



REPUBLIC OF VANUATU

UTILITIES REGULATORY AUTHORITY ACT NO. 11 OF 2007

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REPUBLIC OF VANUATU

Assent: 14/01/2008
Commencement: 11/02/2008

UTILITIES REGULATORY AUTHORITY ACT NO. 11 OF 2007

An Act to establish the Utilities Regulatory Authority and for related purposes.

Be it enacted by the President and Parliament as follows:

PART 1 PRELIMINARY

1 Interpretation

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

Act means the Utilities Regulatory Authority Act and includes any regulations made under the Act;

annual report means the annual report referred to under subsection 33(1);

applicable contract means any extant contract relating to a utility made before, on or after the commencement of this Act and to which the Government is a party;

Authority means the Utilities Regulatory Authority established under section 4 and includes any individual performing any function or exercising any power of the Authority;

benefits, in relation to paragraph 40(2)(b) means financial or other assistance in connection with housing, transport, insurance, long service leave and contributions made under the Vanuatu National Provident Fund Act [CAP 189];

Chairperson means that Commissioner appointed to be Chairperson and, in connection with meetings of the Authority, includes a Commissioner appointed by the Chairperson in writing to be the latter's proxy;

Commissioner means a Commissioner of the Authority;

comparable location means any place or a particular location in another country where the economic, geographical and other relevant conditions of supply of a regulated service are, in the opinion of the Authority, not dissimilar;

competition includes actual or potential competition, including from overseas;

competitor means any person supplying or who may supply a regulated service in Vanuatu, including from overseas, and includes a related entity;

conduct includes omissions;

consumer means a person to whom a regulated service is or may be provided in consideration of a payment;

critical infrastructure means any building, plant or equipment critical to the supply of a regulated service to a substantial section of the public;

emergency means any situation suggesting an immediate risk of:

(a) serious injury or death to any person; or

(b) serious environmental pollution; or

(c) serious damage to critical infrastructure;

Evaluation Committee means the evaluation committee referred to in section 8;

force majeure means circumstances beyond the control and without the fault or negligence of a person, including but not restricted to acts of God, hostilities, war (declared or undeclared), blockade, riots, insurrections, civil commotion, quarantine restrictions, epidemics, storms or earthquakes;

Government means an office, entity or instrument of the Executive Government including a ministry or a Minister;

impede means to hinder, obstruct, delay or otherwise prevent;

incident means an event which causes or nearly causes:

(a) serious injury or death to any individual; or

(b) serious environmental pollution; or

(c) serious damage to critical infrastructure;

Judicial Services Commission means the Judicial Services Commission referred to in Article 48 of the Constitution;

notice of grievance means a notice of grievance referred to under section 27;

penalty means a financial penalty;

place means any location in Vanuatu, including territorial waters;

public fund has the same meaning as in the Public Finance and Economic Management Act [CAP 244];

Public Service Commission means the Public Service Commission referred to in Article 59 of the Constitution;

regulated service means the supply of electricity or water to a consumer and includes all processes leading up to that supply;

related entity means:

- (a) in relation to a utility, a person wholly or partially owned or controlled by, or who wholly or partially owns or controls, the utility; and
- (b) in relation to a competitor, a person which is wholly or partially owned or controlled by, or who wholly or partially owns or controls, the competitor;

relevant Minister means:

- (a) in respect of water, the Minister responsible for water resources; or
- (b) in respect of electricity, the Minister responsible for electricity;

remedies means any one or all of the following:

- (a) penalty; or
- (b) injunction (including interim injunction); or
- (c) declaration;

safety inspector means a safety inspector employed pursuant to subsection 16(1);

safety order means a safety order issued pursuant to section 15;

safety standard means a safety standard issued pursuant to section 14;

standard means a safety standard or a reliability standard;

utility means a person who supplies a regulated service to a consumer for payment and includes a related entity for the purposes of Part 4.

(2) **Safe and safety** refers to the risk of:

- (a) serious injury or death to any individual; or
- (b) serious environmental pollution; or
- (c) serious damage to critical infrastructure.

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

- (a) where this Act confers any power to make or set any determination, order, price, regulation or other instrument, the power includes the power to revoke, vary or otherwise amend the same; and
- (b) where the Authority is required by this Act to have regard to any matter, such matter is not exhaustive of the matters to which regard may be had, but is to be afforded priority over any other matters.

