

# REPUBLIC OF VANUATU

## BILL FOR THE LABOUR (WORK PERMITS) (AMENDMENT) ACT NO. OF 2018

### Explanatory note

This Bill amends the Labour (Work Permits) Act [CAP 187].

The Act outlines the legal processes of how a non-citizen can be engaged to work in the private sector. A person may be legally issued with a work permit if his or her employer applies in the prescribed form and pays the prescribed fees. The Commissioner of Labour will then issue a permit once he or she is satisfied that the requirements set out in the Act are complied with.

Upon enforcing this Act, it has come to the Government's attention that amendments are needed in this Act to ensure that:

- (a) positions are occupied by citizens; and
- (b) there is an increase of Government revenue; and
- (c) the appeal process for work permits is strengthened under the Act; and
- (d) citizens are safeguarded from being mistreated by non-citizens who are working with them under labour work permits; and
- (e) foreign investors are here to invest and not to be employed.

#### **Localization of positions**

Under the current Act, when a non-citizen is employed in Vanuatu, the Commissioner of Labour must inform his or her employer of the obligations to train workers who are citizens to ensure that the citizen is capable of occupying that position when the non-citizen's contract expires. The Act needs to be amended to ensure that there is a specific period for the training of a citizen and how long the non-citizen can continue to be employed in Vanuatu.

The proposed amendments now make it an obligation for this training to occur for 4 years only from the time the work permit was granted. Furthermore, the amendment now ensures that all non-citizens working under a labour work permit can only work for a period not exceeding 4 years. This would encourage the training of citizens and the eventual localization of positions.

### **Increase of Government revenue**

The provisions of the Act currently have very low rates for fees and work permit taxes that are charged to applicants and permit holders.

The proposed amendments increases most of these fees and taxes to facilitate the increase in Government revenue.

### **Appeal process**

The proposed amendment establishes a Work Permit Appeals Committee (“the Appeals Committee”) to determine applications for appeal for an employer who is aggrieved by a decision of the Commissioner of Labour. The Appeals Committee consists of a member of the Judiciary, the Director General of the Ministry of Internal Affairs, the CEO of the Vanuatu Investment Promotion Authority (“VIPA”), and the Director of Immigration Services. The establishment of this Appeals Committee would make the appeal process more transparent compared to having all appeals being heard by the Minister as is currently provided for under the Act.

### **Safeguarding citizens from mistreatment by non-citizens**

The Department of Labour has received some complaints from citizen workers that they have been mistreated by the non-citizen workers who have been granted a work permit under this Act. Some of these complaints are genuinely serious, however, the Commissioner of Labour does not have the power to protect our citizen workers from being mistreated under the current Act.

The proposed amendment will allow for the revocation of any work permit on the ground of mistreatment.

### **Foreign investors**

We have seen foreign investors obtaining VIPA certificates to establish businesses in Vanuatu. Some of these foreign investors have unfortunately been engaged in employment in Vanuatu which defeats their purpose of coming to Vanuatu to invest. Their occupation of local positions currently deprive employment opportunities for citizens. The proposed amendment prohibits a foreign investor from being employed in another business other than the business stated in the original certificate issued by VIPA.

### **Minister of Internal Affairs**



**REPUBLIC OF VANUATU**

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LABOUR (WORK PERMITS) (AMENDMENT)  
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**Arrangement of Sections**

<b>1</b>	<b>Amendment .....</b>	<b>2</b>
<b>2</b>	<b>Commencement.....</b>	<b>2</b>

# REPUBLIC OF VANUATU

## **BILL FOR THE LABOUR (WORK PERMITS) (AMENDMENT) ACT NO.      OF 2018**

An Act to amend the Labour (Work Permits) Act [CAP 187].

Be it enacted by the President and Parliament as follows:

### **1      Amendment**

The Labour (Work Permits) Act [CAP 187] is amended as set out in the Schedule.

### **2      Commencement**

This Act commences on the day on which it is published in the Gazette.

## SCHEDULE

### AMENDMENTS OF LABOUR (WORK PERMITS) ACT [CAP 187]

#### **1 Subsection 1(1)**

Insert in its correct alphabetical position:

“Appeals Committee” means the Work Permit Appeals Committee established under section 10A;”

#### **2 After subsection 2(2)**

Insert

“(2A) The employer must provide copies of the following:

- (a) all copies of the advertisements for the position to which the application for work permit relates; and
- (b) all copies of applications received in response to the advertisement under paragraph (a); and
- (c) in the case where the employer is a corporate entity- records of the decision of appointing the successful candidate.”

#### **3 At the end of section 2**

Add

“(6) The Commissioner of Labour must not issue a work permit under this section to a foreign investor issued with an approval certificate from the Vanuatu Investment Promotion Authority unless issued for the purposes of his or her employees under section 5B.”

