

Application for exemption

ELECTRICITY INDUSTRY ACT 2010

APPLICATION FOR EXEMPTION

SECTION 90

Under section 90(1) of the Electricity Industry Act 2010 (Act), the Electricity Authority (Authority) may:

- exempt any business or involvement from the application of Part 3 of the Act; or
- exempt any person from compliance with any provisions of any Part 3 of the Act.

In considering applications for exemptions in relation to section 90, the Authority will have specific regard to the purpose of Part 3 of the Act.

The Authority notes that the Act provides for maximum cross-ownership limits and specific structural and behavioural requirements to ensure that the purpose of Part 3 is 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 Authority's Guidelines that set out the Authority's responsibilities under Part 3 of the Act.

Applications for exemptions should be made on the form set out below, with any confidential material clearly marked.

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

Electricity Authority
PO Box 10041
Wellington

Attention: Part 3 Notices

marketoperations@ea.govt.nz

APPLICATION FOR EXEMPTION
SECTION 90 OF THE ELECTRICITY INDUSTRY ACT 2010

26 March 2021

Application

Under section 90 of the Electricity Industry Act 2010 (Act), application is hereby made to the Electricity Authority (Authority) for an exemption from compliance with the following provisions under the Part 3 of the Act:

- (a) ownership separation, if a person is involved with both a distributor and any generator/s with more than 250 MW of generation (in total) directly connected to the national grid (section 75);
- (b) obligations for directors of distributors to ensure that the distributor has comprehensive written agreements with "connected retailers", and that the terms of that agreement meet certain requirements (section 77);
- (c) rules preventing persons involved in distributors from paying retailers in respect of the transfer of the retail customers (section 78);
- (d) non-discrimination rules that apply when distributors, or electricity trusts or customer co-operatives involved in distributors, pay dividends or rebates (section 79); and
- (e) obligations for directors of distributors to disclose the quantity of electricity sold each financial year by "connected retailers" (section 88).

No application for exemption from Section 76 is requested on the basis that:

- (a) Contact Energy Limited (Contact) does not have 50MW of generation that is connected to a network owned by Fletcher Building; and
- (b) Contact does not retail more than 75GWh of electricity in a financial year to customers who are connected to a network owned by Fletcher Building.

Details of the Person or Business Filing the Application

Applicant: Fletcher Building Limited on behalf of Robert Stuart McDonald.

Contact: Andrew Clarke, Group General Counsel

Confidentiality

Under section 85 of the Act, the Authority has the power under section 100 of the Commerce Act 1996 to prohibit the disclosure of information, documents, and evidence.

No confidentiality is sought with respect to this application.

Details of the Exemption Sought

Under section 90(1), the Authority may do either of two things:

- exempt any business or involvement from the application of Part 3; or
- exempt any person from compliance with any provisions of Part 3.

Specific information

When considering whether to grant an exemption, the applicant would like the Authority to note:

- (a) A desktop review of the Fletcher Building Group companies did not find any activity that is believed to constitute the actions of a distributor, however there may be incidental activity (eg the way electricity is distributed within a multi-tenanted site or plant) that does qualify under the rules. This activity would be minor to the Fletcher Building Group. It is also not in the contemplation of any business plans of the Fletcher Building Group to conduct itself as a distributor of electricity as contemplated by the Act.
- (b) Any distributor conduct by the Fletcher Building Group companies would be immaterial not only to the Fletcher Building Group but particularly to the conduct of the market and would not crystallise the issue that the cross-directorship restrictions under the Act are designed to prevent.
- (c) Application for an exemption is considered the more prudent course to avoid creating a regulatory issue for Fletcher Building if, on the off chance, it is necessary for it to hold a distribution registration.
- (d) Mr McDonald has not participated and will not participate in any discussions or decision-making by the Fletcher Building Group regarding matters that relate to or could affect or favour the supply of electricity by Contact or any other generator (or disadvantage any other business selling electricity on a network owned by the Fletcher Building Group) on an electricity distribution network owned by the Fletcher Building Group or the provision of electricity lines services by the Fletcher Building Group, including the:
 - i. selection of, and any negotiation with, any electricity retailer for the supply, or intended supply, of electricity to the Fletcher Building Group; and
 - ii. supply, or intended supply, of electricity by Contact to any new or existing consumer on a Fletcher Building Group's electricity distribution network.
- (e) Mr McDonald has not disclosed and will not disclose to Fletcher Building the outcome of any discussions or decision-making by Contact on the matters referred to in paragraph (d).
- (f) Fletcher Building has a well-developed conflict of interest policy. Mr McDonald's directorship at Contact is well disclosed to Fletcher Building shareholders and other Board members and he is precluded from discussions at Fletcher Building that affect or involve Contact or Fletcher Building's purchase of electricity generally.

DECLARATION

A declaration in this form must be attached to all applications for exemptions.

THIS APPLICATION is made by:

Fletcher Building Limited, on behalf of Robert Stuart McDonald, hereby confirms that:

- all the information requested by the Electricity Authority (Authority) is provided;
- all relevant information known to the applicant is provided; and
- all the information provided is true and correct as at the date of this application.

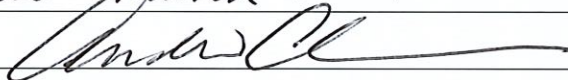
Fletcher Building Limited undertakes to advise the Authority immediately of any material change in circumstances relating to the application.

Company name: Fletcher Building Limited

Date:

26 March 2021

Signed by:



Andrew Clarke

Position:

Group General Counsel & Company Secretary