

Securities Act (Genesis Energy Limited Crown share offer) Exemption Notice 2014

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Interpretation	2
5 Exemptions from sections 34(1)(b) and 37A(1)(b) of Act and regulation 21 of the Regulations in relation to significant event	3
6 Condition of exemptions in clause 5 that amended investment statement not false or misleading	3
7 Conditions of exemptions in clause 5 relating to notification about significant event and right of withdrawal	4
8 Conditions of exemptions in clauses 5(1)(a) and 5(2) relating to withdrawal and refund rights	8
9 Exemption from section 37A(1)(b) and (c) of Act in relation to loyalty bonus shares	9
10 Conditions of exemption in clause 9	9
11 Exemptions from regulations 19(1) and 21(1) of the Regulations in respect of the form and content requirements of the investment statement	9
12 Conditions of exemptions in clause 11	10
13 Exemption from section 61 of Act in relation to the indemnification of directors	11

Notice

- 1 Title**
This Notice is the Securities Act (Genesis Energy Limited Crown share offer) Exemption Notice 2014.
- 2 Commencement**
This Notice comes into force on 12 March 2014.
- 3 Revocation**
 - (1) Clauses 5 to 8 are revoked on the close of 31 July 2014.

- (2) Clauses 9 and 10 are revoked on the close of 31 July 2015.
- (3) Clauses 11 and 12 are revoked on the close of 31 July 2015.
- (4) The remainder of the notice is revoked on the close of 30 November 2016.

4 Interpretation

- (1) In this Notice unless the context otherwise requires:

Act means the Securities Act 1978

amended investment statement means the investment statement and any supplementary disclosure document as if those documents taken together were an investment statement for the purposes of the Act and the Regulations

call centre means the call centre service being operated by or on behalf of the Crown and Genesis Energy in connection with the offer

Crown means Her Majesty the Queen in right of New Zealand

director means a director of Genesis Energy

Genesis Energy means Genesis Energy Limited

Government Share Offer website means an Internet site maintained by or on behalf of the Crown containing information about the Government's proposed share offer programme

investment statement means the investment statement relating to the offer

loyalty bonus share means an additional share which is allotted pursuant to a term of the offer to a shareholder who retains his, her, or its original shares until the loyalty bonus share determination date

loyalty bonus share allotment date means the date on which a loyalty bonus share is allotted pursuant to the offer

loyalty bonus share determination date means the date on which any entitlement to be allotted a loyalty bonus share is determined pursuant to the offer

NZX means NZX Limited

offer means the Crown's part sale of the shares

offer website means an Internet site maintained by or on behalf of the Crown and Genesis Energy containing information about the offer

original shares means shares allotted to a shareholder pursuant to the offer before the close of 31 July 2014

prospectus means the registered prospectus relating to the offer

Regulations means the Securities Regulations 2009

shares means fully paid ordinary shares in Genesis Energy registered in the name of the Crown on the date on which this notice comes into force

significant event means an event or development arising after the date of the investment statement which would make the investment statement false or misleading in a material particular (including by reason of failing to refer, or give proper emphasis, to adverse circumstances)

supplementary disclosure document means a document providing disclosure about a significant event

withdrawal period means any period from the initial date of publication of the advertisements pursuant to clause 7(e) until the close of the date that is 7 days after the initial date of publication of the advertisements pursuant to clause 7(e).

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions from sections 34(1)(b) and 37A(1)(b) of Act and regulation 21 of the Regulations in relation to significant event

- (1) Genesis Energy, the Crown, and every person acting on behalf of either or both of them are exempted, in so far as the investment statement is false or misleading in a material particular in relation to any significant event that occurs after the date of the investment statement from:

- (a) section 37A(1)(b) of the Act; and
(b) regulation 21 of the Regulations.

- (2) Genesis Energy, the Crown, and every person acting on behalf of either or both of them are exempted, in so far as the prospectus is false or misleading in a material particular in relation to any significant event that occurs after the date of the prospectus, from section 34(1)(b) of the Act to the extent that the prospectus is distributed by or on behalf of Genesis Energy or the Crown after the significant event has occurred but before publication of a supplementary disclosure document relating to that significant event pursuant to clause 7(b).