2 Purpose

The purpose of this Act is to regulate certain utilities to:

- (a) ensure the provision of safe, reliable and affordable regulated services; and
- (b) maximise access to regulated services throughout Vanuatu.

3 Application of the Act

This Act applies to a regulated service to the extent that is not inconsistent with a provision in any applicable contract or other Act.

PART 2 UTILITIES REGULATORY AUTHORITY

4 Establishment of Authority

- (1) The Utilities Regulatory Authority is established.
- (2) The Authority
 - (a) is a body corporate with perpetual succession; and
 - (b) is to have a common seal; and
 - (a) may sue or be sued in its corporate name.
- (3) The Authority is to act independently but must have regard to such policies as may be issued pursuant to section 35.

5 Composition of Authority

- (1) The Authority consists of three Commissioners who must be appointed in writing by the Minister responsible for finance on the recommendation of the Evaluation Committee.
- (2) At least two Commissioners must be citizens of Vanuatu.

6 Chairperson

- (1) The Minister responsible for finance must appoint one of the Commissioners as the Chairperson on the recommendation of the Evaluation Committee.
- (2) A Commissioner must not be appointed as a Chairperson for a third consecutive term.
- (3) A Chairperson may resign by notice in writing to the Minister responsible for finance.

7 Termination and resignation of a Commissioner

- (1) The Minister responsible for finance must, by 28 days notice in writing to a Commissioner, terminate the appointment of a Commissioner if he or she is satisfied that the Commissioner:
 - (a) is physically incapacitated to the extent that his or her ability to discharge the roles of the Commissioner is significantly impaired; or
 - (b) is mentally incapacitated; or
 - (c) is bankrupt or seeks any protection from, or enters into any compact with, their creditors; or

- (d) fails to attend or remain present for the duration of any two meetings of the Authority in any 12 month period; or
 - (e) is a member of Parliament; or
 - (f) is a member of a Local Government Council or Municipal Council; or
 - (g) ceases to be a citizen of Vanuatu.
- (2) The Minister responsible for finance may, by 28 days notice in writing to a Commissioner, terminate the appointment of the Commissioner if the Commissioner:
- (a) commits a serious breach of the terms and conditions of his or her appointment; or
 - (b) persistently breaches one of the terms and conditions of his or her appointment.
- (3) A Commissioner may resign by notice in writing to the Minister responsible for finance.

8 Evaluation Committee

- (1) The Evaluation Committee consists of:
- (a) an individual, not being a member of any political party, appointed by the Judicial Services Commission; and
 - (b) an individual, not being a member of any political party, appointed by the Public Service Commission; and
 - (c) the Governor of the Reserve Bank of Vanuatu.
- (2) The Evaluation Committee must be guided only by merit and may recommend:
- (a) an individual in respect of each vacancy in the Authority from time to time; and
 - (b) terms and conditions of appointment in respect of each individual not inconsistent with section 9.
- (3) An individual must not be recommended by the Evaluation Committee as a Commissioner if he or she has not given his or her consent to the Evaluation Committee to accept the appointment on such terms and conditions.

9 Remuneration, terms and conditions of appointment

- (1) A Commissioner is to be paid in accordance with regulations made pursuant to paragraph 40(2)(b) and, if applicable, subsection 40(3).
- (2) The term of appointment of a Chairperson is for a period of not less than three years and not more than five years and may be a full-time or part-time appointment.
- (3) The term of appointment of a Commissioner, not being the Chairperson, is to be for a period of not more than five years and may be a full-time or part-time appointment.
- (4) The terms and conditions of appointment of a Commissioner must be included in the instrument of appointment made pursuant to subsection 5(1).
- (5) The obligations contained in Parts 2, 3 and 4 of the Leadership Code Act [CAP 240] are deemed to be included in the terms and conditions of appointment of a Commissioner.

10 Functions of the Chairperson

- (1) The Chairperson is responsible for:
 - (a) the leadership of the Authority; and
 - (b) the provision of advice and reports; and
 - (c) the maintenance of high level relations with utilities; and
 - (d) the proper and efficient functioning of the Authority.
- (2) The Chairperson holds a non-executive position in the Authority and the other 2 Commissioners hold executive positions.

11 Meetings

- (1) The Authority is to meet at least once every three months at such place and time as the Chairperson may determine.
- (2) The Chairperson must give 14 days written notice to the other Commissioners of meeting, including the time and place for the meeting.
- (3) The Chairperson is to preside at all meetings of the Authority.
- (4) At a meeting, a quorum consists of any two Commissioners, one of whom is the Chairperson.
- (5) Decisions at a meeting are to be by majority of votes of those present and, if there is an equality of votes, the Chairperson has a casting vote.

