



Tonga

ENERGY ACT 2021

Act 14 of 2021



ENERGY ACT 2021

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ENERGY ACT 2021

Act 14 of 2021

**AN ACT TO ESTABLISH THE MINISTRY RESPONSIBLE FOR ENERGY,
ENERGY COMMISSION AND OTHER GOVERNING BODIES AND TO
PROVIDE FOR A COHERENT INSTITUTIONAL, REGULATORY AND
POLICY FRAMEWORK FOR THE ENERGY SECTOR IN TONGA**

I assent,
TUPOU VI,
22nd November 2021.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the
Legislature of the Kingdom as follows:

PART I – PRELIMINARY

1 Short title and commencement

- (1) This Act shall be cited as the Energy Act 2021.
- (2) This Act shall come into force on the date of gazettal, except for –
 - (a) Division Three of Part VI (Price Regulation); and
 - (b) Part IX (Administration and Maintenance of Energy Assets),

which shall come into force on a date proclaimed by Cabinet and published in the Gazette.

2 Interpretation

In this Act unless the context otherwise requires —

“assets” means any real or personal property of any kind, and includes —

- (a) any estate or interest in any land, including all rights of occupation of and access to land or buildings;
- (b) all physical assets, and any rights therein; and
- (c) all rights of any kind, including a right under an Act, deed, agreement or licence;

“back up generation” means the generating of electricity by any person for use in or on that person’s property during a temporary stoppage of electricity supply from a concessionaire;

“body corporate” means an entity having perpetual succession which is recognised in the jurisdiction of its incorporation as having legal personality distinct and separate from its members;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry responsible for energy;

“concession contract” unless otherwise specified, means a contract entered into by the Energy Commission and an energy service provider for the generation, distribution or supply of electricity under section 64 of this Act;

“concessionaire” for the purposes of this Act means a party with whom the Commission has entered into a concession contract;

“crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation and includes —

- (i) crude oil from which certain distillate fractions may have been removed; and
- (ii) crude oil to which certain distillate fractions may have been added;

“electric works” means the works authorized by this Act or regulations made under this Act and includes electric lines and also any buildings, machinery, mechanical appliances, engines, works, matters or things of whatever description required to supply electricity and to carry into effect the objects of an electricity concessionaire under this Act;

“electricity” means all electricity except electricity generated from a renewable energy source which has not been converted to alternate current;

“electricity concessionaire” means a party that has entered into a concession contract with the Commission for the generation, distribution or supply of electricity under this Act;

“Energy Advisory Committee” or **“Committee”** means the Advisory Committee established under section 17 of this Act;

“**Energy Commission**” or “**Commission**” means the Energy Commission established under section 25 of this Act;

“**energy sector**” means the energy sector of the Kingdom and includes all entities that are involved with the generation, conversion, storage, transmission, distribution, sale and consumption or use of all forms of energy in the Kingdom;

“**energy service**” means the provision of services relating to the production, generation, conversion, transmission, storage, transmission, distribution, supply sale, consumption or use of energy and for the purposes of this Act;

“**energy service provider**” means a provider of an energy service in the Kingdom;

“**enforcement officer**” means an enforcement officer designated under section 136 of this Act;

“**gas**” for the purposes of this Act means a compressed gas that consists of flammable hydrocarbons such as –

- (a) propane;
- (b) methane;
- (c) butane; or
- (d) a mixture of two or more of (a), (b) or (c),

and is used as fuel, raw material for chemical synthesis or welding;

“**gas supply system**” for the purposes of this Act means distribution systems, gas installations, fittings and gas appliances that form part of a system for conveying gas to customers;

“**Gazette**” means the Tonga Government Gazette;

“**group company**” for the purposes of section 65(3)(a) of this Act means, in relation to a concessionaire, a wholly owned subsidiary of that concessionaire;

“**Independent Power Producer**” means a producer of electrical energy which is not a public utility, but which makes electrical energy available for sale to an electricity concessionaire or to end users;

“**island group**” means any one of Tongatapu, Vava’u, Ha’apai, ‘Eua, Niuatoputapu and Niuafu’ou;

“**liabilities**” includes liabilities and obligations under any Act, deed, agreement, or licence;

“**liquid fuel**” means petroleum, diesel, oil, kerosene, crude oil and all other derivatives of crude oil;

“**Ministry responsible for marine and ports**” means the Ministry which is lawfully assigned the responsibility for marine and ports from time to time;

“**MEPSL**” means Minimum Energy Performance Standards and Labelling;

“**Minister**” means the Minister responsible for energy;

“Ministry” means the Ministry responsible for energy;

“National Energy Policy” means the national energy policy of the Kingdom that is developed by the Ministry and adopted under section 12 of this Act;

“off-grid electricity asset” means an electricity generation source that is not connected to a transmission grid;

“package” means any case, barrel, drum or container and includes every means by which petroleum may be encased or contained having a capacity of less than 400 litres;

“person” means a natural person or legal person or entity and includes an energy service provider;

“petroleum” means any oil, liquid or spirit derived wholly or in part from any crude oil, shale, coal, peat, bitumen or any similar substance but does not include any oil ordinarily used for lubricating purposes or having a flash-point above 95 degrees Celsius, and shall, for the purposes of this Act, include any other meaning in the Harmonised System code for petroleum 2710;

“petroleum concessionaire” means a party which has entered into a concession contract with the Commission under this Act;

“physical assets” for the purposes of section 65 means the electricity network and all fittings related thereto (including all generators), buildings, vehicles, plant, equipment and machinery;

“property of the Electricity Commission” for the purposes of section 156 means —

- (a) each asset and liability of the Electricity Commission; and
- (b) each contract, agreement, conveyance, deed, lease, licence, or other instrument or undertaking to which the Electricity Commission is a party;

“Power Purchase Agreement” means a commercial agreement between an Independent Power Producer and an electricity concessionaire that specifies the terms and conditions under which the electricity concessionaire shall compensate the Independent Power Producer for exporting electricity into the national electricity grid, including the price the concessionaire will pay and the duration of the agreement;

“Ports Authority” means the Authority established under the Ports Authority Act (CAP.22.07);

“Public Service” for the purposes of this Act shall have the same meaning as in the Public Service Act (CAP.2.11);

“national electricity grid” means the electricity infrastructure that is operated by the electricity concessionaire for the purpose of supplying electricity to the Kingdom;

“**regulated goods**” for the purposes of this Act means energy sector goods which are regulated under this Act;

“**regulated services**” for the purposes of this Act means energy sector services which are regulated under this Act;

“**renewable energy**” means any form of energy from naturally recurring resources which are naturally replenished on a human timescale;

“**renewable energy operators**” means a person involved in the ownership, management, maintenance, design or installation of a renewable energy project;

“**serious misconduct**” for the purposes of section 35(1)(e) means wrongful, improper, or unlawful conduct by a Commissioner, motivated by a premeditated or intentional purpose or by an obstinate indifference to the consequences of the Commissioner’s own acts;

“**street**” for the purpose of section 78 includes every public square or place and every bridge, culvert, drain, channel, footway, gate, building or other thing belonging there or lying upon the line or within the limits;

“**supply electricity**” for the purposes of this Act includes a reference to the sale of electricity;

“**supply gas**” for the purposes of this Act includes a reference to the sale of gas;

“**supply petroleum**” for the purposes of this Act includes a reference to the sale of petroleum;

“**Tonga Competent Authority**” or “**Authority**” means the Tonga Competent Authority established under the Price and Wage Control Act (CAP17.10) or any subsequent legislation providing statutory authority for the functions of the Tonga Competent Authority; and

“**value**” means, for the purposes of section 144(2)(b), the sum that would be charged by the concessionaire to the body corporate for the supply by the concessionaire to the body corporate of the quantity of electricity generated by the body corporate.

3 Act binds the Crown

This Act shall bind the Crown.

4 Purpose

The purposes of this Act are, to -

- (a) provide a coherent institutional and regulatory framework for the management, planning and co-ordination of the energy sector in the Kingdom;

- (b) establish clear national objectives for the energy sector and ensure that those national objectives are achieved;
- (c) establish and clarify the functions and powers of the Ministry, Energy Advisory Committee, Energy Commission and other bodies established under this Act;
- (d) provide for the development of relevant standards for the energy sector and for the regulation of energy services; and
- (e) promote private sector incentives and research initiatives.

PART II – GENERAL ADMINISTRATION

5 Ministry responsible for Energy

The Ministry is hereby established.

6 Administration

The Minister shall be responsible for the administration of this Act.

7 Functions of the Ministry

Functions of the Ministry are to –

- (a) manage and co-ordinate the energy sector in order to achieve a resilient, reliable and flexible energy system that provides high quality, sustainable and affordable energy to support and stimulate economic growth and prosperity in the Kingdom;
- (b) exercise general supervision and control over all matters relating to the energy sector in the Kingdom;
- (c) develop a national energy policy for the Kingdom in accordance with Part III;
- (d) develop, in consultation with the Advisory Committee and its sub-committees, regulations and standards for the energy sector for promulgation under this Act;
- (e) provide technical support to and advise the Government on energy related activities and matters;
- (f) facilitate energy related grants, financial investment or development assistance to the energy sector;
- (g) in relation to the electricity sector, ensure that relevant information is shared among governing bodies so that decisions and the exercise of powers are well-informed and transparent;
- (h) in relation to the petroleum sector –

- (i) ensure that measures are in place to achieve a reliable and regular supply of petroleum to the Kingdom, sufficient to meet national consumption requirements, including for any island group;
 - (ii) lead any reform work in relation to the petroleum sector;
- (i) in relation to the gas sector, identify appropriate standards for the Kingdom for the regulation of the gas sector;
- (j) in relation to the renewable energy sector –
 - (i) establish research capabilities and facilitate research in relation to the use of renewable energy in the Kingdom;
 - (ii) encourage the use of commercially sustainable renewable energy technology for both grid connected and stand alone power supply systems;
 - (iii) establish technical and safety standards for renewable energy technologies;
 - (iv) regulate the licensing of persons involved in the design, research, installation and management of renewable energy projects;
 - (v) regulate renewable energy operators;
 - (vi) regulate the feed-in tariffs for renewable energy generated electricity and ensure that the Commission is responsible for enforcing standards in subsections (j)(iii) to (j)(vi);
 - (vii) support the engagement of the private sector in renewable energy projects in the Kingdom;
 - (viii) promote the implementation of commercially sustainable renewable energy based electrification services by encouraging economically efficient investment in the use of infrastructure to provide electrification services;
 - (ix) promote access to renewable energy services to the extent that it is
- (k) at a working level, coordinate donor activity in the energy sector, in consultation with key stakeholders;
reasonably and commercially practicable to provide such services;
- (l) develop reports or official statements on behalf of the Ministry on energy related matters;
- (m) facilitate training and capacity building for the Ministry, governing bodies and key stakeholders and educate the public on energy related matters;
- (n) oversee, conduct or participate in research projects for the Kingdom energy sector and obtaining copies of research reports for the Ministry;
- (o) establish and maintain a comprehensive energy sector database for the Kingdom;

- (p) ensure that information related to energy services and the regulation of those services is communicated effectively to all key stakeholders;
- (q) keep this Act and regulations made under this Act under review; and
- (r) carry out any other function consistent with the objects of this Act, which may be prescribed by the Cabinet from time to time.

8 Functions of the Minister

Functions of the Minister are to –

- (a) convey approved national policy objectives of the Government in relation to the energy sector, including to the Energy Commission under section 29(1)(a);
- (b) establish Government targets for the energy sector and set national energy sector plans to meet those targets;
- (c) enforce, monitor and evaluate the Kingdom’s progress towards achieving the national energy targets, and to report on progress;
- (d) create an enabling environment which will allow all stakeholders to work towards financing, contributing to and implementing the Government’s targets for the energy sector;
- (e) at a high level, liaise with development partners to ensure access to funding, attract investment and facilitate development of the energy sector;
- (f) make such determinations and directions as are required or considered necessary for the performance of the Ministry’s functions under this Act; and
- (g) exercise any other function under this Act or as may from time to time be lawfully conferred upon the Minister.

9 Functions of the Chief Executive Officer

Functions of the Chief Executive Officer are to –

- (a) ensure the effective review of the national energy policy in accordance with section 12(5);
- (b) ensure consistency between national policy objectives, national energy targets and national development goals of the Government;
- (c) recommend to the Minister a suitable person to be appointed as registrar under section 15(1);
- (d) act as chair of the Advisory Committee under section 18(1)(a);
- (e) nominate the chair of each technical committee under section 21(3);
- (f) oversee the implementation of MEPSL under Part XIII of this Act;

- (g) ensure that the Ministry receives a budget that is sufficient to facilitate the costs of the Ministry in section 127(2) and of the Commission and Committee in section 127(3);
- (h) receive and deal with any complaint against an enforcement officer of the Ministry under section 143;
- (i) establish and maintain registers for the Ministry under section 152;
- (j) furnish the Annual Report of the Ministry to the Minister under section 153;
- (j) administer the requirement for energy sector businesses to register under section 158; and
- (k) exercise any other function that the Minister may delegate to the Chief Executive Officer under this Act or as be lawfully conferred upon the Chief Executive Officer from time to time.

10 Power to obtain information

- (1) For the purposes of carrying out the Minister's functions under this Act, the Minister may –
 - (a) require a person to supply information to the Ministry in relation to the provision of an energy product or service in the Kingdom;
 - (b) require a person to produce for the Minister's inspection, a document relating wholly or in part to –
 - (i) the business carried on by an energy service provider in the Kingdom;
 - (ii) the price and supply of an energy service in the Kingdom; or
 - (iii) the business of an energy service provider in the Kingdom requested by the Minister.
- (2) The Minister or an employee of the Ministry who receives or deals with information obtained under subsection (1) shall be bound by the same requirement of confidentiality as the Commission under section 46.

11 Delegation of powers

- (1) Except for this power of delegation –
 - (a) the Minister may delegate one or more of his functions under this Act to the Chief Executive Officer or senior officer of the Ministry; and
 - (b) the Chief Executive Officer may delegate one or more of his functions under this Act to a senior officer of the Ministry.
- (2) A delegation shall be made in writing and specify the nature and duration of the delegation.

- (3) A delegation shall not prevent the exercise of such power by the delegating authority.
- (4) Notwithstanding the duration of a delegation, the Minister or the Chief Executive Officer may, in writing, revoke or cancel a delegation which was issued under this section.

PART III – NATIONAL ENERGY POLICY

12 Development of a national energy policy

- (1) The Ministry shall, within 12 months of the commencement of this Act, develop and oversee the adoption of a national energy policy for the Kingdom.
- (2) The national energy policy, including subsequent revisions, shall be approved by the Minister, with the consent of Cabinet.
- (3) The national energy policy will include high level energy policies, priorities and targets for –
 - (a) leadership, governance, co-ordination and partnerships;
 - (b) planning, policy and regulatory framework,
 - (c) capacity development;
 - (d) energy production and supply of –
 - (i) petroleum and alternative liquid fuels;
 - (ii) electricity;
 - (iii) gas;
 - (iv) renewable energy;
 - (v) any other forms of energy supply.
 - (e) energy conversion for –
 - (i) electric power;
 - (f) end use energy consumption including –
 - (i) transport energy use;
 - (ii) energy efficiency and conservation;
 - (g) energy data and information;
 - (h) household, community and private sector incentives;
 - (i) financing and investment; and
 - (j) monitoring and evaluation,

and may include any other issue identified by the Ministry or the Minister from time to time.

