Part B* because this reflects its current tax treatment. The following amendments deal with the tax treatment of mixed-ownership enterprises:
  - *new subsection (5B)* of section CW 38 provides that these entities are excluded from the public authority tax exemption in that section (State enterprises are currently excluded under subsection (5) of that section). The amendment to the definition of public authority in section YA 1 also makes it clear that a mixed-ownership enterprise is not a public authority for tax purposes:
  - *new subsection (2A)* of section IC 3 ensures that mixed-ownership enterprises cannot group for loss purposes with other mixed-ownership enterprises. (Section YC 5(5) already has the effect of ensuring that mixed-ownership enterprises cannot group with State enterprises for loss purposes because that provision precludes State enterprises from grouping with any other company):
  - the amendment made to section YB 2(6) ensures that mixed-ownership enterprises are excluded from the associated persons rules:
  - *new section YC 5B* clarifies that there is no breach of shareholder continuity merely because a mixed ownership model company is moved from *Part A* to *Part B*



*of Schedule 36* and that the Crown will always hold its shares in a mixed ownership model company as a single notional person at all times:

- the Land Act 1948. The amendments made to section 172 of that Act ensure that the removal of the ability to assert rights or obtain title to land by user or adverse possession as against a State enterprise continues to apply after the State enterprise becomes a mixed ownership model company:
  - the Public Records Act 2005. The amendment made to section 5 of that Act ensures that it continues to apply in respect of records of the affairs of each mixed ownership model company before it ceased to be a public office:
  - the Public Works Act 1981. *New section 45X* of the Public Finance Act 1989 continues to apply section 24(4) of the SOE Act as if each mixed ownership model company were a State enterprise. This means that sections 40 to 42 of the Public Works Act 1981 apply to land that has been transferred to these companies by the Crown, as if the company were the Crown and the land had not been transferred. If a mixed ownership model company no longer requires land previously acquired for a public work, it must therefore offer the land for sale to the person from whom it was originally acquired. *Clause 18* consequentially amends section 42B of the Public Works Act 1981, which relates to processes that must be followed in these circumstances, to ensure that these also apply to mixed ownership model companies:
  - the Ngāi Tahu Claims Settlement Act 1998, which gives effect to the deed of settlement of a Treaty of Waitangi claim by Ngāi Tahu. The amendment relates to the definition of Crown body to ensure that wherever the term is used in that Act it includes the mixed ownership model companies, as well as State enterprises. The Government is still discussing with other iwi whether they want the Bill to make equivalent amendments to the Acts giving effect to their deeds of settlement and changes to the Bill to deal with this may be proposed at select committee stage, depending on the outcome of those discussions.
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*Hon Tony Ryall*

## **Mixed Ownership Model Bill**

Government Bill

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

**1 Title**

This Act is the Mixed Ownership Model Act **2012**.

**2 Commencement**

- (1) **Part 2** and **Schedules 1 and 2** come into force on the day 5  
after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on a date appointed by  
the Governor-General by Order in Council; and 1 or more  
Orders in Council may be made bringing different provisions  
into force on different dates. 10

**Part 1**

**Provisions for companies to cease to be  
State enterprises and to become mixed  
ownership model companies**

*Amendments to State-Owned Enterprises Act* 15  
*1986*

**3 Amendments to State-Owned Enterprises Act 1986**

**Sections 4 and 5** amend the State-Owned Enterprises Act  
1986.

**4 Schedule 1 amended** 20

- (1) In Schedule 1, repeal the item relating to Genesis Power  
Limited.
- (2) In Schedule 1, repeal the item relating to Meridian Energy  
Limited.
- (3) In Schedule 1, repeal the item relating to Mighty River Power 25  
Limited.
- (4) In Schedule 1, repeal the item relating to Solid Energy New  
Zealand Limited.

**5 Schedule 2 amended**

- (1) In Schedule 2, repeal the item relating to Genesis Power 30  
Limited.

