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# CONSTITUTION OF THE REPUBLIC OF VANUATU

*WE, the people of Vanuatu,*

*PROUD of our struggle for freedom,*

*DETERMINED to safeguard the achievements of this struggle,*

*CHERISHING our ethnic, linguistic and cultural diversity,*

*MINDFUL at the same time of our common destiny,*

*HEREBY proclaim the establishment of the united and free Republic of Vanuatu founded on traditional Melanesian values, faith in God, and Christian principles,*

*AND for this purpose give ourselves this Constitution.*

## CHAPTER 1 – THE STATE AND SOVEREIGNTY

### 1. Republic of Vanuatu

The Republic of Vanuatu is a sovereign democratic state.

### 2. Constitution supreme law

The Constitution is the supreme law of the Republic of Vanuatu.

### 3. National and official languages

- (1) The national language of the Republic of Vanuatu is Bislama. The official languages are Bislama, English and French. The principal languages of education are English and French.
- (2) The Republic of Vanuatu shall protect the different local languages which are part of the national heritage, and may declare one of them as a national language.

### 4. National sovereignty, the electoral franchise and political parties

- (1) National sovereignty belongs to the people of Vanuatu which they exercise through their elected representatives.
- (2) The franchise is universal, equal and secret. Subject to such conditions or restrictions as may be prescribed by Parliament, every citizen of Vanuatu who is at least 18 years of age shall be entitled to vote.
- (3) Political parties may be formed freely and may contest elections. They shall respect the Constitution and the principles of democracy.

## CHAPTER 2 – FUNDAMENTAL RIGHTS AND DUTIES

### PART I – Fundamental Rights

### 5. Fundamental rights and freedoms of the individual

- (1) The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –
  - (a) life;
  - (b) liberty;
  - (c) security of the person;
  - (d) protection of the law;
  - (e) freedom from inhuman treatment and forced labour;
  - (f) freedom of conscience and worship;
  - (g) freedom of expression;
  - (h) freedom of assembly and association;
  - (i) freedom of movement;

- (j) protection for the privacy of the home and other property and from unjust deprivation of property;
  - (k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas.
- (2) Protection of the law shall include the following –
- (a) everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence;
  - (b) everyone is presumed innocent until a court establishes his guilt according to law;
  - (c) everyone charged shall be informed promptly in a language he understands of the offence with which he is being charged;
  - (d) if an accused does not understand the language to be used in the proceedings he shall be provided with an interpreter throughout the proceedings;
  - (e) a person shall not be tried in his absence without his consent unless he makes it impossible for the court to proceed in his presence;
  - (f) no-one shall be convicted in respect of an act or omission which did not constitute an offence known to written or custom law at the time it was committed;
  - (g) no-one shall be punished with a greater penalty than that which exists at the time of the commission of the offence;
  - (h) no person who has been pardoned, or tried and convicted or acquitted, shall be tried again for the same offence or any other offence of which he could have been convicted at his trial

## **6. Enforcement of fundamental rights**

- (1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.
- (2) The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right.

## **Part II – Fundamental Duties**

### **7. Fundamental duties**

Every person has the following fundamental duties to himself and his descendants and to others –

- (a) to respect and to act in the spirit of the Constitution;
- (b) to recognise that he can fully develop his abilities and advance his true interests only by active participation in the development of the national community;
- (c) to exercise the rights guaranteed or conferred by the Constitution and to use the opportunities made available to him under it to participate fully in the government of the Republic of Vanuatu;
- (d) to protect the Republic of Vanuatu and to safeguard the national wealth, resources and environment in the interests of the present generation and of future generations;
- (e) to work according to his talents in socially useful employment and, if necessary, to create for himself legitimate opportunities for such employment;
- (f) to respect the rights and freedoms of others and to cooperate fully with others in the interests of interdependence and solidarity;
- (g) to contribute, as required by law, according to his means, to the revenues required for the advancement of the Republic of Vanuatu and the attainment of national objectives;
- (h) in the case of a parent, to support, assist and educate all his children, legitimate and illegitimate, and in particular to give them a true understanding of their fundamental rights and duties and of the national objectives and of the culture and customs of the people of Vanuatu;
- (i) in the case of a child, to respect his parents.

**8. Fundamental duties non-justiciable but public authorities to encourage compliance**

Except as provided by law, the fundamental duties are non-justiciable. Nevertheless it is the duty of all public authorities to encourage compliance with them so far as lies within their respective powers.

**CHAPTER 3 – CITIZENSHIP**

**9. Automatic citizens**

On the Day of Independence the following persons shall automatically become citizens of Vanuatu –

- (a) a person who has or had four grandparents who belong to a tribe or community indigenous to Vanuatu; and
- (b) a person of ni-Vanuatu ancestry who has no citizenship, nationality or the status of an optant.

**10. Entitlement to citizenship**

Every person who on the Day of Independence is a person of ni-Vanuatu ancestry and has the nationality or citizenship of a foreign state or the status of an optant shall become a citizen of Vanuatu if he makes an application, or an application is made on his behalf by his parent or lawful guardian, within 3 months of the Day of Independence or such longer period as Parliament may prescribe. The Vanuatu citizenship of such a person shall automatically lapse if he has not renounced his other citizenship or nationality within 3 months of the granting of Vanuatu citizenship or such longer period as Parliament may prescribe, except that in the case of a person under the age of 18 years the period of renunciation shall be 3 months after he has reached the age of 18 years.

**11. Persons born after day of independence**

Anyone born after the Day of Independence, whether in Vanuatu or abroad, shall become a citizen of Vanuatu if at least one of his parents is a citizen of Vanuatu.

**12. Naturalisation**

A national of a foreign state or a stateless person may apply to be naturalised as a citizen of Vanuatu if he has lived continuously in Vanuatu for at least 10 years immediately before the date of the application.

Parliament may prescribe further conditions of the eligibility to apply for naturalisation and shall provide for the machinery to review and decide on applications for naturalisation.

**13. Avoidance of dual nationality**

The Republic of Vanuatu does not recognise dual nationality. Any citizen of Vanuatu who is or becomes a citizen of another state shall cease to be a citizen of Vanuatu unless he renounces that other citizenship within 3 months of acquiring Vanuatu citizenship or that other citizenship, as the case may be, or such longer period as Parliament may prescribe, except that in the case of a person under the age of 18 years the period of renunciation shall be 3 months after he has reached the age of 18 years.

**14. Further provision for citizenship**

Parliament may make provision for the acquisition of citizenship of Vanuatu by persons not covered in the preceding Articles of this Chapter and may make provision for the deprivation and renunciation of citizenship of Vanuatu.

**CHAPTER 4 – PARLIAMENT**

**15. Parliament**

The legislature shall consist of a single chamber which shall be known as Parliament.

**16. Power to make laws**

- (1) Parliament may make laws for the peace, order and good government of Vanuatu.
- (2) Parliament shall make laws by passing bills introduced either by one or more members or by the Prime Minister or a Minister.
- (3) When a bill has been passed by Parliament it shall be presented to the President of the Republic who shall assent to it within 2 weeks.
- (4) If the President considers that the bill is inconsistent with a provision of the Constitution he shall refer it to the Supreme Court for its opinion. The bill shall not be promulgated if the Supreme Court considers it inconsistent with a provision of the Constitution.

**17. Election of members of Parliament**

- (1) Parliament shall consist of members elected on the basis of universal franchise through an electoral system which includes an element of proportional representation so as to ensure fair representation of different political groups and opinions.
- (2) Subject to such conditions or restrictions as may be prescribed by Parliament every citizen of Vanuatu who is at least 25 years of age shall be eligible to stand for election to Parliament.

**18. Electoral Commission**

- (1) There shall be an Electoral Commission consisting of a chairman and two members appointed by the President of the Republic acting in accordance with the advice of the Judicial Service Commission.
- (2) The following persons shall not be qualified for appointment as chairman or member of the Commission –
  - (a) a member of or a candidate for election to Parliament;
  - (b) a member of or a candidate for election to local government or municipal councils;
  - (c) a member of or a candidate for election to the National Council of Chiefs;
  - (d) any person who exercises any position of responsibility in a political party.
- (3) A chairman or a member of the Commission shall vacate his office –
  - (a) at the expiration of 5 years from the date of his appointment; or
  - (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

**19. Principal Electoral Officer**

There shall be a Principal Electoral Officer who shall be a public servant.

**20. Functions of Electoral Commission and Principal Electoral Officer**

- (1) The Electoral Commission shall have general responsibility for and shall supervise the registration of electors and the conduct of elections to Parliament, the National Council of Chiefs, local government and municipal councils. The Commission shall have such powers and functions relating to such registration and elections as may be prescribed by Parliament.
- (2) The Principal Electoral Officer shall have such powers and functions relating to such registration and elections as may be prescribed by Parliament. The Principal Electoral Officer shall keep the Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission, and shall comply with any directions that the Commission may give to him in the exercise of his functions.
- (3) Every proposed bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of Parliament, the National Council of Chiefs, local government and municipal councils or to the election of such members shall be referred to the Commission and to the Principal Electoral Officer at such time as shall give them sufficient opportunity to make comments on it before the bill is introduced in Parliament or, as the case may be, before the regulation or instrument is made.
- (4) The Electoral Commission may lay before Parliament such reports concerning the matters under their supervision, or any draft bill or instrument that is referred to them, as they may think fit.

**21. Procedure of Parliament**

- (1) Parliament shall meet twice a year in ordinary session.
- (2) Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.
- (3) Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.
- (4) Unless otherwise provided in the Constitution, the quorum shall be two-thirds of the members of Parliament. If there is no such quorum at the first sitting in any session Parliament shall meet 3 days later, and a simple majority of members shall then constitute a quorum.
- (5) Parliament shall make its own rules of procedure.

**22. Speaker and Deputy Speakers**

- (1) At its first sitting after any general election Parliament shall elect a Speaker and one or more Deputy Speakers.

- (2) The Speaker shall preside at sittings of Parliament and shall be responsible for maintaining order.
- (3) The functions of Speaker may be exercised by a Deputy Speaker.

### **23. Committees**

Parliament may establish committees and appoint members to them.

### **24. Proceedings to be public**

Unless otherwise provided proceedings of Parliament shall be held in public.

### **25. Public finance**

- (1) Every year the Government shall present a bill for a budget to Parliament for its approval.
- (2) No taxation shall be imposed or altered and no expenditure of public funds shall be incurred except by or under a law passed by Parliament.
- (3) No motion for the levying or increase of taxation or for the expenditure of public funds shall be introduced unless it is supported by the Government.
- (4) Parliament shall provide for the office of Auditor-General, who shall be appointed by the Public Service Commission on its own initiative.
- (5) The function of the Auditor-General shall be to audit and report to Parliament and the Government on the public accounts of Vanuatu.
- (6) The Auditor-General shall not be subject to the direction or control of any other person or body in the exercise of his functions.

### **26. Ratification of treaties**

Treaties negotiated by the Government shall be presented to Parliament for ratification when they –

- (a) concern international organisations, peace or trade;
- (b) commit the expenditure of public funds;
- (c) affect the status of people;
- (d) require amendment of the laws of the Republic of Vanuatu; or
- (e) provide for the transfer, exchange or annexing of territory.

### **27. Privileges of members**

- (1) No member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office.
- (2) No member may, during a session of Parliament or of one of its committees, be arrested or prosecuted for any offence, except with the authorisation of Parliament in exceptional circumstances.

### **28. Life of Parliament**

- (1) Parliament, unless sooner dissolved under paragraph (2) or (3), shall continue for 4 years from the date of its election.
- (2) Parliament may at any time decide, by resolution supported by the votes of an absolute majority of the members at a special sitting when at least three-fourths of the members are present, to dissolve Parliament. At least 1 week's notice of such a motion shall be given to the Speaker before the debate and the vote on it.
- (3) The President of the Republic may, on the advice of the Council of Ministers, dissolve Parliament.
- (4) General elections shall be held not earlier than 30 days and not later than 60 days after any dissolution.
- (5) There shall be no dissolution of Parliament within 12 months of the general elections following a dissolution under subarticle (2) or (3).

## **CHAPTER 5 – NATIONAL COUNCIL OF CHIEFS**

### **29. National Council of Chiefs**

- (1) The National Council of Chiefs shall be composed of custom chiefs elected by their peers sitting in District Councils of Chiefs.
- (2) The Council shall make its own rules of procedure.

(3) The Council shall hold at least one meeting a year. Further meetings may be held at the request of the Council, Parliament, or the Government.

(4) During the first sitting following its election the Council shall elect its Chairman.

### **30. Functions of Council**

(1) The National Council of Chiefs has a general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.

(2) The Council may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament.

### **31. Organisation of Council and role of chiefs**

Parliament shall by law provide for the organisation of the National Council of Chiefs and in particular for the role of chiefs at the village, island and district level.

### **32. Privileges of members of Council**

(1) No member of the National Council of Chiefs may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in the Council in the exercise of his office.

(2) No member may, during a session of the Council or of one of its committees, be arrested or prosecuted for any offence, except with the authorisation of the Council in exceptional circumstances.

## **CHAPTER 6 – HEAD OF STATE**

### **33. President of the Republic**

The head of the Republic shall be known as the President and shall symbolise the unity of the nation.

### **34. Election of President**

(1) The President of the Republic shall be elected, in accordance with Schedule 1, by secret ballot by an electoral college consisting of Parliament and the chairmen of Local Government Councils.

(2) When a vacancy in the office of the President of the Republic arises, election to that office shall be held within 3 weeks of the vacancy arising, or in the event of a vacancy arising when Parliament is dissolved, within 3 weeks after the first meeting of the new Parliament.

### **35. Qualifications for election as President**

Any indigenous Vanuatu citizen qualified to be elected to Parliament shall be eligible for election as President of the Republic.

### **36. Term of office and removal of President**

(1) The term of office of the President of the Republic shall be 5 years.

(2) The President of the Republic may be removed from office, only for gross misconduct or incapacity, by the electoral college provided for in Article 34 on a motion introduced by at least one-third of the members of the college and passed by at least two-thirds of its members, when at least three-fourths of its members, including at least three-fourths of the chairmen of the Local Government Councils, are present.

(3) At least 2 weeks' notice of the motion provided for in subarticle (2) shall be given to the Speaker.

(4) If there is no quorum at the first sitting as provided in subarticle (2), the electoral college may meet and vote on the motion provided for in subarticle (2) a week later even if there is only a quorum of two-thirds of the members of the college.

### **37. Speaker to act as President**

(1) Whenever there is a vacancy in the office of the President of the Republic or the President is overseas or incapacitated, the Speaker of Parliament shall perform the functions of President under this Constitution and any other law.

(2) When Parliament is dissolved and there is a vacancy in the office of the President of the Republic or the President is overseas or incapacitated, the Speaker of Parliament at the time of the dissolution shall perform the functions of the President of the Republic under this Constitution and any other law until a new Speaker is elected.



**38. Presidential powers of pardon, commutation and reduction of sentences**

The President of the Republic may pardon, commute or reduce a sentence imposed on a person convicted of an offence. Parliament may provide for a committee to advise the President in the exercise of this function.

**CHAPTER 7 – THE EXECUTIVE**

**39. Executive power**

- (1) The executive power of the people of the Republic of Vanuatu is vested in the Prime Minister and Council of Ministers and shall be exercised as provided by the Constitution or a law.
- (2) The Prime Minister shall keep the President of the Republic fully informed concerning the general conduct of the government of the Republic.
- (3) The President of the Republic may refer to the Supreme Court any regulation which he considers to be inconsistent with the Constitution.

**40. Council of Ministers**

- (1) There shall be a Council of Ministers which shall consist of the Prime Minister and other Ministers.
- (2) The number of Ministers, including the Prime Minister, shall not exceed a quarter of the number of members of Parliament.

**41. Election of Prime Minister**

The Prime Minister shall be elected by Parliament from among its members by secret ballot in accordance with the rules in Schedule 2.

**42. Appointment and removal of other Ministers**

- (1) The Prime Minister shall appoint the other Ministers from among the members of Parliament and may designate one of them as Deputy Prime Minister.
- (2) The Prime Minister shall assign responsibilities for the conduct of government to the Ministers.
- (3) The Prime Minister may remove the Ministers from office.

**43. Collective responsibility of Ministers and votes of no confidence**

- (1) The Council of Ministers shall be collectively responsible to Parliament.
- (2) Parliament may pass a motion of no confidence in the Prime Minister. At least 1 week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected.

**44. Termination of office of Ministers**

The Council of Ministers shall cease to hold office whenever the Prime Minister resigns or dies but shall continue to exercise their functions until a new Prime Minister is elected. In the case of the death of the Prime Minister, the Deputy Prime Minister, or if there is no Deputy Prime Minister a Minister appointed by the President of the Republic, shall act as Prime Minister until a new Prime Minister is elected.

**45. Other times when a Minister ceases to hold office**

A Minister, including the Prime Minister, shall also cease to hold office –

- (a) when, after a general election, Parliament meets to elect a new Prime Minister;
- (b) if he ceases to be a member of Parliament for any reason other than a dissolution of Parliament; or
- (c) if he is elected as President of the Republic or as Speaker of Parliament.

**46. Ministers to remain Members of Parliament**

Members of Parliament who are appointed Ministers shall retain their membership of Parliament.

**CHAPTER 8 – JUSTICE**

**47. The Judiciary**

- (1) The administration of justice is vested in the judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law. If there is

no rule of law applicable to a matter before it, a court shall determine the matter according to substantial justice and whenever possible in conformity with custom.

