



**OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT**

**ON THE FAILURE OF GOVERNMENT TO  
IMPLEMENT THE PRICE CONTROL ACT**

**19 July 2010**



**REPUBLIC OF VANUATU**

**6145/2010/01**

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**PUBLIC REPORT  
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THE FAILURE OF GOVERNMENT  
TO IMPLEMENT THE PRICE CONTROL ACT**

## **SUMMARY**

### **Outline of events**

The Price Control Act [CAP 86] was enacted in 1974 and its revised edition was published in 1988. The purpose of the Act is *“To make provision for controlling the price of goods and services.”*

Since its enactment, the Government has over the years made several attempts to control the price of certain goods. The last attempt at price control was made in 1995 by then Minister responsible, Mr Serge Vohor. After that time, the Act has remained dormant until 2006 when the Ombudsman initiated an own motion investigation to determine whether the Price Control Bureau, now commonly known as the Government Business Enterprise Unit, does not implement the Price Control Act. The aim of the investigation was also to determine whether the Act is defective.

### **Findings**

- The Government through the Ministry of Finance has failed to implement the Price Control Act [CAP 86]

### **Recommendations**

The Ombudsman recommends:

- That Government through the Ministry of Finance appoint a special task force to conduct a comprehensive review of the Price Control Act to bring it in line with the changing global economic trends and to also ensure that consumers and traders rights are protected.

## TABLE OF CONTENTS

<b>SUMMARY.....</b>	<b>2</b>
<b>1. JURISDICTION.....</b>	<b>4</b>
<b>2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED.....</b>	<b>4</b>
<b>3. RELEVANT LAWS .....</b>	<b>4</b>
<b>4. BACKGROUND.....</b>	<b>4</b>
<b>5. OUTLINE OF EVENTS.....</b>	<b>5</b>
<b>6. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM .....</b>	<b>6</b>
<b>7. FINDINGS.....</b>	<b>7</b>
<b>8. RECOMMENDATIONS.....</b>	<b>7</b>
<b>9. INDEX OF APPENDICES.....</b>	<b>8</b>

## 1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the Ministry of Finance & Economic Management, in particular the Price Control Bureau, now commonly known as the Government Business Enterprise Unit. The Ombudsman can also look into defects in laws or administrative practices, including the Price Control Act [CAP 86].

## 2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present the Ombudsman's findings as required by the Constitution and the Ombudsman Act
- 2.2 The scope of this investigation is to establish the facts about the lack of price control on traders by the Price Control Bureau and to determine whether the Price Control Act is defective.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

## 3. RELEVANT LAWS

Relevant parts of the following laws are reproduced in **Appendix 1**.

**Price Control Act [Cap 86]**

## 4. BACKGROUND

- 4.1 Governments often take steps to control the prices of goods and services so as to protect consumers from certain conditions that could make necessities unattainable.
- 4.2 In Vanuatu, the Price Control Act [CAP 86] was enacted in 1974 and its revised edition was published in 1988. The purpose of the Act was "*To make provision for controlling the price of goods and services.*" This included provisions for establishing an independent Price Control Bureau, a Prices Advisory Committee, and a system of price control and inspection.
- 4.3 Since its enactment, the Government has in 1987 and 1988 made attempts to prescribe ceiling prices chargeable on certain goods such as rice, tinned mackerel, sugar, tobacco, corned beef, salt, cooking oil, tea, coffee, milo, milk (including the infant formula milk, *Lactogen*), washing powder, butter, margarine, biscuits and flour. A schedule was created to portray the maximum wholesale and retail prices chargeable and it was to be exhibited in every store or shop that operated as a wholesale trader or retailer.
- 4.4 In 1988, a second attempt was also made to charge ceiling and wholesale retail prices on different tobacco brands.
- 4.5 In January 1995, the Honourable Minister of Home Affairs, Mr Serge Vohor ("Mr Vohor") made an attempt to use his powers as Minister under Section 15 of the Price Control Act to make regulations for a Prices Advisory Committee as established by Section 6 of the Act. The purpose of the committee was to act an advisor on all draft legislation regarding prices. To date, there is no longer such a Committee in existence.

- 4.6 In February 1995, Mr Vohor, again using his powers under Section 16 of the Act, ordered that all traders under specific business license categories include a 4% turnover tax in the mark-up of the prices of goods sold by them.
- 4.7 In June 1995, Mr Vohor issued another order to repeal the order of February 1995 and also ordered that no retailer was permitted to sell goods at a retail price that was higher than that which was displayed, offered for sale or advertised.

