

SAMOA

PETROLEUM ACT 1984

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PETROLEUM ACT 1984

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No. 34

AN ACT to make provision for the supply, transport and storage of petroleum.

*[Date of assent: 4 December 1984]
[Commencement date: 1 October 1984]*

1. Short title –This Act may be cited as the Petroleum Act 1984.

2. Commencement –This Act is deemed to have commenced from 1 October 1984.

3. Interpretation – In this Act, unless the context otherwise requires:

“Chief Executive Officer”:

- (a) means the Chief Executive Officer of the Ministry of Finance; and
- (b) for powers or functions conferred on the Chief Executive Officer by this Act, includes a person authorised by the Chief Executive Officer to exercise any of the powers or functions on behalf of the Chief Executive Officer;

“Prices Board” means the Prices Board established under the Fair Trading Act 1998;

“contractor” means a person with whom the Chief Executive Officer enters into a contract for the supply of petroleum products under section 4;

“dangerouspetroleum” means petroleum having a flash-point below 73° Fahrenheit;

“fuel oil” means petroleum which has a flash-point of not less than 150° Fahrenheit and not more than 90% distilling below 300° Centigrade and which is intended for use as fuel;

“Government” means the Government of Samoa;

“Minister” means the Minister of Finance;

“ordinary petroleum” means petroleum having a flash-point of not less than 73° Fahrenheit but less than 150° Fahrenheit and not less than 90% distilling below 300° Centigrade;

“package”

- (a) means any case, barrel, drum or container; and
- (b) includes any means by which petroleum may be encased or contained having a capacity of less than 90 gallons;

“petroleum” means any gas, liquid, or solid compound,

- whether used as a fuel or for lubrication purposes, which is derived wholly or in part from the refining and blending of hydrocarbon compounds;
- “Revenue Board” means the National Revenue Board established under the Public Finance Management Act 2001;
- “storage facilities” include fixtures, machinery, tools, buildings or any other equipment required to carry out a petroleum trade or a petroleum business;
- “street” includes every public square or place and every bridge, culvert, drain, channel, footway, gate, building or other thing belonging thereto or lying upon the line or within the limits thereof.

3A. Contract transitional arrangements—(1) Despite the provisions of this Act, the Chief Executive Officer may exercise the powers provided under this section in the national interest of Samoa to ensure that the transition from one contract made under section 4 to another such contract shall be such as to minimise the disruption of the supply and distribution of fuel oil and petroleum in Samoa.

(2) Subject to this section, the Chief Executive Officer may enter, take control of, operate, maintain, alter, modify, adapt or otherwise deal with:

- (a) land on which any storage or distribution facilities are located; and
 - (b) any storage or distribution facilities.
- (3)** The powers under subsection(2) shall be exercised only:
- (a) after the Chief Executive Officer and the owner of any land on which any storage or distribution facilities are located, the owner of any storage or distribution facilities, any operator of such facilities and each party to a lease thereof have undertaken discussions in good faith and made every reasonable effort to reach agreement as to how such land and facilities are to be managed and operated so as to minimise the disruption of the supply and distribution of fuel oil and petroleum in Samoa;

- (b) within the period of 6 months before and 6 months after the due date for the completion of a contract made under section 4;
- (c) after the Chief Executive Officer has provided Notice to that effect to the owner, operator and any party to a lease thereof of any land on which storage or distribution facilities are located and of any storage or distribution facilities which would be affected by the exercise of the powers under this section.

(4) The Chief Executive Officer is authorised to use such force as may be reasonably necessary in the exercise of any power under this section.

3B. Right to compensation –Where the Chief Executive Officer exercises any power under section 3A, the Government shall pay to the owner of and any party to a lease of any land or storage and distribution facilities fair and adequate compensation (if any) which shall be assessed in accordance with the provisions of Article 14 of the Constitution (Rights regarding property) and section 8 (which provides for fair and adequate compensation).

