ENVIRONMENT AND CLIMATE ADAPTATION LEVY ACT 2015

Revised up to 31st October 2019

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PART 1 PRELIMINARY
(Sections 1-2)

[Section 1] Short title and commencement

(1) This Act may be cited as the Environment and Climate Adaptation Levy Act 2015.
[subs (1) am Act 36 of 2017 s 12, effective 1 August 2017]

(2) This Act shall come into force on 1 January 2016.

[Section 2] Interpretation

In this Act, unless the context otherwise requires—

accountable person means the owner, manager, sole precedent partner and otherwise the person who is responsible for the daily management of the prescribed service and is responsible for the collection of tax under section 3;

CEO means the Chief Executive Officer appointed under the Fiji Revenue and Customs Service Act 1998 and tax laws, or any persons appointed by the Chief Executive Officer for the purposes of this Act;
[def am Act 36 of 2017 s 11, effective 1 August 2017; Act 38 of 2017 s 7, effective 1 August 2017]

Environment and Climate Adaptation Levy means a levy imposed on—

a) prescribed services under Part 2;
b) prescribed items under Part 3;
c) prescribed income under Part 4; and
d) the charter of a superyacht at the rate of 10% of the gross charter fee paid and collected under the Superyacht Charter Act 2010;
[def insrt Act 36 of 2017 s 3, effective 1 August 2017]

Fund means the Environment and Climate Adaptation Fund established under section 12;
[def insrt Act 36 of 2017 s 3, effective 1 August 2017]

importer has the meaning given to that term under section 2 of the Customs Act 1986;
person means an individual, company, partnership or trust;

plastic bag means—
   a) a carry bag—
      i. the body of which comprises, in whole or in part, polyethylene;
      ii. that includes handles;
      iii. that is provided by a prescribed business for the carrying or transporting of goods; and
      iv. is not an integral part of a product’s packaging; or
   b) a bag that is of a kind prescribed by regulations;

precedent partner in relation to a partnership, means the partner who, of the partners resident in Fiji—
   a) is first named in the agreement of partnership;
   b) if there is no agreement, is named singly or with precedence over the partners in the usual name of the partnership; or
   c) is the precedent active partner if the partner named with precedence is not an active partner,

   and includes, where no partner is resident in Fiji, the attorney, agent, manager or factor of the partnership resident in Fiji;

prescribed service means a service listed in Schedule 1 where the annual gross turnover for the provision of such service exceeds $1.25 million;

and

turnover means any sums or amounts received or receivable by or on behalf of the owner of a service in respect of any sums or amounts included in a charge for a prescribed service.
PART 2 IMPOSITION OF ENVIRONMENT AND CLIMATE ADAPTATION LEVY ON PRESCRIBED SERVICES
(Sections 3–5)

[Section 3] Environment and Climate Adaptation Levy for Prescribed Services

(1) Subject to the provisions of this Act, the Environment and Climate Adaptation Levy at the rate of 10% shall be levied on the turnover of any person conducting a business involving the provision of a prescribed service.
[subs (1) am Act 36 of 2017 ss 5 and 12, effective 1 August 2017]

(2) The Environment and Climate Adaptation Levy is payable by the person to whom the prescribed service is provided.
[subs (2) am Act 36 of 2017 s 12, effective 1 August 2017]

(3) Notwithstanding subsection (2), the Environment and Climate Adaptation Levy shall be payable and recoverable from the accountable person in accordance with section 4.
[subs (3) am Act 36 of 2017 s 12, effective 1 August 2017]

(4) The Environment and Climate Adaptation Levy imposed under subsection (1) shall—
   a) not be subject to the Value Added Tax imposed under the Value Added Tax Act 1991; and
   b) be clearly and separately shown on a tax invoice, invoice or receipt issued for the payment of any prescribed service.
[subs (4) am Act 36 of 2017 ss 5 and 12, effective 1 August 2017]
[s 3 am Act 36 of 2017 ss 5 and 12, effective 1 August 2017]

