

Energy Consumption Levy Bill 1982

EXPLANATORY MEMORANDUM

Clause 1:

Sub-clause (1): This sub-clause provides for the citation of the Act.

Sub-clause (2): This sub-clause provides for the Act to be deemed to have come into effect on 1 October 1982.

Sub-clause (3): This sub-clause divides the Act into eight parts.

Clause 2:

Sub-clause (1): This sub-clause defines certain expressions used in the Act.

Sub-clauses (2) and (3): These sub-clauses establish the basis upon which corporations are or are not related to other corporations for the purposes of the Act.

Sub-clause (4): This sub-clause defines gigajoule units of gas.

Sub-clauses (5) and (6): These sub-clauses deal with other parts of speech and grammatical forms of words or phrases and with the making of proclamations under this Act.

Clause 3: This clause states that the Act is binding on the Crown.

Clause 4:

Sub-clauses (1) and (2): These sub-clauses provide for the administration of the Act by the Commissioner and a Deputy Commissioner.

Sub-clause (3): This sub-clause provides for the appointment of officers and employés.

Sub-clauses (4) to (6): These sub-clauses allow for the delegation of the powers and functions of the Commissioner to officers of the public service.

Clause 5:

Sub-clause (1): This sub-clause allows for communications of any information obtained under this Act between the Commissioner or any person authorized by him and certain other persons.

Sub-clause (2): This sub-clause prevents, except in certain specified circumstances, the Commissioner or any other person employed in the administration of this Act from communicating to other persons or producing in court any information obtained during the course of his employment.

Clause 6:

Sub-clause (1): This sub-clause imposes an energy consumption levy at the prescribed rate on the consumption of gas.

Sub-clause (2): This sub-clause states that the prescribed rate of the energy consumption levy shall be \$0.10 per gigajoule in 1982-83, to be maintained in real terms in subsequent years by reference to the consumer price index number.

Sub-clause (3): This sub-clause states that the levy shall be paid by the consumer who consumed the gas in respect of which the levy is charged.

Sub-clause (4): This sub-clause defines the benchmarks for the maintenance in real terms of the energy consumption levy after 30 June 1983.

Clause 7:

Sub-clause (1): This sub-clause defines the basis upon which consumers, "related persons" and "associates" are members of a group for the purposes of this Act.

Sub-clause (2): This sub-clause provides that, unless the Commissioner otherwise directs, where a consumer is a member of a group and the consumer or another member of that group is a member of another group, a person who is a member of that other group shall be deemed to be a member of the first-mentioned group.

Sub-clause (3): This sub-clause defines the application of clause 6 (1) and clause 14 to a group of which a consumer is a member.

Sub-clause (4): This sub-clause provides for the nomination or appointment of a member of a group for the purposes of sub-clause (3) of this clause.

Sub-clause (5): This sub-clause provides for nominations or appointments under sub-clause (4) to be made in respect of a group notwithstanding that the identity of one or more members of the group is not known or that one or more members do not join in making the nomination.

Sub-clause (6): This sub-clause requires the Commissioner to give notice of the appointment or revocation of appointment of a group member by him for the purposes of sub-clause (3) to each member of the group whose identity he knows.

Sub-clause (7): This sub-clause defines the liability of the Commissioner with respect to appointments or revocation of appointments of members of a group for the purposes of sub-clause (3).

Clause 8: This clause deals with the registration of consumers under this Act and the cancellation of such registration.

Clause 9:

Sub-clause (1): This sub-clause requires every consumer who is registered or required to be registered under this Act within one month after the close of each month during which a billing period or billing periods ended to furnish a return to the Commissioner relating to that billing period or those billing periods and specifying the number of gigajoule units of gas consumed by him during that billing period or those billing periods.

Sub-clause (2): This sub-clause deals with the return to be furnished by a group.

Sub-clauses (3) to (6): These sub-clauses deal with the exempting of consumers from furnishing returns in accordance with this clause.

Clause 10: This clause allows the Commissioner to call upon any consumer or person to furnish within the time specified such return or further or fuller return as the Commissioner requires.

Clause 11: This clause defines the time for payment of the levy.

Clause 12:

Sub-clauses (1), (2) and (3): These sub-clauses allow the Commissioner to assess the number of gigajoule units of gas consumed and the levy payable by a consumer including where the consumer does not furnish a return or the Commissioner is not satisfied with the return made by a consumer. A consumer liable to pay an energy consumption levy by virtue of an assessment made under sub-clause (2) shall also be liable to pay double the amount of that levy as adjusted.

