

# REPUBLIC OF VANUATU

## BILL FOR THE BUREAU OF STANDARDS ACT NO. OF 2016

### Explanatory Note

The purpose of this Bill is to strengthen and increase the quality, safety and competitive of Agriculture, Livestock, Fisheries and Forest products. Specifically, it will oversee the development and adoption of standards, conformity assessment of traded goods and processing facilities, manufacturing of goods and the accuracy of weights and measures used in trade. It also allows Vanuatu to implement Appendix 3 of the Code of Standards and implementation of Article 15 of the WTO Technical Barriers to Trade Agreements.

This Bill is divided into 6 Parts.

#### **Part 1 - Preliminary Matters**

Clause 1 provides for the interpretation of terms that are used in the Bill.

#### **Part 2 - Bureau of Standards Board**

Clause 2 establishes the Board of the Bureau of Standards (“the Board”) and composition of the Board to be appointed by the Minister. Clause 3 outlines the functions of the Board. Clause 4 provides for the meetings of the Board to meet at least 4 times a year. Clause 5 provides for the sitting allowances of the members of the Board including the Chairperson and Deputy Chairperson of the Board. Clause 6 provides for the Board to establish such committees of the Board to consider matters relating to the functions of the Bureau or the Board. Clause 7 provides that the Chief Executive Officer is the Secretary of the Board and it also provides the functions of the Secretary of Board. Clause 8 provides for the appointment of the Chief Executive Officer of the Bureau to be appointed by the Minister on the advice of the Board. Clause 9 empowers the Chief Executive Officer, prior to approval of the Board, to employ staff of the Bureau for the proper and efficient performance of the functions of the Bureau.

#### **Part 3 - Bureau of standards**

Clauses 10 and 11 establish the Bureau of standards and the functions of the Bureau. Clause 12 provides for the funds of the Bureau. The Government is to ensure that there is

sufficient budget allocated for the Bureau to carry out its functions efficiently, effectively and professionally. Clause 13 requires the Bureau to prepare its estimates of income and expenditure not later than 6 months before the commencement of a new financial year. Clause 14 provides for Accounts and Audit. The Bureau must keep proper accounts and records of all its transactions and must prepare a statement of account for each year. Clause 15 allows the Minister after consulting with the Board to give the Bureau direction as to the exercise of the functions of the Bureau and implementation of its policies not consistent with the Act.

#### **Part 4 - Standards**

Clause 16 requires the Bureau to develop and maintain a national norm for the development of Vanuatu standards and it has to be approved by the Board and published as Vanuatu Standard. Clause 17 provides for referencing Vanuatu Standard in law to any commodity which may affect public safety, health or environmental protection. Clause 18 requires the Minister on the recommendation of the Board to issue a notice of a proposed mandatory standard. That notice must be published in the Gazette. Clause 19 requires the Minister on the recommendation of the Board to issue a declaration of a mandatory standard or withdraw a standard that was previously declared as a mandatory standard. This declaration has to be made by Order and published in the Gazette. Clause 20 requires a person who is involved at any stage with the Manufacture, production, processing, treatment or distribution to comply with mandatory standard. Clause 21 provides for the import, sale or supply of a commodity to the Vanuatu market to comply with the relevant mandatory standard. Clause 22 empowers the Minister on the recommendation of the Bureau to declare a mark as a standard mark.

#### **Part 5 - Enforcement and Compliance**

Clause 23 defines a **Minister** that is used in part 5 to mean a Minister responsible for a particular commodity or article. Clause 24 provides for the appointment of inspectors to be appointed by the Chief Executive Officer. Clause 25 provides for the powers of an inspector. Clause 26 requires an inspector to stop, seize and detain any article examined by him or her that he or she has reason to believe, does not conform to this Act or any other Act or is liable for forfeiture under this Act. Clause 27 does not allow any person to make any false claim, declare or conduct his or her affairs or business or carry out an occupation or trade that may create the impression that any commodity conforms to a Vanuatu Standard. Clause 28 protects the Bureau against any claim. Clause 29 deals with offences. Clause 30 provides for the powers of the Court to Order that a commodity be forfeited to the State. Clause 31 deals with compounding of offences.

