

REPUBLIC OF VANUATU

BILL FOR THE STATUTE LAW (MISCELLANEOUS PROVISIONS) ACT NO. OF 2016

Explanatory Note

This Bill provides for minor uncontroversial amendments to the **Customs Act No. 7 of 2013**, the **Employment Act [CAP 160]**, the **Forestry Act [CAP 276]**, the Government Remuneration Tribunal Act [CAP 250], the **Police Act [CAP 105]**, the **Proceeds of Crime Act [CAP 284]** and the **Vanuatu Financial Services Commission Act [CAP 229]**.

Item 1 amends the **Customs Act No.7 of 2013**.

Item 1(a) amends paragraph 17(1)(a) by deleting the word “prescribed” and substituting it with the word “approved”. This amendment has the effect of requiring that an application for a licence must be made in the form approved by the Director. The term approved form is defined in the Interpretation section of the Customs Act.

Item 1(b) amends paragraph 32(2)(b) by deleting the word “crafts” and substituting it with the word “craft’s”. This amendment is required to correct the typographical error in that word.

Item 1(c) amends paragraph 68(1)(c) by substituting after the word “abets” the words “or conspires, to” to ensure that a person who conspires to the importation, exportation, transportation, shipment, unloading, or landing of goods which are prohibited under sections 65 and 66, commits an offence.

Item 1(d) amends paragraph 68(1)(g) by substituting after the word “abets”, the word “or conspires” to ensure that a person who conspires to a breach or failure to comply with the regulation made under subsection 65(3) or subsection 66(3) of the Act, commits an offence.

Item 1(e) amends subsections 68(2) and (3) by repealing the subsections and substituting it with a new subsection (2).

Subsection (2) provides for the penalty provision for a person who commits any offence under subsection (1), to be punished upon conviction to a fine not exceeding VT10,000,000 or to a term of imprisonment of not more than 10 years or both. There is now one penalty provision for a conviction for any offence under subsection (1). In a

criminal proceeding on any of the offences under subsection (1), the Court will determine the appropriate penalty to impose for a conviction of the offence committed.

Item 1(f) amends subsection 73(6) by deleting the cross reference to subsection “45(1)” and substituting it with subsection “51(1)”. This amendment is required to correct the typographical error made in the cross reference.

Item 1(g) amends subsection 77(1) by inserting after the cross reference to subsection “75(1)” the words “or an assessment amended under subsection 76(1)”. An amended assessment is also covered in subsection 77(1) in relation to the due date for the payment of duty.

Item 1(h) amends paragraph 82(2)(a) by deleting the cross reference to section “81” and substituting it with section “80”. This amendment is required to correct the typographical error.

Item 1(i) amends subsection 94(3) by deleting the reference to “Schedule 4” and substituting it with “Schedule 1”. This amendment is necessary given the amendments that have been made in the Import Duties (Consolidation)(Amendment) Act No. 33 of 2014.

Item 1(j) amends paragraph 97(1)(d) by deleting the cross reference to “Schedule 3” and substituting it with “Schedule 1”. This amendment is necessary given the amendments that have been made in the Import Duties (Consolidation)(Amendment) Act No. 33 of 2014.

Item 1(k) amends the heading of section 173 by deleting “168” and substituting it with “169”. This amendment is required to correct the typographical error.

Item 1(l) amends section 174 by deleting the words “does not act” and substitutes it with the word “acts”.

Item 1(m) amends paragraph 180(1)(c) by deleting the cross reference to section “126 or 128” and substituting it with section “124” of the Act. This amendment now applies to questioning in relation to goods only.

Item 2 amends the **Employment Act [CAP 160]**.

Item 2(a) amends subsection 78(1) by deleting the words “shall be guilty of an offence” and substituting it with the words “is guilty of an offence punishable on conviction by a fine not exceeding VT100,000”. This amendment is made to provide for the penalty for any breaches of the provisions of this Act.

Item 2(b) inserts after section 79 a new section 80 to provide for the provision of penalty notices. The provision provides that any person who commits an offence under this Act or its Regulation and who does not wish to have the matter determined by the

Court, must pay to the Commissioner of Labour, within the time specified in a penalty notice, the amount of penalty stated in the penalty notice.

Item 3 amends the **Forestry Act No.26 of 2001**.

This item inserts after paragraph 71(2)(d) a new paragraph “(da)” to provide that a regulation made under subsection 71(2) may also prescribe the requirements for the importation of sawn timber and wood products.

Item 4 amends the **Government Remuneration Tribunal Act [CAP 250]**.

Item 4(a) inserts after section 13 a new section 13A .

Section 13A provides the Tribunal is obliged by law to consult the Council of Ministers, the Minister and Director General of the Ministry of Finance before making any determination. This means that the tribunal must not make any determinations until there has been consultations with the Council of Ministers, the Minister and Director General of the Ministry of Finance.

Item 4(a) amends subsection 27(1) by deleting the word “A” and substituting it with the words “Subject to section 13A”. This amendment exempts section 13A from the rule in subsection 27(1) which provides that a person must not influence or attempt to influence the Tribunal or any member of the tribunal in any matter within the functions, duties and power of the tribunal.

Item 5 amends the **Police Act [CAP 105]**.

This item repeals Part 3AA of the Act which provides for the Appointment, Enrolment, Service and Discharge of Police Officers. This Part already exists in the Act as Part 3 and there was an oversight to remove it from the Police Amendment Act No. 22 of 2010.

Item 6 amends the **Proceeds of Crime Act [CAP 284]**.

