

ENERGY EFFICIENCY BILL 2017

SAMOA

Explanatory Memorandum

Introduction:

The objective of the Bill is to regulate the energy efficiency of energy using products and consumer information on those products and for related purposes.

Clauses:

PART 1 - PRELIMINARY

- Clause 1:** - provides for the short title and commencement of provisions.
- Clause 2:** - provides for the definition of terms.
- Clause 3:** - provides that this Act binds the Government.

PART 2 - ADMINISTRATION

- Clause 4:** - sets out the functions of the Ministry.
- Clause 5:** - provides for the appointment of authorised officers.
- Clause 6:** - sets out the powers of authorised officers.

PART 3 - STANDARDS

- Clause 7:** - provides for the energy performance standards to be determined and adopted by the Chief Executive Officer for the purpose of the Act.

PART 4 - REGISTRATION OF PRODUCTS, BRANDS AND MODELS

- Clause 8:** - prohibits a person from trading any product, brand or model unless the product is of a brand or model that is registered under the Act.

- Clause 9:** - provides for the power of the Chief Executive Officer to register a brand and model.

- Clause 10:** - provides that the Chief Executive Officer may impose any conditions of registration when registering a brand and model.

- Clause 11:** - provides for requirements and process for application to register a brand and model.

- Clause 12:** - provides that the Chief Executive Officer may require the applicant to provide and verify a test report for the product, brand and model to be registered.

- Clause 13:** - provides for the validity of registration of a brand and model.

- Clause 14:** - provides for the variation of registration of a registered brand and model.

- Clause 15:** - provides for the cancellation of registration of a product, brand or model.

- Clause 16:** - establishes the register to record information relating to the registration of a brand and model registered under the Act.

PART 5 - MISCELLANEOUS

- Clause 17:** - provides for the disposal of non-compliant products.
- Clause 18:** - imposes a duty on the trader to provide information on a yearly basis, relating to the trading and sale of energy using products to the Chief Executive Officer for statistical purposes.
- Clause 19:** - provides that information in relation to section 18 is confidential except for official use as permitted for the purposes of the Act.
- Clause 20:** - provides for general offences and penalties.
- Clause 21:** - provides for the power of the Head of State to make regulations.
- Clause 22:** - provides for the power of the Chief Executive Officer to approve forms for the purpose of the Act.
- Clause 23:** - provides for transitional matters.



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(Hon SILI Epa Tuioti)

MINISTER OF FINANCE

ENERGY EFFICIENCY BILL 2017

SAMOA

Arrangement of Provisions

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PRELIMINARY

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2017, No.

A BILL INTITULED

**AN ACT to regulate energy efficiency of energy using products and
consumer information on those products, and for related purposes.**

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement:

- (1) This Act may be cited as the Energy Efficiency Act 2017.
- (2) This Act commences on the date of assent.

2. Interpretation:

In this Act, unless the context otherwise requires:

“approved form” means a form approved under section 22;

“brand” means any mark, including a name, design symbol or trademark under which a product is labelled;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“confidential information” means any information referred to in section 19;

“dispose” means to destroy or get rid of, or to export, a product or model; but does not include to trade in the product or model;

“Ministry” means the Ministry responsible for the administration of this Act;

“model” means a range of products of the same brand of which each product has the same energy performance characteristics;

“prescribed group” means products of a type for which the Chief Executive Officer has determined a standard under Part 3;

“product” means an individual energy using product within a product class;

“product class” means a group or range of energy using products of a standard offering the same general functionality;

“sale” includes lease, hire, hire-purchase, exportation, lay-by or other similar transaction;

“standards” means energy performance standards specified under section 7;

“test report” means a test report required under section 12;

“trade” means to import, make, distribute or sell or display or offer for sale, any product or model, or to import or make any product or model for commercial or personal use.

3. Act binds Government:

This Act binds the Government.

PART 2 ADMINISTRATION

4. Functions of the Ministry:

The Ministry has the following functions:

- (a) to administer and enforce, and develop and formulate policies for the purposes of, this Act;
- (b) to promote and encourage the safe and efficient use of energy;
- (c) to promote and encourage measures for conservation of all forms of energy;
- (d) to monitor the costs of operation of products and their level of energy consumption and energy efficiency;
- (e) to promote energy efficiency through sustainable measures to save costs and monitor other adverse effects;

- (f) to carry out any other functions under this Act or any other enactment or any other prescribed function.