#### **Part 6 - Miscellaneous Provisions**

Clause 32 restricts a person not to use these names “Vanuatu Bureau of Standards” or “Vanuatu Standards” unless that person has obtained a written consent from Minister. Clause 33 deals with confidentiality. A person must not disclose any information relating

to a commodity, process or practice when exercising his or her functions under this Act unless it is required for the purpose of this Act or required by the Court. Clause 34 provides for the employee of any business to disclose information to an inspector if required to do so under clause 26. Clause 35 provides for the Minister's Regulation making power.

**Deputy Prime Minister and Minister of Tourism, Commerce, Industry and Ni-Vanuatu Business**



## REPUBLIC OF VANUATU

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# REPUBLIC OF VANUATU

## BILL FOR THE BUREAU OF STANDARDS ACT NO. OF 2016

An Act to provide for the development, promotion and maintenance of standardization and the rendering of related conformity assessment services.

Be it enacted by the President and Parliament as follows-

### PART 1 PRELIMINARY

#### 1 Definitions

In this Act, unless a contrary intention appears:

**Board** means the Bureau of Standards Board established under section 2;

**Bureau** means the Bureau of Standards established under section 9;

**Chief Executive Officer** means the Chief Executive Officer of the Bureau appointed under section 7;

**commodity** means an article, product, material and service which is the subject of trade or commerce;

**inspector** means a person appointed under section 23 as an inspector;

**mandatory standard** means a Vanuatu Standard or part of a Vanuatu Standard declared as a mandatory standard under section 18;

**mark** includes any brand, heading, label, ticket, name, signature, word, letter, or numeral or any combination thereof;

**Minister** means the Minister responsible for the administration of this Act;

**standard** means a document, established by consensus and approved by a recognized body, that provides for common and repeated use, rules, guidelines or

characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context;

**standard mark** means a mark authorized under section 21;

**Vanuatu Standard** means a document declared to be a national standard under section 15.

## **PART 2 BUREAU OF STANDARDS BOARD**

### **2 Establishment of the Board**

- (1) The Bureau of Standards Board is established.
- (2) The Board consists of the following members who are to be appointed by the Minister:
  - (a) a person representing the Ministry responsible for industry nominated by the Minister responsible for Industry; and
  - (b) a person representing the Ministry of Foreign Affairs and External trade nominated by the Minister of Foreign Affairs and External Trade; and
  - (c) a person representing the Ministry responsible for environment nominated by the Minister responsible for environment; and
  - (d) a person representing the Ministry of health nominated by the Minister of Health; and
  - (e) a person representing the Ministry responsible for agriculture nominated by the Minister of Agriculture, Livestock, Forestry, Fisheries and Biosecurity; and
  - (f) a person representing the Ministry responsible for physical planning nominated by the Minister responsible for physical planning; and
  - (g) a person representing the Ministry of Finance and Economic Management nominated by the Minister of Finance and Economic Management; and
  - (h) a person representing the Ministry responsible for Energy nominated by the Minister of Climate Change Adaptation, Geohazards, Meteorology and Energy; and
  - (i) a person nominated by the Minister who will represent the National Council of the Chambers of Commerce and Industry of Vanuatu.

- (3) The members appointed under subsection (2) must have sufficient knowledge and experience in business management, finance, trade and marketing.
- (4) The Board is to appoint from amongst the members, a Chairperson and Deputy Chairperson.
- (5) A person appointed as a member under subsection (2) holds office for a period of 3 years and may be reappointed.
- (6) A member appointed under subsection (2) may be removed by the Minister, if he or she:
  - (a) fails to attend three consecutive meetings of the Board without the permission of the Board; or
  - (b) has committed a serious misconduct; or
  - (c) is incapable of performing his or her duties; or
  - (d) is a member of Parliament or a member of a Provincial Government Council or Municipal Council.

