Commencement: 24 August 1998

CHAPTER 243

GOVERNMENT

Act 5 of 1998
Act 23 of 2000
Act 38 of 2000
Act 2 of 2008
Act 29 of 2008
Act 2 of 2010
Act 7 of 2017

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GOVERNMENT

An Act to provide for the role, effective management, and responsibilities of the Executive Government.

PART 1 – PRELIMINARY

1. Purpose

The purpose of this Act is to give effect to Chapter 7 of the Constitution by providing for the:

(a) efficient and effective management; and

(b) arrangement; and

(c) function of the Executive; and

(d) the employment, function and responsibilities of political advisors.

2. Constitution

(1) Chapter 7 of the Constitution provides for the structure, role, and responsibilities of the Executive.

(2) The provisions of this Act are in addition to those contained in the Constitution.

(3) If this Act or any provision of this Act conflicts with the Constitution, then the Constitution will prevail.

3. Interpretation

In this Act, unless the context otherwise requires –

"benefit" means:

(a) a benefit derived by a person;

(b) a benefit derived directly or indirectly by another person at the request or direction of the first person; and

(c) a service, advantage or gift;

"Council" means the Council of Ministers referred to in Article 40 of the Constitution;

"Comprehensive Reform Programme" or "CRP" means the reform programme for the Republic of Vanuatu directed at the:

(a) revival of institutions of governance;

(b) redefinition of the function of the Public Service and improvement of efficiency within the public sector;

(c) encouragement of growth within the private sector; and

(d) equitable distribution of benefits of the programme to the people of Vanuatu;

"Ministerial Office" means an office of a minister of Council that has money appropriated to it by Parliament it for the purpose of its expenditure;

"Political advisor" means a person or persons employed on the personal staff of a minister to provide political advice;

"Public Service" shall have the same meaning as in section 2 of the Public Service Act [CAP 246];

"relevant minister" means the minister to whom a political advisor is employed to assist;

"Secretary" means the Secretary to Council appointed under section 10.

PART 2 – THE EXECUTIVE

4. Prime Minister

(1) The Prime Minister is the principal minister of the Council and responsible for the appointment from amongst the members of Parliament of other ministers to the Council and, may appoint a Deputy Prime Minister from within the Council.

(2) The executive power of the people of the Republic of Vanuatu shall be vested in the Prime Minister and the Council and shall be exercised as provided for by the Constitution and by any other enactment not inconsistent with the Constitution.

(3) The Prime Minister may by written instrument specify the functions, duties and responsibilities of each minister.

5. Leadership role of Prime Minister

The Prime Minister will have principal responsibility for:

(a) strategic policy-planning and significant administrative decisions;

(b) coordinating the activities of Government;

(c) determining the fundamental direction of foreign policy;

(d) ensuring observance of the rule of law in public affairs;

(e) overseeing the implementation of Government policy beginning with the implementation of the CRP;

(f) reviewing the machinery and structure of Government; and

(g) tendering advice to the President.

6. Council of Ministers

(1) The Council shall be the paramount institution of the Executive responsible for the exercise of executive power subject to the Constitution and any other enactment not inconsistent with the Constitution.

(2) The collective responsibility of the Council is to assist in:

(a) the strategic policy planning of significant matters affecting Vanuatu;

(b) the co-ordination of the activities of Government;

(c) making significant administrative decisions;

(d) ensuring observance of the rule of law in public affairs; and

(e) implementing Government policy beginning with the implementation of the CRP.

(3) Each minister shall assume and be responsible for:

(a) the functions imposed on him or her by the Prime Minister under section 4(4); and

(b) the effective and efficient management of any ministry, department, State appointed office, agency, instrument, authority or corporation under his or her direction.

7. Minutes and decisions of Council

(1) The Secretary to Council must keep a written record of each Council meeting.

(2) Decisions of the Council must be recorded in writing and a copy is to be provided to:

(i) each Minister and every Ministry and department; and

(ii) such other Constitutional Entities, Statutory Entities, Statutory Corporations or other persons or bodies as may be affected by or charged with the responsibility of implementing the decision.

(3) The minutes and decisions of Council may be archived after every 3 years or sooner if there is a change in Government.

(4) After a change in Government the minutes of the Council before the change shall be archived and will not be made available to the members appointed to the Council after the change unless the composition of the first mentioned Council is substantially the same as the second mentioned Council.

8. Committees of Council

(1) The Council may refer any matter before it to a committee of the Council comprising such members of the Council that the Council may determine.

(2) It shall be the function of any committee of the Council to:

(a) gather all available information relevant to the matter before the committee; and

(b) identify issues of policy that should be brought to the attention of the Council; and

(c) formulate recommendations and report to the Council.