- (2) In Schedule 2, repeal the item relating to Meridian Energy Limited.
- (3) In Schedule 2, repeal the item relating to Mighty River Power Limited.
- (4) In Schedule 2, repeal the item relating to Solid Energy New Zealand Limited. 5

*Amendments to other enactments*

**6 Amendments to Ombudsmen Act 1975**

- (1) This section amends the Ombudsmen Act 1975.
- (2) In Schedule 1, Part 2, repeal the item relating to Genesis Power Limited. 10
- (3) In Schedule 1, Part 2, repeal the item relating to Meridian Energy Limited.
- (4) In Schedule 1, Part 2, repeal the item relating to Mighty River Power Limited. 15
- (5) In Schedule 1, Part 2, repeal the item relating to Solid Energy New Zealand Limited.

**7 Amendment to Official Information Act 1982**

- (1) This section amends the Official Information Act 1982.
- (2) In Schedule 1, repeal the item relating to Solid Energy New Zealand Limited. 20

**8 Amendments to Public Finance Act 1989**

- (1) This section amends the Public Finance Act 1989.
- (2) In **Schedule 5**, insert in its appropriate alphabetical order “Genesis Power Limited”. 25
- (3) In **Schedule 5**, insert in its appropriate alphabetical order “Meridian Energy Limited”.
- (4) In **Schedule 5**, insert in its appropriate alphabetical order “Mighty River Power Limited”.
- (5) In **Schedule 5**, insert in its appropriate alphabetical order “Solid Energy New Zealand Limited”. 30

**9 Amendments to Income Tax Act 2007**

**Sections 10 and 11** amend the Income Tax Act 2007.

**10 Income Tax Act 2007, Schedule 36, Part A amended**

- (1) In **Schedule 36, Part A**, repeal the item relating to Genesis Power Limited.
- (2) In **Schedule 36, Part A**, repeal the item relating to Meridian Energy Limited. 5
- (3) In **Schedule 36, Part A**, repeal the item relating to Mighty River Power Limited.
- (4) In **Schedule 36, Part A**, repeal the item relating to Solid Energy of New Zealand Limited.

**11 Income Tax Act 2007, Schedule 36, Part B amended** 10

- (1) In **Schedule 36, Part B**, insert in its appropriate alphabetical order “Genesis Power Limited”.
- (2) In **Schedule 36, Part B**, insert in its appropriate alphabetical order “Meridian Energy Limited”.
- (3) In **Schedule 36, Part B**, insert in its appropriate alphabetical order “Mighty River Power Limited”. 15
- (4) In **Schedule 36, Part B**, insert in its appropriate alphabetical order “Solid Energy New Zealand Limited”.

**Part 2****Ongoing provision for mixed ownership model companies** 20*Amendments to Public Finance Act 1989***12 Amendments to Public Finance Act 1989**

**Sections 13 to 17** amend the Public Finance Act 1989.

**13 Section 1A amended (Purpose)** 25

After section 1A(2)(e), insert:

“(ea) places limits on the ownership of the companies named in **Schedule 5**; and”.

**14 Section 2 amended (Interpretation)**

In section 2(1), insert in its appropriate alphabetical order: 30  
 “**mixed ownership model company** has the meaning set out in **section 45P**”.

**15 New section 3B inserted (Power to amend Schedule 5 to reflect name changes)**

After section 3A, insert:

**“3B Power to amend Schedule 5 to reflect name changes**

The Governor-General may, by Order in Council, amend **Schedule 5** to replace the name of any company in recognition of a change in its name.”

**16 New Part 5A inserted**

After Part 5, insert:

**“Part 5A**

10

**“Mixed ownership model companies**

*“Preliminary provisions*

**“45P Definitions of mixed ownership model company and other terms**

**“(1)** In this Act, **mixed ownership model company** means a company listed in **Schedule 5**. 15

**“(2)** In this Part,—

**“10% limit** has the meaning set out in **section 45S**

**“Crown** means Her Majesty the Queen in right of New Zealand 20

**“FMA** means the Financial Markets Authority established under section 6 of the Financial Markets Authority Act 2011

**“relevant interest** has the meaning given to it by sections 5 to 6 of the Securities Markets Act 1988

**“security** has the meaning set out in paragraph (a) of the definition of that term in section 2(1) of the Securities Markets Act 1988 25

**“voting right** means a currently exercisable right to cast a vote at meetings of shareholders of a company (and, for this purpose, a right is treated as currently exercisable even if **section 45T(1)(c)** applies to prevent its exercise), other than a right to vote that is exercisable only in 1 or more of the following circumstances: 30

**“(a)** during a period in which a payment or distribution (or part of a payment or distribution) in respect of the se- 35



curity that confers the voting right is in arrears or some other default exists:

“(b) on a proposal that affects rights attached to the security that confers the voting right:

“(c) on a proposal to put the company into liquidation: 5

“(d) during the liquidation of the company:

“(e) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company.

