

# REPUBLIC OF VANUATU

## BILL FOR THE VANUATU COPYRIGHT MANAGEMENT SOCIETY ACT NO. OF 2017

### Explanatory Note

The Bill for the Vanuatu Copyright Management Society Act No. of 2017 (“the Bill”) provides for the establishment, operation and regulation of the Vanuatu Copyright Management Society and for related matters.

This Bill is divided into 8 Parts.

#### **PART 1 PRELIMINARY MATTERS**

Clause 1 provides for the definition of terms used in the Bill.

#### **PART 2 VANUATU COPYRIGHT MANAGEMENT SOCIETY**

##### **Division 1 Establishment, functions and powers of the Society**

Clause 2 provides for the establishment of the Society.

Clause 3 sets out the functions of the Society and clause 4 provides for the powers of the Society.

##### **Division 2 Registration with the Society**

Clause 5 provides for registration with the Society. The owner or owners of the copyright in a work may apply to the Board to be registered as a member or members of the Society. The application for registration is open to both citizens and non-citizens of Vanuatu. The clause also sets out the requirements that must be satisfied for an application for registration to be approved.

Clause 6 provides for the Board to determine an application for registration based on the requirements provided for under clause 5. If an application has been approved by the Board, the person must pay the prescribed registration fee before being registered as a member of the Society. The clause further provides that an owner or owners of the copyright in a work who have been registered with the Society must – in the case of changes made to a work – inform the Board of any changes made to the work and provide a photograph showing proof of the change; or in the case of a new work - provide to the Board a description of any new work and a photograph showing proof of the new work.

Clause 7 provides for the period and conditions of registration and renewal. The period for registration with the Society is 1 year unless cancelled earlier by the Board. A person may apply for a renewal of his or her registration with the Society before the expiry of the person's current registration with the Society.

Clause 8 provides for the grounds upon which the Board may suspend or cancel his or her registration with the Society. The clause also provides that the Board must, by notice, in writing, request the member to appear before the Board within such period as specified in the notice to provide reasons as to why his or her registration should not be suspended or cancelled. The Board must take into account the member's reasons before making its decision. The register is to be amended to reflect the decision of the Board.

### **PART 3 VANUATU COPYRIGHT MANAGEMENT SOCIETY BOARD**

#### **Division 1 Establishment, functions and powers of the Board**

Clause 9 provides for the establishment of the Board and its membership. The Board consists of the Chairperson of each Provincial Association, a representative of the Malvatumauri Council of Chiefs and the Chief Executive Officer of the Society who is to be the secretary of the Board.

Clause 10 provides for the election and removal of Chairperson and Deputy Chairperson and removal of a member of the Board.

#### **Division 2 Functions and powers of the Board**

Clause 11 provides for the functions of the Board which is to carry out the functions of the Society as set out in clause 3 of the Act and such other functions as are conferred on the Board under this Act or any other Act. Clause 12 provides for the powers of the Board which is to exercise the powers of the Society as set out in clause 4 of this Act or other powers as are conferred on the Board under this Act or any other Act.

Clause 13 provides that the Board may, in writing, delegate to the Chief Executive Officer of the Society or any staff member of the Society, any of its functions and powers under this Act other than this power of delegation.

#### **Division 3 Meetings of the Board**

Clause 14 provides for the procedures for meetings of the Board.

Clause 15 provides that the Minister is to prescribe by Order the sitting allowance of the members of the Board including the Chairperson and the Deputy Chairperson, on the advice of the Chief Executive Officer having regard to the budget of the Office.

#### **Division 4 Administration of the Society**

Clause 16 provides for the appointment of the Chief Executive Officer of the Society.

Clause 17 provides that the Board may employ other staff of the Society.

## **PART 4 PROVINCIAL COPYRIGHT OWNERS ASSOCIATIONS**

### **Division 1 Registration and Membership**

Clause 18 provides for the requirement for registration of Provincial Copyright Owners Associations in each Province in Vanuatu. The clause requires that a representative of each work in a Province must be a member of the Executive Committee of the relevant Provincial Association. A person who is representing a work in the Executive Committee must be the person that has received the majority of votes of the owner or owners of that work in the relevant Province. The clause further provides that the President of the Provincial Copyright Owners Association must provide written confirmation of the representations, referred to in subclauses (3) and (4), to the Chief Executive Officer of the Society.