3C. Requirement to provide assistance–(1)Any:

- (a) owner of land on which storage or distribution facilities are located; and
- (b) owner of storage or distribution facilities;and
- (c) party to a lease of land referred to in paragraph (a);and
- (d) party to a lease of storage or distribution facilities; and
- (e)Operator of storage or distribution facilities, –

shall provide the Chief Executive Officer with such assistance as the Chief Executive Officer may reasonably require concerning the exercise of any power under section 3A.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding 100 penalty units or imprisonment not exceeding 12 months, or both.

4. Powers to enter into contracts, etc. –(1)The Chief Executive Officer has, for the purposes of this Act, exclusive power to:

- (a) advertise, call, invite and award any tender for the supply of fuel oil or petroleum to Government, a statutory authority or body or Polynesian Airlines Holdings Limited, or Polynesian Airlines Operations Limited, or any other company in which Government is a shareholder;
- (b) determine the conditions of every tender in each particular case;
- (c) negotiate and enter into a contract of supply of fuel oil or petroleum on behalf of the Government, a statutory authority or body, or Polynesian Airlines Holdings Limited, or Polynesian Airline Operations Limited, or any other company in which Government is a shareholder, with the person or company to whom a tender is awarded.

(2) A person, who is dissatisfied with the award of a tender by the Chief Executive Officer, may appeal to the Minister within 7 days from the date of the award of the tender.

(3) The Minister may allow or dismiss an appeal made under subsection (2).

4A.Imposition of petroleum levy –(1) Subject to the provisions of this section, a contractor shall pay a petroleum levy on any petroleum product.

(2) The rate of levy on each petroleum product is to be determined by the Minister of Finance subject to the approval of Cabinet but shall not exceed the greater of:

- (a) 10%of the wholesale price which would otherwise be payable in accordance with the terms of any contract entered under section 4; or
- (b) 50%of the difference between the wholesale price for a petroleum product published by the PricesBoard as being applicable as at 1 January 1986 and the price for that petroleum product which would otherwise be payable in accordance with the terms of any contract entered into under section 4.

(3) The rate of any levy payable under this section is to be notified in writing to a contractor at least 2 days excluding holidays

prior to that rate coming into effect.

- (4) A levy payable under this Act shall be:
- (a) in addition to the price paid for petroleum products imported into Samoa or accordance with the terms of any contract entered into under section 4; and
 - (b) incorporated into the wholesale and retail price of petroleum products to be determined by the PricesBoard;and
 - (c) paid to the Chief Executive Officer for deposit into the Public Account;and
 - (d) payable on or before 15th of each calendar month on the basis of the volume of all petroleum product sales made by the contractor during the preceding calendar month, at the rate or rates applicable to each product during that month; and
 - (e) accompanied with a return to be filed by the contractor clearly disclosing details of volumes of sales of each petroleum product during the preceding calendar month which, when applicable, shall disclose complete details of all sales made prior to and all sales made after a variation in the rate or rates of levies payable during any month.

(5)If a levy payable under this Act remains unpaid after the due date for payment thereof, the contractor is liable to pay a penalty levy, equivalent to 10%of the total amount of the unpaid levy, in addition to any fine which may be imposed under this Act.

5. No property or lease to be acquired without consent of owner or parties –(1)Subject to the provisions of this section, the Chief Executive Officer has, for the purposes of this Act, the power to acquire or take the following by notice published in the Savaliior the Samoa*Gazette*:

- (a) land;
 - (b) any existing storage facilities for petroleum;
 - (c) the lease of any land;
 - (d) the lease of any existing storage facilities for petroleum.
- (2)The Chief Executive Officer shall not acquire any land or

existing storage facilities for petroleum, or the lease of any land, or existing storage facilities for petroleum, except with the prior consent in writing of the owner of the land or the parties to the lease (or, in the case of an appeal hereinafter provided, of the Minister) and in accordance with the conditions upon or subject to which the consent is granted.

