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Energy Resources Levy Act 1976

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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An Act to make provision for the imposition, assessment, and collection of a levy on certain energy resources produced in New Zealand

1 Short Title

This Act may be cited as the Energy Resources Levy Act 1976.

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

agent means any person declared by this Act or by the Secretary to be the agent of any other person in respect of any energy resource

book and document and **book or document** include all books, accounts, rolls, records, registers, papers, and other documents and all photographic plates, microfilms, photostatic negatives, prints, tapes, discs, computer reels, perforated rolls, and any other type of record whatsoever

coal means anthracite, bituminous coal, sub-bituminous coal, brown coal, or lignite, produced from a coal mine

coal mine means any place where coal is extracted from the ground and access to the coal is obtained by means of the removal of overburden by mechanical or other means so as to expose the coal seam to natural light

company means any body corporate, whether incorporated in New Zealand or elsewhere; but does not include a public body

energy resource means natural gas or coal

land includes land below the sea and any other water

levy means the levy imposed by section 4

licence means a licence granted under the Petroleum Act 1937 or under that Act as applied by section 4 of the Continental Shelf Act 1964

month means a calendar month commencing on the first day of the month

natural gas means petroleum that exists in a gaseous state at 15° Celsius and 1 013 millibars dry

New Zealand includes the internal waters of New Zealand (as defined by section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977), the territorial sea of New Zealand, and the continental shelf (as defined in section 2 of the Continental Shelf Act 1964)

owner, in relation to a coal mine, means the person on whose behalf the mine is worked (whether by himself or otherwise) for his immediate benefit, whether such person is the actual proprietor of the mine or is the occupier of the mine under any lease, grant, or licence; but does not include a person who merely receives a royalty, rent, tribute, or fine from a mine, or who is merely the proprietor of a mine that is being worked by another person under a lease, grant, or

licence for the working of the mine; and **to own**, in relation to a coal mine, has a corresponding meaning

partnership means an association of persons carrying on business as partners or in receipt of income jointly or carrying on a joint undertaking; but does not include a company

person includes a corporation sole, a company, a public body, an unincorporated body of persons, a partnership, and a department of State

petroleum means—

- (a) any naturally occurring hydrocarbon (other than coal), whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons (other than coal), whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of 1 or more hydrocarbons (other than coal), whether in a gaseous, liquid, or solid state, and 1 or more of the following, namely, hydrogen sulphide, nitrogen, helium, or carbon dioxide

produced means mined or otherwise extracted from land

Secretary means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

South Island lignite means lignite produced in the South Island.

- (2) For the purposes of this Act, 2 or more persons acting as co-trustees shall be deemed to be 1 person.

Section 2(1) **agent**: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 2(1) **coal**: substituted, on 1 June 1978, by section 2 of the Energy Resources Levy Amendment Act 1978 (1978 No 1).

Section 2(1) **coal mine**: substituted, on 12 December 1983, by section 2 of the Energy Resources Levy Amendment Act 1983 (1983 No 70).

Section 2(1) **Commissioner**: repealed, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 2(1) **New Zealand**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

Section 2(1) **New Zealand**: amended, on 1 October 1977, pursuant to section 33(2)(b) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 (1977 No 28).

Section 2(1) **Secretary**: substituted, on 2 January 1990, by section 5 of the Ministry of Energy (Abolition) Act 1989 (1989 No 140).

3 Act to bind Crown

This Act shall bind the Crown.

Part 1

Imposition of levy

4 Levy on natural gas and coal

- (1) Subject to sections 6, 7, and 19, there is hereby imposed and shall be paid in accordance with this Act, for the use of the Crown, a levy on all natural gas and coal produced in New Zealand at any time on or after 1 January 1977.
- (2) Subject to section 5, the rate of levy shall be—
 - (a) on natural gas, 45 cents per gigajoule:
 - (b) on coal (other than South Island lignite), \$2 per tonne:
 - (c) on South Island lignite, \$1.50 per tonne.
- (3) The person liable to pay the levy payable on any natural gas shall be the person who, at the time the natural gas was produced, held the licence relating to the land from which the natural gas was produced.
- (4) The person liable to pay the levy payable on any coal (including lignite) shall be the person who, at the time the coal was produced, was the owner of the coal mine from which the coal was produced.
- (5) Nothing in subsections (3) and (4) shall in any way derogate from Part 6.