- (6) A Commissioner may nominate another Commissioner to be his or her proxy.
- (7) The Chairperson may permit other persons to be present at, or participate in, a meeting, however, those persons are not entitled to vote.
- (8) The Authority may otherwise determine and regulate its own procedures.

Division 1- Functions and powers

12 Functions of the Authority

- (1) The Authority has the following functions:
- (a) to exercise the functions and powers conferred by this Act or by any other Act in furtherance of the purposes of this Act;
 - (b) to provide advice, reports and recommendations to the Government relating to utilities;
 - (c) to inform the public of matters relating to utilities;
 - (d) to assist consumers to resolve grievances;
 - (e) to investigate and act upon offences under this Act.
- (2) The functions of the Authority may be performed on behalf of the Authority by:
- (a) any individual authorised by the Authority or this Act to perform those functions from time to time; or
 - (b) any single Commissioner authorised by the Authority to perform those functions from time to time and such Commissioner shall be known as the Chief Executive Officer.

13 Powers of the Authority

- (1) The Authority has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers conferred by this Act may be exercised on behalf of the Authority by any individual authorised by the Authority or this Act to exercise those powers.

Division 2-Safety standards, orders, inspection and reliability standards

14 Safety standards

- (1) The Authority may issue safety standards in relation to the safety of a regulated service in any place.
- (2) A safety standard comes into force on the day on which it is published in the Gazette.

(3) The Authority must, in determining whether to issue any safety standard, have regard to:

- (a) the cost and convenience of compliance with the safety standard; and
- (b) the nature and magnitude of the risk that is addressed.

15 Safety orders

- (1) The Authority may issue safety orders in writing directing any person to do or refrain from doing any thing in relation to the safety of a regulated service.
- (2) A safety order issued in relation to one person comes into force when it is served on that person.
- (3) A safety order issued in relation to more than one person comes into force in relation to each of those persons when it is served on that person.
- (4) The Authority must, in determining whether to issue any safety order, have regard to the cost and convenience of compliance with the safety order and to the nature and magnitude of the risk.
- (5) To avoid doubt, a safety order issued in relation to more than one person may come into force in relation to a particular person in accordance with subsection (3), despite the order not having been served on one or more other persons in relation to whom the order has been issued.

16 Safety inspection

- (1) The Authority may employ a safety inspector on such terms and conditions as may be determined by the Authority.
- (2) The safety inspector may inspect any premises, plant, equipment or vehicle connected with a regulated service and may carry out all or any of the following:
 - (a) enter upon any premises;
 - (b) take any sample of any substance;
 - (c) conduct any non-destructive test upon any plant or equipment at its location;
 - (d) bring with him or her any other individual for the purpose of advice or the conduct of any test;
 - (e) in a suspected emergency, obtain forcible entry to any premises or vehicle;
 - (f) in a suspected emergency, bring with him a member of the Police Force to facilitate his or her inspection.

- (3) The safety inspector must make a full written record of all inspections.
- (4) An inspection under this section may be conducted:
 - (a) at any time during normal business hours, with or without notice; or
 - (b) at any time, in a suspected emergency.
- (5) In the event of an incident, the safety inspector must, as soon as reasonably possible, conduct an inspection of any premises, plant, equipment or vehicle possibly connected to the incident.
- (6) The safety inspector may, in a suspected emergency, make or cause to make anything reasonably required to abate immediate dangers to safety of a regulated service.

17 Reliability standards

- (1) The Authority may issue reliability standards in relation to the reliability of a regulated service in any place.
- (2) A reliability standard comes into force on the day on which it is published in the Gazette.
- (3) The Authority must, in determining whether to issue any reliability standard, have regard to the cost and convenience of compliance with the reliability standard and to the nature and importance of the reliability issue that is addressed.

Division 3-Price, complaint resolution and contract administration

18 Maximum prices

- (1) The Authority may determine the maximum price which may be charged in relation to any aspect of a regulated service in any place.
- (2) The maximum price determined under subsection (1) is effective on the day on which the determination is published in the Gazette.
- (3) The Authority must have regard to the price of similar services in any comparable location when determining maximum prices.