- (2) Except for the Chief Justice the judiciary shall be appointed by the President of the Republic acting on the advice of the Judicial Service Commission.
- (3) All members of the judiciary shall hold office until they reach the age of retirement. They shall only be removed from office by the President of the Republic in the event of –
  - (a) conviction and sentence on a criminal charge; or
  - (b) a determination by the Judicial Service Commission of gross misconduct, incapacity or professional incompetence.
- (4) The promotion and transfer of members of the judiciary may only be made by the President of the Republic on the advice of the Judicial Service Commission.
- (5) Parliament may provide for the appointment by the President of the Republic, after consultation with the Judicial Service Commission, of acting judges for such periods as may be set out in their instruments of appointment.
- (6) Subarticle (3) so far as it relates to the removal from office shall apply to acting judges.

#### **48. The Judicial Service Commission**

- (1) The Judicial Service Commission shall consist of the Minister responsible for justice, as Chairman, the Chief Justice, the Chairman of the Public Service Commission, and a representative of the National Council of Chiefs appointed by the Council.
- (2) The Judicial Service Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions.

#### **49. The Supreme Court, the Chief Justice and other judges**

- (1) The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings, and such other jurisdiction and powers as may be conferred on it by the Constitution or by law.
- (2) The Supreme Court shall consist of a Chief Justice and three other judges.
- (3) The Chief Justice shall be appointed by the President of the Republic after consultation with the Prime Minister and the Leader of the Opposition.
- (4) A person shall not be qualified for appointment as Chief Justice or other judge of the Supreme Court unless he is qualified to practise as a lawyer in Vanuatu.

#### **50. Appeals from Supreme Court to Court of Appeal**

Parliament shall provide for appeals from the original jurisdiction of the Supreme Court and may provide for appeals from such appellate jurisdiction as it may have to a Court of Appeal which shall be constituted by two or more judges of the Supreme Court sitting together.

#### **51. Ascertainment of rules of custom**

Parliament may provide for the manner of the ascertainment of relevant rules of custom, and may in particular provide for persons knowledgeable in custom to sit with the judges of the Supreme Court or the Court of Appeal and take part in its proceedings.

#### **52. Village and Island Courts**

Parliament shall provide for the establishment of village or island courts with jurisdiction over customary and other matters and shall provide for the role of chiefs in such courts.

#### **53. Application to Supreme Court regarding infringements of Constitution**

- (1) Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.
- (2) The Supreme Court has jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution.
- (3) When a question concerning the interpretation of the Constitution arises before a subordinate court, and the court considers that the question concerns a fundamental point of law, the court shall submit the question to the Supreme Court for its determination.

**54. Election disputes**

The jurisdiction to hear and determine any question as to whether a person has been validly elected as a member of Parliament, the National Council of Chiefs, and a Local Government Council or whether he has vacated his seat or has become disqualified to hold it shall vest in the Supreme Court.

**55. Public Prosecutor**

The function of prosecution shall vest in the Public Prosecutor, who shall be appointed by the President of the Republic on the advice of the Judicial Service Commission. He shall not be subject to the direction or control of any other person or body in the exercise of his functions.

**56. Public Solicitor**

Parliament shall provide for the office of the Public Solicitor, appointed by the President of the Republic on the advice of the Judicial Service Commission, whose function shall be to provide legal assistance to needy persons.

**CHAPTER 9 – ADMINISTRATION**

**Part I – The Public Service**

**57. Public servants**

- (1) Public servants owe their allegiance to the Constitution and to the people of Vanuatu.
- (2) Only citizens of Vanuatu shall be appointed to public office. The Public Service Commission shall determine other qualifications for appointment to the public service.
- (3) No appointment shall be made to a post that has not been created in accordance with a law.
- (4) The Prime Minister or the chairman of a Local Government Council may, exceptionally, make provision for the recruitment of staff for a specified period to meet unforeseen needs.  
In urgent cases, the Public Service Commission may, after consulting the Ministers responsible for finance and public administration, make such a decision instead of the Prime Minister.
- (5) For as long as their posts exist, public servants shall not be removed from their posts except in accordance with the Constitution.
- (6) Public servants shall be given increments in their salary in accordance with the law.
- (7) Public servants shall leave the public service upon reaching retirement age or upon being dismissed by the Public Service Commission. They shall not be demoted without consultation with the Public Service Commission.
- (8) The security of tenure of public servants provided for in subarticle (5) shall not prevent such compulsory early retirement as may be decided by law in order to ensure the renewal of holders of public offices.

**58. Exclusion of security of tenure in relation to political advisers and transfer of public servants**

- (1) The rule of security of tenure provided for in Article 57(5) shall not apply to the personal political advisers of the Prime Minister and Ministers.
- (2) Senior public servants in Ministries may be transferred by the Prime Minister to other posts of equivalent rank.

**59. Membership of Public Service Commission**

- (1) The Public Service Commission shall be composed of five members appointed for 3 years by the President of the Republic after consultation with the Prime Minister.
- (2) The President of the Republic shall appoint every year, from among the members of the Commission, a chairman who shall be responsible for organising its proceedings.
- (3) A person shall be disqualified for appointment as a member of the Commission if he is a member of Parliament, the National Council of Chiefs or a Local Government Council or if he exercises a position of responsibility within a political party.
- (4) A person shall cease to be a member of the Commission if circumstances arise that, if he were not a member, would disqualify him for appointment as such.

**60. Functions of Public Service Commission**

- (1) The Public Service Commission shall be responsible for the appointment and promotion of public servants, and the selection of those to undergo training courses in Vanuatu or overseas. For such purposes it may organise competitive examinations.

- (2) The Commission shall also be responsible for the discipline of public servants.
- (3) The Commission shall have no authority over the members of the judiciary, the armed forces, the police and the teaching services.
- (4) The Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions.

## **Part II – The Ombudsman**

### **61. Ombudsman**

- (1) The Ombudsman shall be appointed, for 5 years, by the President of the Republic after consultation with the Prime Minister, the Speaker of Parliament, the leaders of the political parties represented in Parliament, the chairman of the National Council of Chiefs, the chairmen of the Local Government Councils, and the chairmen of the Public Service Commission and the Judicial Service Commission.
- (2) A person shall be disqualified for appointment as Ombudsman if he is a member of Parliament, the National Council of Chiefs or a Local Government Council, if he holds any other public office, or if he exercises a position of responsibility within a political party.
- (3) A person shall cease to be Ombudsman if circumstances arise that, if he were not the Ombudsman, would disqualify him for appointment as such.

### **62. Enquiries by Ombudsman**

- (1) The Ombudsman may enquire into the conduct of any person or body to which this Article applies –
  - (a) upon receiving a complaint from a member of the public (or, if for reasons of incapacity, from his representative or a member of his family) who claims to have been the victim of an injustice as a result of particular conduct;
  - (b) at the request of a Minister, a member of Parliament, of the National Council of Chiefs or of a Local Government Council; or
  - (c) of his own initiative.
- (2) This Article shall apply to all public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies.
- (3) The Ombudsman may request any Minister, public servant, administrator, authority concerned or any person likely to assist him, to furnish him with information and documents needed for his enquiry.
- (4) The Ombudsman shall grant the person or body complained of an opportunity to reply to the complaints made against them.
- (5) The enquiries of the Ombudsman shall be conducted in private.

### **63. Findings of the Ombudsman and reports**

- (1) Wherever, after due enquiry, the Ombudsman concludes that a complaint is unjustified, he shall so inform the complainant and the Prime Minister and the head of the public department or authority concerned.
- (2) Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he shall forward his findings to the Prime Minister and to the head of the public authority or department directly concerned.
- (3) The report of the Ombudsman shall be public unless he decides to keep the report, or parts of it, confidential to the Prime Minister and the person in charge of the relevant public service, on the grounds of public security or public interest. The complainant shall in any case be told of the findings of the Ombudsman.
- (4) The Prime Minister or the person in charge of the relevant public service shall decide upon the findings of the Ombudsman within a reasonable time and the decision, with reasons, shall be given to the complainant forthwith. Any period limiting the time in which legal proceedings may be commenced shall not begin to run until the complainant has received the decision.
- (5) The Ombudsman shall present a general report to Parliament each year and may make such additional reports as he considers necessary concerning the discharge of his functions and action taken or his findings. He may draw the attention of Parliament to any defects which appear to him to exist in the administration.

**64. Right of a citizen to services in own language**

- (1) A citizen of Vanuatu may obtain, in the official language that he uses, the services which he may rightfully expect from the administration of the Republic of Vanuatu.
- (2) Where a citizen considers that there has been a breach of subarticle (1) he may make a complaint to the Ombudsman who shall conduct an enquiry in accordance with Articles 62 and 63.
- (3) The Ombudsman shall, each year, make a special report to Parliament concerning the observance of multilingualism and the measures likely to ensure its respect.

**65. Ombudsman not subject to direction or control**

The Ombudsman shall not be subject to the direction or control of any other person or body in the exercise of his functions.

**CHAPTER 10 – LEADERSHIP CODE**

**66. Conduct of leaders**

- (1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to –
  - (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
  - (b) demean his office or position;
  - (c) allow his integrity to be called into question; or
  - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.
- (2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by subarticle (1).

**67. Definition of a leader**

For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, Members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.

**68. Parliament to give effect to this Chapter**

Parliament shall by law give effect to the principles of this Chapter.

**CHAPTER 11 – EMERGENCY POWERS**

**69. Emergency regulations**

The Council of Ministers may make regulations for dealing with a public emergency whenever –

- (a) the Republic of Vanuatu is at war; or
- (b) the President of the Republic acting on the advice of the Council of Ministers declares a state of emergency by reason of natural calamity or to prevent a threat to or to restore public order.

**70. Period of and renewals of state of emergency**

- (1) When Parliament is in session a state of emergency declared under Article 69 shall cease to have effect at the end of 1 week unless approved by a resolution of Parliament supported by two-thirds of its members.
- (2) When Parliament is not in session a state of emergency shall cease to have effect at the end of 2 weeks.
- (3) Where a resolution has been passed in accordance with subarticle (1) the state of emergency approved by it shall remain in force for the period authorised by the resolution except that no such resolution may authorise a state of emergency for more than 3 months at one time.
- (4) Parliament may meet whenever it decides during a state of emergency.
- (5) Parliament may not be dissolved under Article 28(2) or 28(3) during a state of emergency. If the life of a Parliament ends in accordance with Article 28(1) during a state of emergency the former members of that Parliament may meet for the purpose only of considering the state of emergency until the new Parliament first meets.

- (6) Parliament may at any time terminate a state of emergency by a resolution supported by an absolute majority of its members.

**71. Effect of emergency regulations**

(1) Subject to subarticle (2) regulations made by the Council of Ministers in accordance with Article 69 shall have effect notwithstanding the provisions of Chapter 2, Part I except that no regulation shall –

- (a) derogate from the right to life and the freedom from inhuman treatment and forced labour; and
- (b) make provision for the detention of a person without trial for more than 1 month unless such person is an enemy alien.

(2) Regulations made by the Council of Ministers in accordance with Article 69 shall be such as are reasonably necessary in the circumstances of the emergency to which they relate and as are justifiable in a democratic society.

**72. Complaints to Supreme Court concerning emergency regulations**

Any citizen aggrieved by reason of regulations made by the Council of Ministers in accordance with Article 69 may complain to the Supreme Court which shall have jurisdiction to determine the validity of all or any of such regulations.

**CHAPTER 12 – LAND**

**73. Land belongs to custom owners**

All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.

**74. Basis of ownership and use**

The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.

**75. Perpetual ownership**

Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.

**76. National land law**

Parliament, after consultation with the National Council of Chiefs, shall provide for the implementation of Articles 73, 74 and 75 in a national land law and may make different provision for different categories of land, one of which shall be urban land.

**77. Compensation**

Parliament shall prescribe such criteria for the assessment of compensation and the manner of its payment as it deems appropriate to persons whose interests are adversely affected by legislation under this Chapter.

**78. Disputes**

- (1) Where, consequent on the provisions of this Chapter, there is a dispute concerning the ownership of alienated land, the Government shall hold such land until the dispute is resolved.
- (2) The Government shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom land.

**79. Land transactions**

- (1) Notwithstanding Articles 73, 74 and 75 land transactions between an indigenous citizen and either a non-indigenous citizen or a non-citizen shall only be permitted with the consent of the Government.
- (2) The consent required under subarticle (1) shall be given unless the transaction is prejudicial to the interests of –
  - (a) the custom owner or owners of the land;
  - (b) the indigenous citizen where he is not the custom owner;
  - (c) the community in whose locality the land is situated; or
  - (d) the Republic of Vanuatu.

**80. Government may own land**

Notwithstanding Articles 73 and 74 the Government may own land acquired by it in the public interest.

**81. Redistribution of land**

- (1) Notwithstanding Articles 73 and 74 the Government may buy land from custom owners for the purpose of transferring ownership of it to indigenous citizens or indigenous communities from over-populated islands.
- (2) When redistributing land in accordance with subarticle (1), the Government shall give priority to ethnic, linguistic, customary and geographical ties.

**CHAPTER 13 – DECENTRALISATION**

**82. Legislation for decentralisation**

The Republic of Vanuatu, conscious of the importance of decentralisation to enable the people fully to participate in the government of their Local Government Region, shall enact legislation necessary to realize that ideal.

**83. Local Government Councils**

The legislation shall provide for the division of the Republic of Vanuatu into Local Government Regions and for each region to be administered by a Local Government Council on which shall be representatives of custom chiefs.

**CHAPTER 14 – AMENDMENT OF THE CONSTITUTION**

**84. Bills for amendment of Constitution**

A bill for an amendment of the Constitution may be introduced either by the Prime Minister or any other member of Parliament.

**85. Procedure for passing Constitutional amendments**

A bill for an amendment of the Constitution shall not come into effect unless it is supported by the votes of no less than two-thirds of all the members of Parliament at a special sitting of Parliament at which three-quarters of the members are present. If there is no such quorum at the first sitting, Parliament may meet and make a decision by the same majority a week later even if only two-thirds of the members are present.

**86. Amendments requiring support of referendums**

A bill for an amendment of a provision of the Constitution regarding the status of Bislama, English and French, the electoral system, or the parliamentary system, passed by Parliament under Article 85, shall not come into effect unless it has been supported in a national referendum.

**CHAPTER 15 – TRANSITIONAL PROVISIONS**

**87. First President of the Republic**

Notwithstanding Chapter 6 the first President of the Republic shall –

- (a) be such person as shall have been elected prior to the Day of Independence by an electoral college constituted for that purpose by the Representative Assembly sitting with the Presidents of the Regional Councils if then established;
- (b) assume office on the Day of Independence and hold office in accordance with the provisions of the Constitution.

**88. First Prime Minister and other Ministers**

The persons who immediately before the Day of Independence hold office as Chief Minister or any other Minister shall as from that day hold office as Prime Minister or other Minister, as the case may be, as if they had been elected or appointed thereto under Chapter 7.

**89. First Parliament**

- (1) The persons who immediately before the Day of Independence are members of the Representative Assembly shall on that day become members of Parliament and shall hold their seats in Parliament in accordance with the Constitution.

- (2) The person who immediately before the Day of Independence holds the office of Chairman of the Representative Assembly shall as from that day act in the office of Speaker of Parliament until a person is elected to hold that office.
- (3) The standing orders of the Representative Assembly in force immediately before the Day of Independence shall have effect as from that day as the standing orders of Parliament until modified or replaced under Article 21(5) but shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution.
- (4) Parliament shall, unless sooner dissolved, stand dissolved on the 14 November 1983.

**90. Existing offices**

- (1) Subject to the other provisions of the Constitution, a person who immediately before the Day of Independence holds or acts in an office in the service of the Government of the Republic of Vanuatu shall, as from that day, hold or act in that office or the corresponding office established by or under the Constitution on the same terms and conditions as those on which he holds or acts in the office immediately before that day.
- (2) Subarticle (1) is without prejudice to the power of Parliament to provide for the compulsory retirement of non-citizen officers to promote localisation of offices.
- (3) Notwithstanding Article 57(2), until a citizen of Vanuatu is qualified for appointment to a public office a non-citizen may be appointed to that office but, except in the case of a judge of the Supreme Court, shall be appointed for a limited period.

**91. Judges of the Supreme Court**

Notwithstanding Chapter 8, any person who immediately before the Day of Independence holds office as a judge of the pre-Independence Supreme Court or of a District Court shall as from that day act in the office of judge of the Supreme Court until a substantive appointment is made to that office in accordance with Chapter 8. The President of the Republic may appoint one of them to act as Chief Justice until a substantive appointment is made to that office.

**92. Rights, liabilities and obligations**

- (1) All rights, liabilities and obligations of the Government of the New Hebrides, whether arising out of contract or otherwise, shall, as from the Day of Independence, be rights, liabilities and obligations of the Republic of Vanuatu.
- (2) Nothing in subarticle (1) shall prevent the Government of the Republic of Vanuatu renegotiating rights, liabilities or obligations assumed under that subarticle.

**93. Electoral system**

After the general elections next following the Exchange of Notes providing for the entry into force of this Article, the Representative Assembly shall set up a Committee with equal representation of all political groups to make recommendations on an electoral system based on Article 17(1).

The recommendations of the Committee shall be included in a law enacted by Parliament by a two-thirds majority of its members at a special sitting of Parliament when at least three-fourths of the members are present. If there is no such quorum at the first sitting, Parliament may meet and make a decision by the same majority a week later even if only two-thirds of the members are present.

