

REPUBLIC OF VANUATU

BILL FOR THE

TELECOMMUNICATIONS, RADIOCOMMUNICATIONS

AND BROADCASTING REGULATION

(AMENDMENT) ACT NO. OF 2021

Explanatory Note

This Bill amends the Telecommunications, Radiocommunications and Broadcasting Regulation Act No. 30 of 2009 (“the Act”).

This Bill will focus mainly:

- (a) on transferring the regulatory role of the Broadcasting and Media from the Vanuatu Broadcasting and Television Corporation to the Telecommunications, Radiocommunications and Broadcasting Regulator; and
- (b) on ensuring fair competition in the broadcasting market.

The current provisions of the Act do not cater for the broadcasting services and the Broadcasting and Media Regulatory Framework and Universal Access Policy to address the issues of communications between the many islands of Vanuatu. The islands are scattered making communications and logistics difficult and expensive.

Therefore, this Bill is important:

- (a) to ensure there is the telecommunications and broadcasting coverage across the islands of Vanuatu; and
- (b) to cater for the provisions for any Broadcasting and Media Regulatory Framework and Universal Access Policy in the broadcasting sector.

Further, Vanuatu is one of the most at-risk country in the Pacific in terms of natural hazards such as cyclones, earthquakes and volcanic eruption, therefore, broadcasting and media services plays a significant role in the dissemination of information to the vulnerable people that are not or inadequately served.

The Bill is also important for any broadcast or media operator or the Government to protect the current infrastructure investments and encourage future investments.

Prime Minister



REPUBLIC OF VANUATU

**BILL FOR THE
TELECOMMUNICATIONS,
RADIOCOMMUNICATIONS AND BROADCASTING
REGULATION
(AMENDMENT) ACT NO. 1 OF 2021**

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REPUBLIC OF VANUATU

BILL FOR THE TELECOMMUNICATIONS, RADIOCOMMUNICATIONS AND BROADCASTING REGULATION (AMENDMENT) ACT NO. OF 2021

An Act to amend the Telecommunications, Radiocommunications and Broadcasting Regulation Act No. 30 of 2009.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Telecommunications, Radiocommunications and Broadcasting Regulation Act No. 30 of 2009 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 TELECOMMUNICATIONS, RADIOCOMMUNICATIONS AND BROADCASTING REGULATION ACT NO. 30 OF 2009

1 1 Long title

After “radiocommunications”, insert “and broadcasting,”

2 Paragraph 1(b)

Delete “,”, substitute “; and

(c) to regulate telecommunications, radiocommunications and broadcasting,”

3 Section 2 (Definitions of “bottleneck facilities”, “customer”, “end user”, “net revenue”, “service provider” and “Terms of Service”)

After “telecommunications”, insert “or broadcasting”

4 Section 2 (Definitions of “Minister” and “Ministry”)

After “telecommunications”, insert “, radiocommunications and broadcasting”

5 Section 2 - Definitions

Insert in their correct alphabetical positions

“**broadcasting** means the transmission by radio, television, satellite or any transmission medium of any message or other broadcast matter for reception by the general public;

broadcasting apparatus means:

- (a) any satellite dish or satellite decoder; or
- (b) any other apparatus capable of or designed or constructed for the transmission or reception of broadcast matter by radio waves, wire, cable, optical fibre, satellite or any other means or a combination of any of those means;

broadcasting licence means a licence granted under section 16C;

broadcast matter includes any signs or signals transmitted by a broadcasting station or a satellite transponder, whether for aural or visual reception or both, and any music, theatrical or other entertainment, concert, lecture, speech, address, parade, sports event, rally, advertisement, news and information of any kind so transmitted;

broadcasting station means a station which transmits broadcast matter by radio waves, wire, cable, optical fibre, satellite or any other means or a combination of any of those means for reception by the general public and includes the studio, transmitting station and technical equipment used for transmitting broadcast matter;

service means a telecommunications service or a broadcasting service;”

6 Section 2 – (Definition of “service provider”)

After “;”, insert “or

- (c) provides or is entitled to provide a broadcasting service under a broadcasting licence or exemption, or who has applied for either of these.”

7 After section 2

Insert

“2A. Definition of broadcasting service

- (1) For the purposes of this Act, **broadcasting service** includes a service whereby sounds or visual images are transmitted by the person operating the service to listeners or viewers of the service by means of radio waves, wire, cable, optical fibre, satellite or any other means or a combination of any of those means.
- (2) Despite subsection (1), broadcasting service does not include:
 - (a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images);
or

- (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or
- (c) a service that makes available television and radio programs using the internet; or
- (d) a service, or a class of services, that the Minister determines, by notice in the Gazette, not to fall within the definition of broadcasting service.”