Item 6(a) amends the definitions of “Authority” and “Unit” by deleting the cross reference to “Financial Transactions Reporting Act [Cap. 268]” and substitutes it with “Anti-Money Laundering Counter-Terrorism Financing Act No. 13 of 2014”.

Item 6(b) amends the definition of “financial institution” by deleting the cross reference to “Financial Transactions Reporting Act [Cap. 268]”, and substitutes it with “Financial Institutions Act [CAP 254]”.

These amendments in both 5(a) and (b) are required to correct the reference to the Financial Transactions Reporting Act [Cap. 268] in the definitions of “Authority”, “Unit” and “financial institution” made reference to, has already been repealed and replaced with the Anti-Money Laundering Counter-Terrorism Financing Act No. 13 of 2014.

Item 7 amends the **Vanuatu Financial Services Commission Act [CAP 229]**.

Item 7(a) repeals subsections 18(3), (4) and (5).

Item 7(b) inserts after subsection 18(2), a new subsection (3) and (4). Subsection (3) provides that the accounts of the Commission are to be audited annually by an external auditor to be approved by the Minister.

Minister of Justice and Community Services



REPUBLIC OF VANUATU

**BILL FOR THE
STATUTE LAW (MISCELLANEOUS PROVISIONS)
ACT NO. OF 2016**

Arrangement of Sections

1	Amendment	2
2	Repeal of the Act	2
3	Commencement.....	2

REPUBLIC OF VANUATU

BILL FOR THE STATUTE LAW (MISCELLANEOUS PROVISIONS) ACT NO. OF 2016

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:

- (1) Customs Act No.7 of 2013;
- (2) Employment Act [CAP 160];
- (3) Forestry Act [CAP 276];
- (4) Government Remuneration Tribunal [CAP 250]
- (5) Police Act [CAP 105];
- (6) Proceeds of Crime Act [CAP 284]
- (7) Vanuatu Financial Services Commission Act [CAP 229];

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 1 of the Interpretation Act [CAP 132], affect any amendments made by this Act.

3 Commencement

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

SCHEDULE
MINOR AMENDMENTS

1 CUSTOMS ACT NO.7 OF 2013

(a) Paragraph 17(1)(a)

Delete “prescribed”, substitute “approved”

(b) Paragraph 32(2)(b)

Delete “crafts”, substitute “craft's”

(c) Paragraphs 68(1)(c) After the word “abets”, substitute “or conspires, to”

(d) Paragraph 68(1)(g)

After the word “abets”, substitute “or conspires,”

(e) Subsections 68(2) and (3)

Repeal the subsections, substitute

“(2) A person who commits any offence under subsection (1), is punishable on conviction by a fine not exceeding VT10,000,000 or by a term of imprisonment of not more than 10 years or both.”

(f) Subsection 73(6)

Delete “45(1)”, substitute “51(1)”

(g) Subsection 77(1)

After “75(1)”, insert “or an assessment amended under subsection 76(1)”

(h) Paragraph 82(2)(a)

Delete “81”, substitute “80”

(i) Subsection 94(3)

Delete “Schedule 4”, substitute “Schedule 1”

(j) Paragraph 97(1)(d)

Delete “Schedule 3”, substitute “Schedule 1”

(k) Section 173 (Heading)

Delete “168”, substitute “169”

(l) Section 174

Delete “does not act”, substitute “acts”

(m) Paragraph 180(1)(c)

Delete “126 or 128”, substitute “124”

2 EMPLOYMENT ACT [CAP 160]

(a) Subsection 78(1)

Delete the word, “shall be guilty of an offence”, insert “is guilty of an offence punishable on conviction by a fine not exceeding VT100,000.”

(b) After section 79

Insert

“80 Penalty notices

- (1) The Commissioner of Labour may serve a penalty notice on a person if it appears to the Commissioner that the person has committed an offence under this Act or the Regulations and the offence is one that is stated by the Regulations to be an offence to which this section applies.
- (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 must pay within a time and to the Commissioner of Labour 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, that person is not 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 proceeding arising out of the same occurrence.
- (6) The Regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence;
and

- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
 - (c) 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 prescribed in this Act.
- (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.”

3 FORESTRY ACT NO. 26 OF 2001

After paragraph 71(2)(d)

Insert

“(da) the requirements for the importation of sawn timber and wood products.”

4 GOVERNMENT REMUMERATION TRIBUNAL ACT [CAP 250]

(a) After section 13

Insert

13A Responsibility of the Tribunal

The Tribunal must consult the Council of Ministers, the Minister and the Director General of the Ministry of Finance before making any determination.

(b) Subsection 27(1)

Delete “A”, substitute “Subject to section 13A, a”

5 POLICE ACT [CAP 105]

**Part 3AA – APPOINTMENT, ENROLMENT, SERVICE AND
DISCHARGE**

Repeal the Part.

6 PROCEEDS OF CRIME [CAP 284]

(a) Section 2 -Definitions of “Authority” and “Unit”

Delete “Financial Transactions Reporting Act [Cap. 268]”, substitute “Anti-Money Laundering Counter-Terrorism Financing Act No. 13 of 2014”

(b) Section 2-Definition of “financial institution”

Delete “Financial Transactions Reporting Act [Cap. 268]”, substitute “Financial Institutions Act [CAP 254]”

**7 VANUATU FINANCIAL SERVICES COMMISSION ACT
[CAP 229]**

(a) Subsections 18(3), (4) and (5)

Repeal the subsections.

(b) After subsection 18(2)

Insert

“(3) The accounts of the Commission are to be audited annually by an external auditor to be approved by the Minister.”