



Tuvalu

ENERGY EFFICIENCY ACT



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Tuvalu

ENERGY EFFICIENCY ACT

Act No.003 of 2016

AN ACT TO PROMOTE ENERGY EFFICIENCY, CONTROL THE IMPORTATION, USE AND SALE OF INEFFICIENT ELECTRICAL APPLIANCES INTO TUVALU AND RELATED PURPOSES

Commencement [27th May, 2016]

PART I - PRELIMINARY

1 Short Title

This Act may be cited as the Energy Efficiency Act.

2 Commencement

This Act shall come into force on such date as the Minister by notice appoints.

3 Interpretation

In this Act, unless the context otherwise requires-

“**brand**” means the name which the product is traded under;

“**court**” means the Senior Magistrate Court;

“**determinations**” means the standards for energy performance and labelling adopted by the Minister under section 9 of this Act and prescribed under schedule 1A and 1B of the Regulations.

“**electrical appliances**” means products which use electrical energy for operation, such as freezers and lights;

“**energy conservation**” means a limit or reduction in the use of energy;

“**energy efficiency**” means a change to energy use that results in an increase in net benefits per unit of energy;

“**environment**” has the meaning given to it by the Environmental Act;

“**Minister**” means the Minister who is responsible for the administration of this Act;

“**model**” means a range of items of the same brand where each item has the same energy performance characteristics;

“**warrant**” means a warrant issued by the Court for the purpose of inspection of a public or private premise;

“**Minimum Energy Performance Standards and labelling (MEPSL) product**” is an electrical appliance or a product that affects the amount of energy used by another product and is listed in Schedule 1A of the Regulations with the standards applicable to it;

“**Minimum Energy Performance Standards and labelling (MEPSL) standard**” is a standard designated by the Minister under section 10 for each product as stated in Schedule 1A and 1B of the Regulations;

“**offer to supply**” includes make available, expose, display or advertise a product for supply or sale;

“**product**” means a good or electrical appliance, for the purpose of this Act;

“**product class**” means a category of electrical appliances, grouped as class based on the functions they perform, the materials they contain, their capacity or any other feature;

“**premises** includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b);

“**Regulator**” means the Energy Efficiency Regulator established under Part V of this Act;

“**replacement standard**” means standard made by the Minister that intends to replace the existing standard;

“**revoked standard**” means standard made by the Minister that intends to revoke the existing standard until the replacement standard comes into effect;

“**supply**” includes a supply by way of sale, exchange, gift, lease, loan, hire or hire- purchase.

4 Act binds the Crown

This Act binds the Crown.

5 Purpose

The purpose of this Act is to promote, in Tuvalu, energy efficiency, energy conservation and to give effects to certain obligations that Tuvalu has under the Climate Change Conventions and related conventions.

6 The precautionary principles

- (1) All persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the management of the environment in Tuvalu, or the regulation, control, or management of any substance, matter or thing which may adversely impact upon Tuvalu's environment, shall apply the precautionary approach when discharging their responsibilities and functions, or exercising their powers.
- (2) To clarify the application of subsection (1), the precautionary approach is applied if, in the event of a threat of damage to Tuvalu's natural resources or to the environment of Tuvalu, or a risk to human health in Tuvalu, a lack of full scientific certainty regarding the extent of adverse effects is not used as a reason for not acting to prevent or minimise the potential adverse effects or risks arising in any way from a matter regulated under any law.

PART II - KEY CONCEPTS

7 Products to be regulated

The products or electrical appliances subject to this Act are the products or electrical appliances listed in Schedule 1A and 1B of the Regulations.

8 Brand and Models of products must be registered

The brand and model of the product subject to this Act must be registered under Part VI in relation to the product class standards provided in Schedule 1A and 1B of the Regulations.

9 Application to second hand items

This Act applies to new and second hand products of product class subjected to this Act imported by a consumer for personal use.

PART III - MINIMUM ENERGY PERFORMANCE STANDARDS AND LABELLING STANDARDS

10 Minister determines the standards

- (1) The Minister must determine standards for minimum energy performance and/or energy labelling for the electrical appliances or products subject to this Act and provide such determinations under Schedule 1A and 1B of the Regulations.
- (2) The standards specifying the methods of testing and the minimum energy performance and labelling for the products subject to this Act.
- (3) The determinations comes into force on the day specified by the Minister in the Regulations or if no such date is provided then it is the day after the Minister has signed and endorsed the standards.

