

ENERGY MANAGEMENT BILL 2020

SAMOA

Explanatory Memorandum

Object and reasons:

The objective of the Bill is to provide a coherent institutional, regulatory and policy framework for the energy sector (except the electricity sector which will remain as it is under the administration of the Office of the Regulator as per the Electricity Act 2010), and for other matters connected therewith, including the repeal of certain legislation to avoid duplication/overlap.

Clauses:

PART 1 PRELIMINARY

- Clause 1:** - provides for the short title and commencement date of the Bill (i.e. a date to be determined by the Minister).
- Clause 2:** - provides for the definition of terms.
- Clause 3:** - provides that this enacted Bill binds the Government.
- Clause 4:** - specifies the purpose of the Bill as being the mechanism to provide for a coherent institutional and regulatory framework for the management, planning and coordination of the energy sector or energy related matters (including renewable energy).

- Clause 5:** - clarifies that the Bill applies to any person (including energy stakeholders) involved or participating in, developing, initiating or carrying out any policy, project, activity or any matter relating to energy, all of which are subject to the review of the Ministry responsible for energy and approval by the National Energy Coordinating Committee (NECC). Furthermore, this provision clarifies that the Act does not apply to the electricity sector (given the complexity of issues surrounding the electricity sector, this shall remain administered/implemented by the Office of the Regulator under the Electricity Act 2010). Lastly, any matter or provision relating to renewable energy shall be subject to this Act but implementation continues to be done by the Ministry of Natural Resources and Environment (MNRE).

PART 2 ADMINISTRATION

- Clause 6:** - sets out the functions of the Minister responsible for energy.
- Clause 7:** - sets out the functions of the Chief Executive Officer (“CEO”) of the Ministry responsible for energy (“Ministry”).
- Clause 8:** - provides for the delegation powers of the Minister or the CEO.

PART 3 SAMOA ENERGY SECTOR PLAN

- Clause 9:** - provides for the Samoa Energy Sector Plan (Plan) to be prepared/updated by CEO every five (5) years. It also requires consultations to be carried out before publication no later than 31 July of the calendar year that the Plan becomes effective. Also, the Plan must be approved by NECC with final endorsement by Cabinet.

**PART 4
NATIONAL ENERGY COORDINATION
COMMITTEE**

- Clause 10:** - provides for the NECC (as established initially by Cabinet by way of FK) to be continued under the Act and its composition.
- Clause 11:** - provides for the Secretary of NECC to be a senior officer of the Ministry (practically, this would be the ACEO-Energy of Ministry of Finance or his/her principal(s)). The functions of the Secretary are also specified.
- Clause 12:** - sets out the functions of NECC and its power to appoint sub-committees to perform its functions and report to the Committee.
- Clause 13:** - provides for rules to be applied at NECC meetings and for NECC to set its own rules and procedures.

**PART 5
REGULATION OF ENERGY SECTOR**

Division 1 - Petroleum

- Clause 14:** - prohibits a person from importing, storing and distributing of petroleum into and within Samoa except in accordance with this Part. It requires the approval of the Petroleum Task Force (PTF) for any person storing petroleum at a location where construction or other works are being carried out or any unlicensed petroleum premises.
- Clause 15:** - provides for pricing of petroleum products to be done every month or such other period as approved by Cabinet. It also clarifies the information that goes into the approved pricing template.
- Clause 16:** - requires the Onshore Terminal and Distribution operator to pay a monthly petroleum levy and a terminal fee on any petroleum product. This levy and fee is to be determined by the Minister of Finance acting on advice of CEO and subject also to consideration and approval of the National Revenue Board (NRB). Payment of the levy and fee must be done on or before the 30th of each calendar month, and where such levy is not paid the contractor shall be liable to pay a penalty levy in addition to any fine that may be imposed under this Bill. The penalty levy is determined in the same manner as the initial levy.
- Clause 17:** - provides for petroleum standards for the importation, storage, distribution and resale of petroleum products within Samoa. The standards shall be determined by the CEO in conjunction with members of the PTF.

- Clause 18:** - prohibits a person from selling any petroleum except in accordance with a licence issued under the Bill.
- Clause 19:** - requires a person to apply to CEO for a licence to operate a petrol station for sale of petroleum or to handle, move or store fuel for whatever purpose (“licence”). For every application, there is a fee. Further, there is a requirement for CEO to carry out a preliminary assessment of the application taking into account certain matters and referring the application (and any recommendations) to PTF for its final assessment and approval.
- Clause 20:** - provides for matters or information required to assist CEO preliminary assessment of an application for a licence.
- Clause 21:** - sets out matters that need to be considered by the CEO when deciding on an application for a licence. These matters include consideration of a development assessment under the Planning and Urban Management Act 2004.
- Clause 22:** - provides for the issuing, duration, renewal and conditions of licence. A licence is issued every year before 30 April and after an inspection for compliance of the Health, Safety, Security and Environment Standards (HSSE) has been carried out.
- Clause 23:** - provides for grounds when a licence may be cancelled or suspended by CEO.
- Clause 24:** - provides for right of appeal by a person to the Minister if he/she is not satisfied with a decision of the CEO or PTF regarding refusal, amendment, cancellation or suspension of his or her licence.

- Clause 25:** - provides for powers of the CEO or an authorized officer to enter, remove, examine or seize anything for the purposes of the Bill. Where a person refuses or hinders or obstructs the CEO or the authorized officer in carrying out his/her duties lawfully, the person obstructing may be held liable upon conviction to a fine of 10 penalty units (equivalent to SAT\$1,000). It further provides for the power of the Court to make orders regarding any petroleum seized and detained (i.e. order any petroleum seized to be detained to be forfeited to the Government etc.) if a person is convicted under this Division.
- Clause 26:** - requires a person to obtain the relevant approvals from local authorities when deciding to lay pipes, break any surface, open drains or undertaking any works necessary to erect a tank or anything for storage or transfer of fuel.
- Clause 27:** - empowers the Head of State to make regulations to give full effect to the provisions of this Division and matters listed.
- Clause 28:** - provides for the PTF that was initially set up by Cabinet (by way of FK) to be continued under this Act and its composition.
- Clause 29:** - provides for the appointment of the Secretary of PTF to be a senior officer of the Ministry (usually, it would be ACEO-Energy or any of his/her principals).
- Clause 30:** - sets out the functions of the PTF.

- Clause 31:** - provides for meetings of the PTF, and for PTF to set its own rules and procedures.

*Division 2 - Minimum Energy Performance
Standards and Labelling (MEPSL)*

- Clause 32:** - provides for the Ministry to work jointly with Ministry of Customs and Revenue and other relevant ministries for proper enforcement of MEPSL - but each employee/Ministry is accountable and reports to his/her own CEO.
- Clause 33:** - empowers the CEO to determine standards or adopt any standards from another country to be used in Samoa for the purpose of this Division or to be prescribed. It further provides for the duty of the CEO to publish the standards determined/adopted/prescribed for public's information and to ensure that the trainings are conducted for traders or those who will be affected by such standards. Any person wishing to see the standards may view this at the Ministry premises.
- Clause 34:** - prohibits any person from trading any product that is of a class subject to an approved standard unless it is registered and labeling or markings of the brand and model of the product are in the English language.
- Clause 35:** - requires registration of the brand and model of any energy using product that a person wishes to trade (including a person who wishes to use it for personal use).
- Clause 36:** - provides for the conditions of registration to be imposed by CEO.

- Clause 37:** - authorizes CEO to require an application to submit reports of tests and examinations for any energy using product. The test reports need to be verified from a laboratory testing authority in NZ, Australia or any other country approved by the CEO.
- Clause 38:** - provides for registration of a brand and model of an energy using product to be valid until cancelled or expired. If registration is cancelled or expired, the trader may seek approval of CEO to continue selling the product or to dispose of the same. The trader may also seek CEO's approval to continue using the product for personal use until end of life span.
- Clause 39:** - allows a variation to be made to the registration (this may also include a transfer of registration) by the CEO.
- Clause 40:** - provides the power of the CEO to cancel a registration and grounds for cancellation.
- Clause 41:** - provides for specific powers of authorized officers in relation to inspections, etc.
- Clause 42:** - requires the CEO to maintain a register of energy using products.
- Clause 43:** - provides for the power of the CEO to dispose energy using products that are not registered, or their registration have been expired, etc. In disposing such products, CEO must take into account processes and requirements under other laws.
- Clause 44:** - requires a trader (not including person importing product for personal use) to provide information required by CEO for statistical purposes.