**94. Legal proceedings**

All legal proceedings, whether civil or criminal, pending immediately before the Day of Independence before any court in Vanuatu shall be disposed of on and after that day in accordance with general or specific directions given by the Supreme Court subject to any law which may be enacted for that purpose.

**95. Existing law**

- (1) Until otherwise provided by Parliament, all Joint Regulations and subsidiary legislation made thereunder in force immediately before the Day of Independence shall continue in operation on and after that day as if they had been made in pursuance of the Constitution and shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution.
- (2) Until otherwise provided by Parliament, the British and French laws in force or applied in Vanuatu immediately before the Day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom.
- (3) Customary law shall continue to have effect as part of the law of the Republic of Vanuatu.



**SCHEDULE 1**

(Article 34)

**ELECTION OF THE PRESIDENT OF THE REPUBLIC**

1. The election of the President of the Republic shall take place within 3 weeks of the end of the term of office of the previous President.
2.
  - (1) The electoral college may proceed to elect the President of the Republic at its first meeting if at least three-fourths of its member are present.
  - (2) If there is no such quorum, the electoral college shall meet again 48 hours later and may lawfully proceed to elect the President if at least two-thirds of its members are present.
3. The candidate who obtains the support of two-thirds of the members of the electoral college shall be elected President of the Republic.

**SCHEDULE 2**

(Article 41)

**ELECTION OF THE PRIME MINISTER**

1. The candidate who obtains the support of an absolute majority of the members of Parliament shall be elected Prime Minister.
2. If no candidate is elected under paragraph 1, a second ballot shall be taken but the candidate obtaining the lowest number of votes in the first ballot shall be eliminated.
3. If on the second ballot no candidate obtains the support specified in paragraph 1, further ballots shall be held, each time eliminating the candidate with the lowest vote in the preceding ballot until one candidate receives the support specified in paragraph 1, or if only two candidates remain the support of a simple majority

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## CHAPTER 116

### ACTS OF PARLIAMENT

**To provide for the form and commencement of Acts of Parliament, for the procedure following the passing of Bills and for other purposes connected therewith.**

#### PART 1 – FORM OF ACTS AND BILLS

##### 1. Acts and Bills

This Act shall apply with respect to the form of Acts of Parliament and the form of Bills shall correspond therewith.

##### 2. Title

- (1) Every Act shall bear at its head a short title which shall include its number and the year in which it is enacted.
- (2) The short title shall be followed by a long title describing the main provisions of the Act.
- (3) Every Act may be cited by its short title and number without a statement to that effect in the Act.

##### 3. Words of enactment

[OMITTED]

#### PART 2 – PROCEDURE FOLLOWING PASSING OF BILLS

##### 4. Preparation

- (1) As soon as a Bill has been passed by Parliament the Clerk of Parliament shall cause the text of the Bill as passed to be printed in 4 copies on paper or other material of enduring quality.
- (2) The Clerk shall –
  - (a) cause to be made in the copies such corrections of misprints, typographical errors and wrong references as may be necessary;
  - (b) carefully compare the copies with the text of the Bill as passed; and if he finds them to be correct –
  - (c) sign on each copy a statement in the form set out in Schedule 2; and
  - (d) cause the copies to be presented to the President for assent.

##### 5. The assent

- (1) The President shall show that he assents to a Bill by signing on each copy prepared in accordance with section 4 a statement to that effect in the form set out in Schedule 3.
- (2) A Bill shall become an Act of Parliament on the signing by the President of the assent on the first of the copies.

##### 6. Numbering

[OMITTED]

##### 7. Original copies

- (1) Whenever the foregoing procedure purports to have been followed in relation to an Act, the assented copies shall be the original copies of the Act, and shall be conclusive evidence of the terms of the Act, its number and the date of assent.
- (2) One of the original copies shall be retained by the Speaker who shall cause 1 each of the remainder to be deposited with the Prime Minister, the Chief Justice and the Attorney General.

##### 8. Publication

Every Act shall be published as soon as practicable after the President's assent with –

- (a) the omission of the statements contained in the original copies by virtue of the provisions of sections 4 and 5 of this Act;
- (b) a statement of the date on which the President's assent was signified, and the date of commencement contained in the margin thereof.

**9. Published copies to be evidence**

- (1) Every Act shall be a public Act.
- (2) A copy of any Act other than an original purported to have been printed on behalf of or published by or under the authority of the Government shall be *prima facie* evidence of the terms of the Act, its number and the date of assent.

**PART 3 – COMMENCEMENT**

**10. Commencement**

- (1) Subject to the provisions of this section, commencement of an Act shall be such date as is provided in or under the Act, or where no date is so provided, the date of its publication as notified in the Gazette.
- (2) Every Act of Parliament shall come into force immediately on the expiration of the date next preceding its commencement.
- (3) A provision in an Act regulating the coming into force of an Act or any part thereof shall have effect notwithstanding that the part of the Act containing the provision has not come into operation.
- (4) Where an Act is made with retrospective effect the commencement of the Act shall be the date from which it is given or considered to be given such effect.
- (5) The provisions of subsection (4) shall not apply to an Act until there is notification in the Gazette as to the date of its publication and until such date is specified the Act shall be without effect.

**PART 4 – MISCELLANEOUS AND SUPPLEMENTARY**

**11. Amendment and repeal**

An Act passed in any session of Parliament may be amended or repealed at any time including the same session.

**12. Reprints and revised editions**

[OMITTED]

**13. Certification of special votes and referendums**

[OMITTED]

**SCHEDULE 1**

(Section 3(1))

[OMITTED]

**SCHEDULE 2**

(Section 4(2))

[OMITTED]

**SCHEDULE 3**

(Section 5(1))

**STATEMENT OF THE PRESIDENT'S ASSENT**

I hereby assent.

Signed \_\_\_\_\_  
President

Date of Assent:

## CHAPTER 130

### MAGISTRATES' COURT (CIVIL JURISDICTION)

**To provide for the civil jurisdiction of the Magistrates' Court and matters incidental thereto.**

#### **1. Jurisdiction of the Magistrates' Court in civil matters**

The Magistrates' Court established pursuant to section 12 of the Judicial Services and Courts Act [Cap. 270] shall have jurisdiction to try all civil proceedings –

- (a) in which the amount claimed or the value of the subject matter does not exceed VT 1,000,000 except claims relating to permanent physical damage to a person;
- (b) relating to disputes between landlords and their tenants where there is no claim for damages or compensation or if there is such a claim if the value does not exceed VT 2,000,000;
- (c) subject to such directions as may be made by the Chief Justice those relating to undefended suits for divorce or judicial separation; or
- (d) relating to claims made under the –
  - (i) Maintenance of Family Act [Cap. 42]
  - (ii) Maintenance of Children Act [Cap. 46];
 or any other law providing for the maintenance of children, mothers of children or wives by the fathers of children or husbands as the case may be where the annual sum claimed does not exceed VT 1,200,000.

#### **2. Restriction on jurisdiction of the Magistrates' Court in civil matters**

The Magistrates' Court shall not have jurisdiction to try a suit concerning wardship, guardianship of minors and persons of unsound mind, interdiction, appointment of a *conseil judiciaire*, adoption, civil status, succession, wills, bankruptcy, insolvency or liquidation of corporate bodies.

#### **3. Institution of suits, counterclaims and referrals to Supreme Court**

- (1) More than 1 suit may not be instituted in the Magistrates' Court in respect of the same cause of action against the same party.
- (2) A person may relinquish part of a claim in order to bring a suit in the Magistrates' Court but shall not have a right to sue afterwards in respect of the portion relinquished.
- (3) The Magistrates' Court may hear a counterclaim in a suit where the original claim is within its jurisdiction although the counterclaim exceeds its jurisdiction.
- (4) A magistrate may refer a case where the counterclaim exceeds the original claim to the Supreme Court for hearing.
- (5) Where a case is referred under subsection (4) the Supreme Court shall either hear the case or direct the Magistrates' Court to hear it.

#### **4. Decisions on value**

- (1) Where the value of property or a claim cannot be precisely given a plaintiff may give an estimated value in his plaint.
- (2) When an estimated value is given in accordance with subsection (1) the court shall try the question of value as a preliminary issue.
- (3) When the court has heard the evidence and representations on value under subsection (2) it shall determine whether or not the claim comes within its jurisdiction and if it decides that it does not shall, subject to section 3(2), refer the claim to the Supreme Court.

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## CHAPTER 132

### INTERPRETATION

**To provide for the interpretation and construction of Acts of Parliament, subsidiary legislation, other laws and documents.**

#### PART 1 – PRELIMINARY

##### 1. Application

- (1) Subject to the provisions of this section, this Act shall apply to the construction and interpretation of –
  - (a) Acts and statutory orders including this Act and Acts enacted before the commencement of this Act;
  - (b) orders or by-laws made by bodies or persons empowered by Parliament to make orders or by-laws;
  - (c) documents and writings purporting to give rights or impose obligations on any person; and
  - (d) in all other cases where its provisions are relevant and capable of being applied.
- (2) Subsection (1) will not apply where –
  - (a) it is expressly provided that this Act or any of its provisions shall not apply; or
  - (b) the subject or context is inconsistent with the application of this Act or a particular provision of this Act.

#### PART 2 – MEANING OF CERTAIN EXPRESSIONS AND REFERENCES

##### 2. Interpretation of words and expressions

The words and expressions in the Schedule shall have the meanings given to them.

##### 3. Grammatical variations

- (1) Where any word or expression is defined in an Act of Parliament, the definition shall extend to the grammatical variations of the word or expression.
- (2) Words and expressions importing the masculine gender shall include the feminine and vice versa.
- (3) Words and expressions in the singular, shall include the plural and vice versa.

##### 4. References to holder of office

A reference to the holder of an office by the terms designating his office shall be construed as meaning the person for the time being lawfully holding, acting in or performing the functions of that office.

##### 5. Service by post

Where any Act of Parliament authorises or requires any document to be served, given or sent by post, the service shall be considered effected by properly addressing, pre-paying and posting by registered post the document to the last known postal address of the person on or to whom the document is to be served, given or sent and, unless the contrary is proved, shall be considered to have been effected at the time at which the document would be delivered in the ordinary course of the post.

##### 6. References to the President

A reference to the President (however expressed) shall be construed as a reference to the President of the Republic for the time being.

##### 7. References to "the Minister" and the "Treasury"

- (1) A reference to "the Minister" shall be construed as a reference to the Minister for the time being responsible for the matter in connection with which the reference is made.
- (2) A reference to "the Treasury" shall be construed as a reference to the Minister for the time being responsible for finance and any public officer deputed by him to exercise powers or perform functions or duties in relation to the matter in connection with which the reference is made.

## PART 3 – ACTS OF PARLIAMENT AND STATUTORY ORDERS

### 8. General principles of interpretation

- (1) Every Act must be interpreted in such manner as best corresponds to the intention of Parliament.
- (2) The intention of Parliament is to be derived from the words of the Act, having regard to:
  - (a) the plain meaning of ordinary words; and
  - (b) the technical meaning of technical words; and
  - (c) the whole of the Act and the specific context in which words appear; and
  - (d) headings and any limitation or expansion of the meaning of words implied by them; and
  - (e) grammar, rules of language, conventions of legislative drafting and punctuation.
- (3) Where the application of subsection (2) would produce:
  - (a) an ambiguous result; or
  - (b) a result which cannot reasonably be supposed to correspond with the intention of Parliament, the words are to receive such fair and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.
- (4) In applying subsection (3), the intention of Parliament may be ascertained from:
  - (a) the legislative history of the Act or provision in question; and
  - (b) explanatory notes and such other material as was before Parliament; and
  - (c) Hansard; and
  - (d) Treaties and International Conventions to which Vanuatu is a party.

### 9. Acts subordinate to the Constitution

- (1) Every Act shall be read and construed subject to the Constitution and where any provision of an Act conflicts with a provision of the Constitution the latter provision shall prevail.
- (2) Where a provision in an Act conflicts with a provision in the Constitution the Act shall nevertheless be valid to the extent that it is not in conflict with the Constitution.

### 10. Reference to Acts and orders

- (1) A general reference to Acts of Parliament shall be construed as including –
  - (a) a general reference to any Joint Regulation or any of those Joint Regulations included in a revised edition of the laws of Vanuatu and redesignated as an Act when so included; and
  - (b) except in Part 3 of this Act and the Acts of Parliament Act [CAP. 116], a general reference to statutory orders.
- (2) A general reference to statutory orders shall be construed as including a general reference to any proclamations, rules, regulations, by-laws, orders or other instruments having legislative effect which were made before the commencement of this Act and also any of them included in a revised edition of the laws of Vanuatu and redesignated as statutory orders when so included.
- (3) A reference to a particular Act of Parliament shall be construed as including a reference to that Act as amended from time to time and to any statutory orders made thereunder.
- (4) A reference to a particular statutory order shall be construed as including a reference to that order as amended from time to time.
- (5) In this section the expression "general reference" used in relation to Acts of Parliament and statutory orders means any reference to Acts of Parliament or statutory orders (either in the singular or the plural and however expressed) except a reference to a particular Act or order or to particular Acts or orders.

### 11. Effect of repeal

- (1) Where any Act of Parliament repeals any Act, the repeal shall not –
  - (a) revive anything not in force or existing at the time at which the repeal takes effect; or
  - (b) affect the previous operation of the enactment so repealed or anything duly done or suffered under it; or



- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
  - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed;
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.
- (2) Upon the expiry of an Act of Parliament this section shall apply as if the Act had been repealed.
  - (3) Where an Act of Parliament that has been amended by another Act is repealed the repeal shall include all the provisions in the other Act that amended the repealed Act.

## **12. Definition of statutory orders**

Where an Act of Parliament confers on the President, a Minister or any other authority a power to make or a power exercisable by making proclamations, rules, regulations, by-laws, orders or statutory orders, any document by which that power is exercised shall be known as a statutory order and the provisions of this Act shall apply thereto accordingly.

## **13. Publication of statutory orders**

Every statutory order shall be published in the Gazette and shall be judicially noticed.

## **14. Commencement of statutory orders**

- (1) Subject to the provisions of this section –
  - (a) the commencement of a statutory order shall be such date as is provided in or under the order or where no date is so provided the date of its publication as notified in the Gazette;
  - (b) every statutory order shall come into force immediately on the expiration of the day next preceding its commencement.
- (2) A statutory order may be made to operate retrospectively to any date that is not earlier than the commencement of the Act under which the order is made except that no person shall be made or shall become liable to any penalty in respect of any act committed or the failure to do anything before the date on which such order was published in the Gazette.
- (3) A statutory order made and published on the date of commencement of the Act under which the order is made shall come into force simultaneously with that Act unless the order gives a later date or time of commencement.
- (4) Reference in this section to the commencement of the Act under which a statutory order is made shall, where different provisions of that Act come into force on different dates, be construed as reference to the commencement of the particular provision under which the instrument is made.
- (5) The provisions of this section shall be without prejudice to the operation of section 18.

## **15. General provisions relating to statutory orders**

- (1) Any reference in a statutory order to "the Act" shall be construed as a reference to the Act under which the order is made.
- (2) Unless otherwise provided terms and expressions used in a statutory order shall have the same meaning as in the Act under which the order is made.
- (3) A statutory order may at any time be amended by the authority by which it was made, or by any other authority lawfully replacing that authority.
- (4) Any provision of a statutory order which is inconsistent with any provision of any Act of Parliament (including the Act under which the order was made) shall be void to the extent of the inconsistency.
- (5) Unless the enabling Act otherwise provides, a statutory order may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding VT 20,000 or to a term of imprisonment not exceeding 1 year or to both such fine and imprisonment.
- (6) An act done under or by virtue of or in pursuance of a statutory order shall be deemed to be done under or by virtue of or in pursuance of the Act conferring power to make the order.
- (7) Every statutory order shall be considered to be made under all powers thereunto enabling, whether or not it purports to be made in exercise of a particular power or particular powers.
- (8) Section 11 of this Act shall apply on the revocation of a statutory order as it applies on the repeal of an Act of Parliament.

## **16. Publication of orders, etc. made under Constitution**

- (1) All Constitutional Orders shall be published in the Gazette and shall be judicially noticed.

- (2) In this section "Constitutional Orders" means any orders or declarations made in exercise of a power conferred by the Constitution on the President, the Council of Ministers or any other person or body except a court.

**17. Authentic version**

- (1) In construing an enactment, all its versions in the official languages of Vanuatu shall be equally authentic.
- (2) Where there is a difference between two or more versions of an enactment, preference in construing such enactment shall be given to the version which, according to the true spirit, intent and meaning of the enactment, best ensures the attainment of its objects.
- (3) In this section –
- "enactment" means any provision in an Act of Parliament or in any order, rule, regulation, notice, proclamation or other instrument made or issued under the authority of any Act of Parliament;
- "version" means a version published by, or under the authority of, the Government or any public authority of Vanuatu.

## **PART 4 – POWERS AND DUTIES**

**18. Exercise of power between publication and commencement of acts**

Where by an Act of Parliament which is not to come into force immediately on the publication thereof there is conferred –

- (a) a power to make or a power exercisable by making statutory orders;
- (b) a power to make appointments; or
- (c) a power to do any other thing for the purposes of the Act;

such power may be exercised at any time, on or after the date of publication of the Act but no order, appointment or thing made or done under such power shall have effect until the commencement of the Act unless it is necessary to bring the Act into operation.

