

UTILITIES REGULATORY AUTHORITY OF VANUATU

Charter of Consultation and Regulatory Practice

Charter of Consultation

2008

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Introduction

The Utilities Regulatory Authority is Vanuatu's economic regulator of essential utility services. It is required under legislation, the *Utilities Regulatory Authority Act No. 11 of 2007*, to develop and publish a Charter of Consultation and Regulatory Practice.

The Act and other industry-specific agreements outline the notification, consultation and publication procedures that we must follow when undertaking our functions and making decisions.

The purpose of the Charter is to provide guidance relating to the Authority's processes for making determinations and conducting inquiries.

The Authority first published the Charter in 2008, with a review foreshadowed after two years.

The 2008 edition of the Charter of Consultation and Regulatory Practice has been produced after an extensive review process.

Feedback from interested stakeholders and consumers has been incorporated into this Charter. Stakeholders sought from the Authority an increased level of direct consultation and greater understanding of the impact of regulatory decisions.

We are committed to continually monitoring our consultation practices, maintaining strong consultative processes and increasing opportunities for wider stakeholder input into our regulatory program, ahead of an expected review of this Charter in 2010.

Our role and objectives

The Government of Vanuatu established the Utilities Regulatory Authority on 11 February 2008 under the *Utilities Regulatory Authority Act No. 11 of 2007*. The Act establishes our organisation as the primary economic regulator of utility infrastructure services in Vanuatu.

We regulate certain services in the electricity and water sectors. Our role differs from each regulated industry but generally involves regulating prices, service standards, and market conduct and consumer protection. We also investigate and advise the Government on regulatory matters that affect Vanuatu's essential utilities.

Our decisions affect consumers and users of these services, as well as the regulated businesses that provide those services. For this reason, we aim to be open and transparent in our decision-making, and to consult with as many people in the broader community as possible. Public participation in our regulatory processes enhances the relevance and effectiveness of our decisions.

The *Utilities Regulatory Authority Act No. 11 of 2007* states that our primary objective is to regulate certain utilities to ensure the provision of safe, reliable and affordable regulated services and maximise access to regulated services throughout Vanuatu.

Our other objectives include:

- facilitating efficiency in regulated industries
- facilitating incentives for efficient long-term investment in regulated services
- facilitating the financial viability of regulated industries
- preventing the misuse of monopoly or non-transitory market power
- ensuring our decisions account for the relevant health, safety, environmental and social legislation in each regulated industry
- ensuring consumers and users (including low-income and vulnerable customers) benefit from efficiency gains
- promoting consistency in regulation across all areas.

In our work, we must consider industry –specific legislation and agreements such as the *Port Villa Electrical Supply [CAP. 17]*, *Electricity Cable (Restriction on Passage of Vessels Thereunder) [CAP. 27]*, *Electricity Supply [CAP. 65]*, Concession Agreements for the Port Villa, Luganville, Tanna Island and Malekula areas, *Water Supply (Amendment) Act No. 28 of 1993*, *Water Supply [CAP. 24] and Regulations*, Contract for Management and Operation of the Water Supply Service in Port Villa, and *Water Resources Management Act No. 9 of 2002*.

Under the Utilities Regulatory Authority Act No. 11 of 2007, the Authority is a body corporate, and an independent statutory authority. Determinations, reports and inquiries are not subject to the direction or control of the minister, unless expressly provided for in legislation.

The Commissioners

Membership of the Authority comprises one Commissioner appointed as the Chairperson and two other part time Commissioners. The Commissioners are appointed by the Minister responsible for finance on the recommendation of the Evaluation Committee on a fixed term basis.

The Evaluation Committee consists of individuals, not being a member of any political party, appointed by the Judicial Services Commission, Public Service Commission and Governor of the Reserve Bank of Vanuatu.

Commissioners are charged under the Act to conduct the formal decision-making process.

