

REPUBLIC OF VANUATU

BILL FOR THE STATUTE LAW (MISCELLANEOUS PROVISIONS) ACT NO. OF 2021

Explanatory Note

The Bill provides for amendments to the following Acts:

- (a) Business Licence Act [CAP 249];
- (b) Decentralization Act [CAP 230];
- (c) Foreign Service Act No. 20 of 2013;
- (d) Geothermal Act No. 40 of 2019;
- (e) Government Contracts and Tenders Act [CAP 245];
- (f) Industrial Development Act No. 19 of 2014;
- (g) Passport Act No. 20 of 2009;
- (h) Penal Code Act [CAP 135];
- (i) Public Holidays Act [CAP 114];
- (j) Public Roads Act No. 35 of 2013;
- (k) Public Service Act [CAP 246];
- (l) Quarantine Act [CAP 1];
- (m) Road Traffic (Control) Act [CAP 29];
- (n) State Law Office Act [CAP 242];
- (o) Supply of Electricity (Districts) Act [CAP 96];
- (p) Teaching Service Act No. 38 of 2013;
- (q) Trademarks Act No. 1 of 2003;
- (r) Water Resources Management Act [CAP 281].

Item 1 amends the **Business Licence Act [CAP 249]**.

This amendment is part of the Government's COVID-19 stimulus package.

Item (a) provides that a person who has paid the business license fee (in part or in whole) for the period of 1 January to 31 March 2020, is exempted to make payment until 31 December 2021.

Item (b) also provides that a person who has obtained a business license without making payment of the business license fee for the year 2020, is exempted to make payment for the business license fee for the year 2020 only.

Item (c) provides that the rate of business licence fee for Commercial Banks (Category F1 business licence) is, with effect from 1 January 2020, reduced from 7% to 5%.

Item 2 amends the **Decentralization Act [CAP 230]**.

This item deletes all references to the term 'Chairman' and replaces it with 'President'. It also deletes all references to the terms 'Deputy Chairmen', 'Deputy Chairman' or 'Vice Chairman' and replaces them with 'Vice President'. These amendments are necessary to be consistent with the terms 'President' and 'Vice President' which are currently used.

Item 3 amends the **Foreign Service Act No. 20 of 2013**.

This item corrects a typographical error contained in the Act.

Item 4 amends the **Geothermal Act No. 40 of 2019**.

This item provides that a representative of the Malvatumauri Council of Chiefs will now be part of both the Geothermal Exploration Advisory Board and the Geothermal Production Advisory Board. This amendment is necessary because the issue of land in Vanuatu is very sensitive, therefore, the representative of the Malvatumauri Council of Chiefs will advise the Board on any land or cultural issues that may affect a geothermal project.

Item 5 amends the **Government Contracts and Tenders Act [CAP 245]**.

This item provides that the Government Remuneration Tribunal and not the Public Service Commission is responsible to remunerate the Chairperson of the Central Tenders Board. This change is necessary as the Chairperson is not appointed by the Public Service Commission, therefore, the Commission cannot determine the terms and conditions of the Chairperson's appointment, particularly in relation to remuneration.

Item 6 amends the **Industrial Development Act No. 19 of 2014**.

Item (a) provides that the 5 years period for the validity of an industrial permit is to be changed to 1 year. This is to boost the operation of registration and application for an industrial permit.

Item (b) also empowers the Department of Industry to develop Industrial Development Programmes relating to the development of brands for products that are made, grown, produced or designed in Vanuatu.

Item 7 amends the **Passport Act No. 20 of 2009**.

This item provides that a person may authorize another person to receive his or her Vanuatu Passport. The authorization must be in writing and given to a Passport Officer. This change is necessary for the efficient delivery of Vanuatu Passport to a successful applicant.

Item 8 amends the **Penal Code Act [CAP 135]**.

Item (a) makes it an offence to use threatening language against another person.