- (4) The national energy policy will, as appropriate to the Kingdom, incorporate guiding principles contained in the regional energy policy and strategic action plan for the Pacific region adopted by energy Ministers, or other equivalent document.
- (5) The Chief Executive Officer shall be responsible for ensuring the effective review of the national energy policy every 5 years after it is first adopted by Cabinet.
- (6) In developing the national energy policy and for each subsequent review, the Ministry will consult with governing bodies established under this Act, as well as key Government and non-Government stakeholders, and in a manner that facilitates the participation of women and vulnerable groups.

13 Alignment with other national policies

For the purposes of aligning with other national policies of government and for consistency of approach, the Ministry shall consider other national policies of Government, including policies relating to energy efficiency, climate change and climate resilience in the development and implementation of the national energy policy.

PART IV – REGISTRATION OF ENERGY INDUSTRY ASSOCIATIONS

14 Purpose

- (1) The purpose of this Part is to allow for the registration of energy industry associations in order to facilitate –
 - (a) the nomination of representatives from energy industry associations into the bodies established under this Act;
 - (b) linkages, consultations and communications between the Ministry, Commission and the energy sector; and
 - (c) training and capacity building for industry groups within the energy sector.
- (2) In order to be eligible for registration, the application for registration shall be signed by a minimum of 5 people from within the industry.
- (3) Registration of energy industry associations shall be free.

15 Registrar of industry associations

- (1) The Minister, on the recommendation of the Chief Executive Officer, shall appoint a Registrar of industry associations from the energy sector under this Act.
- (2) The Registrar shall consider applications for the registration of industry associations in accordance with processes and criteria established in regulations made under this Act.
- (3) Upon registration, the Registrar shall issue a registered association with a certificate of registration.

16 Nomination to bodies established under this Act

- (1) In order to be –
 - (a) recognised by the Ministry as an industry body; and
 - (b) eligible for nomination to a governing body established under this Act,an industry association shall be registered in accordance with this Part.
- (2) Notwithstanding subsection (1)(b), the Minister, with the consent of Cabinet, may appoint an energy sector expert who is not already a member of a registered industry association to a body established under this Act, if the Minister deems that for the benefit of the energy sector, it would be expedient to do so.

PART V – ENERGY ADVISORY COMMITTEE**17 Establishment of the Energy Advisory Committee**

- (1) The Energy Advisory Committee is hereby established.
- (2) The Committee will act as an advisory body to the Ministry in relation to the Kingdom's energy sector.

18 Membership

- (1) The Minister shall appoint the following members to the Advisory Committee –
 - (a) Chief Executive Officer of the Ministry (Chair);
 - (b) Chief Executive Officer of the Ministry responsible for finance (Deputy Chair);
 - (c) Chief Secretary and Secretary to Cabinet;
 - (d) Chief Executive Officer of the Ministry responsible for infrastructure;

- (e) Chief Executive Officer of the Ministry responsible for trade and economic development;
 - (f) Chief Executive Officer of the Ministry responsible for public enterprises;
 - (g) Chief Executive Officer of the Energy Commission;
 - (h) Solicitor General; and
 - (i) one representative of District Officers (that representative being a District Officer ordinarily based on Tongatapu), jointly nominated by the District Officers of all the island groups.
- (2) A permanent member of the Advisory Committee in subsection (1) may nominate an alternate to take part in a meeting of the Advisory Committee in his place.
- (3) For the purposes of subsection (1)(i), if District Officers fail to nominate a representative within a period of one month of being requested to do so by the Ministry, the Minister can appoint the representative for District Officers.
- (4) The term for a member of the Advisory Committee shall be as follows –
- (a) a person in subsection (1)(a) to (1)(h) shall serve as an ex officio member of the Committee and his term shall end when a new person is appointed to the post;
 - (b) a person in subsection (1)(i) shall serve for a period of one year and may be reappointed by District Officers, provided that he still holds his post as a District Officer.
- (5) A member, once appointed, shall be provided with a written instrument of appointment signed by the Minister, which outlines the date of appointment, duties and responsibilities, duration of term and entitlements as a member of the committee.
- (6) The Chief Executive Officer shall nominate a person from the Ministry to be the secretary to the Advisory Committee and the Ministry shall provide secretariat services to the Committee.
- (7) The quorum for a meeting of the Advisory Committee shall be 5 members.
- (8) Rules of procedure of the Advisory Committee are in Schedule 1 of this Act and may be amended from time to time with the consent of Cabinet.

19 Co-opted members

- (1) The Advisory Committee may, from time to time, co-opt one or more persons to a meeting of the Advisory Committee, which shall include but not limited to –
- (a) a technical expert; or
 - (b) the Chief Executive Officer of a company holding a –

- (i) concession contract;
 - (ii) petroleum licence;
 - (iii) renewal energy licence;
 - (iv) gas operator licence,
issued under this Act.
- (2) A co-opted person shall not –
 - (a) constitute the quorum of the Committee; or
 - (b) be entitled to vote on any matter or issue considered by the Committee.

20 Functions of the Advisory Committee

The Advisory Committee shall have the following functions –

- (a) provide advice to the Ministry on –
 - (i) policy objectives of the Government in relation to the energy sector that are referred to the Energy Commission under section 29(1)(a);
 - (ii) standards, regulations and policies for the energy sector and their review; and
 - (iii) issues referred to the Committee by the Minister for advice;
- (b) liaise with its sub-committees, the Ministry, Commission and key energy sector stakeholders as appropriate, to ensure that the Committee's recommendations to the Minister under subsection (a) are robust and well-informed.

21 Technical committees of the Advisory Committee

- (1) The Minister shall, on the recommendation of the Advisory Committee, establish one or more technical committees of the Advisory Committee to provide advice, through the Advisory Committee, to the Ministry.
- (2) The following technical committees may be established –
 - (a) technical standards;
 - (b) social and environmental safeguards;
 - (c) tariffs and pricing;
 - (d) legislation and policy;
 - (e) energy sector projects; and
 - (f) any other committee that the Advisory Committee may deem necessary from time to time.
- (3) The chair for each technical committee shall be nominated by the Chief Executive Officer.

- (4) Each technical committee shall have no more than six members.
- (5) The Minister shall ensure that a member of a technical committee –
 - (a) is over 18 years of age;
 - (b) is not a member of the Legislative Assembly;
 - (c) except for the chair, has either –
 - (i) a tertiary degree or qualification in the subject matter for which the sub-committee is responsible; or
 - (ii) specific industry knowledge or experience in a relevant field of at least 5 years;
 - (d) does not have a judgment debt of more than \$5,000; and
 - (e) does not have a criminal record in the Kingdom or abroad.
- (6) In considering the membership of each technical committee, the Minister shall have due regard for gender balance in each committee.
- (7) A member, once appointed, shall be provided with a written instrument of appointment signed by the Minister, which outlines the date of appointment, duties and responsibilities, duration of term and entitlements as a member of the committee.
- (8) The term of each member of a technical committee shall be a period of up to four years and the term may be renewed by the Minister.
- (9) A permanent member of a technical committee may nominate an alternate to take part in a meeting of the Advisory Committee in his place.
- (10) An alternate shall be entitled to the same rights and obligations as a permanent member of a technical committee.
- (11) The Chief Executive Officer shall nominate a person from the Ministry to be the secretary to a technical committee and the Ministry shall provide secretariat services to a committee.
- (12) The quorum for a meeting of a technical committee shall be 4 members.
- (13) Rules of procedure of a technical committee shall be developed by the Advisory Committee and approved by the Minister.

22 Vacancy of office

- (1) A member of the Advisory Committee or a technical committee may –
 - (a) resign by providing one month's notice, in writing to the chair; or
 - (b) be removed by the Minister on the following grounds –
 - (i) the member is convicted of a criminal offence, in Tonga or abroad;
 - (ii) the member has failed or neglected to carry out his duties in accordance with the requirements of or to the standard stated in his letter of appointment; or

- (iii) the Minister intends to restructure or reorganise technical committees under this Part to achieve the purposes of this Act.
- (2) Upon the death of a member, his position on the Advisory Committee or technical committee shall be deemed to be automatically vacated.
- (3) Where there is a vacancy of a position on the Advisory Committee or a technical committee, the Chief Executive Officer shall ensure that a new member is appointed in accordance with section 18 or 21.

23 Functions of a technical committee

Functions of each technical committee shall be –

- (a) stated in the rules of procedure of each committee; and
- (b) approved by the Chair of the Advisory Committee and the Minister.

24 Remuneration for the Advisory Committee and technical committees

Subject to the availability of resources, a member of the Advisory Committee and its technical committees shall be entitled to –

- (a) meeting fees; and
- (b) reimbursement for authorised expenses undertaken as part of the work of the Advisory Committee or a technical committee.

PART VI – ENERGY COMMISSION

DIVISION ONE – ESTABLISHMENT

25 Establishment of the Energy Commission

The Energy Commission is hereby established.

26 Functions

The Energy Commission shall have the following functions –

- (a) ensuring the safety, affordability and security of supply of electricity, petroleum, gas, renewable energy and any other energy sources in the Kingdom;
- (b) negotiate and enter into a concession contract on behalf of the Government;
- (c) monitor and enforce a concession contract made under this Act and take enforcement actions;
- (d) monitor and enforce standards and regulations;

- (e) administer, issue, suspend or cancel individual contractor licenses;
- (f) regulate price and quality of energy sector goods and services;
- (g) administer and maintain energy assets;
- (h) establish and collect fees, levies and charges;
- (i) develop and recommend to the Ministry standards or regulations under this Act, including for public safety;
- (j) conduct or initiate investigations into or in relation to any energy related disaster;
- (k) conduct or initiate capacity building training for energy sector stakeholders; and
- (l) do all things necessary for the performance of its functions and for the exercise of its powers under this Act.

27 Membership

- (1) The Cabinet shall, on the recommendation of the Minister, appoint no less than five and no more than seven people as members of the Energy Commission.
- (2) The Cabinet shall appoint the chair and deputy chair for the Commission.
- (3) A person who is recommended for appointment to the Energy Commission shall meet the following criteria –
 - (a) is over 18 years of age;
 - (b) is properly qualified by skill, qualifications, knowledge or experience in the energy sector, having due regard to the functions and powers of the Commission under this Act;
 - (c) does not have any existing interests in the energy sector, direct or otherwise, which might present as a conflict of interest;
 - (d) is not a member of the Legislative Assembly;
 - (e) does not have a judgment debt of more than \$5,000;
 - (f) has not been convicted of a criminal offence in the Kingdom or abroad;
or
 - (g) is not disqualified or disbarred from working in that person's line of profession.
- (4) To the extent possible, the Cabinet shall ensure that the Chair and Deputy Chair have relevant regulatory and management experience or expertise.
- (5) The Commission shall appoint a secretary to provide secretariat services to the Commission.
- (6) Notwithstanding subsection (1), at the commencement of this Act section 155(1) will apply in respect of the initial membership of the Commission.

28 Term of office

- (1) A member of the Commission shall hold office for a term of up to 4 years and may be reappointed.
- (2) The Cabinet shall specify the term of appointment for each member on the member's instrument of appointment.
- (3) A member of the Commission may be appointed on a part-time or full-time basis.
- (4) Powers of the Commission shall not be affected by a vacancy in its membership, or by a deficiency in the appointment of a member.

29 Relationship with Government

- (1) The Commission shall be an independent body, exercising its powers subject to the following requirements -
 - (a) on or before 31 January of each year the Government shall, through the Minister, provide to the Commission short term policy directives for the energy sector for the next financial year, which the Commission shall take into account in exercising its functions; and
 - (b) the Commission shall, in its Annual Report provided under section 64, outline how it has sought to achieve the policy directives of the Government and the extent to which those directives have been achieved.
- (2) Notwithstanding subsection (1)(a), the Government may provide revised directives within the year if it is a matter of urgency for Government.
- (3) The policy directives of the Government in subsection 1(a) –
 - (a) shall be by way of a Cabinet Order conveyed by the Minister to the chair of the Commission on or before the prescribed time each year; and
 - (b) shall be consistent with the national energy policy adopted under Part III of this Act.
- (4) Notwithstanding the powers of the Commission established under this Act, the Government shall retain its decision making powers during a –
 - (a) national emergency, in accordance with the Emergency Management Act or any other law governing disaster risk management in the Kingdom; or
 - (b) public health emergency in accordance with the Public Health Act.
- (5) Where there is an exercise of power by the Government under subsection (4), the Government shall consult with and take into account recommendations of the Commission.

30 Standing

- (1) The Commission shall be a body corporate with perpetual succession and a common seal.
- (2) The Commission shall be capable of suing and being sued.
- (3) In the exercise of its functions and powers under this Act, the Commission may acquire, hold and dispose of real and personal property and do all such acts and things as body corporate may do or suffer.

31 Remuneration for Commission members

Subject to recommendations of the Remuneration Authority, the Minister shall, with the consent of Cabinet, determine the remuneration, allowances or benefits of members of the Commission.

32 Disclosure of interests

- (1) A member of the Commission who has, directly or indirectly, any financial or personal interest in any matter before it shall fully disclose such interest to the Commission and shall take no part in the discussion on any such matter or vote on such matter:

Provided that such an interest, if so disclosed, shall not disqualify the interested party for the purpose of constituting a quorum.

- (2) A member, agent or employee of the Commission shall not accept any gift or advantage personally or for persons with whom that 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 secretary of the Commission shall establish and maintain a register in which a disclosure of interest under this section is recorded and the register shall be available for access by members of the Commission or public.

33 Rules of procedure

- (1) Rules of procedure of the Commission are in Schedule 2 of this Act.
- (2) The Commission may from time to time, with the consent of Cabinet, amend its rules of procedure.

34 Internal policies and procedures

The Commission shall determine and adopt its own internal policies and procedures, provided that –

- (a) in any matters relating to the administration and expenditure of public funds, its policies are consistent with the Public Finance Management Act and regulations made under that Act; and
- (b) for the determination of consistency under subsection (a), the Minister and or the Minister of Finance may request a copy of the internal policies and procedures of the Commission.

35 Extraordinary vacancies

- (1) A member of the Commission may, in writing, be removed from office by the Cabinet for the following reasons –
 - (a) inability to perform the functions of the office;
 - (b) failure, without reasonable cause, to follow the directives of the Government under section 29(1);
 - (c) acquiring a judgment debt of more than \$5,000;
 - (d) neglect of duty;
 - (e) serious misconduct;
 - (f) conviction of a criminal offence in the Kingdom or abroad;
 - (g) a reorganisation of the membership of the Commission; or
 - (h) any other reason approved by Cabinet.
- (2) Notwithstanding subsection (1)(b), due consideration shall be provided to a Commissioner if the term of a concession contract limits the ability of a Commissioner to follow a Government directive;
- (3) A member of the Commission may, in writing, resign from office by giving notice to that effect to the Minister.
- (4) Where a member of the Commission dies, resigns, or is removed from office under this section, the vacancy created shall be deemed to be an extraordinary vacancy.
- (5) An extraordinary vacancy shall be filled by the appointment of a replacement member by Cabinet, on the recommendation of the Minister.
- (6) A person appointed to fill an extraordinary vacancy under subsection (4) shall be appointed for the remainder of the term for which the vacating member was appointed, and at the end of this period may be reappointed in accordance with section 27.

36 Chief Executive Officer of the Commission

- (1) The Commission, with the consent of the Minister, shall appoint a Chief Executive Officer to oversee the work and operations of the Commission.

