



REPUBLIC OF VANUATU

PRICE MONITORING AND CONSUMER AFFAIRS ACT NO. 5 OF 2023

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REPUBLIC OF VANUATU

Assent: 30/03/2023
Commencement: 03/04/2023

PRICE MONITORING AND CONSUMER AFFAIRS ACT NO. 5 OF 2023

An Act to provide for the establishment of the Bureau of Price Monitoring and Consumer Affairs, the monitoring of the prices of goods and services, the promotion of consumer welfare and for related matters.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY MATTERS

1 Interpretation

In this Act, unless a contrary intention appears:

Bureau means the Bureau of Price Monitoring and Consumer Affairs established under subsection 2(1);

business has the same meaning as under the Business Licence Act [CAP 249];

Chief Executive Officer means the Chief Executive Officer of the Bureau appointed under subsection 12(1);

goods and services mean any work, labour, commodity, equipment, material or supply of any tangible or intangible nature, provided or performed through a contract;

inspector means an inspector appointed under subsection 23(1);

Minister means the Minister responsible for the Bureau of Price Monitoring and Consumer Affairs;

monitored good or service means a good or a service which is approved by the Bureau as being a monitored good or service under subsection 18(1);

trader means a person who engages in trade, business, craft or profession, whether acting personally or through another person, acting in the trader's name or acting on the trader's behalf.

PART 2 THE BUREAU OF PRICE MONITORING AND CONSUMER AFFAIRS

Division 1 Establishment and composition of the Bureau

2 Bureau of Price Monitoring and Consumer Affairs

- (1) The Bureau of Price Monitoring and Consumer Affairs is established.
- (2) The Bureau:
 - (a) is a body corporate with perpetual succession; and
 - (b) is to have an official seal; and
 - (c) may sue and be sued in its own name.

3 Composition of the Bureau

- (1) The Bureau consists of the following members:
 - (a) a member nominated by the Minister; and
 - (b) a member nominated by the Director General of the Ministry responsible for trade; and
 - (c) a member nominated by the Chief Executive Officer of the Bureau of Standards; and
 - (d) a member nominated by the Chief Statistician of the Vanuatu Bureau of Statistics; and
 - (e) a member nominated by the Director of Public Health; and
 - (f) a member nominated by the Director of Local Authorities; and
 - (g) 2 members nominated by the Chief Executive Officer of the Chamber of Commerce and Industry; and
 - (h) a member nominated by the Director of the Department of Customs and Inland Revenue; and

- (i) 2 members nominated by the Vanuatu Consumers Association.
- (2) The Minister is to appoint, by Order, each member nominated under subsection (1).
- (3) The person appointed as a member of the Bureau is to hold office for a period of 3 years.
- (4) The Minister may, on the recommendation of the relevant nominating authority, remove a member of the Bureau.

4 Chairperson and Deputy Chairperson of the Bureau

The Bureau is to elect from amongst its members, the Chairperson and the Deputy Chairperson.

5 Functions of the Bureau

The Bureau has the following functions:

- (a) to collect information on and monitor the prices of goods and services; and
- (b) to maintain a national database with information on pricing of goods and services; and
- (c) to analyse the prices of goods and services and their economic and social impacts; and
- (d) to develop and implement non-regulatory market interventions for monitored goods and services where unfair pricing or ineffective competition exists, and to assess the need for regulatory interventions; and
- (e) to promote consumer welfare and protection; and
- (f) to provide and manage a consumer complaint system; and
- (g) to promote and coordinate collaboration with other relevant stakeholders in performing its functions; and
- (h) to carry out any other function as may be conferred on the Bureau by this Act or any other Act.

6 Powers of the Bureau

The Bureau has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act or any other Act.

7 Delegation of functions and powers

- (1) The Bureau may, in writing, delegate to the Chief Executive Officer, any of its functions or powers under this Act or any other Act, other than the power of delegation.
- (2) The delegation may be made generally, or in respect of a particular matter or class of matters.
- (3) The Bureau may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Bureau from performing the function or exercising the power that it has delegated.