5. Authorised officers:

The Chief Executive Officer may designate any public servant or appoint any other person as an authorised officer for the purpose of this Act.

6. Powers of authorised officers:

- (1) The powers of authorised officers are:
 - (a) to inspect any product, brand or model, intended for registration; and
 - (b) to enter any place of business to inspect or test products; and
 - (c) to require the trader to provide information for the purposes of registration, inspection or testing; and
 - (d) to enter any private premises if the authorised officer has reason to believe that a business is conducted or to prevent a business from being conducted, in the private premises; and
 - (e) to investigate possible breaches of this Act; and
 - (f) to exercise any other prescribed power.
- (2) An authorised officer may not enter any private residential premises except:
 - (a) with the consent of the owner or person in possession of the premises; or
 - (b) pursuant to a warrant issued under subsection (3).
- (3) If a District Court Judge is satisfied on application by an authorised officer that:
 - (a) it is necessary to enter any private residential premises for the purposes of subsection (1)(d) or of this Act; and

- (b) the owner or person in possession of the premises refuses or is likely to refuse consent,
the Judge may issue a warrant for the purposes of subsection (1)(d) or of this Act.
- (4) An authorised officer may:
 - (a) do anything reasonably necessary to effect entry and the search inside the premises; or
 - (b) bring to the premises that are the subject of a warrant any equipment reasonably necessary for the examination or processing of things found at the premises; or
 - (c) seize anything found on the private premises that may be used as evidence of the commission of an offence under this Act.

PART 3 STANDARDS

7. Standards:

- (1) The Chief Executive Officer may determine standards or adopt any standards from another country to be used, for the purpose of this Act.
- (2) Without limiting subsection (1), other standards for the purpose of this Act may be prescribed.
- (3) The Chief Executive Officer must provide public notice:
 - (a) stating that standards have been determined or adopted; and
 - (b) specifying the commencement date of the standards.
- (4) Notification under subsection (3) may be published in a newspaper or other means determined by the Chief Executive Officer.

- (5) A person may, upon payment of the prescribed fee, obtain from the Ministry a copy of the standards referred to in subsection (3).

PART 4
REGISTRATION OF PRODUCTS,
BRANDS AND MODELS

8. Prohibition:

A person must not trade any product, brand or model unless the product is of a brand or model that is registered under this Act.

9. Power to register:

- (1) The Chief Executive Officer:
- (a) may, upon application under section 11 -
 - (i) register a brand and model if satisfied that products of that brand and model comply with the standards; or
 - (ii) refuse to register a brand and model if satisfied on the advice of the authorised officer that products of that brand or model does not comply with the standards; and
 - (b) must, upon proof given under subsection (2) -
 - (i) register a brand and model if the brand and model is registered in Australia, New Zealand, Fiji or any other country approved by the Chief Executive Officer; and
 - (ii) issue a Samoa registration number for that brand and model.
- (2) A trader must provide the Chief Executive Officer with proof of the registration of the brand and model in a country specified under subsection (1)(b)(i).

10. Conditions of registration:

When registering a brand and model, the Chief Executive Officer may impose any condition of registration.

11. Application for registration:

- (1) A person may apply to the Chief Executive Officer to register a brand and model.
- (2) The application is to be made in the approved form and accompanied by the prescribed fee.
- (3) If the brand and model is registered in a country specified under subsection (9)(1)(b)(i), that is sufficient evidence to satisfy the Chief Executive Officer in accordance with subsection (9)(1)(a)(i).
- (4) The Chief Executive Officer may seek additional information from:
 - (a) the applicant relating to the registration of the product, brand and model; or
 - (b) a trader providing proof under section 9(2).
- (5) The Chief Executive Officer must process the application within 20 working days from the date of receiving the application.
- (6) However, the Chief Executive Officer may extend the 20 working days to a further period not exceeding 20 working days under subsection (4) for any unforeseen circumstances including awaiting additional information or a test report or further certification of test reports.

