

REPUBLIC OF VANUATU

**WATER RESOURCES MANAGEMENT
(AMENDMENT)
ACT NO. 32 OF 2016**

Arrangement of Sections

1	Amendment	2
2	Transitional Provisions.....	2
3	Commencement.....	2

REPUBLIC OF VANUATU

Assent: 26/01/2017

Commencement: 07/02/2017

WATER RESOURCES MANAGEMENT (AMENDMENT) ACT NO. 32 OF 2016

An Act to amend the Water Resources Management Act [CAP 281] and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Water Resources Management Act [CAP 281] is amended as set out in the Schedule.

2 Transitional Provisions

- (1) All water works and water uses lawfully undertaken prior to the commencement of this Act are deemed to be undertaken lawfully under this Act.
- (2) The Director may require persons with existing use rights to provide such information as is reasonably necessary for the purposes of this Act.

3 Commencement

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

SCHEDULE

AMENDMENTS OF WATER RESOURCES MANAGEMENT ACT [CAP 281]

1 Part 2 - Division 1 (Division Heading)

Repeal the heading, substitute

**“Division 1 Responsibility of water resources, customary rights and
rights of occupiers to water resources”**

2 Part 2 –Division 2 (Division Heading)

Repeal the heading.

3 Sections 5, 6, 7, 8, 9, 10 and 11

Repeal the sections, substitute

“Division 2 Water use permit

5 Water use permit

- (1) A person must not use water for any purpose other than provided for under section 3 or 4 and unless he or she has been granted a water use permit by the Director under this section.
- (2) Despite subsection (1), a person may use water without a permit under this section if the water is lawfully supplied from a work authorised under this Act.

6 Application for a water use permit

- (1) An application for a water use permit is to be made to the Director and must:
- (a) be made in the manner and form prescribed by the Minister; and
 - (b) be accompanied by any prescribed fees including but not limited to:
 - (i) the application fee; and

(ii) the permit fee.

- (2) In addition to subsection (1), the Director may in writing require an applicant to provide further information that is necessary to enable the Director to make a decision on the application.

7 Determination of application

- (1) Subject to subsection (3), the Director may:

(a) approve the application with or without terms and conditions; or

(b) reject the application if he or she considers that:

(i) the use of water applied for is inconsistent with subsection (2); and

(ii) no practical terms and conditions could be set to make the use of water applied for, consistent with subsection (2).

- (2) In addition to subsection (1), the Director must be satisfied that the use of water stated in the application:

(a) is consistent with any National Water Resources Management Policy or Plan currently in force; and

(b) is not likely to create a water shortage; and

(c) is not likely to create a health nuisance; and

(d) is not likely to adversely affect other lawful users of the water resource; and

(e) is not likely to damage the water resource or its environment; and

(f) is compatible with other uses and works in the immediate area; and

(g) is consistent with the Regulations.

- (3) A determination under subsection (1) must be made within 30 days after receiving the application.
- (4) Despite subsection (3), the Director may, with the agreement of the applicant, extend the time for determining the application to a further 30 days if it is necessary for the purpose of achieving a technical review of the information provided.
- (5) The Director must advise the applicant in writing of his or her decision within 14 days.
- (6) In addition to subsection (5), if the application has not been approved, the Director must state the reasons for not approving the application.

8 Limitation on right to use water

- (1) The Director may, by determination in writing, limit or prohibit any existing right to use water for any or all of the following reasons:
 - (a) in times of actual or anticipated shortage of water;
 - (b) when the use of water from any source has been considered detrimental to public health and safety.
- (2) The Director must:
 - (a) publish a determination under subsection (1) in such manner as he or she considers appropriate in the circumstances; and
 - (b) state in the determination the time period for which the order will remain in force, and the reason why water must not be used.
- (3) The Director must consult the Director of Public Health before making a determination under paragraph (1)(b).