5 Rates of levy may be altered by Order in Council

- (1) The Governor-General may from time to time, by Order in Council, reduce or increase any or all of the rates of levy specified in subsection (2) of section 4:
provided that no such rate may be increased under this subsection to such an extent that it would exceed the rate specified in that subsection (2).
- (2) *[Repealed]*
- (3) *[Repealed]*

Section 5(2): repealed, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 5(3): repealed, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

5A Orders are confirmable instruments

The explanatory note of an Order in Council made under section 5(1) must indicate that—

- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 5A: inserted, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

6 Exemptions from levy

- (1) Notwithstanding section 4, the levy shall not be payable on—
 - (a) any natural gas produced as a result of a discovery of natural gas made on or after 1 January 1986; or
 - (b) any energy resource that, in the opinion of the Secretary, has been unavoidably lost before any use or sale or other disposition of it.
- (2) Notwithstanding section 4,—
 - (a) where the total energy content of all natural gas that is produced during a particular month and the levy on which would be payable by the same person does not exceed 50 gigajoules, no levy shall be payable on that natural gas:
 - (b) where the total weight of all coal that is produced during a particular month and the levy on which would be payable by the same person does not exceed 10 tonnes, no levy shall be payable on that coal.

Section 6(1): substituted (with effect on 1 January 1986), on 28 September 1993, by section 2(1) of the Energy Resources Levy Amendment Act 1993 (1993 No 145).

7 Levy on certain energy resources may be remitted or reduced by Order in Council

The Governor-General may, from time to time and in respect of any particular energy resource that in his opinion would not be produced if a levy at the rate specified in section 4, or, as the case may be, in an Order in Council under section 5, were payable thereon, prescribe by Order in Council that, subject to such conditions as are specified in the Order in Council,—

- (a) no levy shall be payable on that energy resource; or
- (b) a levy at the rate specified in the Order in Council (being a rate lower than that specified in the said section 4, or, as the case may be, in the Order in Council under the said section 5) shall be payable on that energy resource—

and every such Order in Council shall have effect according to its tenor. The Governor-General may in like manner vary or revoke any such Order in Council.

Part 2 Returns

8 Returns

- (1) Subject to this section, every person who is liable to pay a levy on any energy resource shall, within 20 days after the end of the month during which the ener-

gy resource was produced, furnish to the Secretary a return (in the form prescribed pursuant to section 32) stating the amount of the energy resource, the amount of the levy payable thereon, and such other particulars reasonably incidental thereto as the form may require.

- (2) The Secretary, in his discretion, may, for the purpose of meeting the special circumstances (including those relating to the time between production and weighing or measurement of any energy resource) of any case or class of cases, extend for so long and subject to such conditions as he thinks fit the time within which a person is required to furnish a return pursuant to subsection (1). In every such case the provisions of this section shall apply as so varied, and that person shall furnish a return accordingly.
- (3) The exercise by the Secretary of his discretion under subsection (2) shall not in any case exempt a person from his liability to pay any levy, notwithstanding that it may have the effect of extending the time for payment thereof.

Section 8(1): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 8(2): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 8(3): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

9 Secretary may require other returns to be furnished

In addition to the returns required by section 8, the Secretary may require any person to furnish (whether on his own behalf or as an agent or a trustee) to the Secretary such further or other returns as the Secretary requires for the purposes of this Act, and that person shall, within a reasonable time, furnish any such further or other returns accordingly.

Section 9 heading: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 9: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

10 Presumption as to authority

A return purporting to be furnished by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved.

Part 3

Payment, assessment, and recovery of levy

11 Time for payment of levy

- (1) Subject to this section and section 12(5), every person who is liable to pay a levy on any energy resource shall pay that levy to the Secretary within the time

within which he is required by section 8 to furnish a return relating to that energy resource.

- (2) The Secretary, in his discretion, may, for the purpose of meeting the special circumstances of any case or class of cases, extend for so long and subject to such conditions (including payment of interest) as he thinks fit the time within which a person is required to pay a levy pursuant to subsection (1). In every such case the provisions of this section shall apply as so varied, and that person shall pay the levy accordingly.