Sub-clause (4): This sub-clause requires the Commissioner to serve notice of an assessment on the consumer liable to pay it.

Sub-clause (5): This sub-clause prescribes the time for payment of such levy or additional levy.

Sub-clause (6): This sub-clause states that the omission to give any such notice shall not invalidate an assessment made by the Commissioner.

Sub-clauses (7) and (8): These sub-clauses allow the Commissioner to make his assessment by reference to the heating value of the gas and the pressure factor as endorsed on the statement of account issued in respect of the gas.

Sub-clause (9): This sub-clause enables the Commissioner to fix a date for payment of a levy by consumers about to leave the State.

Clause 13: This clause enables the Commissioner to refund any overpayment of a levy.

Clause 14: This clause deals with the refund or rebate of a levy on an annual adjustment.

Clause 15: This clause enables the Commissioner to extend the time for payment of a levy or permit the payment of a levy by instalments and imposes an additional levy in such cases.

Clause 16:

Sub-clause (1): This sub-clause provides for the payment of an additional levy where the levy is paid late.

Sub-clause (2): This sub-clause enables the Commissioner to remit wholly or in part the additional levy imposed under this clause or clause 15.

Clause 17:

Sub-clause (1): This sub-clause deems levies to be debts due to the Crown and payable to the Commissioner.

Sub-clause (2): This sub-clause provides for unpaid levies to be sued for and recovered in a magistrates' court or any other court of competent jurisdiction.

Sub-clause (3): This sub-clause provides that proceedings brought in the name of the Commissioner shall be deemed to have been brought by the authority of the Commissioner.

Sub-clause (4): This sub-clause provides for officers to appear on behalf of the Commissioner or a Deputy Commissioner in proceedings brought under this clause.

Sub-clause (5): This sub-clause makes provision with respect to the particulars of demand to be issued in proceedings.

Clause 18:

Sub-clause (1): This sub-clause empowers the Commissioner to direct a supplier of gas to discontinue such supply to any person who has not paid a levy due and payable.

Sub-clause (2): This sub-clause requires the Commissioner to make or revoke such a direction by serving a notice in writing on the supplier of gas concerned.

Sub-clause (3): This sub-clause prescribes the penalties under this clause.

Sub-clause (4): This sub-clause states that the revocation of a direction does not affect its previous operation.

Clause 19: This clause provides the manner in which any process may be served in any proceedings for the recovery of a levy.

Clause 20:

Sub-clause (1): This sub-clause requires the liquidator of a company which has been a consumer registered or required to be registered under this Act to serve on the Commissioner notice of his appointment as liquidator within fourteen days.

Sub-clause (2): This sub-clause requires the Commissioner to notify the liquidator of the amounts due and payable by the company under this Act.

Sub-clause (3): This sub-clause requires the liquidator to seek the leave of the Commissioner prior to parting with assets of the company until notified of the amount of the levy due and payable and requires him to set aside sufficient assets for the payment of the levy.

Sub-clause (4): This sub-clause imposes a personal liability on the liquidator if he fails to comply with this clause.

Sub-clause (5): This sub-clause attaches the obligations of this clause to all liquidators of a company where more than one is appointed.

Sub-clause (6): This sub-clause allows the Commissioner to assess costs and charges of liquidation which can be paid in priority to any levy payable.

Sub-clause (7): This sub-clause specifies that nothing in this section limits the liability of a liquidator under clause 40 or affects any of the provisions of the *Companies (Victoria) Code*.

Clause 21:

Sub-clause (1): This sub-clause requires the agent for an absentee principal winding up the business to notify the Commissioner of his intention to do so.

Sub-clause (2): This sub-clause prescribes penalties for such agents who fail to give notice to the Commissioner or fail to provide for payment of a levy.

Sub-clause (3): This sub-clause empowers the Commissioner to remit the whole or any part of a levy for which an agent is personally liable pursuant to sub-clause (2).

Clause 22: This clause sets out provisions applicable where a person escapes full payment of a levy in his lifetime.

Clause 23:

Sub-clauses (1) and (2): These sub-clauses state that the Commissioner shall have the same powers and remedies for assessment and recovery of a levy from a consumer's executors and administrators as he would have had against the consumer if he were alive.

Sub-clause (3): This sub-clause enables the Commissioner to make estimates of the number of gigajoule units of gas where the executors or administrators are unable or fail to furnish a return.