6 Condition of exemptions in clause 5 that amended investment statement not false or misleading

The exemptions in clause 5 are subject to the condition that no allotment of shares shall be made if, at the time of allotment, the amended investment statement is known by the Crown, Genesis Energy, or any director, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances whether or not the amended investment

statement became so false or misleading as a result of a change of circumstances occurring after the later of:

- (a) the date of the investment statement; or
- (b) the date of the last supplementary disclosure document published in accordance with this notice.

7 Conditions of exemptions in clause 5 relating to notification about significant event and right of withdrawal

The exemptions in clause 5 are subject to the further conditions that:

- (a) the investment statement must include a prominent, clear and concise description of:
 - (i) the process that will apply if a significant event occurs;
 - (ii) the withdrawal rights that applicants will have if a significant event occurs;
 - (iii) how, and within what timeframe, applicants will be able to withdraw;
 - (iv) the potential that the price of the shares may change following any significant event;
- (b) as soon as practicable after any significant event and on an ongoing basis until the allotment of the shares under the offer or cancellation of the offer, the Crown and Genesis Energy must publish on the offer website a supplementary disclosure document;
- (c) any supplementary disclosure document must:
 - (i) state that it has been published by the Crown and Genesis Energy;
 - (ii) describe the circumstances in which applicants have a right to withdraw their application pursuant to clause 8 or, where no rights to withdraw arise pursuant to clause 8, a clear and concise statement explaining why there are no rights to withdraw pursuant to clause 8;
 - (iii) where there are rights to withdraw pursuant to clause 8, explain how, and within what timeframe, applicants can withdraw their application;
 - (iv) contain a clear and concise description of the issues raised by the significant event including the effect of the event, to the extent that the effect can be assessed, or where the effect of the event cannot be assessed, a statement to that effect;
 - (v) contain a statement describing the likely effect of the significant event on the value of the shares and a statement quantifying that effect if it can be

- quantified, or where the effect of the event cannot be quantified, a statement to that effect:
- (vi) where as a result of the significant event the price of the shares has been revised, the new price;
- (d) prior to publication of the supplementary disclosure document, the Crown and Genesis Energy must:
- (i) amend the prospectus under section 43 of the Act to include the same information, statements, and other matters that are contained in the supplementary disclosure document:
 - (ii) deliver the supplementary disclosure document to the Registrar for lodgement:
 - (iii) provide a copy of an announcement referring to the supplementary disclosure document being available on the offer website to the NZX for the purpose of that announcement being publicly released on NZX's market announcement platform;
- (e) on the day immediately following the initial date of the publication of the supplementary disclosure document pursuant to paragraph (b), an advertisement must be prominently published, in at least A4 size, on the same day in The New Zealand Herald, The Dominion Post, The Press and the Otago Daily Times (or the equivalent weekend editions of these newspapers), containing:
- (i) a clear and concise summary of the material issues raised by the significant event including, where as a result of the significant event the price of the shares has been revised, the new price:
 - (ii) a statement explaining that further information about the significant event is available on the offer website:
 - (iii) a statement explaining that a supplementary disclosure document containing further information about the significant event is available on request by calling the call centre on a specified telephone number:
 - (iv) a statement that the information is published by Genesis Energy and the Crown:
 - (v) a statement that persons who have already applied for shares have a right to withdraw their application or, where there are no rights to withdraw pursuant to clause 8, a clear and concise statement explaining why there are no rights to withdraw pursuant to clause 8:
 - (vi) where there are rights to withdraw pursuant to clause 8, a statement explaining how, and within what timeframe, applicants can withdraw their application;