- (2) In addition to specific requirement of the Commission for the position, the Chief Executive Officer shall meet the following criteria –
 - (a) over 18 years of age;
 - (b) has not been convicted of a criminal offence in the Kingdom or abroad;
 - (c) is not a member of the Legislative Assembly;
 - (d) has a background in economics and holds either –
 - (i) a tertiary degree or qualification which is directly relevant to the energy sector;
 - (ii) a tertiary degree or qualification in commerce, economics, law, accountancy, public administration or consumer affairs having due regard to the functions of the Commission; or
 - (iii) extensive industry knowledge or experience in a relevant field of at least 10 years.
- (3) The Chief Executive Officer shall be engaged under a written contract of employment for a period of up to 3 years and, based on meeting the assessment criteria of the Commission, the contract may be renewed.
- (4) In addition to functions contained in his contract of employment, the Chief Executive Officer shall be responsible for ensuring the efficient and effective administration and operation of the work of the Commission and of its employees and implementing measures to facilitate compliance of the energy sector with standards and regulations prescribed under this Act.
- (5) For the purposes of subsection (2)(i), in advertising the post of chief executive officer, the Commission shall provide the list of degrees or qualifications which are considered to be directly relevant to the energy sector.

37 Staff of the Commission

- (1) The Commission shall appoint employees as is required from time to time for the efficient performance and discharge of the functions of the Commission under this Act.
- (2) The Chief Executive Officer, secretary of the Commission and employees of the Commission are not subject to the Public Service Act, but shall be engaged under a written contract of employment with the Commission.
- (3) The Commission shall have the power to appoint, promote, demote, transfer or terminate its employees in accordance with the internal policies of the Commission, which shall be adopted with the consent of the Minister.

38 Secondment of staff from the public service

- (1) The Commission may, with the approval of the Public Service Commission, the Minister and the Minister responsible for the employee, second a person from the public service to work at the Commission for an agreed period of time.
- (2) Rules and procedures for the secondment of a person from the public service shall be prescribed in regulations made under this Act.

DIVISION TWO – POWERS OF THE COMMISSION

39 Powers generally

- (1) The Commission shall have the power to do all things necessary for the performance of its functions under this Act and for the effective discharge of its duties under this Act or any other Act for which the Commission has statutory authority, including but not limited to the power to —
 - (a) monitor and enforce standards in relation to the energy sector;
 - (b) regulate price and quality of energy sector goods and services;
 - (c) carry out and enforce all activities required by the terms of a concession contract;
 - (d) carry out all activities necessary or desirable for the administration of licences;
 - (e) administer, issue, suspend or cancel licenses to individual contractors in the energy sector;
 - (f) administer and maintain energy assets;
 - (g) develop or recommend standards or regulations under this Act, including for public safety;
 - (h) conduct or initiate investigations into or in relation to any energy related disaster; and
 - (i) take enforcement actions.
- (2) The Commission shall not exercise a power or take any action where to do so would be inconsistent with this Act or a concession contract.

40 Power to obtain information

Where the Commission considers it necessary or desirable to fulfil its functions under this Act or any other Act for which the Commission has statutory authority, the Commission may, in relation to the business of an energy service provider in the Kingdom –

- (a) require a person to supply information to the Commission;
- (b) summon a person to appear at a reasonable time before the Commission;

- (c) require a person to produce for the Commission's inspection, a document relating wholly or in part to –
 - (i) the business carried on by an energy service provider;
 - (ii) the price and supply of an energy service; or
 - (iii) any other document or information requested by the Commission that relates to the business of an energy service provider in the Kingdom;
- (d) ask a question of any person in relation to receipts, expenditures of money or any other relevant matter necessary for the performance of the Commission's functions or powers;
- (e) require any person to supply any information or answer any question relating to documents, books and accounts, money or operations subject to tariff review;
- (f) require, by notice in writing to any person, having possession or control of any documents or books and account subject to tariff review, to deliver all or any of them at a time and place and to such person specified in the notice;
- (g) by written notice to a person or published in a newspaper of general circulation in the Kingdom, require a person or class of persons to render a return or a series of returns in the prescribed form, setting out any particulars relating to the provision of a specific energy service, as may be specified in the notice;
- (h) during trading hours, enter upon any place or premise in the occupation of a person and to search for, or inspect a document of the kind referred to in subsection (c) and to –
 - (i) make copies or abstracts of such documents;
 - (ii) take samples if appropriate; or
 - (iii) take such steps as may be reasonably necessary in the circumstances, to enable the Commission to fulfil its statutory functions under this Act; and
- (i) take possession of a document which appears to the Authority to constitute prima facie evidence of a breach of an order or directive issued by the Commission under section 41 of this Act;
- (j) subject to section 46, share information with the Ministry or a Government Ministry or agency for the purposes of ensuring compliance with this Act and regulations made under this Act.

41 Orders or Directives

- (1) Subject to subsection (3), where the Commission considers it necessary or desirable to fulfil its functions under this Act, the Commission may issue a person with a written directive to comply with provisions of this Act or regulations, which shall be in the prescribed form.

- (2) If requested, the Commission shall meet with the energy service provider to whom an order or directive is directed to discuss any issues or concerns raised by the energy service provider.
- (3) A person to whom an order or directive is issued by the Commission shall be required to comply with such order, unless, after further discussions in subsection (2), an alternative course of action is otherwise agreed with the Commission in writing, or the person is exempted by law from complying.

42 Consultations with industry

- (1) In the exercise of its functions under this Act, the Commission shall endeavour to consult with energy service providers and relevant stakeholders, whether in person or through submissions received in writing, or through other means as the Commission deems appropriate, to ensure that stakeholders are widely consulted.
- (2) Where the Commission has consulted with industry associations or industry representatives, the Commission is deemed to have consulted with each member of that industry.

DIVISION THREE – PRICE REGULATION

43 Power to regulate price and quality of energy sector goods and services

- (1) The Commission shall have the power to declare independent price and quality regulation of energy sector goods and services in accordance with this Act or regulations made under this Act.
- (2) At the commencement of this Division Three the Minister may, in writing, delegate the responsibility in subsection (1) for a stated period of time to the –
 - (a) Tonga Competent Authority established under the Price and Wage Control Act (CAP.17.10) or any subsequent legislation providing statutory authority for the functions of the Tonga Competent Authority; or
 - (b) any other body that has been established under the laws of Tonga, until the Ministry is able to carry out this function.
- (3) Where the Minister delegates the responsibility in subsection (1) to the Tonga Competent Authority –
 - (a) subject to subsection (b), the Authority shall exercise the power to declare independent price and quality regulation of energy sector goods and services in accordance with the Price and Wage Control Act (CAP 17.10) or any subsequent legislation providing statutory authority for the functions of the Tonga Competent Authority; and

- (b) when determining any matter in relation to the energy sector, two members of the Energy Commission and two members of the Ministry shall sit as full members of the Authority for the purposes of this section;
- (c) where members of the Energy Commission and Ministry participate in meetings of the Authority for the purposes of this section, the Energy Commission shall cover the costs of meeting fees or any other costs associated with taking part in the activities of the Authority.

44 Purposes for price regulation

- (1) Subject to this Act, price regulation may be used by the Commission for one or more of the following purposes, in relation to the energy sector –
 - (a) correct market failures or anomalies in the market;
 - (b) promote and regulate competition;
 - (c) ensure affordability of goods or services in the energy sector;
 - (d) deal with geographic specific pricing issues; and
 - (e) deal with volatile changes in international pricing.
- (2) The Commission may remove a good or service from the list of regulated goods or regulated services if it determines that price regulation is no longer required.
- (3) A good or service is no longer a regulated good or regulated service once the Commission issues a written directive to that effect and shall be effective on the date on which the Commission specifies in the directive.

DIVISION FOUR – INFORMATION PROVIDED TO THE COMMISSION

45 Classification of information

- (1) The Commission shall determine the classification of information and materials received by the Commission under this Act.
- (2) Information that is requested by an energy service provider to be confidential shall be treated as confidential by the Commission.
- (3) Information provided to the Commission which is of a commercially sensitive nature shall be kept strictly confidential by employees of the Commission, except –
 - (a) where the Commission is given the express authority to release such information by the owner of the information; or
 - (b) where the Commission is required or permitted to release the information pursuant to section 46(3) of this Act.

- (4) The Chief Executive Officer of the Commission shall ensure that information or materials provided to the Commission are kept secure and released only as authorised by the Commission.

46 Confidentiality

- (1) The Commission, including any of its members or employees, shall 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) A person who contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (3) Nothing in this section shall prevent the disclosure of any document or information to –
 - (a) an appellate body established under this Act or to the Supreme Court in relation to a proceeding under this Act;
 - (b) a Government Ministry where such disclosure is necessary for the performance of the Ministry's statutory duties;
 - (c) international regulatory bodies or agencies with which the Government of Tonga has an agreement, to the extent permitted under such agreement.
- (4) Upon a written request being received by the Commission, the Commission shall determine whether information should be released under subsection (3).

DIVISION FIVE – BUDGET AND FINANCIAL PROVISIONS

47 Funding of Commission

- (1) The Commission may be funded from the following sources –
 - (a) a fee or levy which the Commission is entitled to impose, charge or collect under this Act;
 - (b) monies allocated by the Legislative Assembly; or
 - (c) any other source of funding as may be approved by the Cabinet from time to time, or as may become available to the Commission.
- (2) Notwithstanding subsection (1), in the financial year immediately following commencement of this Act, the Commission shall be funded from the recurrent budget of the Ministry to assist with the transition of functions under this Act to the Energy Commission.

48 Budget

- (1) Upon request, the written budget of the Commission shall be made available to the Minister and the Minister of Finance.
- (2) Where the Commission is to receive funding under section 47(2), the Commission shall provide to the Minister a proposed budget for the work of the Commission for the next financial year, and the Minister shall, in accordance with the budget process, allocate funding to the Commission for that financial year.

49 Power to impose levies

- (1) If prescribed by regulations made under this Act, a supplier or user of an energy sector good or service in the Kingdom (or a prescribed class of suppliers or users of energy sector goods or services) shall pay to the Commission a levy as prescribed.
- (2) Subject to subsection (3), the Commission may, with the consent of Cabinet, make regulations —
 - (a) specifying the amount of levies, or method of calculating or ascertaining the amount of levies, on the basis that the estimated cost of performing the Commission's functions, powers, and duties under this Act, and of collecting of levies, should be met either partially or fully out of levies;
 - (b) including, or providing for the inclusion, in levies, of any shortfall in recovering those actual costs;
 - (c) refunding, or providing for refunds of any over-recovery of those actual costs;
 - (d) providing different levies for different classes or users of suppliers of energy services;
 - (e) specifying the financial year or part financial year to which those levies apply, and applying to that financial year or part financial year until such regulations are revoked or replaced;
 - (f) providing for the payment and collection of those levies;
 - (g) requiring payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced; and
 - (h) exempting or providing for exemptions from, and providing for waivers of, the whole or any part of the levy for any case or class of cases.
- (3) In determining the type and level of levies in subsection (2), the Commission shall have due regard to the principles of affordability and accessibility by users of energy sector goods or services.
- (4) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Commission.

- (5) Before making recommendations to Cabinet for the purposes of subsection (2), the Commission shall consult with energy service providers and key stakeholders.

50 Bank accounts

- (1) The Commission shall open at any bank or banks, such accounts as are necessary for the exercise of its functions and powers.
- (2) All monies received by the Commission, or on behalf of the Commission, shall, as soon as practicable after it has been received, be paid into such bank account of the Commission as the Commission from time to time determines.
- (3) The withdrawal or payment of money from any such account shall be authorised by a prior resolution of the Commission or shall be submitted to the Commission for confirmation at its first ordinary meeting after the date of payment.
- (4) The withdrawal or payment of money from any such account shall be by cheque signed by such person or persons as the Commission may from time to time authorise.

51 Approved expenditures

Subject to section 52 and section 53 of this Act and provisions relating to the use of public funds in the Public Finance Management Act, the Commission shall be authorised to utilise its funds for the following purposes –

- (a) administration and operational costs of the office of the Commission;
- (b) salaries of employees;
- (c) remuneration and other entitlements of members of the Commission;
- (d) relevant training and capacity building of employees of the Commission, members of the Commission and relevant stakeholders; or
- (e) any other expense which is necessary for the discharge of the Commission's functions, as approved by the Cabinet, from time to time.

52 Retained earnings

- (1) Subject to subsections (2) and (3), at the end of each financial year, retained earnings of the Commission shall be rolled over to the next financial year.
- (2) The audited financial report should reflect use of funds by the Commission.
- (3) The business plan of the Commission shall be submitted to Minister before the beginning of a financial year and shall outline intended revenue and expenditure for the new financial year.

53 Accounts and audit

- (1) The Commission shall keep full and correct accounts of all its financial transactions, assets, liabilities, and funds.
- (2) The financial year of the Commission shall end on the 30th day of June.
- (3) At the end of each financial year, the Commission shall prepare an income and expenditure account showing its financial transactions for that year, together with a balance sheet as at the last day of the financial year.
- (4) The Commission shall, no later than 4 months after the end of each financial year, submit its income and expenditure account and balance sheet to the Audit Office for audit.
- (5) The Commission shall, no later than 1 month after receiving its audited accounts, submit to the Minister a copy of the audited accounts of the Commission, together with the report of the Audit Office, for tabling in Cabinet and before the Legislative Assembly.
- (6) The Commission shall incorporate a copy of the audited accounts of the Commission, together with the report of the Audit Office, in the Annual Report of the Commission prepared and submitted under section 54.

54 Annual report of the Commission

- (1) The Commission shall, no later than 3 months after the end of each financial year, submit to the Minister a copy of its Annual Report.
- (2) The Annual Report shall contain all such information required by this Act.
- (3) The Minister shall table a copy of the Commission's report in Cabinet and before the Legislative Assembly

PART VII – REGULATION OF THE ENERGY SECTOR**55 Purpose of this Part**

- (1) The purpose of this Part shall be to promote long-term benefits to consumers by ensuring that suppliers of energy goods and services –
 - (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets;
 - (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands;
 - (c) share with consumers the benefits of efficiency gains in the supply of the goods or services, including through lower prices; and

- (d) deliver energy services to existing and new customers in a safe, affordable, efficient, fair, reliable and environmentally sustainable manner.
- (2) The Ministry shall, with the consent of Cabinet, develop regulations in furtherance of the purposes of subsection (1).

56 Guiding principles

In the implementation of this Part, the Ministry and the Commission shall take into account the following guiding principles –

- (a) a cooperative approach to energy sector coordination that maximises the impact of national resources and capabilities;
- (b) open and consultative cross-sectoral policy development and integrated planning to achieve sustainable supply and use of energy;
- (c) reliable, safe and affordable access to efficient energy for the whole of the Kingdom;
- (d) environmentally clean, energy efficient and cost effective transportation within the Kingdom
- (e) renewable energy sources are the primary source of the Kingdom’s energy supply;
- (f) safe, reliable and affordable supplies of petroleum products;
- (g) available, reliable, affordable and environmentally sound energy supplies for the social and economic development of the Kingdom and of rural areas and remote islands;
- (h) environmentally sustainable development of energy sources and use of energy in the Kingdom;
- (i) optimised energy consumption in all sectors of the Kingdom; and
- (j) adequate human and institutional capacity to plan, manage and develop the Kingdom’s energy sector.

DIVISION ONE – GENERAL MATTERS

57 Licensing

- (1) Every energy service provider in the Kingdom shall be licenced in accordance with this Act and regulations made under this Act.
- (2) For the purposes of subsection (1), a energy service provider may be a natural person or legal entity.
- (3) The licence required under subsection (1) is in addition to any licence required under the Business Licences Act (CAP. 17.01).

- (4) A person who does not comply with subsection (1) commits an offence.

58 Compliance with standards

- (1) Every energy service provider, including every licenced or unlicenced provider, shall comply with standards in regulations made under this Act.
- (2) A person who does not comply with subsection (1) commits an offence.