## 5. OUTLINE OF EVENTS

- 5.1 In August 2006, the Ombudsman was informed that the Government Business Enterprise Unit in the Ministry of Finance was responsible for carrying out the functions of the Price Control Bureau. The Ombudsman then wrote a letter to Mr Thomson Pakoa ("Mr Pakoa"), the Government Business Enterprise Manager, to voice his concerns about the lack of price control on two particularly important commodities; infant formula milk (*Lactogen*) and one bale of sugar. Copies of correspondence between Mr Pakoa and the Ombudsman are attached as **Appendix 2 ,3, 4 and 5**).
- 5.2 Following the Ombudsman's letters, on 22 September 2006, Mr Pakoa wrote to stores in Port Vila and Luganville querying their pricing methods on sugar and *Lactogen* milk. A copy of Mr Pakoa's letter is attached as **Appendix 6**.
- 5.3 Due to insufficient responses by Mr Pakoa, the Ombudsman then initiated an own motion investigation in October 2006 into the allegation that there was a lack of price control on goods and services in Vanuatu by the Price Control Bureau.
- 5.4 The Ombudsman sent letters to 19 traders in Port Vila and Luganville on the allegations being investigated. **Appendix 7** is a summary of the questions and answers received by traders.
- 5.5 On 10 May 2007, the Ombudsman wrote to the Honourable Minister responsible for the Price Control Bureau, then Minister for Finance, Mr Willy Jimmy Tapanga Rarua ("Mr Tapanga Rarua") (refer to **Appendix 8**).
- 5.6 The Ombudsman requested that Mr Tapanga Rarua respond to the allegations regarding the alleged lack of price control on traders by the Ministry of Finance.
- 5.7 In his response dated 21 May 2007 (see **Appendix 9**), Mr Tapanga Rarua responded that in the 1990s, the Price Control Unit was abolished. In 2002, then Minister for Finance, Mr Joe Kalo attempted to resurrect the Price Control Bureau and the Government Business Enterprise Unit would assume the implementation of the Price Control Act. However, due to political instability, this did not eventuate. Further, due to '*budget constraints, high turnover of Ministers in the Ministry and a lack of coordination with relevant stakeholders*', this Bureau has been left idle.
- 5.8 Mr Tapanga Rarua said that he had issued instructions to his First Political Adviser and the Director of the Ministry of Finance to ensure that the Bureau is made to function.

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- 5.9 Mr Tapanga Rarua's opinion is he does not consider *"that the Price Control Act is defective but rather that its implementation and enforcement should be undertaken by dedicated personnel in a dedicated separate unit within the government to ensure that it is effective"*.
- 5.10 Mr Tapanga Rarua also stated that in future, Vanuatu should move towards a *more sophisticated consumer and competition policy with relevant legal framework such as a consumer and competition commission*.
- 5.11 Then Minister of Finance indicated that he would keep the Ombudsman informed.
- 5.12 On 14 June 2007, the Ombudsman again wrote a letter to Mr Tapanga Rarua (see **Appendix 10**). The Ombudsman requested that Mr Tapanga Rarua provide evidence of his instructions to his First Political Adviser, including the terms of reference of the person assigned to resurrect the Price Control Bureau.
- 5.13 Because nothing was forthcoming, the Ombudsman then sent another letter on 28 February, 2008, reminding the honourable Minister to provide a response to the letter of 14 June – seven months had lapsed since the request was made (see **Appendix 11**).
- 5.14 To date, no response has ever been provided by the former Minister of Finance and Economic Management.
- 5.15 A copy of the Working Paper on this report was also sent to the current Minister of Finance and Economic Management but no response was received.

## **6. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM**

- 6.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.
- 6.2 Responses were received from only two retail stores and no response was received from the Ministry of Finance nor the Price Control Bureau (Government Business Enterprise Unit). One retail store confirmed its view that the Price Control Act is not implemented at all and made comparisons to the past when it was. Amongst other views expressed, this particular store also shared the view that the Ombudsman obtain the views of different people to resolve this issue (Refer to **Appendix 12**). The Ombudsman is in agreement here and has therefore incorporated this suggestion in its recommendation below.
- 6.3 The other retail store (see **Appendix 13**) states that price increases for certain goods have been due to world market prices but concludes that in regard to the Price Control Bureau, they *"...have still not received any information..."*.
- 6.4 The Ombudsman is also of the view that changes in the global economy should be reflected in the Price Control Act. In Vanuatu, there is now a move towards competition in the market, particularly in breaking monopolies. Although price control has often brought mixed views to traders and

consumers alike, there may still be opportunities for abuse. It is with this in mind that the Ombudsman has made his recommendation in this report.