Section 11(1): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 11(2): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

12 Assessment of levy

- (1) Where the Secretary finds in any case that a levy or further levy is payable by any person, the Secretary may make an assessment of the energy resource on which that levy or further levy is payable and of the amount of that levy or further levy.
- (2) Where—
- (a) any person makes default in furnishing any return; or
 - (b) the Secretary is not satisfied with the return made by any person; or
 - (c) the Secretary has reason to suspect that any person, although he has not made a return, is liable to pay a levy,—

the Secretary may make an assessment of the energy resource on which, in his judgment, a levy or further levy ought to be paid and of the amount of that levy or further levy, and that person shall be liable to pay the levy or further levy so assessed, save in so far as he establishes on appeal under section 14 that the assessment is excessive or that he is not liable to pay the levy or further levy.

- (3) Subject to section 13, the Secretary may from time to time and at any time make all such alterations in or additions to an assessment made under this section as he thinks necessary to ensure the correctness thereof, notwithstanding that a levy or further levy already assessed may have been paid.
- (4) As soon as conveniently may be after an assessment or amended assessment is made under this section, the Secretary shall cause notice of the assessment or amended assessment to be given to the person liable to pay the levy or further levy:

provided that the omission to give any such notice shall not invalidate the assessment or amended assessment or in any manner affect the operation thereof.

- (5) Where any levy or further levy is assessed under an assessment or amended assessment made under this section the person liable to pay the levy or further levy shall pay the amount thereof to the Secretary within the time within which

he is required by section 8 to furnish a return relating to the energy resource on which the levy or further levy is payable:

provided that where the Secretary is satisfied that the person has not been guilty of wilful neglect or default in making due and complete returns under this Act in respect of that energy resource, the Secretary may, in any case where he considers that the circumstances warrant it, specify in the notice of the assessment or amended assessment, or in any subsequent notice, such date (being later than the last date for furnishing the return in accordance with section 8) as he, in his discretion, determines for the payment of that levy or further levy; and, in that event, the date so determined shall be the due date for payment of that levy or further levy.

- (6) The validity of an assessment or an amended assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.
- (7) Except in proceedings on appeal under section 14 against an assessment or an amended assessment, no assessment or amended assessment made by the Secretary shall be disputed in any court or in any proceedings on any ground; and, except as aforesaid, every such assessment or amended assessment and all the particulars thereof shall be conclusively deemed and taken to be correct, and the liability of the person so assessed shall be determined accordingly.

Section 12(1): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 12(2): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 12(2)(b): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 12(2)(c): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 12(3): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 12(4): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 12(5): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 12(5) proviso: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 12(7): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

13 Limitation of time for amendment of assessment

- (1) Where any person has made a return in respect of any energy resource and has paid, or has been assessed for, a levy or further levy thereon, it shall not be lawful for the Secretary—
 - (a) where an assessment has not been made, to make an assessment:

- (b) where an assessment has been made, to alter the assessment so as to increase the amount thereof—
after the expiration of 4 years from the day on which the return was made.
- (2) Notwithstanding subsection (1), in any case where, in the opinion of the Secretary, the return so made is fraudulent or wilfully misleading, it shall be lawful for the Secretary—
- (a) where an assessment has not been made, to make an assessment at any time:
- (b) where an assessment has been made, to alter the assessment at any time so as to increase the amount thereof.

Section 13(1): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 13(2): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

14 Appeal from assessment to High Court

- (1) Where any person is dissatisfied with any assessment or amended assessment made by the Secretary under this Act, the person may appeal to the High Court against that assessment or amended assessment:
provided that, except as otherwise expressly provided in this Act, there shall be no right of appeal with respect to any matter which by any provision of this Act is left to the discretion, judgment, opinion, approval, consent, decision, or determination of the Governor-General, the Minister of Finance, or the Chief Inspector of Coal Mines.
- (2) Every appeal under subsection (1) shall be made by giving notice of appeal within 2 months after the date on which the appellant was notified of the assessment or amended assessment appealed against or within such further time as the court may allow on application made either before or after the expiration of those 2 months.
- (3) In its determination of any appeal the court may confirm, modify, or reverse the assessment or amended assessment appealed against.
- (4) Subject to this section, the procedure in respect of any such appeal shall be in accordance with rules of court.

Section 14 heading: amended, on 15 August 1991, pursuant to section 3(5) of the Judicature Amendment Act 1991 (1991 No 60).

Section 14(1): amended, on 15 August 1991, pursuant to section 3(5) of the Judicature Amendment Act 1991 (1991 No 60).