59 Notification of accidents

- (1) Every energy service provider shall notify the Commission immediately or as soon as is practically possible, if it is or has been involved in an incident or accident and the particulars of it.
- (2) The Commission shall issue a directive on what constitutes an incident or accident under subsection (1).
- (3) The requirement to report to the Commission in subsection (1) shall include every incident or accident that results in –
 - (a) serious harm to any person; or
 - (b) significant property damage.
- (3) For the purposes of subsection (1), the appropriate person to notify the Commission is –
 - (a) in the case of an incident or accident involving an importer, supplier, distributor or retailer, that importer, supplier, distributor or retailer;
 - (b) if the incident or accident is discovered by any person who is authorised to enter and inspect a premise, that person; or
 - (c) in all other cases, the occupier of the place where the incident or accident occurred.
- (4) Every notice under this section shall be in any manner which facilitates immediate notification, but the report shall also be formalised by the person providing the notice filling out and submitting the prescribed form.
- (5) The Commission shall conduct an inquiry into the likely cause of the incident or accident in accordance with section 60, in order to determine who should be responsible for any damage or compensation due.

60 Power to conduct inquiries

- (1) The Commission shall have the power to conduct an inquiry into any incident or accident which occurs in the energy sector in the Kingdom, to establish the cause of it.

- (2) The Commission may, for the purpose of making any enquiry, require a person to answer any questions or provide all information that a person may have which is of relevance to the inquiry.

61 Report of Commission following inquiry

- (1) Where the Commission conducts an inquiry under section 60, it shall prepare a written report of the findings of the inquiry and make copies of that report available to the Ministry, the Cabinet, the person that provided notification of the incident or accident and interested parties.
- (2) The Cabinet shall determine whether one or more of the recommendations of the Commission in its report submitted in subsection (1) should be binding, and if so, the manner in which such recommendations are to be implemented.

62 Energy sector codes of practice

- (1) The Minister shall, in consultation with energy service providers, develop one or more Codes of Practice in relation to the following –
 - (a) standards or specifications concerning the design, construction, installation, importation or manufacture of distribution systems, installations, fittings or appliances;
 - (b) standards in respect of the quality of petroleum, gas, electricity or renewable energy that is to be sold, supplied to or used by retailers and consumers;
 - (c) operation or use of distribution systems, installations, fittings or appliances;
 - (d) inspection or maintenance of distribution systems, installations, fittings or gas appliances;
 - (e) safety of persons or property associated with or using distribution systems, installations, fittings or appliances; or
 - (f) setting or endorsing of standards or requirements relating to the –
 - (i) training required for any specified class or classes of workers for the purposes of establishing and maintaining safety standards; and
 - (ii) level of technical or other qualifications necessary for the carrying out of any specified class or classes of industry work.
- (2) A Code of Practice under subsection (1), including any subsequent amendments, shall be adopted when it is approved by the Minister with the consent of Cabinet.
- (3) A Code of Practice shall show the date on which it was issued and the date promulgated by Cabinet.

- (4) The Ministry shall ensure that a Code of Practice is widely available and accessible to energy sector stakeholders.

DIVISION TWO – ELECTRICITY

63 Prohibition on generation, distribution or supply of electricity

- (1) A person shall not generate, distribute or supply electricity except under the authority, and subject to the provisions of a concession contract entered into under section 64.
- (2) The requirement to enter into a concession contract under subsection (1) shall not apply to —
 - (a) back up generation;
 - (b) self-generation; or
 - (c) any generation, distribution or supply of electricity for the purpose of supplying electricity to an electricity concessionaire.

64 Concession contract for the generation, distribution or supply of electricity

- (1) The Commission may enter into a concession contract in the form prescribed in Schedule 3, permitting a concessionaire to generate, distribute or supply electricity.
- (2) Without limiting subsection (1), the Minister may, on behalf of the Kingdom, be a party to any concession contract under subsection (1) or (3) which confers rights or imposes obligations on the Kingdom.
- (3) Notwithstanding subsection (1), the Minister may after the date of commencement of this Act, direct the Commission to enter into a concession contract for the supply of electricity in each of the island groups which are not already subject to a Concession Contract and if any such direction is given, the —
 - (a) direction shall specify the terms of the concession contract;
 - (b) Commission shall offer to the concessionaire specified in the direction the right to enter into the concession contract on the terms specified in the direction;
 - (c) Commission shall, if the concessionaire specified in the direction accepts the offer made under subsection (3)(b), enter into the concession contract on the terms specified in the direction; and
 - (d) concession contract entered into, pursuant to the direction, is binding on the Commission and is enforceable as if it were a contract that was freely and voluntarily entered into by the Commission.

- (4) Other than in relation to back up generation and self generation, a concession contract may grant a concessionaire exclusive rights to generate electricity, distribute electricity or supply electricity, or any combination of the three.
- (5) In addition to any rights under a concession contract for the supply of electricity, a concessionaire shall have the special powers contained in Schedule 4.
- (6) Any penalties provided in a concession contract will be enforceable according to the terms of the concession contract.

65 Security of supply

- (1) The physical assets owned by a concessionaire that are used for the generation or supply of electricity may not be removed from the Kingdom without the permission of the Minister if such removal would, either individually or cumulatively with any other removals, cause a concessionaire to be unable to meet any service obligations under a concession contract.
- (2) Subject to subsection (3), the physical assets owned by a person other than a concessionaire that are used for the generation or supply of electricity may be removed from the Kingdom without the permission of the Minister unless such removal would have a material detrimental effect on the security of supply for an island group.
- (3) Ownership of the physical assets owned by a concessionaire that are used for the generation or supply of electricity in the Kingdom may not be transferred unless —
 - (a) the transferee is a party to, or is a group company of a party to, a concession contract entered into under this Act;
 - (b) the transferee is the Kingdom or a nominee of the Kingdom; or
 - (c) the particular asset or assets being transferred are not material to the continuity or security of electricity supply in the Kingdom.

66 Customs duties

All plant, machinery, mechanical appliances, iron and steel works, cement, concrete, engines, boilers, dynamos, motors, generator sets, conductor cable, transformers, poles, insulators, inverters, photovoltaic modules, metering equipment and all materials, apparatus and equipment (including related parts) of any kind whatsoever imported into the Kingdom by, or on behalf of, an electricity concessionaire or a person carrying on an activity referred to in section 63(2)(c), and in either case imported into the Kingdom for the purpose of generating, distributing or supplying electricity in the Kingdom, shall be free of all customs duties, excise duties and any other taxes imposed by any Act in relation to the importation of those goods.

DIVISION THREE – PETROLEUM

67 Prohibition on import, distribution, storage or supply of petroleum

- (1) A person shall not import, distribute, store or supply petroleum except under the authority, and subject to the provisions of a petroleum licence issued under this Part.
- (2) A person who contravenes subsection (1), commits an offence and shall, on conviction, be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

68 Petroleum licence

- (1) A person intending to –
 - (a) import, distribute or supply petroleum; or
 - (b) operate a bulk storage facility,in the Kingdom shall apply to the Minister for a petroleum licence under this Part.
- (2) An application for a petroleum licence shall be made on the prescribed form and submitted together with the prescribed fee, in accordance with regulations made under this Act.
- (3) Notwithstanding subsection (1) and subsection (2), at the commencement of this Act, a petroleum company which has been registered and lawfully operating in Tonga for a period of at least 5 years or more shall be automatically granted a petroleum licence under this section which shall be valid in perpetuity, subject to continued compliance with requirements under this Act and prescribed in regulations

69 Criteria for issuance of a petroleum licence

- (1) Criteria for the issuance of a petroleum licence shall be established in regulations made under this Act.
- (2) Approval of a petroleum licence shall be issued by the Minister, with the consent of Cabinet.

70 Conditions of licence

- (1) The Minister, with the consent of Cabinet, shall impose conditions on the issuance of a petroleum licence in accordance with regulations made under this Act.

- (2) Among other things, the conditions for the issuance of a petroleum licence under this Act shall include –
- (a) a requirement that the holder of a petroleum licence shall maintain a minimum stock level of petroleum, which shall be in stock days;
 - (b) an undertaking by a petroleum licence holder to be responsible for costs directly associated with its failure to maintain the prescribed minimum stock level of petroleum; and
 - (c) an undertaking by a petroleum licence holder to comply with safety and environmental standards established in regulations made under this Act.

71 Validity of licence

Except for a petroleum company under section 68(3), the validity of a petroleum licence shall be as prescribed in regulations made under this Act.

72 Cancellation of petroleum licence

A petroleum licence may be cancelled by the Minister with the consent of Cabinet in accordance with criteria in regulations made under this Act.

73 Owners or operators shall have safety management system

A person that owns or operates a petroleum supply system shall implement and maintain, in accordance with regulations made under this Act, a safety management system that prevents, so far as is reasonably practical, the petroleum supply system from presenting a significant risk of –

- (a) serious harm to any member of the public; or
- (b) significant damage to property owned by a person other than the person that owns or operates the petroleum supply system.

74 Import and export at appointed places

Petroleum shall not be imported or exported from the Kingdom except –

- (a) at or from a declared harbour under section 2 of the Harbours Act (CAP. 22.04);
or
- (b) at such other place or places as may be appointed for that purpose by Cabinet to be notified in the Gazette.

75 Requirements for import or export

- (1) A person shall not import or export petroleum except under and in accordance with technical and safety specifications in this Act or any regulations made under this Act.
- (2) The Commission shall ensure strict compliance by industry with the technical and safety specifications for the import and export of petroleum provided in this Act or regulations made under this Act.
- (3) Petroleum contained on board any vessel in properly constructed bunkers or receptacles and used solely as the propelling power of such vessel shall not be deemed to have been imported or exported contrary to this Act.

76 Notice of arrival

- (1) The master or agent of a vessel carrying petroleum as cargo shall, on or before the arrival of such vessel, notify the Chief Executive Officer of the Ministry of Revenue and Customs) of the following –
 - (a) time of arrival of the vessel;
 - (b) volume of petroleum carried as cargo, exporters and intended receivers; and
 - (c) any other information required by the Commission.
- (2) The master and agent of a vessel shall supply all such information and comply with all directions of the Chief Executive Officer of the Ministry of Revenue and Customs in respect of the import of such petroleum, in accordance with the Customs and Excise Management Act (CAP. 11.03)

77 Anchorage of vessels carrying petroleum

A vessel with petroleum on board as cargo, whether the petroleum is –

- (a) intended to be discharged or transhipped;
- (b) passing through a port; or
- (c) has been loaded in the port,

shall comply with directions of the Ports Authority or the Ministry responsible for marine and ports in relation to the anchorage or port of such vessel in the Kingdom.

78 Power to lay pipes

Notwithstanding any rights or powers vested in any person or body of persons, whether incorporated or unincorporated, the Cabinet shall, in accordance with applicable law and subject to such conditions as it shall think fit to impose, permit any person or company to –

- (a) erect a tank or magazine for the storage of petroleum or for the purpose of the conveyance of petroleum to and from such tank or magazine;
- (b) enter upon, open and break up the surface of any land belonging to any private owner or owners and the soil and pavement of all or any street, and to open up any sewers, drains or tunnels within or under such privately owned land or such street;
- (c) lay down, place and maintain under such privately owned land and under all or any such street, pipes, conduits, service pipes and other works; and
- (d) from time to time to repair, alter or remove pipes, conduits, service pipes and other works and to do all other acts which such person or persons or company as aforesaid shall from time to time deem necessary,

for the conveyance of petroleum, doing as little damage as may be possible in the execution of the powers hereby granted, restoring as far as possible the land affected to its former state, and making compensation for any damage which may be done in the execution of such powers.

DIVISION FOUR – GAS

79 Prohibition on import, distribution, storage or supply of gas

- (1) A person shall not import, distribute, store or supply gas except under the authority, and subject to the provisions of a licence issued under this Part.
- (2) A person who contravenes subsection (1), commits an offence and shall, on conviction, be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

80 Gas operator licence

- (1) A person intending to –
 - (a) import, distribute or supply gas; or
 - (b) operate a bulk storage facility,in the Kingdom shall apply to the Minister for a gas operator licence under this Part.
- (2) An application for a gas operator licence shall be made on the prescribed form and submitted together with the prescribed fee, in accordance with regulations made under this Act.
- (3) Notwithstanding the requirements under this section, at the commencement of this Act, a gas company which has been registered and lawfully operating in Tonga for a period of at least 5 years or more shall be automatically granted a gas operator licence under this section.

81 Criteria for issuance of a gas operator licence

- (1) Criteria for the issuance of a gas operator licence shall be established in regulations made under this Act.
- (2) Approval of a gas operator licence shall be issued by the Minister, with the consent of Cabinet.

82 Conditions of licence

- (1) The Minister, with the consent of Cabinet, shall impose conditions on the issuance of a gas operator licence in accordance with regulations made under this Act.
- (2) Among other things, the conditions for the issuance of a gas operator licence under this Act shall include an undertaking by a gas operator licence holder to comply with safety and environmental standards established in regulations made under this Act.

83 Validity of licence

The validity of a gas operator licence shall be as prescribed in regulations made under this Act.

84 Cancellation of a gas operator licence

A gas operator licence may be cancelled by the Minister, with the consent of Cabinet in accordance with criteria in regulations made under this Act.

85 Owners or operators shall have safety management system

A person that owns or operates a gas supply or storage system shall implement and maintain, in accordance with regulations made under this Act, a safety management system that prevents, so far as is reasonably practical, the gas supply system from presenting a significant risk of –

- (a) serious harm to any member of the public; or
- (b) significant damage to property owned by a person other than the person that owns or operates the gas supply system.

86 Import and export at appointed places

Gas shall not be imported into or exported from the Kingdom except –

- (a) at or from a declared harbour under section 2 of the Harbours Act (CAP.22.04);
or

- (b) at such other place or places as may be appointed for that purpose by Cabinet to be notified in the Gazette.

87 Requirements for import or export

- (1) A person shall not import or export gas except under and in accordance with technical and safety specification in this Act or in regulations made under this Act.
- (2) The Commission shall ensure strict compliance by industry with the technical and safety specifications for the import and export of gas provided in this Act or in regulations made under this Act.

88 Notice of arrival

- (1) The master or agent of a vessel carrying gas as cargo shall, on or before the arrival of such vessel, notify the Chief Executive Officer of the Ministry of Revenue and Customs) of the following –
 - (a) time of arrival of the vessel;
 - (b) volume of gas carried as cargo, exporters and intended receivers; and
 - (c) any other information required by the Commission.
- (2) The master and agent of a vessel shall supply all such information and comply with all directions of the Chief Executive Officer of the Ministry of Revenue and Customs in respect of the import of such gas, in accordance with the Customs and Excise Management Act (CAP. 11.03)

89 Anchorage of vessels carrying bulk gas

A vessel with gas on board as cargo, whether the gas is –

- (a) intended to be discharged or transhipped;
- (b) passing through a port; or
- (c) has been loaded in the port,

shall comply with directions of the Ports Authority or the Ministry responsible for marine and ports in relation to the anchorage or port of such vessel in the Kingdom.

DIVISION FIVE – RENEWABLE ENERGY

90 Regulation of renewable energy services

The Commission may, from time to time, provide for the regulation of a renewable energy service provider as the Commission may deem fit.

PART VIII – CONCESSION CONTRACTS

91 Negotiation of Concession Contracts

- (1) A concession contract made under this Act shall be for a period of not more than 5 years.
- (2) When negotiating a concession contract, the parties shall have due regard for the principles set out in section 56 of this Act.
- (3) A concession contract shall be made publicly available by the Commission in a manner prescribed by regulations.

92 Terms and conditions

Terms and conditions of a concession contract for the generation, distribution or supply of electricity shall be as prescribed in Schedule 3.

93 Parties to a negotiation

The Parties to negotiate an concession contract shall include one or more representatives of the –

- (a) Energy Commission;
- (b) Government;
- (c) proposed concessionaire;
- (d) technical advisers of the parties to the concession contract; and
- (e) any other person that the parties may collectively agree.