12. Test reports:

The Chief Executive Officer may require the applicant:

- (a) to provide a copy of any test report (in the approved form) for the product, brand and model to be registered; and
- (b) to further certify the test report from a laboratory accredited by national association of testing authorities in Australia or New Zealand or any other country approved by the Chief Executive Officer.

13. Validity of registration:

- (1) The registration of a brand and model is valid until:
 - (a) the product, brand or model does not comply with the standards; or
 - (b) registration is cancelled under section 15.
- (2) If a registration:
 - (a) expires under subsection (1)(a) -
 - (i) for any product, brand or model traded, the trader may seek the approval of the Chief Executive Officer to continue selling the non-complying product, brand or model; and
 - (ii) for any product, brand or model used for personal use, the owner may continue to use the product, brand or model for personal use until the end of its life span, and must not sell the product, brand or model;
 - (b) is cancelled under subsection (1)(b), the Chief Executive Officer must specify in notice to cancel registration the conditions of continued sale or disposal of the de-registered product brand or model.
- (3) At the end of the 12-month period in subsection (2)(a) and (b), an authorised officer may enter a business place where the product is located and confiscate the product to be dealt with under section 17 if it has not been sold, subject to the requirement of a warrant under section 6(3).

14. Variation of registration:

- (1) The Chief Executive Officer may vary the registration of a registered brand and model.
- (2) A trader may, in the approved form, apply to the Chief Executive Officer to vary the registration of the trader's registered brand and model.

- (3) A variation is not effective unless both the trader and the Chief Executive Officer agree to the variation.

15. Cancellation of registration:

- (1) The Chief Executive Officer may cancel the registration of a product, brand or model if:
 - (a) the Chief Executive Officer is no longer satisfied that the brand and model complies with the designated standards; or
 - (b) a trader is found to have provided false or misleading information at the time of application; or
 - (c) the Chief Executive Officer has any other reason in the national interest.
- (2) The Chief Executive Officer must first serve the trader with a notice of not less than 20 working days requiring the trader to make written submission to the Chief Executive Officer as to why the registration should not be cancelled.
- (3) A notice under subsection (2) must specify:
 - (a) the grounds for cancellation; and
 - (b) the effective date of cancellation; and
 - (c) any conditions of continued sale or disposal of products of the de-registered brand or model.
- (4) The Chief Executive Officer must publish any cancellation in a newspaper, including the details of the de-registered brand and model, the reasons for cancellation, the effective date of the cancellation and any conditions of continued sale or disposal.

16. Register:

- (1) The Chief Executive Officer must establish and maintain a register to record:
 - (a) the name of every brand and model registered under this Act and the date of its registration; and

- (b) the unique Samoa registration number for each model; and
 - (c) the energy efficiency rating of each model, as determined under the standards; and
 - (d) name and contact address of the person or trader who registered each brand and model; and
 - (e) any transfer, variation or cancellation of any registration under this Act; and
 - (f) any other information approved by the Chief Executive Officer.
- (2) A person is entitled:
- (a) to trade a product of any brand and model that is listed on the register; and
 - (b) to inspect the register.

PART 5

MISCELLANEOUS

17. Disposal of products:

- (1) The Chief Executive Officer may, if a product is not registered under section 9 or registration has expired under section 13(1) or a product has not been sold as required under this Act, dispose of any product in any of the following manner:
- (a) direct the trader to export the product; or
 - (b) scrap the product in a manner approved by the Chief Executive Officer; or
 - (c) in any other manner approved by the Chief Executive Officer.
- (2) For any product that is under the control of the Ministry for Revenue, the Chief Executive Officer may:
- (a) request the Ministry for Revenue to retain the product in storage until its disposal under subsection (1); or

- (b) with the consent of the Comptroller, move the product to a designated place for disposal, or storage awaiting disposal; or
 - (c) direct an authorised officer to take the product to a designated place for disposal, or storage awaiting disposal.
- (3) For any product that is not under the control of the Ministry for Revenue, the Chief Executive Officer may:
 - (a) require an authorised officer to take the product to a designated place for disposal, or storage awaiting disposal; or
 - (b) direct an authorised officer to remove the product from the trader or owner and take the product to a designated place for disposal, or storage awaiting disposal; or
 - (c) take any other necessary action to ensure that the product is taken to a designated place for disposal, or storage awaiting disposal.
- (4) The Chief Executive Officer may designate a place for the purpose of this section.
- (5) The offices of the Ministry are treated as designated places under subsection (4).
- (6) The trader or owner of a product is liable for the costs associated with the movement, storage or disposal of the product.