15 Obligation to pay levy not suspended by appeal

The obligation to pay and the right to receive and recover any levy shall not be suspended by any appeal; but, if the appellant succeeds, the amount (if any) of the levy received by the Secretary in excess of the amount which, according to

the decision on the appeal, was properly payable shall forthwith be refunded to him by the Secretary.

Section 15: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

16 Additional levy for default in payment of levy

- (1) Subject to subsections (3) and (4), if any levy or further levy or part thereof payable under this Act (whether or not assessed under section 12) is not paid within the time specified for payment thereof under section 11 or section 12(5), as the case may be, an amount calculated in accordance with subsection (2) shall be and be deemed to be added to the levy or further levy by way of an additional levy and shall be payable accordingly.
- (2) For the purposes of subsection (1), any amount payable thereunder as additional levy shall be calculated at the rate of 2% of the unpaid levy or further levy or part thereof, as the case may be, for every period of 28 days or part thereof between the date by which the levy or further levy or part thereof should have been paid under this Act and the date the levy or further levy or part thereof is paid.
- (3) On application for relief made in writing by or on behalf of any person who has become liable under this section for the payment of any additional levy that does not exceed \$500, the Secretary, if having regard to the circumstances of the case he thinks it equitable to do so, may grant relief to the person—
 - (a) by the remission of the whole or any part of the additional levy; or
 - (b) where the additional levy has been paid in whole or in part, by the refund to the person of the whole or any part of the additional levy that has been paid, with or without the remission of any part of the additional levy that has not been paid.
- (4) On application for relief made in writing by or on behalf of any person who has become liable under this section for the payment of any additional levy that exceeds \$500, the Minister of Finance, if having regard to the circumstances of the case he thinks it equitable to do so, may grant relief to the person—
 - (a) by the remission of the whole or any part of the additional levy; or
 - (b) where the additional levy has been paid in whole or in part, by the refund to the person of the whole or any part of the additional levy that has been paid, with or without the remission of any part of the additional levy that has not been paid.
- (5) Any amount imposed by way of additional levy under this section shall be in addition to any other penalty to which the person may be liable, and shall for all purposes be deemed to be of the same nature as the unpaid levy in respect of which it is imposed, and shall, except to the extent that relief is granted in respect thereof under subsection (3) or subsection (4), be recoverable accordingly.

Section 16(2): amended, on 28 September 1993, by section 3 of the Energy Resources Levy Amendment Act 1993 (1993 No 145).

Section 16(3): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

17 Recovery of levy

- (1) All money payable to the Secretary under this Act shall constitute a debt due to the Crown.
- (2) The right to recover any levy as a Crown debt shall not be affected by the fact that a bond or security has been given for the payment of the levy or that no proper assessment of the levy has been made in due course or that a deficient assessment of the levy has been made.
- (3) Without in any way derogating from the Income Tax Act 2007 or the Tax Administration Act 1994, the provisions of section RA 7 of the Income Tax Act 2007, and sections 156 and 158 to 164 of the Tax Administration Act 1994, as far as they are applicable and with the necessary modifications, shall have effect as if they formed part of this Act and as if—
 - (a) every reference in those provisions to income tax or to tax were a reference to a levy; and
 - (b) every reference in those provisions to the Commissioner were a reference to the Secretary as defined in section 2; and
 - (c) for the words “tax, and no proceedings on objection to an assessment of tax” in section 162 of the Tax Administration Act 1994 there were substituted the words “a levy, and no proceedings on appeal against an assessment or amended assessment of a levy”; and
 - (d) for the words “this Act” in both places where they occur in section 164 of the Tax Administration Act 1994 there were substituted the words “the Energy Resources Levy Act 1976”.
- (4) All money paid to or recovered by the Secretary under this Act shall be paid into a Crown Bank Account.

Section 17(1): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 17(3): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 17(3): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 17(3)(b): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 17(3)(c): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 17(3)(d): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 Income Tax Act 1994 (1994 No 164).

Section 17(4): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 17(4): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Part 4

Refunds and relief from levy

18 Refund of excess levy

Where the Secretary is satisfied that any levy paid by a person is in excess of the levy properly payable by him, the Secretary shall refund the amount paid in excess:

provided that no refund shall be made under this section after the expiration of the period of 8 years immediately after the date on which the levy was paid by him, unless written application for the refund is made by or on behalf of the person before the expiration of that period.