“**45Q Treaty of Waitangi (Te Tiriti o Waitangi)**

“(1) Nothing in this Part shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). 10

“(2) For the avoidance of doubt, **subsection (1)** does not apply to persons other than the Crown.

“Compare: 1986 No 124 s 9

15

*“51% Crown control*

“**45R Restriction on reduction of the Crown’s holding below 51% control**

“(1) No Minister who is a shareholder in a mixed ownership model company may take any of the following actions if it would result in the Crown holding less than 51% of the voting rights in the company: 20

“(a) sell or otherwise dispose of any shares in the company held in the Minister’s name:

“(b) permit shares in, or other securities of, the company to be allotted or issued to any person. 25

“(2) A mixed ownership model company must not issue, acquire, or redeem shares in, or other securities of, the company if the issue, acquisition, or redemption would result in the Crown holding less than 51% of the voting rights in the company. 30

“(3) An issue, acquisition, or redemption of shares or other securities is invalid and of no effect to the extent that it breaches **subsection (2)** (and, if more than 1 person has participated in an issue of shares affected by this provision, the invalidity applies to the issue of shares to those persons on a pro-rata basis). 35

*“10% limit***“45S 10% limit on holdings by persons other than the Crown**

“(1) No person (other than the Crown) may have a relevant interest in securities that confer more than 10% of the voting rights of a mixed ownership model company (the **10% limit**). 5

“(2) **Subsection (1)** is subject to **section 45U**.

**“45T Effect of exceeding 10% limit**

“(1) Every person who contravenes **section 45S** must—

“(a) comply with any written notice that the person receives from the mixed ownership model company requiring that the person sell or otherwise dispose of interests in securities of the company, or take any other steps that are specified, for the purpose of ensuring that the 10% limit is not exceeded; and 10

“(b) without limiting **paragraph (a)**, take the steps that are necessary to ensure that the person is no longer in contravention of that section at the end of 60 days after the date of the first contravention; and 15

“(c) while the person contravenes that section, not exercise or control the exercise of the voting rights that exceed the 10% limit. 20

“(2) An exercise of a voting right in contravention of **subsection (1)(c)** is of no effect and must be disregarded by the person responsible for counting the votes concerned.

“(3) Nothing in **section 45S** or this section limits or prevents the constitution of a mixed ownership model company from providing for the 10% limit and the consequences of a person exceeding the 10% limit (including to implement, or to add to, the consequences set out in this section). 25

“Compare: 1988 No 234 s 36U 30

**“45U Exemption from 10% limit for trustee corporations and nominee companies, etc**

“(1) A person (A) may exceed the 10% limit without contravening **section 45S** if—

“(a) A complies with both of the following subparagraphs: 35

- “(i) A exceeds the 10% limit merely because A holds securities on behalf of another person in the ordinary course of business as a trustee corporation or nominee company; and
- “(ii) section 31(1)(b) of the Securities Markets Act 1988 currently applies to A (and so exempts A as a trustee corporation or a nominee company under that Act); or
- “(b) A exceeds the 10% limit merely because A is attributed with (under section 5B of the Securities Markets Act 1988) the relevant interests of another person who is exempt from the 10% limit under **paragraph (a)** or this paragraph.
- “(2) A person to whom **subsection (1)(a)** applies must—
- “(a) keep under continuing review the transactions of all persons for whom A holds securities of the mixed ownership model company in A’s name; and
- “(b) inform the mixed ownership model company if any of those persons exceeds the 10% limit.
- “(3) The exemption under this section does not apply to a person who is currently designated under **section 45V** as no longer exempt.
- “Compare: 1988 No 234 ss 31–32A
- “**45V Power of FMA to remove exemption from 10% limit for trustee corporations, nominee companies, etc**
- “(1) The FMA may, by notice in the *Gazette*, designate a person as no longer exempt under **section 45U** if it is satisfied that—
- “(a) the person has not complied with the condition in **section 45U(2)**; or
- “(b) the exemption is being used for the purpose or purposes of circumventing, evading, or defeating the operation of the 10% limit taking into account the nature, substance, and economic effect of the interest or relationship or other facts (and not the mere form).
- “(2) The FMA may, by notice in the *Gazette*, revoke a designation under this section.