## **7. FINDINGS**

### **7.1 Finding 1: The Government through the Ministry of Finance has failed to implement the Price Control Act [CAP 86]**

7.1.1 Since the enactment of the Price Control Act, the Vanuatu Government has failed to ensure that the Price Control Act be implemented.

7.1.2 The Ombudsman acknowledges the attempts made by different Ministers in the 1980s, 1990s, early 2000 and 2007. However, implementation of the Act is still to become a reality.

7.1.3 In May 2007, the Minister of Finance, Mr Tapangna Rarua informed the Ombudsman that he would ensure that a Price Control Bureau be resurrected, together with a terms of reference for a person who would be responsible for the Bureau. One year has lapsed since Mr Tapangna Rarua's pledge and nothing has transpired.

7.1.4 There was also no response to the Ombudsman's working paper which was issued recently to the current Ministry of Finance and Economic Management.

7.1.5 Because of the Government's failure to implement the Price Control Act, there is no price control on goods and services in Vanuatu.

7.1.6 The lack of price control means that Traders can charge whatever prices they want on their goods and services. It leaves room for traders to take advantage of the situation, particularly in cases where one trader is the sole distributor, supplier or service provider.

7.1.7 The Government has a duty under the Price Control act to protect consumers from unfair trade practices and it is failing to do this.

## **8. RECOMMENDATIONS**

8.1 It is recommended that Government through the Ministry of Finance appoint a special task force to conduct a comprehensive review of the Price Control Act so as to cater for the changing global economic trends whilst at the same time, ensure that consumers and traders rights are protected.

Dated this 19<sup>th</sup> day of July 2010

**Pasa TOSUSU**

**OMBUDSMAN OF THE REPUBLIC OF VANUATU**

**9. INDEX OF APPENDICES**

1. The Price Control Act [CAP 86]
2. Copy of Ombudsman's letter of August 8<sup>th</sup> 2006 letter to Mr Pakoa
3. Copy of letter from Mr Pakoa dated August 9<sup>th</sup> 2006
4. Copy of Ombudsman's letter of 29<sup>th</sup> August 2006 to Mr Pakoa
5. Copy of Ombudsman's letter of 20 September 2006 to Mr Pakoa
6. Copy of letter of 22 September 2006 to traders from Mr Pakoa
7. Summary of information collected from traders
8. Copy of Ombudsman's letter of 10<sup>th</sup> May 2007 to Mr Tapanga Rarua
9. Copy of Mr Tapanga Rarua's letter of 21<sup>st</sup> May 2007 to the Ombudsman
10. Copy of Ombudsman's letter of 14 June 2007 to Mr Tapanga Rarua
11. Copy of Ombudsman's letter of 28 February 2008 to Mr Tapanga Rarua
12. Copy of response to working paper from one retail store
13. Copy of response to working paper from another retail store



# Appendix 1 - Page 1 of 6

## PRICE CONTROL ACT [CAP 86]

*Commencement: 29 August 1974*

LAWS OF THE REPUBLIC OF VANUATU  
REVISED EDITION 1988

### CHAPTER 86

#### PRICE CONTROL

JR 18 of 1974  
JR 27 of 1974  
JR 10 of 1975

#### ARRANGEMENT OF SECTIONS

#### SECTION

#### PART I

#### Interpretation

##### 1. Interpretation

#### PART II

#### Price Control Bureau

2. Establishment of Price Control Bureau
3. Composition of Bureau
4. Functions of Bureau
5. Exercise of functions of Bureau

#### PART III

#### Prices Advisory Committee

6. Establishment of Prices Advisory Committee
7. Consultation of Committee on draft legislation concerning prices

#### PART IV

#### Procedure and method for fixing prices

8. Inquiry into price structure and profit margins
9. Methods of fixing prices

#### PART V

#### Controller and Inspectors

10. Powers of Controller and Inspectors
11. Secrecy

## Appendix 1 - Page 2 of 6

### PART VI Duties of Traders

12. Traders to keep books, accounts etc.
13. Prohibition of destruction of documents within 2 years
14. Invoices etc., to be supplied
15. Power to make subsidiary legislation
16. Power to regulate activity of traders

### PART VII

#### Offences and Penalties

17. Offences
18. Penalties
19. Offences by company
20. Offences by employees

SCHEDULE - Form of undertaking of secrecy under section 11 of The [Price Control Act](#).