8 Meetings of the Bureau

- (1) The Bureau is to meet at least 4 times in a year and may hold such other meetings as are necessary for the proper performance of its functions under this Act or any other Act.
- (2) At a meeting of the Bureau, a quorum consists of 6 members present at the meeting.
- (3) The Chairperson, or in his or her absence the Deputy Chairperson, is to preside at all meetings of the Bureau.
- (4) The decisions of the Bureau are to be made by a simple majority vote of the members present and voting.
- (5) If there is a tie vote at a meeting of the Bureau, the Chairperson or the Deputy Chairperson, (whichever is presiding at that meeting), has a casting vote.
- (6) The Bureau may determine and regulate its own procedures.

9 Conflict of interest

- (1) A member who has an interest or a potential conflict of interest in any matter before the Bureau must:
 - (a) declare that interest; and
 - (b) not be present during any deliberation of that matter by the Bureau; and
 - (c) not vote on that matter.
- (2) The member's declaration under subsection (1) must be recorded in the minutes of the meeting.
- (3) A member who fails to declare his or her conflict of interest under subsection (1) is disqualified as a member of the Bureau.

10 Sitting allowances of the members of the Bureau

The Minister may, by Order, prescribe the sitting allowances for the members of the Bureau.

11 Committees of the Bureau

- (1) The Bureau may form committees to review pricing and other consumer issues in specific market sectors, or any other matter that is a function of the Bureau.
- (2) The Bureau is to determine the composition and functions of a committee of the Bureau and the terms of reference for the committee.
- (3) A committee consists of not more than 5 persons and each member of the committee is not entitled to a sitting allowance.
- (4) Subject to the directions of the Bureau, a committee may regulate its own proceedings.

Division 2 Chief Executive Officer and other staff of the Bureau

12 Appointment of the Chief Executive Officer

- (1) The Bureau is to appoint a Chief Executive Officer.

- (2) The appointment of the Chief Executive Officer must be based on merit and must follow a fair and transparent selection process.
- (3) A person must not be appointed to the position of the Chief Executive Officer unless he or she has at least 5 years of experience in a senior management role relevant to the functions of the Bureau.
- (4) The Bureau may determine additional criteria for the position of the Chief Executive Officer.

13 Terms and conditions of appointment

- (1) The Bureau is to determine the terms and conditions of employment of the Chief Executive Officer.
- (2) The Chief Executive Officer is to hold Office for a period of 4 years and, may be reappointed only once.

14 Removal of the Chief Executive Officer

The Bureau may remove the Chief Executive Officer if:

- (a) he or she becomes permanently incapable of performing his or her functions under this Act; or
- (b) he or she commits a serious breach of a term and condition of his or her employment.

15 Functions of the Chief Executive Officer

The Chief Executive Officer has the following functions:

- (a) to convene meetings of the Bureau at the request of the Bureau; and
- (b) to prepare and circulate agendas and issue papers for the meetings of the Bureau; and
- (c) to take minutes of the meetings of the Bureau and circulate them within 2 weeks after each meeting; and
- (d) to coordinate and facilitate the implementation of the decisions of the Bureau; and

- (e) to coordinate the presentation of monitoring reports on the implementation of decisions of previous meetings of the Bureau; and
- (f) to ensure that meetings are held according to the approved schedule of meetings; and
- (g) to mobilise appropriate resources for the efficient implementation of all decisions of the Bureau; and
- (h) to prepare the draft annual strategic plans for the Bureau and other work programmes; and
- (i) any other functions that may be conferred on the Chief Executive Officer, under this Act or any other Act.

16 Staff of the Bureau

- (1) The Chief Executive Officer may, with the prior approval of the Bureau, employ any other staff of the Bureau as is necessary for the proper and efficient performance of the functions of the Bureau.
- (2) The Chief Executive Officer is to determine the terms and conditions of the employment of a staff of the Bureau.
- (3) The appointment of a staff must follow a fair and transparent selection process and must be based on merit.

