



Australian Capital Territory

Utilities (Energy Industry Levy) Amendment Act 2007

A2007-13

An Act to amend the *Utilities Act 2000*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2006-185

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Utilities (Energy Industry Levy) Amendment Act 2007*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Utilities Act 2000*.

Note This Act also amends the *Taxation Administration Act 1999* (see s 9).

4 New section 5A

in part 1, insert

5A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 54J (Production of relevant information etc).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 New part 3A

insert

Part 3A Energy industry levy

Notes to pt 3A

This part is a tax law under the *Taxation Administration Act 1999*. As a tax law, this part is subject to provisions of the *Taxation Administration Act 1999* about the administration and enforcement of tax laws generally.

The levy imposed under this part applies in relation to the financial year beginning on 1 July 2007 and each subsequent financial year (see s 400).

54A Definitions—pt 3A

In this part:

administrator—see section 54N.

determined means determined by the administrator under this part.

energy industry sector—see section 54D (1).

energy utility—see section 54D (2).

energy utility service—see section 54D (3).

fixed net regulatory cost—see section 54G (3).

levy means the levy under section 54C.

levy year—see section 54C (1).

local regulatory cost—see section 54F (1).

national regulatory cost—see section 54E (2).

national regulatory obligations—see section 54E (1).

net regulatory cost—see section 54G (2).

regulatory cost—see section 54G (1).

year means financial year.

54B Purpose—pt 3A

The purpose of this part is to impose a levy on energy utilities to recover the amount of the Territory's national regulatory costs, and local regulatory costs, in relation to the energy industry sectors.

54C Energy industry levy—imposition

- (1) If an energy utility provides an energy utility service in an energy industry sector at any time during a year (the *levy year*), the utility is liable to pay a levy in relation to the net regulatory cost for that year.
- (2) The levy for the levy year is worked out as follows:

$$\frac{K}{NC} + \frac{(L - K) \times E}{\Sigma E} + A$$

- (3) If an energy utility does not provide an energy utility service in an energy industry sector in the levy year, but provided an energy utility service in the sector in the previous year—
- (a) *L* is taken to be zero in relation to the utility for the levy year; and
 - (b) *K* is taken to be zero in relation to the utility for the levy year.
- (4) If an energy utility provides an energy utility service in an energy industry sector in the levy year, but did not provide an energy utility service in the sector in the previous year—
- (a) *L'* is taken to be zero in relation to the utility for the previous year; and
 - (b) *K'* is taken to be zero in relation to the utility for the previous year.
- (5) In this section:

A, for the levy year, means an adjustment for the previous year, worked out as follows:

$$\frac{K'}{NC'} + \frac{(L' - K') \times E}{\Sigma E} - T$$

E, for the levy year, means—

- (a) for an electricity distributor—the total number of megawatt hours of electricity distributed by the distributor in the ACT in the previous year; and
- (b) for an electricity supplier—the total number of megawatt hours of electricity sold by the supplier in the ACT in the previous year; and
- (c) for a gas distributor—the total number of megajoules of gas distributed by the distributor in the ACT in the previous year; and

(d) for a gas supplier—the total number of megajoules of gas sold by the supplier in the ACT in the previous year.

K, for an energy industry sector for the levy year, means the determined estimate of fixed net regulatory cost for the sector for the year.

K', for an energy industry sector for the levy year, means the determined fixed net regulatory cost for the sector for the previous year.

L, for an energy industry sector for the levy year, means the determined estimate of net regulatory cost for the sector for the year.

L', for an energy industry sector for the levy year, means the determined net regulatory cost for the sector for the previous year.

NC, for an energy industry sector for the levy year, means the determined number of energy utilities that provided energy utility services in the sector at any time before 15 September for the year.

NC', for an energy industry sector for the levy year, means the determined number of energy utilities that provided energy utility services in the sector at any time during the previous year.

T, for the levy year, means the amount of any levy paid by the utility in relation to the provision of energy utility services in the energy industry sector during the previous year.

ΣE, for an energy industry sector for the levy year, means the total number of megawatt hours of electricity or megajoules of gas distributed or sold in the ACT by all energy utilities in the sector in the previous year.

54D Energy industry sectors etc

- (1) For this part, each of the following is an *energy industry sector*:
 - (a) the electricity distribution sector;
 - (b) the electricity supply sector;

- (c) the gas distribution sector;
 - (d) the gas supply sector;
 - (e) an energy industry sector prescribed by regulation.
- (2) For this part, an *energy utility* is a utility that provides an energy utility service.
- (3) For this part, an *energy utility service* is any of the following:
- (a) electricity distribution;
 - (b) electricity supply;
 - (c) gas distribution;
 - (d) gas supply.
- (4) In this section:

electricity distribution means the distribution of electricity through an electricity network.

electricity supply means the supply of electricity from an electricity network to premises for consumption.

gas distribution means the distribution of gas through a gas distribution network.

gas supply means the supply of gas from a gas distribution network to premises for consumption.