- Clause 45:** - provides for offences and penalties under this Division.
Clause 46: - provides for transitional matters under this Division.

Division 3 - Linkages with Government Authorities

- Clause 47:** - clarifies the relationship between MoF and other Government departments to ensure that there is better management and cooperation between each. It also provides for MOUs to be signed to effect an arrangement between departments similar to what MoF has signed with Ministry of Customs and Revenue. This clause also clarifies that MoF is the focal point of all energy related matters, and where other departments (e.g. MNRE and EPC) implement provisions relating to their line of work, such shall remain subject to consideration by MoF, to ensure that policies, procedures, etc. determined by other departments are in line with Government's overall policies, financing, etc.

PART 6

ENERGY AND ENERGY RELATED PROJECTS

- Clause 48:** - provides for rules or procedures to be followed when there is a proposal to the Government for an energy or energy related project.

- Clause 49:** - sets out the requirements for all energy and energy related projects - and these requirements are to be determined by the Ministry in consultation with NECC and relevant Government authorities (e.g. EPC, MNRE, etc.) to address technical requirements, economic considerations, social considerations and environmental factors.

PART 7 FINANCIAL

- Clause 50:** - provides for the Ministry's budget for purposes of the Bill.
- Clause 51:** - authorizes fees, levies and other charges to be imposed subject to consideration and approval of NRB.

PART 8 COMPLIANCE AND ENFORCEMENT

- Clause 52:** - authorizes CEO of Ministry to designate suitable persons as authorized officers for the purposes of the Bill. Also, authorized officers would need to wear ID cards and must have the appropriate level of skill, training, qualifications and experience to undertake the required works/services.
- Clause 53:** - provides for general powers of authorized officers under the Bill.

- Clause 54:** - provides for rights and duties of owner of a business or premises, during inspection carried out by an authorized officer under the Bill.
- Clause 55:** - provides for procedures to be followed by an authorized officer if believe that a person has failed to comply with the Bill on first inspection.
- Clause 56:** - provides for issuing of a compliance notice and matters to be set out in the notice.
- Clause 57:** - provides for procedures to be carried out by an authorised officer when there is non-compliance on re-inspection.
- Clause 58:** - provides for how to deal with complaints against an authorized officer.

PART 9 OFFENCES AND PENALTIES

- Clause 59:** - provides for offences and penalties if a person fails to provide information required by, or obstructs an authorized officer.
- Clause 60:** - makes it an offence for a person to fail to comply or if he/she contravenes the provisions of the Bill.
- Clause 61:** - provides that an employer is liable and responsible for the acts and omissions of his or her employees.

PART 10 MISCELLANEOUS

- Clause 62:** - requires the Ministry to keep registers of energy service providers, complaints, and other matters required under the Bill.

- Clause 63:** - provides for personal immunity of officers and employees authorized to carry out enforcement under the Act (including members of NECC and PTF).
- Clause 64:** - provides for confidentiality of information used or received or communicated under the Bill, and specific circumstances when disclosure would be allowed.
- Clause 65:** - provides for disclosure of interests.
- Clause 66:** - provides for a general regulation making power of the Head of State for purposes of the Bill.
- Clause 67:** - requires CEO to make available forms approved for purposes of the Bill.
- Clause 68:** - repeals Energy Efficiency Act 2017, Oil Fuel Supply Act 1974 and Petroleum Act 1984.
- Clause 69:** - makes provision for savings and transitional matters.



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(Hon SILI Epa Tuioti)

MINISTER OF FINANCE

ENERGY MANAGEMENT BILL 2020

SAMOA

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2020, No.

A BILL INTITULED

**AN ACT to provide for a coherent institutional, regulatory and policy framework
for the energy sector, including the repeal of the Energy Efficiency Act 2017,
Oil Fuel Supply Act 1974, Petroleum Act 1984 and other related purposes.**

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

PART 1
PRELIMINARY

1. Short title and commencement:

This Act may be cited as the Energy Management Act 2020 and commences on a date nominated by the Minister.

2. Interpretation:

In this Act, unless the context otherwise requires:

“authorised officer” means a person authorised by the Chief Executive Officer to carry out a duty under this Act;

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

“bulk fuel” means any petroleum imported as a fuel in quantities greater than 500,000 litres per annum;

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

“Code of Conduct” means the Public Service Code of Conduct made under the Public Service Act 2004;

“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;

“energy sector” means the energy sector, which includes the infrastructure, stakeholders and institutions that are directly or indirectly involved in the importation, generation, conversion, storage, transmission, distribution, sales and consumption or use of all forms of energy;

“energy sector database” refers to the database maintained by the Ministry for purpose of recording data and update on energy related activities from various energy stakeholders to inform the annual energy review reports;

- “energy service” means the provision of services relating to the production, generation, storage, distribution, transmission and use and consumption of energy and for the purposes of this Act;
- “energy service provider” means a provider of an energy service;
- “MEPSL” means Minimum Energy Performance Standards and Labelling;
- “Minister” means the Minister responsible for the Ministry;
- “Ministry” means the Ministry responsible for the energy sector;
- “model” means a range of products of the same brand of which each product has the same energy performance characteristics;
- “National Energy Coordination Committee” or “NECC” means the Committee continued under section 10 of the Act;
- “Onshore and Terminal Distribution Operator” means the contractor engaged by Government for the storage and distribution of petroleum products to onshore and terminal facilities in Samoa;
- “package” means:
- (a) any case, barrel, drum or container; and
 - (b) includes any means by which petroleum may be encased or contained having capacity of less than 90 gallons.
- “petroleum” means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, gaseous, viscous or solid) containing any hydrocarbon compounds and includes bulk fuel, but does not include ordinary petroleum;
- “Petroleum Task Force” or “PTF” means the Task Force continued under section 28 of this Act;
- “product” means an individual energy using product within a product class;
- “sale” includes lease, hire, hire-purchase, exportation, lay-by or other similar transaction;

“Samoa Energy Sector Plan” means the Plan developed pursuant to section 9 of the Act;

“service station operator” is a person who is issued a licence under this Act to operate a service station;

“storage facilities” includes fixtures, machinery, tools, buildings or any other equipment required to carry out a petroleum trade or a petroleum business;

“terminal” includes airports, wharves, and fuel storage facilities (including all pipelines, buildings and associated infrastructure where fuel facility assets and tanks are located);

“test report” means a test report required under section 37;

“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;

“Treasury Fund” means the fund established under the Public Finance Management Act 2001.

3. Act binds Government:

This Act binds the Government.

4. Purpose:

The purpose of this Act is to provide a coherent institutional and regulatory framework for the management, planning and coordination of the energy sector or energy related matters (including renewable energy).

5. Application:

(1) This Act applies to any person (including energy stakeholders) involved or participating in, developing, initiating or carrying out any policy, project, activity or any matter relating to energy.

- (2) Anything done under subsection (1) is subject to review of the Ministry and approval by the NECC.
- (3) For avoidance of doubt:
 - (a) this Act does not apply to the electricity sector which is regulated in accordance with the Electricity Act 2010; and
 - (b) any matter or provision relating to renewable energy shall, subject to this Act, continue to be implemented by the Ministry of Natural Resources and Environment.