Clause 19 provides that the owner or owners of the copyright in the work may register as a member or members of the relevant Provincial Association in which he or she is operating from. The clause also makes it clear that a person who is a Ni-Vanuatu citizen must be a registered member of a Provincial Copyright Owners Association in order to register as a member of the Society. The requirement to register with a Provincial Association does not apply to a non-citizen who is applying for registration with the Society.

### **Division 2 Functions and Powers of a Provincial Association**

Clause 20 provides for the functions of a Provincial Association and clause 21 provides for the powers of a Provincial Association.

## **PART 5 VANUATU COPYRIGHT MANAGEMENT SOCIETY GENERAL ASSEMBLY**

Clause 22 provides for the establishment of the General Assembly of the Society. The General Assembly consists of all members of the Society.

Clause 23 provides for the procedures for meetings of the General Assembly.

## **PART 6 LICENCES, LICENCE FEES AND ROYALTIES**

Clause 24 provides for the application for a licence to use a work subject to the authorisation by the owner of the copyright in that work. The clause provides that the application for licence is open to both citizens and non-citizens of Vanuatu and it also sets out the requirements that must be satisfied before a licence can be issued to a person.

Clause 25 provides for the renewal of licence.

Clause 26 provides that the Board is to determine the standard rates for the license fees after consulting with the representatives of each work in the Executive Committee of the Provincial Associations. The clause also provides that the Board is to determine the manner in which the licence fees are to be distributed and in what proportions.

Clause 27 requires that a licensee must pay royalty in respect of a work that the licensee is authorised to use under the licensee's licence. The royalty is to be determined by the owner

or owners of the copyright in a work and are to be received by the Board. The clause requires the Board to distribute the royalty as soon as practicable to the owner or owners of the copyright in the work.

## **PART 7      SUSPENSION OR CANCELLATION OF LICENCE**

Clause 28 provides that if a licensee uses a work in a manner that is detrimental to the owner or owners of the copyright in the work or changes the original form of the work, the licensee commits an offence punishable on conviction by a fine not exceeding VT1,000,000. The clause also provides that if subclause (1) applies, the licensee's licence may be suspended or cancelled by the Board in accordance with the procedures sets out in clause 29.

Clause 29 sets out the procedures for suspension or cancellation of a licence.

Clause 30 provides that a person whose licence has been cancelled under clause 29 may apply for a new licence using the same procedure as set out under clause 24.

## **PART 8      MISCELLANEOUS PROVISIONS**

Clause 31 provides that the Government has the obligation to ensure that the Society is fully funded to carry out its functions and powers under this Act or any other Act.

Clause 32 sets out the funds of the Society. The clause also provides that the Board is to open and maintain bank accounts on behalf of the Society and the funds of the Society are to be deposited to such bank accounts as determined by the Board.

Clause 33 provides that the Board must prepare an annual report for each financial year of the Society, and an independent auditor authorised by the Board is to audit the account of the Society within 3 months after the end of that financial year. The clause also requires the Board to provide to the Minister the annual report for each financial year of the Society.

Clause 34 empowers the Minister to make Regulations for the purposes of the Act.

**Deputy Prime Minister and Minister of Tourism, Trade, Commerce, Industry and Ni-Vanuatu Business**



## REPUBLIC OF VANUATU

# BILL FOR THE VANUATU COPYRIGHT MANAGEMENT SOCIETY ACT NO. OF 2017

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# REPUBLIC OF VANUATU

## BILL FOR THE VANUATU COPYRIGHT MANAGEMENT SOCIETY ACT NO. OF 2017

An Act to provide for the establishment, operation and regulation of the Vanuatu Copyright Management Society and for other related matters.