94 Ministry to facilitate Power Purchase Agreements

If requested by an electricity concessionaire, the Ministry shall endeavour to provide assistance to facilitate the conclusion of a Power Purchase Agreement between the concessionaire and an Independent Power Producer.

PART IX – ADMINISTRATION AND MAINTENANCE OF ENERGY ASSETS

95 Administration of energy assets

- (1) The Energy Sector Infrastructure Committee is hereby established.

- (2) The Committee, in consultation with the Ministry, shall be responsible for the following –
- (a) maintaining a register of energy assets which are or have been donated to the Kingdom by development partners or other entities immediately preceding and after the commencement of this Act;
 - (b) overseeing the operation and maintenance of the assets listed in (a), including the following –
 - (i) determining responsibility for jurisdiction over the mini grid;
 - (ii) determining the best governance model for the ownership, maintenance, and administration of energy sector assets and infrastructure owned by the Government, including the formalisation of those decisions;
 - (c) determining the level of fees, levies or charges that should be charged in relation to (b) and how these payments are to be collected and disbursed;
 - (d) liaising with District and Town Officers and communities on each island group to ensure that donor funded equipment in their communities are operating well and for the general benefit of communities;
 - (e) liaising with development partners on the operation, maintenance and use of donated equipment; and
 - (f) supporting capacity building measures to ensure the development of relevant skill sets and knowledge for the effective operation and maintenance of equipment and resources under this Part.
- (3) Members of the Committee are as follows –
- (a) Chief Executive Officer of the Ministry (Chair);
 - (b) Chief Executive Officer of the Energy Commission;
 - (c) Chief Executive Officer of the Ministry of Lands;
 - (d) Chief Executive Officer of the Ministry of Finance;
 - (e) Chief Executive Officer of the Ministry responsible for infrastructure; and
 - (f) Chief Executive Officer of the Ministry responsible for trade.
- (4) The Ministry shall provide secretariat services to the Committee.

96 Registration of local community governance entities

- (1) A local community governance entity that was registered under the Incorporated Societies Act (CAP.17.06) for the purposes of implementing, monitoring or overseeing an energy sector project or asset immediately prior to the commence of this Act shall be required to register in accordance with regulations made under this Act.

- (2) The Minister, with the consent of Cabinet, shall promulgate regulations for the registration of local community governance entities under this section.

97 Fees, levies and charges

- (1) The Minister shall, with the consent of Cabinet, have the power to impose fees, levies and charges under this Part for the purposes of administering, operating and maintaining assets registered under this Part.
- (2) Fees, levies and charges established under subsection (1) shall be promulgated in regulations made under this Act.

98 Maintenance of equipment

The Minister shall, with the consent of Cabinet, develop regulations which provide for the operation and maintenance of equipment under this Part.

99 Consultations with local stakeholders

In carrying out its functions and responsibilities under this Act, the Commission shall endeavour to consult and work closely with energy service providers and key stakeholders, including local community governance entities established under this Act, the Ministry and relevant Government line Ministries, the private sector, as applicable, energy asset owners and managers and in a manner that facilitates the participation of women and vulnerable groups.

100 Assets and maintenance register

The Chief Executive Officer of the Ministry shall establish and maintain an assets and maintenance register under this Part.

101 Disposal of energy assets

The Chief Executive Officer of the Ministry shall establish and maintain a disposal of energy assets register under this Part.

PART X – REGULATION OF OFF-GRID ELECTRICITY

102 General matters

- (1) A person who owns or manages an off-grid electricity asset in the Kingdom with a peak generation capacity greater than 100 watts shall be required, in the prescribed manner, to –

- (a) register the off grid electricity asset with the Commission; and
 - (b) at the time of registration, confirm that installation of the off-grid electricity asset has been checked and approved by the Ministry or licenced electrician;
 - (c) each year, provide a report to the Commission which shall include –
 - (i) for the preceding year:
 - (A) basic financial statement, including revenue (such as fees collected, fundraising revenue, government or donor subsidies) and expenditure;
 - (B) a description of any safety incidents that occurred during the period and how they were dealt with;
 - (C) a description of any complaints received during the period and how they were dealt with; and
 - (ii) a management plan for the following year, including:
 - (A) proposed fees to be charged for off-grid electricity services (if applicable);
 - (B) a maintenance plan for the off-grid electricity asset; and
 - (C) health and safety procedures.
- (2) The Commission may exempt a person who owns or manages an off-grid electricity asset from the requirements of all or any of subsections (1)(b) to (1)(c) if the Commission considers there to be good reason for doing so.

103 Oversight powers

- (1) The Commission shall have oversight powers in relation to off-grid electricity, including the power to –
 - (a) request and obtain information from asset owners or managers;
 - (b) issue a compliance notice in accordance with section 141;
 - (c) recommend to a service provider that a service or maintenance contract be put in place between the owner or manager of the off-grid electricity asset and an appropriately qualified tradesperson;
 - (d) approve fees to be charged for off-grid electricity services;
 - (e) require the owner or manager of an off-grid electricity asset to cease operations for serious violation of safety standards; and
 - (f) prohibit the establishment of an off-grid electricity asset.
- (2) The Commission may consult with, and make recommendations to, the Ministry in respect of off-grid electricity.
- (3) The Minister may exercise the power of the Commission in subsection (1)(f).

104 Duty to report incidents

- (1) A person who owns or manages an off-grid electricity asset shall report any major safety incident to the Commission as soon as reasonably practical after the incident occurs.
- (2) For the purposes of subsection (1), a major safety incident includes any incident resulting in serious injury or loss of life, or that had the potential to result in serious injury or loss of life.
- (3) The Commission shall keep an Incidents register, into which all information relating to reported incidents under this section are kept.

PART XI – OCCUPATIONAL SAFETY AND HEALTH**105 Purpose of this Part**

The purpose of this Part is to ensure the safety and health of employees who are working within the energy sector.

106 Duties of employers

- (1) An employer shall provide and maintain so far as is practicable, a working environment for employees that is safe and without risk to health.
- (2) An employer shall develop an Occupational Safety and Health Policy to apply within the workplace which –
 - (a) complies with minimum conditions set out in this Part and in regulations made under this Act; and
 - (b) meets applicable industry standards for occupational safety and health.
- (3) An employer shall –
 - (a) identify existing and new hazards at work and assess each identified hazard to determine whether or not it is a significant hazard to any employee at work; and
 - (b) take steps as far as is practicable to eliminate each significant hazard in the workplace, and if the hazard remains significant –
 - (i) take steps as far as practicable to isolate the hazard from employees at the workplace;
 - (ii) introduce a system to control each employee's exposure to the hazard and provide protective clothing and equipment to protect employees from any harm that might arise from the hazard; and
 - (iii) provide such information, instruction, training and supervision as is necessary to enable employees to perform their work in a manner that is safe and without risks to their health or safety.

- (4) An employer who –
 - (a) knowing that any action, or a failure to take action, is reasonably likely to cause serious harm to an employee; and
 - (b) commits an action or fails to take action, which causes serious harm to an employee,commits an offence and is liable to a penalty under this Act.
- (5) If an injury or death occurs in a workplace due to a workplace hazard, the employer shall report the incident to the Ministry within 48 hours of the injury or death being made known to the employer.

107 Duties of employees

- (1) While at work, an employee shall –
 - (a) take reasonable care for his own health and safety and for the health and safety of any other employee who may be affected by his acts or omissions in the workplace; and
 - (b) co-operate with his employer, with respect to any action taken by the employer to comply with a requirement of this Part.
- (2) An employee shall not –
 - (a) wilfully or recklessly interfere with, or misuse anything provided by the employer for the purpose of protecting the health and safety of employees in the workplace; or
 - (b) wilfully place at risk the health or safety of himself or any person in the workplace.
- (3) An employee who fails to comply with subsection (2) commits an offence and is liable to a penalty under this Act.

108 Duties of the Commission

For the effective implementation of this Part, the Ministry shall provide the following –

- (a) an appropriate template for the development of an employer's Occupational Safety and Health Policy under this Part; and
- (b) subject to the availability of funding, relevant training for employers and employees in each sector with the objective to reduce workplace hazards and improve safety within work places.

PART XII – SAFETY AND ENVIRONMENTAL STANDARDS

109 Joint collaboration

In developing relevant safety and environmental standards under this Act, the Ministry shall consult with and work jointly with relevant Ministries and agencies of Government, including but not limited to the Fire Commissioner, Ministry responsible for environment, Ministry responsible for infrastructure, Ports Authority and Attorney General's Office.

PART XIII – MINIMUM ENERGY PERFORMANCE AND LABELLING STANDARDS

110 Purposes for this Part

Purposes for the implementation of MEPSL are to –

- (a) improve the energy efficiency of products imported into and sold in the Kingdom;
- (b) reduce the level of energy usage in the Kingdom by requiring consumers to purchase products that are more energy efficient and which utilise less energy; and
- (c) provide protection for consumers by ensuring that regulated items meet the prescribed standards and are properly labelled.

111 Scope of this Part

Except as otherwise declared by the Minister by notice in the Gazette, this Part shall cover all persons in the Kingdom.

112 Implementation and administration of MEPSL

- (1) The Ministry shall be responsible for the implementation, administration and enforcement of MEPSL.
- (2) The Ministry shall work in coordination with the Ministry responsible for trade and economic development and the Ministry responsible for revenue and customs to ensure that the effective implementation and enforcement of this Division.
- (3) Notwithstanding the joint responsibilities of the relevant Ministries under subsection (2), each officer shall be accountable to and shall report to his own Chief Executive Officer and Minister.

113 MEPSL standards established in regulations

- (1) The Minister shall, from time to time with the consent of Cabinet, make regulations for the following –
 - (a) establishment of MEPSL standards;
 - (b) administration, implementation and enforcement of MEPSL;
 - (d) prescribed fees and forms;
 - (e) offences and penalties; and
 - (f) any other matter which may be required from time to time.
- (2) Standards and processes for MEPSL shall be published by the Ministry on its website and made widely accessible to members of the public in the Kingdom and to Tongan subjects abroad.

114 Database

The Ministry shall establish and maintain a database containing all relevant information collected and collated under this Part.

115 Power to issue orders

- (1) The Minister may, for the purposes of this Part, issue an order for the –
 - (a) confiscation of goods which have been determined by the Head of the Ministry to be non-compliant with MEPSL regulations;
 - (b) re-export or disposal of goods which have been confiscated; or
 - (c) any other order which may be deemed appropriate by the Minister.
- (2) An order made under subsection (1) may require the –
 - (a) importer to arrange for the re-export of non-compliant goods from the Kingdom;
 - (b) Ministry to oversee the confiscation or destruction of non-compliant goods; and
 - (c) the importer or person from whom the goods were confiscated to refund the Ministry for any costs of, or related to, re-export or destruction.
- (3) An order for costs under section 2(c) shall not invalidate a prosecution under this Act or regulations made under this Act, or the imposition of offences and penalties.

116 Designation of officers

- (1) The Chief Executive Officer shall ensure that –
 - (a) officers of the Ministry are designated as enforcement officers under this Act for the enforcement of MEPSL;

- (b) as required, officers of relevant Ministries in sections 118 and 119 may be formally designated by the Minister as enforcement officers under this Act; and
 - (c) a sufficient number of officers are assigned from the Ministry for the implementation and enforcement of MEPSL requirements.
- (2) The Ministry shall ensure that –
- (a) Ministries with the joint responsibility for the implementation and enforcement of MEPSL are adequately resourced to carry out the functions under this Division; and
 - (b) MEPSL requirements and standards are continuously reviewed and updated for efficient and effective implementation.

117 Regulatory offences and penalties

- (1) The maximum fine for a regulatory penalty under this Act shall be –
- (a) in the case of a business, a fine of up to \$100,000 or a term of imprisonment of up to 12 months, or both; and
 - (b) in the case of an individual, a fine of up to \$50,000 or a term of imprisonment of up to 6 months, or both.

PART XIV – INTERAGENCY CO-ORDINATION

118 Inter-agency coordination

- (1) To ensure 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 responsible for commerce;
 - (b) Ministry responsible for infrastructure;
 - (c) Ministry responsible for fire and emergency services; and
 - (d) Ministry responsible for lands.
- (2) For clarity, the functions of each Ministry shall continue uninterrupted in accordance with each Ministry’s statutory responsibilities, whether or not a Ministry has entered into a Memorandum of Agreement with the Ministry under section 119.

119 Memorandums of Agreement

- (1) For the effective discharge of joint responsibilities under this Part, the Ministry may enter into a Memorandum of Agreement with a Government line Ministry 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.

PART XV – CAPACITY BUILDING

120 Capacity building

- (1) The Ministry shall develop a policy for staff development and capacity building and training for key stakeholders in the energy sector.
- (2) To the extent possible, capacity building measures should include key line Ministries that share responsibilities for the energy sector under this Act.

121 Technical and vocational training and programmes

- (1) The Ministry shall develop a policy for the provision of technical and vocational training and programmes for key stakeholders.
- (2) The policy shall be developed in consultation with key stakeholders in the energy sector so that industry needs are properly identified and met.

122 Curriculum development

The Ministry shall work jointly with the Ministry responsible for education for the development of appropriate curriculum for enhancing and building capacity within the energy sector.

123 Scholarships

Subject to available resources, the Ministry shall provide scholarships for the development of capacity within relevant Ministries and agencies of Government and also the energy sector.

124 Responsiveness to industry

The Ministry shall work consultatively with the energy industry for the implementation of all provisions under this Part.

PART XVI – INCENTIVES**125 Private sector incentives**

- (1) The Ministry shall, in consultation with Government line Ministries and development partners, seek to provide monetary and non-monetary incentives for private sector investment in the energy sector.
- (2) Private sector incentives may include specific exemptions from import duty to the Kingdom, assistance with capacity building and training, low interest loans, subsidies or direct grants.

126 General incentives

Subject to resources, the Ministry in consultation with relevant Ministries and agencies of Government, shall endeavour to provide general incentives to households and members of the public to facilitate the achievement of the national energy goals of the Kingdom and the key purposes of this Act.

PART XVII – FINANCIAL PROVISIONS**127 Ministry budget**

- (1) The budget of Ministry is from the following sources –
 - (a) the recurrent budget of the Ministry;
 - (b) a fee which the Ministry is entitled to charge or collect under this Act;
 - (c) monies allocated by the Legislative Assembly; or
 - (d) any other source of funding as may be approved by the Cabinet from time to time, or as may become available to the Ministry.

- (2) The Chief Executive Officer shall ensure that the recurrent budget of the Ministry proposes sufficient funding for the following –
 - (a) costs of the Ministry for the implementation and enforcement of this Act and for the effective discharge of the Ministry’s statutory responsibilities under this Act;
 - (c) initial and ongoing capacity building, staff development and training needs of the Ministry;
 - (d) procurement of new or additional resources of the Ministry, including equipment, vehicles and their replacement; and
 - (e) maintenance of buildings and facilities of the Ministry.
- (3) As applicable, the Chief Executive Officer shall propose sufficient funding for the Commission and Committee for each financial year.

128 Collection of fees, levies and charges

- (1) Fees, levies and charges collected by the Commission under Part VII of this Act shall be paid into the authorised bank account of the Commission in accordance with that Part.
- (2) Regulatory penalties issued under this Act shall be paid to a Magistrates Court and deposited in the General Revenue account of government.
- (3) All other fees, levies or charges collected by the Ministry shall be deposited into the General Revenue account of government.

