

REPUBLIC OF VANUATU

BILL FOR THE UTILITIES REGULATOR AUTHORITY (AMENDMENT) ACT NO. OF 2016

Explanatory Note

This Bill amends the Utilities Regulatory Authority Act No. 11 of 2007 (the “Act”). The purpose of amending this Act is to achieve financial independence and sustainability which is reflected in the Financial Sustainability Plan developed by the Utilities Regulatory Authority (“the URA”) and approved by the Council of Ministers on 24 December 2014.

Item 1 amends section 1 by inserting in their correct alphabetical positions the terms ‘fees’ and ‘trust money’. The term ‘fees’ is defined as fees assessed or other expenses or cost charged by the Authority under section 29B. The term ‘trust money’ is defined as money that is deemed to be trust money under paragraph 46(1)(f) of the Public Finance and Economic Management Act [CAP 244].

Item 2 repeals section 3 and substitutes it with a new section 3. The applicability of this Act is now subject to subsection 29B(7). To ensure URA’s financial independence and sustainability, the power of the URA in section 29B cannot be overridden in any Concession Agreement.

Item 3 amends subsection 21(8) by deleting the word “section” and substituting it with the word “Act”. A person commits an offence if the person contravenes a provision of this Act.

Item 4 amends subsection 25(1) by deleting the words “Part other than subsections 21(4) and (5)” and substituting it with the word “Act”. An infringement notice may now be issued in respect of any single offence under this Act.

Item 5 repeals subsection 25(4) and substituting it with new subsections (4) and (4A). Subsection (4) provides that despite paragraph (3)(e) which sets the limit for penalties that could be set out in an infringement notice, the penalty for failure to pay the amount specified in an infringement notice is to be 3 times the amount due plus payment of 1% calculated daily on the amount due for each day until the amount due is fully paid. Subsection (4A) provides that the failure to pay the penalty set out in subsection (4), is prima facie evidence for any proceedings brought under section 24.

Item 6 amends subsection 26(1) by inserting after that subsection a new subsection (1A) providing that penalties paid in respect of an offence under

section 29C must be deposited into the bank account of the URA required under subsection (2).

Item 7 amends subsection 26(2) by inserting after that subsection new subsections (3) and (4). Subsection (3) requires the Authority to prescribe rules for the use of penalties paid under subsection (1A). Subsection (4) provides that the rules prescribed under subsection (3) are to be approved by the Minister of Finance and Economic Management.

Item 8 amends paragraph 29(b) by inserting after the word ‘costs’ the word ‘penalties’. The effect of this amendment is that penalties paid in respect of fees recovered by the URA and deposited in the URA’s account form part of the URA’s revenue to be used appropriately. The use of such penalties by URA is subject to the rules issued by the URA and approved by the Minister of Finance and Economic Management as required in Item 7.

Item 9 repeals paragraph 29(c) and substituting it with new paragraphs (c) and (d). Paragraph (c) clarify the intention of the existing paragraph (c) by referring to a term ‘trust account’ as deemed under paragraph 46(1)(f) of the Public Finance and Economic Management Act [CAP 244]. Paragraph (d) provides that fees charged by the Authority under section 29B are also revenue for the URA.

Item 10 amends section 29A by inserting after that section, new sections 29B and 29C. Section 29B allows the Authority to assess fees on utilities and to prescribe rules to assess fees which are to be approved by the Minister of Finance and Economic Management. Section 29C provides for the payment of fees under section 29B.

Item 11 amends subsection 30(1) by inserting after that subsection new subsections (1A), (1B) and (1C). Subsection (1A) requires the URA to provide its annual approved budget to the Minister of Finance and Economic Management within 15 working days after the budget is approved by the URA Commissioners. Subsection (1B) requires the Authority to prescribe rules to use funds appropriated by the Government and trust money. The prescribe rules are to approved by the Minister of Finance and Economic Finance as required under (1C).

Item 12 amends subsection 30(2) by deleting the words “subsection 39(4)” and substituting it with the words “section 34C”. The effect of this amendment is to correct the referencing made in the Public Finance and Economic Management Act [CAP 244].

Item 13 amends subsection 30(3) by inserting after the word “funds” (first occurring) the words “received under paragraph 29(a) and”. The effect of this amendment is to clarify that any surplus funds received under paragraph 29(a) is to be returned to the public fund at the end of the financial year.

Item 14 amends subsection 30(3) by inserting after that subsection new subsections (4) and (5). Subsection (4) requires the URA to prescribe rules for surplus funds comprising fees dealt with by the URA and subsection (5) provides that the prescribed rules under subsection (4) are to be approved by the Minister of Finance and Economic Management.