### **3 Functions of the Board**

The Board has the following functions:

- (a) to provide and oversee the strategic vision and plan of action of the Bureau;
- (b) to develop and produce a standard procedure for the development of national standards;
- (c) to approve normative documents as Vanuatu Standards or as other normative deliverables;
- (d) to approve the annual draft budget before it is submitted to the Minister;
- (e) to monitor the performance of Vanuatu Bureau of Standards in accordance with the plan of action and budget;

- (f) to approve the relevant reports for the previous year before submission to the Minister;
- (g) to monitor and improve the performance of the Management and the staff of the Bureau;
- (h) to provide advice and recommendations to the Minister on matters related to standardization, mandatory standards and metrology;
- (i) to perform any other functions conferred on the Board under this Act or any other Act.

#### **4 Meetings of the Board**

- (1) The Board is to meet, at least 4 times a year, at such time and place as the Chairperson, or in his absence the Deputy Chairperson, directs.
- (2) At a meeting of the Board, a quorum consists of 5 members including the Chairperson.
- (3) The Chairperson or, in his or her absence, the deputy Chairperson is to preside at all meetings of the Board.
- (4) A member present at a meeting has 1 vote and questions arising at the meeting are to be decided by a majority of votes and if the voting is equal, the Chairperson has a casting vote.
- (5) Subject to this Act, the Board may determine and regulate its own procedures.

#### **5 Sitting allowances**

- (1) The members of the Board including the Chairperson and Deputy Chairperson are entitled to a sitting allowance of not more than VT5,000 for each day in which the Council sits for a meeting.
- (2) The Minister may, on the advice of the Board, prescribe by Order the sitting allowance.

**6 Committees of the Board**

- (1) If the Board deems it desirable that any matter relating to the functions of the Bureau or the Board are to be referred to a committee of the Board, the Board may appoint such a committee.
- (2) The Board is to determine the composition and functions of a Committee of the Board and the terms and conditions of appointment of its members.
- (3) A Committee must not consist of more than 5 members and is not entitled to an allowance.
- (4) A Committee of the Board ceases to function after it has considered the matter referred to it and has rendered its advice to the Board.
- (5) Subject to the directions of the Board, a Committee of the Board may regulate its own proceedings.

**7 Secretary of the Board**

- (1) The Chief Executive Officer is to be the Secretary of the Board and has the following functions:
  - (a) to convene meetings of the Board at the request of the Board; and
  - (b) to prepare and circulate agendas and issue papers for meetings of the Board; and
  - (c) to take minutes of meetings and circulate them at least 3 weeks after each meeting; and
  - (d) to coordinate and facilitate the implementation of the decisions of the Board; and
  - (e) to coordinate the presentation of monitoring reports on the implementation of decisions of previous meetings of the Board; and
  - (f) to ensure that meetings are held according to the approved schedule of the meetings; and

- (g) to mobilise appropriate resources for the efficient implementation of all decisions of the Board; and
  - (h) to prepare annual work programmes of the Board; and
  - (i) such other functions that are conferred on the Secretary by this Act or any other Act.
- (2) To avoid doubt, the Secretary has no voting rights at a meeting of the Board.