Item (b) also repeals sections 120 and 121 of the Act and substitutes them with new provisions, as the previous provisions do not appropriately reflect the criminal elements of criminal libel and slander. The new provisions now extend the offence of criminal libel and slander to cover the use of defamatory statement not only made in public but also on a public platform.

Item 9 amends the **Public Holidays Act [CAP 114]**.

The Act currently provides that all businesses throughout Vanuatu are to be closed on public holidays (with the exception of a few type of businesses only). This item empowers the President to prescribe additional type of businesses that may operate during a public holiday.

Item 10 amends the **Public Road Act No. 35 of 2013**.

Currently the Act provides that Regulations are to commence on the date on which they are published in the Gazette. The amendment now provides that Regulations commence on the day on which they are made.

Item 11 amends the **Public Service Act [CAP 246]**.

This item amends paragraph 19B(4)(a) by deleting the figure “21” and substitutes it with “45”. The current 21 days in this Act is practically not sufficient for any disciplinary process, therefore, this amendment will give the Commission enough time to complete the disciplinary process and to carry out its obligation as a good employer.

Item 12 amends the **Quarantine Act [CAP 1]**.

This item amends the definition of “communicable disease” to mean notifiable disease as defined in the Public Health Act [CAP 234]. This will allow the Act to include all the incoming and unexpected diseases in the world such as COVID-19.

Item 13 amends the **Road Traffic (Control) Act [CAP 29]**.

Item (a) repeals section 16 and substitutes it with a new provision. The new provision empowers a police officer to stop a vehicle and conduct a breathalyser test to a person suspected to be under the influence of alcohol or drugs. If the person is tested with alcohol or drug content at the level of at least 0.03 percent, he or she will be arrested and his or her vehicle will be detained. The person will be released if the alcohol or drugs level of content is below 0.03 percent and his or her vehicle is released if the vehicle documents meet the requirements under this Act.

Item (b) provides for changes to the payment of annual tax fees only for the year 2020 due to COVID-19. The item provides that a person who has paid annual tax for the year 2020 before 1 April 2020, is not entitled to credit or refund for annual tax fees of 2020. The item also provides that a person who has paid annual tax on or before 31 March 2020, is exempted from paying annual tax until 31 December 2021.

Item (c) amends the penalty fine of VT10,000 to VT20,000. This amendment increases the penalty fine due to the high rate of cases of careless driving resulting in fatal accidents causing death.

Item 14 amends the **State Law Office Act [CAP 242]**.

This item corrects an error relating to the appointment of legal officers.

Item 15 amends the **Supply of Electricity (Districts) Act [CAP 96]**.

This item deletes all references to ‘Public Works’ and replaces it with ‘Energy’. The Department of Energy is now responsible for the administration of this Act. This item also empowers the Utilities Regulatory Authority to set tariffs under this Act.

Item 16 amends the **Teaching Service Act No. 38 of 2013**.

This item corrects the reference to the Education Act No. 9 of 2014 in certain definitions under section 4 of this Act.

Item 17 amends the **Trademarks Act No. 1 of 2003**.

This item provides for the change of the period of the application for registration of a Trademark to be published in the Gazette from 28 days to 90 days. This is to provide sufficient time for the application, registration and publication of the application details.

Item 18 amends the **Water Resources Management Act [CAP 281]**.

This item empowers the Minister to declare Water Protection Zone.

Prime Minister



REPUBLIC OF VANUATU

**BILL FOR THE
STATUTE LAW (MISCELLANEOUS PROVISIONS)
ACT NO. OF 2021**

Arrangement of Sections

| | | |
|----------|--------------------------------|----------|
| 1 | Amendment | 2 |
| 2 | Repeal of the Act | 3 |
| 3 | Commencement..... | 3 |
| | SCHEDULE | 4 |

REPUBLIC OF VANUATU

BILL FOR THE STATUTE LAW (MISCELLANEOUS PROVISIONS) ACT NO. OF 2021

An Act to provide for the amendments to certain Acts.