PART XVIII – REGULATIONS AND STANDARDS

129 Power to make regulations

- (1) The Minister, with the consent of Cabinet, shall have the power to make regulations and for –

General application

- (a) powers of the Commission, including for the purpose of carrying out any of the functions of the Commission;
- (b) powers and rights of a concessionaire, including creation of easements and rights of access in favour of a concessionaire for the purpose of –
 - (i) performing any obligation under a concession contract or any regulations;
 - (ii) undertaking any work pursuant to a concession contract or any regulations; and

- (iii) any entitlement to, and the method for determining, any compensation payable to any person in respect of any such easement or rights of access in favour of a concessionaire;
- (c) fees, levies or charges or the manner in which those fees, levies or charges are to be calculated, collected and paid to the Ministry, Commission or any other person;
- (d) the manner in which every concession contract is to be made publicly available under this Act;
- (e) the disposal of waste, by products or hazardous materials used in or generated by the energy sector;

Electricity

- (f) licensing of electricians, including the establishment of offences and penalties;
- (g) electrical safety, including in relation to back up generation and self generation, and including the establishment of offences and penalties;
- (h) requirements for major electrical work, including maintenance or protection of submarine cables, provided any such electrical work is not inconsistent with a concession contract;
- (i) fees, levies or charges payable by any person (other than a concessionaire) to the Commission which reflect the actual or estimated costs of the performance or exercise by the Commission of any of the Commission's functions, powers and duties under this Act or any regulations made under this Act that do not relate to the performance of the Commission's functions, powers and duties under a concession contract;
- (j) levies payable by any person (other than a concessionaire) to the Commission which reflect the actual or estimated costs of the performance or exercise by the Commission of any of the Commission's functions, powers or duties under a concession contract and, without limiting the foregoing, any such regulations —
 - (i) may authorise and require a concessionaire to collect on behalf of the Commission any such levies;
 - (ii) may prescribe the manner in which such levies are to be calculated, collected and paid to the Commission; and
 - (iii) shall, if those regulations authorise and require a concessionaire to collect such levies on behalf of the Commission —
 - A require the concessionaire to set out the details of any such levies (including the amount thereof and a statement that they are payable to the Commission) in any invoice by a concessionaire to any person by whom such levies are payable to the extent that it is reasonably practical for the

concessionaire to do so, having regard to the functionality of the concessionaire's invoicing systems; and

- B exclude any liability for the concessionaire if any person by whom such levies are payable fails to pay any such levies;
- (k) the transfer of property to the Energy Commission under section 156;
 - (l) the demarcation point between a concessionaire's electricity network and the electrical works, fittings and other installations for which a purchaser of electricity from a concessionaire is responsible;
 - (m) requiring any person carrying on, or proposing to carry on, back up generation or self generation to provide to the Commission, at such times as required by the Commission, information relating to the method of generation, use and amount of electricity generated, or any other information relating to back up generation or self generation as the Commission may reasonably require;
 - (n) the right of the Commission, or its nominees, to enter on the property of any person carrying on, or proposing to carry on, back up generation or self generation, for the purpose of assessing whether the person is in compliance with this Act and any regulations made under it.

Petroleum and Gas

- (o) regulating the transport of petroleum or gas whether by land or water;
- (p) regulating the discharging and loading of petroleum or gas from vessels to the shore or wharves and vice versa;
- (q) prescribing the quantity or mode of storage of and the receptacles in which petroleum or gas may be carried in any vessel, cart, truck or other vehicle and the quantities to be contained in such receptacles;
- (r) 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;
- (s) prescribing the quantity of petroleum which may be stored or kept in unlicensed premises and the manner of storing or keeping such petroleum;
- (t) providing for the licensing of places in which petroleum or gas is stored;
- (u) prescribing the rules to be observed in any place where petroleum or gas is kept, stored, used or conveyed, whether licensed or not;
- (v) prescribing the marking of a package or packages containing petroleum or gas;

Renewable Energy

- (w) licensing of renewable energy operators;
- (z) establishing technical and safety requirements;
- (y) establishing regulations for energy efficiency;

- (z) prescribing any powers for the purposes of carrying out any of the functions of the Ministry or Commission;
 - (aa) ownership of renewable energy projects;
 - (bb) requirements for the establishment or construction of any plant, premises or facilities for the production, storage or distribution of renewable energy;
 - (cc) specifying any renewable energy source;
 - (dd) providing or prescribing any institutional or administrative matters relating to a proclamation made under this Act;
 - (ee) any matter relating to any international obligation of the Kingdom;
 - (ff) the demarcation point in which renewable energy is passed to a third party or consumer;
 - (gg) any prohibition on the carrying out of activities relating to renewable energy;
 - (hh) method of production, storage, distribution or use, or the quantity of renewable energy involved in the operation by any person;
 - (ii) the right of the Ministry or the Commission (or their nominees) to enter onto the property of a person carrying on or proposing to carry on any production, storage or distribution of renewable energy, for the purpose of assessing whether the person is in compliance with this Act or any regulations made under this Act.
- (2) The Minister shall not make any regulation which would be inconsistent with the terms of a concession contract.
- (3) The power to make regulations under this section with respect to petroleum or gas includes the power to make regulations with respect to any particular class of petroleum or gas.
- (4) Regulations shall establish clearly, among other things, the agency responsible for their enforcement.

130 Power to establish standards

The Minister, with the consent of Cabinet, shall have the power to make standards in relation to or for the matters prescribed in section 129.

131 Publication and dissemination of regulations and standards

All regulations and standards made under this Part shall be published by the Ministry in the Ministry's website and made accessible to key stakeholders and interested members of the public free of charge.

132 Consultation on standards and regulations

In the development of regulations or standards under this Act and of the independent price and quality declarations under section 43, the Ministry shall consult with the Commission, energy service providers and other relevant stakeholders in the energy sector.

PART XIX – REGULATORY PENALTIES

133 Power to issue

- (1) An enforcement officer shall have the power to issue a regulatory penalty under this Act.
- (2) In addition to provisions under this Part, the Ministry may develop enforcement protocols to be approved by the Minister, for the purposes of issuing and enforcing regulatory penalties.

134 Election of process

- (1) In the event that a person is issued with a regulatory penalty, that person may elect to do one of the following –
 - (a) accept the alleged infringement and pay the prescribed fine; or
 - (b) contest the allegation by submitting a letter in writing to the Ministry outlining the reason or reasons for contesting the allegation.
- (2) Where a person contests in the allegation under subsection (1)(b), the Ministry shall take into account all relevant information from the complainant and the enforcement officer, and within 21 days of the letter being received in subsection (1)(b), make a final and binding decision which shall be communicated in writing to the complainant.
- (3) If a person who is issued with a regulatory penalty does not respond within a period of 21 days, the matter will be automatically referred by the Ministry to the Magistrates Court for determination.
- (4) In the Notice of a regulatory penalty, the Notice shall clearly state the following –
 - (a) the alleged offence;
 - (b) date on which the offence was allegedly committed;
 - (c) provision or provisions which have been violated and prescribed sanction; and
 - (d) right of the alleged offender to elect the process in accordance with subsection (1) and the prescribed period within which this shall be done.

135 Types and level

- (1) The types and level of regulatory penalties to be issued under this Part shall be as prescribed.
- (2) The maximum amount for a regulatory penalty shall be not less than \$2,000 and not more than \$10,000.

PART XX – ENFORCEMENT**136 Designation of enforcement officers**

- (1) In relation to –
 - (a) staff or officers of the Ministry or of a government line Ministry, the Minister may designate a person; and
 - (b) staff or officers of the Energy Commission, the Energy Commission may designate a person,as an enforcement officer for the purposes of this Act .
- (2) A designation under subsection (1) shall be in the form prescribed in Schedule 6, with the instrument of designation clearly stating the duration and the powers provided.
- (3) Once designated, an enforcement officer shall be provided with a certificate of identity, which shall be in the form prescribed in Schedule 7.
- (4) Before a person is designated as an enforcement officer under subsection (1), the Minister or Energy Commission shall ensure that the person is –
 - (a) by their level of skill, training, qualifications or experience; or
 - (b) by their employment record,display such qualities or competencies which show that they are suitable to undertake duties under this Act.
- (5) The designating authority may revoke the designation of an enforcement officer in accordance with subsection (6).
- (6) A revocation shall be made in writing and shall clearly state the following –
 - (a) effective date for the revocation of powers;
 - (b) reason for the revocation; and
 - (c) powers that have been revoked.
- (7) An enforcement officer whose designation has been revoked under subsection (6) shall return the certificate of identity which was issued to the officer to the designating authority's office and shall not use the identity card after the revocation date.

- (8) Notwithstanding the revocation of a person's designation as an enforcement officer, a person from the public service shall continue to be employed by the Ministry, until the Public Service Commission otherwise directs the Ministry in writing.

137 General powers

An enforcement officer shall have the power to –

- (a) inspect or re-inspect a business or business premise in accordance with section 138 or section 142 to ensure that provisions in this Act or regulations made under this Act are complied with;
- (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;
- (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; or
- (e) issue on a person a regulatory penalty, notice or directive in accordance with this Act or regulations made under this Act.

138 Power to inspect

- (1) An enforcement officer shall have the power to inspect or re-inspect -
 - (a) any business or business premise;
 - (b) goods sold, displayed or stored at a business or its premises;
 - (c) services provided by a proprietor or business;
 - (d) receipt books, records and related documents;
 - (e) pricing and pricing lists of goods or services; or
 - (f) any other matter that is relevant to the inspection.
- (2) A police officer of or above the rank of sub-inspector or other person duly appointed by the Minister shall, for the purposes of this Act, have power to —
 - (a) enter, inspect and examine between the hours of 7 a.m. and 6 p.m. any premises, other than a dwelling-house, on which he has reasonable cause to believe petroleum is stored or kept;
 - (b) take samples of any petroleum stored or kept in such premises;
 - (c) seize or detain any petroleum stored or kept in such premises contrary to the provisions of this Act;
 - (d) make such examination and inquiry as may be necessary to ascertain whether the provisions of the Act are complied with.

- (3) A person who –
- (a) refuses to permit a designated officer to enter or inspect any premises; or
 - (b) hinders or obstructs a designated officer in the execution of his duty under this Act; or
 - (c) refuses to allow a designated officer to take samples in pursuance of this section or to facilitate that purpose,
- commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 1 month, or both.
- (4) Where a person is convicted of an offence against the provisions of this Act, a court with jurisdiction may order any petroleum seized and detained to be forfeited and to be sold or otherwise disposed of, or, in its discretion, to be returned to the person appearing to be entitled to it.

139 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 enforcement officer while he 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 enforcement officer in relation to the objective of the inspection; or
 - (b) permit the taking of samples and the gathering of evidence, including photographs.

140 Non-compliance on first inspection

If an enforcement officer has reasonable grounds to believe that a person is or has failed to comply with the Act or regulations made under the Act, the enforcement officer may carry out one or both of the following –

- (a) issue a regulatory penalty in accordance with Part XIX; or
- (b) issue a compliance notice in accordance with section 141.

141 Issuance of Compliance Notice

A compliance notice issued under this Act shall –

- (a) state the provision or provisions under the Act or regulations that has or have been breached;
- (b) specify measures which the owner shall undertake to ensure compliance; and
- (c) state the date on which the owner shall comply, following which there will be a re-inspection of the business or premises by an enforcement officer.

142 Non-compliance on re-inspection

If during a re-inspection of a business or premise, an enforcement officer finds that a person has failed to comply with a compliance notice issued under section 141, the enforcement officer may carry out one or both of the following –

- (a) issue an additional regulatory penalty in accordance with Part XIX; or
- (b) make an appropriate recommendation to the Commission, including for the prosecution of the person under the Act or regulations, or making a recommendation to the Ministry responsible for commerce for the suspension of the person's business licence.

143 Complaint against an enforcement officer

- (1) A person who is aggrieved by the action of an enforcement officer under this Act may submit a complaint in writing –
 - (a) to the Chief Executive Officer of the Ministry; or
 - (b) in the case of an officer from another Government line Ministry, to the Chief Executive Officer of that Ministry, setting out the details of the complaint.
- (2) The relevant Chief Executive Officer may request additional information from the person making the complaint or from the enforcement officer or require the parties to appear in person.
- (3) If the Chief Executive Officer determines that it is a major disciplinary issue, the Chief Executive Officer shall –
 - (a) refer the matter to the Public Service Commission to be dealt with in accordance with the relevant policy of the Commission; and or
 - (b) refer the matter to the police for the determination of appropriate legal charges.
- (4) No action shall lie against an enforcement officer for any injury, loss or damage under this Act or regulations made 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 XXI – OFFENCES AND PENALTIES**144 Offences**

- (1) Any person who –

- (a) fails, without reasonable case, to provide any information or answer any question put to him by the Commission under this Act;
 - (b) provides false information to the Ministry or Commission; or
 - (c) fails, without reasonable cause, to provide information in a timely manner, is guilty of an offence and shall be liable upon conviction –
 - (i) in the case of a person other than a body corporate, to a fine not exceeding \$1,000 or a term of imprisonment not exceeding two months, or both; or
 - (ii) in the case of a body corporate, to a fine not exceeding \$5,000 or a term of imprisonment not exceeding six months, or both.
- (2) Any person who contravenes section 63(1) of this Act commits an offence and shall be liable upon conviction —
- (a) in the case of a person other than a body corporate, for each offence to a fine not exceeding \$1,000;
 - (b) in the case of a body corporate, to a fine not exceeding three times the value of the electricity generated in contravention of section 63(1) (such quantum of electricity generated to be reasonably estimated by the Commission).
- (3) An information for an offence against this section may be laid at any time within two years from the time when the subject matter of the information arose.
- (4) If the Commission becomes aware (whether by notification by a concessionaire or otherwise) that there are reasonable grounds to suspect a person has committed an offence under subsection (1), then —
- (a) the Commission shall promptly investigate the alleged offence; and
 - (b) if the Commission is satisfied on reasonable grounds that there is a case to answer, the Commission shall promptly take such action as is appropriate to prevent a continued contravention of section 63(1).
- (5) Without limiting the rights and obligations of the Commission under this section, if —
- (a) a concessionaire has reasonable grounds to suspect a person has committed an offence under subsection (1); and
 - (b) that concessionaire is adversely affected by the suspected contravention of section 63(1) by that person,
- that concessionaire shall be entitled to seek injunctive relief to prevent a continued suspected contravention of section 63(1).

145 General Penalty

Any person who acts in contravention of or fails to comply with the provisions of this Act shall be guilty of an offence and, where no special penalty is provided, shall be

liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 6 months or both.

146 Failure to provide information and obstruction

A person who —

- (a) wilfully fails to give information or to produce any document lawfully required of that person under this Act or regulations made under this Act;
- (b) knowingly provides false information; or
- (c) obstructs the work of the Commission or an enforcement officer under this Act or regulations,

shall be liable on conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding of 1 month, or both.

147 Failure to comply

A person who contravenes or fails to comply with any of the provisions of this Act or of any order, notice, direction or requirement lawfully made or given under this Act shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 months, or both.

148 Offences by corporations

Where a person charged with an offence under the provisions of this Act is a body corporate, a person who at the time of the commission of the offence was a director or officer of the body corporate may be charged jointly in the same proceedings with such body corporate, and where the body corporate is convicted of the offence, every such director or officer shall be deemed to be guilty of that offence, unless the director or officer satisfies the Court that the offence was committed without their knowledge and that they exercised all due diligence to prevent the commission of the offence.

149 Responsibility of employer for acts of servants

- (1) A person who employs an employee, officer, contractor or agent shall be 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.

150 Personal immunity of directors, officers and employees

Notwithstanding any other provision in this Part, a director, officer, employee, agent or member of the Ministry, Commission or Committee or any person acting under direction of the Ministry, Commission or Committee pursuant to this Act shall not be personally liable for any act or default of the Ministry, Commission or Committee which is done or omitted to be done in good faith and without gross negligence in the course of each entity's operations.