- (f) subject to paragraph (g), commencing on the initial date of the publication of the supplementary disclosure document pursuant to paragraph (b), and on an on-going basis until the allotment of the shares under the offer or cancellation of the offer, the offer website must include on its homepage in a prominent place:
- (i) a clear and concise summary of the material issues raised by the significant event:
 - (ii) a statement explaining that further information about the significant event is available at an attached link, followed by a hyperlink to the supplementary disclosure document and the investment statement in that order, preceded by a statement explaining that the documents should be read together:
 - (iii) a statement explaining that a supplementary disclosure document containing further information about the significant event is available on request by calling the call centre on a specified telephone number:
 - (iv) a statement that the information is published by Genesis Energy and the Crown:
 - (v) a statement that persons who have already applied for shares have a right to withdraw their application or, where there are no rights to withdraw pursuant to clause 8 a clear and concise statement explaining why there are no rights to withdraw pursuant to clause 8:
 - (vi) if there are rights to withdraw pursuant to clause 8, a statement explaining how, and within what timeframe, applicants can withdraw their application, for the duration of the withdrawal period:
 - (vii) if there are rights to withdraw pursuant to clause 8, an online withdrawal form through which applicants can withdraw their application, for the duration of the withdrawal period;
- (g) paragraph (f) does not apply if, commencing on the initial date of publication of the supplementary disclosure document pursuant to paragraph (b), and on an on-going basis until the allotment of the shares under the offer or cancellation of the offer, the offer website includes on its homepage in a prominent place a hyperlink to a page dedicated to the supplementary disclosure event in accordance with paragraph (h). The page dedicated to the supplementary disclosure must include:
- (i) a clear and concise summary of the material issues raised by the significant event:

- (ii) the supplementary disclosure document and the investment statement in that order, preceded by a statement explaining that the documents should be read together:
 - (iii) a statement explaining that a supplementary disclosure document containing further information about the significant event is available on request by calling the call centre on a specified telephone number:
 - (iv) a statement that the information is published by Genesis Energy and the Crown:
 - (v) a statement that persons who have already applied for shares have a right to withdraw their application or, where there are no rights to withdraw pursuant to clause 8 a clear and concise statement explaining why there are no rights to withdraw pursuant to clause 8:
 - (vi) if there are rights to withdraw pursuant to clause 8, a statement explaining how, and within what timeframe, applicants can withdraw their application, for the duration of the withdrawal period:
 - (vii) if there are rights to withdraw pursuant to clause 8, an online withdrawal form through which applicants can withdraw their application, for the duration of the withdrawal period;
- (h) if the offer website includes a hyperlink on the homepage to a page dedicated to the supplementary disclosure event under paragraph (g), commencing on the initial date of the publication of the supplementary disclosure document pursuant to paragraph (b), and on an on-going basis until the allotment of the shares under the offer or cancellation of the offer, the offer website must include on its homepage in a prominent place a statement to the effect below, together with a hyperlink to the offer website page dedicated to the supplementary disclosure event:
- "Important Notice: a material event has occurred in relation to the Genesis Energy Share Offer that could impact you. If you have applied, or are intending to apply, for Genesis Energy shares, click here."*
- (i) commencing on the initial date of the publication of the supplementary disclosure document pursuant to paragraph (b), and on an on-going basis until the allotment of the shares under the offer or cancellation of the offer, the Government Share Offer website must include on its homepage in a prominent place a statement to the effect below, together with a hyperlink to the offer website homepage referred to in paragraph (f), or to the page of the

offer website dedicated to the supplementary disclosure event referred to in paragraph (g) (as applicable):

"Important Notice: a material event has occurred in relation to the Genesis Energy Share Offer that could impact you. If you have applied, or are intending to apply, for Genesis Energy shares, click here."

- (j) the Crown must send free of charge a copy of the supplementary disclosure document, on request to any person that has applied for shares if that request is received from such a person during the period between the date of publication of the supplementary disclosure document until the date of the allotment of the shares under the offer or cancellation of the offer;
- (k) subject to the exemptions in clause 11, either:
 - (i) the investment statement must comply with the Regulations; or
 - (ii) the amended investment statement must comply with the Regulations;
- (l) any investment statement printed but not distributed to any person by the Crown or Genesis Energy, or by any person acting on behalf of either or both of them, prior to the publication of any supplementary disclosure document pursuant to paragraph (b) must have a copy of the supplementary disclosure document attached to the front cover of the investment statement or inserted immediately behind the front cover of the investment statement prior to its distribution.

8 Conditions of exemptions in clauses 5(1)(a) and 5(2) relating to withdrawal and refund rights

- (1) The exemptions in clauses 5(1)(a) and 5(2) are subject to the further conditions that:
 - (a) in addition to any other rights of withdrawal that an applicant may have, if an applicant's application is dated on or before the date of publication of the advertisements pursuant to clause 7(e), an applicant may withdraw their application for shares by notice of withdrawal received by or on behalf of the Crown or Genesis Energy before the end of the withdrawal period;
 - (b) the Crown and Genesis Energy must refund to every withdrawing applicant his or her application money (without any interest on that money) within 5 working days after the earlier of:
 - (i) the end of the withdrawal period; or
 - (ii) the cancellation of the offer.