54E National regulatory obligations and costs

- (1) For this part, the *national regulatory obligations* are the Territory's obligations under the AEMA in relation to—
- (a) cost-sharing arrangements for funding AEMC in relation to the exercise of its functions; and
 - (b) the Ministerial Council on Energy's responsibilities under the AEMA.

- (2) For this part, the *national regulatory cost* for a year is the amount determined under this section to be the cost to the Territory of meeting its national regulatory obligations for the year.
- (3) The administrator must, before 1 October in the levy year, in accordance with this section, determine—
 - (a) the estimated national regulatory cost to be applied to each energy industry sector for each levy year; and
 - (b) the national regulatory cost to be applied to each energy industry sector for the year before each levy year.
- (4) In determining the estimated national regulatory cost to be applied to an energy industry sector for a levy year, the administrator must—
 - (a) consider the following:
 - (i) the AEMC's budget, or draft budget, for its functions for the year;
 - (ii) the MCE's budget, or draft budget, for its functions under the AEMA for the year;
 - (iii) the amount, if any, allocated for AEMC and MCE by the Territory for the year;
 - (iv) the annual costs incurred by AEMC and MCE in previous years in relation to the ACT;
 - (v) the annual costs incurred by the Territory in previous years for activities undertaken by AEMC and MCE; and
 - (b) apportion the estimated national regulatory cost between energy industry sectors having regard to the costs attributable to each sector.

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- (5) In determining the national regulatory cost to be applied to an energy industry sector for the year before the levy year, the administrator must—
- (a) consider the amount payable by the Territory for its national regulatory obligations for the previous year; and
 - (b) apportion the national regulatory cost between energy industry sectors having regard to the costs attributable to each sector.
- (6) A determination under this section is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (7) In this section:

AEMA means the Australian Energy Market Agreement 2004, as amended in 2006, between the Commonwealth, State and Territory Governments.

AEMC means the Australian Energy Market Commission under the *Australian Energy Market Commission Establishment Act 2005* (SA).

MCE means the Ministerial Council on Energy and working groups established under the council.

54F Local regulatory costs

- (1) For this part, the *local regulatory cost* for a year is the amount determined by the administrator to be the cost to the Territory of—
- (a) providing regulatory activities in relation to safety, technical operations, consumer service and environmental behaviour for energy utility services; and
 - (b) the administration of the levy.

- (2) The administrator must, before 1 October in the levy year, in accordance with this section, determine the amount of the local regulatory cost to be applied to each energy industry sector for each levy year and the previous year.
- (3) In determining the estimated local regulatory cost for an energy industry sector for a levy year, the administrator must—
 - (a) consider the following:
 - (i) the budget, or draft budget, for local regulatory activities for the year;
 - (ii) the costs incurred in previous years for local regulatory activities; and
 - (b) apportion the estimated local regulatory cost between energy industry sectors having regard to the costs attributable to each sector.
- (4) In determining the local regulatory cost for an energy industry sector for a year before a levy year, the administrator must apportion the local regulatory cost between energy industry sectors having regard to the costs attributable to each sector.
- (5) A determination under this section is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

54G Annual regulatory costs etc

- (1) For this part, the *regulatory cost* for an energy industry sector for a year is the sum of the amounts determined by the administrator to be—
 - (a) the *national regulatory cost* to be applied to the sector for the year; and
 - (b) the *local regulatory cost* to be applied to the sector for the year.

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- (2) For this part, the *net regulatory cost* for an energy industry sector for a year is the regulatory cost for the sector for the year less the total amount of annual licence fees determined under section 45 (Determination of fee) for all energy utilities in the sector for the year.
 - (3) For this part, the *fixed net regulatory cost* for an energy industry sector for a year is the net regulatory cost incurred for an energy utility that is unrelated to the utility's market share.

54H Further energy sector determinations

- (1) For this part, the administrator must, before 1 October in the levy year, determine the following:
 - (a) for the levy year—
 - (i) the number of energy utilities that provided an energy utility service in each energy utility sector at any time before 15 September in the year; and
 - (ii) for each energy industry sector, the estimated fixed net regulatory cost for the sector for the year;
 - (b) for the year before the levy year—
 - (i) the number of energy utilities that provided an energy utility service in each energy industry sector at any time during the year; and
 - (ii) having regard to statements lodged under section 54I, the total number of megawatt hours of electricity or megajoules of gas distributed or sold in the ACT by all energy utilities in each energy industry sector in the year; and
 - (iii) for each energy industry sector, the fixed net regulatory cost for the sector for the year.

- (2) A determination under this section is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

54I Production of distribution and sales information

- (1) An energy utility must lodge a statement for a levy year if the utility provided an energy utility service in the ACT at any time during the previous year.
- (2) The statement for a year must—
- (a) be in writing; and
 - (b) be lodged with the administrator not later than 15 September in the year; and
 - (c) state—
 - (i) for an electricity distributor—the total number of megawatt hours of electricity distributed by the distributor in the ACT in the previous year; and
 - (ii) for an electricity supplier—the total number of megawatt hours of electricity sold by the supplier in the ACT in the previous year; and
 - (iii) for a gas distributor—the total number of megajoules of gas distributed by the distributor in the ACT in the previous year; and
 - (iv) for a gas supplier—the total number of megajoules of gas sold by the supplier in the ACT in the previous year; and
 - (v) the way the energy utility calculated the number of megawatt hours or megajoules mentioned in subparagraphs (i) to (iv).