151 Prosecution

A prosecution for an offence under this Act may be instituted and conducted by the Ministry, Commission, or by the Attorney General's office.

PART XXII – REGISTERS**152 Chief Executive Officer to keep registers**

- (1) The Chief Executive Officer shall establish and maintain the following registers within the Ministry –
 - (a) details of all energy service providers in the Kingdom;
 - (b) list of persons who are delegated responsibilities under this Act and effective date;
 - (c) names of enforcement officers who are designated by the Minister under this Act, including their date and duration of appointment;
 - (d) declared conflicts of interest of or by members of the Commission, based on the secretary of the Commission's register in section 32(3);
 - (e) register of models of electrical goods that have been approved for import under MEPSL requirements;
 - (f) register of energy service providers and manufacturers that have been approved for particular activities under MEPSL requirements;
 - (g) register of laboratories or testing stations approved by the Ministry to conduct tests or provide reports in relation to electrical appliances or models;
 - (h) memorandums of agreement entered into by the Ministry with other Government line Ministries;
 - (i) complaints received and related outcomes;
 - (j) list of assets, chattels, leases or buildings of the Ministry; and
 - (k) any other register that the Ministry deems necessary for the efficient and effective discharge of the Ministry or Ministry's functions.
- (2) To the extent possible, these registers shall be maintained electronically.

PART XXIII – MISCELLANEOUS

153 Annual report of the Ministry

- (1) The Chief Executive Officer shall, no later than 6 months after the end of each financial year, furnish to the Minister a copy of the Ministry's Annual Report which outlines its operations for the preceding financial year.
- (2) As soon as is reasonably practical, the Minister shall present a copy of the Ministry's Annual Report to the Cabinet and the Legislative Assembly.

154 Prescribed fees

The Ministry shall prescribe fees under this Act.

PART XXIV – TRANSITIONAL, REPEAL AND SAVINGS

155 Transitional provisions relating to the Commission

- (1) A person who, immediately before the commencement of this Act, was a member of the Electricity Commission under the Electricity Act (CAP.14.04), shall continue to serve as a member of the Energy Commission under this Act until the member's term as a Commissioner expires, at which point the member may be reappointed or a new member of the Commission may be appointed in accordance with this Act.
- (2) A person who, immediately before the commencement of this Act, was an employee or subcontractor of the Electricity Commission under a provision of the Electricity Act (CAP.14.04) shall continue to be an employee or subcontractor of the Energy Commission until the employee or subcontractor's contract expires, at which point the employee or subcontractor may be reappointed or reengaged, or a new employee or subcontractor appointed by the Energy Commission in accordance with this Act.
- (3) A concession contract or agreement granted by the Electricity Commission under the Electricity Act (CAP.14.04) or regulations made under that Act before the commencement of this Act shall continue in force until the term ends.
- (4) The rights, obligations, liabilities, contracts and engagements of the Electricity Commission become the rights, obligations, liabilities, contracts and engagements of the Energy Commission.
- (5) A decision or exemption issued by the Electricity Commission under the Electricity Act (CAP.14.04) or regulations made under that Act before the commencement of this Act shall continue in force as if it were a decision or exemption issued by the Energy Commission.

- (6) A directive or order issued by the Electricity Commission under the Electricity Act (CAP.14.04) before the commencement of this Act shall be taken to have been a directive or order made by the Energy Commission.
- (7) Any proceeding (including an action for a breach of discipline or breach of contract) commenced under a provision of the Electricity Act (CAP.14.04) and not yet determined, may be continued after the commencement of this Act.
- (8) An appointment made under the Electricity Act (CAP.14.04) shall be taken to be an appointment made under this Act and shall continue until the end of the term of appointment,
Provided that the conditions or purposes for the appointment are not inconsistent with this Act.
- (9) A licence or permit issued by the Electricity Commission under the Electricity Act (CAP.14.04) before the commencement of this Act shall be deemed to have been a licence or permit issued by the Energy Commission under this Act.

156 Transfer of functions, property and documents

- (1) At the commencement of this Act, functions and powers of the Electricity Commission in relation to the regulation of electricity shall be moved to the Energy Commission established under this Act.
- (2) For the transition of functions under subsection (1) –
 - (a) all files, reports, documents, correspondences or property in the possession of the Electricity Commission, whether in hard copy or electronic, shall be transferred to the Energy Commission; and
 - (b) all files, reports, documents or correspondences in the possession of the Electricity Commission, in so far as they relate to the regulation of the price of petroleum or gas, whether in hard copy or electronic, shall be transferred to the Energy Commission.
- (3) Notwithstanding subsection (2), the Commission may, by notice in writing to the Minister not later than 28 days after the date of commencement of this Act, disclaim any property of the Electricity Commission or Tonga Competent Authority (or any category thereof) which was transferred to the Commission under subsection (2) and —
 - (a) the transfer under subsection (1) of any property so disclaimed shall be of no effect; and
 - (b) the property so disclaimed shall be deemed never to have transferred to the Commission.
- (4) In addition to subsection (2), any property of the Electricity Commission which is cash (including any cash reserves) shall transfer to the Commission.

- (5) The provisions of this section shall apply to any lease of land where the Electricity Commission is the lessee, subject to those changes being formalised in accordance with the Land Act.
- (6) The provisions of Schedule 5 shall apply to any property which is transferred under subsection (2) and has not been disclaimed under subsection (3).

157 Existing rights preserved

Notwithstanding any other provision of this Act and the repeal of the Electricity Act (CAP.14.04) but subject to any regulations made under that Act —

- (a) any easements or rights of access existing under the Electricity Commission prior to the date of commencement of this Act;
- (b) any tunnels constructed under, or aqueducts or flumes constructed over, any land pursuant to the Electricity Act prior to the date of commencement of this Act;
- (c) any poles erected on, and any wires carried over, any land pursuant to the Electricity Act (CAP.14.04) prior to the date of commencement of this Act; and
- (d) any machinery and materials used in the construction or repair of any such electric works stored on any land pursuant to the Electricity Act (CAP.14.04) prior to the date of commencement of this Act,

shall be deemed to be authorised for the purposes of, and to the extent required by, this Act and a concessionaire shall continue to enjoy such access rights and easements, to be entitled to have constructed or erected such electric works and to store such machinery and materials as if granted, constructed, erected or stored pursuant to regulations made under this Act.

158 Transitional provisions relating to price regulation

- (1) At the commencement of this Act, Division Three, Part VI (Price Regulation) shall not come into force until the Minister, by notice in the Gazette, declares that the Commission is ready to take on the functions and responsibilities under that Part.
- (2) Prior to this declaration, the Tonga Competent Authority established under the Price and Wage Control Act (Cap. 17.10) shall continue to establish, regulate and monitor the price of petroleum and gas in accordance with the Price and Wage Control Act (Cap. 17.10).

159 Requirement to register

Notwithstanding any other applicable law in the Kingdom —

- (a) within 3 months of the commencement of this Act, a person who is importing, supplying or selling petroleum, gas or renewable energy products or services in

the Kingdom shall advise the Chief Executive Officer, on the prescribed form, of the place at which the person is carrying on business.

- (b) a person who intends to commence business importing, supplying or selling petroleum gas or renewable energy products or services shall, at least 1 month before the commencement of business, notify the Chief Executive Officer, on the prescribed form of the place at which the person will carry on business.
- (c) a person who intends to change that person's place of business in relation to the import, supply or sale of petroleum, gas or renewable energy products or services shall notify the Chief Executive Officer at least 1 month before the change is to take place.

160 Repeal and savings

At the commencement of this Act –

- (a) the Electricity Act (CAP.14.04) is repealed;
- (b) the Petroleum Act (CAP. 20.04) is repealed;
- (c) the Renewable Energy Act (CAP. 14.07) is repealed;
- (d) regulations and bylaws which were made under the Electricity Act (CAP.14.04) and the Petroleum Act (CAP.20.04) and are currently in force are saved and shall continue in force until they are repealed and replaced under this Act; and
- (e) in relation to regulations and bylaws saved under subsection (d), a reference to the Electricity Commission shall be deemed to be a reference to the Energy Commission under this Act.

Passed by the Legislative Assembly this **25th** day of **August** 2021.

SCHEDULE 1*(Section 18(8))***RULES OF PROCEDURE OF THE ENERGY ADVISORY COMMITTEE**

The Advisory Committee shall have the following rules of procedure, and shall include any other rule as may be incorporated and approved by Cabinet from time to time -

1 Meetings of the Advisory Committee

- (1) The Chair of the Advisory Committee shall convene such meetings of the Committee as the Chair thinks necessary for the efficient performance of the powers of the Committee under this Act.
- (2) A meeting of the Committee may be held either —
 - (a) by a quorum of members being assembled together at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication by which a quorum of members can simultaneously hear each other throughout the meeting.
- (3) The Chair shall preside at every meeting of the Committee, unless absent from that meeting.

2 Quorum

- (1) At a meeting of the Advisory Committee the quorum shall be 5 members.
- (2) If a quorum is not present within 30 minutes after the time appointed for the meeting then —
 - (a) the meeting is adjourned to the next working day at the same place and time;
 - (b) at any such reconvened meeting of the Advisory Committee the quorum shall be 2 members; and
 - (c) if a quorum is not present within 30 minutes after the time appointed for the reconvened meeting, the meeting is dissolved.

3 Voting

- (1) All questions arising at any meeting of the Advisory Committee shall be determined by a majority of votes of the members present and voting.
- (2) The Chair shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

- (3) Subject to the provisions of this Act, the Chair may give directions regarding the procedure to be followed at or in connection with any meeting of the Advisory Committee.

4 Determinations

A determination in writing which is signed, or assented to in writing, by all the members of the Advisory Committee necessary to constitute a quorum shall be as valid and effectual as if it had been made at a meeting of the Advisory Committee duly called and constituted by those members.

5 Functions of the Chair

- (1) Responsibilities of the Chair are as follows –
 - (a) chair the meetings of the Advisory Committee;
 - (b) ensure that nominations for membership in the Advisory Committee are in accordance with this Act;
 - (c) ensure that decisions and recommendations of the Advisory Committee are consistent with objectives in this Act; and
 - (d) ensure that the Advisory Committee provides an annual report to the Minister, who shall inform Cabinet of the Advisory Committee's activities and recommendations.
- (2) No decision of the Advisory Committee, and no proceeding before the Advisory Committee, shall be held bad for want of form, or be void or in any way vitiated by reason of any informality or error of form.

6 Functions of the Deputy Chair

- (1) Where the Chair becomes incapable of acting by reason of illness, absence, or other sufficient cause or during any vacancy in the office of Chair, or if the Chair considers it not proper or desirable to adjudicate personally on any specified matter, the Deputy Chair shall act for the Chair for that particular period or purpose.
- (2) In the event of sub-article (1), the Deputy Chair shall be deemed to be the Chair, and shall have and may exercise all the powers, functions, and duties of that office for the period or for the purpose stated in the appointment.
- (3) No appointment of a member of the Advisory Committee to the office of Chair and no act done by that member as such, and no act done by the Advisory Committee while any member is acting as such, shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

7 Functions of the secretary of the Advisory Committee

- (1) Functions of the secretary of the Advisory Committee shall include -
 - (a) keeping proper minutes of meetings of the Advisory Committee;
 - (b) notifying members as to meetings of the Advisory Committee within the prescribed time, and oversee timely distribution of meeting materials;
 - (c) liaising between the Ministry and the Chair of the Advisory Committee as necessary on matters relevant to the Advisory Committee, for effective communication between the Ministry and Advisory Committee;
 - (d) liaising between the Advisory Committee and the public, key stakeholders and the media as is required from time to time;
 - (e) ensuring that confidential information of the Advisory Committee are kept in secure storage and released only according to the instructions of the Advisory Committee; and
 - (f) complying with any other lawful directive of the Advisory Committee.
- (2) Functions of the Secretariat shall include:
 - (a) preparing and distributing meeting materials of the Advisory Committee under the supervision of the secretary of the Advisory Committee;
 - (b) keeping proper filing systems of reports, documents, accounts and other records of the Advisory Committee;
 - (c) carrying out any other administrative or financial functions of the Advisory Committee as directed by the Chair; and
 - (d) following the lawful directions of the secretary of the Advisory Committee in accordance with this Act.

8 Members not personally liable

A member of the Advisory Committee shall not be personally liable for any act or omission by the Advisory Committee which was carried out in good faith in pursuance of the powers, duties and functions of the Advisory Committee under this Act.

9 Procedural matters

- (1) The Advisory Committee shall maintain a continual programme of audits and reviews, which will provide for the regular and systematic review of a concessionaire contract.
- (2) The Advisory Committee shall, where appropriate, express on the reliability of the information contained and the management and control of concessionaire assets.
- (3) The Advisory Committee shall ensure that all reviews are properly specified, planned and managed, so as to ensure that the regulatory profits are completed to the required standard in the time specified.

10 Internal policies and guidelines

The Advisory Committee may, from time to time establish internal policies relating to the work of the Advisory Committee, provided that internal policies of the Advisory Committee are –

- (a) developed and finalised after due consultation with relevant Government and non-Government stakeholders; and
- (b) adopted with the consent of the Minister and Cabinet.

SCHEDULE 2*(Section 33(1))***RULES OF PROCEDURE OF THE ENERGY COMMISSION**

The Energy Commission shall have the following rules of procedure, and shall include any other rule as may be incorporated and approved by Cabinet from time to time -

1 Meetings of the Commission

- (1) The Chair of the Commission shall convene such meetings of the Commission as the Chair thinks necessary for the efficient performance of the powers of the Commission under this Act.
- (2) A meeting of the Commission may be held either —
 - (a) by a quorum of members being assembled together at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication by which a quorum of members can simultaneously hear each other throughout the meeting.
- (3) The Chair shall preside at every meeting of the Commission, unless absent from that meeting.

2 Quorum

- (1) At a meeting of the Commission the quorum shall be 3 members.
- (2) If a quorum is not present within 30 minutes after the time appointed for the meeting then —
 - (a) the meeting is adjourned to the next working day at the same place and time;
 - (b) at any such reconvened meeting of the Commission the quorum shall be 2 members; and
 - (c) if a quorum is not present within 30 minutes after the time appointed for the reconvened meeting, the meeting is dissolved.

3 Voting

- (1) All questions arising at any meeting of the Commission shall be determined by a majority of votes of the members present and voting.
- (2) The Chair shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

- (3) Subject to the provisions of this Act, the Chair may give directions regarding the procedure to be followed at or in connection with any meeting of the Commission.

4 Determinations

A determination in writing which is signed, or assented to in writing, by all the members of the Commission necessary to constitute a quorum shall be as valid and effectual as if it had been made at a meeting of the Commission duly called and constituted by those members.

5 Functions of the Chair

- (1) Responsibilities of the Chair are as follows –
 - (a) chair the meetings of the Commission;
 - (b) ensure that nominations for membership in the Commission are in accordance with this Act;
 - (c) ensure that decisions and recommendations of the Commission are consistent with objectives in this Act; and
 - (d) ensure that the Commission provides an annual report to the Minister, who shall inform Cabinet of the Commission's activities and recommendations.
- (2) No decision of the Commission, and no proceeding before the Commission, shall be held bad for want of form, or be void or in any way vitiated by reason of any informality or error of form.