Minister of Climate Change Adaptation, Geohazards, Meteorology and Energy



REPUBLIC OF VANUATU

**BILL FOR THE
UTILITIES REGULATORY AUTHORITY
(AMENDMENT) ACT NO. OF 2016**

Arrangement of Sections

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REPUBLIC OF VANUATU

BILL FOR THE UTILITIES REGULATORY AUTHORITY (AMENDMENT) ACT NO. OF 2016

An Act to amend the Utilities Regulatory Authority Act No. 11 of 2007.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Utilities Regulatory Authority Act No. 11 of 2007 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 THE UTILITIES REGULATORY AUTHORITY ACT NO. 11 OF 2007

1 Subsection 1(1)

Insert in their correct alphabetical positions:

“**fees** means fees assessed on utilities by the Authority, or any other fees, expenses or cost charged by the Authority under section 29B;

trust money means money that is deemed to be trust money under paragraph 46(1)(f) of the Public Finance and Economic Management Act [CAP 244];”

2 Section 3

Repeal the section, substitute

“3 Application of this Act

Subject to subsection 29B(7), this Act applies to a regulated service to the extent that is not inconsistent with a provision in any concession agreement under the Electricity Supply Act [CAP 65] existing on or before the commencement of this Act or a provision of any other Act.”

3 Subsection 21(8)

Delete “section”, substitute “Act”

4 Subsection 25(1)

Delete “Part other than subsections 21(4) and (5)”, substitute “Act”.

5 Subsection 25(4)

Repeal the subsection, substitute

“(4) Despite paragraph (3)(e), if the penalty specified in the infringement notice is not paid within the time required, the penalty in the infringement notice is to be 3 times the amount due plus payment of 1% calculated daily on the amount due for each day until the amount due is fully paid.

(4A) If the penalty imposed under subsection (4) is not paid in the time required it is deemed for the purpose of any proceedings brought under section 24 to be prima facie evidence of any facts described in it.”

6 After subsection 26(1)

Insert

“(1A) Despite subsection (1), penalties paid in respect of an offence under section 29C must be deposited into the bank account of the Authority under subsection (2).”

7 After subsection 26(2)

Add

“(3) The Authority may prescribe rules for the use of penalties paid under subsection (1A).

(4) The prescribed rules are to be approved by the Minister of Finance and Economic Management.”

8 Paragraph 29(b)

After “costs”, insert “and penalties”

9 Paragraph 29(c)

Repeal the paragraph, substitute

“(c) trust money; and

(d) fees charged by the Authority in accordance with section 29B.”

10 After section 29A

Insert

“29B Fees

(1) The Authority may assess fees on utilities in accordance with this section and may prescribe the rules to assess the fees. A person must comply with the rules prescribed by the Authority.

(2) The prescribed rules are to be approved by the Minister of Finance and Economic Management.

(3) The fees assessed on a utility by the Authority under subsection (1) must not exceed 2% of that utility’s annual revenue for the previous calendar year from the regulated service.

(4) The fees assessed on a utility by the Authority pursuant to subsection (1) is to be included as a component of that utility’s cost when determining maximum price pursuant to section 18.

- (5) The penalty paid by a utility pursuant to subsection 29C, paragraph 25(3)(e) or subsection 25(4) must not be included in that utility's cost when determining the maximum price.
- (6) The Authority may prescribe such other reasonable fees, expenses or costs to relevant parties when performing its functions or providing any service under this Act.
- (7) If a provision of a concession agreement conflicts with a provision under this section, the provisions of this section prevail.

29C Payment of fees

- (1) A person must make payments of the fees assessed under section 29B, within the time required by the Authority.
- (2) The Authority may impose a penalty on a person who fails to comply with subsection (1).
- (3) The penalty imposed under subsection (2) is 3 times the amount due plus payment of 1% calculated daily on the amount due for each day until the amount due is fully paid.
- (4) The amount of penalty imposed under this section is a debt owed to the Authority and is recoverable by action in a court of law.”

11 After subsection 30(1)

Insert

- “(1A) The Authority must provide a copy of its approved annual budget to the Minister of Finance and Economic Management within 15 working days after the approval of the annual budget by the Commissioners.
- (1B) The Authority is to prescribe rules for the use of funds appropriated to it by the Government and trust money.
- (1C) The prescribed rules are to be approved by the Minister of Finance and Economic Management”

12 Subsection 30(2)

Delete “subsection 39(4)”, substitute “section 34C”

13 Subsection 30(3)

After “funds” (first occurring), insert “received under paragraph 29(a) and”

14 After subsection 30(3)

Insert

- “(4) The Authority may prescribe rules for the surplus funds comprising of fees to be dealt with by the Authority.
- (5) The prescribed rules are to be approved by the Minister of Finance and Economic Management.”