#### **4 Subsection 3(1)**

- (a) Delete “VT250,000”, substitute “VT330,000”;
- (b) Delete “lower rate”, substitute “other rate not exceeding VT500,000”

#### **5 Subsection 3(1A)**

Delete “VT250,000”, substitute “VT330,000”

**6 Section 5**

Repeal the section, substitute

**“5 Renewal of extension of work permits**

- (1) An employer who wishes to retain the services of any employee who has been issued with a valid work permit under this Act beyond the expiry of the period for which such permit is valid, may apply to the Commissioner of Labour in the form prescribed under Schedule 1.
- (2) An application under subsection (1) must be made not less than 60 days prior to the date of expiry of that work permit.
- (3) The Commissioner of Labour must not renew a work permit under this section after 4 years from when it was originally issued.”

**7 Subsection 5B(2)**

Delete “the period stated in the permit”, substitute “a period not exceeding 4 years”

**8 After subsection 5E(3)**

Insert

- “(4) The Commissioner of Labour must not renew a work permit issued under section 5A or 5D, after 4 years from when the work permit was originally issued.”

**9 Section 5F**

Delete “VT5,000”, substitute “VT20,000”

**10 Subsection 5G(1A)**

Repeal the subsection, substitute

- “(1A) The Commissioner of Labour may revoke a work permit if he or she is satisfied that, the holder of the work permit:
- (a) has failed to train a citizen worker; or
  - (b) has failed to comply with any condition of the work permit; or
  - (c) is mistreating other employees he or she is working with.
- (1B) For the purposes of paragraph (1A)(c), “mistreating” includes but is not limited to an act of physically or verbally assaulting another person.”

**11 Section 5J**

Repeal the section.

**12 Subsections 8(3) and (3A)**

Repeal the subsections.

**13 Part 3 (Heading)**

Delete “VOCATIONAL TRAINING”, substitute “TRAINING OF A CITIZEN”

**14 Paragraph 9(5)(c)**

Delete “Minister on any appeal made under section 12”, substitute “Appeals Committee on an appeal under Part 3A”

**15 Section 10 (Heading)**

Delete “Vocational training”, substitute “Training of a citizen”

**16 After Part 3**

Insert

**“PART 3A APPEALS**

**Division 1 Establishment of the Work Permit Appeals Committee**

**10A Establishment of the Work Permit Appeals Committee**

The Work Permit Appeals Committee is established.

**10B Composition of the Appeals Committee**

- (1) The Appeals Committee consists of the following members:
- (a) the Director General of the Ministry of Internal Affairs; and
  - (b) the Chief Executive Officer of the Vanuatu Investment and Promotion Authority; and
  - (c) the Director of Immigration Services; and
  - (d) a person nominated by the Judicial Service Commission.
- (2) The member referred to under paragraph (1)(d) is to be appointed by the Minister by Order for a period of 4 years.

- (3) The person appointed under subsection (2), is the Chairperson of the Appeals Committee.
- (4) The members of the Appeals Committee are to elect from amongst themselves a Deputy Chairperson.
- (5) The person elected as Deputy Chairperson holds office for a period of 2 years.

**10C Functions of the Appeals Committee**

The Appeals Committee is responsible to assess and make a determination on all applications for appeal made under section 10E.

**10D Meetings of the Appeals Committee**

- (1) The Appeals Committee is to meet at least 4 times in a year and may hold such other meetings as are necessary for the proper performance of its functions.
- (2) The Chairperson of the Appeals Committee is to preside at all meetings of the Appeals Committee and in his or her absence, the Deputy Chairperson is to preside at these meetings.
- (3) At a meeting of the Appeals Committee, the quorum is 3 members present at the meeting.
- (4) The Appeals Committee may meet despite any vacancies in its membership so long as a quorum is present.
- (5) If a member is for any reason unable to attend a meeting of the Appeals Committee, he or she may nominate another person to represent him or her at a meeting of the Appeals Committee.
- (6) A member present at a meeting has 1 vote and questions arising at a meeting are to be decided by a majority of votes and the Chairperson has the casting vote.
- (7) Minutes are to be kept of all meetings of the Appeals Committee and are to be kept and taken by a senior member of the Department of Labour.
- (8) Subject to this Act, the Appeals Committee is to determine and regulate its own procedures.



- (9) The Minister is to prescribe by Order, the sitting allowances for the members of the Appeals Committee.

## **Division 2 Appeals Procedures**

### **10E Procedures for appeals**

- (1) A person aggrieved by a decision of the Commissioner of Labour under this Act may appeal to the Appeals Committee within 7 days of being served with the written notice of that decision.
- (2) An application for appeal made under this section must be accompanied with the prescribed fee.
- (3) The Appeals Committee must consider the application for appeal and make a decision within 30 days of the lodging of the application.
- (4) The Appeals Committee may confirm, modify, amend or rescind the decision of the Commissioner of Labour.
- (5) The Appeals Committee must:
- (a) record the decision, and the reason for the decision, in writing; and
  - (b) send a copy of the decision and reasons to the employer or the foreign investor concerned,
- within 7 days of the decision.”

### **17 Section 12**

Repeal the section.