

# REPUBLIC OF VANUATU

## BILL FOR THE UTILITIES REGULATORY AUTHORITY (AMENDMENT) ACT NO. OF 2017

### Explanatory Note

This Bill amends the Utilities Regulatory Authority Act No. 11 of 2007 (the "Act"). The purpose of amending this Act is to strengthen the powers of the Utility Regulatory Authority ("URA") as suggested in the National Energy Road Map (NERM).

Item 1 repeals section 3 and substitutes it with a new section 3 providing that, "subject to subsection 29B(7), this Act and any decisions taken by the Authority under this Act or any other Act, applies to a regulated service to the extent that it does not diminish the economic entitlement of a utility under any concession agreement under the Electricity Supply Act [CAP 65] or the Water Supply Act [CAP 24] existing on or before the commencement of this Act."

Item 2 amends subsection 12(1) by inserting new paragraphs (f), (g), (h), (i), (j), (k) and (l). Subsection 12(1) now clearly defines in detail, the functions of the URA. The new paragraphs clarifies and expands the functions of the URA to include monitoring and determination of prices for regulated services, researching and developing strategies to make regulated services affordable, resolve disputes between utilities and consumers, supervising the contracts and deeds entered between the Government and a utility for regulated service, acting as an arbitrator or mediator in disputes relating to regulated service, carrying out regulatory audit on utilities and exercising functions conferred on it by any other Act.

Item 3 amends section 13 by inserting new paragraphs (ba), (bb) and (bc) after paragraph 13(2)(b). The new paragraph (ba) allows the Authority to require any information from a party to a dispute under subsection 19(1), 19A(1) or 19B(1) that may be helpful in resolving a dispute between the parties. This amendment provides the URA with the power to require information from a utility specifically in respect of disputes between a utility and consumers, utility and third parties and any other dispute under an applicable contract. The new paragraphs (bb) and (bc) empower the Authority to impose and collect fees for any services rendered and also to collect and manage fees under the Act.

Item 4 repeals subsection 14(1) and substitutes it with a new subsection (1) to provide for the power of the Authority to issue standards in relation to the safety of any equipment or

installation owned or operated by any person that is connected to a network operated by a utility.

Item 5 amends subsection 15(1) by inserting after "regulated service" the words "or the safety of equipment or installations owned or operated by any person that are connected to a network operated by a utility in connection with the provision of a regulated service". This is to reflect the same amendment made in subsection 14(1) which is to include safety of equipment or installation owned or operated by any person that is connected to a network operated by a utility.

Item 6 repeals subsection 19(1) and substitutes it with a new subsection (1). Subsection (1) allows the Authority to act as a mediator in any dispute regarding a regulated service.

Item 7 repeals subsections 19(3), (4), and (5) and substitutes them with a new subsection (3). It empowers the Authority to prescribe procedures for Complaint and Dispute Resolution in respect of consumer rights and obligations.

Item 8 inserts two new sections 19A and 19B, after section 19. Section 19A provides for the Authority to act as an arbitrator in respect of disputes between the utilities and third parties and may also appoint any person to act as arbitrator on its behalf. Section 19B provides that the Authority may exercise the powers and functions of an arbitrator under an applicable contract and also act as an arbitrator in any utility related contract. Further the Authority is empowered to prescribe the procedures and requirements for arbitration under this section. Item 9 amends subsection 25(2) by deleting 'three' and substituting it with 'six'. The effect of this amendment is to allow for enough time, which can be more than six months, to serve a utility or person living outside of Port Vila or on any island in Vanuatu with an infringement notice.

Item 10 amends paragraph 25(3)(e) by deleting "VT100,000 which is sought in respect of the alleged offence" and substitutes it with "the maximum amount of the penalty imposed under the Act". The effect of this amendment is to ensure that the appropriate amount of penalty, which can be more than VT100,000 but not exceeding those prescribed under the Act, is imposed through infringement notice and is sufficient to deter a utility or person from repeating the same offence.

Item 11 repeals subsection 30(1). Given the new financial sustainability regime put in place through the 2016 amendment, the Authority will no longer be requiring funds as its initial capital from the Government. However, the Authority will still be receiving government funds to supplement its annual budget and needs to report its annual budget to the Minister of Finance pursuant to subsection (1A).

Item 12 repeals Table A1 of the Schedule and substitutes it with a new Table A1. The new Table A1 caters for certain provisions in the concession contract which were assigned to the Authority under Table B1 but can only be exercised upon approval of the Government. Now those rights can be assigned by the Authority without requiring any approval.