- “(3) A notice under this section takes effect from the date stated in the notice (which must not be earlier than the date of the *Gazette* notice).
- “(4) Before designating a person as no longer exempt, the FMA must— 5
- “(a) do everything reasonably possible on its part to advise the person of the proposed designation; and
- “(b) give the person a reasonable opportunity to make submissions to the FMA on the proposal.
- “(5) **Subsection (4)** does not apply to a designation if the FMA 10 considers that it is desirable in the public interest for the exemption to be removed urgently.
- “(6) Failure to comply with **subsection (4)** does not invalidate the designation.
- “Compare: 1988 No 234 ss 48C, 48D 15

“**45W FMA may use its powers for purposes of exemption**  
The FMA may exercise its powers under subpart 1 of Part 3 of the Financial Markets Authority Act 2011 for the purposes of **section 45V**.

“*Continuing application of certain provisions* 20

“**45X Certain provisions of State-Owned Enterprises Act 1986 and other enactments continue to apply**

- “(1) Sections 22 to 30(1) of the State-Owned Enterprises Act 1986, the provisions listed in **subsection (2)**, and any Order in Council made at any time under any of those provisions continue to apply to a mixed ownership model company, despite it ceasing to be a State enterprise, as if— 25
- “(a) the company were a State enterprise and a company named in Schedule 2 of the State-Owned Enterprises Act 1986; and 30
- “(b) the Minister of Finance and the Minister responsible for that company were the shareholding Ministers for the company.
- “(2) The provisions are—

- “(a) the definition of State forest land in section 2(1) and sections 24(1) and (6), 24B(4) to (6), and 61(2) of the Conservation Act 1987:
- “(b) section 11 of the Crown Pastoral Land Act 1998:
- “(c) sections 8A to 8H of the Treaty of Waitangi Act 1975. 5
- “Compare: 1998 No 99 s 3(2), (4)”.

**17 New Schedule 5 inserted**

After Schedule 4, insert the **Schedule 5** set out in **Schedule 1** of this Act.

*Amendments to other enactments*

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**18 Amendments to other enactments**

Amend the enactments specified in **Schedule 2** as set out in that schedule.

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<b>Schedule 1</b>	<b>s 17</b>
<b>New Schedule 5 inserted</b>	
<b>Schedule 5</b>	<b>s 45P</b>
<b>Mixed ownership model companies</b>	

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## Schedule 2

s 18

### Amendments to other enactments

#### Electricity Act 1992 (1992 No 122)

In section 2(1), replace the definition of **corporation** with:

“**corporation** means a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986) or a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that is a generator of electricity, and includes any of its subsidiaries”.

#### Employment Relations Act 2000 (2000 No 24)

In Schedule 1, Part A, replace clause 3 with:

“2A The production or supply of electricity.

“3 The operational management of a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986) or a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that is a generator of electricity.”

#### Finance Act (No 2) 1988 (1988 No 128)

Repeal sections 7 to 9 and the cross-heading above section 7.

#### Income Tax Act 2007 (2007 No 97)

After section CW 38(5), insert:

“*Exclusion: mixed-ownership enterprises*

“(5B) **Subsection (2)** does not apply to an amount of income derived by a mixed-ownership enterprise.”

In section CW 38, in the list of defined terms, insert in its appropriate alphabetical order “mixed-ownership enterprise”.

After section IC 3(2), insert:

“*Restriction for mixed-ownership enterprises*

“(2A) A mixed-ownership enterprise may be included in a group of companies only if, at the particular time or for the particular period, no other company in the group is a mixed-ownership enterprise.”

In section IC 3, in the list of defined terms, insert in its appropriate alphabetical order “mixed-ownership enterprise”.