PART 2

ADMINISTRATION

6. Functions of the Minister:

The functions of the Minister are:

- (a) to establish Government targets for the energy sector to be reflected in national energy sector plans and how to meet those targets;
- (b) to create an enabling environment which will allow all stakeholders to work towards planning, financing, contributing and implementing the Government's targets for the energy sector in paragraph (a);
- (c) to convey approved national policy objectives of the Government in relation to the energy sector to stakeholders of the energy sector;
- (d) to enforce, monitor and evaluate progress towards achieving the national energy targets, and report on progress as required;
- (e) to ensure consistency between national policy objectives, energy targets and national development goals of the Government;
- (f) at a high level, liaise with donor organisations and development partners in order to ensure access to funding, attract investment and facilitate development of the energy sector;

- (g) to make such determinations and directions as are required or considered necessary for the performance of the Ministry's functions under this Act; and
- (h) exercise any other function as may be lawfully conferred upon the Minister.

7. Functions of the Chief Executive Officer:

The functions of the Chief Executive Officer are:

- (a) planning, coordinating, reviewing and monitoring all energy and energy related matters and activities;
- (b) providing advice to the Government on energy related activities and matters;
- (c) exercising general supervision and control over all matters relating to the energy sector;
- (d) formulating the Samoa Energy Sector Plan (which shall include targets set by the Minister for the energy sector and how to meet those targets);
- (e) consulting with the NECC on the policy objectives of Government in relation to the energy sector;
- (f) to regulate and improve the energy efficiency of energy using products imported into, and sold in Samoa by developing, implementing and enforcing MEPSL together with other key Government line Ministries;
- (g) ensuring that policies are in place to achieve a reliable and regular supply of petroleum sufficient to meet the local demand;
- (h) liaising with key stakeholders of the energy sector as required for the proper discharge of the Ministry's functions;

- (i) at a working level, coordinating donor activity in the energy sector in consultation with key stakeholders of the energy sector;
- (j) facilitating training and capacity building for employees of the Ministry on energy and energy related matters;
- (k) overseeing or coordinating research projects in relation to the energy sector and obtain copies of those reports for the Ministry;
- (l) establishing and maintaining an overarching energy sector database;
- (m) ensuring that information related to energy services and the regulation of those services is communicated effectively to all key stakeholders;
- (n) carrying out any other function consistent with the objects of this Act, which may be prescribed by regulations or as directed by Cabinet.

8. Delegation of powers:

- (1) The Minister or the Chief Executive Officer, as the case may be, may delegate any of their functions and powers under this Act, subject to section 44 of the Acts Interpretation Act 2015.
- (2) A delegation under this section:
 - (a) must be in writing and specify the nature and duration of the delegation; and
 - (b) may be revoked at will by the Minister or the Chief Executive Officer, as the case may be.

PART 3

SAMOA ENERGY SECTOR PLAN

9. Samoa Energy Sector Plan:

- (1) The Chief Executive Officer shall:

- (a) continue developing and updating the Samoa Energy Sector Plan within the planning period, for every five (5) years; and
 - (b) undertake consultations with relevant stakeholders of the energy sector and community; and
 - (c) as necessary, publish the Plan no later than 31 July of the calendar year that the Plan becomes effective; and
 - (d) oversee the adoption of a Samoa Energy Sector Plan.
- (2) The Samoa Energy Sector Plan, including subsequent revisions, must be approved by the NECC with final endorsement by Cabinet.
- (3) The Samoa Energy Sector Plan shall include overall energy policies, priorities and targets for:
- (a) leadership, governance, coordination and partnerships; and
 - (b) capacity development, planning, policy and regulatory framework; and
 - (c) energy production and supply of -
 - (i) petroleum and alternative liquid fuels; and
 - (ii) renewable energy; and
 - (d) energy conversion for electric power; and
 - (e) end use energy consumption including -
 - (i) transport energy use; and
 - (ii) energy efficiency and conservation; and
 - (f) energy data and information; and
 - (g) financing, investment, monitoring and evaluation; and
 - (h) any other issue identified by the Minister or the Ministry.
- (4) For purpose of this section, “planning period” refers to the period ending six (6) months preceding January of the following calendar year in which the Plan commences.

PART 4**NATIONAL ENERGY COORDINATION COMMITTEE****10. National Energy Coordination Committee:**

- (1) The National Energy Coordination Committee that was established by Cabinet continues under this Act.
- (2) The Committee comprises of the following members:
 - (a) Minister of Finance, as Chairperson;
 - (b) Minister of Natural Resources and Environment, as Co-Chairperson;
 - (c) Minister of Works, Transport and Infrastructure;
 - (d) Chief Executive Officer of the Ministry of Finance;
 - (e) Chief Executive Officer of the Ministry of Natural Resources and Environment;
 - (f) Chief Executive Officer of the Ministry of Works, Transport and Infrastructure;
 - (g) Chief Executive Officer of the Ministry of Women, Community and Social Development;
 - (h) Attorney General;
 - (i) Chief Executive Officer of the Ministry of Commerce, Industry and Labour;
 - (j) Chief Executive Officer of the Ministry of Agriculture and Fisheries;
 - (k) Chief Executive Officer of the Ministry of Customs and Revenue;
 - (l) Chief Executive Officer of the Scientific Research Organisation of Samoa;
 - (m) Chief Executive Officer of the Land Transport Authority;
 - (n) General Manager of the Electric Power Corporation; and
 - (o) General Manager of Samoa Trust Estates Corporation.

11. Secretary:

- (1) The Chief Executive Officer shall appoint a senior officer of the Ministry to be Secretary to the NECC.
- (2) The Secretary shall be responsible for monitoring execution of the policies of the NECC, keeping minutes and records of NECC and providing other administration support to the NECC.

12. Functions:

- (1) The functions of the NECC are:
 - (a) to assist the Minister in establishing -
 - (i) a strong governance framework for the energy sector with clear policies, plans, legislation, institutional and organisational arrangements that are interlinked; and
 - (ii) a harmonised and engaging environment for regional and international entities, development partners and investors;
 - (b) to oversee the energy sector management and coordination;
 - (c) to coordinate all key Government stakeholders in the energy sector and to report on any matters relating to energy;
 - (d) to promote the mainstreaming of energy in all sectors and decision-making processes within Government and society, including national planning and budgetary processes;
 - (e) to promote evidence and knowledge-based decision-making;

- (f) to review and endorse activities in both private and public sector, and recommend initiatives and activities that call for Government approval;
 - (g) to oversee and evaluate implementation of energy related policies and projects;
 - (h) to approve energy related reviews and activities before implementation or onward submission to Cabinet (or relevant committees of Cabinet) for endorsement;
 - (i) to regulate and manage all energy related developments;
 - (j) to develop energy related policies, including policies that promote the development of renewable energy;
 - (k) to facilitate consultation with regional and international agencies and development partners relating to energy activities and programmes;
 - (l) to provide oversight on national activities for any regional or international energy related projects on bilateral or multilateral agreements; any other function as approved or determined by Cabinet;
 - (m) to coordinate with all the stakeholders regarding Energy Awareness Day.
- (2) The Committee may appoint sub-committees to perform its functions and to report to the Committee.

13. Meetings:

- (1) At a meeting of the NECC, more than one half shall form a quorum.
- (2) A Co-chairperson must preside over a meeting, and in the absence of both Co-chairperson, members present shall agree on a person to be elected as Chairperson for that meeting.

- (3) In the absence from any meeting of any member of the Board, that member may authorise a senior officer from his or her department to attend the meeting in his or her stead.
- (4) Subject to this section, the NECC shall regulate its meetings and determine its own rules and procedures as it sees fit.

PART 5

REGULATION OF ENERGY SECTOR

Division 1 - Petroleum

14. Importation, storage and distribution of petroleum:

- (1) A person must not import, store or distribute petroleum into and within Samoa except in accordance with this Part.
- (2) Without limiting subsection (1), prior approval of the Petroleum Task Force must be obtained by any person requiring storage of petroleum at a location where construction or other works are being carried out or any unlicensed petroleum premises.

15. Pricing of petroleum products:

- (1) The Chief Executive Officer is responsible for setting:
 - (a) the maximum ceiling wholesale price for petrol, diesel, kerosene and jet fuel; and
 - (b) the maximum retail price for petrol, diesel and kerosene; and
 - (c) the maximum wholesale or retail prices for such other petroleum products as directed by Cabinet.