[Section 4] Environment and Climate Adaptation Levy to be Paid and Returns Made to the CEO

(1) The accountable person shall—
   a) before or on the last day of each month following the month in which the levy was collected, pay the CEO any Environment and Climate Adaptation Levy that has been payable since the previous month; and
   b) provide together with such payment a return setting out the total amount of the turnover for that month.
[subs (1) am Act 36 of 2017 ss 11 and 12, effective 1 August 2017]

(2) Notwithstanding subsection (1), the CEO may, in any particular case, require that the Environment and Climate Adaptation Levy be paid within a period of less than one month.
[subs (2) am Act 36 of 2017 ss 11 and 12, effective 1 August 2017]
(3) Pursuant to subsection (2), the accountable person shall—

a) pay the CEO the prescribed Environment and Climate Adaptation Levy within 14 days after the expiry of the period fixed by the CEO; and

b) comply with the requirement of subsection (1)(a) in respect of that period.

[subs (3) am Act 36 of 2017 ss 11 and 12, effective 1 August 2017]

(4) For the purpose of ensuring that a person does not pay the Environment and Climate Adaptation Levy more than once in relation to a prescribed service, an accountable person shall—

a) only charge and pay the CEO the Environment and Climate Adaptation Levy that is payable for the prescribed service provided by the business under the responsibility of the accountable person; and

b) not charge the Environment and Climate Adaptation Levy for a prescribed service where the Environment and Climate Adaptation Levy has been charged by another person with respect to the prescribed service.

[subs (4) insrt Act 36 of 2017 s 6, effective 1 August 2017]

[s 4 am Act 36 of 2017 ss 6, 11 and 12, effective 1 August 2017]

[Section 5] Accountable Persons to Register with the CEO

(1) Subject to subsection (2), the owner or the person who is responsible for the daily management of a prescribed service shall, within 30 days before the commencement of the business, register with the CEO the—

a) name and address of the accountable person for the prescribed service;

b) names and addresses of any partners and associates in that business, indicating the precedent partner;

c) names and addresses of the directors and authorised officers of the company, in the case of a company;

d) trade or business name where the business is carried on under a name or style other than under his or her own name; and

e) place and address where the person intends to carry out the prescribed service.

[subs (1) am Act 36 of 2017 s 11, effective 1 August 2017]

(2) At the commencement of this Act, the person who is responsible for the daily management of a prescribed service is deemed to be registered under this section as an accountable person.

(3) Notwithstanding subsection (1), a person who is registered under the Service Turnover Tax Act 2012 shall be deemed to have been registered under this Act.

(4) It shall be deemed to be sufficient compliance with subsection (1) if, in the case of a partnership, the precedent partner, and in the case of a body of persons, the manager, effect the registration of that partnership or body of persons.
(5) In the case of paragraph 14 of Schedule 1, any person receiving rent on behalf of the owner shall be registered or deemed registered as an accountable person.
[subs (5) am Act 36 of 2017 s 11, effective 1 August 2017]

(6) Any person who, on or after 1 January 2016, in the course of carrying out the prescribed service has reasonable grounds to believe that his or her annual gross turnover will exceed $1.25 million, that person shall register or be deemed registered by the CEO.
[subs (6) am Act 36 of 2017 s 11, effective 1 August 2017 ; Act 17 of 2018 s 3, effective 1 August 2018]

(7) Subject to this Act, any accountable person registered under subsection (6) that has been registered for 12 consecutive months may notify the CEO if the annual gross turnover of the prescribed service during the period of 12 months is not more than $1.25 million and if the CEO is satisfied that the annual gross turnover of the prescribed service during the period of 12 months is not more than $1.25 million the CEO shall deregister the accountable person.
[subs (7) subst Act 17 of 2018 s 3, effective 1 August 2018]
[ss 5 am Act 36 of 2017 s 11, effective 1 August 2017]
PART 3 IMPOSITION OF ENVIRONMENT AND CLIMATE ADAPTATION LEVY ON PRESCRIBED ITEMS
(Sections 6–9)

DIVISION 1 IMPOSITION OF ENVIRONMENT AND CLIMATE ADAPTATION LEVY ON PLASTIC BAGS
(Sections 6, 7)

[Section 6] Imposition of Environment and Climate Adaptation Levy on Plastic Bags

(1) An Environment and Climate Adaptation Levy shall be charged on plastic bags distributed by businesses prescribed by regulations.