Section 18: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

19 Relief in cases of serious hardship

In any case where it is shown to the satisfaction of the Minister of Finance that any person who has become liable to pay a levy has suffered such loss or is in such circumstances that the exaction of the full amount of the levy would entail or has entailed serious hardship, the Minister of Finance may release the person wholly or in part from his liability to pay the levy and may take such steps as are necessary for that purpose; and the Minister of Finance may, if the levy or any part thereof has already been paid, refund the whole or any part of the amount paid.

20 Appropriation of refunds

Any refund of a levy or an additional levy under this Act may be paid from public money without further appropriation than this section.

Section 20: amended (with effect on 1 July 1989), on 26 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Part 5

Offences

21 Offences

- (1) Every person commits an offence against this Act who—
 - (a) refuses or fails to furnish any return or information as and when required by this Act or any regulations made thereunder; or

- (b) wilfully or negligently makes any false return, or gives any false information, or misleads or attempts to mislead the Secretary or any other officer or employee of the responsible department of State in relation to any matter or thing affecting his own or any other person's liability to a levy; or
 - (c) resists, obstructs, deceives, or attempts to deceive any person acting in the discharge of his duties or functions or in the exercise of his powers under this Act; or
 - (d) acts in contravention of or, without lawful justification or excuse, fails to comply in any respect with any provision of this Act or of any regulations made thereunder or any requirement imposed under this Act or the regulations; or
 - (e) aids, abets, or incites any other person to commit any offence against this Act or against any regulations made thereunder.
 - (f) *[Repealed]*
- (2) Every person who commits an offence against this Act for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding \$1,000.

Section 21(1)(b): amended, on 2 January 1990, pursuant to section 4(c) of the Ministry of Energy (Abolition) Act 1989 (1989 No 140).

Section 21(1)(b): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 21(1)(f): repealed, on 1 April 1987, by section 25(1) of the Official Information Amendment Act 1987 (1987 No 8).

Section 21(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

22 Information may charge several offences

- (1) Any charging document may charge the defendant with any number of offences against this Act, if those offences are founded on the same set of facts, or form or are part of a series of offences of the same or a similar character.
- (2) Where any charging document charges more than 1 such offence, particulars of each offence charged shall be set out separately in the charging document.
- (3) All such charges shall be heard together, unless the court, either before or at any time during the hearing, considers it just that any charge should be heard separately and makes an order to that effect.

Section 22(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 22(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

23 Charging document may be filed within 10 years

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act or any regu-

lations made under it ends on the date that is 10 years after the date on which the offence was committed.

Section 23: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 6 Agents

24 Interpretation

For the purposes of this Part—

absentee means—

- (a) any person (other than a company) who is for the time being out of New Zealand:
- (b) any overseas company, unless it has a fixed and permanent place of business in New Zealand at which it carries on business in its own name:
- (c) any overseas company, which is declared by the Secretary to be an absentee for the purposes of this Act by notice given to that company or to its agent or attorney in New Zealand, so long as that declaration remains unrevoked

overseas company means any company other than one incorporated in New Zealand.

25 Secretary may declare person to be agent of another person

The Secretary may from time to time, for the purposes of this Act, declare any person to be the agent of any other person in respect of any energy resource.

Section 25 heading: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 25: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

26 Relation of principal and agent arising in effect

Where the Secretary is satisfied that any person in New Zealand (in this section called the **agent**) is so far under the control of any other person in New Zealand or elsewhere (in this section called the **principal**) that the relation between them is in effect that of agent and principal, he may require returns to be made, and may make assessments, accordingly and the principal and agent shall be liable for a levy accordingly.

Section 26: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

27 Liability of new companies for levy payable by former companies with substantially the same shareholders or under the same control

Without in any way derogating from the Income Tax Act 2007, section HD 15 of that Act, as far as it is applicable and with the necessary modifications, shall have effect as if it formed part of this Act and as if every reference therein to land tax or to income tax or to tax were a reference to a levy.

Section 27: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

28 Liability of agent of absentee principal for returns and levy

Every person who has the possession, control, or management of a licence held or coal mine owned by any other person who is an absentee shall, for the purposes of this Act, be the agent of that other person in respect of any energy resource produced from land to which that licence relates or from that coal mine, as the case may be, and shall make returns and shall be chargeable with, and assessable and liable for, any levy payable thereon accordingly.