**Income Tax Act 2007 (2007 No 97)**—*continued*

In section YA 1, insert in its appropriate alphabetical order:

“**mixed-ownership enterprise** means an entity specified in **schedule 36, part B** (Government enterprises)”.

In section YA 1, definition of **public authority**, paragraph (d), replace “that section” with “that section; and”. 5

In section YA 1, definition of **public authority**, after paragraph (d), insert:

“(e) does not include a mixed-ownership enterprise”.

In section YA 1, definition of **state enterprise**, replace “schedule 36 (State enterprises)” with “**schedule 36, part A** (Government enterprises)”. 10

After section YB 2(6)(a), insert:

“(ab) a mixed-ownership enterprise.”.

In section YB 2, in the list of defined terms, insert in its appropriate alphabetical order “mixed-ownership enterprise”. 15

After section YC 5, insert:

**“YC 5B Treatment of mixed-ownership enterprises**

“(1) Section YC 5 applies to the Crown’s interest in a mixed-ownership enterprise in the same way as it does to the Crown’s interest in a special corporate entity to determine— 20

“(a) who is treated as holding those shares and related rights that represent the Crown’s interest in the enterprise:

“(b) how those shares and related rights are treated as being held.

“*Transitional provision for changes in status* 25

“(2) If a special corporate entity changes its status to become a mixed-ownership enterprise, no breach of shareholding arises in relation to the Crown’s interest.

“Defined in this Act: mixed-ownership enterprise, share, special corporate entity.” 30



**Income Tax Act 2007 (2007 No 97)**—*continued*

Replace the Schedule 36 heading with:

**“Schedule 36  
“Government enterprises**

**“Part A**

**“State enterprises”.** 5

In Schedule 36, after the item relating to Works and Development Services Corporation (NZ), insert:

**“Part B**

**“Mixed-ownership enterprises**

**“Air New Zealand Limited”.** 10

**Land Act 1948 (1948 No 64)**

In section 172(1), after “State-Owned Enterprises Act 1986,” insert “or as against a mixed ownership model company within the meaning of **section 45P** of the Public Finance Act 1989,”.

In section 172(2), after “State-Owned Enterprises Act 1986,” insert “a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989),”.

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**Manapouri-Te Anau Development Act 1963 (1963 No 23)**

In section 2, definition of **corporation**, after “a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986”, insert “, or a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989),”.

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**Maori Purposes Act 1959 (1959 No 90)**

In section 4(7)(l), after “electricity”, insert “or of a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that is a generator of electricity”.

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**Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)**

In section 8, definition of **Crown body**, replace “or a State enterprise or any company which is wholly-owned by a Crown entity or a State enterprise” with “, a State enterprise, or a mixed ownership model”.

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**Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)**—*continued*

company, or a company that is wholly-owned by a Crown entity, a State enterprise, or a mixed ownership model company”.

In section 8, insert in its appropriate alphabetical order:

“**mixed ownership model company** has the same meaning as in **section 45P** of the Public Finance Act 1989”.

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In section 48(1), definition of **Crown body**, paragraph (a), replace “or any company that is wholly-owned by a Crown entity or a State enterprise” with “a mixed ownership model company, or a company that is wholly-owned by a Crown entity, a State enterprise, or a mixed ownership model company”.

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In section 48(1), insert in its appropriate alphabetical order:

“**mixed ownership model company** has the same meaning as in **section 45P** of the Public Finance Act 1989”.

**Public Records Act 2005 (2005 No 40)**

After section 5(6), insert:

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“(7) This Act continues to apply to a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that was a public office immediately before becoming a mixed ownership model company, as if it were still a public office, but only in respect of its affairs before it ceased to be a public office (regardless of when the records of those affairs are created).”

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**Public Works Act 1981 (1981 No 35)**

In section 42B(1), replace “is advised by a State enterprise within the meaning of the State-Owned Enterprises Act 1986 that any land held by that State enterprise” with “is advised by a State enterprise within the meaning of the State-Owned Enterprises Act 1986 or a mixed ownership model company (within the meaning of **section 45P** of the Public Finance Act 1989) that any land held by that State enterprise or mixed ownership model company”.

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