19 Complaint Resolution

- (1) The Authority may, if requested by a person, assist that person to resolve any dispute with a utility in respect to a regulated service.
- (2) Without limiting subsection (1), the Authority may:

- (a) require the utility to answer any question; or
- (b) require the utility to provide any document; or
- (c) require the utility to test, at the utility's cost, the accuracy of any meter or other equipment measuring the quantity or quality of a regulated service provided to the complainant; or
- (d) require the utility to calibrate, at the utility's cost, any meter or other equipment measuring the quantity or quality of a regulated service provided to the complainant; or
- (e) require a utility providing water to test, at the utility's cost, a sample of water as directed by the Authority.

20 Assignment of contractual rights

- (1) The rights exercisable by the Government in the contracts described in Part A of Schedule 1 are assigned to the Authority.
- (2) The rights exercisable by the Government in the contracts described in Part B of Schedule 1 are assigned to the Authority, but may only be exercised by the Authority upon receiving the written approval of the relevant Minister.
- (3) The regulations may assign to the Authority other contractual rights exercisable by the Government in relation to a regulated service.
- (4) The Authority may, if necessary or convenient to administer any contractual right assigned to it pursuant to subsection (1) or (2), or the regulations, require a utility to:
 - (a) answer any question; or
 - (b) provide any document.
- (5) If the Authority is provided with information or documents in relation to, or in connection with, the Authority's functions and powers set out in Part C of Schedule 1, the Authority must provide a copy of the information or documents to the Minister responsible for finance.

PART 4 OFFENCES

21 Offences

- (1) A utility must not:
 - (a) contravene any safety standard; or
 - (b) contravene any reliability standard; or
 - (c) contravene any safety order.
- (2) A utility must not impede a safety inspector.
- (3) A utility must not advertise, propose, claim or demand a price in respect of any regulated service which exceeds a determination made under subsection 18(1).
- (4) A utility and a competitor must not propose or enter into, any contract, arrangement or understanding that contains a provision which provides for the fixing, controlling or maintaining of any price, discount, rebate or credit in respect of a regulated service.
- (5) A utility must not, propose, or enter into, any contract, arrangement or understanding with any person, that contains a provision which provides that:
 - (a) goods or services of any kind are not to be supplied, or not to be supplied on the same price or condition; or
 - (b) a lease or other interest in or over a land is not to be granted, to a competitor of the utility.
- (6) A utility must not:
 - (a) fail to comply within 21 days; or
 - (b) provide any false or misleading information or document, in relation to any requirement imposed under section 19 or subsection 20(4).
- (7) A utility must not engage in any conduct which is misleading or deceptive, or is likely to mislead or deceive a consumer.
- (8) A person commits an offence if the person contravenes a provision under this section.
- (9) A person who commits an offence under this section is liable on conviction to a fine not exceeding:

- (a) VT50,000,000- in the case of a body corporate; and
 - (b) VT5,000,000- in the case of an individual.
- (10) Subject to section 22, liability for the offences in this section is strict.
- (11) In this section, **utility** is deemed to include an individual.

22 Defences

- (1) It is a defence to an offence under paragraph 21(1)(a) that the contravention was due to an accident and that reasonable precautions were made and due diligence was exercised to prevent such accident.
- (2) It is a defence to an offence under paragraph 21(1)(a) or subsection 21(2) that the contravention was due to a mistake of fact caused by reasonable reliance on information supplied by another, not being an officer or employee of the utility.
- (3) It is a defence to an offence under subsection 21(3) that the price advertised, proposed, claimed or demanded was the subject of a genuine typographical or clerical mistake.
- (4) It is a defence to an offence under subsections 21(4) and (5) that the provision:
- (a) facilitates the purposes of a *bona fide* joint venture; and
 - (b) does not have, and is unlikely to have, the effect of substantially lessening competition in any place.
- (5) It is a defence to an offence under subsection 21(6) or (7) that an answer or documents required are the subject of legal professional privilege.
- (6) It is a defence to an offence under section 21 that the contravention was due to force majeure.

23 Onus and standard of proof

- (1) The onus of proving the commission of any offence under this Part is upon the Authority and the standard of proof shall be the balance of probabilities.
- (2) The onus of proving any defence under this Part is upon the person raising it and the standard of proof is to be on the balance of probabilities.

24 Proceedings in respect of offences

- (1) The Authority may commence a claim in the civil jurisdiction of the Supreme Court seeking any one or more remedies in respect of offences under this Part.
- (2) The Authority may commence a claim in the civil jurisdiction of the Magistrates Court seeking a penalty within its financial jurisdiction.