**19. Time for exercise of powers**

Where an Act of Parliament confers any power or imposes any duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

**20. Implied power**

Where an Act of Parliament confers a power on any person to do or enforce the doing of any act or thing all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

**21. Power to appoint includes power to remove**

Where an Act of Parliament confers power on any authority to make any appointment that authority shall also have power (subject only to any express limitations or qualifications contained in that Act) to remove, suspend, reappoint or reinstate any person appointed in the exercise of the power.

**22. Power to appoint member of board etc. temporarily**

Where by an Act of Parliament a power is conferred on any authority to appoint any person to be a member of any board, commission, committee or similar body, that authority may, if during any period owing to absence or inability to act from illness or any other cause any member so appointed is unable to act as such appoint some other person to act temporarily for such member during the period of absence or inability.

**23. Power to appoint chairman etc.**

Where by an Act of Parliament a power is conferred on any authority to appoint the members of any board, commission, committee or similar body, that authority may appoint a chairman and a secretary of such board, commission, committee or similar body.

**24. Power to appoint members includes power to appoint alternates or temporary members**

Where any board, tribunal, commission, committee or similar body is established by or under any Act, any person who is empowered by such Act to appoint any or all of the members thereof may –

- (a) appoint one or more duly qualified persons to be alternate members of the same, and any one such alternate member may attend any meeting of the same when a substantive member is temporarily unable to attend for any reason;
- (b) appoint a duly qualified person to be a temporary member of the same in the place of any substantive member who is precluded by illness, absence from Vanuatu or any other cause from exercising his functions as such,

and when attending any meeting of such board, tribunal, commission, committee or similar body such alternate or temporary member shall be considered for all purposes to be a member of the same.

## **25. Appointment by name or office**

Where by an Act of Parliament any authority is empowered to appoint a person –

- (a) to exercise any power or perform any duty;
- (b) to be a member of any board, commission, committee or similar body; or
- (c) to be or to do any other thing,

that authority may make the appointment either by appointing a person by name or by appointing the holder of an office by the term designating his office and any such appointment of the holder of an office shall be construed as the appointment of the person for the time being lawfully holding, acting in or performing the functions of that office.

## **26. Power to appoint persons to act in offices**

(1) Where an Act of Parliament confers power to make an appointment to an office and in respect of that office –

- (a) there is a vacancy; or
- (b) the holder of the office is suspended; or
- (c) the holder of the office is –
  - (i) on leave of absence;
  - (ii) absent from the country;
  - (iii) out of speedy and effective communication;
  - (iv) otherwise unable to perform or is not readily available to perform the duties of his office,

the power to appoint includes power, subject to subsection (2) to appoint another person to act in that office.

- (2) The power provided for by subsection (1) is exercisable only subject to any conditions to which the exercise of the original power was or would be subject.
- (3) An acting appointment may be made in anticipation of all or any of the circumstances specified in subsection (1) and, unless it expires or is revoked the acting appointment shall continue to operate from time to time in accordance with its terms.
- (4) In subsection (1) "office" includes position.

## **27. Power of majority**

Where by an Act of Parliament any act or thing may or is required to be done by more than two persons a majority of them may do it.

## **28. Powers of certain bodies not affected by vacancy etc.**

(1) Any body to which this section applies may act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by –

- (a) the presence or participation of any person not entitled to be present thereat or to participate therein; or
- (b) any minor irregularity in the convening or conduct of any meeting.

(2) The bodies to which this section applies are –

- (a) a local government council and any committee of such council;
- (b) a municipal council, area, village or similar council established under the law for the time being in force and any committee of any such council;
- (c) any board, commission or similar body (whether corporate or unincorporate) established by an Act of Parliament.

(3) This section shall be considered always to have been in force –

- (a) in respect of the bodies to which it applies; and
- (b) in the case of a body mentioned in paragraph (a) and (b) of subsection (2) in respect of any council or committee thereof established in the area where that body is established before that body came into existence.

**29. Exercise of powers in special circumstances**

Where any Act of Parliament confers any power or imposes any duty upon the holder of any public office and either –

- (a) that office has been abolished; or
- (b) no person has been appointed to discharge the functions of that office;

those powers and duties may be exercised or performed –

- (i) in the case of making subsidiary legislation, by the Prime Minister; and
- (ii) in any other case, by the holder of such other public office as the President may by order direct.

**30. Exercise of Minister's power**

Where a power is conferred on a Minister by an Act of Parliament –

- (a) the exercise of the power may be signified under the hand of any Minister; and
- (b) the Minister who signifies the exercise of the power should be deemed to be the Minister for the time being authorised to exercise it.

**PART 5 – DISTANCE AND TIME****31. Distance**

Any distance to be measured for the purposes of an Act of Parliament shall be measured in a straight line on a horizontal plane.

**32. Time**

Where any expression of time occurs in an Act of Parliament the time referred to shall signify the standard time of Vanuatu which, unless the President prescribes otherwise by statutory order, shall be 11 hours in advance of Greenwich Mean Time.

**33. Computation of time etc.**

(1) In computing time for the purpose of an Act of Parliament –

- (a) a period of days from the happening of an event or the doing of any act or thing shall be exclusive of the day in which the event happens or the act or thing is done;
- (b) if the last day of a period is a Sunday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day, not being an excluded day;
- (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day that is not an excluded day;
- (d) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding 6 days, excluded days shall not be reckoned in the computation of time.

(2) Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay and as often as due occasion arises.

(3) Where by an Act of Parliament a time is prescribed for doing any act or taking any proceeding and power is given to a court, or other authority to extend such time, such power may be exercised by the court or other authority although the application for the exercise thereof is not made until after the expiration of the time prescribed.

**PART 6 – MISCELLANEOUS****34. Warrants etc. valid at any day or time**

Any summons, notice, warrant or other process may be issued, served or executed and any arrest, search or seizure may be carried out or made on any day, whether a public holiday or not, and at any hour of the day or night.

**35. Disposal of forfeits**

(1) Where under any Act of Parliament any animal or anything is adjudged by any court or other authority to be forfeited it shall be forfeited to the Republic and the net proceeds thereof, if it is ordered by a competent authority to be sold, shall be paid into the Revenue Fund.

(2) Nothing in this section shall affect any provisions in any Act whereby any portion of any fine or forfeit or of the proceeds of any forfeit is expressed to be recoverable by any person or may be granted by any authority to any person.

(3) Any fine or pecuniary penalty imposed under an Act of Parliament shall be paid into the Revenue Fund.

### **36. Penalties prescribed, stated or implied in Acts of Parliament**

- (1) Where in an Act of Parliament, a penalty is prescribed for an offence against that Act such penalty shall, unless the contrary intention appears, be the maximum penalty.
- (2) Where in an Act of Parliament a penalty is stated at the end of a section or subsection creating an offence without further words that shall be the prescribed penalty and where both a fine and term of imprisonment are stated they shall in the discretion of the court be alternative or cumulative penalties and the term of imprisonment may be imposed in default of payment of the fine.
- (3) Where an Act of Parliament omits to prescribe a penalty for an offence created by the Act or for a contravention of a provision of the Act the penalty shall be a fine of VT 5,000 or imprisonment for 1 year or both.

### **37. Forms not void for insubstantial defects**

Where any form is prescribed by a written law a document which purports to be in such form shall not be void by reason of any deviation therefrom which does not affect the required substance of such document or which is not calculated to mislead.

### **38. Fees**

- (1) Where an Act of Parliament confers power on any person to prescribe fees or charges, the order prescribing such fees or charges may provide for all or any of the following matters –
  - (a) the imposition either generally or under specific circumstances of –
    - (i) specific fees or charges; or
    - (ii) maximum or minimum (or maximum and minimum) fees or charges; or
    - (iii) no fee or charge;
  - (b) the reduction, waiver or refund (in whole or in part) of any such fees or charges, either upon the happening of a certain event or in the discretion of a specified person.
- (2) Where any reduction, waiver or refund (in whole or in part) of any fee or charge is provided for, such reduction, waiver or refund may be expressed to apply or be applicable either generally or specifically –
  - (a) in respect of certain matters or transactions or classes of matters or transactions;
  - (b) in respect of certain documents or classes of documents;
  - (c) when any event happens or ceases to happen;
  - (d) in respect of certain persons or classes of persons; or
  - (e) in respect of any combination of such matters, transactions, documents, events or persons,
 and may be expressed to apply or be applicable subject to such conditions as may be specified in the instrument or in the discretion of any person specified therein.
- (3) Fees and charges imposed by an Act of Parliament shall when collected be paid into the Revenue Fund.

### **39. Change in designation of public office**

If the Minister is satisfied that a change in the designation of a public office has been or is about to be made, he may by statutory order declare the new designation and appoint a day on which the change shall take effect and from the day so appointed any reference to the former designation shall be construed as a reference to the designation declared in the order.

### **40. Person to cease to hold office when disqualified or no longer qualified**

Where a person holds an office and circumstances arise such that if he were not holding that office he would either be disqualified from being appointed to it or not qualified to be appointed to it he shall cease to hold that office.

### **41. Ex-officio proceedings not to abate on death etc.**

Any civil or criminal proceedings taken by or against any person in virtue of his office shall not be discontinued or abated by his death, resignation, absence or removal from office, but may be carried on by or against, as the case may be, the person for the time being lawfully holding, acting in or performing the functions of that office.

### **42. Act binding on Government**

This Act shall bind the Government.

## **SCHEDULE**

(Section 2)

### **INTERPRETATION OF WORDS AND EXPRESSIONS**

“Act” and “Act of Parliament” used with reference to legislation means a law made by Parliament;

“act” used with reference to an offence or civil wrong includes a series of acts; and words which refer to acts done shall extend to illegal omissions;

“adult” means a person who has attained the age of 18 years;

“administrative officer” means a District Commissioner, an assistant District Commissioner and any public officer or class of public officer declared by the Prime Minister by statutory order to be an administrative officer or administrative officers;

“aircraft” includes every description of craft used in aerial navigation;

“amend” includes repeal, revoke, rescind, cancel, replace, add to or vary and the doing of any two or more of such things simultaneously in the same written law;

“Attorney General” means the Attorney General of Vanuatu;

“Auditor-General” means the Auditor-General of Vanuatu;

“Cabinet” means the Council of Ministers established by the Constitution;

“calendar year” means a period of 12 months ending on the last day of a month;

“Chief Justice” means the Chief Justice of the Supreme Court of Vanuatu;

“citizen” means a citizen of Vanuatu;

“coin” means any coin legally current in Vanuatu;

“commencement” used with reference to an Act of Parliament means the date on which the Act comes into operation;

“Constitution” means the Constitution of Vanuatu;

“Constitutional Entity” means any entity or office, however described, created by the Constitution;

“contravene” in relation to any requirement or condition prescribed in any Act of Parliament or in any grant, permit, leave, licence or authority granted by or under any Act includes a failure to comply with that requirement or condition;

“court” means a court of competent jurisdiction in Vanuatu whether provided for under the Constitution or any law;

“Court of Appeal” means the Court of Appeal of Vanuatu established by Parliament in accordance with the Constitution;

“custom” means the customs and traditional practices of the indigenous peoples of Vanuatu;

“Deputy Speaker” means the Deputy Speaker of Parliament;

“district” means an administrative district of Vanuatu;

“document” means any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of those means;

“export” means take or cause to be taken out of Vanuatu;

“financial year” means the period of 12 months ending on 31 December in any year or such other period of 12 months as the Minister responsible for finance may by order prescribe;

“foreign service officer” means a person holding or acting in an office in the foreign service of Vanuatu;

“function” includes power, duty and responsibility and vice versa;

“Gazette” means the Vanuatu Gazette, a supplement to the Gazette or a Gazette Extraordinary;

“Gazetted” means published in the Gazette;

“Government” means the Executive Government of the Republic of Vanuatu and includes:

- (a) the Prime Minister; and
- (b) Ministers; and
- (c) All Departments and other administrative units of a Ministry, however described, but not Statutory Entities or Statutory Corporations;

“import” means to bring or cause to be brought into Vanuatu;

“immovable property” means –

- (a) land, whether covered by water or not;
- (b) any estate, right, interest or easement in or over land; and
- (c) things attached to land or permanently fastened to anything attached to land.

“infant” and “minor” means a person who has not attained the age of 18 years;

“Judicial Committee” means a committee consisting of the Chief Justice as chairman, the Attorney General and a legal practitioner appointed by the Minister responsible for justice;

“Judiciary” means the Chief Justice, the judges of the Supreme Court and acting judges of the Supreme Court;

"land" includes any estate or interest in land, all things growing on land and houses, buildings and land covered by water;

"magistrate" means a magistrate of any grade appointed under the law;

"master" used with reference to a ship means any person (except a pilot or harbour master) having for the time being control or charge of the ship;

"medical officer" means a medical practitioner in the service of the Government;

"medical practitioner" means a person registered or licensed in Vanuatu as a medical practitioner including a dentist under the law for the time being in force subject, in the case of a person so licensed, to the terms and conditions of his licence;

"Minister" means a Minister of the Government including the Prime Minister and where in any Act reference is made to "the Minister" it shall mean the Minister for the time being responsible for matters under that Act or any Minister acting on his behalf;

"Ministry" means a Ministry of the Government;

"month" means a month reckoned according to the Gregorian calendar;

"movable property" means property of every description except immovable property;

"municipality" means a municipality in Vanuatu established by law;

"oath" and "affidavit" in the case of persons for the time being allowed by law to affirm or declare instead of swearing includes affirmation and declaration and "swear" in the like case, includes affirm and declare;

"occupy" in the case of land includes use, inhabit, be in possession of the land or premises to which the word relates otherwise than as a servant or for the care or charge thereof;

"Ombudsman" means the Ombudsman appointed under the Constitution;

"Parliament" means the Parliament of the Republic of Vanuatu;

"person" includes any statutory corporation, company or association or body of persons corporate or unincorporate;

"police officer" means a member of a police force established by Act of Parliament;

"power" includes any privilege, authority or discretion;

"prescribed" means prescribed by statutory order by or under the Act in which the word occurs;

"President" means the President of the Republic of Vanuatu;

"property" includes –

- (a) money, goods, *choses in action* and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, arising out of or incident to property as defined in paragraph (a).

"Public Accounts Committee" means the Committee of that name established by Parliament;

"public holiday" means a day declared to be a public holiday in Vanuatu under the law for the time being in force;

"Public Prosecutor" means the Public Prosecutor of Vanuatu;

"public officer" means a person in the service of the Government whether or not appointed by the Public Service Commission;

"public place" and "public premises" includes any public road and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings or assembly or as an open court;

"public road" includes any road, highway, market place, square, street, bridge or other way which is used by the public whether by lawful right or by usage;

"Public Solicitor" means the Public Solicitor appointed under the Constitution;

"publication" means –

- (a) all written and printed matter;
- (b) any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed;
- (c) anything whether of a similar nature to the foregoing or not, containing any visible representation, or by its form, shape, or in any manner, capable of producing, reproducing, representing or conveying words or ideas; and
- (d) every copy and reproduction of any publication as defined in paragraphs (a), (b), and (c) of this definition;

"registered" used with reference to a document means registered under the provisions of the law for the time being applicable to the registration of such documents;

“Revenue Fund” means the Revenue Fund of Vanuatu;

“rules of court” used in relation to a court means rules, orders, or other legislative instruments for regulating the practice and procedure of such court made by the authority having for the time being the power to do so;

“sell” includes barter, exchange, offer for sale and expose for sale;

“ship” includes every description of vessel used in water navigation not exclusively propelled by oars or paddles;

“sign” used with reference to a person who is unable to sign his name includes “mark”;

“Speaker” means the Speaker of Parliament;

“State” means the Republic of Vanuatu;

“Statutory Corporation” means any corporation created by an Act;

“Statutory Entity” means any entity or office, however described, other than a corporate body, created by an Act;

“subordinate court” means a court other than the Supreme Court or Court of Appeal;

“surname” includes a clan or family name;

“Vanuatu” means the Republic of Vanuatu;

“vessel” includes any ship or boat or other description of vessel used in water navigation;

“will” includes codicil;

“words” includes figures and symbols;

“writing” includes printing, photography, lithography, typewriting and any other way of representing or reproducing words in visible form;

“written law” means the Constitution, Acts of Parliament, statutory orders and any other legislative enactments or legislative instruments having effect in Vanuatu;

“year” means a year reckoned according to the Gregorian calendar.



## CHAPTER 146

### REPRESENTATION OF THE PEOPLE

**To provide for registration of voters and elections to Parliament.**

#### PART 1 – PRELIMINARY

##### 1. Interpretation

In this Act unless the context otherwise requires –

a person shall be related to a person if he is that person's spouse, or the brother, sister, uncle, aunt or lineal ancestor or descendant of that person or his spouse;

“constituency” means one of the constituencies into which Vanuatu is divided by Order made by the President acting on the advice of the Electoral Commission;

“election” includes a by-election;

“election offence” means any offence provided for under this Act and includes an offence under section 53;

“Electoral Commission” means the Electoral Commission established by article 18 of the Constitution;

“electoral list” means the electoral list drawn up in accordance with Parts 5, 6 and 7;

“electoral officer” means the Principal Electoral Officer and officers of the Electoral Office, a registration officer, an assistant registration officer, a returning officer or a polling clerk;

“polling day” means the day fixed for an election or the commencement of an election in accordance with section 21;

“Principal Electoral Officer” means the Principal Electoral Officer established by article 19 of the Constitution and includes a deputy principal electoral officer;

“registration officer” means a registration officer appointed under section 6(1) and includes an assistant registration officer.