**8 Chief Executive Officer**

- (1) The Minister, on the advice of the Board, is to appoint a Chief Executive Officer of the Bureau.
- (2) The Board is to determine the terms and conditions of employment of the Chief Executive Officer.
- (3) A person must not be appointed to the position of the Chief Executive Officer unless:
- (a) he or she has had at least 5 years of experience in the field of science and technology relevant to the functions of the Bureau; and
  - (b) he or she has had at least 3 years of experience in a management or administrative level of employment; and
  - (c) he or she has applied for this position and has gone through a fair and transparent selection process and based on merit.
- (4) The Board may determine additional criteria required for the position of the Chief Executive Officer.
- (5) A person is disqualified from being appointed as the Chief Executive Officer if the person:
- (a) is or becomes a member of Parliament, of a Provincial Government Council or a member of a Municipal Council; or

- (b) is bankrupt or has made an arrangement in the nature of composition or assignment with his or her creditors; or
  - (c) has been convicted of an offence and sentenced to a term of imprisonment of 6 months or more, whether or not it is a suspended sentence.
- (6) Subject to subsection (8), the Chief Executive Officer is to hold office for a period of 5 years and is eligible for re-appointment for a further 1 term.
- (7) The Chief Executive Officer is subject to this Act and to the general directions of the Board, and is responsible for the day to day management of the business of the Bureau.
- (8) The Chief Executive Officer ceases to hold office if:
- (a) he or she is disqualified for appointment under subsection (5); or
  - (b) he or she becomes permanently incapable of performing his or her functions under this Act; or
  - (c) he or she resigns from his or her office by notice in writing addressed to the Board; or
  - (d) his or her appointment is terminated by the Minister for a serious breach of the terms and conditions of his or her employment.
- (9) If the Chief Executive Officer is absent or for any other reason unable to perform his or her functions, the he or she may appoint a senior staff of the Bureau to perform the functions of the Chief Executive Officer until the Chief Executive Officer returns or assumes the functions of the office.

## **9 Staff of the Bureau**

- (1) The Chief Executive Officer may, with the prior approval of the Board, employ any staff of the Bureau as it considers necessary for the proper and efficient performance of the functions of the Bureau.
- (2) The Board is to determine the terms and conditions of the employment of the staff of the Bureau.

- (3) The appointment of a staff must be in accordance with the staff manual and must follow a fair and transparent selection process and must be based on merit.
- (4) The Chief Executive Officer may, on the approval of the Board, produce the staff manual of the Bureau.
- (5) The Chief Executive Officer may, according to the disciplinary procedures set out in the staff manual, promote, suspend or dismiss a staff of the Bureau.
- (6) The Chief Executive Officer may, on the approval of the Board, delegate any functions or powers of the Chief Executive Officer to a staff of the Authority.
- (7) The Chief Executive Officer is to inform and make recommendations to the Board on matters involving the staff of the Bureau including but not limited to:
  - (a) the recruitment of a staff; or
  - (b) the promotion of a staff; or
  - (c) the disciplinary action taken against a staff.

## **PART 3 BUREAU OF STANDARDS**

### **10 Establishment of the Bureau**

- (1) The Bureau of Standards is established.
- (2) The Bureau:
  - (a) is a body corporate with perpetual succession; and
  - (b) is to have a common seal; and
  - (c) may acquire, hold, manage and dispose of property; and
  - (d) is capable of suing and being sued.

### **11 Functions of the Bureau**

- (1) The Bureau has the following functions:
  - (a) to promote standardization in industry and commerce;
  - (b) to act as a depository for all standards;
  - (c) to prepare draft standards and to declare them as Vanuatu Standards;
  - (d) to make arrangements or provide facilities for the examination and testing of commodities and any material or substance from which or with which they may be manufactured, produced, processed or treated and for the manner of such manufacture, production, processing or treatment;
  - (e) to provide for the use of standard marks;
  - (f) to provide for the assessment of manufacturing, process or management systems and their certification;