Be it enacted by the President and Parliament as follows-

1 Amendment

The following Acts are amended as set out in the Schedule:

- (a) Business Licence Act [CAP 249];
- (b) Decentralization Act [CAP 230];
- (c) Foreign Service Act No. 20 of 2013;
- (d) Geothermal Act No. 40 of 2019;
- (e) Government Contracts and Tenders Act [CAP 245];
- (f) Industrial Development Act No. 19 of 2014;
- (g) Passport Act No. 20 of 2009;
- (h) Penal Code Act [CAP 135];
- (i) Public Holidays Act [CAP 114];
- (j) Public Roads Act No. 35 of 2013;
- (k) Public Service Act [CAP 246];
- (l) Quarantine Act [CAP 1];
- (m) Road Traffic (Control) Act [CAP 29];
- (n) State Law Office Act [CAP 242];

- (o) Supply of Electricity (Districts) Act [CAP 96];
- (p) Teaching Service Act No. 38 of 2013;
- (q) Trademarks Act No. 1 of 2003;
- (r) Water Resources Management Act [CAP 281].

2 Repeal of the Act

- (1) This Act is repealed on the day following the day on which all provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 11 of the Interpretation Act [CAP 132], affect any amendments made by this Act.

3 Commencement

- (1) Subject to subsection (2), this Act commences on the day on which it is published in the Gazette.
- (2) Amendments (b) and (c) in item 1 relating to the Business Licence Act [CAP 249], is taken to have commenced on 1 January 2020.
- (3) Amendments in item 4 relating to the Geothermal Act No. 40 of 2019 is to commence on the date on which the Geothermal Act No. 40 of 2019 is published.

SCHEDULE

MINOR AMENDMENTS

1 BUSINESS LICENCE ACT [CAP 249]

(a) After subsection 18(5)

Insert

“(6) Despite the provisions of this Act or any other Act, all owners of businesses are exempted from paying the business licence fee for the year ending 31 December 2020.

(7) If the owner of a business has paid the business licence fee for the year ending 31 December 2020 on or before 31 March 2020:

(a) that person is exempted from paying the business licence fee until 31 December 2021; and

(b) that person is not entitled to a refund or credit for the amount exempted.

(8) To avoid doubt:

(a) subsection (6) does not apply to Category F1 of Schedule 1; and

(b) subsection (7) applies to a person who has paid the business licence fee in part or in whole.”

(b) Section 18A

Repeal the section.

(c) Schedule 1, Column 2, Class F, Category F1, Commercial Banks

Delete “7.00% of turnover for the licencing year subject to a minimum fee of 5,500,000”, substitute “5.00% of turnover for the licensing year subject to a minimum fee of 5,000,000”

2 DECENTRALIZATION ACT [CAP 230]

(a) References to Chairman

Delete “Chairman” (wherever occurring), substitute “President”

(b) References to Deputy Chairmen, Deputy Chairman or Vice Chairman

Delete “Deputy Chairmen”, “Deputy Chairman” or “Vice Chairman” (wherever occurring), substitute “Vice President”

3 FOREIGN SERVICE ACT NO. 20 OF 2013

Subsection 42B(2)

Delete “, the Director General of the Director General,”, substitute “or the Director General”

4 GEOTHERMAL ACT NO. 40 OF 2019

(a) After paragraph 5(1)(g)

Insert

“(ga) a representative of the Malvatumauri Council of Chiefs nominated by the President of the Malvatumauri Council of Chiefs; and”

(b) Subsection 5(2)

Delete “(1)(h)”, substitute “(1)(ga), (h)”

(c) Subsection 7(4)

Delete “4”, substitute “6”

(d) After paragraph 28(1)(g)

Insert

“(ga) a representative of the Malvatumauri Council of Chiefs nominated by the President of the Malvatumauri Council of Chiefs; and”

(e) Subsection 28(2)

Delete “(1)(h)”, substitute “(1)(ga), (h)”

(f) Subsection 30(4)

Delete “4”, substitute “6”

5 GOVERNMENT CONTRACTS AND TENDERS ACT [CAP 245]

Subsection 11(4)

Delete “Public Service Commission”, substitute “Government Remuneration Tribunal”

6 INDUSTRIAL DEVELOPMENT ACT NO. 19 OF 2014

(a) Subsection 4(4)

Delete “5 years”, substitute “1 year”

Transitional

A person who has been issued with a permit before the commencement of this Act, must renew that permit within a period of 6 months from the commencement of this Act.