- (2) The prices set under subsection (1) must be set every month, or such other period as approved by Cabinet.
- (3) For purpose of this section, a monthly pricing template which is approved by the Government sets the monthly ceiling prices for petroleum products, as follows:
 - (a) the maximum wholesale price is applied by the Onshore and Terminal Distribution Operator to charge service stations and its other customers; and
 - (b) the maximum retail price is applied by service stations to charge its customers.
- (4) With reference to subsection (3), the time change of monthly price takes place on the 1st of every month at 12 midnight, and if the site closes before midnight and opens in the morning, then the monthly price should be changed first before opening the site to the public on the next ensuing opening date.

16. Imposition of levy and fee:

- (1) A contractor appointed as the Onshore Terminal and Distribution Operator must pay, on a monthly basis, a petroleum levy and a terminal fee on any petroleum product.
- (2) The rate of levy and fee to be paid under subsection (1):
 - (a) is determined by the Minister, acting on the advice of the Chief Executive Officer, and subject to the consideration and approval of the National Revenue Board, and final endorsement of Cabinet; and
 - (b) is to be prescribed by regulations; and

- (c) is to be notified in writing to the contractor prior to the commencement of new prices that are set under section 15;
 - (d) is paid to the Chief Executive Officer for deposit into the Treasury Fund;
 - (e) is payable on or before the 30th of each calendar month on the basis of the volume of all petroleum product sales made by the contractor during the preceding calendar month, at the rate or rates applicable to each product during that month; and
 - (f) is accompanied with a return to be filed by the contractor clearly disclosing details of volumes of sales of each petroleum product during the preceding calendar month which, when applicable, shall disclose complete details of all sales made prior to and all sales made after a variation in the rate or rates of levies payable during any month.
- (3) If a levy payable under this section remains unpaid after its due date, the contractor is liable to pay a penalty levy, in addition to any fine which may be imposed under this Act.
 - (4) A penalty levy payable under subsection (3) is to be determined in the same manner as the levy in subsection (1) and the Onshore Terminal and Distribution Operator must be notified when the levy is determined or varied.

17. Petroleum standards:

- (1) The Chief Executive Officer shall, in conjunction with the Petroleum Task Force, be responsible for determining health, safety, security and environmental standards for the importation, storage, distribution and resale of petroleum products within Samoa.

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

18. Retail of petroleum without licence:

No person shall sell any petroleum, except in accordance with a licence issued under this Division.

19. Licence:

- (1) A person may apply to the Chief Executive Officer for a licence:
 - (a) to operate a service station for the retail of petroleum; or
 - (b) to handle, move or store fuel for whatever purpose.
- (2) An application for a licence under subsection (1) must:
 - (a) be made in an approved form; and
 - (b) accompanied by the prescribed fee.
- (3) The Chief Executive Officer shall:
 - (a) carry out a preliminary assessment of the application taking into account matters specified in section 20; and

- (b) refer the application along with recommendation to the Petroleum Task Force for final assessment and approval.
- (4) A licence required under this section is reserved for citizens of Samoa exclusively, and no approval may be given under this Act, or any other law, for a non-citizen to be issued a licence for purposes of this section or other similar purpose.
- (5) For the purpose of this section, "citizen" means a person who has acquired Samoan citizenship under the Citizenship Act 2004, except that a person who has acquired citizenship by marriage or citizenship by permanent residence or citizenship by investment, qualifies for a license under this section upon meeting conditions, including but not limited to the following, as determined by the Chief Executive Officer of the Ministry:
 - (a) the required number of years resident in Samoa;
 - (b) the required capital;
 - (c) that there is benefit to Samoa's economy;
 - (d) that it is in the public interest;
 - (e) that it is to be conducted by a person authorised or licensed to do so;
 - (f) such other condition or criteria as may be required by the Chief Executive Officer.

20. Further information required:

- (1) For purpose of the Chief Executive Officer's preliminary assessment under section 19, he or she may, by notice in writing, require an applicant for a licence:
 - (a) to provide, in accordance with directions in the notice -
 - (i) information that is relevant to the consideration of an application;

- (ii) records that are relevant to the review of the application which includes allowing examination of records, the taking of extracts from them and the making of copies of them; and
 - (b) to provide such authorities and consents as the Chief Executive Officer requires for the purpose of obtaining any information from other persons concerning the applicant or the application.
- (2) The Chief Executive Officer may refuse to consider or decline an application for a licence if:
 - (a) a requirement under this section is not complied with; or
 - (b) any information or document provided by an applicant under this section is false, misleading or defective in any particular.

21. Matters to be considered:

In making a decision on an application for a licence the Chief Executive Officer must consider the following matters:

- (a) a development assessment under the Planning and Urban Management Act 2004;
- (b) the appropriateness of issuing a licence for a petrol station in the area to which the application relates;
- (c) the willingness of the applicant to comply with obligations of a licensee;
- (d) the public interest; and
- (e) any other matter that the Chief Executive Officer considers to be relevant.

22. Issuing of licence, duration, renewal and conditions of licence:

- (1) Upon receipt of the Chief Executive Officer's preliminary assessment and recommendation, the Petroleum Task Force shall:
 - (a) proceed with its final assessment and decision on whether to grant or decline the issuing of a licence; and

- (b) direct the Chief Executive Officer, acting as Chairperson of the Petroleum Task Force -
 - (i) to grant a licence in the approved form; and
 - (ii) to decide, as necessary, on any matter arising following the issuing of a licence, which to the satisfaction of the Chief Executive Officer warrants cancellation or suspension of a licence under section 23; or
 - (iii) to notify an applicant if the application is declined, specifying:
 - (A) the reasons for the decision; and
 - (B) the right to appeal the decision; and
 - (C) the process to be followed for an appeal.
- (2) A licence is issued every year before 30th April and after inspection for compliance of a service station with the Health, Safety, Security and Environment Standards, and:
 - (a) commences on the date specified in the licence or in the absence of such date, on the day that it is issued; and
 - (b) remains valid until 31 December in the year of its issue, unless suspended or revoked.
- (3) An application for the renewal of a licence must:
 - (a) be in the approved form; and
 - (b) be accompanied by the prescribed fee; and
 - (c) be submitted at least one (1) month prior to expiration of a current licence.
- (4) The Chief Executive Officer may impose conditions which are consistent with this Act for a licence issued under this section.
- (5) Any licence conditions imposed under this section must include:

- (a) the power of the Chief Executive Officer to vary or revoke a licence, or a condition of a licence; and
- (b) a prohibition for the transfer of any licence without the Chief Executive Officer's written approval.

23. Cancellation or suspension of licence:

- (1) The Chief Executive Officer may suspend or cancel a licence granted under this section:
 - (a) if the Chief Executive Officer is satisfied that -
 - (i) the licensee has breached any conditions of the licence or any other relevant requirement under this Act;
 - (ii) the licensee fails, or has failed, to comply with the standards determined, adopted or prescribed under this Division; or
 - (iii) the licensee supplied information that is materially false or misleading in its application for the licence, or for a renewal or an amendment of the licence; or
 - (iv) the licensee has ceased business operations; or
 - (v) the licensee no longer meets, or has failed to comply with, a requirement or condition upon which a licence was initially granted;
 - (vi) price not changed on time; and
 - (b) after having considered any of the matters in section 21.
- (2) Before the Chief Executive Officer issues a notification under subsection (3) to suspend or cancel a licence, he or she shall first issue, in writing, to the licensee:
 - (a) an initial warning and may impose further conditions for compliance of the licence holder; and

- (b) a further warning if the licensee continues to be in breach of any conditions of the licence or any other relevant requirement under this Act,
and when requirements of paragraphs (a) and (b) are met, the Chief Executive Officer may exercise his or her powers under subsection (3).
- (3) If the Chief Executive Officer decides to suspend or cancel a licence, the Chief Executive Officer must provide written notification to the licensee of:
 - (a) the reasons for the decision;
 - (b) the right to appeal the decision; and
 - (c) the process to be followed for an appeal.