(2) Pursuant to subsection (1), the Environment and Climate Adaptation Levy charged on plastic bags is $0.50 per plastic bag.
[subs (2) am Act 17 of 2018 s 4, effective 1 August 2018; sub(2) am Act 11 of 2019 s2, effective 1 January 2020]

(3) The Environment and Climate Adaptation Levy on plastic bags is payable by the person to whom a plastic bag is provided.

(4) The levy imposed under subsection (1) shall—
   a) not be subject to the Value Added Tax imposed under the Value Added Tax Act 1991; and
   b) be clearly and separately shown on a tax invoice, invoice or receipt issued for the purchase of any goods.

[Section 7] Collection of Environment and Climate Adaptation Levy for Plastic Bags

The Environment and Climate Adaptation Levy payable under this Division shall be collected by the Fiji Revenue and Customs Service in the manner prescribed by regulations.
[s 7 am Act 38 of 2017 s 7, effective 1 August 2017]
[Section 8]  Imposition of Environment and Climate Adaptation Levy on Imported Goods

(1) An Environment and Climate Adaptation Levy shall be charged on imported goods prescribed in Schedule 2 at the rate of 10% of the value of the goods.

(2) The application of the Environment and Climate Adaptation Levy on imported goods may be limited by exemptions prescribed in Schedule 2.

(3) The Environment and Climate Adaptation Levy on imported goods is payable by the importer.

(4) The levy imposed under subsection (1) shall—
   a) not be subject to the Value Added Tax imposed under the Value Added Tax Act 1991; and
   b) be clearly and separately shown on a tax invoice, invoice, receipt or any document issued for the payment of any imported good.

(5) The Minister may by notice in the Gazette amend the list of imported goods prescribed in Schedule 2 and the limitations or exemptions that apply to the goods.

[Section 9]  Collection of Environment and Climate Adaptation Levy for Imported Goods

The Environment and Climate Adaptation Levy payable under this Division shall be collected by the Fiji Revenue and Customs Service in conjunction with the collection of duty under the Customs Act 1986.

[Section 9A]  Amendments to the Environment and Climate Adaptation Levy on Imported Goods

(1) Where a Bill for an Act is published which, if passed, would impose or alter the Environment and Climate Adaptation Levy on imported goods, the Fiji Revenue and Customs Service shall, with effect from that date of publication, or, if a later date is specified in the Bill, that later date, collect the levy under section 9 as if that Bill had been passed.

(2) If a Bill referred to in subsection (1) is not passed within 6 months of it being published or is passed with an amendment, the levy collected in excess of that authorised by this Act, or this Act as amended by that Bill as passed, shall be repaid to the importer and the repayment of the levy collected in excess of the authorised amount shall be a charge on the Consolidated Fund.
(3) No action shall lie against the Fiji Revenue and Customs Service for any action taken under subsection (1) to protect the revenue.

[S9A inserted by Act 11 of 2019 s3, effective 1 August 2019]
PART 4 IMPOSITION OF ENVIRONMENT AND CLIMATE ADAPTATION LEVY ON PRESCRIBED INCOME
(Sections 10-11)

[Section 10] Imposition of Environment and Climate Adaptation Levy on Prescribed Income

An Environment and Climate Adaptation Levy at the rate of 10% shall be charged on income as prescribed by regulations and shall form part of the Social Responsibility Tax under the Income Tax Act 2015.