Division 3 Water works permit

9 Water works permit

- (1) A person must not construct, operate or maintain works without a water works permit in the following circumstances:

- (a) any work in or adjacent to any water source or any bore; or
 - (b) any work whose purpose is not to supply water to any other person.
- (2) To avoid doubt the existence of any work on land does not confer any rights:
 - (a) to that land on the part of the owner of the works; or
 - (b) to that work on the part of the landowner.

10 Application for a water works permit

- (1) An application for a water works permit is to be made to the Director and must:
 - (a) be made in the manner and form prescribed by the Minister; and
 - (b) be accompanied by any prescribed fees including but not limited to:
 - (i) the application fee; and
 - (ii) the permit fee.
- (2) In addition to subsection (1), the Director may in writing require an applicant to provide further information that is necessary to enable the Director to make a decision on the application.

11 Determination of application

- (1) Subject to subsection (3), the Director may:
 - (a) approve the application with or without terms and conditions; or
 - (b) reject the application if he or she considers that:
 - (i) the work applied for is inconsistent with subsection (2); and

- (ii) no practical terms and conditions could be set to make the work applied for, consistent with subsection (2).
- (2) In addition to subsection (1), the Director must be satisfied that the water works stated in the application:
 - (a) is consistent with any National Water Resource Management Policy or Plan currently in force; and
 - (b) is not likely to create a water shortage; and
 - (c) is not likely to create a health nuisance; and
 - (d) is not likely to adversely affect other lawful users of the water resource; and
 - (e) is not likely to damage the water resource or its environment; and
 - (f) is compatible with other uses and works in the immediate area; and
 - (g) is consistent with the Regulations.
- (3) A determination under subsection (1) must be made within 30 days after receiving the application.
- (4) Despite subsection (3), the Director may, with the agreement of the applicant, extend the time for determining the application to a further 30 days if it is necessary for the purpose of achieving a technical review of the information provided.
- (5) The Director must advise the applicant in writing of his or her decision within 14 days.
- (6) In addition to subsection (5), if the application has not been approved, the Director must state the reasons for not approving the application.”

4 After paragraph 14(2)(l)

Insert

- “(la) provide technical advice to Rural Water Committees to ensure the sustainability of rural water supply systems;
- (lb) support the Rural Water Committees by providing technical support on the development of drinking water safety plans;
- (lc) support the rehabilitation and upgrades of community water supply systems that have exceeded their life cycle;”

5 Part 3 – Division 2 (Heading)

Repeal the Heading, substitute

“Division 2 – National Water Resources Advisory Committee”

5A Sections 19 and 20

Repeal the sections, substitute

“Division 3 – Provincial Water Resources Advisory Committee

19 Provincial Water Resources Advisory Committee

A Provincial Water Resources Advisory Committee is established for each Provincial Government Region.

20 Functions of a Provincial Water Resources Advisory Committee

A Provincial Water Resources Advisory Committee has the following functions:

- (a) to oversee the proper planning and development of water supply in the relevant Province; and
- (b) to coordinate water resource management activities in the relevant Province; and
- (c) to provide quarterly reports to the Director and the National Water Resources Management Committee; and
- (d) to advise the Director and the National Water Resources Management Committee on matters related to water supply in the relevant Province; and

- (e) to perform such other functions as is required by the Director or the National Water Resource Management Committee.

20A Composition of the Provincial Water Resources Advisory Committee

- (1) The Secretary General of each Provincial Government Council is to appoint by Order, on the recommendation of the Director and the National Water Resources Advisory Committee, 5 members of the Provincial Water Resources Advisory Committee.
- (2) In determining the composition of each Committee, the Secretary General, Director and National Water Resources Advisory Committee must take into consideration the merits of any candidates with respect to:
 - (a) the relevant technical, legal and commercial water issues that are to be addressed; and
 - (b) the needs of water consumers; and
 - (c) the interest of utilities providers and the industrial sector.

