MINISTRY OF ENERGY (ABOLITION) AMENDMENT BILL (NO. 2)

AS REPORTED FROM THE COMMERCE COMMITTEE

COMMENTARY

Recommendation

The Commerce Committee has examined the Ministry of Energy (Abolition) Amendment Bill (No. 2) and recommends that it be passed with the amendment shown in the bill.

Conduct of the examination

The Ministry of Energy (Abolition) Amendment Bill (No. 2) was referred to the Commerce Committee on 14 May 1998. The closing date for submissions was 27 May 1998. The committee received and considered eleven submissions from current employees of the Mining Inspection Group, the Public Service Association, petroleum and electricity organisations and other interested groups and individuals. Two submissions were heard orally. One hour and ten minutes were spent on the hearing of evidence and consideration took fifty minutes.

Advice was received from the Ministry of Commerce.

This report sets out the detail of the committee's consideration of the bill and the major issues addressed by the committee.

Background

The bill:

- facilitates the transfer of employees of the Mining Inspection Group of the Ministry of Commerce to the Occupational Safety and Health Service (OSH) of the Department of Labour;
- abolishes inspection related levies charged to the extractive industries which will no longer by required following the transfer;
- expands the purposes to which the electricity and gas levies can be put;
- validates previous incorrect applications of funds recovered under the electricity and gas levies and validates incorrect payments into the Crown Bank Account of past surpluses from the petroleum fuels monitoring levy; and

Price Code: J

- explicitly allows for the petroleum fuels monitoring levy to be set by regulations at a rate lower than that specified in the Ministry of Energy (Abolition) Amendment Act 1989 (the Act).

Transfer of staff

Of the 22 staff currently employed by the Mining Inspection Group 14 have been offered positions that are substantially similar to the work they currently do and offer no less favourable terms and conditions of employment in the Department of Labour. Two have been offered different jobs at existing terms and conditions and one will transfer within the Ministry of Commerce. Those who choose not to transfer are prevented by clause 11 from receiving "technical redundancy". The remaining five staff are being dealt with under the surplus staffing provisions of their contracts.

Currently the inspectors employed by the Ministry of Commerce are on higher salaries than their OSH counterparts. The two submissioners who are currently employed by the Ministry of Commerce and the Public Service Association were concerned that:

- transferees would face an erosion of terms and conditions; and
- those who chose not to transfer were not able to claim "technical redundancy" and receive the redundancy payment provided for in their contracts.

The transfer of employees raised the major issue for us. We were concerned that the transferred employees would suffer a loss of terms and conditions as a result of the transfer. One submissioner suggested that clause 10 (3) of the bill be modified to give transferees at least 12 months before they are subject to any request or suggestions from their new employer to vary their contracts. We felt that to legislate for this twelve month period of grace would be against the intent of the Employment Contracts Act 1991. Instead, we preferred to seek a letter from the Department of Labour stating that transferees would have at least twelve months before their new employer would introduce variations to their employment conditions. Although it would not have the force of law, we feel it is a matter of integrity for the Department of Labour to honour the letter.

We recommend that clause 10 (2) be removed. The intent of clause 10 (2) was to replace the Secretary of Commerce with the Secretary of Labour as the employer party for any unexpired collective employment contract. As there are no unexpired Ministry of Commerce collective employment contracts the clause is not needed.

Abolition of the mining levies

The transfer of the Mining Inspection Group to the Department of Labour will mean it is no longer appropriate for the mining inspection levies to be collected. OSH is funded by the Health and Safety in Employment (HSE) levy which is forecast to exceed the OSH appropriation. This will allow sufficient funding for OSH to fund the Mining Inspection Group operations from the appropriations for Vote Labour from 1 July 1998.

The extractive industries support the proposal to cease charging the mining inspection levies.

Electricity and gas levy purposes

In the latter part of 1997, a legal review of the purposes for which monies received under the levies may be applied (section 14 of the Act) showed that some activities, such as general safety publicity and legislative activities, do not fall within these purposes despite the original policy intent that they should.

The bill now provides for general safety publicity to be funded from the levies, and for the validation of past expenditure of levy monies outside the purposes provided for in section 14 of the Act.

The unlawful expenditure relates to general public safety publicity and legislative activities undertaken since the introduction of the levies until 31 October 1997 when these activities were found to be outside the purposes of the Act and levy funding of them ceased.

Petroleum fuels monitoring levy payments

This levy has been collected since 1998 from oil wholesalers of petrol and diesel and is used:

- to fund New Zealand's involvement in the International Energy Agency (IEA);
- for the collection and compilation of energy sector information to meet obligations of the IEA Agreement; and
- for petrol and diesel price and quality monitoring.