#### PART 2 – PRINCIPAL ELECTORAL OFFICER

##### 2. Organisation and administration of elections by the Principal Electoral Officer

- (1) The Principal Electoral Officer shall be responsible for the Organisation and administration of elections subject to the powers of the Electoral Commission under the Constitution and this Act.
- (2) There shall continue to be an Electoral Office which shall be a public office and which shall be supervised by the Principal Electoral Officer.
- (3) There shall be one or more deputy Principal Electoral Officers responsible to the Principal Electoral Officer, who shall be public servants.
- (4) The Public Service Commission shall second to the Electoral Office such staff as in the opinion of the Principal Electoral Officer may be required for the effective discharge of his functions.
- (5) The Electoral Office shall be in Port Vila and the Principal Electoral Officer may establish branch offices.

##### 3. Responsibilities of Principal Electoral Officer

- (1) The Principal Electoral Officer shall be responsible for the registration of electors and the conduct of elections.
- (2) The Principal Electoral Officer shall in particular be responsible for –
  - (a) control of electoral expenditure;
  - (b) dividing Vanuatu into registration areas for the purpose of registering voters;
  - (c) instruction and supervision of registration officers;
  - (d) transport, travel and equipment for registration officers;
  - (e) the design and printing of electoral cards, forms and other materials;
  - (f) arrangements for voters resident overseas;
  - (g) production, distribution and publication of electoral lists;
  - (h) providing information to voters and the general public;
  - (i) provision and distribution and security of ballot papers, ballot boxes and equipment for polling stations;

- (j) preparation and distribution of instructions for returning officers, and polling clerks;
- (k) maintenance, preservation and security of all electoral records;
- (l) preparation of the electoral report required under section 39(1);
- (m) such other duties as may from time to time be assigned by the Electoral Commission in accordance with its powers under the Constitution and this Act.

### **PART 3 – POLLING DISTRICTS**

[OMITTED]

### **PART 4 – OVERSEAS POLLING STATIONS**

[OMITTED]

### **PART 5 – ELECTORAL LISTS**

[OMITTED]

### **PART 6 – REGISTRATION OF OVERSEAS VOTERS**

[OMITTED]

### **PART 7 – ELECTORAL CARDS**

[OMITTED]

### **PART 8 – CHANGES TO AND COMPLETION OF ELECTORAL LISTS**

[OMITTED]

### **PART 9 – (*Repealed*)**

### **PART 10 – ESTABLISHING ELECTORAL ROLLS**

[OMITTED]

### **PART 11 – ELECTIONS**

#### **21. Polling day**

Subject to article 28(4) of the Constitution polling day shall be a day fixed for an election or the commencement of an election by the President acting on the advice of the Prime Minister given after consultation with the Electoral Commission and the Principal Electoral Officer.

#### **22. By-elections**

When a Parliamentary seat becomes vacant in a constituency for any reason except dissolution of Parliament a by-election shall be held to fill that vacancy and no by-election shall be held for any other seat in that constituency by reason of such vacancy.

### **PART 12 – CANDIDATES FOR ELECTION**

#### **23. Persons disqualified from being Parliamentary candidates**

(1) The following persons shall not be qualified as candidates for election to Parliament –

- (a) the President of the Republic;
- (b) judges and magistrates;
- (c) members of the police force;
- (d) members of the National Council of Chiefs, any member of the District Council of Chiefs, Island Council of Chiefs and Area Council of Chiefs, who holds the position of chairman, vice-chairman, secretary or treasurer of these councils;
- (e) public servants;
- (f) members of the teaching service; and
- (g) members of the Citizenship Commission.

- (2) The Electoral Commission may after consultation with the Council of Ministers add other persons or classes of persons to subsection (1).

#### **24. Eligibility of candidates**

- (1) Subject to section 23 a person shall be eligible to stand as a candidate for election to Parliament if he –
- (a) is not disqualified from voting;
  - (b) has not received a sentence including a suspended sentence of a term or terms of imprisonment which has not ended;
  - (c) is not an undischarged bankrupt;
  - (d) has attained 25 years of age; and
  - (e) is a citizen.

#### **25. Declaration of candidature**

- (1) Not later than a date declared by the Electoral Commission by Order every candidate for election shall lodge with the Electoral Office –
- (a) a declaration of candidature signed by him in the form and containing the particulars provided for in Part 1 of Schedule 3 which shall include a declaration that the candidate is eligible as provided for in section 24;
  - (b) a deposit of VT 50,000;
  - (c) 2 full face photographs of himself;
  - (d) except for a candidate sponsored by a political party having a symbol approved by the Electoral Commission, an illustration on paper of his personal electoral symbol.
- (2) A declaration of candidature shall also contain the signatures of not less than five sponsors being persons registered to vote in the constituency of the candidate and not being related to the candidate.
- (3) No person may lodge a declaration of his own candidature –
- (a) for more than 1 constituency; or
  - (a) if he is a member of Parliament in the case of a by-election.
- (4) A deposit paid under subsection (1)(b) shall not be refunded.
- (5) The Principal Electoral Officer when receiving a declaration of candidature shall give a receipt to the candidate in the form contained in Part 2 of Schedule 3.
- (6) The Principal Electoral Officer shall within 24 hours of the day declared by the Electoral Commission under subsection (1) make a list of the candidates named in the declarations of candidature received by him and send copies to the Electoral Commission.
- (7) The Principal Electoral Officer shall send with the list referred to in subsection (6) such comments on the validity of the candidature of any person named in the list as he shall consider fit.

#### **26. Declaration of invalidity of candidature by Electoral Commission**

- (1) When a declaration of candidature has been delivered and a deposit paid in compliance with section 25 the candidate shall stand sponsored for election unless and until the Electoral Commission declares the candidature invalid or evidence is given to the satisfaction of the Electoral Commission that the candidate has died, or the candidate withdraws by notice in writing given to the Principal Electoral Officer.
- (2) The Electoral Commission shall only declare a candidature invalid if –
- (a) the candidate or his sponsors do not have the necessary qualifications or are disqualified; or
  - (b) the declaration of candidature is not sponsored as provided in section 25(2).
- (3) Where the Electoral Commission decides that a candidature is invalid it shall so endorse the declaration of candidature giving reasons for the decision.
- (4) The decision of the Electoral Commission that a candidature is valid or invalid shall be final and shall not be questioned in any proceedings whatsoever.
- (5) Nothing in this section shall prevent the Supreme Court declaring the election of a candidate void after the election on the grounds that he was not qualified or was disqualified for election.

#### **27. Correction of technical defects and late candidatures**

- (1) Notwithstanding the provisions of section 26 the Electoral Commission shall where it considers that a declaration of candidature is invalid by reason of a bona fide error not less than 14 days before polling day request the candidate to resubmit a valid declaration not less than 72 hours after such request.
- (2) Where a declaration of candidature sponsored by a political party is declared invalid by the Electoral Commission or a candidate dies not less than 14 days before polling day another candidate sponsored by the same party may lodge a declaration of candidature provided that he does so within 72 hours of the

declaration or death but notwithstanding that he does so within a shorter time before polling day than shall have been provided by the Electoral Commission under section 25(1).

## **28. Publication of lists of candidates**

A list of candidates shall be displayed at –

- (a) the office of every Local Government Council;
- (b) the Parliament Building;
- (c) the Electoral Office; and
- (d) such other places in Vanuatu as the Electoral Commission may direct,

for not less than 14 days before polling day except in the case of new candidatures under section 27 where the period shall be not less than 9 days.

## **PART 13 – ELECTION OF MEMBERS OF PARLIAMENT**

### **29. Declaration of election without a poll and notice of new poll**

- (1) If at the close of or at any time after the close of the period for declaration of candidatures the number of candidates in any constituency is not more than the number of members to be elected the Principal Electoral Officer shall so report to the Electoral Commission which shall declare the candidates elected without a poll.
- (2) If the number of candidates is less than the number of members to be elected the Electoral Commission shall when it declares the number of candidates elected declare the number of seats vacant.
- (3) The Electoral Commission shall within 30 days after the declaration referred to in subsection (2) and after consultation with the Prime Minister fix the date of an election for the seats declared vacant.
- (4) If the number of candidates exceeds the number of members to be elected a poll shall be taken in accordance with this Part and without undue delay. After the closing of the list of candidates the Principal Electoral Officer shall publish a notice stating –
  - (a) the names of the candidates;
  - (b) the hours of polling;
  - (c) the situation of each polling station;
  - (d) sufficient information to enable voters to know which polling station they are required to vote at;
  - (e) any other information that may be prescribed.

### **30. Returning officers**

Every polling station shall be presided over by a returning officer appointed for that purpose by the registration officer.

### **31. Electoral rolls to be in polling stations and voters only to vote if therein and have electoral cards**

- (1) During voting a copy of the electoral roll shall be kept in every polling station.
- (2) No person may vote unless his name is contained in the roll of electors of the polling district of the station at which he presents himself for voting, and he produces a valid electoral card issued to him.

### **32. Persons not entitled to vote**

Persons detained in a mental institution in accordance with the law shall not be entitled to vote whether or not their names may be on an electoral roll.

### **33. Polls to be secret and electors to vote once for one candidate**

- (1) A poll shall be taken by secret ballot.
- (2) Subject to section 34 no person shall have more than 1 vote nor vote for more than one candidate.

### **34. Proxy votes**

A person may vote by proxy in the circumstances and in the manner provided for in Schedule 4.

### **35. Suspension and stopping of poll**

- (1) Where polling is interrupted at a polling station in such circumstances that in the opinion of the returning officer, it is temporarily impossible to continue he may suspend the poll and recommence it when he considers polling may continue undisturbed.
- (2) Where there has been a suspension and reopening in accordance with subsection (1) polling shall continue after the time fixed for ending the poll for the period of the suspension unless the returning officer is satisfied that every elector on the roll has cast his vote.
- (3) When circumstances arise which in the opinion of a returning officer make it impossible to continue with a poll within a reasonable time whether or not polling has already been suspended under subsection (1) he shall declare the poll stopped and inform the Principal Electoral Officer of the declaration who shall immediately forward a report thereon with any comments he may have to the Electoral Commission.

- (4) When a poll has been stopped under subsection (3) all proceedings before the declaration shall be annulled by the Electoral Commission by order either –
- (a) in every polling station in the relevant constituency if the result in the constituency as a whole could be affected by the addition of the votes of voters of the polling district where the poll has been stopped; or
  - (b) in the polling station where the poll has been stopped only if the results in the relevant constituency as a whole could not be materially affected by the addition of the votes of the voters of the polling districts where the poll has been stopped,
- and in either case the Electoral Commission shall in its order fix a new day and time for polling and a new poll shall be held.
- (5) If in the opinion of the returning officer and not less than one polling clerk not later than half an hour before the time fixed for polling to close the number of voters waiting will not be able to vote in that time he may extend the time to the close of the poll by 1 hour and shall record the extension in his report under Rule 19 of Schedule 5.
- (6) The returning officer may close the polling station when all the voters on the roll have voted but the counting of votes shall not start earlier than 1 hour before the time fixed for the end of polling.

### **36. Display and locking of ballot boxes**

Immediately before the commencement of a poll the returning officer shall show the interior of the ballot box to those lawfully present in the polling station and then lock the box with 2 padlocks having different keys and shall retain the key of one and give the other to a polling clerk.

### **37. Method of voting and procedures**

The method of voting, procedures to be observed during polls, and the manner of counting votes and declaring the election of candidates shall be in accordance with the provisions of Schedule 5.

### **38. Publication of results**

As soon as practicable after an election the Electoral Commission shall cause the results to be published in each constituency in such manner as it considers appropriate and in the Gazette.

## **PART 14 – ELECTION REPORTS**

[OMITTED]

## **PART 15 – ELECTION OFFENCES**

[OMITTED]

## **PART 16 – ELECTION PETITIONS**

### **54. Elections only to be challenged under this Act**

- (1) The validity of any election to Parliament may be questioned by a petition brought for that purpose under this Act and not otherwise.
- (2) Every election petition shall be heard by the Supreme Court.

### **55. Persons who may present election petitions**

An election petition may be presented by one or more of the following –

- (a) a person who is registered to vote at the election to which the petition relates;
- (b) a person claiming himself to have been a candidate at such election.

### **56. Petition only valid if deposit made**

- (1) The presentation of an election petition shall not be valid unless within the time limited by section 57 for presentation of the petition the person seeking to present the same lodges with the Supreme Court a deposit of VT 20,000 as security for costs.
- (2) Subject to subsection (3) a deposit made under subsection (1) shall be returned to the petitioner after the petition has been heard.
- (3) The Supreme Court may deduct from a deposit made under subsection (1) the amount of any costs ordered to be paid.

### **57. Time for presentation of petitions**

- (1) Subject to subsection (2) an election petition shall be presented within 21 days of the publication in the Gazette of the results of the election to which the petition relates.

- (2) If a petition alleges a specific payment of money or other reward after an election by or on the account of a person whose election is disputed, the petition may be presented within 21 days of the alleged payment.
- (3) The time limit provided for in this section shall not be extended.

## **58. Election petitions to be in writing and copies to be served on affected persons**

- (1) An election petition shall be in writing and shall specify the ground or grounds upon which an election is disputed.
- (2) The Supreme Court shall cause a copy of each election petition to be served on any person whose election may be affected by the petition and allow such person a reasonable time in which to make any submissions in writing on such petition and an opportunity to be heard on the hearing of the petition.

## **59. Rules for election disputes**

- (1) The Chief Justice may make such rules not inconsistent with this Act concerning the conduct of proceedings before the Supreme Court under this Part, the times and places of hearings and adjournment thereof as he shall consider proper.
- (2) The proceedings of the Court shall be conducted in English, French or Bislama according to the choice of the petitioner and interpreters shall be provided by the Supreme Court.
- (3) The proceedings of the Court shall be recorded in writing.
- (4) A summons to a witness shall be in the form contained in Schedule 6.
- (5) A person who without sufficient excuse –
  - (a) disobeys a summons or reasonable direction of the court;
  - (b) hinders or obstructs the court;
  - (c) gives false evidence to the court; or
  - (d) insults the court by word of mouth, writing, radio broadcast or in any other manner,
 commits an offence and shall be liable on conviction to a fine not exceeding VT 75,000 or to imprisonment not exceeding 5 years or to both such fine and imprisonment.
- (6) No person appearing before the Court during the hearing of an election petition shall be bound to incriminate himself and all such persons shall be entitled to the privileges accorded to a witness appearing before the Supreme Court when exercising its normal jurisdiction.

## **60. Decisions of Court in election disputes**

- (1) On hearing a petition the Supreme Court may -
  - (a) declare the election to which the petition relates is void;
  - (b) declare a candidate other than the person whose election is questioned was duly elected; or
  - (c) dismiss the petition and declare that the person whose election is questioned was duly elected.
- (2) The Supreme Court may make such orders as to the payment of costs by any person appearing before it as it may deem fit.

## **61. Grounds for declaring election void**

- (1) The election of a candidate may be declared void on an election petition if it is proved to the satisfaction of the Supreme Court, that –
  - (a) bribery, treating, undue influence or other misconduct or circumstances whether similar to those herein before enumerated or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
  - (b) there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election;
  - (c) the candidate was at the time of his election a person not qualified or disqualified for election; or
  - (d) there was such irregularity in the counting of the votes as may reasonably be supposed to have affected the result of the election.
- (2) The election of a candidate shall be declared void if he is convicted by a Court of committing a corrupt practice or of attempting or conspiring to commit a corrupt practice.
- (3) Notwithstanding the provisions of subsection (1) –
  - (a) where upon the hearing of an election petition the Supreme Court finds that any agent of a candidate has been guilty of a corrupt practice and the Supreme Court further finds that the candidate has proved to the Supreme Court that –
    - (i) no corrupt practice was committed by the candidate himself or with his knowledge or consent or approval;

- (ii) the candidate took all reasonable means for preventing the commission or corrupt practices at such election;
  - (iii) in all other respects the election was free from any corrupt practice on the part of the candidate; and
  - (iv) such corrupt practices did not affect the result of the elections,
- then, if the Supreme Court so decided, the election of such candidate shall not by reason of any such practice be void;
- (b) where upon the trial of an election petition the Supreme Court finds that there has been failure to comply with any provision of this Act but the Court further finds, that it is satisfied that the election was conducted in accordance with the principles laid down in this Act and that such failure did not affect the result of the election, the election of the successful candidate shall not by reason of such failure, be void.

## **62. Examination of votes cast**

When on an election petition the election is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes the Supreme Court may direct an examination of the counted and void votes and of the counting of votes.

## **63. Communication of decision of Court concerning election disputes**

- (1) The decision of the Supreme Court shall be communicated without delay to the petitioner and to all persons whose election is subject to such petition.
- (2) There shall be no appeal from a decision of the Supreme Court under this Part.

## **64. Reports to Public Prosecutor**

The Supreme Court shall if in its opinion anyone has committed an offence of a corrupt practice in connection with an election to which a petition heard by it relates, send a written report in respect thereof to the Public Prosecutor.

## **65. No person required to reveal his vote**

No person who has voted in an election shall in any proceedings be required to state for whom he has voted.

# **PART 17 – MISCELLANEOUS AND SUPPLEMENTAL**

## **66. Notification to Electoral Commission and Principal Electoral Officer of election offences**

Any Court which convicts a person of an election offence shall inform the Electoral Commission and the Principal Electoral Officer.

## **67. Saving when election declared void**

Where on an election petition the election of a member of Parliament is declared void nothing done by him prior to such declaration either as a member of Parliament or in an office for which membership of Parliament is a qualification shall be thereby invalidated.