17 Immunity

- (1) A civil or criminal proceeding must not be brought against a member of the Bureau, the Chief Executive Officer, an inspector or a staff of the Bureau for anything done or omitted to be done in good faith by him or her in carrying out his or her functions or in exercising his or her powers under this Act.
- (2) Subsection (1) does not apply if a member of the Bureau, the Chief Executive Officer, an inspector or a staff of the Bureau has acted in bad faith when carrying out his or her functions or in exercising his or her powers under this Act.

PART 3 PRICE MONITORING AND MARKET INTERVENTION

18 Monitored good and service

- (1) If the Bureau considers that a good or a service requires specific monitoring and market intervention, the Bureau may approve that good or that service to be a monitored good or service.
- (2) In determining whether a good or a service should be approved as a monitored good or service, the Bureau must take into account the following:
 - (a) whether or not the monitoring and market intervention by the Bureau will result in large welfare gains for consumers or traders; or
 - (b) any evidence of unfair pricing practices or large supernormal profits being consistently made; or
 - (c) any adverse impacts caused by that good or that service; or
 - (d) whether or not an intervention by the Bureau in that market will have an impact on any close substitutes that are produced in Vanuatu.

19 Price Monitoring

- (1) The Bureau is to develop and maintain a national price monitoring system for monitored goods and services.
- (2) The price monitoring system is to be used to analyse the pricing of goods or services to determine whether there is evidence of any of the following:
 - (a) unfair pricing practices or other market inefficiencies; or
 - (b) any social or economic matter that has an impact on the prices of goods and services.
- (3) The Bureau may use the following data to develop and maintain a national price monitoring system:
 - (a) data collected from the Vanuatu Bureau of Statistics; and

- (b) data collected by regular pricing inspections carried out by inspectors; and
 - (c) data required by the Bureau on pricing information to be provided by traders; and
 - (d) data collected from other Government Departments or any other institution, office or organisation.
- (4) The Bureau must keep records of historical information on pricing for at least 10 years.
- (5) The Bureau must consult and obtain the consent of regulators, statutory bodies and other Government institutions with regulatory functions in a sector proposed for price monitoring prior to performing its functions and exercising its powers over that sector.

20 Non-regulatory market interventions

- (1) The Bureau may conduct non-regulatory market interventions to address pricing issues of a monitored good and service.
- (2) Non-regulatory market interventions may include, but are not limited to:
- (a) activities targeting consumer awareness or education; and
 - (b) publishing information on pricing; and
 - (c) activities promoting competition between traders for basic goods and services; and
 - (d) collaborative projects with other institutions to improve consumer welfare.
- (3) The Bureau must consult with the relevant stakeholders prior to approving a non-regulatory market intervention.

21 Regulatory market interventions

- (1) The Minister may by Order and on the recommendation of the Bureau, provide for the following:

- (a) to fix the price of a monitored good or service; or
 - (b) to regulate the profit margin for traders who sell or provide a monitored good or service; or
 - (c) to regulate prices by any other means appropriate to achieve the objectives of the intervention.
- (2) The Bureau must not make a recommendation under subsection (1) unless it is satisfied that all other non-regulatory market interventions have been considered and deemed ineffective or inappropriate.
- (3) Prior to making an Order under subsection (1), the Minister must publish in the Gazette a notice containing the following information:
- (a) identified goods or services that are proposed to be regulated under subsection (1); and
 - (b) details of the how the prices or profits are proposed to be regulated; and
 - (c) inviting interested persons to provide their comment in writing within 2 months after the date of its publication.
- (4) 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 goods or services that is the subject of a notice under subsection (3).

PART 4 CONSUMER AFFAIRS

22 Consumer Complaints

- (1) The Bureau is to establish a system for receiving consumer complaints relating to goods and services.

- (2) The Bureau has the following functions in relation to consumer complaints:
 - (a) to receive consumer complaints through any means of communication deemed appropriate, including through provincial and area council officers; and

 - (b) to maintain a register of consumer complaints; and

 - (c) in the case where the consumer complaint relates to the quality or health standards of a good or service or relates to the price of a good or service that is already regulated under another Act - to forward that complaint to the relevant authority and require that authority to respond to the complaint within 7 working days of receiving the complaint; and

 - (d) in the case where the consumer complaint relates to the price of a good or service that has been regulated under subsection 21(1) - to require inspectors to investigate the breach of an Order made under subsection 21(1); and

 - (e) in the case where the consumer complaint relates to the price of a good or service that has not been regulated under subsection 21(1) – to collect and analyse the information provided through consumer complaints and determine whether or not that good or service should be approved as a monitored good or service.