- (g) to provide for the examination, testing and calibration of instruments, appliances, apparatus and weights and measures and weighing and measuring instruments in relation to their accuracy;
  - (h) to provide for the testing of commodities manufactured in Vanuatu or imported into Vanuatu for the purpose of determining whether the commodities conform to the provisions of this Act or any other Act dealing with standards or technical regulations;
  - (i) to keep and maintain the National Standards and Secondary Standards for weights and measures and to calibrate the working standards kept under this Act;
  - (j) to impose any fees and charges connected with the performance of its functions;
  - (k) to coordinate and manage the international, regional and bilateral interactions with other standardization bodies or organizations;
  - (l) to maintain a national information centre on matters of standardization, industry, science and technology and energy;
  - (m) to prepare, implement and execute, at the request and subject to the directions of the Minister, programmes in areas of industry, science and technology and energy not inconsistent with the provisions of this Act;
  - (n) to perform any other functions conferred on the Bureau by this Act or any other Act or Regulations.
- (2) For the purposes of paragraph (1)(i), **Secondary Standards** refers to instruments of weighing and measurement used in trading.

## **12 Funds of the Bureau**

- (1) The funds of the Bureau consist of:
- (a) fees, charges and penalties payable under this Act or any other Act or Regulation;
  - (b) funds appropriated by the Government;

- (c) any other funds received by the Bureau from any other source.
- (2) The Government must ensure there is a sufficient budget allocated to the Bureau to enable it to perform its functions efficiently, effectively and professionally.
- (3) Subject to the express authorisation of the Director General of the Ministry of Finance and Economic Management under subsection 43(4) of the Public Finance and Economic Management Act [CAP 244], the Bureau may open and maintain bank accounts on behalf of the Board.
- (4) The funds of the Bureau are to be deposited into its bank accounts in the manner determined by the Board.
- (5) The funds of the Bureau may be applied by the Bureau:
  - (a) to settle expenses incurred by the Bureau in the performance of its functions and powers;
  - (b) to settle the remuneration, allowance, fees, national provident fund contributions, gratuities, working expenses or all other charges properly arising, including any necessary capital expenditure.

### **13 Estimates**

- (1) The Bureau must, no later than 6 months before the commencement of a new financial year, prepare estimates of income and expenditure of the Bureau in respect of that year.
- (2) The Bureau must, as soon as practicable, give the Minister a copy of the estimates for each financial year referred to in subsection (1).
- (3) The Minister may, after consultation with the Minister of Finance and Economic Management, approve with or without modification the estimates submitted under subsection (1).
- (4) After the Minister approves the estimates under subsection (3), the estimates so approved are to be the estimate of the Bureau for the financial year for which it is prepared.

- (5) The financial year of the Bureau is for a period of 12 months starting on the 1st January and ending on 31 December each year.

**14 Accounts and audit**

- (1) The Bureau must keep proper accounts and records of all its transactions and must prepare in respect of each financial year a statement of account in accordance with generally accepted accounting principles and practices.
- (2) The accounts and statement of accounts of the Bureau for each financial year must be audited by a qualified external auditor who is to be appointed by the Board for a term of not more than 1 year.
- (3) The Bureau must as soon as practicable after the accounts and statement of accounts for each financial year have been audited according to subsection (2), give the Minister a copy of the statement of account and a copy of the auditor's report.

**15 General directions by Minister**

The Minister may, after consulting the Board, give the Bureau directions not inconsistent with this Act, as to the exercise of the functions and policies of the Bureau.

## **PART 4 STANDARDS**

### **16 Vanuatu Standards**

- (1) The Bureau is to develop and maintain a National Norm for the development of the Vanuatu Standards as approved by the Board, which is to be published as a Vanuatu Standard.
- (2) In Developing the National Norm, the Bureau is to carry out the following:
  - (a) set out the process for the development, approval and publication of a Vanuatu Standard based on international best practices; and
  - (b) ensure that the interests of all parties concerned are considered; and
  - (c) ensure that the Vanuatu Standards are harmonized with relevant international or regional standards; and
  - (d) ensure that there has been an appropriate national consensus building process; and
  - (e) ensure that the National Norm contains an appeals procedure for resolving disputes and deadlocks.
- (3) In developing, amending or revising a Vanuatu Standard, the Bureau must ensure that it complies with the relevant provisions of the National Norm.
- (4) If a commodity, process or practice in respect of which a draft standard is prepared is under the control or supervision of any Ministry or Department, the Bureau must ensure that it consults that Ministry or Department.
- (5) The Bureau may by a notice published in a local newspaper and by such other means, notify the public of any draft standard prepared under subsection (1), and specify in the notice a place where the draft standard may be inspected
- (6) A person may within 60 days of the publication of the notice under subsection (5), lodge with the Chief Executive Officer a written objection or representation in respect of the draft standard.

