



REPUBLIC OF VANUATU

BILL FOR THE BUREAU OF STANDARDS ACT NO. OF 2014

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REPUBLIC OF VANUATU

BILL FOR THE BUREAU OF STANDARDS ACT NO. OF 2014

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 Board of the Vanuatu Bureau of Standards constituted under section 11;

Bureau means the Vanuatu Bureau of Standards established by section 3;

Chief Executive Officer means the Chief Executive Officer of the Bureau appointed under section 5;

commodity means an article, product or thing which is the subject of trade or commerce;

conformity assessment means the procedure used to determine, directly or indirectly, that the relevant requirements in a technical regulations or a standard have been fulfilled;

consensus means a general agreement, characterized by the absence of sustained opposition to substantial issues by an important part of the concerned interests, arrived at by a process that involves seeking to take into account the views of the parties concerned and to reconcile any conflicting arguments;

inspector means a person appointed under subsection 6(2) as an inspector;

Mandatory standard means a Vanuatu Standard declared mandatory under subsection 18(1);

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

Minister means the Minister responsible for the Bureau in Vanuatu;

Vanuatu Standard means a document declared as a national standard under subsection 15(1);

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 subsection 17(1);

Technical Regulation means a document that lays down a product's characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory and may also include or deal exclusively with:

- (a) terminology; or
- (b) symbols; or
- (c) packaging; or
- (d) marking; or
- (e) labelling requirements,

as they apply to a product, process or production method.

PART 2 THE BUREAU

2 Establishment of the Bureau

- (1) The Vanuatu 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) is capable of suing and being sued.

3 Functions of the Bureau

The Bureau has the following functions:

- (a) to promote standardization in industry and commerce;
- (b) to prepare draft standards and to declare them as Vanuatu Standards;
- (c) 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;
- (d) to provide for the use of standard marks;
- (e) to provide for the assessment of manufacturing, process or management systems and their certification;
- (f) 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;
- (g) 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;

- (h) to be keep and maintain the National Standards and Secondary Standards for weights and measures and to calibrate the working standards kept under the Act;
- (i) impose any fees and charges connected with the performance of its functions;
- (j) to coordinate and manage the international, regional and bilateral interactions with other standardization bodies or organizations;
- (k) to maintain a national information centre on matters of standardization, industry, science and technology and energy;
- (l) 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;
- (m) to exercise any other functions conferred by or under any other Act or regulations.

4 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 more than 5 years of experience in the field of science and technology relevant to the functions of the Bureau; and
 - (b) he or she has at least 3 years experience in management or administrative level of employment; and
 - (c) the Board has followed a fair and transparent selection process and based on merit.
- (4) The Board may determine other 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 Local 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 3 years and is eligible for re-appointment for 1 term.
- (7) The Chief Executive Officer 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 Minister may appoint a 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.

5 Staff of the Bureau

- (1) The Chief Executive Officer may 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 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, suspend or dismiss a staff of the Bureau.
- (6) The Chief Executive Officer is to inform the Board on matters involving the staff of the Bureau including but not limited to:
 - (a) the recruitment of a staff; or
 - (b) the disciplinary action taken against a staff.
- (7) The Chief Executive Officer may appoint any person or class of persons as inspectors for the purposes of this Act. .

6 Funds of the Bureau

- (1) The funds of the Authority consists of:
 - (a) the prescribed 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 Authority 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 such bank accounts on behalf of the Board as it considers necessary.

- (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) in the payment of expenses incurred by the Bureau in the performance of its functions;
 - (b) in the payment of remuneration, salaries, allowance, fees, superannuation fund contributions, gratuities, working expenses or all other charges properly arising, including any necessary capital expenditure.

7 Estimates

- (1) The Bureau must, no later than 2 months before the commencement of each financial year, prepare estimates of income and expenditure of the Chamber 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 the 31st of December of each year.

8 Accounts

- (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.

9 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 3 THE BOARD AND COMMITTEES

10 Vanuatu Bureau of Standards

- (1) The Vanuatu Bureau of Standards is established.
- (2) The Board consists of the following persons:
 - (a) a person representing the Ministry responsible for industry nominated by the Minister responsible for industry; and
 - (b) a person representing the Ministry responsible for Foreign Affairs and External trade nominated by the Minister of Foreign Affairs and External Trade;
 - (c) a person representing the Ministry responsible for environment nominated by the Minister responsible for environment;
 - (d) a person representing the Ministry responsible for health nominated by the Minister of Health;
 - (e) a person representing the Ministry responsible for agriculture nominated by the Minister of Agriculture, Livestock, Forestry and Fisheries;
 - (f) a person representing the Ministry responsible for physical planning nominated by the Minister responsible for physical planning.
 - (g) a person nominated by the Minister who represents the industry or trade sector and has sufficient knowledge and experience on the functions of the Bureau, in particular business management, finance and marketing.
- (3) The Chief Executive Officer is an ex-officio member of the Board.
- (4) The Minister is to appoint from amongst the members of the Board, a Chairperson and deputy Chairperson of the Board.
- (5) A member other than the Chief Executive Officer is to be a member for a period of 3 years and may, at expiry of his or her term of office, be reappointed.