20B Chairperson and Deputy Chairperson

- (1) The Secretary General of each Provincial Government Council is the Chairperson of each respective Provincial Water Resources Advisory Committee.
- (2) The members of the Committee are to elect from amongst themselves, the Deputy Chairperson of the Committee for a term not exceeding 12 months.

20C Term of members

- (1) A person appointed by the Secretary General under subsection 20A(1) is to hold office for a term of 3 years.
- (2) To avoid doubt, subsection (1) does not apply to the Secretary General.

20D Meetings of the Provincial Water Resources Advisory Committee

- (1) The Provincial Water Resources Advisory Committee must meet at least 4 times in a year and may hold such other meetings as are necessary for the proper performance of its functions.
- (2) The Chairperson of the Committee is to preside at all meetings of the Committee and in his or her absence the Deputy Chairperson.
- (3) At a meeting of the Committee, a quorum consists of 4 members present at the meeting.
- (4) The Committee may meet despite any vacancies in its membership so long as a quorum is present.
- (5) A member present at a meeting has 1 vote and questions arising at a meeting are to be decided by a majority of votes.
- (6) Any matters arising at a meeting of the Committee is to be decided by a majority of the members present and voting, and in the case of an equality of votes, the Chairperson is to have a casting vote.
- (7) Subject to this Act, the Committee is to determine and regulate its own procedures.

20E Secretary of the Committee

- (1) The Director is to appoint a staff of the Department to be the Secretary of the Committee.
- (2) The Secretary has the following functions:
 - (a) to convene meetings of the Committee at the request of the Committee; and
 - (b) to prepare and circulate agendas and issue papers for meetings of the Committee; and
 - (c) to coordinate, facilitate and implement the decisions of the Committee; and

- (d) to take, keep and maintain a proper record of the minutes of all meetings of the Committee and circulate them within 3 weeks after each meeting to all members of the Committee; and
 - (e) to attend to any matters as directed by the Committee in relation to the administration of the Committee; and
 - (f) to mobilise appropriate resources for the efficient implementation of all decisions of the Committee; and
 - (g) to ensure that meetings of the Committee are held according to the approved schedule of meetings; and
 - (h) such other functions that may be conferred on the Secretary by this Act or any other Act.
- (3) The Secretary must attend all meetings of the Committee and if he or she is unable to attend a meeting, the Secretary must nominate a staff of the Department to attend on his or her behalf.

20F Rural Water Committees

- (1) The Minister on the recommendation of the Director may establish Rural Water Committees for each community in a Provincial Government Region.
- (2) Subject to subsection (4), the Director is to register the names of the members of each Rural Water Committee.
- (3) The Minister must not establish a Rural Water Committee unless he or she is satisfied that the members of the committee have undertaken a:
 - (a) community development training; and
 - (b) water management and financial training.
- (4) The Director must not register the names of the members of a Rural Water Committee under subsection (2) unless the names have been nominated by the relevant communities.

- (5) At least 40 percent of the members of a Rural Water Committee must be women.
- (6) The Director is to keep a register of all prescribed Rural Water Committees and all members of each Committee.
- (7) A Rural Water Committee may regulate its own procedures.

20G Functions of a Rural Water Committees

- (1) The Rural Water Committee has the following functions:
 - (a) to develop, implement and maintain:
 - (i) water supply conservation measures; and
 - (ii) management of the water supply scheme; and
 - (iii) a community drinking water safety plan to ensure water safety and security; and
 - (b) to represent the community on the ownership of the water supply system and facilitate decision making in the community; and
 - (c) to make rules to regulate water resource management issues in the community; and
 - (d) to perform any other functions as required by the Provincial Water Resources Advisory Committee.
- (2) A Rural Water Committee must negotiate and establish formal Agreements to be filed with the relevant Provincial Government Council and the Department, between the land owners and the community to allow land access for a water supply system.
- (3) A Rural Water Committee may apply for assistance from the Director in the assessment, conservation or management of any water resources.