24. Appeal for licences:

- (1) A person may appeal to the Minister against a decision of the Chief Executive Officer or the Petroleum Task Force to:
 - (a) refuse to grant a licence; or
 - (b) amend or revoke a condition of a licence; or
 - (c) suspend or cancel a licence.
- (2) An appeal must be in writing and must be made within:
 - (a) 15 working days after the date of the notice of the Chief Executive Officer's decision; or
 - (b) any longer period that the Minister allows of not more than 15 working days, if an application for an extension is made within the time period specified in paragraph (a).
- (3) The Minister:
 - (a) may request any information from the person lodging the appeal or from the Chief Executive Officer; and
 - (b) is not bound to follow any formal procedure; and
 - (c) does not need to hold a hearing.

- (4) The Minister may confirm, vary or reverse the decision being appealed.
- (5) The Minister must give notice of:
 - (a) its decision, with reasons, to both the person who lodged the appeal and the Chief Executive Officer; and
 - (b) the date on which its decision takes effect.

25. Powers to enter, remove, examine or seize:

- (1) The Chief Executive Officer or an authorised officer may, for the purposes of this Division, exercise the following powers:
 - (a) to enter, inspect and examine between normal working hours any private premises, other than a dwelling house, on which he or she has reasonable cause to believe petroleum is stored or kept;
 - (b) to take samples of any petroleum stored or kept in such premises;
 - (c) to seize or detain any petroleum stored or kept in such premises contrary to the provisions of this Act;
 - (d) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with.
- (2) If a person refuses to permit the Chief Executive Officer or an authorised officer to enter or inspect any premises, or hinders or obstructs the Chief Executive Officer or any authorised officer in the execution of a duty under this Act, or refuses to allow such person to take samples in pursuance of this section or to give facilities for the purpose, the person is liable upon conviction to a fine of 10 penalty units.
- (3) Where a person is convicted of an offence under this Division, the Court may order any petroleum seized and detained to be:
 - (a) forfeited to the Government and sold; or

- (b) disposed of; or
- (c) returned to its rightful owner.

26. Laying of pipes and other works:

A person must obtain the necessary approvals from the relevant local authorities as to laying of any pipes, breaking of any surface, opening of drains, or undertaking any works necessary for purpose of erecting a tank or thing for the storage or transfer of petroleum.

27. Petroleum Regulations:

- (1) The Head of State, acting on the advice of Cabinet, may, make regulations as are necessary or expedient for giving full effect to the provisions of this Division.
- (2) Without limiting subsection (1), regulations may be made under this section for all or any of the following purposes:
 - (a) regulating the transport of petroleum;
 - (b) prescribing the quantity or mode of storage and the receptacles in which petroleum may be carried in any package, vessel, cart, truck or other vehicle and the quantities to be contained in such receptacles;
 - (c) providing for the examination and testing of petroleum and prescribing the tests to be applied to ascertain its flash-point and the method of applying the same;
 - (d) prescribing the quantity of petroleum which may be stored or kept in unlicensed petroleum premises and the manner of storing or keeping such petroleum;
 - (e) providing for the licensing of places in which petroleum is stored;
 - (f) prescribing the rules or standards to be observed in any place where petroleum is kept, stored, used, or conveyed, whether licensed or not;

- (g) prescribing the making of packages containing petroleum;
- (h) prescribing penalties not exceeding a fine of 10 penalty units for the breach of any such regulations;
- (i) prescribing the requirements for erecting a tank or package for the storage of petroleum, and the transfer or movement of petroleum to and from such tank or package;
- (j) prescribing the minimum size of overhead fuel tanks for the general public, contractor or service station operator; or
- (k) prescribing any other matters relating to the issuing of licenses and appeals relating to licences; or
- (l) prescribing levies, fees or charges imposed or required for the purpose of this Act; or
- (m) prescribing matters relating to the changing of the monthly price.

28. Petroleum Task Force:

- (1) The Petroleum Task Force that was established by Cabinet in 2012 continues under this Act.
- (2) The Task Force comprises of the following members:
 - (a) Chief Executive Officer of the Ministry of Finance, as Chairperson;
 - (b) Chief Executive Officer of the Ministry of Natural Resources and Environment;
 - (c) Chief Executive Officer of the Ministry of Commerce, Industry and Labour;
 - (d) Chief Executive Officer of the Ministry of Works, Transport and Infrastructure;
 - (e) Chief Executive Officer of the Land Transport Authority;
 - (f) Chief Executive Officer of the Ministry of Health (also known as Director General of Health);
 - (g) Commissioner of the Fire and Emergency Services Authority;

- (h) Chief Executive of the Onshore and Terminal Distribution Operator.

29. Secretary:

- (1) The Chief Executive Officer shall appoint a senior officer of the Ministry to be Secretary to the Petroleum Task Force.
- (2) The Secretary shall be responsible for monitoring execution of the policies of the Petroleum Task Force, keeping minutes and records of Petroleum Task Force and providing other administration support to the Petroleum Task Force.

30. Functions:

The functions of the Petroleum Task Force are:

- (a) to review, recommend or advise in relation to the licensing and operation of petroleum storage and dispensing facilities in Samoa, including but not limited to service stations and commercial sites; and
- (b) to discuss, review and monitor all issues relating to service stations and ensuring that they adhere to the standards developed.

31. Meetings:

- (1) At a meeting of the Petroleum Task Force, more than one half forms a quorum.
- (2) If the Chairperson is absent, the members present shall agree on a person to be elected as Chairperson for that meeting.
- (3) In the absence from any meeting of any member of the Board, that member may authorise a senior officer from his or her department to attend the meeting in his or her stead.
- (4) The Petroleum Task Force may co-opt or call upon a representative of the Service Station Association to attend a meeting of the Petroleum Task Force to advise on any matter affecting, or relating

to, the licensing and operation of service stations or relevant standards that apply or any policy in relation to the service station industry in Samoa.

- (5) Subject to this section, the Petroleum Task Force regulates its meetings and determines its own rules and procedures as it sees fit.

*Division 2 - Minimum Energy Performance
Standards and Labelling (MEPSL)*

32. Enforcement:

- (1) The Ministry shall work jointly with the Ministry responsible for Customs and Revenue and other relevant Ministry for the proper enforcement of the Minimum Energy Performance Standards and Labelling.
- (2) Despite the joint responsibilities of the Ministries under subsection (1), each employee is accountable and must report to his or her own Chief Executive Officer.
- (3) To assist enforcement, the Chief Executive Officer:
 - (a) may, as required, appoint a person or class of persons from the Ministry or other Ministry as authorised officers under this Act;
 - (b) must ensure that a Government Ministry which is assigned with the joint responsibility for the enforcement of Minimum Energy Performance Standards and Labelling requirements is aware that such responsibilities are to be carried out as part of existing roles of each Ministry;

- (c) must ensure that a sufficient number of officers are assigned from within the Ministry for the administration and enforcement of Minimum Energy Performance Standards and Labelling requirements; and
- (d) must ensure that Minimum Energy Performance Standards and Labelling requirements and standards are reviewed and updated as necessary, and monitored for efficient and effective implementation; and
- (e) may, in liaison with another Ministry or entity or organisation from the private sector, conduct or assist in providing training, awareness programmes, and capacity building, as required, on Minimum Energy Performance Standards and Labelling or other requirements under this Division.

33. Minimum Energy Performance Standards and Labelling:

- (1) The Chief Executive Officer may determine standards or adopt any standards from another country approved by the Chief Executive Officer to be used for the purposes for this Division.
- (2) Without limiting subsection (1), other standards for the purpose of this Act may be prescribed.
- (3) The Chief Executive Officer must:
 - (a) provide public notice in any newspaper widely circulating in Samoa or other appropriate means of advertisement or publication -
 - (i) stating the standards that have been determined, adopted or prescribed; and
 - (ii) specifying the commencement date for the standards; and

- (b) ensure to conduct or cause the conduct of relevant trainings for traders who may be affected by standards determined.
- (4) A person may view a copy of current standards at the premises of the Ministry.

