

# REPUBLIC OF VANUATU

## BILL FOR THE PORTS (AMENDMENT) ACT NO. OF 2021

### Explanatory Note

This Bill amends the Ports Act [CAP 26] (“the Act”) to address the difficulties faced by the Department of Ports and Harbor (the “Department”) in implementing the provisions of the Act. The Act is amended to address the following matters:

- (a) the functions and powers of the Harbor Master being transferred to the Director;
- (b) the wreckage and moorings within the harbor;
- (c) implementation of maritime conventions nationally;
- (d) establishment of Committees by the Director;
- (e) to add offences and increase penalty fines;
- (f) to provide more revenue initiatives for the Government.

#### **1 Transferring of the functions and powers of the Harbor Master to the Director**

The Act provides for the functions and powers of the harbor master, but not the Director, thus it is difficult for the Director to:

- (a) make decisions when there are no functions and powers in the Act. People continue to risk their lives to face the challenge on board a domestic vessel due to lack of safe and secure infrastructure. The risk are in areas of wreckage, offshore developments and installations, management of concession agreements, the control of international shipping lines and agent, and poor management of domestic ports; and
- (b) issue instructions, Orders and to delegate responsibilities to subordinate officers and clients.

Therefore the Bill ensures that the Director has the power and functions to properly manage all the Ports of Entry.

Additionally, when the Act came into force, the administration of the Department were carried out by the harbor master. The Government through the Public Service Commission (“the PSC”) has provided structures for positions in the administration of the Department.

The PSC appoints the Director to be responsible for the administration of the Department. The PSC also appoints the harbormaster, as a public servant with technical expertise. However, the Director has been facing difficulties in carrying out his or her responsibilities as it is limited by the Act.

## **2 To address the wreckage and moorings within the harbor**

Currently, the Act does not cater for the wreckage of vessels in the harbor, thus the owners or masters of wrecked vessels tend to escape their responsibilities in removing the wrecked vessels. As a result there are a few stranded vessels within the harbor of Port Vila. Therefore, the Bill provides powers to the Director to remove the wreckages in line with the Government National Sustainable Development Plan, environmental pillar, to promote safety of navigation and sustainability of aquatic resources.

Additionally, the Act does not cater for the management of moorings and buoying. The Bill will ensure that the Department will not only manage ports but to collect mooring fees in terms of rental within all declared ports.

## **3 Implementation of the Maritime Conventions nationally**

Vanuatu as a signatory to the International Ships and Ports Security (“ISPS”) Code, has been implementing the requirements of the ISPS Code but it was never been included in the Act. This Bill allows the Director to ensure that the implementation of the requirements of the ISPS Code on international vessels and international ports in Vanuatu are complied with.

The Bill covers Hull grooming and ballast water exchange. Hull grooming and ballast water exchange are water exchange activities happening when international vessels are dock alongside the wharf. The water exchange activities resulted in introduction of invasive aquatic marine species that are dangerous to our marine ecosystem. It is an offence if the hull grooming and ballast water exchange is conducted.

## **4 Establishment of Committees**

The Act does not provide the power to the Director to establish Committees to carry out the functions under the Act. Therefore this amendment provides for the Director to establish any committee to ensure his or her functions are effectively carried out under the Act.

## **5 Offences and penalties**

The penalties in the Act are too small when compared to offences committed. The current provisions of the Act provides for VT30,000 to any person committing an offence under this Act. The Act is amended to increase the fines to VT5,000,000 for an individual and VT15,000,000 for a body corporate.

Furthermore, the Bill is amended to provide for other offences and penalty notices for these offences.

## **6 Revenue initiatives for the Government**

There are no provisions in the Act that provides for revenue collections in particular charging of fees relating to light dues, anchorage fees and other related fees. The Bill will allow the Government to increase its revenue collection within the Ports.

**Minister of Infrastructure and Public Utilities**



**REPUBLIC OF VANUATU**

**BILL FOR THE  
PORTS (AMENDMENT) ACT NO.      OF 2021**

**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 PORTS (AMENDMENT)ACT NO. OF 2021**

An Act to amend the Ports Act [CAP 26].

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The Ports Act [CAP 26] 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 PORTS ACT [CAP 26]

**1 References to “harbourmaster”**

Delete references to “harbourmaster” (wherever occurring), substitute “Director”

**2 Section 1**

Insert in their correct alphabetical positions:

““Director” means the Director responsible for Ports;

“Director General” means the Director General responsible for Ports;”

**3 Heading before section 5**

Repeal the heading, substitute “ADMINISTRATION”

**4 Sections 5 to 12 and sections 14 to 16**

Repeal the sections, substitute

**“5. Director**

The Director is responsible for the day to day management and administration of this Act.