(b) Paragraph 13(3)(e)

Delete “indigenous brands for manufactured products”, substitute “brands for products made, grown, produced or designed in Vanuatu”

7 PASSPORT ACT NO. 20 OF 2009

After section 7

Insert

“Division 1A - Authorisation to receive Vanuatu Passports

7A. Authorisation to receive Vanuatu passports

- (1) A person may authorise another person, in writing, to receive his or her Vanuatu passport.
- (2) An officer must not give a Vanuatu passport to a person under subsection (1), unless that person gives to the officer the written authorisation to receive the passport.
- (3) A person is deemed to have received his or her Vanuatu passport once the authorised person receives the passport from the officer.”

8 PENAL CODE [CAP 135]

(a) After section 114

Insert

“114A. Threatening language

- (1) A person must not use threatening:
 - (a) written, spoken or automated words; or
 - (b) gestures,

towards another person.

- (2) A person who fails to comply with subsection (1), commits an offence punishable on conviction to imprisonment for a term not exceeding 3 years.”

(b) Sections 120 and 121

Repeal the sections, substitute

“120. Criminal Libel

- (1) A person must not make a false written representation on any public platform that is likely to:
- (a) expose another person to public hatred, contempt, or ridicule; or
 - (b) injure that person’s profession, reputation, office, business, trade or occupation.
- (2) In addition to subsection (1), the person must not make a false written representation on any public platform:
- (a) knowing that the matter is false; or
 - (b) being reckless as to whether or not the matter is false.
- (3) A person who contravenes subsections (1) and (2) commits an offence, punishable on conviction, by imprisonment for a term not exceeding 3 years.
- (4) For the purposes of this section:

false written representation means any representation that is untrue or misleading made in writing or by use of pictures;

public platform includes newspapers, magazines, internet websites, social networking sites, blog sites and any other similar platforms available for public viewing.

121. Criminal Slander

- (1) A person must not use any false representation on any public platform that is likely to:
- (a) expose another person to public hatred, contempt, or ridicule; or
 - (b) injure that person's profession, reputation, office, business, trade or occupation.
- (2) In addition to subsection (1), the person must not use any false representation on any public platform:
- (a) knowing that the matter is false; or
 - (b) being reckless as to whether or not the matter is false.
- (3) A person who contravenes subsections (1) and (2) commits an offence, punishable on conviction, by imprisonment for a term not exceeding 3 years.
- (4) For the purposes of this section:

false representation means any representation that is untrue or misleading made in an oral statement or by reproduced audio or video recordings;

public platform includes television, radio, internet websites, social networking sites and blog sites and any other similar platforms available for public viewing.”

9 PUBLIC HOLIDAYS ACT [CAP 114]

(a) Paragraph 7(c)

Delete “.”, substitute “;

- (d) any other businesses as may be prescribed.”

(b) After section 7

Insert

“8. Regulations

The President may, on the advice of the Prime Minister, make Regulations:

- (a) required or permitted by this Act to be prescribed; or

- (b) necessary or convenient to be prescribed for the better carrying out or giving effect to the provisions of this Act.”

10 PUBLIC ROADS ACT NO. 35 OF 2013

Subsection 3(4)

Repeal the subsection.