Sub-clause (4): This sub-clause enables the Commissioner to make an assessment in cases where probate has not been granted or letters of administration taken out within six months of the death of the consumer.

Sub-clause (5): This sub-clause requires the Commissioner to twice publish in a newspaper notice of such assessments.

Sub-clause (6): This sub-clause enables persons claiming an interest in the estate of the deceased to lodge an objection against the assessment within sixty days of the publication of the notice.

Sub-clause (7): This sub-clause prescribes assessments by the Commissioner to be conclusive evidence of the indebtedness of the deceased.

Sub-clause (8): This sub-clause enables the Commissioner to authorize any person to levy the amount of levy payable by sale of the property of the deceased.

Sub-clause (9): This sub-clause enables objections to be made against assessments under this clause by executors and administrators.

Clause 24: This clause deals with the recovery from another person of a levy paid on behalf of that other person.

Clause 25:

Sub-clause (1): This sub-clause provides the basis of liability of two or more persons who are jointly liable to pay a levy.

Sub-clause (2): This sub-clause prescribes the liability of members of a group.

Clause 26:

Sub-clause (1): This sub-clause provides the basis upon which the Commissioner may collect a levy from a person owing money to the consumer.

Sub-clause (2): This sub-clause prescribes the penalty for failure to comply with this clause.

Sub-clause (3): This sub-clause allows for the payment in part of a levy by persons owing money to the consumer.

Sub-clause (4): This sub-clause allows for such payments to be made as if acting under the authority of the consumer.

Sub-clause (5): This sub-clause provides for notice to be given where the levy is paid.

Sub-clause (6): This sub-clause defines levy to include any judgment debt and costs in respect of a levy.

Clause 27:

Sub-clause (1): This sub-clause enables persons dissatisfied with the Commissioner's decision to make an objection within sixty days after service on him of notice of that decision.

Sub-clause (2): This sub-clause enables the Commissioner to consider, allow or disallow such objections.

Sub-clause (3): This sub-clause allows for refunds where objections are successful.

Sub-clause (4): This sub-clause requires the Commissioner to serve on the objector written notice of his decision on the objection.

Clause 28:

Sub-clause (1): This sub-clause enables persons dissatisfied with the Commissioner's decision on an objection to appeal to the Victorian Taxation Board of Review or the Supreme Court.

Sub-clause (2): This sub-clause requires the Commissioner to refer the decision to the Board of Review or cause it to be set down for hearing by the Supreme Court within sixty days of the request.

Sub-clause (3): This sub-clause empowers the Commissioner to require a person to give further and better particulars of his objection.

Clause 29:

Sub-clause (1): This sub-clause restricts the objector, unless the Board of Review or Supreme Court otherwise orders, to the grounds listed by him in his objection and places the burden of proof on the objector.

Sub-clause (2): This sub-clause requires the review or appeal authority to deal with a person's liability or assessment as reduced by the Commissioner after consideration of the objection.

Clause 30:

Sub-clauses (1) and (2): These sub-clauses empower the Victorian Taxation Board of Review to confirm, reduce or increase the Commissioner's decision unless the objector fails to appear, in which case the Commissioner's decision shall be confirmed unless the matter is re-opened and reviewed by the Board.

Sub-clause (3): This sub-clause states that the Board shall have all the powers and functions of the Commissioner in making its decisions.

Sub-clause (4): This sub-clause enables the Commissioner or objector to appeal to the Supreme Court if he is not satisfied with the decision of the Victorian Taxation Board of Review on a question of law.

Clause 31:

Sub-clauses (1) and (2): These sub-clauses enable the Supreme Court to make such orders and award such costs as it thinks fit on the hearing of an appeal under this Act.

Clause 32:

Sub-clause (1): This sub-clause states that a pending appeal or review will not act to delay the normal payment of the levy or affect the liability which is the subject of the appeal.

Sub-clause (2): This sub-clause allows for refunds and the recovery of amounts short paid pursuant to assessments altered on appeal or review.

Clause 33:

Sub-clause (1): This sub-clause prescribes the culpability of any person failing to furnish a return, refusing to give evidence, making a false return or contravening any provision of the Act.

Sub-clauses (2) and (3): These sub-clauses make provision with respect to a person who, after conviction for an offence against this clause, continues to fail to comply with the requirements in respect of which he was convicted.

Clause 34:

Sub-clause (1): This sub-clause prescribes additional levies in the cases of those who fail or neglect to furnish returns or information as and when required by this Act or by the Commissioner or fail to include in a return particulars of gas required to be included in that return.