- (3) The court may impose a penalty if it finds an offence to have been proved, however all other remedies are in the court's discretion.
- (4) The Authority may recover and be liable for costs in respect of proceedings under this section.
- (5) Claims brought under this section are to be commenced, conducted and enforced in accordance with any applicable rules of court and, subject to this section, as nearly as possible in the same manner as other claims.
- (6) Claims brought under this section are to be commenced within three years of the date of the alleged offence.
- (7) No objection, other than as provided by any applicable rules of court, is taken to any defect in substance or form in the claim or any variance between the claim and any other document and the court is to permit any amendment or adjournment necessary to determine the real matters in issue.
- (8) In respect of any claims brought under this Part, the production of a Gazette (or certified copy thereof) containing any standard issued, or determination made, pursuant to subsection 14(1), 17(1) or 18(1) is conclusive evidence of the fact and the terms of the standard or determination.
- (9) A person who suffers loss or damage by reason of any offence under this Part (even if no proceedings have been commenced under this section) may recover the amount of such loss or damage by claim in any court, according to its financial jurisdiction and may, to this end, apply to be joined to any proceedings commenced under this section.
- (10) If any class of persons have suffered loss or damage by reason of any offence in this Part, the Authority may recover the amount of such loss or damage on behalf of such class subject to any applicable rules of court provided that the Authority has first obtained the written consent of each of the persons on whose behalf such claim is made.
- (11) Nothing in subsections (9) or (10) limits, by implication, other remedies to which a person may be entitled.

25 Infringement notices

- (1) The Authority may issue an infringement notice in respect of any single offence under this Part other than subsections 21(4) and (5).
- (2) An infringement notice does not come into force unless it is served within three months of the date of the offence alleged in that notice.
- (3) An infringement notice must:
 - (a) state the name of the person alleged to have committed the offence;

- (b) state that it is issued on behalf of the Authority pursuant to this Act;
- (c) include brief particulars of the alleged offence including the date, time and place (to the extent possible);
- (d) refer to the subsection of section 21 by which the alleged offence is created;
- (e) specify a penalty not greater than VT100,000 which is sought in respect of the alleged offence; and
- (f) state that unless the penalty specified under paragraph (e) is paid within 28 days of the date of service of the infringement notice, the alleged offence is to be dealt with by a court.

(4) If the penalty specified in the infringement notice is not paid within the time required (or such further time as the Authority may allow) it is deemed, for the purposes of any proceedings brought under section 24 to be *prima facie* evidence of any facts described in it.

(5) If the penalty specified in the infringement notice is paid within the time required (or such further time as the Authority may allow) it is a bar to the commencement of any proceedings brought under section 24 in respect of the same offence by the same person.

(6) The Authority may, in its discretion:

- (a) revoke an infringement notice; and
- (b) extend the time for payment of the penalty specified in any infringement notice; and
- (c) issue a new infringement notice in lieu of one which is revoked.

(7) The payment by a utility of the penalty specified in an infringement notice is not, in any circumstances, evidence of the commission of any offence or of any act or omission.

26 Penalties payable to public fund

(1) All penalties recovered under this Part must be paid into the public fund.

(2) Any cost recovered under this Part is to be deposited in the bank account of the Authority.

PART 5 REVIEW OF CERTAIN ACTIONS

27 Internal review

- (1) A utility aggrieved by any action taken pursuant to Part 3 or section 37 may, within 30 days, give a notice of grievance to the Authority in writing that contains:
 - (a) a detailed description of any facts or matters supporting the grievance; and
 - (b) copies of any documents supporting the grievance; and
 - (c) a detailed description of any alleged error of law; and
 - (d) a detailed description of any relevant changed facts or circumstances since the action being the subject of the notice.
- (2) If the Authority receives a notice of grievance within the time prescribed by subsection (1), it must review the merits of the grievance and may:
 - (a) revoke the action complained of in the notice of grievance; or
 - (b) amend or vary the action complained of in the notice of grievance; or
 - (c) take no further action.
- (3) The aggrieved person must be informed of the outcome of the review within 30 days and, in the event that the Authority takes the action described in paragraphs (2)(b) or (c), the Authority must provide written reasons for its actions.
- (4) If upon review, the Authority is satisfied of any of the matters described in paragraphs 28(a) to (c) it must revoke, amend or vary the action complained of accordingly.

