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1976, No. 71

An Act to make provision for the imposition, assessment, and collection of a levy on certain energy resources produced in New Zealand [7 December 1976]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

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 Commissioner 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:

“Coal mine” includes an opencast coal quarry (as defined in section 2 of the Coal Mines Act 1925) and any other place where coal is or has been mined or otherwise extracted from land:

“Commissioner” means the Commissioner of Energy Resources appointed in accordance with section 6 (1) of the Ministry of Energy Resources Act 1972; and, in relation to any powers and duties of or pertaining to the position of Commissioner which any other officer of the Public Service is for the time being directed under section 6 (2) of that Act to exercise and perform, includes that other officer; and, in relation to any function or power exercisable by the Commissioner under any enactment that has been delegated to any officer or officers or employee or employees of the Ministry of Energy Resources or the Mines Department pursuant to section 10 of that Act

(as substituted by section 38 of this Act), includes that officer or employee or those officers or employees, as the case may be:

“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 of this Act:

“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 1st day of the month:

“Natural gas” means petroleum that exists in a gaseous state at 15 degrees celsius and 1013 millibars dry:

“New Zealand” includes the internal waters of New Zealand (as defined in section 4 of the Territorial Sea and Fishing Zone Act 1965), 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:

“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.

3. Act to bind Crown—This Act shall bind the Crown.

PART I

IMPOSITION OF LEVY

4. Levy on natural gas and coal—(1) Subject to sections 6, 7, and 19 of this Act, 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 the 1st day of January 1977.

(2) Subject to section 5 of this Act, 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) of this section shall in any way derogate from Part VI of this Act.

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 of this Act:

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) Every Order in Council made under this section and laid before Parliament in any session pursuant to the Regulations Act 1936 (as amended by the Regulations Amendment Act 1962) shall—

(a) Where the Order in Council is made on or before the 30th day of June in any calendar year, expire on the close of the last day of that session except so far as it is expressly validated or confirmed by an Act of the General Assembly passed during that session; and

(b) Where the Order in Council is made on or after the 1st day of July in any calendar year, expire on the close of the last day of the session of Parliament in the following calendar year except so far as it is expressly validated or confirmed by an Act of the General Assembly passed during that session or the preceding session.

(3) If any Order in Council or any provision of any Order in Council expires by virtue of subsection (2) of this section, the rate or rates of levy altered by that Order in Council or provision shall, from the expiry of that Order in Council or provision and until it is or they are again altered, be the same as it was or they were immediately before that Order in Council or provision came into force.

6. Exemptions from levy—(1) Notwithstanding section 4 of this Act, the levy shall not be payable on any energy resource that, in the opinion of the Commissioner, has been unavoidably lost before any use or sale or other disposition thereof.

(2) Notwithstanding section 4 of this Act,—

(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.

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 of this Act, or, as the case may be, in an Order in Council under section 5 of this Act, 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 II

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 energy resource was produced, furnish to the Commissioner a return (in the form prescribed pursuant to section 32 of this Act) 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 Commissioner, 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) of this section.

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 Commissioner of his discretion under subsection (2) of this section 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.

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

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 III

PAYMENT, ASSESSMENT, AND RECOVERY OF LEVY

11. Time for payment of levy—(1) Subject to this section and section 12 (5) of this Act, every person who is liable to pay a levy on any energy resource shall pay that levy to the Commissioner within the time within which he is required by section 8 of this Act to furnish a return relating to that energy resource.

(2) The Commissioner, 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) of this section. In every such case the provisions of this section shall apply as so varied, and that person shall pay the levy accordingly.

12. Assessment of levy—(1) Where the Commissioner finds in any case that a levy or further levy is payable by any person, the Commissioner 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 Commissioner is not satisfied with the return made by any person; or

(c) The Commissioner has reason to suspect that any person, although he has not made a return, is liable to pay a levy,—

the Commissioner 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 of this Act that the assessment is excessive or that he is not liable to pay the levy or further levy.

(3) Subject to section 13 of this Act, the Commissioner 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 Commissioner 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 Commissioner within the time within which he is required by section 8 of this Act to furnish a return relating to the energy resource on which the levy or further levy is payable:

Provided that where the Commissioner 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 Commissioner 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 of this Act) 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 of this Act against an assessment or an amended assessment, no assessment or amended assessment made by the Commissioner 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.

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 Commissioner—

(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) of this section, in any case where, in the opinion of the Commissioner, the return so made is fraudulent or wilfully misleading, it shall be lawful for the Commissioner—

(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.

14. Appeal from assessment to Administrative Division of Supreme Court—(1) Where any person is dissatisfied with any assessment or amended assessment made by the Commissioner under this Act, the person may appeal to the Administrative Division of the Supreme 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) of this section 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.

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 Commissioner in excess of the amount which, according to the decision on the appeal, was properly payable shall forthwith be refunded to him by the Commissioner.

16. Additional levy for default in payment of levy—
(1) Subject to subsections (3) and (4) of this section, if any levy or further levy or part thereof payable under this Act (whether or not assessed under section 12 of this Act) is not paid within the time specified for payment thereof under section 11 or section 12 (5) of this Act, as the case may be, an amount calculated in accordance with subsection (2) of this section 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) of this section, any amount payable thereunder as additional levy shall be calculated at the rate of 4 percent 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 Commissioner, 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) of this section, be recoverable accordingly.