20H Rural Water Committee rules

- (1) A Rural Water Committee may make rules regulating water sources within the relevant community.
- (2) Without limiting subsection (1), the Rural Water Committee may make rules on the following matters:
 - (a) the use of water sources; and
 - (b) setting fees to be paid for the use of water sources as approved by the Director.
- (3) Water resources must be used in accordance with the rules made under this section.

20I Structure of water delivery and management system in rural areas

- (1) The Rural Water Committees are to report to the Provincial Water Resources Advisory Committee on any matter concerning water supply or water resources management in their respective communities.
- (2) A Provincial Water Resources Advisory Committee in each province is to report annually to the Department and the National Water Resource Advisory Committee on the overall water supply services and water resource management in its respective Province.”

6 After subsection 26(5)

Insert

- “(6) The Minister may on the advice of the Director make Regulations to provide for Water Protection Zones.
- (7) The Director must:
 - (a) carry out research on harmful activities that degrade the quantity and contaminates the quality of water; and
 - (b) provide a list of harmful activities that must not be carried out within the Water Protection Zone; and

- (c) advise the Minister to make regulations under subsection (6) to regulates these restricted harmful activities; and
- (d) put in place a programme of public education on these harmful activities to protect the Water Protection Zones.”

7 After section 27

Insert

“Division 3 – Buffer zones

27A Buffer zones

- (1) The Minister on the advice of the Director, is to prescribe buffer zones over any river, stream or lake for the following purposes:
 - (a) to improve water quality by trapping or removing sediment and chemicals from runoff as these pollutants lead to destruction of aquatic ecosystems; and
 - (b) to stabilize stream banks and prevent soil erosion; and
 - (c) to conserve or protect any water resource used or intended for water supply; and
 - (d) to maintain a habitat for fish and other aquatic organisms; and
 - (e) to improve the outward appearance of stream corridors; and
 - (f) to provide habitat and contiguous travel corridors for wildlife; and
 - (g) to filter impurities from water making the water fit for consumption and agricultural purposes; and
 - (h) to promote the protection, management or use of water in rural and urban areas; and
 - (i) to deal with any emergency which may affect water supply.

- (2) A person must not perform any of the following activities within a buffer zone:
- (a) clearing or grubbing of existing vegetation; or
 - (b) logging activities; or
 - (c) grading or striping of soil; or
 - (d) filling or dumping of waste; or
 - (e) use, storage, or the application of pesticides, herbicides, and fertilizers; or
 - (f) list of prohibited activities under the Code of Logging Practices under the Forestry Act [CAP 276].
- (3) In addition to subsection (2), the Minister may on the advice of the Director prescribe by Order, restricted activities within buffer zones.
- (4) Despite the provisions of the Physical Planning Act [CAP 193], no physical planning must be made in a buffer zone area.
- (5) For the purpose of this section “buffer zones” means an area to protect the open water such as river, lake, stream from pollution and interference with the natural flow of the open water.

8 After subsection 32(4)

Insert

- “(5) A person who:
- (i) undertakes any activity that is prohibited or restricted under section 26 or 27A; or
 - (ii) contravenes section 20F or subsection 20H(3); or
 - (iii) assaults, obstructs, resists, delays, hinders, refuses entry, and intimidates any authorised officers under section 29 in the performance of their relevant duties,

commits an offence punishable on conviction by a fine not exceeding VT5,000,000 or imprisonment for a period not exceeding 12 months, or both.”

9 After section 32

Insert

“32A Penalty notices

- (1) The Director may serve a penalty notice on a person if it appears to him or her that the person has committed an offence under this Act or the regulations and the offence is one that is stated by the regulations to be an offence to which this section applies.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a Court, the person may pay to the Department within a time 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, that person is not liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any proceeding arising out of the same occurrence.
- (6) The Regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty prescribed in this Act.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.”