Item 13 contains the same amendment as item 13 by repealing Table A2 of the Schedule and substitutes it with a new Table A2. The effect of this amendment is that the rights of the Government in the Port Vila Water Concession Contract which were supposed to be exercised by the Authority with the approval of the Government, can now be exercised by the Authority without requiring an approval. The reason for this amendment is as set out under Item 12 above.

Item 14 and 16 repeal Tables B1 and part of Table B2 of the Schedule. Given that the assigned rights under these Tables have now been moved to Tables A1 and A2, this amendment is required.

Item 15 deletes the first row of the Table under Part C of the Schedule. Table C still has some reference to the UNELCO Luganville Concession Agreement which has already expired. Given that this Concession Agreement has expired and a different utility is currently running the Luganville concession, there is need to amend the Schedule of the Act.

**Minister of Climate Change Adaptation, Meteorology, Geo-hazards, Environment, Energy and Disaster Manager**



**REPUBLIC OF VANUATU**

**BILL FOR THE  
UTILITIES REGULATORY AUTHORITY  
(AMENDMENT)  
ACT NO.      OF 2017**

**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 UTILITIES REGULATORY AUTHORITY (AMENDMENT) ACT NO. OF 2017**

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 TO THE UTILITIES REGULATORY AUTHORITY ACT NO. 11 OF 2007

#### **1 Section 3**

Repeal the section, substitute

#### **“3 Application of this Act**

Subject to subsection 29B(7), this Act and any decisions taken by the Authority under this Act or any other Act, apply to a regulated service to the extent that it does not diminish the economic entitlement of a utility under any concession agreement under the Electricity Supply Act [CAP 65] or the Water Supply Act [CAP 24] existing on or before the commencement of this Act.”

#### **2 Paragraph 12(1)(e)**

Delete “.”, substitute “;

- (f) to monitor, review and determine price for regulated services;
- (g) to conduct research, trials and pilot programs to identify strategies to make regulated services more affordable, increase access to regulated services and increase competition;
- (h) to represent the interests of consumers and utilities in relation to overcharging or undercharging, non-compliance with regulated prices and other disputes between utilities and consumers, including where appropriate seeking compensation on behalf of consumers;
- (i) to oversee the administration of concession contracts and deeds entered between the Government and a utility in respect of a regulated service;
- (j) to carry out regulatory audit on utilities;
- (k) to exercise the functions of an arbitrator or mediator in any disputes relating to regulated services;
- (l) such other functions as are conferred on it by this Act or any other Act.”

**3 After paragraph 13(2)(b)**

Insert

- “(ba) to require from a party to a dispute under subsection 19(1), 19A(1) or 19B(1) any information that will assist the Authority to resolve the dispute between the parties; or
- (bb) to impose and collect fees for services rendered to cover its costs of operation; or
- (bc) to collect and manage fees under the Act; or”

**4 Subsection 14(1)**

Repeal the subsection, substitute

- “(1) The Authority may issue safety standards in relation to the safety of:
- (a) a regulated service; or
- (b) any equipment or installation owned or operated by any person that is connected, or is intended to be connected, to a network operated by a utility in connection with the provision of a regulated service,
- in any place.”

**5 Subsection 15(1)**

After “regulated service”, insert “or the safety of equipment or installations owned or operated by any person that are connected to a network operated by a utility in connection with the provision of a regulated service”

**6 Subsection 19(1)**

Repeal the subsection, substitute

- “(1) The Authority may, if requested by a person or a utility, act as the mediator to resolve any dispute between them in respect of a regulated service.”

**7 Subsections 19(3),(4) and (5)**

Repeal the subsections, insert

- “(3) Authority may prescribe procedures for Complaint and Dispute Resolution relating to consumer rights and obligations.”

**8 After section 19**

Insert

**“19A Arbitration of disputes between utility and third parties**

- (1) The Authority may, if requested by a party to a dispute, act as arbitrator in disputes between a utility and a third party, in relation to any agreement related to the supply of or an aspect of a regulated service.
- (2) The Authority may appoint a suitable person to act as arbitrator on its behalf and any action or decision of a person so appointed is deemed to be an action or decision of the Authority.

**19B Arbitration of disputes under an applicable contract**

- (1) The Authority may:
  - (a) exercise the powers and functions of an arbitrator under an applicable contract; or
  - (b) act as an arbitrator in any utility related contract.
- (2) The Authority is to prescribe the procedures and requirements for arbitration under this section.”

**9 Subsection 25(2)**

Delete “three”, substitute “six”

**10 Paragraph 25(3)(e)**

Delete “VT100,000 which is sought in respect of the alleged offence”, substitute “the maximum amount of the penalty imposed under the Act ”

**11 Subsection 30(1)**

Repeal the subsection.