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### PRICE CONTROL

**To make provision for controlling the price of goods and services.**

### PART I

#### INTERPRETATION

#### INTERPRETATION

1. In this Act and in any subsidiary legislation made thereunder, unless the context otherwise requires -

"Controller" means the Price Controller referred to in section 3;

"Inspector" means a Price Inspector referred to in section 3;

"Minister" means the Minister responsible for price control;

"price" when used in connexion with the provision of services includes the rate charged for supplying or carrying on any service and the term "price" or "rate" shall be deemed to include valuable consideration of any kind whatsoever direct or indirect;

"retail" when used in relation to any sale means a sale by a retailer to a consumer;

"retail price" means the price paid or payable for goods sold by retail;

"retailer" means a trader who sells goods to a consumer;

"trader" means any person who in connexion with any business carried on by him sells, has sold, or proposes to sell any goods, or who supplies or who carries on any service;

"wholesale" when used in relation to any sale means a sale by a wholesaler to any person;

"wholesaler" means a trader who sells goods to any person for the purpose of resale or for use by such person in his trade or business;

"wholesale price" means the price paid or payable for goods sold by wholesale.

## **Appendix 1 - Page 3 of 6**

### **PART II PRICE CONTROL BUREAU**

#### **ESTABLISHMENT OF PRICE CONTROL BUREAU**

2. A Price Control Bureau is hereby established for Vanuatu which shall form an independent part of the Ministry responsible for price control.

#### **COMPOSITION OF BUREAU**

3. The Bureau shall comprise a Price Controller and a sufficient number of Price Inspectors:

Provided however that police officers of or above the rank of sergeant shall, by virtue of their rank and office be entitled to exercise all functions of a Price Inspector upon having made the declaration of secrecy required by section 11.

#### **FUNCTIONS OF BUREAU**

4. The functions of the Price Control Bureau shall be -

- (a) to ensure that the legislation concerning price control is observed by all traders, persons engaged in commercial activities and persons providing services;
- (b) to verify any infringements of the said legislation and to make a report thereon.

#### **EXERCISE OF FUNCTIONS OF BUREAU**

5. The Controller and Inspectors shall exercise the functions of the Bureau with the powers conferred upon them by this Act.

### **PART III**

#### **PRICES ADVISORY COMMITTEE**

##### **ESTABLISHMENT OF PRICES ADVISORY COMMITTEE**

6. A Prices Advisory Committee is hereby established the composition whereof shall be fixed by the Minister.

##### **CONSULTATION OF COMMITTEE ON DRAFT LEGISLATION CONCERNING PRICES**

7. The Committee shall be consulted on all draft legislation concerning prices. It may call before it any person or representative of any businesses whose advice may appear to it useful. It shall in addition give all necessary publicity to any draft legislation submitted to it for a period of 2 weeks and shall receive either verbally or in writing any representations which may be made.

#### **PART IV**

### **PROCEDURE AND METHOD FOR FIXING PRICES**

#### **INQUIRY INTO PRICE STRUCTURE AND PROFIT MARGINS**

8. Before any legislation concerning the control of prices charged for the supply of any goods or services is initiated, the Price Control Bureau shall undertake an inquiry into the price structure and profit margins applied by those persons who supply, whether as wholesaler or retailer, such goods or supply such services.

#### **METHODS OF FIXING PRICES**

9. If it shall appear as a result of any inquiry undertaken as aforesaid that price control measures should be initiated, the Price Controller shall so inform the Minister who may, after consulting the Prices Advisory Committee in accordance with section 7, make rules -

- (a) determining the price itself by freezing or fixing;
- (b) determining a profit margin as a fixed sum or as a percentage; or
- (c) controlling prices by any other means which may appear suitable.

# Appendix 1 - Page 4 of 6

## PART V CONTROLLER AND INSPECTORS

### POWERS OF CONTROLLER AND INSPECTORS

10. The Controller and Inspectors shall have power –

(a) at any reasonable time to require any trader -

(i) to furnish either verbally or in writing, honestly and to the best of his knowledge, any information concerning the price structure applicable to such of his business activities as may be specified;

(ii) as soon as is reasonably possible to produce or to supply a copy of any paper or document relating to the price structure applicable to such of his business activities as may be specified in no matter whose possession the same may be;

(b) during the normal working hours of any business -

(i) to enter and inspect any business premises and to take such steps as may be reasonably necessary to effect such purposes;

(ii) to take possession of any paper, document or sample of merchandise which may appear to him to be evidence constituting proof of any contravention of this Act or any rules made thereunder.

### SECURITY

11. (1) The Controller and Inspectors shall be bound by business secrecy but may nevertheless solely for official purposes communicate to the Prices Advisory Committee any information or documents which are necessary for its decisions, provided that such information or documents disclose neither the name nor the business name nor the address of the trader to whom they relate.

(2) In order to ensure compliance with this section the Controller and Inspectors shall individually enter into an undertaking of secrecy in the form prescribed in the Schedule.