9 Exemption from section 37A(1)(b) and (c) of Act in relation to loyalty bonus shares

Genesis Energy, the Crown, and every person acting on behalf of either or both of them are exempted from section 37A(1)(b) and (c) of the Act in respect of loyalty bonus shares.

10 Conditions of exemption in clause 9

The exemption in clause 9 is subject to the conditions that:

- (a) the prospectus contains particulars of all material matters relating to the offer of the loyalty bonus shares:
- (b) without limiting (a) above, both the prospectus and investment statement contain information explaining:
 - (i) the terms of the offer of loyalty bonus shares, including:
 - A the period of time from the allotment of the shares pursuant to the offer until the loyalty bonus share determination date:
 - B the number of loyalty bonus shares which the terms of the offer provide will be allotted as a ratio to original shares held on the loyalty bonus share determination date and any other terms about the number of loyalty bonus shares which the terms of the offer provide will be allotted:
 - C the maximum period of time from the loyalty bonus share determination date until the end of the period in which the loyalty bonus share allotment date may occur:
 - (ii) the principal risks that the loyalty bonus shares will not be allotted:
 - (iii) that the value of the loyalty bonus shares at the loyalty bonus share allotment date will be determined by the market value of shares in Genesis Energy at that date;
- (c) without limiting (a) above, the prospectus contains information explaining all conditions which must be met in order for the loyalty bonus shares to be allotted;
- (d) the investment statement contains information explaining that all conditions that must be met in order for the loyalty bonus shares to be allotted are set out in the prospectus.

11 Exemptions from regulations 19(1) and 21(1) of the Regulations in respect of the form and content requirements of the investment statement

Genesis Energy, the Crown, and every person acting on behalf of either or both of them are exempted from:

- (a) regulation 19(1) of the Regulations to the extent that it requires the investment statement to contain the following information, statements and other matters specified in the following clauses of Schedule 13 of the Regulations:
- (i) clauses 3(7), 7, 8, 14, 18(1)(c), 19, and 20:
 - (ii) clauses 16 and 17:
 - (iii) clause 1(1) to the extent that that subclause requires the investment statement to include:
 - A the heading "Choosing an investment":
 - B the words "When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:":
 - C the index of questions in italics (including page references):
 - (iv) clause 4(b) to the extent that that subclause requires the investment statement to include an indication of how long Genesis Energy has been carrying on its activities:
 - (v) clause 15(1) to the extent that that subclause requires the investment statement to include a statement as to whether, in Genesis Energy's opinion, there is an established market for the sale of the shares;
- (b) regulation 21(1) of the Regulations.

12 Conditions of exemptions in clause 11

- (1) The exemption in clause 11(a)(ii) is subject to the condition that the investment statement contains a reference to a New Zealand free phone number which potential investors in New Zealand can call with questions about the offer:
- (2) The exemption in clause 11(a)(iii) is subject to the condition that the investment statement contains a prominent table of contents prior to the first substantive section of the investment statement:
- (3) The exemptions in clause 11 are subject to the further conditions that –
- (a) the investment statement includes a prominent statement prior to the first substantive section of the investment statement, to the following effect:

"IMPORTANT NOTICE

This document is an investment statement. The purpose of an investment statement is to:

 - *provide certain key information that is likely to assist a prudent but non-expert person to decide whether or not to subscribe for securities; and*

- *bring to the attention of such a person the fact that other important information about the securities is available to that person in other documents.*

For more information to assist you in deciding whether or not to purchase the Shares offered to you, you are recommended to read the Prospectus which has been prepared in respect of this Offer.";

- (b) the investment statement includes a description, prior to the first substantive section of the investment statement, on how a copy of the prospectus, which includes or refers to the most recent financial statements of Genesis Energy, can be obtained, free of charge.
- (4) Nothing in this clause 12 limits the information, statements, questions or other matters that may be contained in an investment statement.