11 Labelling requirements

- (1) The importer may not supply or offer to supply a product prescribed in Schedule 1B of the Regulations unless:
 - (a) the brand and model is registered under this Act; and
 - (b) the product has an energy label that complies with the energy performance standards and method of testing provide under Schedule 1A for that product;
 - (c) the energy label is displayed at the front of that product; and
 - (d) the energy performance characteristics on the label correspond to those registered for that model.
- (2) No other label showing energy performance standards of the product may be attached to the product except the label specified in the scheduled 1B.

12 Replacing determinations

- (1) The Minister may by notice revoke a determination (*revoked determination*) prescribed in Schedule 1A and 1B of the Regulations for a particular product class and make a new determination (*replacement determination*) for that product class.
- (2) The revoked determination ceases to be in force immediately before the replacement determination comes into force.
- (3) The replacement determination comes into force on the date specified by the Minister or the day after the Minister has endorsed or signed the new determination.

- (4) The Minister must ensure that the new determination is made known to the public through the publication of such amendment to the Regulations on the government notice board or announcement on the radio Tuvalu.

PART IV - REQUIREMENTS FOR IMPORTERS

13 Supplying or offer to supply

A person who intends to import, offer to supply or supply a product subject to this Act and specified under Schedule 1A and 1B of the Regulations must not do so unless:

- (a) the brand and model of the product is registered under Part VI; and
- (b) the product complies with the standards required for that particular product class as specified under Schedule 1A and 1B of the Regulations.

PART V - ADMINISTRATION

14 Regulator

The Director of Energy is the Regulator of products or electrical appliances subject to this Act.

15 Functions

The Regulator has functions as follows:

- (a) to administer the Act; and
- (b) to maintain a register of products complying with the Act; and
- (c) to monitor and enforce compliance with the Act; and
- (d) to review and evaluate the operation of the Act; and
- (e) to advise the Minister on policy matters for the purpose of the Act;
- (f) to publish relevant information and other materials for public information; and
- (g) to carry out such other functions as may be conferred on the Regulator by the Act or any other Act.

16 Power of the Regulator

The Regulator has the power to do all things necessary to enforce any right, prosecute any offence and to do all lawful things necessary to carry out its functions or requirements under the Act.

PART VI - REGISTRATION

17 Establishment of register

The Regulator must establish and maintain a register to be known as the Register of products or electrical appliances subject to this Act.

18 Application to register

- (1) A person who intends to import, supply or offer to supply a product class specified in Schedule 1A and 1B of the Regulations must apply to the Regulator to register the model of the product.
- (2) Application must be made in the appropriate form (Form A, Form B & Form C) prescribed under Schedule 2 of the Regulations and under any of the following categories
 - (a) *Category A*: a model that is already registered in a country prescribed under Schedule 3.
 - (b) *Category B*: a model that is not registered in a prescribed country under Schedule 3 but which is identical with regard to energy efficiency to a model registered in a country prescribed under Schedule 3
 - (c) *Category C*: a model that is neither Category A or B.
- (3) The application form must be accompanied by original or certified documents required to substantiate the information provided in the form or any other information as directed by the Regulator.
- (4) If the documents in support of the application are in a language other than English, such documents must be translated into English at or by a certified translator institution either within or outside Tuvalu. Details of the translator must also be provided by the applicant to the Regulator.

19 Further information

The Regulator may, for the purpose of determining an application under this Part, give the applicant a written notice requesting the applicant to give further specified documents or information within the time specified in the notice.

20 Grounds for refusing an application

- (1) The following are grounds for refusing an application under this Part:
- (a) the model does not comply with the standards set out under Schedule 1A and 1B for that particular product class;
 - (b) the applicant has not given to the Regulator further documents or information by the time specified in a notice given in relation to the application;
 - (c) the documents or other information provided in the application, or as requested by the Regulator in the notice, is not accurate or sufficient;
 - (d) the applicant has not complied with any of the other provisions under this Act or any other Act.

21 Registration by the Regulator

The Regulator must on application register the model, in relation to the product class, against the relevant standards for that product class, unless:

- (a) the model is not compliant with the required standards for that product or
- (b) if the applicant is a business or commercial importer, he or she has not meet the other legal requirements for carrying out such business in Tuvalu.