28 Judicial review

A utility that is aggrieved by any action taken pursuant to Part 3 or section 37 may, in addition to any other rights, apply to the Supreme Court for judicial review upon one or more of the following grounds as to which the onus of proof is upon the applicant:

- (a) the cost and inconvenience of compliance with any standard is not reasonably proportionate to the issue it addresses; and
- (b) a price determined pursuant to section 18 will produce less income for the utility than the cost to the utility of providing the regulated service in the place to which it relates; and
- (c) a price determined pursuant to section 18 does not enable the utility to realise a reasonable profit on the regulated service to which it relates.

PART 6 FINANCE

29 Revenue

The revenue of the Authority consists of:

- (a) funds appropriated by the Government; and
- (b) costs recovered in respect of proceedings under Part 4; and
- (c) funds assigned to it by the Minister responsible for finance by way of initial capital and budget allocation.

30 Budget

- (1) The initial capital and the annual budget of the Authority must be approved by the Minister responsible for finance after consultation with the Council of Ministers.
- (2) The Minister responsible for finance must not withhold funds to the Authority once allocated to it except in accordance with subsection 39(4) of the Public Finance and Economic Management Act [CAP 244].
- (3) Any surplus funds held by the Authority at the end of the financial year must be returned to the public fund.

31 Accounting and audit

- (1) The Authority must keep full and proper books of account.
- (2) The Authority is to prepare and submit to the Minister responsible for finance, a financial report in respect of each financial year within three months after the end of that financial year.
- (3) The financial report must be audited and certified by the Auditor General in accordance with the Expenditure Review and Audit Act [CAP 241].

32 Bank account

The Authority may open and operate a bank account if the Director-General of Finance and Economic Management expressly authorises the Authority to do so pursuant to subsection 43(4) of the Public Finance and Economic Management Act [CAP 244].

PART 7- MISCELLANEOUS

33 Annual report

- (1) The Authority must submit to the Minister responsible for public utilities an annual report of its operations for a particular year within 60 days of the end of that financial year.
- (2) Without limiting subsection (1), the report must include:
 - (a) a summary of the activities of the Authority; and
 - (b) financial statements of the Authority; and
 - (c) a report of the auditor; and
 - (d) a summary of court proceedings where the Authority had been a party to (if any); and
 - (e) a summary of major decisions taken by the Authority; and
 - (f) a list of staff of the Authority; and
 - (g) such other information as the Minister may direct in writing.
- (2) The annual report must be tabled in Parliament at the next sitting following its presentation to the Minister responsible for public utilities.

34 Other reports

The Authority may from time to time provide any Minister with such reports other than the annual report if the Minister requests a copy of such report.

35 Policy

The relevant Minister may issue statements of general policy relevant to the functions and powers of the Authority that are not inconsistent with any provision in this Act.

36 Staff and application of Public Service Act

- (1) The Authority may employ or engage such persons as it considers necessary to perform its functions or exercise its powers.
- (2) The Public Service Act [CAP 246] does not apply to the Authority or any person employed or engaged by the Authority.

37 Consultation

- (1) Subject to subsection 4(3), the Authority may obtain advice from or consult with any person including the Government.
- (2) Prior to exercising any of the powers contained in subsections 14(1), 17(1) or 18(1), the Authority must:

- (a) give notice of the material substance of the proposed exercise of such powers to all utilities potentially affected; and
- (b) afford all such utilities a reasonable opportunity to make submissions in relation to the exercise of such powers.

- (3) The Authority is to consider any submissions provided under paragraph (2)(b).
- (4) If upon consideration, the Authority is satisfied of any of the matters described in paragraphs 28(a) to (c) it may revoke, amend or otherwise vary the proposed action accordingly.

38 Protection from legal actions

- (1) This section applies to each of the following persons:

- (a) the Authority;
- (b) a Commissioner;
- (c) a safety inspector;
- (d) an employee of, or a person engaged by, the Authority under section 36;
- (e) a delegate of the Authority.

- (2) The person is not liable to an action, suit or proceeding in relation to an act or matter if:

- (a) the act or matter is done or omitted to be done in the exercise or performance, or purported exercise or performance, of a power or function under this Act or any other law; and
- (b) the act or matter is done or omitted to be done in good faith.