- (7) The Bureau may, having regard to any objections or representations (if any) lodged under subsection (6), confirm with or without modification, the draft standard and declare by notice published in the Gazette the draft standard as a Vanuatu Standard.
- (8) The notice under subsection (7) must state the title and number of the Vanuatu Standard, and contain a summary of the scope and purpose of that Vanuatu Standard or the amendment or revision.

**17 Referencing Vanuatu Standards in law**

- (1) A Vanuatu Standard that refers to any commodity which may affect public safety, health or environmental protection, may be incorporated by reference in any law.
- (2) The reference under subsection (1) refers to the title and the number of the relevant Vanuatu Standard.
- (3) If the referenced Vanuatu Standard or any provision under subsection (1) is amended or revised, that amendment or revision is deemed to be incorporated into the Vanuatu Standard.

**18 Notice of a proposed mandatory standard**

- (1) A Minister may, on the recommendation of the Board, issue a notice of a proposed mandatory standard.
- (2) A notice issued under subsection (1) must:
  - (a) nominate the Vanuatu Standards to be declared mandatory; and
  - (b) set out administrative particulars of the proposed mandatory standard under paragraph 18(2)(b); and
  - (c) invite interested persons to comment on the proposed mandatory standard in writing by not less than 2 months after the date of its publication.
- (3) The Minister must consult with any Ministry or department responsible for administering any Act or Regulation that regulates the import, sale or supply of any commodity that is the subject of a notice under subsection (3).

**19 Declaration of a mandatory standard**

- (1) A Minister may on the recommendation of the Board, in respect of a commodity that may affect public safety, health or the environment, by notice published in the Gazette, declare a Vanuatu Standard or part of a Vanuatu Standard as a mandatory standard or withdraw a standard previously declared as a mandatory standard.
- (2) The notice under subsection (1) must:
  - (a) refer to the number and title of the Vanuatu Standard, and if that standard is amended or revised the amendment or revision is deemed to be mandatory; and
  - (b) contain such particulars for the administration of the mandatory standard, such as markings, conformity assessment requirements, and sanctions as deemed relevant by the Minister; and
  - (c) provide for the date or dates on which the mandatory standard or different provisions thereof comes into operation, which dates may not be less than 60 days after the date of publication of the notice.
- (3) A Minister is not to publish a notice under subsection (1) unless a notice of a proposed mandatory standard has been published in the Gazette according to section 17.

**20 Compliance with the mandatory standard**

If a Minister declares a mandatory standard, any person involved at any stage with the manufacture, production, processing, treatment or distribution of the commodity in respect of which the declaration is made, must comply with that mandatory standard.

**21 Import, sale or supply of commodity subject to mandatory standard**

- (1) A person who intends to import, sell or supply a commodity to the Vanuatu market for which a mandatory standard is applicable to, must comply with the relevant mandatory standard.
- (2) A person who imports, sells or supplies a commodity to which a mandatory standard is applicable must:

- (a) keep or supply to the Bureau, any records requested by the Chief Executive Officer; and
- (b) pay such fees to the Bureau as may be prescribed by the relevant Minister.