Over the period since 1989 levy surpluses have been paid to the Crown on the understanding that this was consistent with the Public Finance Act 1989. However, legal advice indicates that the specific provisions of the Act take precedence over the general provisions of the Public Finance Act 1989. As section 26 of the Act states that rebates may be granted, the past payments of the surpluses into the Crown Bank Account should not have been made.

Clause 8 of the bill amends the Act so that surpluses from levy funds paid into the Crown Bank Account on petrol and diesel sold through to 30 June 1997 do not have to be paid back into the Departmental Bank Account and rebated. For 1997/98 and future years surpluses will be rebated.

The move to validate past incorrect levies paid into the Crown Bank Accounts was not generally supported by the petroleum industry. However, petroleum companies did support the move to rebate the surplus levies from 30 June 1997. The move to enable the levy to be set at lower than 0.025 cents per litre may go some way to minimise future surpluses.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous) Subject to this Act,	Text struck out unanimously
(Subject to this Act,)	Words struck out unanimously
Subject to this Act,	Words inserted unanimously

Hon Max Bradford

MINISTRY OF ENERGY (ABOLITION) AMENDMENT (NO. 2)

ANALYSIS

A BILL INTITULED

An Act to amend the Ministry of Energy (Abolition) Act 1989 in relation to levies and also to—

(a) Validate previous applications of levy monies; and

(b) Allow for the transfer of certain employees from the Ministry of Commerce to the Department of Labour

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Ministry of Energy (Abolition) Amendment Act (No. 2) **1998**, and is part of the Ministry of Energy (Abolition) Act 1989* ("the principal Act").

(2) This Act comes into force on 1 July 1998.

*1989, No. 140

Amendments to Ministry of Energy (Abolition) Act 1989

2. Purpose of levies—Section 14 of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

"(aa) The dissemination of information concerning safety in relation to the industries to which the levies relate; and".

3. Repeal of certain levies and administration charge—Sections 15 to 21, 25, and 25A of the principal Act are repealed.

4. Petroleum fuels monitoring levy—Section 24 (3) of the principal Act is amended by adding the words "or such lesser amount for each complete litre as may be prescribed".

5. Due dates for payment—Section 27 of the principal Act is amended by omitting the expression "15 to 24", and substituting the expression "22, 23, and 24".

6. Ministry of Energy (Levies) Regulations 1989 amended—Regulations 2 to 6, 9, and 9A of the Ministry of Energy (Levies) Regulations 1989 (S.R. 1989/381) are revoked.

Validations

7. Validation of past expenditure of levy revenues—Regardless of section 14 of the principal Act, all applications made before 31 October 1997 of levies recovered under Part III of that Act for any purpose are validated and deemed to have been lawfully imposed, recovered, and applied.

8. Payments into Crown Bank Account—Regardless of sections 14 and 26 of the principal Act, the payment into the Crown Bank Account of any levies payable before 30 June 1997 under section 24 of that Act (*are*) is validated and deemed to have been lawfully paid into that account.

Transfer of Employees from Ministry of Commerce to Department of Labour

9. Transfer of employees—(1) Every person employed in the Ministry of Commerce immediately before the date of commencement of this Act who the chief executive of the Department of Labour has agreed to transfer to the Department of Labour is to be treated as having been transferred to the Department of Labour on that date.

(2) This section prevails over section 61A of the State Sector Act 1988.

10. Protection of terms and conditions of employment—(1) The employment of a person who is transferred to the Department of Labour under **section 9 (1)** must be on terms and conditions no less favourable to the transferred employee than those applying at the date of transfer.

Struck Out (Unanimous)

(2) Any unexpired collective employment contract which covers employees transferred to the Department of Labour under **section 9 (1)** is deemed, as from the date of transfer, to continue to apply on the same terms—

(a) As if it were a contract that had been made in respect of the Department of Labour; and

(b) As if it were binding both on those employees and on the chief executive of the Department of Labour.

(3) **Subsections (1) and (2)** continue to apply to the terms and conditions of employment of a transferred employee until the terms and conditions of employment of the transferred employee are varied by agreement between the transferred employee and the chief executive of the Department of Labour.

11. No compensation for technical redundancy—A person who is transferred to the Department of Labour under **section 9 (1)** is not entitled to any compensation for redundancy by reason only of the person ceasing to be employed by the Ministry of Commerce.

12. Saving of appointments, etc—The appointment of every statutory officer who is transferred to the Department of Labour under **section 9 (1)** continues until the earliest of the following occurs:

(a) The term of the appointment expires:

(b) The person ceases employment in the Department of Labour:

(c) The appointment is revoked.

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