(3) Any owner of land or party to a lease may refuse consent under this section, or may grant consent either unconditionally or upon or subject to such conditions, not inconsistent with this Act, or with any regulations made under this Act, as he or she thinks fit.

(4) If the owner of any land or party to any lease refuses or neglects to grant consent under this section or grants consent upon or subject to any condition, the person applying for consent may appeal to the Minister, and in that case the Minister may refuse consent under this section in respect of that land or lease, or may grant consent either unconditionally or upon or subject to such conditions, not inconsistent with this Act, or with any regulations made under this Act, as he or she thinks fit.

6. Compensation to be paid or secured before any land or lease is acquired –No land, storage facilities for petroleum, or a lease thereof shall be taken or acquired under this Act unless:

- (a) the owner of the land or storage facilities for petroleum or each party to a lease thereof has first been paid adequate compensation (if any); or
- (b) an agreement in writing has been entered into with the owner of the land or storage facilities for petroleum or each party to a lease thereof as to compensation (if any) and as to the payment thereof; or
- (c) security has been given to the satisfaction of a Judge of the Supreme Court for payment of compensation (if any).

7. Assignment, lease and sublease –(1) Subject to subsection (2), the Chief Executive Officer may, for the purposes of this Act, after acquiring land, storage facilities for petroleum or a lease thereof:

- (a) lease the land; or

- (b) lease the storage facilities for petroleum; or
- (c) assign a lease of the land or storage facilities for petroleum; or
- (d) sublease the land or storage facilities for petroleum,–

to a person or company to whom a tender has been awarded under section 4(1).

(2) An assignment, lease or sublease in subsection (1) is to be for a term not exceeding 2 years.

(3) The Minister may refuse consent to a lease, assignment or sublease under subsection (1).

(4) If the Minister refuses his or her consent to a lease, assignment or sublease, the same shall be void.

8. Assessment of compensation –(1) In default of agreement in writing between the parties as to any compensation to be paid under this Act and as to the payment of compensation, subsection (2) applies.

(2) Claims for compensation in respect of land shall be made and determined within the time and in the manner provided by the Taking of Land Act 1964 and the provisions of that Act, so far as they are applicable and with the necessary modifications, apply to such claims.

(3) Claims for compensation for any storage facilities for petroleum shall include a report by an independent valuer stating the:

- (a) estimated economic life of the storage facilities; and
- (b) estimated current market value of the storage facilities; and
- (c) written down taxation value of the storage facilities,–

in any other respect, claims under this subsection shall be made and determined in the same manner as provided in subsection (2).

9. Application for review – A person who has *locus standi* has a right to make application to the Supreme Court for review of a decision by the Minister.

10. Petroleum to be handled only at approved places –No petroleum is to be imported into Samoa or moved by ship from one

place in Samoa to another place in Samoa except at or from the Port of Apia or at such other place or places as may be appointed for that purpose by the Minister and notified in the Samoa *Gazette* or Savali.

11. Storage – No person shall store or keep within Samoa any petroleum except under and in accordance with this Act or any regulations made under this Act.

12. Powers of entry, etc. –(1)The Chief Executive Officer has, for the purposes of this Act, the following powers:

- (a) to enter, inspect and examine between the hours of 7 in the forenoon and 6 in the afternoon any private premises, other than a dwelling house, on which he or she has reasonable cause to believe petroleum is stored or kept;
- (b) to take samples of any petroleum stored or kept in such premises;
- (c) to seize or detain any petroleum stored or kept in such premises contrary to the provisions of this Act;
- (d) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with.

(2) If a person refuses to permit the Chief Executive Officer or any person authorised by the Chief Executive Officer to enter or inspect any premises, or hinders or obstructs the Chief Executive Officer or any person authorised by the Chief Executive Officer in the execution of a duty under this Act, or refuses to allow such person to take samples in pursuance of this section or to give facilities for the purpose, the person is liable to a fine of 10 penalty units.

(3) Where a person is convicted of an offence against the provisions of this Act, the Court 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.