13 Exemption from section 61 of Act in relation to the indemnification of directors

The Crown is exempted from section 61 of the Act in respect of any indemnification of a director in respect of:

- (a) liability for any negligence, default, breach of duty, or breach of trust in that director's capacity as a director arising out of, or in relation to, the offer; and
- (b) costs incurred by a director in defending or settling any claim or proceeding relating to liability of a kind referred to in paragraph (a).

Dated at Wellington this 11th day of March 2014.



Simone Robbers
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice comes into force on 12 March 2014. The exemptions relating to a significant event arising after the date of the prospectus and investment statement are revoked on 31 July 2014, the exemption in relation to loyalty bonus shares is revoked on 31 July 2015, the exemptions in relation to the content of the investment statement are revoked on 31 July 2015, and the exemption in respect of an indemnity given by the Crown is revoked on 30 November 2016.

This notice exempts Her Majesty the Queen in right of New Zealand (the Crown) and Genesis Energy Limited (**Genesis Energy**) from the prohibition on allotment of shares and distribution of the investment statement in circumstances where an event arises after the date of the investment statement which would make the investment statement false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances. The exemption applies if wide public notice is given about the event and about subscribers' rights to withdraw their application (**significant event exemption**).

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Securities Act 1978 (**Act**), considers it appropriate to grant this significant event exemption because —

- the Act does not contain a mechanism by which issuers can amend an investment statement. This means that, without an exemption, if a significant event arose after the date of the investment statement, which without further information would render the investment statement false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances, a new investment statement would be required to be distributed to all prospective investors for their consideration about whether to invest in the shares offered. Due to the large size of the offer, this would be logistically difficult and expensive:
- the exemptions only apply in the case of a significant event that occurs after the date of the investment statement. This means that there is no exemption from the requirement that the investment statement and prospectus contain all matters required by the Act and Securities Regulations 2009 (**Regulations**) at the date of the investment statement and prospectus:
- this exemption allows for continuous distribution of the prospectus. In the event that Genesis Energy and the Crown determine that a significant event has occurred, the notice allows for supplementary disclosure to be provided and the investment statement to be amended. This provides a mechanism for the Crown and Genesis Energy to produce a supplementary disclosure statement so that potential investors in Genesis Energy can be informed of any material and adverse effects that may arise during the offer period without the Crown and Genesis Energy incurring costs or delay in producing a new investment statement. The exemption does not exempt Genesis Energy from the requirement to amend its prospectus in accordance with the Act:
- conditions of the exemptions require a supplementary disclosure document to be published that contains a clear and concise description of the issues raised by the significant event including the effect on the value of the shares. The investment statement and prospectus must also contain disclosure of the potential re-

pricing of the shares on the occurrence of a significant event. Where, as a result of a significant event the price of the shares has been revised, any supplementary disclosure must also state the new price. Further conditions prohibit allotment of the shares if the investment statement, read together with the supplementary disclosure document, is false or misleading. This means that if the issues cannot be described clearly and concisely in a supplementary disclosure document (such that the investment statement read together with the supplementary disclosure document would not be false or misleading) the offer would need to be withdrawn and a complete new investment statement distributed in order to proceed with the offer:

- the high profile nature of the offer means that there would be wide publicity surrounding any significant event relevant to the offer. In addition to the wide publicity that could be expected in light of the high profile nature of this offer, conditions of the exemption require that wide public notice be given of both any significant event and the right of share applicants to withdraw their application in that instance. Further conditions require that the process that would apply, and rights that share applicants would have, in the event of a significant event, must be prominently explained in the investment statement. This means subscribers should be aware this process may occur, and if the process does occur there will be high public awareness of it:
- in all of these circumstances FMA considers that the significant event exemption will not cause significant detriment to subscribers, and that the exemption is not broader than reasonably necessary to address the matters that gave rise to it.