Be it enacted by the President and Parliament as follows:

### PART 1 PRELIMINARY MATTERS

#### 1 Interpretation

In this Act, unless a contrary intention appears:

**artistic work** has the same meaning as in the Copyright and Related Rights Act No. 42 of 2000;

**Board** means the Vanuatu Copyright Management Society Board established under section 9;

**Chairperson** means the Chairperson of the Board;

**Chief Executive Officer** means the person appointed as the Chief Executive Officer of the Vanuatu Copyright Management Society under subsection 16(1);

**copyright** has the same meaning as in the Copyright and Related Rights Act No. 42 of 2000;

**Deputy Chairperson** means the Deputy Chairperson of the Board;

**dramatic work** has the same meaning as in the Copyright and Related Rights Act No. 42 of 2000;

**economic rights** has the same meaning as in the Copyright and Related Rights Act No. 42 of 2000;

**General Assembly** means the General Assembly of the Society established under subsection 22(1);

**indigenous knowledge** has the same meaning as in the Copyright and Related Rights Act No. 42 of 2000;

**licence** means a licence issued under subsection 24(4);

**licensee** means a person who holds a licence to use a work subject to the authorisation by the owner or owners of the copyright in that work;

**literary work** has the same meaning as in the Copyright and Related Rights Act No. 42 of 2000;

**member** means a person who is registered as a member of the Society under this Act;

**Minister** means the Minister responsible for copyright;

**musical work** has the same meaning as in the Copyright and Related Rights Act No. 42 of 2000;

**owner or owners of the copyright in a work** means the author or authors of the work or any other person who is the original owner of the economic rights in the work in accordance with section 20 of the Copyright and Related Rights Act No. 42 of 2000 (example: an employer is usually the owner of the copyright in the work of an employee);

**Provincial Association** means an Association referred to in subsection 18(1);

**Registrar** means the Registrar of Trademarks, Patents and Designs as provided for under the Trademarks Act No. 1 of 2003, the Patents Act No. 2 of 2003 and the Designs Act No. 3 of 2003;

**Society** means the Vanuatu Copyright Management Society established by section 2;

**work** has the same meaning as set out in sections 5 and 6 of the Copyright and Related Rights Act No. 42 of 2000.



## **PART 2 VANUATU COPYRIGHT MANAGEMENT SOCIETY**

### **Division 1 Establishment, functions and powers of the Society**

#### **2 Establishment of the Society**

- (1) The Vanuatu Copyright Management Society is established.
- (2) The Society is:
  - (a) a body corporate with perpetual succession; and
  - (b) to have a common seal; and
  - (c) capable of suing and being sued.

#### **3 Functions of the Society**

The Society has the following functions:

- (a) to determine the criteria for, and classes of, membership of the Society; and
- (b) to represent and defend the interests of its members in Vanuatu and abroad; and
- (c) to contribute by all appropriate means to the promotion of national creativity in any musical work, literary work, artistic work, dramatic work, audio-visual work, expression of indigenous culture, indigenous knowledge and other works; and
- (d) to build the Society's online website for the purpose of prioritizing and promoting Society events, publicizing the accomplishments of the members and encouraging membership; and
- (e) to monitor and evaluate the use of all works that have been registered with the Society; and
- (f) to administer and manage, on an exclusive basis, within Vanuatu, such economic rights of its members, as determined by the Board; and

- (g) to keep and maintain an up to date register of all the registered members of the Society and of all licences issued under this Act; and
- (h) to liaise with similar regional and international organisations for matters relating to copyright management; and
- (i) to receive payment of licence fees under this Act; and
- (j) to receive royalties and pay royalties to copyright owners; and
- (k) to provide annual reports which must include a financial audit report to the Minister and the Registrar; and
- (l) to advise the Minister on matters relating to copyright management; and
- (m) to educate members of the Society on the provisions of this Act to ensure compliance with the provisions of this Act; and
- (n) such other functions as may be conferred on the Society by this Act or any other Act.

#### **4 Powers of the Society**

- (1) The Society has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act or any other Act.
- (2) Without limiting subsection (1), the Society has the following powers:
  - (a) to acquire property and hold any property required for the carrying out of its function; and
  - (b) to enter into any agreement with any person for purposes relating to this Act; and
  - (c) to prescribe standards that have to be met by copyright owners; and
  - (d) to prescribe and impose conditions on licences for different copyright works issued under this Act.