39 Delegation

- (1) The Authority may by signed instrument delegate to a person all or any of the powers or functions of the Authority under this Act or any other law.
- (2) A delegate of the Authority is, in the exercise of the delegate's delegated powers or functions, subject to the directions of the Authority.
- (3) A power or function delegated is, when exercised or performed by the delegate, deemed to have been exercised by the Authority.
- (4) The delegation of a power or function does not prevent the exercise of the power or the performance of the function by the Authority.

40 Regulations

(1) The relevant Minister may make regulations:

- (a) to give effect to the purpose and provisions of this Act; or
- (b) as are necessary or convenient to be prescribed for carrying out or giving effect to this Act

(2) Without limiting subsection (1), the regulations may provide for all or any of the following:

- (a) the prescription of penalties for certain offences to be sought by an infringement notice;
- (b) the prescription of the remuneration, benefits and allowances of the Chairperson and other Commissioners, provided that the remuneration of the Chairperson shall not be less than that of a Director-General of a Ministry and shall not be more than that of the Governor of the Reserve Bank of Vanuatu at any time.

(3) Despite paragraph (2)(b), if the Chairperson is not a citizen of, nor currently resides in, Vanuatu the Minister responsible for finance may make regulations prescribing a supplement to be paid to the Chairperson if he or she is satisfied that it is reasonably necessary to attract a suitable candidate.

41 Commencement

This Act comes into force on the day on which it is published in the Gazette.

Schedule 1

Part A Powers conferred under subsection 20(1)

A1 Electricity

Instrument	Function / power / responsibility
Electricity Supply Act (as amended)	Section 5 Section 6
Convention relating to the Concession for the Generation and Public Supply of Electric power in Luganville	Section 6, paragraph 29 Section 12, paragraph 55
Specifications relating to the Concession for the Generation and public supply of electric power in Luganville	Section 3, paragraph 4 Section 3, paragraph 7 Section 3, paragraph 9 Section 4, paragraph 12 Section 7, paragraph 31 Section 8, paragraph 35 Section 11, paragraph 57 Section 11, paragraph 58 Section 12, paragraph 59 Section 13, paragraph 66 Section 14, paragraph 67 Section 14, paragraph 73 Section 17, paragraph 75 Section 18, paragraph 76 Section 18, paragraph 78 Section 21, paragraph 81
Convention relating to the Concession for the Generation and Public Supply of Electric power in Port Vila	Section 6, paragraph 29 Section 12, paragraph 55

Instrument	Function / power / responsibility
Specifications relating to the Concession for the Generation and public supply of electric power in Port Vila	Section 3, paragraph 4 Section 3, paragraph 7 Section 3, paragraph 9 Section 4, paragraph 12 Section 6, paragraph 29 Section 7, paragraph 33 Section 10, paragraph 55 Section 10, paragraph 56 Section 11, paragraph 57 Section 12, paragraph 64 Section 13, paragraph 65 Section 14, paragraph 71 Section 16, paragraph 73 Section 17, paragraph 74 Section 17, paragraph 75 Section 17, paragraph 76 Section 20, paragraph 79
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)	Section 11

Instrument	Function / power / responsibility
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 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 32, paragraph 160 Article 34, paragraph 165 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 9, paragraph 29 Article 18, paragraph 69 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 32, paragraph 159 Article 34, paragraph 165 Article 34, paragraph 166

A2 Water

Instrument	Function / power / responsibility
Contract for the Management and Operation of the Water Supply Service in Port Vila	Article 7.2
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 29 Article 33.1 Article 33.3 Article 33.4 Article 34

Part B Powers conferred under subsection 20(2)

B1 Electricity

Instrument	Function / power / responsibility
Convention relating to the Concession for the Generation and Public Supply of Electric power in Luganville	Section 5, paragraph 20 Section 8, paragraph 38 Section 13, paragraph 62
Specifications relating to the Concession for the Generation and public supply of electric power in Luganville	Section 5, paragraph 24 Section 5, paragraph 27 Section 9, paragraph 43 Section 17, paragraph 60 (which has been incorrectly numbered and should read paragraph 69)
Convention relating to the Concession for the Generation and Public Supply of Electric power in Port Vila (as amended)	Section 5, paragraph 5.2, of amending agreement dated 25 September 1997 Section 5, paragraph 20 Section 7, paragraph 32 Section 8, paragraph 34 Section 9, paragraph 43 Section 13, paragraph 62 Section 17, paragraph 69
Specifications relating to the Concession for the Generation and public supply of electric power in Port Vila (as amended)	Section 5, paragraph 23, as varied by agreement dated 1 September 1998 Section 5, paragraph 26, as varied by agreement dated 1 September 1998 Section 7, paragraph 32
Concession contract for the Generation and Public Supply of Electric Power in Malekula Island	Article 6, paragraph 23 Article 7, paragraph 26 Article 31, section 31.07, paragraph 157
Concession contract for the Generation and Public Supply of Electric Power in Tanna Island	Article 6, paragraph 22 Article 7, paragraph 25 Article 31, section 31.07, paragraph 156