34. Prohibition:

- (1) A person must not trade any product that is of a class subject to an approved standard unless:
 - (a) the brand and model of that product is registered under this Act or otherwise demonstrated to comply with the approved standards; and
 - (b) the labelling or markings of the brand and model of that product are in the English language.
- (2) For each class of product subject to an approved standard, the Chief Executive Officer must prescribe whether:
 - (a) all brands and models must be registered; or
 - (b) the means by which it can be demonstrated that brands and models comply, or fail to comply with the approved standards.

35. Registration:

- (1) A person who intends to trade a product that is of a class subject to registration under this Act must submit a written application to the Chief Executive Officer to register the brand and model of such:
 - (a) in the approved form under any of following categories of registration -
 - (i) Form for Category A (Product registered in country approved by Chief Executive Officer); or
 - (ii) Form for Category B (Product not registered in country approved by the Chief Executive Officer but identical in terms of energy consumption and efficiency); or

- (iii) Form for Category C (Product not registered elsewhere other than a country approved by the Chief Executive Officer); and
 - (b) for purpose of being issued a Samoa registration number, attach proof that the brand and model of any product is registered in New Zealand, Australia, Fiji or other country approved by the Chief Executive Officer.
- (2) The Chief Executive Officer may, upon receipt of an application under subsection (1):
 - (a) register a brand and model of a product and issue a Certificate of Registration if satisfied that such brand and model comply with the standards; or
 - (b) if a brand and model of a product is registered in New Zealand, Australia, Fiji or other country approved by the Chief Executive Officer (and accompanied by proof required under subsection (1)(b)), issue a Certificate of Registration indicating a Samoan registration number for that brand and model; or
 - (c) refuse to register the brand and model of a product if satisfied on the advice of the authorised officer that the brand and model do not comply with the standards.
- (3) In considering an application under subsection (2), the Chief Executive Officer:
 - (a) may seek additional information from the applicant relating to the registration of the brand and model of a product; and
 - (b) must take into account other laws, requirements or policies that may affect a decision on an application for registration.
- (4) The Chief Executive Officer must process the application within 20 working days from the date of receiving the application and inform the applicant of his or her decision.

- (5) The Chief Executive Officer may, at his or her own initiative or upon request of an applicant, extend the timeframe under subsection (4) to a further period not exceeding 20 working days for any unforeseen circumstances including awaiting additional information or a test report or further clarification of test reports.
- (6) A person trading a product of a registered brand and model does not need to apply for registration, however that person must obtain written confirmation from the Ministry of the registration to assist him or her with customs clearance.
- (7) For the purposes of this section, the Chief Executive Officer may permit applications to be made, and certificates and confirmations and permits to be issued, in electronic form.

36. Conditions of registration:

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

37. Tests and examinations:

- (1) The Chief Executive Officer may require the applicant:
 - (a) to provide a copy of any test report for the product, brand and model to be registered in the approved form; and
 - (b) to further clarify the test report from a laboratory testing authority in Australia or New Zealand or any other country approved by the Chief Executive Officer.
- (2) The Chief Executive Officer may, at any time, upon his or her own discretion or having received information, conduct an inquiry, inspection, testing or examination, in relation to any product registered to ensure that such product is or continues to be in compliance with Minimum Energy Performance Standards and Labelling.

38. Validity of registration:

- (1) The registration of a brand and model of a product is valid until:
 - (a) the brand and model of the product no longer complies with current standards; or
 - (b) registration is cancelled under section 40; or
 - (c) registration has expired as per end date specified in the Certificate of Registration issued under section 35.
- (2) If a registration is no longer valid under any circumstance specified in subsection (1) a trader, in possession of a product of the model and brand for which the registration is invalid may:
 - (a) seek the approval of the Chief Executive Officer to continue selling, or disposing of, the product; or
 - (b) continue to use any such product, brand or model for personal use until the end of its life span; or
 - (c) dispose of the product in a manner approved by the Chief Executive Officer.

39. Variation of registration:

- (1) The Chief Executive Officer may vary the registration of a brand and model.
- (2) A trader who wishes to vary the registration of a brand and model must indicate in writing to the Chief Executive Officer setting out the details of any proposed variation.
- (3) A variation is not effective unless both the trader and the Chief Executive Officer agree in writing to the variation.
- (4) For avoidance of doubt, a variation under this section includes a transfer of registration.

40. 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 fails or has failed to comply with standards determined, adopted or prescribed under this Division; or
 - (c) a trader has breached any conditions of the registration or any other relevant requirement under this Act; or
 - (d) a trader is found to have provided false or misleading information at the time of application; or
 - (e) for 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 and model.
- (4) The Chief Executive Officer must publish any cancellation in a newspaper widely circulating in Samoa or other means of communication, 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.

41. Specific 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 inspect any product to determine whether it is consistent with the information given in association with the registration of that brand and model, including the conditions for energy labelling where required by the approved standard;
 - (c) to enter any place of business to inspect or test products; and
 - (d) to require the trader to provide information for the purposes of registration, inspection or testing; and
 - (e) 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
 - (f) to investigate possible breaches of this Act; and
 - (g) 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) 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.

42. Products 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, consistent with current standards; and
 - (d) name and contact address of the person or trader who registered each brand and model; and
 - (e) any variation (including transfer) 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 registered brand and model that is listed on the register; and
 - (b) to inspect the register.
- (3) The register may be kept in an electronic form, accessible at a location advertised by the Chief Executive Officer.

43. Disposal of products:

- (1) The Chief Executive Officer may dispose of a product or direct a trader to dispose of a product:
 - (a) if a product is not registered under section 35; or

- (b) if registration has expired under section 38; or
 - (c) if a product has not been sold as required under this Act.
- (2) The Chief Executive Officer may dispose, or cause the disposal of, a product under subsection (1):
- (a) by directing the trader to export the product; or
 - (b) by scrapping the product, or causing the product to be scrapped, in a manner approved by the Chief Executive Officer; or
 - (c) in any other manner approved by the Chief Executive Officer, but where another law provides for disposal of, or requirements relating to, such product, the applicable provisions of that law must be taken into account before disposal of the product.
- (3) For any product that is under the control of the Ministry of Customs and Revenue, the Chief Executive Officer may:
- (a) request the Ministry of Customs and Revenue to retain the product in storage until its disposal under subsection (1); or
 - (b) with the consent of the Chief Executive Officer of the Ministry of Customs and Revenue, 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.
- (4) For any product that is not under the control of the Ministry responsible for Customs and 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.
- (5) The Chief Executive Officer may designate a place for the purpose of this section.
- (6) The offices of the Ministry are treated as designated places under subsection (4).
- (7) The trader or owner of a product is liable for the costs associated with the movement, storage or disposal of any product.

44. Information for statistical purposes:

A trader, other than a person importing products for personal use must, as required, provide to the Chief Executive Officer, in the approved form, information:

- (a) setting out the number of products traded in the previous year or over any time period specified by the Chief Executive Officer;
- (b) on the sales of other types of energy-using products.

45. Offences and penalties under this Division:

- (1) A person commits an offence who:
 - (a) contravenes any provision of this Division;
 - (b) when registering a brand and model of a product, declares or produces any document that the person knows to be false or misleading; or
 - (c) if a brand and model of a product have not been registered, does an act that may reasonably cause any other person to believe that such have been registered; or
 - (d) continues to trade a product of a previously registered brand and model for which registration is no longer valid, except if it is sold under an approval of the Chief Executive Officer given under section 38; 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 in sentencing a person convicted under this section may also order:
 - (a) the forfeiture of any product for which the offence was committed;
 - (b) that the person is prohibited from trading any product for a period specified in the order;
 - (c) that the person must identify the other person to whom the product has been supplied and offer restitution by way of replacement with a compliant product of similar quality or recompense for additional energy costs incurred as a result of the supply of the non-compliant product;
 - (d) the Ministry to arrange export of the product or their destruction in a safe manner, and require the person from whom the products were confiscated to repay to the Ministry the itemised costs of such export or destruction.
- (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.

