

# Electricity Industry Participation Code Amendment (Part 6A Dispensation for Specified Persons) 2023

Under sections 38 and 40 of the Electricity Industry Act 2010, I make the following amendment to the Electricity Industry Participation Code 2010.

At Wellington on the 16<sup>th</sup> day of August 2023



Anna Helen Kominik  
Chair  
Electricity Authority

Certified in order for signature:



Nichola Lambie  
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Electricity Authority

16 August 2023



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16 August 2023

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## Amendment

### 1 Title

This is the Electricity Industry Participation Code Amendment (Part 6A Dispensation for Specified Persons) 2023.

## 2 Commencement and expiry

- (1) This amendment comes into force on 31 August 2023.
- (2) This amendment expires on the date that is 9 months after the date on which it comes into force.

## 3 Code amended

This amendment amends the Electricity Industry Participation Code 2010.

## 4 Clause 1.1 amended (Interpretation)

In clause 1.1(1), insert in their appropriate alphabetical order:

**"Part 6A dispensation** means an exclusion from compliance with Part 6A or any provisions of Part 6A granted by the **Authority** in accordance with the process set out in clause 6A.9

**"specified person** has the meaning given in section 32(6) of the **Act** ".

## 5 New clause 6A.9 inserted (Authority may grant Part 6A dispensation to specified person)

After clause 6A.8, insert:

**"Clause 6A.9 (Authority may grant Part 6A dispensation to specified person)**

- (1) A **specified person** may apply to the **Authority** for a **Part 6A dispensation** in respect of their involvement in two or more classes of industry **participant** that are the subject of this Part, or specific provisions of this Part.
- (2) The application must be submitted in the form and by the means specified by the **Authority**.
- (3) Where the **Authority** receives an application under this clause, it may grant a **Part 6A dispensation** to a **specified person** if the **Authority** is satisfied that—
  - (a) it is not necessary, for the purpose of achieving the **Authority's** objectives under section 15 of the **Act**, for the **specified person** to comply with this Part or the specific provisions of this Part; or
  - (b) granting a **Part 6A dispensation** in respect of the **specified person** would better achieve the **Authority's** objectives than requiring compliance.
- (4) The **Authority** must give reasons for its decision under subclause (3).
- (5) The **Authority** may grant a **Part 6A dispensation** on any terms or conditions that it reasonably considers are necessary.
- (6) The **Authority** may amend or revoke a **Part 6A dispensation** granted under subclause (3) by issuing a notice that identifies the **specified person** subject to the **Part 6A dispensation** and gives reasons for the amendment or revocation, but only if the **Authority**—
  - (a) has given notice of the proposed amendment or revocation to the **specified person** subject to the **Part 6A dispensation** and given them a reasonable opportunity to comment; and
  - (b) in relation to an amendment, is satisfied that the amendment is necessary or desirable for the purpose of achieving the **Authority's** objectives in section 15 of the **Act**; and
  - (c) in relation to a revocation, is no longer satisfied of the matters in subclause (3).

- (7) The **Authority** must publish a list of all current **Part 6A dispensations** granted under this clause.”

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### Explanatory Note

*This note is not part of the amendment, but is intended to indicate its general effect.*

This amendment to the Electricity Industry Participation Code 2010 (“Code”) comes into force on 31 August 2023 and expires on the date that is 9 months after the date on which it comes into force.

The amendment amends Part 1 and Part 6A of the Code to introduce a new dispensation scheme in relation to Part 6A of the Code. The amendment enables the Authority to grant a dispensation in respect of a specified person from the obligation to comply with Part 6A of the Code in appropriate cases and subject to any conditions the Authority considers reasonably necessary.

Pursuant to section 40 of the Electricity Industry Act 2010 (“Act”), the Authority considers that it is necessary or desirable in the public interest that the amendment be made urgently because:

- (i) The amendment would address an area of immediate uncertainty that has been identified following the Electricity Industry Amendment Act 2022 (“Amendment Act”) being passed which moved certain provisions from Part 3 of the Act to Part 6A of the Code and provided for those parts of the Code to apply to specified persons.
- (ii) The amendment would restore specified persons to the position they were in prior to the Amendment Act being passed when they could have sought an exemption from Part 3 of the Act under section 90 of the Act.
- (iii) The amendment would ensure a specified person can be treated in the same way as a person in a similar position who had earlier obtained an exemption under section 90 of the Act, as these existing exemptions continue to apply.
- (iv) There is a reasonable possibility that a specified person otherwise covered by Part 6A will soon approach the Authority seeking a form of exclusion from the application of that Part in respect of them.
- (v) The amendment will enable the Authority to properly administer Part 6A of the Code without undue delay, providing certainty to those affected, and where the Authority will soon consult on a proposal to make this amendment a permanent Code amendment, pursuant to section 39 of the Act.