[Section 11] Collection of Environment and Climate Adaptation Levy for Prescribed Income

The Environment and Climate Adaptation Levy imposed under this Part shall be collected as part of the Social Responsibility Tax under the Income Tax Act 2015.
PART 5 ENVIRONMENT AND CLIMATE ADAPTATION FUND
(Sections 12–14)

[Section 12] Establishment of the Environment and Climate Adaptation Fund

(1) This section establishes the Environment and Climate Adaptation Fund.

(2) The Fund shall consist of—
   a) any money paid to the Fiji Revenue and Customs Service in relation to the Environment and Climate Adaptation Levy imposed under this Act;
   b) any interest accrued from money deposited in the Fund;
   c) any money appropriated by Parliament for the purposes of the Fund; and
   d) such sums of money received for the purposes of the Fund under written law or from any other source approved by the Minister.

(3) The Fiji Revenue and Customs Service must pay money collected for the payment of the Environment and Climate Adaptation Levy into the Fund.

(4) No part of the Fund may be transferred or assigned to any person other than in accordance with this Act.

(5) The Trustee Act 1966 does not apply to the Fund.

[Section 13] Purposes of the Fund

The purposes of the Fund are to—
   a) promote conservation of the forests, flora, fauna, wildlife, ecosystems and biodiversity of Fiji;
   b) provide funding to assist programmes, projects and activities associated with climate change, including climate change mitigation and adaptation activities; and
   c) engage in any environment or climate change related activity approved by the Minister.

[Section 14] Application of Fund

(1) The Ministry must only expend the monies of the Fund for the purposes provided under section 13.

(2) No payments may be made from the Fund without the authorisation of the permanent secretary responsible for finance.

(3) The expenditure of the Fund shall be published by the Ministry and made publicly available.
PART 6 ANTI-AVOIDANCE
(Section 15)

[Section 15] Avoidance of Environment and Climate Adaptation Levy

If there are reasonable grounds for the CEO to believe that any dealings have the direct or indirect effect of—

a) altering the incidence of any Environment and Climate Adaptation Levy that is payable or suffered by, or which would otherwise have been payable or suffered by any person;

b) relieving any person from any liability that has arisen or which would otherwise have arisen to pay Environment and Climate Adaptation Levy or file an Environment and Climate Adaptation Levy return;

c) evading or avoiding any liability which is imposed or would otherwise have been imposed on any person under this Act; or

d) hindering or preventing the operation of this Act in any respect,

the CEO may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the dealings and make such assessments as the CEO considers just and proper in the circumstances.

[sp 6 am and renum as s 15 Act 36 of 2017 ss 7, 11 and 12, effective 1 August 2017]
PART 7 MISCELLANEOUS
(Sections 16–18)

[Section 16] Application

Section 102 of the Income Tax Act 2015 applies for the purpose of this Act.
[s 7 renum as s 16 Act 36 of 2017 s 7, effective 1 August 2017]

[Section 17] Regulations

The Minister may make regulations to give effect to the provisions of this Act.
[s 8 renum as s 17 Act 36 of 2017 s 7, effective 1 August 2017]

[Section 18] Amendment to references to “Environmental Levy”

All written laws and all State documents of any nature whatsoever (including the titles of any written law) are amended by deleting “Environmental Levy” wherever it appears and substituting “Environment and Climate Adaptation Levy”, unless the context otherwise requires.
[s 18 insrt Act 36 of 2017 s 12, effective 1 August 2017]
SCHEDULE

SCHEDULE 1

(Section 2) - Prescribed Services

[Sch 1 am Act 17 of 2016 s 2, effective 1 August 2016; Act 36 of 2017 ss 9 and 11, effective 1 August 2017; Act 17 of 2018 s 5, effective 1 August 2018]

1. Provision of accommodation, refreshments and any other services by a licensed hotel.

2. Any services provided in a vessel that is wholly or principally engaged in the carriage of tourists within Fiji.

3. Provision of meals or beverages, and any other services in a licensed bar.
   For the purpose of this paragraph, “bar” includes any club.

