

DRAFT AS AT 17 SEPTEMBER 2001

REPUBLIC OF VANUATU

**BILL FOR THE
DESIGNS ACT NO. OF 2001**

Explanatory Note

This note does not form part of the Bill.

The purpose of this Bill is to provide for the registration of designs, and to set out and protect the rights deriving from registration.

The Bill reflects international trends towards greater uniformity in the field of intellectual property law. In particular, this Bill conforms with the minimum standards and principles prescribed for designs in the international Agreement on Trade-Related Aspects of Intellectual Property Rights.

PART 1 - PRELIMINARY

This Part contains definitions and terms that are used frequently throughout this Bill.

PART 2 - DESIGNS AND DESIGN RIGHTS

This Part explains what is a design and sets out the rights given by this Act to the registered owner and any authorised user of a registered design, such as the right to exclusive use of the design.

PART 3 - APPLICATION FOR REGISTRATION

This Part deals with the steps to take to have a design registered, such as who may apply and how to apply, and gives the Registrar the power to make the initial decision whether to accept the application. It also sets out the grounds on which the Registrar may reject an application for registration of a design, such as a design that is identical with an existing design, or is otherwise likely to deceive or cause confusion.

PART 4 - OPPOSITION TO REGISTRATION

This Part deals with opposition to registration of a design, such as how to oppose an application for registration. It sets out the grounds on which a person may object to the registration of a design. The grounds include the same grounds on which the application could be opposed under Part 3, as well as grounds that the design is similar to an existing registered design, or that the person applying for registration does not own or intend to use the design.

PART 5 - AMENDMENT OF DOCUMENTS

This Part sets out how and in what circumstances an application for registration of a design may be amended, and deals with amendment before and after details of the application have been published.

PART 6 - REGISTRATION OF DESIGNS

This Part deals with the registration of designs by the Registrar, how they are registered, the term of registration, and when registration ceases. It sets out what must be done to renew the registration of a design, including when renewal may be applied for.

PART 7 - AMENDMENT AND CANCELLATION OF REGISTRATION

This Part sets out how and why particulars of registered designs may be amended, and registration cancelled. The grounds for cancellation include that registration was obtained by fraud or misrepresentation, and any of the grounds on which registration could have been opposed. The Part also deals with removal of a design from the Register for non-use of the design.

PART 8 - ASSIGNMENT AND TRANSMISSION OF DESIGNS

This Part deals with the assignment of registered designs and of designs whose registration has been sought, and with the registration and other recording of assignments. This Part also deals with the recording of the rights and interests that persons (other than registered owners) may have in registered designs or designs whose registration is being sought.

PART 9 - INFRINGEMENT OF DESIGNS

This Part sets out what constitutes an infringement of a design, such as using a design that is substantially similar to a registered design, or using a registered design without the consent of the registered owner of the design. It also deals with how to obtain redress and relief in cases of infringement.

PART 10 - INDIGENOUS KNOWLEDGE

This Part provides for the protection of indigenous knowledge. It requires the Registrar to refer applications for registration of a design that involves an expression of indigenous culture to the Vanuatu National Cultural Council, and provides that such a design is not to be registered without the consent of the custom owners of the indigenous knowledge. In limited circumstances such consent is not required eg if the custom owners cannot be identified. There is also provision for payment to the custom owners of an equitable share of the benefits from the design.

PART 11 - OFFENCES

This Part makes certain types of conduct, such as falsely using a design and selling goods made from false designs, offences against the Act

PART 12 - JURISDICTION AND POWERS OF COURTS

This Part deals with the jurisdiction of the Supreme Court to hear and determine matters arising under the Bill. It sets out the circumstances when a person aggrieved by a decision of the Registrar may appeal to the Supreme Court, and provides a right of appeal to the Court of Appeal.

PART 13 - ADMINISTRATION

This Part deals with the Registrar and the keeping of the Register of Designs. It provides for the Registrar to be appointed by the Public Service Commission, for the Registrar to be responsible for keeping the Register, and allows for the Register to be kept by computer.

PART 14 - MISCELLANEOUS

This Part deals with miscellaneous matters such as an address for service, the fixing of fees for applications and other matters under the Bill, the service of documents and the making of regulations.

**Deputy Prime Minister and Minister of
Trade Tourism and Economic Cooperation**