Sub-clause (2): This sub-clause enables the Commissioner to remit the whole or a part of an additional levy.

Sub-clause (3): This sub-clause provides that additional levies imposed under this clause are not payable where action is taken under clause 33.

Clause 35: This clause prescribes the culpability of persons seeking to evade an energy consumption levy.

Clause 36:

Sub-clause (1): This sub-clause enables prosecutions in respect of offences against Clause 35 to commence within three years after the commission of the offence.

Sub-clause (2): This sub-clause enables certain prosecutions under clause 33 to commence at any time.

Clause 37: This clause states that payment of penalties does not relieve any person from liability to pay a levy.

Clause 38: This clause prescribes the culpability of those who obstruct or hinder a person acting in the administration of the Act.

Clause 39:

Sub-clauses (1) and (2): These sub-clauses enable the Commissioner to require a company to appoint a public officer for the purposes of this Act.

Sub-clause (3): This sub-clause enables the Commissioner to appoint public officers of companies in certain circumstances.

Sub-clause (4): This sub-clause enables the Commissioner to appoint a public officer in place of the person appointed by a company if the Commissioner is dissatisfied with the appointment.

Sub-clause (5): This sub-clause states that service of a document on the public officer is sufficient service on the company for the purposes of the Act.

Sub-clause (6): This sub-clause states that the public officer is answerable for the doing of all such things as are required to be done by the company under this Act.

Sub-clauses (7) and (8): These sub-clauses prescribe the effect of the appointment of a public officer by a company.

Sub-clause (9): This sub-clause provides that proceedings under this Act taken against the public officer are deemed to be taken against the company.

Sub-clause (10): This sub-clause enables the Commissioner to serve on any director secretary or other officer of a company or any attorney or agent of a company any notice, process or proceeding.

Clause 40: This clause makes provision with respect to agents and trustees.

Clause 41: This clause makes provision with respect to persons in receipt or control of money belonging to persons resident out of the Commonwealth of Australia who are liable to pay levies under this Act.

Clause 42: This clause requires certain books to be kept and retained for 5 years unless exempted by the Commissioner for the purposes of this Act.

Clause 43: This clause deals with the powers of the Commissioner to obtain information and evidence.

Clause 44: This clause enables the Commissioner or any authorized officer to enter premises and have full and free access to books in or on those premises.

Clause 45:

Sub-clause (1): This sub-clause empowers the Commissioner to obtain a warrant authorizing police officers together with other persons to enter and search premises for any books which are relevant to the assessment of an energy consumption levy.

Sub-clause (2): This sub-clause requires warrants for entry to be in the form or to the effect of that specified in the Schedule attached to the Act.

Sub-clause (3): This sub-clause provides that the taking of any books under this clause does not prejudice any lien which any person may have on them.

Sub-clause (4): This sub-clause enables copies to be made of books.

Sub-clause (5): This sub-clause prescribes penalties for those who refuse to permit searches or obstruct those conducting them.

Sub-clause (6): This sub-clause provides that the powers conferred by this section are additional to any other powers conferred by law.

Clause 46: This clause contains certain evidentiary provisions.

Clause 47:

Sub-clauses (1) and (2): These sub-clauses prescribe the manner in which any document required or authorized by the Act to be served by the Commissioner may be served.

Sub-clause (3): This sub-clause states that the provisions of this clause are in addition to those under the Companies Code.

Clause 48: This clause relates to the service of documents on the Commissioner.

Clause 49:

Sub-clauses (1) and (2): These sub-clauses enable officers acting on behalf of the Commissioner to lay informations relating to offences under the Act.

Clause 50: This clause deals with offences by bodies corporate.

Clause 51:

Sub-clause (1): This sub-clause enables the Governor in Council to make regulations with respect to forms, applications, returns, notices, certificates, appointments and certain other matters.

Sub-clause (2): This sub-clause states that the regulations referred to in sub-clause (1) may be made to have different application as required and can impose a penalty not exceeding five penalty units for offences against the regulations.

Sub-clause (3): This sub-clause allows certain matters to be prescribed by reference to other instruments and documents.

Sub-clause (4): This sub-clause provides that a form in or to the like effect of the prescribed form shall be sufficient in law.

Clause 52: This clause makes an amendment to the *Evidence (Commissions) Act 1982* which is consequential on the provisions of clause 5 (2).

The Schedule: This schedule provides a standard format for a warrant to enter premises to seek or examine documents pursuant to clause 45.