46. Transitional:

- (1) At the commencement of this Act:
 - (a) any product that has been lawfully registered in accordance with the Energy Efficiency Act 2017 is deemed to be registered under this Act, until such time as the registration is no longer valid under this Act; and
 - (b) the standards approved in the Energy Efficiency (Approved Energy Using Product Standards) Regulations 2018 remain valid until repealed or replaced under this Act; and
 - (c) any binding arrangements made or entered into between the Ministry and any trader are revoked.
- (2) Regulations made under this Act may specify commencement dates and transition periods with respect to any matter determined under the Regulations.

*Division 3 - Linkages between Government Authorities***47. Formal linkages with other Government authorities:**

- (1) For the effective discharge of joint responsibilities under this Part, the Ministry may enter into an agreement or Memorandum of Understanding with a Government authority to ensure the following:
 - (a) establishment of proper lines of authority for decision-making, implementation and joint initiatives or activities;
 - (b) establishment of channels of communication for the provision of timely advice, testing and recommendations in relation to energy consuming and energy efficient;

- (c) establishment of internal protocols for reporting and accountability to each respective Minister, including information required for inclusion in annual reports;
 - (d) delegation of powers and designation of officers;
 - (e) resource and budget requirements;
 - (f) assessment of capacity and joint training initiatives; and
 - (g) joint assessment and development of standards and requirements.
- (2) To ensure the effectiveness and efficiency in the discharge of their statutory functions in relation to the energy sector, the Ministry will, as soon as is practical after the commencement of this Act enter into a Memorandum of Agreement with the following key Government line Ministries:
- (a) Ministry of Commerce, Industry and Labour;
 - (b) Ministry of Customs and Revenue;
 - (c) Ministry for Works, Transport and Infrastructure;
 - (d) Ministry of Women, Community and Social Development; and
 - (e) Ministry of Natural Resources and Environment.
- (3) For clarity, the functions of each line Ministry continues uninterrupted, whether or not each line Ministry has entered into a Memorandum of Agreement with the Ministry under subsection (2).
- (4) For purposes of this Act, the following relationship is to be considered:
- (a) the Ministry is the focal point and shall be responsible -
 - (i) for coordinating, managing and reviewing any energy related policy or activity developed or proposed by a person;
 - (ii) for dealing with all energy and energy related projects and financing; and
 - (b) the stakeholders or partners of the energy sector (including Electric Power Corporation and Ministry of Natural Resources and Environment) shall be implementing agencies of renewable energy and energy efficiency projects.

- (5) Subject to the consideration and approval of the Ministry, any other Government authority may propose or determine procedures, policies or guidelines relevant to energy related projects or activities particular to such authority.

PART 6

ENERGY AND ENERGY RELATED PROJECTS

48. Energy and energy related projects:

- (1) Any proposal to the Government for an energy or energy related project, whether solicited or unsolicited, must be lodged with the Ministry.
- (2) Upon receipt of a proposal lodged under subsection (1), the Ministry must:
 - (a) register the proposal and perform an initial review, for consistency or otherwise, with the Samoa Energy Sector Plan;
 - (b) notify the Minister and the National Energy Coordination Committee of the proposal; and
 - (c) forward the proposal to the appropriate Government entity or entities who must perform a comprehensive review of the proposal to ensure compliance with -
 - (i) standards and requirements established under this Act;
 - (ii) licensing requirements under this or any other relevant Act; and
 - (iii) for any electricity related project, procedures or approval processes for entering into any power purchase agreement under the Electricity Act 2010;

- (d) request the relevant Government entity or entities to report to the Committee through the Ministry, on its review of the proposal, within a specified timeframe.

49. Requirements for projects:

- (1) The Ministry in consultation with the Committee and relevant Government entities including the Electric Power Corporation and the Ministry of Natural Resources and Environment, must determine requirements for energy projects which must address the following:
 - (a) technical requirements;
 - (b) economic considerations;
 - (c) social considerations; and
 - (d) environmental factors.
- (2) The requirements established under subsection (1) must be made available to the public or on the Ministry's website.

**PART 7
FINANCIAL**

50. Budget:

The Chief Executive Officer shall ensure that the budget of the Ministry proposes sufficient funding for the following:

- (a) costs for the implementation and enforcement of this Act and for the effective discharge of the Ministry's statutory responsibilities under this Act; and

- (b) initial and ongoing capacity building, staff development and training needs.

51. Fees, levies and other charges:

Any fees, levies and charges required under this Act are:

- (a) determined by the Chief Executive Officer; and
- (b) subject to the consideration and approval of the National Revenue Board; and
- (c) to be prescribed by Regulations; and
- (d) collected by the Ministry under this Act and paid into the Treasury Fund.

PART 8

COMPLIANCE AND ENFORCEMENT

52. Designation of authorised officers:

- (1) The Chief Executive Officer, may designate a suitable person as an authorised officer for the purposes of this Act.
- (2) A designation under subsection (1) must be made in writing, with the instrument of designation clearly stating the duration and the powers provided.
- (3) An authorised officer shall, in addition to the instrument of designation, be provided with an identity card as a duly authorised officer under this Act.
- (4) Before a person is designated as an authorised officer under subsection (1), the Chief Executive Officer shall ensure that the person is:
 - (a) by their level of skill, training, qualifications or experience; or
 - (b) by their record in the public service, displaying such qualities as leadership, honesty and integrity,

suitable to undertake duties under this Act.

- (5) In accordance with subsection (6), the Chief Executive Officer may revoke the designation of an authorised officer under subsection (1).
- (6) A revocation must be made in writing and must clearly state the following:
 - (a) the effective date for the revocation of powers;
 - (b) the reason for the revocation; and
 - (c) the powers that have been revoked.
- (7) An authorised officer whose designation has been revoked under subsection (6) shall return the identity card which was issued to the officer by the Ministry and must not use the card after the revocation date.
- (8) Despite the revocation of a person's designation as an authorised officer, a public service officer may continue as an employee of the Ministry by which he or she is employed, unless the Public Service Commission otherwise directs the Ministry in writing.

53. General powers:

- (1) An authorised officer shall have the power to:
 - (a) inspect or re-inspect, to ensure compliance with this Act -
 - (i) any business or business premise;
 - (ii) products sold, displayed or stored at a business or its premises;
 - (iii) services provided by a proprietor or business;
 - (iv) receipt books, records and related documents;
 - (v) pricing and pricing lists of goods or services;

- (vi) service stations or any place, company or thing handling, moving or storing fuel; or
 - (vii) any other matter that is relevant to the inspection;
 - (b) investigate a person in relation to the suspected commission of an offence;
 - (c) interview, request documentation, take photos, take samples, confiscate or request the arrest of a person in connection with an inspection or investigation under this section; and
 - (d) direct a person to act or refrain from acting in a particular manner in relation to a function of the officer, carried out in good faith, under this Act.
- (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.

54. Rights and duties of owner or person in charge:

- (1) During an inspection carried out under this Part, the owner or person in charge of the business or premise may accompany the authorised officer while he or she is on the business premises.
- (2) If requested, the owner or person in charge of the business or premise shall:
 - (a) supply any information or document requested by the authorised officer in relation to the objective of the inspection;
or
 - (b) permit the taking of samples and the gathering of evidence, including photographs.

55. Non-compliance on first inspection:

If an authorised officer has reasonable grounds to believe that a person is or has failed to comply with the Act, the authorised officer may carry out one

(1) or both of the following:

- (a) issue a compliance notice in accordance with section 56; or
- (b) make a report to the Chief Executive Officer with a recommendation to suspend a licence, where applicable, or to remove any product from the trader's premises.

56. Compliance notice:

A compliance notice issued to a person under section 55 must:

- (a) state the provision under the Act that has been breached;

- (b) specify measures which the owner must undertake to ensure compliance; and
- (c) state the date on which the owner must comply, following which there will be a re-inspection of the business or premises by an authorised officer.