PART 5 ENFORCEMENT AND OFFENCES

23 Inspectors

- (1) The Chief Executive Officer may appoint a person as an inspector.
- (2) The Bureau is to determine the criteria for appointment of a person as an inspector.

24 Powers of inspectors

- (1) An inspector has the following powers:
 - (a) to inspect any goods and enter any premises (other than premises used only as a dwelling); and
 - (b) to require any person carrying on a business, or employed in connection with a business, to produce any document relating to the business; and
 - (c) to make extracts from or copies of documents produced under paragraph (b); and
 - (d) to collect information on the pricing of goods and services; and
 - (e) to require traders to provide information relevant to the pricing structures of their goods and services or both.
- (2) A person who:
 - (a) wilfully obstructs an inspector under this section; or
 - (b) with intent to deceive, produces a document which is false in a material,

commits an offence punishable on conviction, by a fine not exceeding VT10,000,000 or imprisonment for a term not exceeding 10 years, or both.

25 Confidentiality

- (1) Information obtained under section 24 must not be disclosed by any person unless authorised by the Bureau.

- (2) Any person who contravenes subsection (1) commits an offence punishable on conviction, by a fine not exceeding VT10,000,000 or imprisonment for a term not exceeding 10 years, or both.

26 Offences

- (1) A person must not:
- (a) sell or attempt to sell a good or provide or attempt to provide a service, to which an Order made under subsection 21(1) applies, at a greater price than that prescribed by the Order; or
 - (b) in the course of doing business, apply different methods of fixing or ascertaining the prices of a commodity, to which an Order made under section 21(1) applies, with the intent to breach the provisions of this Act or its Regulation.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction, to a fine not exceeding VT10,000,000 or imprisonment for a term not exceeding 10 years, or both.

27 Penalty notice

- (1) The Chief Executive Officer may serve a penalty notice on a person if it appears to the Chief Executive Officer that the person has committed an offence under any provision of this Act.
- (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 may pay within a time and to a person specified in the notice, 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, no person is 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 civil proceeding arising out of the same occurrence.

- (6) The Regulations may prescribe the amount of penalty payable for the offence if dealt with under this section.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty provided for 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.

PART 6 MISCELLANEOUS

28 Regulation

The Minister may, on the advice of the Bureau, by Order, prescribe anything which is necessary or convenient to be prescribed for the better carrying out or giving effect to the provisions of this Act.

29 Repeal of Price Control Act [CAP 86]

The Price Control Act [CAP 86] is repealed.

30 Savings

Any Order or document made or any action taken by the Price Control Bureau or the Price Controller under the Price Control Act [CAP 86], continues in force as if it was made or taken by Bureau under this Act.

31 Transfer of funds, assets, liabilities and contractual obligations

The funds, assets, liabilities and contractual obligations of the Price Control Bureau established under the Price Control Act [CAP 86] immediately before the commencement of this Act, are transferred on the commencement of this Act, to the Bureau.

32 Transitional – Price Controller

- (1) A person employed as the Price Controller immediately before the commencement of this Act, is perform the functions and exercise the powers of the Chief Executive Officer under this Act until an appointment of a Chief Executive Officer is made.
- (2) An appointment of a Chief Executive Officer must be made within 6 months from the commencement of this Act.
- (3) To avoid doubt, the Price Controller ceases to perform the functions and ceases to exercise the powers of the Chief Executive Officer as soon as an appointment of a Chief Executive Officer is made.
- (4) In addition to subsection (3), the Price Controller is entitled to payment of all accrued entitlements.

33 Transitional provision – Staff of the Bureau

A person employed as a staff or appointed as an inspector under the Price Control Act [CAP 86] immediately before the commencement of this Act, is taken to be employed as a staff or appointed as an inspector under this Act on the same terms and conditions with the same accrued or accruing entitlements.

34 Commencement

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