29 General provisions

With respect to every agent, the following provisions shall apply:

- (a) he shall, in respect of the energy resource in respect of which he is an agent, make the returns and be chargeable with the levy thereon as if he were the principal, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other:
- (b) where as agent he pays any levy, he may recover the amount so paid from his principal, or may deduct the amount from any money in his hands belonging or payable to his principal:
- (c) he may from time to time retain out of any money belonging or payable to his principal such sums as may reasonably be deemed sufficient to pay the levy for which he is or may become liable:
- (d) he shall be personally liable for the levy payable in respect of the energy resource in respect of which he is an agent if, after the Secretary has required him to make a return, or while any such levy remains unpaid, he disposes of or parts with any fund or money which is in his hands or comes to him, being a fund or money from or out of which the levy could legally be paid, but he shall not otherwise be so personally liable.

Section 29(d): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

30 Liability of principal not affected

- (1) Nothing in this Act relating to an agent shall be so construed as to release the principal from liability to make returns and to be chargeable with, and assessable and liable for, a levy.

- (2) No assessment of the agent shall preclude an assessment of the principal for the same levy, nor shall an assessment of the principal preclude an assessment of the agent for the same levy, and the principal and agent shall be jointly and severally liable for any levy for which the agent is liable.
- (3) Where 2 or more persons are chargeable as agents with the same levy, they shall be jointly and severally liable therefor.

Part 7

General provisions

31 Effect of imposition or alteration of levy on agreements for sale and prices of energy resources

- (1) Notwithstanding any other enactment or rule of law, every agreement, for the sale of an energy resource in respect of which a levy is payable, that has been made at any time before the day on which this Act receives the Governor-General's assent shall (unless the parties to the agreement otherwise agree or express provision to the contrary is made by the agreement or the amount of the levy has been specifically allowed for in the agreed price) be deemed to be modified by adding to the agreed price for the energy resource the amount of the levy payable in respect thereof.
- (2) Notwithstanding any other enactment or rule of law, if any alteration of any or all of the rates of levy is made by Order in Council, or by expiration of an Order in Council, pursuant to section 5, every agreement, for the sale of an energy resource in respect of which a levy at an altered rate is payable, that has been made at any time before the day the Order in Council is made or expires, as the case may be, shall (unless the parties to the agreement otherwise agree or express provision to the contrary is made by the agreement or the alteration has been specifically allowed for in the agreed price) be deemed to be modified in accordance with the following provisions, namely:
 - (a) if the alteration increases the amount of levy payable in respect of the energy resource, there shall be added to the agreed price for the energy resource the difference between the amount of levy that would have been payable in respect of the energy resource had the alteration not been made and the amount of levy actually payable in respect of the energy resource:
 - (b) if the alteration reduces the amount of levy payable in respect of the energy resource, there shall be deducted from the agreed price for the energy resource the difference between the amount of levy that would have been payable in respect of the energy resource had the alteration not been made and the amount of levy actually payable in respect of the energy resource.

- (3) Notwithstanding any other enactment, where an agreement for the sale of an energy resource in respect of which a levy is payable or has been paid is made at any time on or after the day on which this Act receives the Governor-General's assent, the price payable under that agreement for that energy resource may be an amount not exceeding the total of—
- (a) the maximum price that would have been lawfully payable therefor under such an agreement if this Act had not been passed; and
- (b) the amount of the levy payable or paid in respect of that energy resource.
- (4) Notwithstanding any other enactment, rule of law, deed, or agreement, where a person is liable to pay to any other person a royalty, rent, tribute, or fine on any energy resource produced and the amount of that royalty, rent, tribute, or fine is a percentage of or calculated by reference to the selling price of that energy resource, the selling price for the purposes of calculating the royalty, rent, tribute, or fine payable shall be the amount that the selling price would have been had this Act not been passed, unless both those persons otherwise agree.
- (5) Section 74A(1) of the Property Law Act 2007 applies to any money paid by a purchaser to a seller in excess of the amount payable under this section (despite section 74A(2) of that Act).
- (6) In this section—

agreement means any agreement, whether in writing or not and whether the seller thereunder is the person liable to pay the levy or a person who has purchased the energy resource from the person so liable or any other person

energy resource means natural gas, coal, or natural gasoline

natural gasoline means natural gasoline derived from natural gas by the Natural Gas Corporation of New Zealand (established by the Natural Gas Corporation Act 1967).