11 PUBLIC SERVICE ACT [CAP 246]

Paragraph 19B(4)(a)

Delete “21”, substitute “45”

12 QUARANTINE ACT [CAP 1]

Section 1 (Definition of “communicable disease”)

Repeal the definition, substitute

““communicable disease” has the same meaning as “notifiable disease” defined in the Public Health Act [CAP 234];”

13 ROAD TRAFFIC (CONTROL) ACT [CAP 29]

(a) Section 16

Repeal the section, substitute

“16. Driving under influence of alcohol or drugs

- (1) For the purpose of this section, “breathalyser” means a device used for measuring the amount of alcohol or drugs taken from a sample of that person’s breath.
- (2) A person must not drive a vehicle on a road while he or she is under the influence of alcohol or drugs.
- (3) If a police officer suspects that a person is driving a vehicle under the influence of alcohol or drugs, the police officer must:
- (a) stop the vehicle; and
 - (b) conduct a breathalyser test on that person.
- (4) If the person under subsection (3) is tested with alcohol or drugs content level of at least 0.03 percent, the police officer must:

- (a) detain the vehicle; and
 - (b) arrest the driver without a warrant.
- (5) The police officer must:
- (a) release the person from custody once the driver's content level of alcohol or drugs is below 0.03 percent; and
 - (b) release the vehicle if he or she is satisfied that the vehicle documents meet the requirements under this Act."

(b) After subsection 34(2)

Insert

“(2A) Despite the provisions of this Act or any other Act, all owners of vehicles are exempted from paying annual tax for the year ending 31 December 2020.

(2B) If a person has paid annual tax for the year ending 31 December 2020 on or before 31 March 2020:

- (a) that person is exempted from paying the annual tax until 31 December 2021; and
- (b) that person is not entitled to a refund or credit for the amount exempted.”

(c) Subsection 53(1)

Delete “10,000”, substitute “20,000”

14 STATE LAW OFFICE ACT [CAP 242]

Subsection 18(1)

Delete “and appointed by the Judicial Service Commission”

15 SUPPLY OF ELECTRICITY (DISTRICTS) ACT [CAP 96]

(a) Subsections 1(2) and 8(2), and sections 5, 11, 13, 14, 15 and 16

Delete “Public Works” (wherever occurring), substitute “Energy”

(b) Subsection 1(1)

Repeal the subsection, substitute

“(1) In this Act, unless the contrary intention appears:

“Authority” means the Utilities Regulatory Authority established under the Utilities Regulatory Authority Act No. 11 of 2007;

“subscriber” means the occupant of any property, whether built on or not, which is connected to the public electricity supply.”

(c) Subsection 2(1)

Delete “shall be those shown in the tariff set forth in the schedule”, substitute “is to be set out by the Authority”

(d) Subsection 2(2)

Repeal the subsection.

(e) Sections 5 and 6

Delete “forth in the Schedule”, substitute “out by the Authority”

(f) Subsection 8(3)

Repeal the subsection, substitute

“(3) Accounts in respect of the amount of electricity consumed must be addressed to subscribers in a monthly period and such accounts must be settled within 15 days of receipt.”

(g) Subsection 9(1)

Delete “30”, substitute “15”

(h) Subsection 9(2)

Delete “given in the tariff set forth in the Schedule”, substitute “ to be set out by the Authority”

(i) Subsection 10(3)

Delete “Public Works Department”, substitute “Department of Energy”

(j) Section 11

Delete “Commissioner”, substitute “Engineer”

16 TEACHING SERVICE ACT NO. 38 OF 2013

Section 4 (Definitions of “Education Authority”, “principal”, “Provincial Education Board”, “Provincial Education Officer” and “school”)

Delete “Education Act [CAP 272]”, substitute “Education Act No. 9 of 2014”

17 TRADEMARKS ACT NO 1. OF 2003

Section 18

Delete “28”, substitute “90”

18 WATER RESOURCES MANAGEMENT ACT [CAP 281]

(a) Subsection 26(1)

Delete “Director may in writing”, substitute “Minister may in writing, on the advice of the Director,”

(b) Paragraphs 26(2)(d) and (3)(a) and subsection 26(5)

Delete “Director”, substitute “Minister”