## **Division 2 Registration with the Society**

### **5 Application for Registration**

- (1) An owner or the owners of the copyright in a work may apply in the prescribed form to the Board to be registered as a member or members of the Society.
- (2) In the case of a citizen or citizens applying, the application must be accompanied by:
  - (a) an application fee of VT10,000 payable to the Board; and
  - (b) the following information:
    - (i) the full name and current address of an applicant or each applicant (if there is more than one owner of the copyright in the work); and
    - (ii) a description of the work and a photograph showing proof of the work; and
    - (iii) written confirmation of the applicant's or, each applicant's (if there is more than one owner of the copyright in the work), registration with the relevant Provincial Association.
- (3) In the case of a non-citizen or non-citizens applying, the application must be accompanied by:
  - (a) an application fee of VT20,000 payable to the Board; and
  - (b) the following information:
    - (i) the full name, current address and nationality of an applicant or each applicant (if there is more than one owner of the copyright in the work); and
    - (ii) a description of the work and a photograph showing proof of the work.
- (4) The Board may require an applicant or each applicant (if there is more than one owner of the copyright in the work), to provide such further

information as it considers necessary in order to make a determination on the application.

**6 Determination of applications for registration by the Board**

- (1) On receiving an application for registration with the Society, the Board may:
  - (a) if it is satisfied that all the requirements for an application under section 5 have been met by an applicant or applicants, register the applicant or each applicant (if there is more than one owner of the copyright in the work), as a member of the Society upon payment of the prescribed registration fee; or
  - (b) if it is not satisfied that all the requirements for an application under section 5 have been met by an applicant, refuse to register the applicant or each applicant (if there is more than one owner of the copyright in the work), as a member of the Society.
- (2) To avoid doubt, if an application is made on behalf of more than one owner of the copyright in a work, each person named in the application must pay the prescribed registration fee to the Board if the Board makes a decision under paragraph (1)(a).
- (3) The owner or owners of the copyright in a work who have been registered with the Society must:
  - (a) in the case of changes made to a work - inform the Board of any changes made to the work and a photograph showing proof of the change; or
  - (b) in the case of a new work - provide to the Board with a description of the new work and a photograph showing proof of the new work.

**7 Period and conditions of registration and renewal**

- (1) The period for registration with the Society is 1 year unless cancelled earlier by the Board.
- (2) Before the expiry of a member's current registration, the member may apply to the Board in the prescribed form for renewal of his or her registration for 1 year with the Society.

- (3) Subject to subsection (4), sections 5 and 6 apply to the process of renewing registration with the Society under this section.
- (4) No application fee for renewal of registration is payable, but the registration fee prescribed under section 6 is payable to the Board on renewal of the member's registration or each member's registration if there is more than one owner of the copyright in a work who is registered.
- (5) The registration or renewal of a member is subject to such conditions as the Board may determine.

**8 Board may suspend or cancel registration**

- (1) Subject to subsections (2) and (3), the Board may, by notice in writing to a member, suspend or cancel the registration of the member if the member:
  - (a) has contravened any provision of this Act or a condition of his or her registration under section 7; or
  - (b) does not adequately provide information when requested by the Board.
- (2) If the Board proposes to suspend or cancel the registration of a member, the Board must, by notice in writing, request the member to appear before the Board, within such period as specified in the notice, to provide reasons why his or her registration should not be suspended or cancelled.
- (3) The Board must take into account any reasons provided under subsection (2) in making its decision to suspend or cancel.
- (4) The register is to be amended if the Board:
  - (a) suspends the registration of a member; or
  - (b) cancels the registration of a member.

## **PART 3 VANUATU COPYRIGHT MANAGEMENT SOCIETY BOARD**

### **Division 1 Establishment, functions and powers of the Board**

#### **9 Establishment and membership of the Board**

- (1) The Vanuatu Copyright Management Society Board is established.
- (2) The Board consists of the following members:
  - (a) the Chairperson of each Provincial Association; and
  - (b) a representative of the Malvatumauri Council of Chiefs to be nominated by the President of the Malvatumauri Council of Chiefs; and
  - (c) a representative of the Vanuatu Intellectual Property Office to be nominated by the Registrar; and
  - (d) the Chief Executive Officer of the Society who is to be the secretary of the Board.