They meet as the URA Commission in a formal session, usually each month, to consider and direct the Authority's regulatory business. URA Commission decisions are informed by staff papers and formal oral briefings. When a URA Commission decision is made, a minute is created and approved.

URA Commission Staff

The Commissioners are supported in their decision-making by regulatory and analytical staff led by the Chief Executive Officer including external service providers with economic, accounting, engineering and other analytical disciplines.

While legal decision-making is ultimately the responsibility of the Commissioners, the staff are responsible for formulating recommendations and being the main contact point in consultation with stakeholders.

Our functions

While our role and functions differ for each regulated industry, our broad functions include:

- reviewing prices and service standards
- undertaking investigations into the supply of electricity and water and other matters (as referred by relevant Ministers)
- issuing, amending and revoking safety and reliability standards, and monitoring compliance with those standards
- developing, amending and monitoring the regulated businesses compliance with regulatory instruments (for example concession agreements)
- monitoring and reporting on regulated businesses' performance
- approving prices and charges that regulated businesses levy on regulated services
- conducting public education programs on the regulatory framework and ensuring that framework adequately protects customers
- resolving access and other disputes between service providers and users
- responding to customer inquiries about regulatory matters, and if required, assist consumers to resolve grievances.

Our work program

At the start of each financial year, we publish a work program, setting out our proposed regulatory agenda for the following 12 months.

The annual work program is developed to reflect the goals and strategies that we will pursue in meeting our statutory objectives to regulate certain utilities to ensure the provision of safe, reliable and affordable regulated services and maximise access to regulated services throughout Vanuatu.

The work program outlines all price and regulatory reviews, special projects and other work activities that we will undertake, and is segmented by each industry sector – electricity, water sectors and Special References.

All activities are listed with a brief description, and an appropriate time given for commencement and completion of each project.

A key feature of the work program is the role of stakeholders in its development.

Before publication, a draft work program is circulated for public comment to a range of our stakeholders, including consumers and industry associations, public sector agencies and businesses.

These comments are considered in the re-drafting process before final publication and distribution of the work program to stakeholders.

After the conclusion of the financial year, we report in our annual report on how we have conducted our work program, with specific information on outputs achieved and the benefits and impact of each particular project.

Our consultation principles

We are committed to wide community consultation to guide our decision making.

We aim to be:

- independent, balanced and fair by ensuring our decisions and process do not reflect undue influences and are consistent with our statutory objectives
- open and transparent by publishing our work program and distributing it early in the financial year to stakeholders within government, businesses, statutory authorities and customer and industry groups
- accessible to, and inclusive of, all relevant stakeholders by providing them all reasonable opportunity to participate in our consultation processes
- considerate of the varying information needs and accessibility levels of a diverse Vanuatu community
- representative and fair in the way in which we explain the key issues, facts and information and reflect the comments that stakeholders make to our processes
- effective in identify priority issues, providing well targeted opportunities for consultations and resolving them in a timely manner
- efficient in minimising the costs of our regulatory activities and seeking to ensure that the costs of regulation do not exceed the benefits.

How we notify of our inquiries, decisions and determinations

Decisions taken by the Utilities Regulatory Authority affect a broad cross-section of the Vanuatu population.

Customers and providers of regulated services, and their representatives, have a stake in the outcomes of our work, as do the various levels of government and other regulatory bodies.

We strive to give as many stakeholders as possible the opportunity to participate in our review and decision-making processes.

We notify stakeholders of our inquiries, decisions and determinations by:

- advertising in relevant local and/or regional daily or weekly newspapers
- directly advising relevant Government Ministers, and where appropriate Members of Parliament, of our activities
- writing directly to regulated businesses, customer groups, industry associations, and other regulatory bodies that will be impacted by the particular inquiry, decision or determination
- alerting stakeholder via our website
- promoting our activities through relevant media outlets
- communicating by postal or electronic mail to all individuals and organisations registering an interest in a particular activity, such as a price review.

Under the Utilities Regulatory Authority Act No. 11 of 2007, we are also required to consult with a range of government departments and statutory authorities.