22 Deciding of application

The Regulator must decide on the application within 7 working days from the date he received the application.

23 Issuing of registration permit.

The Regulator must after satisfying that the application has fulfilled all the registration requirements, issue the applicant with a permit allowing him or her to supply or offer to supply or use the product in Tuvalu.

24 When a registration is in force

A model's registration comes into force at the date specified in the registration permit.

25 When registration ceases to be in force.

- (1) A model's registration ceases to be in force:

- (a) at the beginning of the day after the end of the registration period specified in the permit; or
 - (b) at the beginning of the day after the registration is cancelled;
- (2) For the purposes of paragraph (1)(a) the *registration period* for a model registered under Category C under section 17(2)(c) is 5 years beginning on the day the registration comes into force. The registration of a product registered under Category A or B remains in force as long as the product continues to be registered in a country prescribed under Schedule 3.

26 Suspending a registration

- (1) The Regulator may suspend a model's registration if:
- (a) the Regulator suspects, on reasonable grounds, that:
 - (i) the model does not comply with the standards required for that product class; or
 - (ii) any of the documentation or other information given to the Regulator at any time in connection with the registration was not accurate at the time it was given; or
 - (iii) changes have been made to the model so that any test results given in connection with the model's registration no longer accurately reflect the extent to which the model complies with the required standards; or
 - (iv) the applicant has breached a condition of the registration.
 - (v) the applicant has failed to comply with one or more of his responsibilities under this Act or any other Act that relates to the carrying out of his business or commercial undertaking; and
 - (b) the Regulator is satisfied that the applicant has failed to comply with one or more of his responsibilities under the Act or any other Act that relates to the carrying out of his business.
- (2) A model covered by a suspension is taken not to be registered at all.
- (3) The Regulator must advise the holder of a suspended registration the reasons for the suspension and must give the holder a reasonable time (not exceeding 1 month) to respond or provide what he further required from the applicant.

27 Cancelling a registration

- (1) The Regulator may cancel a model's registration in relation to a product class if the Regulator is satisfied that the applicant does not provide the documents or information required by the Regulator in 25(3).
- (2) The Regulator must after deciding to cancel the registration, give a written notice to the applicant of his decision to cancel his application. The notice must specify the reasons for the cancellation.

- (3) A cancellation comes into force at a time specified in the notice given under subsection (2).
- (4) Cancellation of a registration can only be given after the Regulator has given the applicant the opportunity (suspension) to provide what is still required to satisfy the requirements for registration under the Act.

28 Notice of decisions

- (1) The Regulator must give the applicant a written notice of its decision on an application under this Part.
- (2) If the application is granted, then the Regulator must issue a permit to the applicant.

29 Notice to contact person

If a notice is served on a person specified by the applicant as his contact person, such service is taken to have been served on the applicant.

PART VII - MONITORING AND INVESTIGATION

30 Inspector

- (1) The Regulator is an inspector.
- (2) The Regulator may, in writing, appoint a person or persons as an inspector for the purposes of this Part. An appointed inspector shall have all the appropriate authority of the Regulator required to perform the role appointed or given to him as though the inspection is performed by the Regulator personally.
- (3) The Regulator must not appoint a person as an inspector unless he is satisfied that the person has suitable training or experience to properly exercise the powers of an inspector.
- (4) The Regulator must not appoint an officer or employee of another government department as an inspector without the agreement of the responsible Secretary of the department of that appointed officer.
- (5) An inspector appointed under sub-section 2 must, in exercising of such powers comply with any directions given by the Regulator.

31 Powers in public areas

- (1) An inspector may exercise the following powers in premises where it is open for public to enter:

- (a) to inspect the products that are subject to this Act;
 - (b) to collect written information, advertising or any other document that is available, or made available, to the public in relation to the products subject to this Act;
 - (c) to discuss product features of any product subject to this Act with any person;
 - (d) to observe practices relating to the offer for supply, supply and disposal of the products subject to this Act.
- (2) An inspector may only exercise a power under subsection (1) for one or more of the following purposes:
- (a) determining whether a provision of this Act has been, or is being, complied with;
 - (b) determining whether information given in compliance or purported compliance with a provision of this Act is correct;
 - (c) investigating a possible contravention of a related provision under the Act.
- (3) Subsection (1) does not affect any right of the occupier or owner of the premises in refusing to allow an inspector to enter, or remain on, the premises. In such circumstance, the inspector must apply to the Court for a warrant or interim order in order to enter and inspect or monitor the compliance of products supply or offer to supply in that premises.