#### **10 Election, resignation and removal of Chairperson or Deputy Chairperson**

- (1) The members of the Board are to elect from amongst themselves the Chairperson and the Deputy Chairperson of the Board for a term not exceeding 3 years.
- (2) The Chairperson or the Deputy Chairperson may resign from office by giving his or her written resignation to the Board.
- (3) The Board may by notice in writing to a member remove the member as the Chairperson or Deputy Chairperson of the Board if in the opinion of a majority of the members of the Board, the member is acting in contravention of any provisions of this Act.

## **Division 2 Functions and powers of the Board**

### **11 Functions of the Board**

The Board has the responsibility to carry out the functions of the Society as set out in section 3 of this Act and such other functions as are conferred on the Board under this Act or any other Act.

### **12 Powers of the Board**

The Board is to exercise the powers of the Society as set out in section 4 of this Act or any other powers as are conferred on the Board under this Act or any other Act.

### **13 Delegation of functions and powers**

- (1) The Board may, in writing, delegate to the Chief Executive Officer of the Society or any staff of the Society, any of the Society's functions or powers under this Act other than this power of delegation.
- (2) The delegation may be made generally or in respect of a particular matter or class of matters.
- (3) The Board may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Board from performing the function or exercising the power that it has delegated.

## **Division 3 Meetings of the Board**

### **14 Meetings of the Board**

- (1) The Board is to meet at least 4 times a year and may hold such other meetings as are necessary for the proper performance of its functions.
- (2) The Chairperson is to preside at all meetings of the Board and in his or her absence, the Deputy Chairperson is to preside at these meetings.
- (3) At a meeting of the Board, a quorum consists of:
  - (a) the Chairperson or the Deputy Chairperson if the Chairperson is for any reason unable to preside at the meeting; and
  - (b) 4 other members of the Board,

present at that meeting.

- (4) The Board may meet despite any vacancies in its membership so long as a quorum is present.
- (5) If a member of the Board is for any reason unable to attend a meeting of the Board, he or she may nominate another person to represent him or her at a meeting of the Board.
- (6) Each member of the Board present at a meeting of the Board has a vote and decisions will be carried by a simple majority of the votes cast and, in the event of an equality of votes, the Chairperson will have a casting vote.
- (7) The Chief Executive Officer has no voting rights in any meetings of the Board.
- (8) The minutes of a meeting of the Board are to be taken and kept by the Chief Executive Officer of the Society.
- (9) Subject to this Act, the Board is to determine and regulate its own procedures.

#### **15 Sitting Allowance**

The Minister is to prescribe by Order the sitting allowance for the members of the Board, including the Chairperson and the Deputy Chairperson, after consultation with the Chief Executive Officer regarding the budget of the Office.

### **Division 4 Administration of the Society**

#### **16 Chief Executive Officer of the Society**

- (1) The Chief Executive Officer of the Society is to be appointed by the Board for a period of 3 years and is eligible for re-appointment.
- (2) The Board is to determine the remuneration, terms and conditions of employment of the Chief Executive Officer.
- (3) The appointment of the Chief Executive Officer of the Society must follow a fair and transparent selection process based on merit.
- (4) A person must not be appointed as the Chief Executive Officer unless the person has had more than 7 years' experience in managing an office.