## **68. Disposal of reports and documents**

- (1) Subject to subsection (2) the Principal Electoral Officer shall retain for not less than 1 year all reports sent to him in accordance with this Act and all documents sent therewith including packets of counted and void votes.
- (2) Documents relating to an election in respect of which an election petition or any legal proceedings have been commenced shall not be destroyed until the proceedings have ended.
- (3) The Supreme Court when hearing an election petition or a court trying an election offence may make an order that any document retained by the Electoral Commission or the Principal Electoral Officer shall be inspected, copied or produced at such time and place and subject to such conditions as it thinks fit.
- (4) No order shall be made under subsection (3) unless the court is satisfied that the inspection, copying, or production is essential for the hearing of a charge of an election offence or the hearing of an election petition.
- (5) Except as provided by subsection (3) no person may inspect or copy any document retained by the Electoral Commission or the Principal Electoral Officer under this Act.

## **69. Power of Electoral Commission to make orders**

[OMITTED]

## **70. Saving of seats and constituencies and change of registration areas in polling districts**

[OMITTED]

**SCHEDULE 1**

[OMITTED]

**SCHEDULE 2**

[OMITTED]

**SCHEDULE 3**

[OMITTED]

**SCHEDULE 4**

[OMITTED]

**SCHEDULE 5**

(Section 37)

[OMITTED]

**SCHEDULE 6**

(Section 59(4))

[OMITTED]



## CHAPTER 270

### JUDICIAL SERVICES AND COURTS

**An Act to provide for the independence of the Judicial Service, the functions and powers of the Judicial Service Commission in addition to those in the Constitution, the Courts of the Republic of Vanuatu, and for related purposes.**

#### PART 1 – PRELIMINARY

##### 1. Definitions

(1) In this Act, unless the contrary intention appears:

“Board” means the Court Personnel Disciplinary Board established under section 59;

“chief magistrate” means the chief magistrate appointed under section 19;

“commencement” means the commencement of this Act;

“Commission” means the Judicial Service Commission referred to in Article 48 of the Constitution;

“committee” means a committee established by the Commission under section 6;

“court personnel” means:

- (a) a clerk of the Magistrates’ Court appointed under section 25; or
- (b) an employee of the Magistrates’ Court engaged under section 26; or
- (c) the registrar or any other officer of the Supreme Court appointed under section 40 or 43; or
- (d) an employee of the Supreme Court engaged under section 44; or
- (e) the registrar or any other officer of the Court of Appeal appointed under section 47;

“immediate family” of a person means the person’s spouse and any child of the person and/or the person’s spouse;

“judge” means a person appointed as a member of the judiciary under Article 47(2) of the Constitution or as an acting judge under Article 47(5) of the Constitution and includes the Chief Justice;

“judicial officer” means a judge or magistrate;

“Judicial Service” means the Judicial Service mentioned in subsection (2);

“magistrate” means a magistrate appointed under section 18, and includes:

- (a) the chief magistrate; and
- (b) any senior magistrate; and
- (c) any acting magistrate, senior magistrate or chief magistrate;

“Magistrates’ Court” means the Magistrates’ Court of Vanuatu continued in existence under section 12;

“Minister” means the Minister responsible for justice;

“registrar” means a person appointed as registrar under section 40;

“Rules of Court” means the rules made under section 66;

“salary” means basic salary;

“senior magistrate” means a magistrate appointed as a senior magistrate under section 18;

“statutory orders” means the statutory orders made under this Act;

“this Act” includes the statutory orders;

“Vanuatu Courts” means:

- (a) the Court of Appeal; and
- (b) the Supreme Court; and

- (c) the Magistrates' Court; and
  - (d) the Island Courts established under the Island Courts Act [Cap. 167]; and
  - (e) any office or service associated with any of these Courts, including translations, interpretation, libraries and archives.
- (2) The Judicial Service is constituted by:
- (a) judges; and
  - (b) magistrates; and
  - (c) other judicial officers; and
  - (d) court personnel.

## PART 2 – JUDICIAL SERVICE COMMISSION

### 2. Constitution of the Commission

- (1) The Commission consists of:
- (a) the Minister responsible for Justice, as chairman; and
  - (b) the Chief Justice; and
  - (c) the chairman of the Public Service Commission; and
  - (d) a representative of the National Council of Chiefs appointed by the Council.
- (2) The Commission may elect one of its members to be the Deputy Chairman of the Commission. The Deputy Chairman must perform the functions of the Chairman (including those under section 7(3)) if the Chairman is:
- (a) absent from Vanuatu; or
  - (b) unable for any reason to perform the functions of the Chairman.
- (3) A vacancy in the Commission does not affect the validity of the proceedings or decisions of the Commission.

### 3. Objects

- (1) The objects of the Commission are:
- (a) to promote and protect the independence and the efficiency of the Judicial Service; and
  - (b) to promote the operation of the rule of law; and
  - (c) to promote and monitor generally the performance and accountability of the Judicial Service.
- (2) The Minister must not act so as to interfere with the independence of the Judicial Service in performing his or her functions:
- (a) as the Minister responsible for justice; and
  - (b) as the Chairman of the Commission

### 4. Functions

- (1) The Commission has the following functions:
- (a) to ensure that:
    - (i) the appointment and promotion of judicial officers and court personnel is undertaken in accordance with the relevant provisions of the Constitution and this Act; and
    - (ii) the appointment, promotion, transfer and discharge of, and disciplinary steps against, judicial officers and court personnel takes place without favour or prejudice; and
    - (iii) the law and administrative procedures that are applicable to the matters mentioned in subparagraphs (i) and (ii) are applied uniformly and correctly to judges, magistrates and court personnel, as the case requires;
  - (b) to ensure that no improper influencing or victimisation of judicial officers and court personnel takes place;

- (c) to carry out or cause to be carried out the investigations that it considers necessary for the purposes of this Act;
  - (d) to promote the training of judicial officers and court personnel;
  - (e) to compile a code of conduct for judicial officers and keep it up to date;
  - (f) to inform the Minister about:
    - (i) administrative matters which are applicable to judicial officers and court personnel, including salaries, allowances and other conditions of service; and
    - (ii) the general maintenance and upkeep of the courts in Vanuatu, including buildings, libraries, furniture and furnishings, and plant and equipment;
  - (g) to prepare a report for each year about:
    - (i) any matter that is relevant to the independence and efficiency of the administration of justice; and
    - (ii) any action needed to be taken to strengthen the operation of law; and
    - (iii) reforms that may be needed to any laws;
  - (h) *(repealed)*
  - (i) such other functions as are conferred on it by this Act or any other Act;
  - (j) to do anything else that is incidental or conducive to the performance of any of the preceding functions.
- (2) The report referred to in subsection (1)(g) must be prepared within 3 months after the end of the relevant year and the Minister must table in the Parliament a copy of the report within 5 sitting days after the commencement of the next ordinary session.
  - (3) In undertaking an investigation under subsection (1)(c), the Commission must observe the rules of natural justice.
  - (4) In undertaking its functions, the Commission may consult with representatives of the legal profession and any other person in its discretion.

## **5. Powers**

- (1) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the powers of the Commission include the following:
  - (a) subject to any other Act or law, to obtain access to information or documents (other than classified material within the meaning of the Official Secrets Act [Cap. 111]) for the purposes of an investigation;
  - (b) to require any person by notice in writing to appear before it to give evidence and to produce any document or thing;
  - (c) subject to subsection (5), to publish any finding, opinion or recommendation of the Commission.
- (3) A person who obstructs or improperly influences the Commission or a committee of the Commission in the execution of the Commission's powers under subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 100,000 or imprisonment for a term of not more than 6 months, or both.
- (4) A person who is required to appear before the Commission under subsection (2)(b) may be represented by a qualified legal practitioner.
- (5) The Commission cannot publish any information or document that is commercial in confidence and the disclosure of which could reasonably be expected to prejudice substantially the commercial interests of a person.

## **6. Committees**

- (1) The Commission may establish committees to assist and advise the Commission on any matter relating to the administration of this Act.
- (2) A committee may, subject to the directions of the Commission, exercise any of the powers referred to in section 5(2)(a), (b) or (c).
- (3) The Commission is to determine the composition of a committee. A committee may include persons who are not members of the Commission.

**7. Meetings and procedure**

- (1) The Commission must meet at least 6 times each year at such times and places as the Chairman determines.
- (2) A quorum of the Commission consists of 3 members.
- (3) The Chairman of the Commission must:
  - (a) preside at a meeting of the Commission; and
  - (b) regulate the proceedings of the meeting; and
  - (c) cause minutes to be kept of the meeting.
- (4) The meetings of the Commission are to take place in private unless the Chairman of the Commission directs otherwise.
- (5) Subject to this Act and the Constitution, the Commission is to regulate its own procedures.

**8. Remuneration and expenses of members**

[OMITTED]

**9. Secretary**

[OMITTED]

**10. Funding**

[OMITTED]

**11. Protection of proceedings and publications**

[OMITTED]

**PART 3 – MAGISTRATES’ COURT AND MAGISTRATES****Division 1 – Magistrates’ Court and its jurisdiction****12. Magistrates’ Courts continue in existence as a single court**

- (1) The Magistrate’s Courts established by section 1 of the Courts Act [Cap. 122] continue in existence on and after commencement as the Magistrates’ Court of Vanuatu.
- (2) The Magistrates’ Court has jurisdiction throughout the whole of Vanuatu.
- (3) The Commission may by statutory order prescribe districts and registries for the administration of the Magistrates’ Court.

**13. Constitution**

- (1) The Magistrates’ Court is to be presided over by a single magistrate.
- (2) A magistrate must perform the functions and exercise the powers that are conferred on him or her by or under this Act and any other law.

**14. Criminal and civil jurisdiction**

- (1) The Magistrates’ Court has jurisdiction to hear and determine in a summary way civil proceedings as provided for by the Magistrates’ Court (Civil Jurisdiction) Act [Cap. 130] and any other law.
- (2) Subject to the provisions of any other Act or law, the Magistrates’ Court has jurisdiction to hear and determine in a summary way criminal proceedings for an offence for which the maximum punishment does not exceed imprisonment for 2 years. A magistrate must not impose a sentence greater than imprisonment for 2 years.
- (3) The Magistrates’ Court must hear and determine criminal proceedings without a preliminary judicial inquiry.
- (4) A senior magistrate may on application or at his or her discretion hear and determine in a summary way criminal proceedings for an offence for which the maximum punishment does not exceed imprisonment for 10 years. However, a senior magistrate must not impose a sentence greater than imprisonment for 5 years.

- (5) Despite subsections (2) and (4), a magistrate may sentence consecutively an offender in respect of 2 or more offences to a term of imprisonment exceeding 2 years, but not exceeding 4 years.
- (6) The Supreme Court may, by order made under its seal, invest the Magistrates' Court with jurisdiction to try any proceeding in respect of a particular class of offence or proceeding or a particular case.

#### **15. Orders for community service**

- (1) If the Magistrates' Court sentences a person to a term of imprisonment of 6 months or less, the Court may as an alternative order the person to perform specified work for community purposes for a specified period not exceeding 100 hours subject to specified conditions.
- (2) A person undergoing community work who is absent from such community work without a lawful excuse is guilty of an offence and is punishable on conviction by a term of imprisonment not exceeding one month or a fine not exceeding VT 20,000 and the order is to continue. In the alternative, the person is to be sentenced for the original offence and the order discharged..

#### **16. Contempt and concurrent jurisdiction**

- (1) The Magistrates' Court has the power to punish summarily a person for contempt of court by imprisonment for a term not exceeding 2 months or a fine not exceeding VT 20,000.
- (2) The jurisdiction conferred on the Magistrates' Court does not in any way restrict or affect the jurisdiction of the Supreme Court.

#### **17. Reservation of questions of law**

- (1) A magistrate may reserve for the consideration of the Supreme Court on a case to be stated by the magistrate any question of law which may arise on the hearing of any criminal or civil proceedings.
- (2) The magistrate must not deliver judgement in the proceedings until he or she has received the opinion of the Supreme Court.
- (3) The Supreme Court has power to determine every such question after hearing argument.

### **Division 2 – Magistrates**

#### **18. Appointment**

- (1) The President must appoint magistrates on the recommendation of the Commission which must be based on merit.
- (2) The Commission must not recommend a person for appointment as a magistrate unless the person:
  - (a) holds a degree in law from a recognised tertiary institution; or
  - (b) has suitable legal training or experience.
- (3) Each magistrate is to be appointed for the whole of Vanuatu.
- (4) The President must appoint senior magistrates on the recommendation of the Commission which must be based on merit.
- (5) The Commission must not recommend a person for appointment as a senior magistrate unless the person has at least 3 years' experience as a magistrate.
- (6) A senior magistrate may, with the written approval of the Commission, resign as a senior magistrate, but remain a magistrate.

#### **19. Chief magistrate**

- (1) The President must appoint a magistrate to be the chief magistrate on the recommendation of the Commission which must be based on merit.
- (2) The Commission must not recommend a person for appointment as the chief magistrate unless the person has at least 5 years' experience as a magistrate.
- (3) The chief magistrate holds office for a period of 5 years and is eligible for reappointment.
- (4) With the approval of the Commission, the chief magistrate may resign as chief magistrate but remain a magistrate.
- (5) The chief magistrate, subject to prior consultation with the Chief Justice and the Registrar:
  - (a) is responsible for the management of the administrative affairs of the Magistrates' Court; and

- (b) may issue directions with respect to practices and procedures of Magistrates' Court, however, such directions must not be inconsistent with the Rules of Court; and
  - (c) must identify training programmes for magistrates; and
  - (d) must bring to the notice of the Commission any matter which affects the employment of magistrates; and
  - (e) may discipline magistrates by way of counselling; and
  - (f) is responsible for the efficient management and control of court personnel of the Magistrates' Court; and
  - (g) must implement statutory orders relating to magistrates.
- (6) The chief magistrate is responsible for the orderly and expeditious exercise of the Magistrates' Court's jurisdiction and power, and must ensure that:
- (a) the business of the Magistrates' Court is undertaken in a just and fair manner at a reasonable cost; and
  - (b) all cases are listed, brought on for hearing and determined as soon as possible; and
  - (c) delays in proceedings are avoided through unnecessary adjournments and that reasonable notice is given to parties of changes to hearing dates.
- (7) For the sole purpose of managing the administrative affairs of the Magistrates' Court, the chief magistrate has power to do all things that are necessary or convenient to be done. The chief magistrate must liaise with the Chief Justice about administrative matters common to the Magistrates' Court and the Supreme Court (for example, accommodation).

## **20. Acting appointments**

- (1) The President must appoint a person as an acting magistrate or as the acting chief magistrate if the Commission recommends that the appointment of the person is necessary for transacting the business of the Magistrates' Court, whether or not an appointment has been made to that office.
- (2) The Commission must not recommend a person for an acting appointment unless the person has the qualifications necessary for appointment on a permanent basis.
- (3) A person appointed to act must continue to act until the end of the period for which he or she is appointed unless the person:
  - (a) earlier resigns his or her acting appointment; or
  - (b) is suspended or removed from office under section 23.

## **21. Disqualification**

- (1) If:
  - (a) a magistrate has a personal interest in any proceedings; or
  - (b) there is actual bias or an apprehension of bias by the magistrate in the proceedings;
 he or she must disqualify himself or herself from hearing the proceedings and direct that the proceedings be heard by another magistrate.
- (2) A party to any proceedings may apply to a magistrate to disqualify himself or herself from hearing the proceedings.
- (3) If a magistrate rejects an application for disqualification, the applicant may appeal to the Supreme Court against the rejection. If an appeal is made, the magistrate must adjourn the proceedings until the appeal has been heard and determined.
- (4) A magistrate who rejects an application for disqualification must give written reasons for the rejection to the applicant.

## **22. Salaries, allowances and benefits**

[OMITTED]

## **23. Vacation of office and discharge**

- (1) A magistrate holds office until he or she reaches the age of 55.
- (2) A magistrate must not be suspended or removed from office except in accordance with the provisions of this section.

- (3) The President must suspend or remove a magistrate from office on the recommendation of the Commission.
  - (4) The Commission may recommend the suspension or removal of a magistrate:
    - (a) for gross misconduct; or
    - (b) on account of physical or mental incapacity to carry out his or her duties of office efficiently; or
    - (c) if the magistrate is convicted and sentenced on a criminal charge; or
    - (d) for professional incompetence.
  - (5) A magistrate who is suspended from office is to be paid his or her full salary during the period of the suspension.
  - (6) The Commission may, at the request of a magistrate, allow the magistrate to vacate his or her office:
    - (a) on account of continued ill-health; or
    - (b) for any other reason which the Commission considers sufficient.
  - (7) A request under subsection (6)(b) must be made to the Commission at least 6 months before the date on which the magistrate wishes to vacate his or her office, unless the Commission approves a shorter period in a particular case.
  - (8) If a magistrate is allowed to vacate his or her office under subsection (6)(a) or (6)(b), the magistrate is entitled to the pension and benefits prescribed by the statutory orders.
- 24. Magistrate may sit after appointment terminated and other paid work**
- (1) A magistrate whose appointment has terminated (otherwise than by reason of his or her removal from office) may sit as a magistrate for the purpose of hearing, giving judgement in or otherwise finishing any proceedings which were commenced before the termination of his or her appointment.
  - (2) A magistrate must not perform any paid work outside his or her duties of office without the consent of the Commission.