54J Production of relevant information etc

- (1) The administrator may, by written notice given to an energy utility, require the utility to give the administrator relevant information or documents that the administrator reasonably requires for this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) The notice must state—
 - (a) the information or document required by the administrator; and
 - (b) where or how the information or document is to be given to the administrator; and
 - (c) when the information or document must be given to the administrator.
- (3) An energy utility commits an offence if the utility contravenes a requirement of a notice given to the utility under subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

54K Registration of energy utilities

The commissioner must register an energy utility if the utility—

- (a) provides an energy utility service in the ACT; and
- (b) has applied to the commissioner for registration as an energy utility.

54L Offence—failure to register

- (1) A person commits an offence if—
 - (a) the person becomes an energy utility; and

- (b) the person does not apply to the commissioner to be registered as an energy utility within 90 days after the day the person becomes an energy utility.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to subsection (1) (a).
- (3) A person commits an offence if—
 - (a) on the commencement of this part, the person provides an energy utility service in the ACT; and
 - (b) the person does not apply to the commissioner to be registered as an energy utility within 90 days after the day this part commences.

Maximum penalty: 50 penalty units.

- (4) Strict liability applies to subsection (3) (a).
- (5) Subsections (3) and (4) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (6) Subsections (3), (4) and (5) and this subsection expire 1 year after the day this section commences.

54M Returns under Taxation Administration Act

- (1) An energy utility must lodge a return for a levy year if the utility provided an energy utility service in the ACT at any time—
 - (a) before 1 October in the year; or
 - (b) during the previous year.
- (2) The return for a year must—
 - (a) be in writing; and
 - (b) be lodged with the commissioner for revenue not later than the return deadline; and

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- (c) state—
- (i) for an electricity distributor—the total number of megawatt hours of electricity distributed by the distributor in the ACT in the previous year; and
 - (ii) for an electricity supplier—the total number of megawatt hours of electricity sold by the supplier in the ACT in the previous year; and
 - (iii) for a gas distributor—the total number of megajoules of gas distributed by the distributor in the ACT in the previous year; and
 - (iv) for a gas supplier—the total number of megajoules of gas sold by the supplier in the ACT in the previous year; and
 - (v) the way the energy utility calculated the number of megawatt hours or megajoules mentioned in subparagraphs (i) to (iv).

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for this provision, the form must be used.

(3) In this section:

return deadline, for a return for a year, means—

- (a) 31 October in the year; or
- (b) if the deadline is extended under the *Taxation Administration Act 1999*, section 40—the date by which the return must be lodged under that section.

54N Levy administrator

The Minister may appoint a public servant to be the *administrator* for this part.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 A person's appointment also ends if the person resigns (see Legislation Act, s 210).

6 New part 17

insert

Part 17 Transitional

400 Application of pt 3A (Energy industry levy)

- (1) The levy imposed under section 54C (Energy industry levy—imposition) applies in relation to the financial year beginning on 1 July 2007 and each subsequent year.
- (2) This section is a law to which the Legislation Act section 88 (Repeal does not end effect of transitional laws etc) applies.

401 Expiry—pt 17

- (1) This part expires 1 year after the day part 3A (Energy industry levy) commences.
- (2) When this part expires, the following note also expires:
 - Part 3A, note 2.

7 Dictionary, note 2, new dot point

insert

- commissioner for revenue

8 Dictionary, new definitions

insert

administrator, for part 3A (Energy industry levy)—see section 54N.

determined, for part 3A (Energy industry levy)—see section 54A.

energy industry sector, for part 3A (Energy industry levy)—see section 54D (1).

energy utility, for part 3A (Energy industry levy)—see section 54D (2).

energy utility service, for part 3A (Energy industry levy)—see section 54D (3).

fixed net regulatory cost, for part 3A (Energy industry levy)—see section 54G (3).

levy, for part 3A (Energy industry levy)—see section 54A.

levy year, for part 3A (Energy industry levy)—see section 54C (1).

local regulatory cost, for part 3A (Energy industry levy)—see section 54F (1).

national regulatory cost, for part 3A (Energy industry levy)—see section 54E (2).

national regulatory obligations, for part 3A (Energy industry levy)—see section 54E (1).

net regulatory cost, for part 3A (Energy industry levy)—see section 54G (2).

regulatory cost, for part 3A (Energy industry levy)—see section 54G (1).

year, for part 3A (Energy industry levy)—see section 54A.

9 Taxation Administration Act 1999, new section 4 (ka)

insert

(ka) the *Utilities Act 2000*, part 3A (Energy industry levy);

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 March 2007.

2 Notification

Notified under the Legislation Act on 13 June 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Utilities (Energy Industry Levy) Amendment Bill 2007, which was passed by the Legislative Assembly on 29 May 2007.

Clerk of the Legislative Assembly

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