Section 31(5): replaced, on 1 March 2017, by section 8(2) of the Property Law Amendment Act 2016 (2016 No 66).

32 Power of Secretary to prescribe forms

For the purposes of this Act the Secretary may from time to time prescribe any forms that are not otherwise specifically prescribed.

Section 32 heading: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 32: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

33 Evidence of forms, returns, assessments, and financial transactions

- (1) The production of any document under the hand of the Secretary purporting to be a prescribed form or an extract from a prescribed form, or a copy of any such form or extract, shall in all courts and in all proceedings be sufficient evidence of the fact that the form or extract was prescribed; and all courts shall in

all proceedings take judicial notice of the signature of the Secretary either to the prescribed form or to any such extract or copy.

- (2) The production of any document under the hand of the Secretary purporting to be a copy of or extract from any return or assessment shall in all courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary, and all courts shall in all proceedings take judicial notice of the signature of the Secretary either to the original or to any such copy or extract.
- (3) In proceedings for an offence against this Act and in proceedings in the course of which the Secretary has the burden of proving any such offence, any book or document, or entry in any book or document, kept or made in the regular course of business by any person (not being a bank as defined in section 2 of the Banking Act 1982) in carrying on any business shall be admissible as evidence of the transactions, dealings, matters, and amounts therein disclosed.
- (4) A copy of any book or document, or of an entry in any book or document, that would be admissible in evidence under subsection (3), or a copy of any such copy, shall be admissible as evidence of the book or document or entry and of the transactions, dealings, matters, and amounts therein disclosed, whether or not notice to produce the book or document or entry or copy has been given.
- (5) In subsections (3) and (4) the term **business** means any business, profession, trade, manufacture, occupation, or calling of any kind; and includes the activities of any department of State or of any organisation or society.

Section 33(1): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 33(2): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 33(3): amended, on 16 December 1982, pursuant to section 15 of the Banking Act 1982 (1982 No 144).

Section 33(3): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

34 Secretary's powers of inspection and inquiry

- (1) Notwithstanding anything in any other Act, the Secretary, or any officer or employee of the responsible department of State authorised by him in that behalf, shall at all reasonable times have full and free access to all lands, buildings, and places, and to all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whatsoever, for the purpose of inspecting any books and documents and any property, process, or matter which the Secretary, officer, or employee considers necessary or relevant for the purpose of collecting any levy under this Act, or considers likely to provide any information otherwise required for the purposes of this Act, and may, without fee or reward, make extracts from or copies of any such books or documents.

- (2) The Secretary or any authorised officer or employee may for the purposes of any investigation under this section require the owner or manager of any property or business which is being investigated, or any other person employed, or previously employed, in connection with the property or business, to give him all reasonable assistance in the investigation and to answer all proper questions relating to any such investigation either orally or, if the Secretary or officer or employee so requires, in writing, or by statutory declaration, and for that purpose may require the owner or manager or, in the case of a company, any officer of the company to attend at the premises with him.
- (3) Every person (including any officer employed in or in connection with any department of the Government or by any public authority, and any other public officer) shall, when required by the Secretary or by any authorised officer or employee, furnish in writing any information and produce for inspection any books and documents (including copies of statements of financial position and of profit and loss accounts and other accounts, and statements of assets and liabilities) that the Secretary or officer or employee considers necessary or relevant for any purpose relating to the administration or enforcement of this Act.
- (4) The Secretary or any authorised officer or employee may, if he considers it reasonable to do so, remove and retain any books or documents produced for inspection under subsection (3) for so long as is necessary for a full and complete inspection of such books and documents; and may, without fee or reward, make extracts from or copies of any such books or documents.
- (5) Any person producing any books or documents which are retained by the Secretary or any authorised officer or employee pursuant to subsection (4) shall, at all reasonable times and subject to such reasonable conditions as may be determined by the Secretary or that officer or employee, be entitled to inspect the retained books or documents and to obtain copies thereof at his own expense.
- (6) The Secretary or any authorised officer or employee may require that any written information or particulars furnished under this section shall be verified by statutory declaration or otherwise.