13. Power to lay pipes, etc. – The Minister may, subject to

such conditions as the Minister shall think fit to impose, grant permission to any person or persons or company erecting a tank or magazine for the storage of petroleum for the purpose of the conveyance of petroleum to and from such tank or magazine:

- (a) to 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 streets; and
- (b) to open up any sewers, drains or tunnels within or under such privately owned land or such streets; and
- (c) to lay down, place and maintain under such privately owned land and under all or any of such streets, pipes, conduits, service pipes and other works, and from time to time repair, alter or remove the same; and
- (d) 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 such petroleum as aforesaid—
 - (i) doing as little damage as may be in the execution of the powers granted;
 - (ii) restoring as far as possible the land affected to its former state; and
 - (iii) making compensation for any damage and any losses sustained or suffered by any person which may be done in the execution of such powers.

14. Regulations —(1) The Head of State, acting on the advice of Cabinet, may, make regulations as are necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting subsection (1), regulations may be made under this section for all or any of the following purposes:

- (a) regulating the transport of petroleum;
- (b) prescribing the quantity or mode of storage and the receptacles in which petroleum may be carried in any package, vessel, cart, truck or other vehicle and

- the quantities to be contained in such receptacles;
- (c) providing for the examination and testing of petroleum and prescribing the tests to be applied to ascertain its flash-point and the method of applying the same;
 - (d) prescribing the quantity of petroleum which may be stored or kept in unlicensed petroleum premises and the manner of storing or keeping such petroleum;
 - (e) providing for the licensing of places in which petroleum is stored;
 - (f) prescribing the rules to be observed in any place where petroleum is kept, stored, used, or conveyed, whether licensed or not;
 - (g) prescribing the making of packages containing petroleum;
 - (h) prescribing licence fees and penalties not exceeding a fine of 10 penalty units for the breach of any such regulations;
 - (i) prescribing the forms for tenders for the supply of Petroleum;
 - (j) prescribing the forms for notices of appeal;
 - (k) prescribing the forms for claims for compensation and security for compensation;
 - (l) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(3) The power to make regulations under this section with respect to petroleum includes the power to make regulations with respect to any particular class of petroleum, including dangerous petroleum, ordinary petroleum and fuel oil.

15. Offences –A person who acts in contravention of, or fails to comply with a provision of this Act or of any regulations made under this Act commits an offence, and, where no special penalty is provided in this Act or in such regulations, is liable to a fine not exceeding 10 penalty units.

16. Savings – The tender for the supply of petroleum awarded in the month of October 1984 to the Shell Company Pacific Islands

Limited is taken to have been made and awarded under the provisions of this Act and this Act, shall, with the necessary modifications, apply to that tender and all matters and actions incidental and pertaining thereto.

17. Repeal – (1)The Petroleum Ordinance 1960 (1960, No. 14)is repealed.

(2)All matters and proceedings commenced under the enactment repealed and pending or in progress on the coming into operation of this Act may be continued, completed and enforced as though the said enactment remained in force.

REVISION NOTES 2008 – 2014

This is the official version of this Act as at 31 December 2014.

This Act has been revised by the Legislative Drafting Division from 2008 to 2014respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Insertion of the commencement date
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”
 - “shall have” changed to “has”
 - “hereby” and “from time to time” removed
 - (iii) Offence provisions
 - “shall be guilty” changed to “commits”
 - “is punishable by” changed to “is liable to”
 - (iv) Use of plain language – “in respect of” changed to “for”
 - (v) Numbers (and symbols described) in words changed to figures (e.g. per centum and degrees)
 - (vi) Removal of superfluous terms
 - “the general power conferred by”
 - “of this Act”
 - (vii) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate
 - (viii) Interpretation of words paragraphed – “Chief

- Executive Officer” and “package”.
- (ix) Schedule deleted as it is incorporated into section 17(1).
 - (x) Section 13 paragraphed.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

*This Act is administered by
the Ministry of Finance.*