6 Functions of the Deputy Chair

- (1) Where the Chair becomes incapable of acting by reason of illness, absence, or other sufficient cause or during any vacancy in the office of Chair, or if the Chair considers it not proper or desirable to adjudicate personally on any specified matter, the Deputy Chair shall act for the Chair for that particular period or purpose.
- (2) In the event of sub-article (1), the Deputy Chair shall be deemed to be the Chair, and shall have and may exercise all the powers, functions, and duties of that office for the period or for the purpose stated in the appointment.
- (3) No appointment of a member of the Commission to the office of Chair and no act done by that member as such, and no act done by the Commission while any member is acting as such, shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

7 Functions of the secretary of the Commission and secretariat

- (1) Functions of the secretary of the Commission shall include -
 - (a) keeping proper minutes of meetings of the Commission;
 - (b) notifying members as to meetings of the Commission within the prescribed time, and oversee timely distribution of meeting materials;
 - (c) liaising between the Ministry and the Chair of the Commission as necessary on matters relevant to the Commission, for effective communication between the Ministry and Commission;
 - (d) liaising between the Commission and the public, key stakeholders and the media as is required from time to time;
 - (e) ensuring that confidential information of the Commission are kept in secure storage and released only according to the instructions of the Commission; and
 - (f) complying with any other lawful directive of the Commission.
- (2) Functions of the Secretariat shall include:
 - (a) preparing and distributing meeting materials of the Commission under the supervision of the secretary of the Commission;
 - (b) keeping proper filing systems of reports, documents, accounts and other records of the Commission;
 - (c) carrying out any other administrative or financial functions of the Commission as directed by the Chair; and
 - (d) following the lawful directions of the secretary of the Commission in accordance with this Act.

8 Members not personally liable

A member of the Commission shall not be personally liable for any act or omission by the Commission which was carried out in good faith in pursuance of the powers, duties and functions of the Commission under this Act.

9 Procedural matters

- (1) The Commission shall maintain a continual programme of audits and reviews, which will provide for the regular and systematic review of a concessionaire contract.
- (2) The Commission shall, where appropriate, express on the reliability of the information contained and the management and control of concessionaire assets.
- (3) The Commission shall ensure that all reviews are properly specified, planned and managed, so as to ensure that the regulatory profits are completed to the required standard in the time specified.

10 Internal policies and guidelines

The Commission may, from time to time establish internal policies relating to the work of the Commission, provided that internal policies of the Commission are –

- (a) developed and finalised after due consultation with relevant Government and non-Government stakeholders; and
- (b) adopted with the consent of the Minister and Cabinet.

SCHEDULE 3*(Sections 64(1) & 92)***REQUIREMENTS FOR A CONCESSION CONTRACT FOR THE GENERATION, DISTRIBUTION OR SUPPLY OF ELECTRICITY****1 Interpretation**

In this Schedule –

“**tariff**” means the sum that is charged to electricity consumers for supply of electricity.

2 First period

A concession contract shall provide for —

- (a) an opening tariff that, at the commencement of a concession contract, is expected to allow a concessionaire to recover not more than the expected reasonable costs (including an allowance for agreed return on capital and any efficiency gains on an agreed basis) of providing the service required by the service standards during the period prior to the first periodic review under a concession contract;
- (b) an adjustment mechanism that will allow for the tariff to be adjusted between periodic reviews to reflect —
 - (i) changes in petroleum costs; and
 - (ii) inflation in the Kingdom;
- (c) service standards for the period prior to the first periodic review under a concession contract that reflect —
 - (i) the standards of a reasonably efficient operator; and
 - (ii) the tariff allowed under the concession contract;
- (d) penalties that are to be imposed on a concessionaire for breaches of service standards under a concession contract.

3 Periodic review

- (1) A concession contract shall include provisions that provide for a review, after a number of years to be identified in the concession contract, of the tariff, the appropriateness of the methodology of the adjustment mechanism, service standards and penalties.
- (2) The provisions under subparagraph (1) shall require the Commission —
 - (a) to procure expert advice on the appropriate tariff, adjustment mechanism, service standards and penalties for the next review period; and

- (b) to undertake public consultation on the appropriate tariff, adjustment mechanism, service standards and penalties.
- (3) The provisions under subparagraph (1) shall require —
 - (a) that the tariff and adjustment mechanism set at each review reflect the likely reasonable costs of service (and, if appropriate, provide a mechanism for pass through of certain costs); and
 - (b) that the service standards for the next review period reflect —
 - (i) the standards of a reasonably efficient operator; and
 - (ii) the tariff allowed for that review period under the concession contract.

4 Extraordinary circumstances

A concession contract shall include provisions allowing for an adjustment of the tariff in the event of extraordinary circumstances.

5 Termination of rights

A concession contract shall provide for the circumstances in which the Kingdom or a concessionaire can terminate the concession contract, and an adequate protection of the interests of the Kingdom and a concessionaire on termination.

6 Penalties

A concession contract shall provide penalties for the breach of any conditions of the contract.

7 Other terms

A concession contract may provide for any other reasonable terms.

8 Reporting requirements

A concession contract shall include reporting requirements to the Energy Commission, which shall include but not be limited to providing information on the following –

- (a) review and reset arrangements;
- (b) tariff review and adjustments;
- (c) service standards;
- (d) service coverage terms and conditions;
- (e) electrical safety and occupational health and safety standards;

- (f) customer complaints;
- (g) insurance requirements and compliance;
- (h) capital investments and efficiency;
- (i) disputes involving the concessionaire; and
- (j) customer service agreement and conditions.

SCHEDULE 4*(Sections 64(5))***SPECIAL POWERS OF AN ELECTRICITY CONCESSIONNAIRE****1 Power to enter land for survey purposes or during an emergency**

- (a) Any engineer, surveyor, or other officer appointed by the Concessionaire may, with the approval of the Minister of Lands, enter upon any land within the electric power district or outer area for the purpose of making any survey or inspection “for the proposed works” and undertakings of the Concessionaire.
- (b) A person who is approved by the Minister of Lands under sub-article (a) may fix or set up survey pegs, marks or poles and dig or bore into such lands, so as to ascertain the nature of the soil and set out the lines of any works.
- (c) In the event of an emergency, or a matter involving safety a person in sub-article (a) shall have the right to enter upon the land if the owner of the land can be contacted quickly, or if not, shall have the right to enter upon the land with reasonable cause.

2 Power of entry for ascertaining quantity of electricity consumed

Any officer appointed by the Concessionaire may at all reasonable times enter any premises to which electricity is or has been supplied by the Concessionaire in order to inspect the electric lines, meters, accumulators, fittings, works and apparatus for the supply of electric power belonging to the Concessionaire and for the purpose of ascertaining the quantity of electricity consumed or supplied or, where a supply of electric power is no longer required or where the Concessionaire intends to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, meters, accumulators, fittings, works or apparatus belonging to the Concessionaire.

3 Notice of entry to be given outside of an emergency

- (1) Except as provided under sub-article (1)(c) and article (2), 24 hours’ notice of entry shall be given by the Concessionaire to the owner or occupier of the land to be entered upon, before such entry is made.
- (2) Upon request, the officer entering the land shall produce to the owner or occupier of the land a form of identification and/or evidence of the approval provided by the Concessionaire to make the survey.

4 Concessionaire to make good damage

- (1) Where land is damaged by an officer pursuant to entering under article 1 of this Schedule, the Concessionaire shall be liable to make good the damage either by –
 - (a) doing what it can to restore the land; or
 - (b) payment of an amount to the land owner or occupier.
- (2) The amount payable shall be ascertained in the manner prescribed for assessment of compensation for land taken or affected by any electric works.

5 Occupation of adjacent land

- (1) Subject to the approval of the land owner or the Minister of Lands, the Concessionaire may enter upon or cause to be entered upon all lands which it is authorized to use or acquire under this Act for the purpose of making such surveys as may be necessary.
- (2) Provided that the necessary approval has been obtained under sub-article (1), the Concessionaire may take and hold all the lands required for the electric works, and may from time to time temporarily occupy, with the consent of Cabinet, and use such lands as may be necessary on either side of the electric works during the construction thereof, or for the purpose of maintenance.

6 Right to erect poles

Subject to any provisions in the Land Act relating to easements, the Concessionaire may or may cause to construct tunnels under any private land, or aqueducts or flumes over the same, and may erect poles and carry wires over or along any such land (the nature of the work will be subject to technical standards), without being bound to acquire the same, with right of way by the best available route to and along such works and erections for the Concessionaire's servants, workmen and agents, from time to time and at all times, with or without any suitable means of conveyance, and with such tools, machinery, articles and materials as may be necessary for the construction of such works or for the maintenance or repairing of the same or for the doing of anything hereby authorized.

The Concessionaire may also deposit and store from time to time upon any lands adjoining such works all such machinery and materials of any kind as may be used in the construction or repairing of such works:

Provided that nothing in this article shall affect the right of any owner or occupier of land to have all the rights to compensation given by or under this Act.

7 Notice and appeal against occupation of land

- (1) The engineer or other person having charge of the electric works shall, before occupying or using any land as herein provided, and except in the case of

accident to the electric works requiring immediate repair, give to the owner or occupier thereof not less than 21 days notice in writing and shall state in such notice the use to be made of such land.

- (2) The owner or occupier may within 10 days of receipt of such notice, and after giving notice to the said engineer or other person of his intention so to do, apply to the Judge of the Land Court, who may thereupon summon such engineer or other person to appear before him at a time and place to be named in the summons.
- (3) If it appears to the Judge of the Land Court that the use proposed to be made of the said lands is unreasonable or unnecessary, or that other neighbouring lands are more fitting to be used for the purpose proposed, he may order that the land in question shall not be occupied or used in the manner proposed.
- (4) If it appears to the Judge of the Land Court that the use proposed to be made of the said land is reasonable and necessary, he may in like manner order that the said land may be occupied and used, in such manner and to such extent only and subject to such limitations and restrictions as he thinks fit; and all persons concerned shall be bound by such order.

8 Reverting of land

If it is found that any land taken or acquired under this Act is not required for the purpose of the electric works, it shall, if situated on Crown Land revert to the Crown, or if situated on the estate of a tofi'a holder revert to such tofi'a holder and be disposed of in accordance with the provisions of the Land Act.

9 Removal of trees

- (1) A land owner or occupier is responsible for –
 - (a) trimming back to the boundary line any branches of trees which overhang any roadway in such a manner as to prevent the construction of or endanger any electric works; and
 - (b) ensuring that trees and vegetation are situated at the following minimum distances from a power line –

OVERHEAD LINE	GROWTH LIMIT ZONE
11kV- High Voltage	5.0 metres (clearance should be distance and height)
400v/230v – Low Voltage	1.0 metres

- (2) If the electricity concessionaire becomes aware of trees or vegetation growing near the growth limit zone, the electricity concessionaire may issue the land owner or occupier with a 24 hour written notice to remedy the issue by cutting or trimming as appropriate.
- (3) If a land owner or occupier does not comply with the notice provided in sub-article (2), he may be liable for any costs incurred by the electricity concessionaire for carrying out this work.
- (4) Any debris from cuttings or trimmings of trees from the result of this work shall be the responsibility of the land owner or occupier to remove.
- (5) Notwithstanding sub-article (2), where the Concessionaire is unable to locate the land owner, the Concessionaire shall apply to the Minister of Lands for approval to carry out the required works to trees or vegetation.
- (6) Notwithstanding sub-article (1)(b), if the engineer or other person having charge of the electric works is of the opinion that any line is, or is likely to be, in any manner injured or obstructed by any tree or shrub, whether ornamental or otherwise, growing or being on any land adjoining such line or over which any such line passes or is carried, he may by himself or his agents remove such tree or shrub or part thereof, and it is hereby provided that compensation shall only be paid on the first occasion on which any such tree or shrub shall be removed from any such land, but shall not be payable for any removal of any tree or shrub from the same land on a subsequent occasion.

10 Lease of land

The Concessionaire may, in accordance with the Land Act, and subject to such conditions as the Minister of Lands may impose, let or lease any land required for the immediate use of the Concessionaire under or in relation to this Act.

11 Compensation

- (1) Every person having any estate or interest in any land taken under the authority of this Act, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the electricity concessionaire, subject always to the terms of article 11.
- (2) In the event of any dispute as to the payment or the amount of such compensation, the matter shall be determined in the manner provided by the Land Act.

SCHEDULE 5*(Sections 156(6))***TRANSFER OF ASSETS AND LIABILITIES TO THE COMMISSION**

The following provisions shall apply to a transfer of property from the Electricity Commission to the Commission under section 155 of this Act —

1 Commission substituted for the Electricity Commission

Subject to clause 2 of this Schedule, upon transfer to the Commission of any contract, agreement, conveyance, deed, lease, licence, or other instrument or undertaking to which the Electricity Commission is a party, then, to the extent appropriate to the thing transferred —

- (a) the Commission, instead of the Electricity Commission, is to be treated as the person by whom the contract, agreement, conveyance, deed, instrument, or undertaking was entered into or made or given; and
- (b) to the extent that the relevant contract, agreement, conveyance, deed, lease, instrument, or undertaking was previously binding on and enforceable by, against, or in favour of, the Electricity Commission, it becomes binding on and enforceable by, against, or in favour of the Commission.

2 Effect of transfer

Nothing effected or authorised by a transfer under section 156 of this Act —

- (a) may be regarded as placing the Electricity Commission or the Commission, or any other person, in breach of contract, deed or confidence or as otherwise making any of them liable of a civil wrong;
- (b) may be regarded as giving rise to a right for any person to terminate or cancel a contract, deed or arrangement, or to accelerate the performance of any obligation;
- (c) may be regarded as placing the Electricity Commission or the Commission, or any other person, in breach of an enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment or transfer of property or the disclosure of information;
- (d) releases a surety wholly or in part from any obligation; or
- (e) invalidates or discharges any contract, agreement, conveyance, deed, lease, instrument, or undertaking.

3 Registration of transfers

Where the transfer of any asset or liability under this Act (including under this Schedule) is registrable, the person responsible for keeping the register shall register the transfer forthwith after written notice of the transfer is received by him or her from any person authorised for this purpose.

4 Interests in land

For the avoidance of doubt, assets that are transferred under this Act (including under this Schedule) that are fixed to, or under or over, any land may be transferred whether or not any interest in the land is also transferred. Where such asset is so transferred, the asset and the land shall be regarded as separate assets each capable of separate ownership.

SCHEDULE 6*(Section 136(2))***DESIGNATION OF AN ENFORCEMENT OFFICER: FULL POWERS**

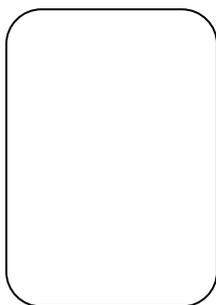
Pursuant to section 136(2) of the Energy Act 2021, I hereby designate OFFICER'S NAME of MINISTRY NAME as an enforcement officer under the Energy Act 2021 ("the Act").

You are hereby authorised to act as an enforcement officer on behalf of the [Ministry/Energy Commission], holding full powers of an enforcement officer under Part XX of the Act, but subject to all provisions in the Act and regulations made under it.

The duration of this designation is a period of NO. OF YEARS. At the end of this period, your designation will automatically lapse until a further designation is issued in writing by the [Minister in office/Energy Commission].

Issued at Nuku'alofa on this day of month, 20..... year.

.....
[Hon. Minister responsible for energy/Chair of Energy Commission]

SCHEDULE 7*(Section 136(3))***FORM OF IDENTIFICATION OF AN ENFORCEMENT OFFICER**FRONT:

Name:

Designation:

Ministry/Energy Commission:

Expiration:

ID No.:

FULL POWERS / LIMITED POWERSBACK:

THIS ID IS THE PROPERTY OF THE
[MINISTRY RESPONSIBLE FOR ENERGY /
ENERGY COMMISSION]

You are hereby required to carry this identification at all times when you are exercising your powers under the Energy Act. You shall show this ID if you are requested by any person.

At the expiration of your designation, please immediately return your identification card to the Chief Executive Officer of the [Ministry responsible for Energy/Energy Commission].