18. Information for statistical purposes:

- (1) A trader (other than trader importing products for personal use) must, no later than 30 April each year, provide to the Chief Executive Officer, in the approved form, information setting out the number of products traded in the previous year.
- (2) The Chief Executive Officer may direct a trader to also report on the sales of other types of energy-using products.

- (3) As an exception to subsection (1), the Chief Executive Officer may, in writing, request a trader to provide, in the approved form, no later than 30 working days after receiving the request, the number of products traded over the time period specified in the request.

19. Confidential information:

- (1) Any information provided to the Ministry under section 18, is confidential.
- (2) A person must not disclose any confidential information except:
 - (a) for official use as permitted for the purposes of this Act; or
 - (b) for investigation, prosecution or for proceedings for an offence against this Act or other enactment; or
 - (c) as agreed between the Chief Executive Officer and the trader.
- (3) Any information that is not particular to a person:
 - (a) may be disclosed to -
 - (i) an employee of the Ministry; or
 - (ii) a consultant to the Ministry; or
 - (iii) a person to whom the information relates; and
 - (b) is published under subsection (4).
- (4) The Ministry may publish statistical information if the statistic is arranged in a manner so as to prevent information published from being identifiable by a person (other than the person who supplied the information) as information relating to a particular person, unless:
 - (a) that person has consented to the publication of the information in that manner, or has already permitted its publication in that manner; or

- (b) the publication of the information in that manner could not reasonably have been foreseen by the Ministry.

20. Offence and penalty:

- (1) A person commits an offence who:
 - (a) contravenes section 8;
 - (b) when registering a brand or model, declares or produces any document that the person knows to be false or misleading; or
 - (c) if a product, brand or model has not been registered, does an act that may reasonably cause any other person to believe that it has been registered; or
 - (d) continues to trade a product of a brand or model for which registration has expired, except if it is sold under the conditions specified by the Chief Executive Officer under subsection 13(2)(b); or
 - (e) for a product that is required to display an energy label, trades a product on which the energy label is obscured, missing or incorrect or carries an energy label not compliant with the standards.
- (2) A person who is convicted for an offence under subsection (1) is liable to the following penalty:
 - (a) for a first offence, a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding six (6) months; and
 - (b) for a second or subsequent offence, a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months.

- (3) The Court which convicts a person of an offence under this Act may order:
- (a) the forfeiture of any product for which the offence was committed; or
 - (b) that the person is prohibited from trading any product for a period specified in the order; or
 - (c) that the person shall identify the other person to whom the product has been supplied and offer restitution by way of replacement with compliant product of similar quality or recompense for additional energy costs incurred as a result of the supply of the non-compliant product.
- (4) The Chief Executive Officer shall publish in such manner as he or she thinks fit, the name, address and description of a person in respect of whom an order under subsection (3) has been made by the Court.

21. Regulations:

- (1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to or for the purposes of this Act.
- (2) Prescribed fees are subject to prior approval of the National Revenue Board before Cabinet advises the Head of State to make Regulations for such.

22. Approved forms:

The Chief Executive Officer may approve forms for the purpose of this Act.

23. Transitional:

- (1) At the commencement of this Act, any product, brand or model that has been imported, or ordered and intended for shipment, or is ready to be shipped for importation, into Samoa:

- (a) that does not comply with the standards is not required to be registered and must be sold within 12 months from the commencement of this Act;
 - (b) that is registered in Australia, New Zealand, Fiji or other country approved by the Chief Executive Officer, must be dealt with in accordance with section 9 of this Act.
- (2) If the Chief Executive Officer or a person authorised by the Chief Executive Officer has reason to believe that a product was imported, or was ordered and intended for shipment, or was ready to be shipped for importation into Samoa after the commencement of this Act, he or she may request a trader to produce proof of the date of order, shipment or importation of the product.
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