Our legislation requires that we must, as early as practicable, consult with a relevant department or authority in the making of a determination and in the conduct of an inquiry, after first consulting with our responsible Minister.

Processes for public consultation

Each year, we hand down a range of decisions, determinations and reports relating to regulated industries in Vanuatu.

Our regulatory decisions are preceded by a program of consultation with our major stakeholders, depending on the type of project, for example, price or regulatory review, performance reports or investigations.

We rely heavily on the input of all our stakeholder groups. Their involvement helps us to shape our work program, discuss and debate the key issues and balance the interests and views of a wide cross-section of stakeholders.

Our approach to consultation is generally similar across projects, although we tailor it to reflect the nature of the regulated industry or activity, any legislative requirements and the implications for stakeholders.

For the purposes of our regulatory tasks, consultation is not consensus-building or agreement; rather it is seeking, in a transparent way, a range of views from different stakeholders and incorporating them into our decision-making process in a way that best achieves the objectives under the Act.

The following measures summarise our approach to consultation in conducting inquiries, making determinations and generally carrying out our regulatory program.

Frameworks for consultation

When beginning consultation on a particular matter, we inform stakeholders of the terms of reference for our investigation, outlining our proposed process, broad approach and timelines.

We provide details of the relevant person or persons to contact for further information, and other relevant matters.

These details are communicated through direct correspondence and placement on our website, complemented by newspaper advertising.

Opportunities for stakeholder comment

Once a consultation is advertised, we provide opportunities for stakeholder input into our inquiry or regulatory or price review.

Stakeholders are encouraged to provide written submissions, outlining issues to be considered as part of our consultation. Early-stage submissions can be highly valuable in guiding our consultation and determining future consultation activity, such as the number, nature and location of public meetings.

We encourage open discussion and transparency during our consultation processes, making submissions available on our website (except where they contain commercially sensitive or confidential information).

The publication of submissions on our website allows other people to put forward their own views and better understand the issues.

In the interests of transparency, we encourage relevant information to be provided at an early stage, so that we can develop our regulatory response, first draft form, and then as a final document.

After the publication of a draft decision or paper, we seek to continue our consultations with all stakeholders in an open and transparent manner.

Publication of material

We publish our own consultation papers, drafts, decisions and related documents on our website.

Where possible, we also distribute such documents to stakeholders via direct mail or delivery, particularly where relevant stakeholders may not have access to the internet.

Wide publication and distribution of our preliminary and draft material enables interested parties to provide additional information and analysis to influence our further analysis and findings.

Publishing our final decisions also helps our stakeholders to understand the reasons for those decisions and to trace their contributions to our processes. Final decision papers often outline the role of consultation and the contribution of particular stakeholders.

Encouraging relevant information

We will ask stakeholders to provide us with any relevant information or documents where we believe the material will help us to carry out our work.

Receipt of all relevant information is crucial to our regulatory tasks.

It should be noted that the Utilities Regulatory Authority Act No. 11 of 2007 provides us with the scope to formally request information for the purposes of our regulatory reviews or investigations.

Confidentiality and privacy

We are subject to legislative requirements relating to confidentiality or commercially sensitive information, privacy matters and freedom of information.

If you provide us with information on a confidential or commercially-sensitive basis, we will not disclose it without first seeking your consent.

Timelines for consultation

Timelines for consultation will vary according to the individual project or review being undertaken. In setting timelines for comments, the URA Commission will take into account competing timelines for other reviews being conducted elsewhere by the Authority or other regulators.

Reviews typically involve the release of an issues paper, followed by a draft report. This allows two stages of consultation before the URA Commission reaches its final decision. Substantial reviews would also include one or more public hearings.

Where the timetable for a review is necessarily short, either because of the subject matter or the terms of reference, we may produce only a draft decision and a final determination.

Longer more complex reviews, particularly those preceding price determinations, may take more than 12 months. In these instances, a consultation or issues paper will be released prior to a draft decision.