17. Recovery of levy—(1) All money payable to the Commissioner 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 Land and Income Tax Act 1954, the provisions of sections 205, 209, and

211 to 217 of that Act, 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 Commissioner as defined in section 2 of this Act; and
 - (c) For the words “tax, and no proceedings on objection to an assessment of tax” in the said section 215 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 the said section 217 there were substituted the words “the Energy Resources Levy Act 1976”.
- (4) All money paid to or recovered by the Commissioner under this Act shall be paid into the Public Account, and shall be credited to the Consolidated Revenue Account.

PART IV

REFUNDS AND RELIEF FROM LEVY

18. Refund of excess levy—Where the Commissioner is satisfied that any levy paid by a person is in excess of the levy properly payable by him, the Commissioner 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.

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 the Consolidated Revenue Account without further appropriation than this section.

PART V

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 Commissioner or any other officer or employee of the Ministry of Energy Resources or the Mines Department 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; or
- (f) Makes a record of or divulges or communicates to any other person, otherwise than for the purposes of this Act or in the course of any criminal proceedings or in accordance with a direction of the Minister of Energy Resources, any information that has been supplied to him or obtained by him pursuant to or for the purposes of this Act.

(2) Every person who commits an offence against this Act for which no other penalty is prescribed shall be liable on summary conviction to a fine not exceeding \$1,000.

22. Information may charge several offences—(1) Any information 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 information charges more than one such offence, particulars of each offence charged shall be set out separately in the information.

(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.

23. Information may be laid within 10 years—Notwithstanding section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act or against any regulations made thereunder may be laid at any time within 10 years after the offence was committed.

PART VI

AGENTS

24. Interpretation—For the purposes of this Part of this Act—

“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 Commissioner 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. Commissioner may declare person to be agent of another person—The Commissioner 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.

26. Relation of principal and agent arising in effect—Where the Commissioner 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.

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 Land and Income Tax Act 1954, section 185 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.

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 Commissioner 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.

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 VII

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 of this Act, 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) Subsection (1) of section 94A of the Judicature Act 1908 (as inserted by section 2 of the Judicature Amendment Act 1958) shall apply to any money paid by a purchaser

to a seller in excess of the amount payable under this section, notwithstanding subsection (2) of the said section 94A.

(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).

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

33. Evidence of forms, returns, assessments, and financial transactions—(1) The production of any document under the hand of the Commissioner 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 Commissioner either to the prescribed form or to any such extract or copy.

(2) The production of any document under the hand of the Commissioner 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 Commissioner 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 Commissioner 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 1908) 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) of this section, 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) of this section 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.

34. Commissioner's powers of inspection and inquiry—

(1) Notwithstanding anything in any other Act, the Commissioner, or any officer or employee of the Ministry of Energy Resources or the Mines Department 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 Commissioner, 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 Commissioner 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 Commissioner 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 Commissioner or by any authorised officer or employee, furnish in writing any information and produce for

inspection any books and documents (including copies of balance sheets and of profit and loss accounts and other accounts, and statements of assets and liabilities) that the Commissioner or officer or employee considers necessary or relevant for any purpose relating to the administration or enforcement of this Act.

(4) The Commissioner 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) of this section 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 Commissioner or any authorised officer or employee pursuant to subsection (4) of this section shall, at all reasonable times and subject to such reasonable conditions as may be determined by the Commissioner 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 Commissioner 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.

35. Chief Inspector of Coal Mines to decide what is lignite—Where there is disagreement between the Commissioner 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 33 of the Coal Mines Act 1925), or a person appointed by him for the purpose, shall decide whether or not the substance is lignite, and his decision shall be final.

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 of Energy Resources 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 Commis-

sioner or any officer or employee authorised by the Commissioner 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 Commissioner has notified the person that retention is not required.

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 of Energy Resources and the Mines Department for the purposes of this Act:
- (b) Prescribing, or providing that the Commissioner 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 Commissioner 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 Commissioner 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.

38. Amendments to Ministry of Energy Resources Act 1972—(1) The Ministry of Energy Resources Act 1972 is hereby amended—

(a) By adding to section 4 (1) the words “and shall have and undertake such functions as are necessary for the due and proper administration of this Act and other Acts administered by the Ministry”:

(b) By adding to the First Schedule a reference to this Act.

(2) The Ministry of Energy Resources Act 1972 is hereby further amended by repealing section 10, and substituting the following section:

“10. Delegation of functions and powers by Commissioner—

(1) The Commissioner may from time to time, either generally or particularly, delegate to such officer or officers or employee or employees of the Ministry as he thinks fit all or any of the functions and powers exercisable by him under any enactment, including any functions and powers delegated to him under any enactment but not including any power of delegation conferred by this section:

“Provided that the Commissioner shall not delegate any power delegated to him by the Minister without the written consent of the Minister, or any power delegated to him under the State Services Act 1962 without the written consent of the State Services Commission.

“(2) The Commissioner may, with the written consent of the Secretary of Mines, from time to time delegate, either generally or particularly, to such officer or officers or employee or employees of the Mines Department as he thinks fit all or any of the functions and powers exercisable by him under the Energy Resources Levy Act 1976.

“(3) Subject to any general or special directions given or conditions attached by the Commissioner, the officer or employee to whom any function or power is delegated under this section may exercise that function or power in the same manner and with the same effect as if it had been conferred on him directly by this section and not by delegation.

“(4) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

“(5) Any delegation under this section may be made to a specified officer or employee or to officers or employees of a specified class, or may be made to the holder or holders for the time being of a specified office or appointment or class of offices or appointments.

“(6) Any delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any function or power by the Commissioner.

“(7) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding that the Commissioner by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Commissioner.”

This Act is administered in the Ministry of Energy Resources.