8 Paragraph 7(2A)(b)

After “broadcasting”, insert “, international telecommunications and radiocommunications forums”

9 Paragraph 7(2A)(c)

After “ethical”, insert “and content”

10 Paragraphs 33(7)(b), 37(2)(c), 42(2)(a) and Subsections 12(1), 13(6), 17(1), 18(1), 24(3), 33(2), 37(1), 45(3) and (4)

After “telecommunications”, insert “or broadcasting”

11 Subsection 7(9)

Delete “does”, substitute “do”

12 Paragraph 8(7)(c)

Delete “was”, substitute “as”

13 Section 15 (heading)

Repeal the heading, substitute

“15 Amendment, revocation and renewal of licences and exceptions”

14 Section 15

- (a) After “licensee” (wherever occurring), insert “or grantee of an exception”
- (b) After “licence”, (wherever occurring), insert “or exception”

15 Subsection 15(1)

Delete “The Regulator may amend the terms and conditions of, or revoke a licence if:”, substitute “The Regulator may by written notice amend or revoke the terms and conditions of a licence or an exception if:”

16 Paragraph 15(1)(b)

Delete “licence term or condition”, substitute “term or condition of a licence or exception”

17 Paragraph 15(7)(a)

After “after”, insert “written”

18 Paragraph 15(7)(b)

Delete “.”, substitute “; or

- (c) changes in formal Government policy affects the terms and conditions of a licence or exception; or
- (d) there are changes in a term or condition of the licence or exception; or
- (e) there is a change in the definition of services that the licensee or grantor of an exception is authorised by the licence or exception to provide.”

19 Subsection 16B(1)

(a) Delete “Minister”, substitute “Regulator”

(b) Delete “Regulator”, substitute “service providers”

20 Subsection 17(1)

Delete “service”, substitute “and broadcasting services”

21 Subsection 18(1)

After “telecommunications”, insert “and broadcasting”

22 Subsection 19(7)

Repeal the subsection, substitute

“(7) A service provider is not required to pay more than 3.2% of its net revenue.”

23 Sections 20, 21, 22, 23, Paragraphs 25(1)(b) and 42(2)(b)

After “telecommunications”, insert “or broadcasting” (wherever occurring)

24 Paragraph 23(2)(g)

After “telecommunications service” (second occurring), insert “, in a market in which the service provider is dominant”

25 Section 24

Repeal the section, substitute

“24. Pre-approval to engage in conduct

- (1) A person must, prior to engaging in the conduct in respect of which it is sought, apply in writing to the Regulator for pre-approval.
- (2) The Regulator in making a decision to grant or refuse an application under subsection (1), must consider the following:
 - (a) the conduct will not or is unlikely to substantially lessen competition in any telecommunications or broadcasting market in Vanuatu; and
 - (b) the conduct will not or be unlikely to otherwise prevent competition in any telecommunications or broadcasting market in Vanuatu; and
 - (c) the decision to grant is in the overall public interest; and
 - (d) the decision to grant will have the effect or likely effect of reducing uncertainty associated with the relevant conduct; and
 - (e) the interests of other parties potentially affected or impacted by the application have been determined and taken into consideration; and
 - (f) such other matters as the Regulator considers necessary or appropriate in the relevant circumstance.”

26 Subsection 26(4)

Delete “A service provider must not be required to enter into an interconnection agreement on terms that would, in its reasonable opinion, and where the Regulator has not made an order otherwise, either”, substitute “Subject to an order issued by the Regulator, a service provider must not enter into an interconnection agreement that would either”

27 Section 30 (heading)

After “charges”, insert “disputes”

28 Subsection 33(2)

- (a) After “prior”, insert “written”
- (b) Delete “increases”, substitute “changes”

29 Subsection 33(3)

- (a) After “licence” (wherever occurring), insert “or exception”
- (b) Delete “increases” (wherever occurring), substitute “changes”

30 Subsection 33(4)

Repeal the subsection.

31 Subsection 33(5)

Repeal the subsection, substitute

- “(5) The Regulator may dispense with the requirement in subsection (1), in whole or in part, where he or she considers the competitive market forces will be sufficient to protect the interests of end-users.”

32 Subsection 33(7)

Delete “increases”, substitute “changes”

33 Section 34

Delete “or schedule of tariffs” (wherever occurring)

34 Paragraph 34(1)(a)

Delete “until the date on which the tariff is approved”

35 Subparagraph 34(1)(a)(ii)

Repeal the subparagraph.

36 Subparagraph 34(1)(a)(iii)

Delete “declare”, substitute “publish on its website”

37 Subsection 34(2)

Repeal the subsection, substitute

“(2) The dominant service provider must publish any changes to the standard tariffs on its official website.”

38 Section 36 (heading)

Repeal the heading, substitute

“**36 Tariff Regulation**”

39 Subsection 44(4)

Repeal the subsection.

40 Subsection 44(5)

Repeal the subsection, substitute

“(5) A person contravenes a provision of this Act if:

- (a) the conduct of an employee, agent or officer of the person contravenes a provision of this Act; or
- (b) an employee, agent or officer of the person aids, abets, counsels or procures or by any act or omission directly or indirectly concerned in the contravention of a provision of this Act.”

41 Subsection 44(7)

Repeal the subsection.

42 Subsections 53(3) and (4)

Repeal the subsections.

43 Subparagraphs 53(3)(a)(i) and paragraph 53(3)(b)

Delete “, except to the extent that a contract is ultra vires”

SCHEDULE
AMENDMENTS OF TELECOMMUNICATIONS, RADIOCOMMUNICATIONS AND
BROADCASTING REGULATION ACT NO. 30 OF 2009

44 Paragraph 54(5)(b)

After “telecommunications”, insert “, broadcasting”