4. Provision of services such as music, dancing or other entertainment including other services in a licensed nightclub.

5. Provision of inbound tour services.

6. Live entertainment provided wholly or substantially by the personal participation of artists at the place of performance or exhibition of products, where a fee is charged.

7. Provision of services for recreational activity for gain.

8. Provision of services relating to any exhibition of films to the public or to a section of the public which includes the production of any music, speech or other sound whatsoever in connection with the projection of a film, where the exhibitor is licensed under the Cinematographic Films Act 1971 and a charge is made for admission to the premises where the exhibition is held, including any other services provided by cinema operators.

9. Provision of services relating to hire or rent of motor vehicle by a person that operates a business of hired cars or rental cars licensed by the Land Transport Act 1998, and the provision of chartered transport services to tourists by an omnibus or a mini-bus operator.

10. Provision of meals, beverages and other services by bistros or coffee shops.

11. Provision of meals, beverages and other services regularly supplied on sale to the public by a licensed restaurant.

12. Provision of charter flight services provided by an aircraft or helicopter registered with the Civil Aviation Authority of Fiji, except for medical or natural disaster relief evacuation services.
13. Provision of all water sports including under water activities and river safaris.

14. Provision of accommodation in a private residence or property that accommodates tourists, international students or overseas visitors who are paying guests excluding any pre-school registered by the Ministry of Education, primary school, secondary school, the Fiji National University, Montfort Boystown, the Pacific Regional Seminary, the Pacific Theological College and the University of the South Pacific, or any other similar educational institution as approved by the CEO, but does not include any educational institution that is carried on for the purposes of commercial profit or gain to any proprietor, member or shareholder.

15. Provision of similar services listed in all the above conducted by an unlicensed operator.
## SCHEDULE 2
### (Section 8)- Imported Goods

[Sch 2 insrt Act 36 of 2017 s 10, effective 1 August 2017; paragraphs 1, 2 and 3 amended by Act 11(s4) and 24(s2) of 2019, effective 7 July 2019, except for non-hybrid vehicles which is effective from 5th August 2019]

<table>
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<tr>
<th>Imported Goods</th>
<th>Conditions or Exemptions (if any)</th>
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<tr>
<td><strong>Exemptions and Conditions:</strong></td>
<td>Vehicles used for public transportation, liquid petroleum gas, compressed natural gas, solar vehicles, electric vehicles, and vehicles procured by anyone under concession codes 201A, 203, 204, 205, 206, 220 columns 2(iii) and 287 of Schedule 2, Part 3 to the Customs Tariff Act 1986 provided that any person or body exempted from paying the Environment and Climate Adaptation Levy under the above concession codes who at any time within 5 years from the date of importation or delivery from the warehouse of such vehicles, sells or disposes such vehicles to any non-entitled persons or bodies other than those specified under the above concession codes, shall be liable to pay the Environment and Climate Adaptation Levy on a pro-rata basis for the unused period of the vehicle.</td>
</tr>
<tr>
<td>New or used hybrid or non-hybrid vehicles with engine capacity exceeding 3000cc</td>
<td></td>
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<tr>
<td><strong>Exemptions and Conditions:</strong></td>
<td>Vehicles used for public transportation, liquid petroleum gas, compressed natural gas, solar vehicles, electric vehicles, and vehicles procured by anyone under concession codes 201A, 203, 204, 205, 206, 220 columns 2(iii) and 287 of Schedule 2, Part 3 to the Customs Tariff Act 1986 provided that any person or body exempted from paying the Environment and Climate Adaptation Levy under the above concession codes who at any time within 5 years from the date of importation or delivery from the warehouse of such vehicles, sells or disposes such vehicles to any non-entitled persons or bodies other than those specified under the above concession codes, shall be liable to pay the Environment and Climate Adaptation Levy on a pro-rata basis for the unused period of the vehicle.</td>
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<tr>
<td>New or used hybrid or non-hybrid vehicles with engine capacity less than 1500cc</td>
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<tr>
<th>New or used hybrid or non-hybrid vehicles with engine capacity of 1500cc to 3000cc</th>
<th>Vehicles used for public transportation, liquid petroleum gas, compressed natural gas, solar vehicles, electric vehicles, and vehicles procured by anyone under concession codes 201A, 203, 204, 205, 206, 220 columns 2(iii) and 287 of Schedule 2, Part 3 to the Customs Tariff Act 1986 provided that any person or body exempted from paying the Environment and Climate Adaptation Levy under the above concession codes who at any time within 5 years from the date of importation or delivery from the warehouse of such vehicles, sells or disposes such vehicles to any non-entitled persons or bodies other than those specified under the above concession codes, shall be liable to pay the Environment and Climate Adaptation Levy on a pro-rata basis for the unused period of the vehicle.</th>
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<tbody>
<tr>
<td>Smart phones (high end mobile phones):Phones that have e-mail capability and inbuilt features that are found on a personal digital assistant or a computer</td>
<td>Exemption: Not applicable to phones which only have a Wireless Application Protocol (WAP) Browser.</td>
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<tr>
<td>Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated</td>
<td>Refrigerators and freezers</td>
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<tr>
<td>Televisions</td>
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<tr>
<td>Household and commercial laundry-type washing machines, including machines which both wash and dry</td>
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<tr>
<td>Household and commercial clothes-dryers</td>
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<td>Dish washing machines</td>
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<td>Electric stoves</td>
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<td>Item</td>
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<td>Microwave ovens</td>
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<td>Electric lawn mowers</td>
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<tr>
<td>Hair dryers</td>
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<tr>
<td>Toasters</td>
<td></td>
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<tr>
<td>Electric kettles</td>
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[Regulation 1]  Short title and Commencement

