

2007

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**UTILITIES (ENERGY INDUSTRY LEVY)
AMENDMENT BILL 2007**

EXPLANATORY STATEMENT

Circulated by the authority of

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Chief Minister

Utilities (Energy Industry Levy) Amendment Bill 2007

PURPOSE

The purpose of the Bill is to establish an Energy Industry Levy that provides funds to cover the ACT's financial obligations in relation to national and local energy regulatory activities. The new Part 3A, the operational provision, is a tax law under the *Taxation Administration Act 1999*. As a tax law, the Energy Industry Levy regime is subject to provisions of the *Taxation Administration Act 1999* about the administration and enforcement of tax laws generally.

BACKGROUND

This Bill will overcome the issues associated with the phasing-out of jurisdictional-based licensing regimes from 2007/08, as part of the National Energy Market reform. It will provide a levy that will ultimately replace the current licence fees and will also aid in the funding of the financial requirements for the ACT's contribution to the Australian Energy Market Commission (AEMC). In accordance with the timetable agreed to by Commonwealth, State and Territory Governments, the AEMC will assume, in a staged process, the energy regulatory functions that are currently undertaken by the Independent Competition and Regulatory Commission (ICRC).

DETAILS OF THE BILL

Clause 1 provides that the name of the Act is the *Utilities (Energy Industry Levy) Amendment Act 2007*.

Clause 2 provides the commencement date of the levy as the day fixed by the Minister by written notice.

Clause 3 provides the Legislation amended as the *Utilities Act 2000*.

Clause 4 inserts a new section 5A, which provides a reference to the application of the Criminal Code for offences against the *Utilities Act 2000*.

Clause 5 provides a new framework for the establishment of an Energy Industry Levy, which raises funds to cover the ACT's financial obligations in relation to national and local energy regulatory activities, by inserting new Part 3A (with new sections 54A, 54B, 54C, 54D, 54E, 54F, 54G, 54H, 54I, 54J, 54K and 54L) into the *Utilities Act 2000*.

- New Part 3A: establishes the Energy Industry Levy framework, consisting of new sections 54A, 54B, 54C, 54D, 54E, 54F, 54G, 54H, 54I, 54J, 54K, 54L, 54M and 54N.
- New section 54A: inserts definitions of “administrator”, “determined”, “energy industry sector”, “energy utility”, “energy utility service”, “fixed net

regulatory cost”, “levy”, “levy year”, “local regulatory cost”, “national regulatory cost”, “national regulatory obligations”, “net regulatory cost”, “regulatory cost” and “year”.

- New section 54B: provides the purpose of Part 3A, which is to impose a levy on energy utilities for the Territory to recover its national and local regulatory financial obligations in relation to energy industry sectors.
- New section 54C: provides a formula for the calculation of the energy levy for a levy year. The levy consists of three components: (i) the first component is in relation to the estimated fixed regulatory cost, which is shared equally among all utilities in an energy sector; (ii) the second component represents a variable regulatory cost, which is shared among the utilities in proportion to their market shares; and (iii) the third component is an adjustment from the previous year. Refer to the Bill for detailed formula explanation and justification.
- New section 54D: lists the energy industry sectors and energy utility services to which the legislation applies.
- New section 54E: provides the definition of the Territory’s national regulatory costs, which are to be recovered through the energy levy. These costs are the Territory’s financial obligations under the Australian Energy Market Agreement in relation to the operation of the Australian Energy Market Commission and the Ministerial Council on Energy, including working groups established under the Council. The national regulatory costs are to be determined by the administrator for each financial year and each energy industry sector, before 1 October of the year. The determination is a notifiable instrument.
- New section 54F: provides the definition of the Territory’s local regulatory costs, which are to be recovered through the energy levy. These costs are the costs to the Territory of providing regulatory activities in relation to safety, technical operations, consumer service and environmental behaviour for energy utility services. These costs also cover the administration of the levy. The local regulatory costs are to be determined by the administrator for each financial year and each energy industry sector, before 1 October of the year. The determination is a notifiable instrument.
- New section 54G: provides the definition of the Territory’s annual regulatory cost, which is the sum of the national regulatory cost and the local regulatory cost. The section also provides the definition of the net regulatory cost, which is the annual regulatory cost less the total amount of annual licence fees, determined under section 45 of the *Utilities Act 2000*, for the energy sector. This is to ensure that the same cost will not be counted twice under the licence fee regime and the levy regime.
- New section 54H: provides that administrator must determine, for each energy sector, the number of energy utilities and the fixed net regulatory cost for the levy year and the year before. The administrator must also determine the total

number of megawatt hours of electricity or megajoules of gas distributed or supplied in the ACT by all energy utilities in each energy industry sector in the year before the levy year. These figures will then be fed into the formula in section 54(C) for the calculation of the energy levy payable by an energy utility. These figures are required to be determined before 1 October of a levy year.

- New section 54I: provides that a utility must lodge a statement with the administrator before 15 September for a levy year in relation to its distribution or sales information. This information will enable the administrator to accurately determine the total distribution and sales data, which will then be input into the formulation for the calculation of the levy.
- New section 54J: provides for an information collection power, under which the administrator may, by written notice, require a utility to give relevant information or documents that he or she reasonably requires for the performance of his or her duties under this part.
- New section 54K: provides for the commissioner to register a person as an energy utility that provides an energy utility service in the ACT.
- New section 54L: provides offence provisions. A person is strictly liable to a penalty of 50 penalty units if the person becomes an energy utility and 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.
- New section 54M: provides that an energy utility, which operated in an energy industry sector at any time during the current financial year (before 1 October) or the previous year, must lodge a return in writing before 31 October or the extended deadline determined under section 40 of the *Taxation Administration Act 1999*. In accordance with section 51 of the *Taxation Administration Act 1999*, the energy levy is due and payable on 31 October of the year, which is the last day when the return is required to be lodged, or by the extended deadline determined under section 40 of the *Taxation Administration Act 1999*.
- New section 54N: provides for an appointment power under which the Minister may appoint a public servant to be the administrator for the purpose of the energy levy regime.

Clause 6 provides for a transitional arrangement, which deals with the commencement of the energy levy regime, by inserting new Part 17 (with new sections 400 and 401) into the *Utilities Act 2000*.

- New section 400: provides that the energy levy regime will apply to energy utilities from 1 July 2007.
- New section 401: provides that Part 17 will expire 1 year after the Part 3A (Energy industry levy) commences.

Clause 7 inserts “commissioner for revenue” in note 2 to the Dictionary of the *Utilities Act 2000* as an example of terms that are defined in Part 1 (Meaning of commonly-used terms) of the Dictionary of the *Legislation Act 2001*.

Clause 8 inserts the definitions of:

- Administrator
- Determined
- Energy industry sector
- Energy utility
- Energy utility service
- Fixed net regulatory cost
- Levy
- Levy year
- Local regulatory cost
- National regulatory cost
- National regulatory obligations
- Net regulatory cost
- Regulatory cost
- Year

in the Dictionary.

Clause 9 inserts new section 4(ka) into the *Utilities Act 2000*. The new section provides that the new Part 3A (Energy industry levy) of the *Utilities Act 2000* is a tax law under the *Taxation Administration Act 1999*. As a tax law, Part 3A is subject to provisions of the *Taxation Administration Act 1999* about the administration and enforcement of tax laws generally.