## PART VI

### DUTIES OF TRADERS

#### TRADERS TO KEEP BOOKS, ACCOUNTS ETC.

12. Every trader shall keep proper and up to date books, accounts and records as are customary in his business or as may be directed in writing by the Controller with the approval of the Minister.

#### PROHIBITION OF DESTRUCTION OF DOCUMENTS WITHIN 2 YEARS

13. No trader shall, without the prior consent of the Controller, destroy wholly or partially or render unusable any document relating to his business activities within a period of 2 years from the date on which such document came into being.

#### INVOICES ETC., TO BE SUPPLIED

14. (1) Every wholesaler shall supply his customers with an invoice which must contain the following particulars -

(a) the name and address of the seller and the purchaser;

(b) the date;

(c) a description of the merchandise;

(d) the individual and total prices, together with any additional information specifically relating to particular businesses, merchandise or services as may be required by the Controller. A duplicate of this invoice must be retained by the trader for a period of 2 years after the date on which the same was issued.

(2) Every trader who supplies goods by retail or who supplies any service shall, when such goods or services are supplied on credit, issue at the time when such goods or services are supplied an invoice to the purchaser and a note in duplicate containing the following information –

(a) the name of trader;

(b) the name and first name of the customer;

(c) the date;

(d) the total amount.

## Appendix 1 - Page 5 of 6

The trader shall thereupon present such note to the customer for signature after which the trader shall hand one copy to the customer. In the case of cash sales the trader need not issue a note as aforesaid unless otherwise provided in any subsidiary legislation made in accordance with section 15 or unless so requested by the purchaser.

### POWER TO MAKE SUBSIDIARY LEGISLATION

15. The Minister may make such subsidiary legislation as he shall deem necessary for the implementation of this Act and in particular for prescribing the requirements as to the advertising of prices which are to be observed by traders.

### POWER TO REGULATE ACTIVITY OF TRADERS

16. Without prejudice to the provisions of section 15, if it appears to the Minister necessary to do so, he may, on the advice of the Price Controller or the Price Advisory Committee, make subsidiary legislation to control any operation or activity (including the refusal to sell goods or supply services) by any trader or group of traders which would have as its effect the artificial or unjustified increase or reduction of the price paid for goods whether such goods are sold wholesale or retail.

## PART VII

### OFFENCES AND PENALTIES

#### OFFENCES

17. (1) Any person refusing to comply with any requirement made of him in accordance with the provisions of section 10 or by any Inspector, or who wilfully supplies him with false information or with documents which he knows to be erroneous, or who obstructs in any way the Controller or any Inspector in the exercise of his duty shall be guilty of an offence and liable to the penalties prescribed in section 18.

(2) Any trader who, whilst complying with the requirements of any subsidiary legislation made under the provisions of this Act regarding the pricing, labelling description or invoicing of goods supplied by him, nevertheless sells or exposes of; sale goods or supplies services otherwise than in accordance with the price, label, description or invoice applied by him to such goods or services, shall be guilty of an offence and is liable to the penalties prescribed in section 18.

#### PENALTIES

18. (1) Any person who contravenes the provisions of this Act or any subsidiary legislation which shall be made for the implementation thereof shall be liable to a fine not exceeding VT200,000 or imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

(2) In addition, notwithstanding the provisions of the Business Licence Act, Cap. 173, the shop or premises where the offence has taken place may be closed by order of the Minister for a period not exceeding 3 months and the trader who has committed the offence shall at his expense display a copy of the said order. The order shall be displayed on the principal entrance to the premises and shall be clearly readable from outside the premises.

#### OFFENCES BY COMPANY

19. If any offence is committed by a legally incorporated company, the manager or any officer thereof responsible under the articles of association of the said company, shall be guilty of such offence unless he satisfies the court that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

#### OFFENCES BY EMPLOYEES

20. Any trader who employs any person whether paid or not within his place of business shall be responsible for the acts or omissions of such employee and may be charged therewith if such acts or omissions constitute an offence against this Act unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of any offence; in such case only the employees responsible shall be charged.

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# Appendix 1 - Page 6 of 6

SCHEDULE

(section 11(2))

Form of Undertaking of Secrecy under section 11  
of the [Price Control Act](#), Cap. 86

I, ..... of ..... being an  
Inspector/Controller appointed to that office in accordance with the [Price Control Act](#) hereby undertake  
not to voluntarily disclose any information supplied in pursuance of the [Price Control Act](#), except as  
allowed by that Act.

.....  
(Signature)

Signed at ..... this ..... day of ..... 19 .....

Witness: .....

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