(1) These Regulations may be cited as the Environment and Climate Adaptation Levy (Plastic Bags) Regulations 2017.

(2) These Regulations come into force on 1 August 2017.

[Regulation 2]  Interpretation

In these Regulations, unless the context otherwise requires—

- **accountable person** means the owner, manager, sole precedent partner and otherwise the person who is responsible for the daily management of a business;

- **Business** means a business as prescribed under regulation 3;

- **Cashier** means a person who, as part of his or her employment with a business, operates a register for the business; and

- **Register** means a point of sale invoicing device into which a cashier enters data for a transaction.

[Regulation 3]  Business to which these Regulations apply

For the purposes of section 6(1) of the Act, a “business” means any business that utilises a register.

[Regulation 4]  Collection of Environment and Climate Adaptation Levy on Plastic Bags

(1) The Environment and Climate Adaptation Levy charged on plastic bags must be collected by a cashier at the point at which a plastic bag is provided by the business to a consumer.
(2) The accountable person must—

a) ensure that the Environment and Climate Adaptation Levy is collected in accordance with subregulation (1);
b) ensure that the Environment and Climate Adaptation Levy collected under subregulation (1) is paid to the CEO before or on the last day of each month following the month in which the Environment and Climate Adaptation Levy is collected; and
c) provide together with such payment a report in respect of the month in which the Environment and Climate Adaptation Levy is collected, setting out the—
   i. number of plastic bags stocked by the business at the beginning of that month;
   ii. number of plastic bags provided to consumers in that month;
   iii. number of plastic bags remaining in the stock of the business at the end of that month; and
   iv. amount of Environment and Climate Adaptation Levy collected in that month.

(3) Notwithstanding subregulation (2), the CEO may, in any particular case, require that the Environment and Climate Adaptation Levy be paid within a period of less than one month.

(4) Pursuant to subregulation (3), the accountable person must—

a) not later than 14 days from the date the CEO requires, pay to the CEO the Environment and Climate Adaptation Levy collected at the time the CEO makes such a request; and
b) provide along with such payment a report containing the particulars contained in subregulation 2(c).

[Regulation 5] Consumer Awareness

(1) A business must display a notice informing consumers of the Environment and Climate Adaptation Levy charged on plastic bags.

(2) Pursuant to subregulation (1), the notice must be clearly legible and displayed in a conspicuous place.