11 Functions of the Board

- (1) The Board has the following functions:
- (a) to provide the strategic vision and plan of action of the Bureau;
 - (b) to approve the standard 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 the performance of the Management and the personnel 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.

12 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 member Chairing the meeting.
- (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 one vote and questions arising at the meeting are to be decided by a majority of votes. 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.
- (6) The Chief Executive Officer is to appoint a staff of the Bureau to be the Secretary of a meeting of the Board.

13 Administration of the Bureau

Subject to the directions of the Board, the Chief Executive Officer is to:

- (a) have supervision over and direction of the day to day affairs of the Bureau; and
- (b) perform the functions of the Bureau; and
- (c) have power to sign documents on behalf of the Bureau.

14 Committee 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 composition and functions of a Committee of the Board and the terms and conditions of appointment of its members is to be determined by the Board.
- (3) 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.
- (4) Subject to the directions of the Board, a Committee of the Board may regulate its own proceedings.

15 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 [xyz] standard.

- (2) In Developing the National Norm, the Bureau must 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.
- (2) In developing a Vanuatu Standard including any amendment or revision, the Bureau must ensure that it complies with the relevant provisions of the National Norm.
- (3) 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.
- (4) The Bureau may by a notice published in a local newspaper and by such other means determined by the Bureau, notify the public of any draft standard prepared under subsection (1), and specify in the notice a place for the inspection of the draft standard.
- (5) A person may within 60 days of the publication of the notice under subsection (4) lodge with the Chief Executive Officer a written objection or representation in respect of the draft standard.
- (6) The Bureau may, having regard to any objections or representations (if any) lodged under subsection (5), confirm with or without modification, the draft standard and declare by notice published in the Gazette the draft standard as a Vanuatu Standard.
- (7) The notice under subsection (6) 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.

16 Copyright of Vanuatu Standards

- (1) The copyright of Vanuatu Standards is vested in the Bureau despite any other law, and the Bureau shall not be deprived of the copyright if a Vanuatu Standard is incorporated in another law in terms of the provisions of such a law.
- (2) A person must not publish, publish, reproduce, record or transmit any Vanuatu Standard or any part of such a standard subject to copyright without the authorization of the Bureau, with the exception of its use for educational purposes.

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 as well.

18 Declaration of a Mandatory Standard

- (1) The Minister may, on the recommendation of the Board, in respect of any commodity which may affect public safety, health or the environment, by notice in the Gazette declare a Vanuatu Standard mandatory or withdraw such standard previously declared mandatory.
- (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) The Minister is not to publish a notice under subsection (1) unless a preliminary notice has been published in the Gazette:
- (a) nominating the Vanuatu Standards to be declared mandatory; and
 - (b) setting out administrative particulars of the proposed mandatory standard under paragraph (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 publishing the preliminary notice.
- (4) The Minister must consult with any other Ministries or departments responsible for administering any Act or regulation that regulates the import, sale or supply of any commodity that is the subject of a preliminary notice under subsection (3).

19 Compliance with the Mandatory Standard

If the Minister declares a mandatory standard, any person concerned 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.

20 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, may only do so according to the provisions of the relevant mandatory standard.
- (2) A person who imports, sells or supplies a commodity to which a mandatory standard is applicable to 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 Minister.

21 Standard mark

- (1) The 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.

PART 4 MISCELLANEOUS

22 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).

23 Appointment of inspectors

- (1) The Chief Executive Officer is to appoint any staff of the Bureau as Inspectors for specific purposes of this Act and may at any time withdraw the appointment of such an inspector.
- (2) 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.
- (3) 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) An Inspector has the following powers:
 - (a) to 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 all reasonable times 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, process or process; and
 - (m) such other powers conferred on the inspector under this Act or any other Act.
- (2) 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 to forfeiture under section 23.
- (3) An inspector must, within 14 days of seizing and detaining an article or cause a stop in the process or practice under subsection (3),:
- (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.
- (4) An inspector must, when exercising any powers under this section, produce on the demand by any person, his or her identity card.

26 Confidentiality

Except for the purposes of this Act or any other Act or when required by any 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.

27 Restriction on use of certain words

- (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.

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 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.

30 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 under section 25;
- (c) contravenes section 26 or 27;
- (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 29,

commits an offence punishable on conviction by a fine not exceeding X VT, 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;
- (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;
- (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 X VT or by a term of imprisonment of not more than X years, or both.

31 Powers of Court

- (1) In addition to imposing a penalty under subsection 30(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.

32 Compounding of offences

- (1) The Board or the Chief Executive Officer may, if the Board and the Chief Executive Officer of the Bureau 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 such offence by accepting from such 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.

33 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) matters which by this Act are required to be prescribed or which are necessary or convenient to be prescribed.

34 Commencement

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