57. Non-compliance on re-inspection:

If during a re-inspection of a business or premise, an authorised officer finds that a person has failed to comply with a compliance notice issued under section 55, the authorised officer may carry out one (1) or both of the following:

- (a) make an appropriate recommendation to the Chief Executive Officer for the prosecution of the person under the Act where applicable;
- (b) to revoke a licence issued under the Act.

58. Complaint against an authorised officer:

- (1) A person who is aggrieved by the action of an authorised officer under this Act may submit a complaint in writing:
 - (a) to the Chief Executive Officer; or
 - (b) in the case of an officer from another Ministry, to the Chief Executive Officer of that Ministry, setting out the details of the complaint, and copied to the Chief Executive Officer.
- (2) The relevant Chief Executive Officer may request additional information from the person making the complaint or from the authorised officer or require the parties to appear in person.
- (3) If the Chief Executive Officer determines that the complaint is likely to breach the Code of Conduct, the Chief Executive Officer shall:
 - (a) refer the matter to the Public Service Commission; and
 - (b) refer the matter to the Police for the determination of appropriate legal charges.

- (4) No action shall lie against an authorised officer for any injury, loss or damage under this Act unless:
- (a) it arose from an act that was outside of the officer's normal duties;
 - (b) the officer acted maliciously; or
 - (c) the officer was grossly negligent in carrying out the officer's duties.

PART 9 OFFENCES AND PENALTIES

59. **Failure to provide information and obstruction:**

A person who:

- (a) without lawful cause, fails to give information or to produce any document lawfully required of that person under the Act; or
- (b) knowingly provides false information; or
- (c) obstructs the work of the Ministry or an authorised officer under this Act, is liable on conviction to a fine not exceeding 30 penalty units or a term of imprisonment not exceeding two (2) years, or both.

60. **Failure to comply:**

A person who contravenes or fails to comply with this Act or of any order, notice, direction or requirement lawfully made or given under this Act is:

- (a) for a body corporate, liable upon conviction to a fine not exceeding 500 penalty units; or
- (b) for a person, liable upon conviction to a fine not exceeding 50 penalty units, or for a term of imprisonment not exceeding four (4) years, or both.

61. Responsibility of employer for acts of servants:

- (1) A person who employs an employee, officer, contractor or agent is answerable for the acts or omissions of such employee, contractor or agent, in so far as they concern the business of such employer.
- (2) If an employee, officer, contractor or agent commits an act or makes an omission which is an offence or which would be an offence if made or committed by the employer, the employer and employee, officer, contractor or agent may be jointly charged with the offence.

PART 10
MISCELLANEOUS

62. Ministry to keep registers:

- (1) The Ministry shall establish and maintain the following registers within the Ministry:
 - (a) details of all energy service providers;
 - (b) list of persons who are delegated responsibilities under this Act and effective date;
 - (c) names of authorised officers who are designated by the Minister under this Act, including their date and duration of appointment;
 - (d) agreements or memorandums of understanding entered into by the Ministry with other Government authorities;
 - (e) complaints received and related outcomes; and
 - (f) any other register that the Ministry deems necessary for the efficient and effective discharge of the Ministry's functions.
- (2) Subsection (1) does not prevent any other Government authority from maintaining a register to keep data or any information relating to projects or any matter for which that authority is responsible, provided that such data and information is shared with the Ministry as required.

- (3) For purposes of subsection (2), the Ministry may enter into an agreement or memorandum of understanding with any other Government authority to effect the sharing of information.
- (4) To the extent possible, any register referred to in this section is to be maintained electronically.

63. Personal immunity of officers and employees:

An officer, employee, agent or member of the Ministry, Committee, Petroleum Task Force or any person acting under direction of the Ministry, Committee or Petroleum Task Force pursuant to this Act is not personally liable for any act or default of the Ministry, Committee or Petroleum Task Force which is done or omitted to be done in good faith and without gross negligence in the course of each entity's operations.

64. Confidential information and specific disclosure:

- (1) The Chief Executive Officer and employees within the Ministry, contractors or any other person working in the Ministry in whatever capacity must not communicate any information or allow to be communicated any information obtained under this Act, to a person not legally entitled to such information.
- (2) Disclosure is permitted only in the following circumstances:
 - (a) for official use as permitted for the purposes of this Act; or
 - (b) for investigation, prosecution or any proceedings for an offence against this Act or other enactment; or
 - (c) as agreed between the Chief Executive Officer and the trader;
or

- (d) the disclosure of any document or information to -
 - (i) a Court in relation to a proceeding under this Act;
 - (ii) a person in the service of Government where such disclosure is necessary for the performance of the person's statutory duties; and
 - (iii) international regulatory bodies or agencies with which the Government of Samoa has an agreement, to the extent permitted under such agreement.
- (3) Any information that is not particular to a person:
 - (a) may be disclosed to -
 - (i) an employee of the Ministry including a consultant to the Ministry; or
 - (ii) a person to whom the information relates; and
 - (b) may be published under subsection (2).
- (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.
- (5) For the purpose of this section, "confidential information":
 - (a) is information which is by its nature confidential;
 - (b) is information that is designated by the Ministry to be confidential; or
 - (c) is information that a person knows or ought to know is confidential; and

- (d) includes information concerning the processes and policies, commercial operations, financial arrangements or affairs of the Ministry, the terms of any arrangement made under this Act, information which identifies or relates to customers of the Ministry, records; and
 - (e) excludes information that is publicly known other than as a result of a breach of this Act or a condition of a licence issued under this Act, information lawfully in the possession of a person through a source other than the Ministry.
- (6) A person who contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding 30 penalty units or to a term of imprisonment not exceeding two (2) years, or both.

65. Disclosure of interests:

- (1) The Chief Executive Officer, an employee of the Ministry, a member of the Committee or the Petroleum Task Force or any other person who performs a function or a duty under this Act, who has, any financial or personal interest in any matter that it deals with or handle in the performance of his or her functions under this Act must fully disclose such interest to the Minister, Chief Executive Officer, Committee, Petroleum Task Force or any other senior person, as the case may be, and must not take part in the discussions or the handling of any such matter or vote on such matter, provided that such an interest, if so disclosed, does not disqualify the interested party for the purpose of constituting a quorum in a meeting.
- (2) The Chief Executive Officer, a member of the Committee or Petroleum Task Force, agent or employee of the Ministry must not accept any gift or advantage personally or for persons with whom he or she may have family, business, or financial connections, if the acceptance would result, or give the appearance of resulting, in a diminution of that person's impartial devotion to his or her duties under this Act.

- (3) The Chief Executive Officer, the Committee or the Petroleum Task Force must establish and maintain a register in which a disclosure of interest under this section is recorded and the register must be available for access by members of the Committee, Petroleum Task Force or inspection by an employee of the Ministry.

66. 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) The Regulations shall establish clearly, among other things, whether the Ministry or other Government agency is to be responsible for their enforcement.
- (3) In the development of regulations under this Act, the Ministry must consult with relevant stakeholders and industry groups in the energy sector.
- (4) Any fees that are prescribed in the regulations made under this Act must be approved by the National Revenue Board.

67. Approved forms:

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

68. Repeal:

- (1) The following legislation are repealed:
 - (a) Energy Efficiency Act 2017;
 - (b) Oil Fuel Supply Act 1974; and
 - (c) Petroleum Act 1984.

- (2) A reference in a law, instrument or document to:
 - (a) the repealed Acts is taken to be a reference to this Act; and
 - (b) any terminology, office or title used in the repealed Act is taken to be a reference to the equivalent term, office or title used under this Act.

69. Saving and transitional:

- (1) At the commencement of this Act, all licences, registrations, tenders, contracts or approvals issued, approved and entered into, or decisions made or any proceedings undertaken, under the repealed Act continue to have full force and effect until expiry or termination as the case may be.
 - (2) Regulations made under the repealed Act continue as if they were made under this Act until amended or replaced by Regulations made under this Act.
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