Our preference is to allow a minimum of three weeks for comment on issues papers and draft reports or decisions.

In some cases, the actual time required for comment is specified in the relevant legislation and may be a lesser period, or be determined by a statutory time frame.

If new significant information is revealed following a draft decision, we may also foreshadow the URA Commission's position in a revised draft decision, circulated to major stakeholders, if it is substantially different from the draft.

Informing stakeholders of our decisions, determinations and reports

At the conclusion of a regulatory or price review, we seek to notify all parties simultaneously of the outcome, via our website.

With detailed performance reports, we confirm facts and figures with the relevant businesses beforehand to ensure accuracy of information.

In the case of investigations for and initiated by a Minister, the final report will be presented first to the Minister for eventual release by his or her office.

Requirements in relation to public hearings

Many of our major reviews feature direct consultation, such as public meetings and workshops.

During price reviews, for example, we hold an extensive round of public meetings in local, regional and rural areas to hear first-hand the views of customers and businesses, as well as community and industry groups, government and Members of Parliament.

To encourage public participation, we advertise the meetings in newspapers, as well as alerting industry and consumer groups, community groups, government and Members of Parliament.

Media coverage up to and after such meetings can assist the consultation process and promote issues under review to a wider audience.

Generally chaired by a Commissioner or the Chief Executive Officer, public meetings hosted by the Utilities Regulatory Authority are usually informal and tailored to encourage customers to present a range of views.

While many customers may not be prepared to provide a submission to a review, they will take the opportunity of raising questions as public meetings and meeting directly with our Commissioners and staff.

At these public meetings, we record the names and contact details of people who would like to be kept informed of our consultations on that particular review.

On occasions, we may sometimes take a transcript of proceedings or prepare notes to publish on our website, to provide a reference for discussion and allow others to understand the issues raised.

Our approach to regulatory practice

Our legislation requires that a Charter of Consultation and Regulatory Practice set out what we will do to ensure best practice in performing our functions. In addition to the regulatory and consultation practices outlined in this document, we have in place a range of initiatives to achieve the objectives of the Act.

These include:

- training, recruiting and retraining staff to ensure we have access to the necessary skills and expertise to perform our regulatory functions
- reviewing regulatory practices and frameworks to assess their effectiveness and revising these practices where necessary
- maintaining a rigorous project management approach within the Authority to complete regulatory projects in a timely and cost-effective manner
- liaising with and learning from academic institutions and regulators in other jurisdictions

In addition we have a commitment to implementing best practice regulatory approaches consistent with the Vanuatu Government policy and initiatives. This includes being guided (where relevant) by the following principles when designing (or reviewing) regulatory proposals:

- identification of the problem being addressed and consideration of the desired objectives and outcomes of the proposed regulatory solution
- regulatory measure must be the minimum to achieve the desired objectives
- consideration of potential solutions to the problem, including non-regulatory solutions
- consideration of the relative costs and benefits of potential solutions, including any compliance and administration costs
- aiming to use consultative and transparent processes to ensure effective communication between the Authority and stakeholders and to provide adequate opportunity for stakeholders to participate
- ensuring any decisions, policies or procedures are readily available

Ensuring we are performing our functions

We will continually review our program of consultation to keep it consistent with the objectives of this Charter.

Each year we will report in our annual report on how we have adhered to this Charter in our decision making.

We will list the projects undertaken and report on our level of consultation, such as reporting on the number of public meetings held and submissions received to major reviews or inquiries.

When conducting post-project appraisals of our price reviews and major inquiries, we will actively seek stakeholder views on structure, effectiveness and level of our consultation. We are also subject to regular internal audits of our consultation and communication practices.

We will also seek views of all stakeholders on an ongoing basis.

In addition, we will review this Charter's effectiveness in two years, in consultation with our stakeholders (or sooner if we materially change our approach to, or the nature of, matters on which we consult).