**6. Functions of the Director**

In addition to such functions as are conferred on the Director under this Act and any other Act, the Director has the following functions:

- (a) to provide policy directives on Ports infrastructure development; and
- (b) to advise the Minister on Ports policy and development; and
- (c) to implement the requirements of the International Ships and Ports Security (ISPS) Code on international vessels and international ports; and
- (d) to enforce ports security measures and operations on Government ports infrastructures; and
- (e) to implement, maintain and manage development and infrastructures of Government ports; and
- (f) to ensure that the Department performs its functions properly, efficiently and effectively as required under this Act or any other Act.

**7. Powers of the Director**

The Director has the power to do all things that are necessary or convenient to be done for or in connection with the proper performance of his or her functions under this Act or any other Act.

**8. Committees**

- (1) The Director may establish such Committees to assist the Director in carrying out his or her functions under this Act.
- (2) The Director is to determine the compositions and functions of the Committees.
- (3) Subject to the directions of the Director, the Committees may regulate their own procedures.”

**5 Section 20**

Repeal the section, substitute

**“20. Dealing with vessels**

- (1) A person, other than the owner, must not remove, sink, destroy, demolish or interfere with any wrecked or stranded vessel within the limits of a port unless authorised by the master or owner of the vessel.
- (2) Despite subsection (1), the Director may give 30 days’ notice to the master or owner of the vessel stating reasons to remove, sink, destroy, demolish or interfere with his or her wrecked or stranded vessel.
- (3) The Director may remove, sink, destroy, demolish or interfere with the wrecked or stranded vessel if the master or owner of the vessel fails to comply with the notice under subsection (2).
- (4) The expense incurred in removing, sinking, destroying, demolishing or interfering with the wrecked or stranded vessel under subsection (3) is to be paid by the master or owner of the vessel.”

**6 Section 27**

Delete “define”, substitute “declare”

**7 Section 31**

Delete “, other than at a Government wharf,”

**8 Section 32**

Delete “or goods”

**9 Paragraph 33(e)**

Delete “.”, substitute “;

- (f) uses the flag of the harbourmaster without the approval of the Director;
- (g) fails to comply with the directions of the Director to operate a vessel;
- (h) hinders or causes to hinder the Director, port officer or any person employed by the Director to moor or unmoor, place or remove a vessel;
- (i) releases, cuts or unfastens a line, warp, chain or hawser to a vessel without the authorisation of the Director;
- (j) in cases of international vessels, carries out hull grooming activities alongside the wharf;
- (k) in cases of international vessels, carries out any ballast water exchange within any declared port area.”

**10 Section 34**

Repeal the section, substitute

**“34. Penalty**

A person who contravenes section 13 or 33 is liable on conviction:

- (a) in the case of an individual – to a fine not exceeding VT5,000,000 or a term of imprisonment not exceeding 6 years, or to both; or
- (b) in the case of a body corporate – to a fine not exceeding VT15,000,000.

**34A. Penalty notice**

- (1) The Director may serve a penalty notice on a person if it appears to the Director that the person has committed an offence under any provision of this Act or its Regulations.
- (2) A penalty notice is a notice to the effect that if the person served does not wish to have the matter determined by a Court, the person may pay within a time and to a person specified in the notice, the amount of penalty stated in the penalty notice.

- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.
- (6) The Regulations may:
  - (a) prescribe the amount of penalty payable for the offence if dealt with under this section; and
  - (b) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a Court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **Miscellaneous Provisions**

### **34B. Immunity**

- (1) A civil or criminal proceeding must not be brought against the Director, harbourmaster, pilot or a port officer, for anything done or omitted to be done in good faith by him or her in the execution or purported executions of his or her functions and powers under this Act.
- (2) Subsection (1) does not apply if the Director, harbourmaster, pilot or a port officer acted in bad faith in executing his or her functions or powers under this Act.”

### **11 Section 35**

Repeal the section, substitute



**“35. Regulations**

- (1) The Minister may, on the advice of the Director, make Regulations:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.
- (2) Without limiting subsection (1), the Minister may, on the advice of the Director, make Regulations for all or any of the following:
- (a) to prescribe anchorage fees for international vessels anchoring in the harbour;
  - (b) to regulate access entry and fees for individual or vehicles entering the international Port;
  - (c) to charge light dues and collect fees from international vessels and domestic vessels;
  - (d) to charge fees for mooring and buoys in the harbour;
  - (e) to regulate rental fees for mooring and buoys;
  - (f) to prescribe offences for breaches of the provisions of the Regulations;
  - (g) any other matter required to be prescribed under this Act.”