- (5) The Chief Executive Officer ceases to hold office if he or she:
- (a) becomes permanently incapable of performing his or her functions under this Act; or
  - (b) resigns from his or her office by notice in writing addressed to the Board; or
  - (c) has been terminated by notice in writing by the Board for a serious breach of the terms and conditions of his or her employment; or
  - (d) is or has been declared bankrupt; or
  - (e) has been convicted of a serious offence.
- (6) The Chief Executive Officer has the following functions:
- (a) to be responsible for the day to day administration of the Society; and
  - (b) to ensure that the Provincial Associations registered under this Act are working effectively; and
  - (c) to convene meetings of the Board at the request of the Chairperson, or Deputy Chairperson or a majority of the members of the Board; and
  - (d) to prepare and circulate agendas and issue papers for meetings of the Board; and
  - (e) to coordinate, facilitate and implement the decisions of the Board; and
  - (f) to attend, take, keep and maintain a proper record of the minutes of all meetings of the Board and circulate them within 3 weeks after each meeting; and
  - (g) to act on any matters that the Board directs him or her to do in relation to matters of the administration of the Board; and
  - (h) to mobilise appropriate resources for the efficient implementation of all decisions of the Board; and

- (i) to ensure that meetings are held according to the schedule of the meetings approved by the Board; and
  - (j) such other functions that may be conferred on the Chief Executive Officer by this Act or any other Act.
- (7) The Chief Executive Officer must attend all meetings of the Board and if he or she is unable to attend a meeting, he or she must nominate a senior staff of the Society to attend on his or her behalf.

**17 Other staff of the Society**

- (1) The Board may employ other staff of the Society as it considers necessary for the proper and efficient performance of the functions of the Society.
- (2) The Board is to determine the terms and conditions of employment of the persons referred to in subsection (1).
- (3) The appointment of other staff of the Society must follow a fair and transparent selection process and must be based on merit.

## **PART 4 PROVINCIAL COPYRIGHT OWNERS ASSOCIATIONS**

### **Division 1 Registration and membership**

#### **18 Registration of a Provincial Copyright Owners Association**

- (1) Subject to subsection (2), the following Provincial Associations must be registered with the Society:
  - (a) TORBA Copyright Owners Association; and
  - (b) SANMA\LUGANVILLE Copyright Owners Association; and
  - (c) PENAMA Copyright Owners Association; and
  - (d) MALAMPA Copyright Owners Association; and
  - (e) SHEFA\PORT VILA Copyright Owners Association; and
  - (f) TAFEA\LENAKEL Copyright Owners Association.
- (2) A Provincial Association must be registered in accordance with the Charitable Associations (Incorporation) Act [CAP 140].
- (3) Subject to subsection (4), a representative of each work in a Province must be a member of the Executive Committee of the relevant Provincial Association.
- (4) A person who is representing a work in the Executive Committee of a Provincial Association must be the person that has received the majority of votes of the owner or owners of that work in the relevant Province to be their representative on the relevant Executive Committee.
- (5) The President of each Provincial Association must provide to the Chief Executive Officer of the Society, written confirmation of representations referred to in subsections (3) and (4).

**19 Membership of a Provincial Association**

- (1) The owner or owners of the copyright in a work may register as a member or members of a Provincial Association in the Province in which the owner is, or, owners are, operating from.
- (2) The Provincial Association is to determine the terms and conditions for membership and fees to be paid before a person may become a member of the Provincial Association.
- (3) To avoid doubt, a person must be a registered member of a Provincial Association in order to register as a member of the Society.
- (4) Subsection (3) does not apply to a non-citizen who is applying for registration with the Society.

**Division 2 Functions and Powers of a Provincial Association**

**20 Functions of a Provincial Association**

A Provincial Association has the following functions:

- (a) to oversee the efficient and effective management of the Provincial Association; and
- (b) to provide such information and assistance that may be required by the Board or the Chief Executive Officer; and
- (c) to develop and maintain cooperative relationships with the Society and other Provincial Associations; and
- (d) to ensure that the members of the Association within its jurisdiction comply with the provisions of this Act; and
- (e) to bring to the attention of the Board any matters which the Provincial Association considers significant for the better carrying out of the management of the Association within the relevant jurisdiction; and
- (f) to perform such other functions as may be conferred on the Provincial Association by the Board, or under this Act or any other Act.

**21 Powers of a Provincial Association**

A Provincial Association has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act.

## **PART 5 VANUATU COPYRIGHT MANAGEMENT SOCIETY GENERAL ASSEMBLY**

### **22 Establishment of the General Assembly**

- (1) The General Assembly of the Vanuatu Copyright Management Society is established.
- (2) The General Assembly consists of all members of the Society.