B2 Water

Instrument	Function / power / responsibility
Water Supply Act (as amended by the Water Supply (Amendment) Act No. 9 of 1993)	Section 11
Contract for the Management and Operation of the Water Supply Service in Port Vila	Article 1.4.2 Article 7.3
Schedule of Conditions to the Contract for the Management and Operation of the Water Supply Service in Port Vila	Article 22 Article 26 Article 34

Part C Functions and powers to which subsection 20(5) applies

Instrument	Function / power / responsibility
Specifications relating to the Concession for the Generation and public supply of electric power in Luganville	Section 3, paragraph 7 Section 3, paragraph 9 Section 11, paragraph 57 Section 14, paragraph 67 Section 18, paragraph 76 Section 18, paragraph 78
Specifications relating to the Concession for the Generation and public supply of electric power in Port Vila	Section 3, paragraph 7 Section 3, paragraph 9 Section 10, paragraph 55 Section 13, paragraph 65 Section 17, paragraph 74 Section 17, paragraph 75 Section 17, paragraph 76
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)	Section 11
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 23, paragraph 104 Article 26, paragraph 120 Article 31, paragraph 154 Article 32, paragraph 160

Instrument	Function / power / responsibility
Concession contract for the Generation and Public Supply of Electric Power in Tanna Island	Article 2, Section 2.03, paragraph 12 Article 2, Section 2.03, paragraph 14 Article 23, paragraph 103 Article 26, paragraph 119 Article 31, paragraph 153 Article 32, paragraph 160
Contract for the Management and Operation of the Water Supply Service in Port Vila	Article 7.2
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 29 Article 33.1 Article 33.3 Article 33.4 Article 34



REPUBLIC OF VANUATU

**UTILITIES REGULATORY AUTHORITY
(AMENDMENT) ACT NO. 18 OF 2010**

Arrangement of Sections

1	Amendment.....	2
2	Commencement	2

REPUBLIC OF VANUATU

Assent: 30/12/2010
Commencement: 24/01/2011

UTILITIES REGULATORY AUTHORITY (AMENDMENT) ACT NO. 18 OF 2010

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 OF THE UTILITIES REGULATORY AUTHORITY ACT NO. 11 OF 2007

1 Section 2

Delete "to regulate certain utilities"

2 Paragraph 2(b)

Delete "." Substitute "; and"

3 At end of section 2

Add

"(c) promote the long term interests of consumers"

4 Section 3

Repeal the section, substitute

"3 Application of the Act

This Act applies to a regulated service to the extent that is not inconsistent with a provision in any concession agreement under the Electricity Supply Act [CAP 65] existing on or before the commencement of this Act or a provision of any other Act."

5 Subsection 13 (2)

Re-number the subsection as "(3)"

6 After subsection 13(1)

Insert

"(2) Without limiting subsection (1), the Authority may:

- (a) require a utility to furnish the Authority with specified information or documents; or information or documents of a specified kind, relating to a regulated service or to the corporate structure, accounts or finances of the utility; or

- (b) require a utility to confer with the Authority as to the manner in which it carries on any specified activity in relation to a regulated service; or
- (c) do anything reasonably incidental to any of its powers.”

7 After section 29

Insert

“29A Investment Support Fund

The investment support fund established under sections 6 of the Conventions listed below must be held by the Central Government Cashier at the Department of Finance and Economic Management:

- (a) Convention relating to the Concession for the Generation and Public Supply of Electric Power in Lugainville; and
- (b) Convention relating to the Concession for the Generation and Public Supply of Electric Power in Port Vila.”

**8 Schedule 1- Part A- Powers conferred under subsection 20(1)-
A1 Electricity**

Delete “section 6, paragraph 29” relating to the following:

- (a) Convention relating to the Concession for the Generation and Public Supply of Electric Power in Lugainville; and
- (b) Convention relating to the Concession for the Generation and Public Supply of Electric Power in Port Vila.”