This notice also exempts the Crown and Genesis Energy in respect of 'loyalty bonus shares' to be allotted to shareholders that have held their shares for a prescribed period, from the prohibition on allotment of securities beyond a defined period from the date of the financial statements in the prospectus, and where at the time of the allotment, material information about Genesis Energy or the securities may no longer be as described in the prospectus or investment statement (**loyalty bonus exemption**). FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this loyalty bonus exemption because —

- without an exemption the Crown and Genesis Energy would be prohibited from allotting the loyalty bonus shares unless they first registered a new prospectus relating to the loyalty bonus shares. This is because the terms of the offer provide for the proposed allotment to be more than the standard 9 month period from the date of the financial statements in the prospectus. Additionally the Crown and Genesis Energy would also be likely to be required to register a new prospectus and prepare and distribute a new investment statement because, given the extended passage of time to allotment of the loyalty bonus shares, it is likely that the

original prospectus and the original investment statement would be out of date and as a consequence false or misleading in a material particular by reason of failing to refer or give proper emphasis to adverse circumstances current at allotment time. The registration of a new prospectus and distribution of a new investment statement would be a significant exercise and create a significant expense:

- the conditions of the exemption require all material matters relating to the offer of the loyalty bonus shares to be included in the original prospectus and certain key information relating to the offer of the loyalty bonus shares to be included in the original investment statement. Investors will have made their investment decision at the time they subscribed to the original offer. The loyalty bonus shares are allotted on a fully paid basis and so no additional investment consideration or decision is required by investors following that initial subscription to the original offer. These factors mean that neither a new prospectus registered closer to allotment nor a new investment statement distributed to investors at that time, would be useful to assist investors with their investment decision:
- in all of these circumstances FMA considers that the loyalty bonus share exemption will not cause significant detriment to subscribers, and that the exemption is not broader than reasonably necessary to address the matters that gave rise to it.

This notice also exempts the Crown and Genesis Energy in respect of certain specific content and form requirements of the Securities Regulations 2009 (**Regulations**) in relation to the investment statement (**investment statement content exemption**). FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this investment statement content exemption because -

- the purpose of an investment statement is to provide prescribed key information that is likely to assist a prudent but non-expert person to decide whether or not to subscribe for the securities, and to bring to the attention of such a person the fact that other important information about securities is available to them in other documents:
- the Regulations contemplate that certain matters may not be applicable to a particular offer of securities and therefore the investment statement is not required to refer to such matters. However, for a large and complex initial public offering, there are a number of prescribed matters that, while applicable, will not provide useful or relevant information to investors in order for them to make an informed investment decision:
- the exemptions will enable the issuers to prepare an investment statement that provides investors with clear, concise, and effective information in an appropriate form for the particular offer. There is therefore no significant detriment to investors:

- in these circumstances, FMA considers that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.

This notice also exempts the Crown from any prohibition on indemnifying the directors of Genesis Energy in relation to liability arising out of, or in relation to, the offer for sale by the Crown of shares in Genesis Energy (**indemnity exemption**). FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this indemnity exemption because —

- the purpose of the prohibition in section 61 of the Act on an issuer indemnifying directors is that investors should not effectively incur the costs of paying for any compensation to which they are entitled through a loss in the value of their securities. FMA considers that the proper interpretation of section 61 does not, in the case of an offer of previously allotted shares, prohibit an indemnity for liability to be given by the offeror to the directors of the original allotter where the offeror and the original allotter are issuers in relation to the new offer:
- section 61 does not expressly address the circumstances of multiple issuers in relation to the same offer, and may be interpreted literally as operating to prevent third party indemnities from persons who are issuers. Any indemnity given in contravention of section 61 is void. It is desirable to ensure that market participants have certainty in the application of such a provision. This exemption clarifies the appropriate interpretation for the avoidance of any doubt:
- an indemnity from the Crown (as issuer because it is the offeror of the securities but is not the entity in which subscribers will hold an interest) raises no significant detriment to subscribers. Both the directors of Genesis Energy and the Crown will remain liable to subscribers for any untrue statements in the prospectus and investment statement:
- further the Crown has confirmed it will not indemnify the directors from criminal liability for any false or misleading information in the prospectus or investment statement or any other non-compliance in connection with the offer, nor in respect of any conduct where they engage in wilful misconduct, malice, fraud or recklessness. The directors will remain motivated to conduct appropriate enquiries and take a full and proper interest in the information in the prospectus and investment statement and compliance generally of the offer:
- the exemption is not broader than reasonably necessary to ensure the Crown and the directors of Genesis Energy have confidence to proceed on the basis that FMA considers is consistent with the appropriate interpretation of section 61.