### **23 Meetings of the General Assembly**

- (1) The General Assembly of the Society is to meet once a year, on or before 31<sup>st</sup> March.
- (2) Despite subsection (1), an extraordinary meeting of the General Assembly may be held at any time at the request of the Board or the majority of its members.
- (3) The Chief Executive Officer must provide the Provincial Associations, one month's notice containing the date, venue and agenda of the meeting of the General Assembly.
- (4) The President or in his or her absence the Vice President of each Provincial Association must inform their members of the date, venue and time of a meeting of the General Assembly.
- (5) The Chairperson of the Board is to preside at all meetings of the General Assembly and in his or her absence, the Deputy Chairperson of the Board is to preside at these meetings. In the event that none of those persons is available for a meeting of the General Assembly, the members of the Society are to elect a member to preside at such meeting.
- (6) At a meeting of the General Assembly, a quorum consists of two thirds of the members of the General Assembly, present at that meeting.
- (7) If the quorum under subsection (6) is not achieved, the General Assembly is to be convened two days later with a quorum of a simple majority of its members present at the meeting.
- (8) Each member present at a meeting of the General Assembly will have one vote and decisions will be carried by a simple majority of the votes cast. In

the event of an equality of votes, the person presiding at the meeting will have a casting vote.

- (9) The Chief Executive Officer has no voting rights at any meetings of the General Assembly.
- (10) The minutes of a meeting of the General Assembly are to be taken by the Chief Executive Officer or his or her delegate.
- (11) Subject to this Act, the General Assembly is to determine and regulate its own procedures.

## **PART 6 LICENCES, LICENCE FEES AND ROYALTIES**

### **24 Application for licence**

- (1) Subject to authorisation by the owner of the copyright in a work, a person who intends to use the work must apply in the prescribed form to the Board for a licence to use that work.
- (2) An applicant for a licence who is a citizen of Vanuatu must:
  - (a) pay an application fee prescribed by Order by the Minister on the advice of the Board; and
  - (b) provide the relevant documents and certificates as prescribed by Order by the Minister on the advice of the Board; and
  - (c) pay a licence fee which is to be determined by the owner or owners of the copyright in the work after consultation with the Board.
- (3) An applicant for a licence who is a non-citizen of Vanuatu must:
  - (a) pay an application fee prescribed by Order by the Minister on the advice of the Board; and
  - (b) provide the relevant documents and certificates as prescribed by Order by the Minister on the advice of the Board; and
  - (c) pay a licence fee which is to be determined by the owner or owners of the copyright in the work after consultation with the Board.
- (4) The Board may issue a licence to a person if the Board is satisfied that the person has met the requirements under subsection (2) or (3) (whichever is applicable).
- (5) A licence is valid for a period of 1 year commencing on the date on which it was issued, unless the licence is cancelled earlier under section 29.
- (6) A person must not use a work unless the person:
  - (a) has been authorised to use that work by the owner or owners of the copyright in that work; and



- (b) has been issued with a licence under this section.
- (7) A person who contravenes subsection (6), commits an offence punishable, on conviction, by a fine not exceeding VT1,000,000.
- (8) Application fees and licence fees referred to in this section are payable to the Board.

## **25 Renewal of licence**

- (1) The provisions of section 24 apply to the renewal of a licence.
- (2) The Board may renew a licence to a person if the Board is satisfied that the person has met the requirements under subsections 24(2) or (3) (whichever is applicable).
- (3) The renewal of licence is valid for a period of 1 year commencing on the date on which it was renewed unless the licence is cancelled earlier under section 29.
- (4) To avoid doubt, a licence to use a work must not be renewed unless a licence renewal fee which is to be determined by the owner or owners of the copyright in the work after consultation with the Board is paid to the Board.
- (5) The Board may issue or renew a licence subject to such conditions as the Board determines.

## **26 Licence Fee**

- (1) The Board is to determine the standard rates for the licence fee for each work after consultation with the representative of each work on the Executive Committee of the Provincial Associations.
- (2) The Board is to determine the manner in which licence fees are to be paid, after consultation with the owner or owners of the copyright in a work.