### Division 3 – Clerks of court and employees

#### 25. Clerks of court

- (1) The Commission may appoint one or more clerks of court to be attached to the Magistrates' Court. An appointment must be made on merit.
- (2) A clerk of court is under the direction and control of a magistrate.
- (3) A magistrate may direct a person to perform the duties of a clerk of court if an appointment has not been made or the clerk is not available for any reason.
- (4) The duties of a clerk of court are to be prescribed by the Rules of Court, and a clerk of court is entitled to the salary, benefits and allowances as are prescribed by the statutory orders.

#### 26. Other employees

- (1) The Commission may engage on merit such other employees as the Commission considers necessary for the purposes of the Magistrates' Court.
- (2) An employee is entitled to the salary, benefits and allowances as are prescribed by the statutory orders.

## PART 4 – SUPREME COURT AND JUDGES

### Division 1 – The Supreme Court

#### 27. Constitution

The Supreme Court must be constituted by a judge sitting alone:

- (a) in the exercise of its jurisdiction under Articles 6, 16(4), 39(3), 53 and 54 of the Constitution; and
- (b) in any other proceeding unless an Act or law otherwise provides.

#### 28. Unlimited jurisdiction throughout Vanuatu

- (1) The Supreme Court has:

- (a) unlimited jurisdiction throughout Vanuatu to hear and determine any civil or criminal proceedings in Vanuatu, including matters of custom; and
- (b) all jurisdiction that is necessary for the administration of justice in Vanuatu.
- (2) Subject to the Rules of Court, a judgement of the Supreme Court has effect and may be executed in any part of Vanuatu.
- (3) To avoid doubt, subsection (2) does not limit the effect of a judgement of the Supreme Court in any other country.

## **29. Administration**

- (1) Subject to and in accordance with this Act, the Supreme Court is to administer its own affairs and the Chief Justice is responsible for the management of the administrative affairs of the Court.
- (2) Without limiting subsection (1), the Chief Justice is responsible for the orderly and expeditious exercise of the Supreme Court's jurisdiction and power, and must ensure that:
  - (a) the business of the Court is undertaken in a just and fair manner at a reasonable cost; and
  - (b) all cases are listed, brought on for hearing and determined as soon as possible; and
  - (c) delays in proceedings are avoided through unnecessary adjournments and reasonable notice is given to parties of changes to hearing dates.
- (3) For the purpose of the management of the administrative affairs of the Supreme Court, the Chief Justice has power to do all things that are necessary or convenient to be done.
- (4) Without limiting subsection (3), the Chief Justice has the power on behalf of the State to:
  - (a) to enter into contracts; and
  - (b) to acquire, hold and dispose of personal property; and
  - (c) to take on hire, to exchange, and to accept on deposit or loan, library material, and also furnishings, equipment and goods needed for the purposes of the Supreme Court.
- (5) Subsection (4) does not authorise the Chief Justice to acquire any interest or right in land, or to enter into a contract under which the State is to pay or receive an amount exceeding VT 1,000,000 without the approval of the Commission.
- (6) The Chief Justice may appoint committees consisting of judges, or of judges and other persons, for the purpose of assisting him or her in the management of the administrative affairs of the Supreme Court.
- (7) The Chief Justice may, in writing, delegate all or any of his or her powers associated with administration of the affairs of the Supreme Court under subsection (1) to any one or more of the judges.
- (8) Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Supreme Court may be instituted by or against the State, as the case requires.
- (9) The Commission may by statutory order prescribe districts and registries for the administration of the Supreme Court.

## **30. Appeals from Magistrates' Court**

- (1) Subject to the provisions of any other Act, the Supreme Court has jurisdiction to hear and determine appeals from judgements of the Magistrates' Court on all or any of the following:
  - (a) a question of law;
  - (b) a question of fact;
  - (c) a question of mixed law and fact.
- (2) The Supreme Court in hearing an appeal:
  - (a) is to proceed on the face of the record of the Magistrates' Court; and
  - (b) may exercise such powers as may be prescribed by or under this Act or any other law; and
  - (c) has the powers and jurisdiction of the Magistrates' Court; and



- (d) may review the procedures and the findings (whether of fact or law) of the Magistrates' Court; and
  - (e) may substitute its own judgement for the judgement of the Magistrates' Court; and
  - (f) may receive evidence.
- (3) *(Repealed)*
- (4) The Supreme Court is the final court of appeal for the determination of questions of fact. However, an appeal lies to the Court of Appeal from the Supreme Court on a question of law if the Court of Appeal grants leave.
- 31. Review of convictions and reservation of questions of law**
- (1) The Supreme Court has power at any time to review the conviction of a person by the Magistrates' Court, whether or not there has been an appeal against the conviction.
- (2) The Supreme Court may exercise the power:
- (a) on its own motion; or
  - (b) upon the petition of the Public Prosecutor; or
  - (c) upon the petition of the defendant or any other interested person.
- (3) If the Supreme Court reviews a conviction and is of the opinion, by reason of new evidence or otherwise, that a miscarriage of justice has or may have occurred, the Supreme Court may do all or any of the following:
- (a) set aside the conviction;
  - (b) order a new trial before the Magistrates' Court that made the conviction;
  - (c) make such other orders in the interest of justice and give all necessary and consequential directions.
- (4) If the Supreme Court makes an order setting aside a conviction, the convicted person:
- (a) if he or she is imprisoned – must be released immediately; or
  - (b) if he or she has paid a fine – must be refunded the amount paid.
- (5) A judge may reserve for the consideration of the Court of Appeal on a case to be stated by the judge any question of law which may arise on the hearing of any criminal or civil proceedings.
- (6) The judge must not deliver judgement in the proceedings until he or she has received the opinion of the Court of Appeal.
- (7) The Court of Appeal has power to determine every such question after hearing argument.

### **32. Contempt**

The Supreme Court has power to punish summarily a person for contempt of court by imprisonment for a term not exceeding one year or a fine not exceeding VT 100,000.

## **Division 2 – Judges**

### **33. Appointment of Chief Justice and judges**

- (1) The Chief Justice must be appointed in accordance with Articles 47 and 49 of the Constitution.
- (2) A judge must be appointed in accordance with Articles 47(2) and 49(4) of the Constitution.
- (3) In preparing advice in relation to the appointment of a judge under Article 47(2) of the Constitution, the Commission may have regard to the following:
  - (a) whether the person has sufficient experience and ability to fulfil the duties of a judge;
  - (b) whether the person has public confidence and standing in the community in which he or she usually resides, and is a person of good character;
  - (c) in the case of a person from outside Vanuatu – is or was a judge of a superior court in another jurisdiction.
- (4) A judge is to be appointed for the whole of Vanuatu.
- (5) The judges, other than the Chief Justice, have seniority according to the dates of their appointment unless the Commission otherwise directs.

### **34. Acting Chief Justice**

- (1) If:

(a) the Chief Justice is absent from Vanuatu or is unable or unavailable to perform the duties of his or her office; or

(b) there is a vacancy in the office of Chief Justice;

the next senior judge who is able and willing to do so must perform the duties of the Chief Justice. That judge may exercise the powers of the Chief Justice and is to be designated Acting Chief Justice.

(2) *(Repealed)*

(3) *(Repealed)*

### **35. Acting judges**

(1) The President must appoint a person as an acting judge if the Commission recommends the appointment of the person is necessary for transacting the business of the Supreme Court.

(2) A person must not be appointed as an acting judge unless he or she is qualified for appointment in accordance with Article 49(4) of the Constitution.

(3) In recommending a person for appointment, the Commission must have regard to the matters in section 33(3).

(4) A person appointed to act must continue to act until the end of the period for which he or she is appointed, unless the person:

(a) resigns from his or her acting appointment; or

(b) is removed under Article 47(3) of the Constitution.

(5) *(Repealed)*

(6) *(Repealed)*

### **36. Vacation of office and discharge**

(1) A judge holds office until he or she reaches the age of 65.

(1A) Notwithstanding subsection (1), a person who is not a citizen of Vanuatu and is over the age of 65 years may be appointed as a judge of the Supreme Court for a specified term and will only cease to hold office:

(a) at the expiration of that term; or

(b) in accordance with article 47 (3) (a) or (b) of the Constitution.

(1B) Nothing done by a judge of the Supreme Court is invalid by the only reason that he or she has attained the age at which he or she is required by this section to vacate his or her office.

(2) A judge must not be removed from office except in accordance with Article 47(3)(a) or (b) of the Constitution.

(3) The Commission may, at the request of a judge, allow the judge to vacate his or her office:

(a) on account of continued ill-health; or

(b) for any other reason which the Commission considers sufficient.

(4) A request under subsection (3)(b) must be made to the Commission in writing at least 6 months before the date on which the judge wishes to vacate his or her office, unless the Commission approves a shorter period in a particular case.

(5) If a judge is allowed to vacate his or her office under subsection (3)(a) or (3)(b), the judge is entitled to the pension and benefits prescribed by the statutory orders.

### **37. Salaries, benefits and allowances**

[OMITTED]

### **38. Disqualification**

(1) If:

(a) a judge has a personal interest in any proceedings; or

(b) there is actual bias or an apprehension of bias by the judge in the proceedings;

he or she must disqualify himself or herself from hearing the proceedings and direct that the proceedings be heard by another judge.

- (2) A party to any proceedings may apply to a judge to disqualify himself or herself from hearing the proceedings.
- (3) If a judge rejects an application for disqualification, the applicant may appeal to the Court of Appeal against the rejection. If an appeal is made, the judge must adjourn the proceedings until the appeal has been heard and determined.
- (4) A judge who rejects an application for disqualification must give written reasons for the rejection to the applicant.

**39. Judge may sit after appointment terminated and other paid work**

- (1) A judge whose appointment has terminated (otherwise than by reason of his or her removal from office) may sit as a judge for the purpose of hearing, giving judgement in or otherwise finishing any proceedings that were commenced before the termination of his or her appointment.
- (2) A judge must not perform any paid work outside his or her duties of office without the consent of the Commission.

**Division 3 – Officers and employees**

**40. Registrar**

- (1) The Commission must appoint on merit a registrar of the Supreme Court.
- (2) The registrar:
  - (a) is to assist the Chief Justice in the management of the administrative affairs of the Supreme Court and the Court of Appeal, and the chief magistrate in the management of the administrative affairs of the Magistrates' Court; and
  - (b) is to assist the Chief Justice and the chief magistrate in ensuring the orderly and expeditious exercise of the jurisdiction of those courts; and
  - (c) may act on behalf of the Chief Justice and the chief magistrate for the purposes of paragraphs (a) and (b); and
  - (d) has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Justice and the chief magistrate under paragraphs (a) and (b); and
  - (e) is to assist the Chief Justice in undertaking his or her duties under section 52; and
  - (f) is responsible for the efficient operation of the Supreme Court registry; and
  - (g) must discharge such other duties as may be prescribed by the statutory orders or the Rules of Court.
- (3) The Commission may appoint a person to be an acting registrar. An acting registrar, during the time for which he or she is appointed, must perform the duties of the registrar.
- (4) A person holding the office of registrar or acting as the registrar is entitled to the salary, allowances and benefits applicable to that office as set out in the table in Part 2 of the Schedule. The benefits are described in detail in Part 3 of the Schedule.
- (5) A person appointed to act as the registrar must continue to act until the end of the period for which he or she is appointed unless the person:
  - (a) resigns from his or her acting appointment; or
  - (b) is suspended or removed under Part 7.

**41. Functions of the registrar relating to court personnel**

- (1) The registrar of the Supreme Court:
  - (a) is responsible for the efficient management and control of court personnel; and
  - (b) must advise the Chief Justice on the salaries and salary scales of court personnel; and
  - (c) must identify, after consultation with the Chief Justice, training programs for court personnel; and
  - (d) must bring to the notice of the Chief Justice any matter which affects the employment of court personnel; and
  - (e) must implement statutory orders relating to court personnel.
- (2) *(Repealed)*

**42. Master and deputy masters**

- (1) The Commission must appoint on merit a master and such deputy masters of the Supreme Court.
- (2) A person must not be appointed as the master or a deputy master unless the person:
  - (a) is admitted as a barrister or solicitor of the Supreme Court or a similar court in another jurisdiction or is sitting as a Senior Magistrate for a period of 3 years; and
  - (b) has sufficient experience and ability to fulfil the duties of the master or a deputy master.
- (3) The master or a deputy master:
  - (a) may hear and determine all or any of the following matters:
    - (i) application for directions relating to matters of procedure;
    - (ii) taxation of bills of costs;
    - (iii) applications for probate;
    - (iv) preliminary matters in relation to applications for adoption;
  - (b) may exercise such of the powers, functions and jurisdiction of the Supreme Court as may be prescribed by the Rules of Court.
- (4) A person may appeal to a judge of the Supreme Court against a decision of the master or a deputy master made under paragraphs (3)(a) and (b). The appeal is to proceed by way of a hearing de novo and the judge's decision on appeal is final.
- (5) The Commission may appoint a person who satisfies paragraphs 42(2)(a) and (b) to be an acting master, if:
  - (a) there is a vacancy in the office of the master; or
  - (b) the master is absent from Vanuatu or is for any reason unable to perform his or her duties.
- (6) A person appointed as an acting master, has the jurisdiction, functions and powers of the master.
- (7) A person holding the office of master or acting master is entitled to the salary and allowances applicable to that office as set out in the table in Part 1 of the Schedule and the benefits as are described in detail in Part 3 of the Schedule.
- (8) The Commission is to determine the salary and allowances applicable to the office of deputy master.
- (9) A person appointed to be an acting master must continue to act in that office until the end of the period for which he or she is appointed, unless the person:
  - (a) resigns from his or her acting appointment; or
  - (b) is suspended or removed from the acting position.
- (10) Section 21 and subsections 23(2) to (5) apply to the master or a deputy master as if a reference in that section and those subsections to a magistrate were a reference to the master or a deputy master.
- (11) The master or a deputy master has, in exercising his or her functions under section 42, the same protection and immunity as a judge has under section 55 of this Act, in performing the functions of a judge.

**42A. Mediation**

- (1) Subject to the Rules of Court, the Supreme Court may by order refer the proceedings in that Court, or any part of them or any matter arising out of them, to the master or a deputy master or a mediator for mediation in accordance with the Rules of Court.

- (2) Referrals under subsection (1) to the master, a deputy master or a mediator may be made with or without the consent of the parties to the proceedings.
- (3) In seeking such resolution under subsection (1):
- (a) the master, deputy master or a mediator may require the attendance of the parties before him or her; and
  - (b) the parties may make suggestions and concessions without prejudice to their claims and position in the proceedings; and
  - (c) the master, deputy master or a mediator may make suggestions for the resolution of disputes without prejudice to any hearing before the Supreme Court; and
  - (d) if a settlement is reached, it must then be signed and dated by the master, deputy master or mediator; and
  - (e) any settlement recorded under paragraph (d) is enforceable as an order of the Supreme Court; and
  - (f) evidence of anything said, or of any admission made, at a conference conducted by the master, a deputy master or a mediator in the course of mediating anything referred to under this section is not admissible in any Court.
- (4) A mediator has, in mediating anything referred to under this section, the same protection and immunity as a judge has under section 55 of this Act, in performing the functions of a judge.
- (5) In this section, **mediator** means a person who is appointed as a mediator under the Rules of Court.

#### **42B. Arbitration**

- (1) Subject to the Rules of Court, the Supreme Court may by order refer the proceedings in that Court, or any part of them or any matter arising out of them, to an arbitrator for arbitration in accordance with the Rules of Court.
- (2) Referrals under subsection (1) to an arbitrator may be made only with the consent of the parties.
- (3) The Rules of Court may make provision for the registration of awards made in an arbitration carried out pursuant to an order made under subsection (1).

#### **42C. Power of arbitrator to refer question of law to the Supreme Court**

- (1) If:
- (a) any proceedings in the Supreme Court, or any part of them or any matter arising out of them, has been referred under subsection 42B(1) to an arbitrator for arbitration; and
  - (b) the arbitrator has not made an award in respect of the arbitration; and
  - (c) a party to the arbitration has requested the arbitrator to apply to the Supreme Court for leave to refer that Court to a question of law arising in the arbitration,
- the arbitrator may apply to the Supreme Court for leave to refer the question to that Court.
- (2) The Supreme Court must not grant leave unless it is satisfied that the determination of the question of law by that Court might result in substantial savings in costs to the parties to the arbitration.

#### **42D. Application to the Supreme Court for review of award on a question of law or for costs to be taxed**

- (1) Subsections (2) to (5) apply if:
- (a) any proceedings in the Supreme Court, or any part of them or any matter arising out of them, has been referred under subsection 42B(1) to an arbitrator for arbitration; and
  - (b) the arbitrator has made an award in respect of the arbitration; and
  - (c) the award has been registered with the Supreme Court under the Rules of Court.
- (2) A party to the award may apply to the Supreme Court for a review, on a question of law, of the award.

- (3) On a review of an award on a question of law, the Supreme Court may:
- (a) determine the question of law; and
  - (b) make such orders as it thinks appropriate, including:
    - (i) an order affirming the award; or
    - (ii) an order varying the award; or
    - (iii) an order setting aside the award and remitting the award to the arbitrator for reconsideration in accordance with the directions of the Supreme Court; or
    - (iv) an order setting aside the award and determining the matter to which the award related.
- (4) A party to the award may apply to the Supreme Court for an order that the costs payable by the party in respect of the arbitration be taxed in accordance with the Rules of Court.
- (5) The person who has made an application under subsection (4) is not liable to pay in respect of the costs of the arbitration an amount that is more than the amount of the costs as taxed under an order made pursuant to subsection (4).