## **22 Standard mark**

- (1) A Minister may on the recommendation of the Bureau, declare a mark as a standard mark.
- (2) A standard mark distinguishes a commodity process or practice, which conforms to a Vanuatu Standard from those that do not conform to that standard.
- (3) The Bureau may, subject to such conditions as it may impose, permit a person to use a standard mark authorized under subsection (1) if the commodity process or practice in respect of which it is used conforms to a Vanuatu Standard.
- (4) An application for a permit under subsection (3) is to be made in writing and is to be:
  - (a) addressed to the Chief Executive Officer; and
  - (b) accompanied by any additional information or document as required by the Chief Executive Officer.
- (5) A standard mark must not be used with any good unless it satisfies the conditions imposed under subsections (3) and (4).

## **23 Interpretation**

For the purposes of this Part, a **Minister** means a Minister that is responsible for a particular commodity or article.

## **PART 5 ENFORCEMENT AND COMPLIANCE**

### **24 Appointment of inspectors**

- (1) The Chief Executive Officer may in writing, appoint a staff of the Bureau or any other suitably qualified person as an inspector for the purposes of enforcing and ensuring compliance with this Act.
- (2) An inspector appointed under subsection (1) must have:
  - (a) at least 5 years of previous work experience; and
  - (b) a certificate recognised and accredited under the Vanuatu Qualifications Authority Act No. 1 of 2014.
- (3) The powers and functions of an inspector must be stated in his or her instrument of appointment.
- (4) A staff appointed as an inspector is to be issued with a unique identity card signed by the Chief Executive Officer, stating that he or she has been appointed for a specific purpose under this Act.
- (5) The identity card is to be withdrawn immediately if the person ceases to be a staff of the Bureau.

### **25 Powers of an inspector**

- (1) For the purposes of implementing, enforcing and ensuring compliance with the provisions of this Act and its regulations, an inspector may:
  - (a) carry out such inspections as the Bureau may direct in compliance with any provision of this Act; and
  - (b) verify the conformity of goods, processes or services with relevant mandatory standards or legal metrology measures; and
  - (c) investigate any fees payable in terms of the administration of this Act; and
  - (d) at any reasonable time enter any premises in which any commodity, process or practice is or is reasonably suspected of

- being manufactured, processed, produced, treated or kept for the purpose of any trade or business; and
- (e) order the temporary closure of any premises in which a commodity, process or practice is or is reasonably suspected of being manufactured, processed, produced, treated or kept for the purpose of any trade or business; and
  - (f) seize any product or commodity that is being manufactured, processed, produced or treated contrary to any Standard; and
  - (g) inspect or take samples of the commodity or of any material used or suspected to be intended for use in the manufacture, production, processing or treatment of the commodity; and
  - (h) inspect the process or practice and make any notes in relation to the process or practice; and
  - (i) inspect any operation carried out in the premises in connection with the commodity; and
  - (j) require any person to produce any document which is in his possession, custody or control and which relates to the commodity, process or practice; and
  - (k) examine and make copies or take extracts from the document; and
  - (l) require any person to appear before him or her and answer any questions relating to the commodity or process; and
  - (m) such other powers conferred on the inspector under this Act or any other Act.
- (2) An inspector must, when exercising any powers under this section, produce on the demand by any person, his or her identity card.
- (3) For the purposes of paragraph (1)(b), legal metrology measures are weights and measures that are recognised by this Act or any other Act.

**26 Seizure and detention of articles**

- (1) An inspector may stop, seize and detain any article examined by him or her that he or she has reason to believe does not conform to this Act or any other Act or is liable for forfeiture under this Act.
- (2) An inspector must, within 14 days of seizing and detaining an article or order a temporary closure under paragraph 24(1)(e):
  - (a) cause legal proceedings to be instituted; or
  - (b) return the article so seized, stopped or detained to the person from whom it was taken or stopped.

**27 Claims of compliance with Standards**

- (1) A person must not falsely claim, declare or conduct his or her affairs or business or carry out an occupation or trade under in a manner likely to create the impression that any commodity conforms to a Vanuatu Standard.
- (2) The Bureau may institute legal proceedings to restrain or claim for damages in relation to subsection (1).