## **27 Royalty on a work used under licence**

- (1) A licensee must pay to the Board a royalty in respect of a work that the licensee is authorised to use under the licensee's licence.

- (2) The amount of a royalty is to be determined by the owner or owners of the copyright in a work.
- (3) The Chief Executive Officer must ensure that the owner or owners of a copyright in a work enter into a legally binding Agreement with a licensee for the payment of a royalty by the licensee in respect of the work that the licensee is authorised to use under the licensee's licence before the licence is issued to, or renewed by, the licensee under this Act.
- (4) After having received the payment of a royalty from a licensee, the Board must as soon as practicable distribute the royalty to the owner or owners of the copyright in the work.

## **PART 7 SUSPENSION OR CANCELLATION OF LICENCE**

### **28 Suspension or cancellation of licence**

- (1) A licensee who:
- (a) uses that work in a manner that is detrimental to the owner or owners of the copyright in the work; or
  - (b) changes the original form of the work without the prior authorisation of the owner or owners of the copyright in a work,
- commits an offence punishable on conviction, by fine not exceeding VT 1,000,000.
- (2) If subsection (1) applies, the licensee's licence may be suspended or cancelled by the Board in accordance with the procedures set out in section 29.

### **29 Suspension or cancellation of licence - procedures**

- (1) If the Board decides to suspend or cancel a licence, the Board may by notice in writing, request the licensee to appear, within such period as specified in the notice, to give reasons why the licensee's licence should not be suspended, or cancelled, as the case may be.
- (2) The notice under subsection (1) must specify the grounds under section 28 by which a licence is to be suspended or cancelled.
- (3) The Board must have regard to any reasons given by the licensee under subsection (1) and if the matter:
- (a) is resolved to the satisfaction of the Board, the Board must not take any further action; or
  - (b) is not resolved to the satisfaction of the Board but the Board considers that the action to suspend or cancel the licence is not warranted, may, in writing, caution the licensee; or
  - (c) is not resolved to the satisfaction of the Board and the Board is satisfied that further action is warranted, the Board may by notice in writing:

- (i) give such direction as the Board considers necessary; or
  - (ii) suspend a licence to use the work for such period as the Board considers necessary or cancel the licence.
- (4) Upon cancellation or suspension of a licence to use a work, the licensee must cease to use the work:
  - (a) in the case of a cancellation – for as long as the cancellation is in force; and
  - (b) in the case of a suspension – for the period of the suspension.
- (5) A person who acts in contravention of subsection (4), commits an offence punishable on conviction by a fine not exceeding VT1,000,000.

### **30 New licence after cancellation of licence**

A person whose licence to use a work has been cancelled under section 29 may apply under section 24 for a new licence after a period of 12 months from the date of the cancellation to use the work, subject to the authorisation by the owner of the copyright in the work.

## **PART 8 MISCELLANEOUS PROVISIONS**

### **31 Government's obligation**

The Government must ensure so far as practicable that the Society is fully funded to carry out its functions and powers under this Act or any other Act.

### **32 Funds of the Society**

- (1) The funds of the Society consist of:
  - (a) funds appropriated by Parliament; and
  - (b) fees and charges payable to the Board under this Act; and
  - (c) funds from any other lawful source.
- (2) The Board is to open and maintain bank accounts on behalf of the Society as the Board considers necessary.
- (3) The funds of the Society are to be deposited to such bank accounts as the determined by the Board.

### **33 Annual report and auditing**

- (1) The Board must prepare an annual report for each financial year of the Society.
- (2) The Society's accounts for each financial year must be audited within 3 months after the end of that financial year by an independent auditor authorised by the Board.
- (3) The Board must provide the Minister and the Registrar with an annual report for each financial year of the Society as soon as practicable after the report has been prepared.

### **34 Regulations**

The Minister may by Order, on the advice of the Board, prescribe anything which is necessary or convenient to be prescribed for the better carrying out or giving effect to the provisions of this Act.

**35 Commencement**

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