

No. 9 of 2007

GOVERNMENT PROCEEDINGS

An Act to regulate the institution and conduct of civil proceedings in which the Government 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;

Constitution means the Constitution of the Republic of Vanuatu;

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;

Government includes all Ministers, offices, instrumentalities, and agencies of the Executive Government and their servants or agents, but does not include:

- (a) a body created by or under an Act; or
- (b) an office created by the Constitution; or
- (c) any individual in his or her private capacity;

institute, in relation to proceedings, means the date on which the originating process in the proceedings is filed with 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 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;

Republic of Vanuatu refers to the republic created by the Constitution;

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

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
 - (c) 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 involves merely the application of established precedent to the issue.

PART 2 INSTITUTION OF PROCEEDINGS**3 Proceedings by or against Government**

Subject to this Act, a proceeding may be instituted by or against the Government of the Republic of Vanuatu.

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 by or against the Government 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 Government party, that Government party; or
 - (b) if there is more than one Government party, all Government 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 Government, other than an urgent proceeding, is to 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 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 may recover costs and disbursements of and incidental to all proceedings in a Court in such circumstances and such amount as the Court decides.
- (2) The Government may recover costs and disbursements of and incidental to all proceedings in a Court as if it were an individual, whether or not it has paid or is liable to pay any such costs or disbursements.
- (3) Subject to subsection (4), costs awarded by a Court to the Government must be calculated in accordance with the rates usually applied.
- (4) Costs awarded by a Court to the Government 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 by a Court in favour of the Government 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 Government, 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 Republic of Vanuatu any law that would not otherwise be binding.
- (3) A mandatory injunction is not to be granted against the Republic of Vanuatu.

PART 4 RIGHTS OF THE ATTORNEY-GENERAL**11 Intervention and amicus curiae**

- (1) The Attorney-General, on behalf of the Republic of Vanuatu, 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 Republic of Vanuatu; 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 Republic of Vanuatu, 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 Republic of Vanuatu; 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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