**12 Table A1 of the Schedule**

Repeal the Table, substitute

**“A1 - Electricity**

<b>Instrument</b>	<b>Function / power / responsibility</b>
Electricity Supply Act (as amended)	Section 5

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	Section 6
Convention relating to the Concession for the Generation and Public Supply of Electric power in Port Vila (as amended)	<p>Section 5, paragraph 5.2, of amending agreement dated 25 September 1997</p> <p>Section 5, paragraph 20</p> <p>Section 7, paragraph 32</p> <p>Section 8, paragraph 34</p> <p>Section 9, paragraph 43</p> <p>Section 12, paragraph 55</p> <p>Section 13, paragraph 62</p> <p>Section 17, paragraph 69</p>
Specifications relating to the Concession for the Generation and public supply of electric power in Port Vila	<p>Section 5, paragraph 23, as varied by agreement dated 1 September 1998</p> <p>Section 5, paragraph 26, as varied by agreement dated 1 September 1998</p> <p>Section 3, paragraph 4</p> <p>Section 3, paragraph 7</p> <p>Section 3, paragraph 9</p> <p>Section 4, paragraph 12</p> <p>Section 6, paragraph 29</p>

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	<p>Section 7, paragraph 32</p> <p>Section 7, paragraph 33</p> <p>Section 10, paragraph 55</p> <p>Section 10, paragraph 56</p> <p>Section 11, paragraph 57</p> <p>Section 12, paragraph 64</p> <p>Section 13, paragraph 65</p> <p>Section 14, paragraph 71</p> <p>Section 16, paragraph 73</p> <p>Section 17, paragraph 74</p> <p>Section 17, paragraph 75</p> <p>Section 17, paragraph 76</p> <p>Section 20, paragraph 79</p>
<p>Agreement varying concession between the Government of the Republic of Vanuatu and the Honourable Minister of Lands, Geology, Mines, Energy and Rural Water Supply and Union Electrique du Vanuatu Limited (dated 25 September 1997)</p>	<p>Section 11</p>

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Concession contract for the Generation and Public Supply of Electric Power in Malekula Island	Article 2, Section 2.03, paragraph 12
	Article 2, Section 2.03, paragraph 14
	Article 6, paragraph 23
	Article 7, paragraph 26
	Article 9, paragraph 30
	Article 18, paragraph 70
	Article 19, paragraph 75
	Article 23, paragraph 104
	Article 23, paragraph 105
	Article 24, paragraph 107
	Article 25, paragraph 119
	Article 26, paragraph 120
	Article 27, paragraph 128
	Article 28, paragraph 129
	Article 31, paragraph 154

  

	Article 31, section 31.07, paragraph 157
	Article 32, paragraph 160
	Article 34, paragraph 165

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	Article 34, paragraph 166
Concession contract for the Generation and Public Supply of Electric Power in Tanna Island	Article 2, Section 2.03, paragraph 11 Article 2, Section 2.03, paragraph 13  Article 6, paragraph 22  Article 7, paragraph 25  Article 9, paragraph 29  Article 18, paragraph 69

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	Article 19, paragraph 74
	Article 23, paragraph 103
	Article 23, paragraph 104
	Article 24, paragraph 106
	Article 25, paragraph 118
	Article 26, paragraph 119
	Article 27, paragraph 127
	Article 28, paragraph 128
	Article 31, section 31.06, paragraph 153
	Article 31, section 31.07, paragraph 156
	Article 32, paragraph 159
	Article 34, paragraph 165
	Article 34, paragraph 166

**13 Table A2 of the Schedule**

Repeal the Table, substitute

**“A2 Water**

<b>Instrument</b>	<b>Function / power / responsibility</b>
Contract for the Management and Operation of the Water Supply Service in Port Vila	Article 7.2  Article 7.3

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 AMENDMENTS TO THE UTILITIES REGULATORY AUTHORITY ACT NO. 11 OF 2007

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Instrument	Function / power / responsibility
	Article 1.4.2
Schedule of Conditions to the Contract for the Management and Operation of the Water Supply Service in Port Vila	Article 2  Article 6  Article 9  Article 16  Article 17  Article 22  Article 26  Article 33.1  Article 33.3  Article 33.4  Article 34

**14 Table B1 of the Schedule**

Repeal the Table.

**15 Table B2 of the Schedule**

Delete the Second and Third row.

**16 Part C**

Delete the first row of the table.

SCHEDULE  
AMENDMENTS TO THE UTILITIES REGULATORY AUTHORITY ACT NO. 11 OF 2007

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