32 Powers in private premises

- (1) An inspector may enter any premises and exercise the monitoring and inspection powers for either or both of the following purposes:
- (a) to determine whether a provision of this Act has been, or is being, complied with;
 - (b) to determine whether information given in compliance or purported compliance with a provision of this Act is correct.
- (2) An inspector is not authorised to enter the premises unless:
- (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier;
or
 - (b) the entry is made under a warrant issued by the Court.

33 Authorised person

- (1) The Regulator may appoint a person to assist the inspector in exercising powers or performing functions or duties under this part, if that assistance is necessary and reasonable.

- (2) A person assisting the inspector must have the inspector's power necessary to carry out the functions in which he was appointed.

34 Identity cards

- (1) The Regulator must issue an identity card to any inspector appointed under section 29(2) or authorised person appointed under 32(1).
- (2) An inspector or authorised person must carry his or her identity card at all times when exercising powers under this Part and to provide it upon request.

PART VIII - OFFENCES AND ENFORCEMENT

35 Offences

- (1) A person who knowingly or with knowledge makes a declaration or produces documents of any kind in relation to registration or application for registration, that such declaration or document is false commits an offence and shall be liable to a fine of \$200 or 1 year imprisonment.
- (2) A person who knowingly or with knowledge misleads the Regulator; inspector or person authorised in the translation of the documents into English as specified under section 17(4) commits an offence and shall be liable to a fine of \$100 or 6 months imprisonment.
- (3) A person who knowingly or with knowledge supplies or offer to supply, a product prescribed in Schedule 1A and 1B of the Regulations, that the products have not been registered as required under the Act commits an offence and shall be liable to a fine of \$200 or 1 year imprisonment.
- (4) A person who knowingly or with knowledge allows his or her permit to be used by someone else to trade his or her products while knowing that the person's products are subject to this Act and have not been registered under this Act commits an offence and shall be liable to a fine of \$200 or 1 year imprisonment.
- (5) A person who use the registration permit of another person to supply or offer to supply his products which are subject to this Act, knowingly and with knowledge that he has not registered his product as required under this Act commits an offence and shall be liable to a fine of \$100 or 6 months imprisonment.

36 Grant of injunctions

- (1) The Regulator may apply to the Court for an injunction if the Regulator is satisfied that a person has engaged, is engaging or is proposing to engage, in

conduct that breaches or is likely to breach any provision enforceable under this Act.

- (2) The Court may, on application by the Regulator or a person authorised by the Regulator, grant an injunction either:
 - (a) to restrain the person from engaging or proposing to engage in a certain conduct or act; or
 - (b) requiring the person to perform an act;
 - (c) or any other order necessary and proper to the Court in upholding the purpose and spirit of this Act.
- (3) The Court may discharge or vary an injunction granted under this Part.

PART IX - REVIEWING DECISIONS

37 Internal review

- (1) A person affected by a decision made by the Regulator or any person authorised by the Regulator to perform certain roles under this Act may apply in writing to the Minister for a review of the decision.
- (2) An application for internal review to the Minister must be made within:
 - (a) 30 days after the day on which the decision first came to the notice of the applicant; or
 - (b) such further period (if any) as the Regulator or inspector notifies.
- (3) The Minister must, on receiving an application, review the decision within 5 working days and provide the decision in writing immediately to the applicant.
- (4) The Minister may:
 - (a) affirm, varying or revoke the decision of the Regulator or any person authorised by the Regulator; and
 - (b) if the Minister revokes the decision, make such other decision as the Minister thinks appropriate in the circumstances and must notify both the person applying for internal review and the Regulator.

PART X - MISCELLANEOUS

38 Regulations

The Minister may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or

(b) necessary to be prescribed for carrying out or giving effect to this Act.

39 Transitional provisions

A person who has lawfully imported a product prescribed in Schedule 1A and 1B of the Regulations for the purposes of supply or offer to supply in Tuvalu prior to the commencement of this Act, may supply or offer to supply or use that product for a period of up to three years from that date in which the Act comes into effect.