#### **42E. Protection of arbitrators**

An arbitrator has, in arbitrating anything referred under section 42A, the same protection and immunity as a judge has under section 55 of this Act, in performing the functions of a judge.

#### **42F. Arbitration awards**

- (1) The Supreme Court may, upon application by a party to an award made in arbitration (whether carried out under an order made under section 42B(1) or otherwise) in relation to a matter, in which that Court has original jurisdiction, make an order in accordance with the terms of the award.
- (2) Subsection (1) does not apply to an award made in an arbitration carried out under an order made under subsection 42B (1) unless the award has been registered with the Supreme Court under the Rules of Court.
- (3) Subject to subsection (4), an order made under subsection (1), is enforceable in the same manner as if it has been made in an action in the Supreme Court.
- (4) A writ of attachment must not be issued to enforce payment of moneys under an order made in accordance with this section."

#### **43. Other officers**

- (1) The Commission may appoint on merit such assistant registrars, sheriffs and other officers of the Supreme Court as the Commission considers necessary for the efficient operation of the Court.
- (2) An assistant registrar, sheriff or other officer must discharge such duties as may be prescribed by the statutory orders or the Rules of Court, or as a judge of the Court or the registrar may direct.
- (3) The Commission may appoint a person to act as an assistant registrar or other officer of the Court.
- (4) An officer appointed under this section or a person acting as an officer is entitled to the salary, benefits and allowances prescribed by the statutory orders.
- (5) The sheriff is responsible for the service and execution of all writs, summonses, rules, orders, warrants and processes of the Supreme Court directed to the sheriff.
- (6) The sheriff is also responsible for:
- (a) taking, receiving and detaining all persons committed to his or her custody by the Supreme Court; and
  - (b) discharging such persons when so directed by the Court or otherwise required by law.
- (7) An officer appointed under this section may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

**44. Other employees**

- (1) The Commission may engage on merit such other employees as the Commission considers necessary for the purposes of the Supreme Court.
- (2) An employee is entitled to the salary, benefits and allowances as are prescribed by the statutory orders.

**PART 5 – THE COURT OF APPEAL****45. Appointment of Supreme Court judges and disqualification**

- (1) A judge of the Supreme Court may sit as a judge of the Court of Appeal in accordance with Article 50 of the Constitution.
- (2) A judge so acting is entitled to the allowances and benefits as set out in the table in Part 1 of the Schedule. The benefits are described in detail in Part 3 of the Schedule.
- (3) A judge of the Supreme Court whose judgement is under consideration in any proceeding before the Court of Appeal must not sit as a member of the Court of Appeal in that proceeding.

**46. Administration**

- (1) The Chief Justice is responsible for the administration of the Court of Appeal and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.
- (2) Subject to this Act, the Chief Justice has power to do all things necessary or convenient to be done for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.

**47. Registrar and other officers**

- (1) The Commission may appoint on merit a registrar and such other officers as are necessary to administer the Court of Appeal.
- (2) A person holding the office of registrar is entitled to the salary, allowances and benefits applicable to that office as set out in the table in Part 2 of the Schedule, unless he or she also holds the office of the registrar of the Supreme Court. The benefits are described in detail in Part 3 of the Schedule.
- (3) The Commission may appoint any officer of the Supreme Court to undertake similar duties in the Court of Appeal.
- (4) The registry of the Court of Appeal established under section 24 of the Courts Act [Cap. 122] continues in existence on and after commencement as if that Act had not been repealed.

**48. Appellate jurisdiction**

- (1) Subject to the provisions of this Act and any other Act, the Court of Appeal has jurisdiction to hear and determine appeals from judgements of the Supreme Court.
- (2) The Chief Justice must, in consultation with the other judges of the Supreme Court, decide the composition of the Court of Appeal for the hearing of proceedings before the Court.
- (3) For the purpose of hearing and determining an appeal from the Supreme Court, the Court of Appeal:
  - (a) may exercise such powers as may be prescribed by or under this Act or any other law; and
  - (b) has the powers and jurisdiction of the Supreme Court; and
  - (c) may review the procedure and the findings (whether of fact or law) of the Supreme Court; and
  - (d) may substitute its own judgement for the judgement of the Supreme Court.
- (4) The Court of Appeal may deal with the appeal on the notes of evidence that were recorded in the Supreme Court without hearing the evidence again. However, the Court of Appeal may receive further evidence.
- (5) In the exercise of the appellate jurisdiction of the Court of Appeal, any judgement of the Court of Appeal has full force and effect, and may be executed and enforced, as if it were an original judgement of the Supreme Court.

## **PART 6 – FUNDING, PROTECTION AND ACCOUNTABILITY OF THE JUDICIAL SERVICE AND THE COURTS**

[OMITTED]

## **PART 7 – DISCIPLINE OF COURT PERSONNEL**

[OMITTED]

## **PART 8 – MISCELLANEOUS**

### **64. Seals**

The Magistrates' Court, the Supreme Court and the Court of Appeal must each have an official seal and must use the seal as required. The Commission must approve the design of the seal of each Court.

### **65. Inherent powers of Supreme Court and Court of Appeal, and custom**

- (1) The Supreme Court and the Court of Appeal have such inherent powers as are necessary to carry out their functions. The powers are subject to:
  - (a) the Constitution; and
  - (b) any other written law; and
  - (a) the limitations of each Court's jurisdiction.
- (2) For the purpose of facilitating the application of custom, a provision of any Act or law may provide that it may be construed by the Court of Appeal, the Supreme Court or the Magistrates' Court with such alterations and adaptations as may be necessary.
- (3) The Supreme Court and the Court of Appeal have the inherent and incidental powers as may be reasonably required in order to apply custom.
- (4) The Magistrates' Court has the incidental powers as may reasonably be required in order to apply custom.

### **66. Judicial Committee and Rules of Court**

- (1) The Judicial Committee established by section 30 of the Courts Act [Cap. 122], as in force immediately before commencement, continues in existence on and after commencement as if that Act had not been repealed.
- (2) However, the Committee is to consist of the following 5 members:
  - (a) the Chief Justice as chairperson;
  - (b) a judge of the Supreme Court as deputy chairperson;
  - (c) the Attorney General;
  - (d) the Public Prosecutor;
  - (e) a legal practitioner appointed by the Minister on the recommendation of the private legal profession.
- (3) The Judicial Committee may make Rules of Court, not inconsistent with this Act or the statutory orders, for or in relation to the following:
  - (a) the practice and procedure of the Magistrates' Court, the Supreme Court and the Court of Appeal;
  - (b) the criminal and civil jurisdiction of such Courts, including the procedure for the making and hearing of appeals to the Supreme Court and the Court of Appeal;
  - (c) the fees to be paid in respect of proceedings in the Magistrates' Court, the Supreme Court and the Court of Appeal;
  - (d) all matters and things incidental to such practice, procedure, jurisdiction and fees;
  - (e) all matters and things necessary or convenient to be prescribed for the conduct of any business of the Magistrates' Court, the Supreme Court and the Court of Appeal.
- (4) Rules prescribing or affecting the amount of any fees or their recovery do not come into operation unless approved by the Commission.
- (5) The Judicial Committee is to regulate its own procedures, however, a quorum consists of 3 members. A member of the Judicial Committee is entitled to the allowances prescribed by the statutory orders.



- (6) All rules made by the Judicial Committee that were in force immediately before commencement are to continue in force on and after commencement.

**67. Review of salaries and benefits**

[OMITTED]

**68. Oath or affirmation of office**

[OMITTED]

**69. Continuous service for public servants**

[OMITTED]

**70. Statutory orders**

[OMITTED]

**71.**

[OMITTED]

**PART 9 – REPEAL AND TRANSITIONAL PROVISIONS**

**72. Repeal of Courts Act**

- (1) The Courts Act [Cap. 122] is repealed.
- (2) To the extent that it is possible, all references in any other Act or law to the Courts Act [Cap. 122] on and after commencement is taken to be a reference to this Act.
- (3) All references in any other Act or law to a provision of the Courts Act [Cap. 122] on and after commencement is taken to be a reference to the corresponding provision (if any) of this Act.

**73. Judges – Transitional and savings provision**

[OMITTED]

**74. Magistrates – Transitional and savings provision**

[OMITTED]

**75. Court personnel – Transitional and savings provision**

[OMITTED]

**76. Saving of orders, acting appointments and Rules of Court**

- (1) An Order made under section 1(2) of the Courts Act [Cap. 122] that was in force immediately before commencement, continues in force, on and after commencement, as if the Order had been made under this Act.
- (2) An Order made under section 5(2) or (3) of the Courts Act [Cap. 122] that was in force immediately before commencement, continues in force, on and after commencement, as if the Order had been made under this Act.
- (3) An Order made under section 13 of the Courts Act [Cap. 122] that was in force immediately before commencement, continues in force, on and after commencement, as if the Order had been made under this Act.
- (4) If an appointment made under section 20(1) of the Courts Act [Cap. 122] was in force immediately before commencement, the appointment continues in force, on and after commencement, as if it had been made under this Act.
- (5) Any Rules of Court made under section 30 of the Courts Act [Cap. 122] that were in force immediately before commencement, continue in force, on and after commencement, as if they had been made under this Act.
- (6) If an appointment made under section 30(2) of the Courts Act [Cap. 122] was in force immediately before commencement, the appointment continues in force, on and after commencement, as if it had been made under this Act.

**77. Existing proceedings saved**

- (1) This section applies to any proceedings in the Magistrate's courts, the Supreme Court or the Court of Appeal that had not been finally disposed of immediately before commencement.
- (2) The proceedings continue, on and after commencement, as if the Courts Act [Cap. 122] had not been repealed.

**78. Act does not take away or limit jurisdiction**

Except as is provided for by this Act, this Act does not take, lessen or impair any jurisdiction or power that was, immediately before commencement, vested in or capable of being exercised by:

- (a) the Court of Appeal or one or more judges of that Court; or
- (b) the Supreme Court or one or more judges of that Court; or
- (c) the Magistrate's courts or one or more magistrates.

**SCHEDULE**

[OMITTED]

## No. 9 of 2007

## STATE PROCEEDINGS

**An Act to regulate the institution and conduct of civil proceedings in which the State is a party to or may be interested, and for related purposes**

## PART 1 PRELIMINARY

**1 Interpretation**

In this Act, unless the contrary intention appears:

**Act** includes any law of the Parliament of Vanuatu or any law of the United Kingdom or France applicable to the New Hebrides and remaining in force;

**Attorney-General** means the Attorney General appointed pursuant to the State Law Office Act [CAP 242] and, if none is appointed, means the Solicitor-General;

**Constitutional proceeding** means any application or proceeding under the Constitution;

**Court** includes:

- (a) Court of Appeal; and
- (b) Supreme Court; and
- (c) Magistrates Court;

**designation** means the title, office, rank or name given to any person by or in consequence of any Act;

**institute**, in relation to proceedings, means the date on which the originating process in the proceedings is accepted as filed by the relevant court;

**important public issue** has the meaning given by section 2;

**Judicial Committee** means the Judicial Committee created by the Judicial Services and Courts Act [CAP 270];

**mandatory injunction** includes an order of a Court to do any act but does not include:

- (a) an order in the nature of mandamus; and
- (b) an order for specific performance of any agreement; and
- (c) an order to do any act involving registration, deregistration, rectification or other alteration to any register;

**proceeding** means any action, suit, claim, application (other than an interlocutory application), or appeal in relation to which a Court has civil jurisdiction;

**Solicitor General** means the Solicitor General appointed pursuant to the State Law Office Act [CAP 242];

**State** includes for the purposes of this Act, a Constitutional or a Statutory Entity;

**State Law Office** means the State Law Office as established under the State Law Office Act [CAP 242];

**urgent proceeding** includes any proceedings involving a claim for release (habeas corpus) or in which an application for urgent interim relief is filed with the relevant Court on the same day the proceedings are instituted.

**2 Important public issue**

(1) Subject to subsection (2), an issue is an important public issue if it arises in any proceedings in any Court not instituted under section 3 and involves:

- (a) the interpretation of the Constitution; or
- (b) a determination as to the validity of any Act; or

- (d) a determination of the nature or extent of the judicial powers of any Court.
- (2) An issue is not an important public issue if it is already the subject of clear and established precedent or an enactment and involves merely the application of the same.

## PART 2 INSTITUTION OF PROCEEDINGS

### 3 Proceedings by or against Government

Subject to this Act, a proceeding may be instituted by or against the State.

### 4 Appropriate Court

A proceeding instituted under section 3 must be instituted in the Court that would have jurisdiction if the proceeding were between individuals.

### 5 Description of parties

- (1) A proceeding instituted under section 3, other than a proceeding by way of judicial review, must be brought using the name "Republic of Vanuatu" which name must be used only once to describe:
  - (a) if there is only one party, that party; or
  - (b) if there is more than one party, all parties.
- (2) A proceeding instituted under section 3 and being a proceeding by way of judicial review must include as defendants only:
  - (a) the person who appears to be most directly responsible for the matters giving rise to the proceeding, by the person's designation and, where such person is an individual, also by his or her name; and
  - (b) if a declaration about an enactment is sought, the Attorney-General under the name "Attorney-General".
- (3) Subsections (1) and (2) do not apply if the Attorney-General is seeking a remedy against an office created by the Constitution.

### 6 Notification of intention to institute proceedings

- (1) No proceeding against the State, other than an urgent proceeding or a Constitutional proceeding, may be instituted under section 3 unless the party intending to do so first gives written notice to the State Law Office of such intention.
- (2) The notice under subsection (1) must:
  - (a) include reasonable particulars of the factual circumstances upon which the proposed proceedings will be based; and
  - (b) be given not less than 14 days and no more than 6 months prior to the institution of proceedings.

## PART 3 CONDUCT OF PROCEEDINGS AND RELATED MATTERS

### 7 Application of Rules of Court

A proceeding instituted under section 3 is to be instituted and conducted in accordance with any applicable rules of court and, if none, as nearly as possible according to such rules as would be applicable in similar proceedings between individuals.

### 8 Rights of parties

In a proceeding instituted under section 3 the rights of all parties are to be, subject to this Act, as nearly as possible the same as in similar proceedings between individuals.

### 9 Entitlement to costs and disbursements

- (1) The Government is entitled to and may recover costs and disbursements of and incidental to all proceedings under section 3 or in respect of a Statutory Corporation represented by the State Law Office.
- (2) The Government may recover costs and disbursements to which subsection (1) applies, whether or not it has paid or is liable to pay any such costs or disbursements.

- (3) Subject to subsection (4), costs awarded under this section must be calculated in accordance with the rates usually applied as between individuals.
- (4) Costs awarded on an indemnity basis must be calculated according to such rate as that Court thinks fair and reasonable having regard to the charges ordinarily payable by a client to a lawyer for the work done.
- (5) This section applies to:
  - (a) all orders that were made before the commencement of this Act for the payment of costs and disbursements; and
  - (b) all proceedings that have been instituted in a Court before the commencement of this Act in which professional work has been performed on behalf of the State or a Statutory Corporation represented by the State Law Office, but in relation to which an order for the payment of costs and disbursements has not been made; and
  - (c) all proceedings instituted on or after the commencement of this Act.

#### **10 Limitations and immunities**

- (1) This Act does not affect any immunity from, or limitation on, liability provided by any other Act or law.
- (2) This Act does not make binding upon the State any law that would not otherwise be binding.
- (3) A mandatory injunction is not to be granted against the State.
- (4) This Act does not affect public interest privileges.
- (5) The State shall not be required to give security for the costs of any party.
- (6) The State shall not be required to give any undertaking as to damages as a precondition to the grant of any injunction, but shall be liable in respect of any injunction as it may obtain in the same manner and to the same extent as an individual as if such an undertaking had been given by that individual.
- (7) The State or any officer of the State in that capacity is not liable to pay any fees in any Court.

### **PART 4 RIGHTS OF THE ATTORNEY-GENERAL**

#### **11 Intervention and amicus curiae**

- (1) The Attorney-General, on behalf of the State, may intervene in any proceeding if:
  - (a) an important public issue has arisen or is likely to arise in the proceeding; or
  - (b) the outcome of the proceeding may directly or indirectly affect the interest of the State; or
  - (c) the outcome of the proceeding may directly or indirectly affect the general public or some section of it not otherwise represented in the proceeding.
- (2) The Attorney-General, on behalf of the State, may be granted leave to appear as amicus curiae in any proceeding if:
  - (a) the Court concerned is of the view that it will be better informed of matters which it ought to take into account in the proceeding; or
  - (b) the outcome of the proceeding may directly or indirectly affect the interest of the State; or
  - (c) the outcome of the proceeding may directly or indirectly affect the general public or some section of it not otherwise represented in the proceeding.

#### **12 Procedure upon identification of important public issue**

If in any proceeding in any Court not brought under section 3, it appears to the Court that an important public issue has arisen or is likely to arise in the proceeding, the Court must:

- (a) take no further steps in the proceeding (other than as required by Article 53(3) of the Constitution) until the expiration of 14 days after notice is given under paragraph (b); and
- (b) direct one or more of the parties to give to the Attorney-General notice in writing of the important public issue; and

- (c) if it is a Magistrates Court, refer the issue to the Supreme Court for determination pursuant to section 17 of the Judicial Services and Courts Act [CAP 270].

## **PART 5 MISCELLANEOUS**

### **13 Rules of Court**

The Judicial Committee may make rules governing practice or procedure for the purposes of this Act.

### **14 Commencement**

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

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