

# 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 cancelation.
- 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**