**28 Protection against claims**

The fact that:

- (a) a commodity, process or practice conforms or is alleged to conform to a standard specification or a standard code of practice; or
- (b) a standard mark is used in connection with any commodity, process or practice,

does not give rise to any claim against the Bureau.

**29 Offences**

- (1) A person who:
  - (a) prevents, hinders or obstructs an inspector;

- (b) fails to produce any document or to appear or answer any questions when required to do so by an inspector under section 24;
- (c) contravenes section 31 or 32;
- (d) being a person concerned at any stage of the manufacture, production, processing, treatment or distribution of a commodity in respect of which a mandatory standard has been declared, contravenes subsection 20(1);
- (e) being an employer, contravenes section 33,

commits an offence punishable on conviction by a fine not exceeding VT1,000,000, or by a term of imprisonment of not more than 1 year, or both.

(2) A person who:

- (a) uses a standard mark without a permit granted by the Bureau or contravenes any conditions of the permit; or
- (b) makes any statement or representation, whether in writing or not, or uses a standard mark which conveys or is likely to convey the impression that a commodity, process or practice conforms to a standard, as the case may be, when it does not do so; or
- (c) without the consent of the Bureau in writing or fraudulently makes any statement or representation, whether in writing or not, whereby comparison is made in respect of any commodity, process or practice with any standard,

commits an offence punishable on conviction by a fine not exceeding VT1,000,000 or by a term of imprisonment of not more than 1 years, or both.

**30 Powers of the Court**

- (1) In addition to imposing a penalty under subsection 28(1) or (2), a Court may also, subject to subsection (2), order that a commodity, or a consignment or batch of a commodity in respect of which the offence was committed, be forfeited to the State.

- (2) The Minister may by Order determine the manner in which forfeited goods referred to in subsection (1) are to be dealt with.

**31 Compounding of offences**

- (1) The Board or the Chief Executive Officer may, if the Board and the Chief Executive Officer is satisfied that a person has committed an offence against the Act and if the person has admitted that fact and agreed in writing to it being dealt with under this section:
- (a) compound the offence by accepting from that person a sum of money not exceeding the fine specified for that offence; and
  - (b) dealt with the sum of money received under this section as though it were a fine imposed by the Court.
- (2) In any proceedings brought against any person for an offence against this Act, it is a defence if the person proves that the offence has been compounded under this section.

## **PART 6 MISCELLANEOUS**

### **32 Restriction on use of certain terms**

- (1) A person, other than the Bureau, must not, except with the consent of the Minister in writing, use a name which contains any combination of the words “**Vanuatu Bureau of Standards**” or “**Vanuatu Standards**”.
- (2) Subsection (1) does not apply to a person using a name described in that subsection prior to the commencement of this Act.

### **33 Confidentiality**

For the purposes of this Act or unless required by the Court, a person must not disclose information in relation to any commodity, process or practice in which he or she has acquired in the exercise of his or her functions under this Act.

### **34 Disclosure of information by employee**

Despite anything in any other law or in an undertaking in respect of disclosure of information, an employee of any business is not be liable to any penalty for disclosing information to an inspector when required to do so under section 25 and the employer of that worker is not to do anything to the prejudice of the worker on the grounds of such disclosure.

### **35 Regulations**

- (1) The Minister may make Regulations for carrying into effect the purposes and provisions of this Act.
- (2) Without limiting the generality of subsection (1), Regulations may provide for:
  - (a) matters relating to packing, labelling, description and advertising of any commodity for which a standard has been declared;
  - (b) matters relating to inspection, taking samples testing commodities;
  - (c) the seizure and forfeiture of articles;
  - (d) matters which by this Act are required to be prescribed or which are necessary or convenient to be prescribed.

**36 Commencement**

This Act commences on the day on which it is published in the Gazette.