Section 34 heading: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 34(1): amended, on 2 January 1990, pursuant to section 4(c) of the Ministry of Energy (Abolition) Act 1989 (1989 No 140).

Section 34(1): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 34(2): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 34(3): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).

Section 34(3): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 34(4): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 34(5): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 34(6): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

35 Chief Inspector of Coal Mines to decide what is lignite

Where there is disagreement between the Secretary and any person as to whether any substance is lignite for the purposes of this Act, the Chief Inspector of Coal Mines (appointed under section 8 of the Coal Mines Act 1979), or a person appointed by him for the purpose, shall decide whether or not the substance is lignite, and his decision shall be final.

Section 35: amended, on 1 April 1980, pursuant to section 268(2) of the Coal Mines Act 1979 (1979 No 21).

Section 35: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

36 Measurement of energy resources and keeping of records

(1) Every person who is liable to pay a levy on any energy resource shall ensure that it is weighed or measured for the purposes of this Act in accordance with regulations made under this Act or, in default of any such regulations or so far as such regulations do not extend, in such manner as the Minister may prescribe.

(2) Every person who is liable to pay a levy shall, for the purposes of this Act, keep sufficient books and documents to enable his liability to be readily ascertained by the Secretary or any officer or employee authorised by the Secretary in that behalf, and shall retain all such books and documents for a period of at least 10 years after he has paid the levy:

provided that this subsection shall not require the retention of any books and documents in respect of which the Secretary has notified the person that retention is not required.

Section 36(1): amended, on 2 January 1990, by section 5 of the Ministry of Energy (Abolition) Act 1989 (1989 No 140).

Section 36(1): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 36(2): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 36(2) proviso: amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

37 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing the duties and functions of officers and employees of the Ministry for the purposes of this Act:

- (b) prescribing, or providing that the Secretary or any other specified person may prescribe in relation to any particular case or any class or classes of cases, the times, places, manner, and equipment in, at, or by which energy resources shall be weighed or measured for the purposes of this Act; and prescribing that any such equipment shall be inspected or tested at reasonable intervals and the methods of such inspection or testing and the persons who shall conduct them; and providing that the Secretary or any other specified person may inspect or test any such equipment at any reasonable time and may enter upon any land or premises for that purpose; and prescribing that reasonable notice of the installation, alteration, replacement, or adjustment of any such equipment shall be given to the Secretary or any other specified person; and prescribing the time, place, manner, equipment, and person or persons in, at, or by which or whom any energy resource on which no levy is payable may be weighed, measured, or estimated for the purposes of this Act:
 - (c) providing for such other matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Any regulations made under this section may provide that they shall come into force or shall be deemed to have come into force on a date to be specified therein, whether that date is before or after the date of the making of the regulations.

Section 37(1)(a): amended, on 2 January 1990, by section 5 of the Ministry of Energy (Abolition) Act 1989 (1989 No 140).

Section 37(1)(a): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Section 37(1)(b): amended, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

38 Amendments to Ministry of Energy Resources Act 1972

[Repealed]

Section 38: repealed, on 1 April 1978, by section 20(1) of the Ministry of Energy Act 1977 (1977 No 33).

Reprints notes

1 *General*

This is a reprint of the Energy Resources Levy Act 1976 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Property Law Amendment Act 2016 (2016 No 66): section 8

Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120): section 14

Criminal Procedure Act 2011 (2011 No 81): section 413

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Financial Reporting Amendment Act 1997 (1997 No 17): section 6(1)

Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74): section 5(4)

Income Tax Act 1994 (1994 No 164): section YB 1

Energy Resources Levy Amendment Act 1993 (1993 No 145)

Judicature Amendment Act 1991 (1991 No 60): section 3(5)

Ministry of Energy (Abolition) Act 1989 (1989 No 140): sections 4(c), 5

Public Finance Act 1989 (1989 No 44): sections 65R(3), 86(1)

Official Information Amendment Act 1987 (1987 No 8): section 25(1)

Energy Resources Levy Amendment Act 1983 (1983 No 70)

Banking Act 1982 (1982 No 144): section 15

Coal Mines Act 1979 (1979 No 21): section 268(2)

Energy Resources Levy Amendment Act 1978 (1978 No 1)

Ministry of Energy Act 1977 (1977 No 33): section 20(1)

Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 (1977 No 28): section 33(2)(b)