9. Ministries and the Public Service

(1) The Prime Minister may, by notice published in the Gazette, designate ministries, departments, State appointed offices, agencies, instruments, authorities and corporations as being within the Public Service in which event every person employed therein shall from the date of the publication of the notice be employed as a member of the Public Service.

(2) The Prime Minister may by written instrument direct what functions a ministry shall be responsible for and may from time to time assign to, or withdraw functions from, a ministry.

(3) A minister may, after consultation with the Prime Minister, assign, by written instrument, functions to a ministry for which he or she is responsible.

(4) A minister (including the Prime Minister) must not:

(a) interfere or attempt to interfere in employment issues relating to the Public Service; or

(b) interfere or attempt to interfere in employment issues relating to the Teaching Service Commission, the Judicial Service Commission or the Police Service Commission.

(5) To avoid doubt, nothing in subsection (4) is to be taken to limit the right of a minister (including the Prime Minister):

(a) to notify in writing the Public Service Commission, the Teaching Service Commission, the Judicial Service Commission or the Police Service Commission of employment issues relating to that Commission that are affecting the implementation of the Government's policies; and

(b) to request that Commission to respond to the issues in writing by setting out the action it proposes to take in relation to the issues so as to enable the Government's policies to be implemented.

(6) The Public Service Commission, the Teaching Service Commission, the Judicial Service Commission or the Police Service Commission, as the case requires, must

respond to the request within 28 days after receiving it or within such longer period as may be specified in the notice.

PART 3 – SUPPORT TO COUNCIL OF MINISTERS

10. Secretary to Council

(1) There shall be appointed from the Public Service a secretary to the Council.

(2) The secretary will be appointed by the Public Service Commission in accordance with the Public Service Act.

(3) The secretary must not disclose any business or general matters of the Council to any third party without the express authority of the Prime Minister or in his or her absence, the minister responsible for the Prime Minister's duties.

(4) The secretary is to be responsible for Council minutes and decisions in accordance with section 7 and must maintain a register of Council minutes and decisions.

11. Functions of Secretary

The functions of the secretary will include:

(a) attending Council meetings;

(b) responsibility for ensuring the effective and efficient administration of the business of the Council;

(c) the provision and co-ordination of administrative assistance to the Council;

(d) co-ordination of submissions made to Council; and

(e) complying with the provisions of this Act or any other enactment.

12. Developmental Committee of Officials

There is established an advisory committee to the Council to be called the Developmental Committee of Officials (DCO).

13. Members of Developmental Committee of Officials

(1) The Prime Minister will appoint members of the Developmental Committee of Officials which will be comprised of:

(a) the Director-General of the Prime Minister's Office who shall be the Chairperson;

(b) each director-general of each Ministry;

(c) a political advisor from each Ministry;

(d) (repealed)

(e) the Director of the Department of Strategic Management who is to be Secretary to the DCO;

(f) the Secretary to Council who shall provide secretarial support, and be the liaison person between Council and DCO.

(2) (Repealed)

(3) The Attorney General must, if requested to do so by the DCO, attend its meetings and provide legal advice to the DCO on any submission or paper being considered by the DCO.

(4) The Chairperson of the Public Service Commission must, if requested to do so by the DCO, attend its meetings and provide advice on any submission or paper being considered by the DCO that is relevant to the Commission's powers or functions.

(5) Before the DCO considers any submission or paper, the secretary to the DCO must send a copy of the submission or paper to each member of the DCO and to the first political advisor for each minister.

(6) Subject to subsection (7), the Chairperson of the DCO must not list a submission or paper for the DCO to consider unless he or she is satisfied that:

(a) there has been proper consultation with other Ministries in relation to the submission or paper; and

(b) the first political advisor in the Ministry sponsoring the submission or paper has approved it.

(7) Subsection (6) does not apply if the Chairperson is satisfied that the submission or paper is urgent.

(8) At the meeting of the DCO, a quorum is constituted by 7 members. The DCO can meet whenever there are enough members to constitute quorum.

(9) If a member of the DCO is not available to attend a meeting, the member may direct an officer within his or her Ministry to attend the meeting on the member's behalf.

14. Functions of Developmental Committee of Officials

The functions of the DCO shall include:

(a) advising Council on Council submissions;

(b) advising Council on issues submitted to Council; and

(c) improving standards and procedures to be used in preparing Council submissions, and to ensure that submissions and papers put before Council are of the highest quality, are factually correct and have been property coordinated between interested parties.

15. Advice from Attorney General and Director-General of Finance

(1) The Council must not consider a submission unless the Council has available to it advice from the Attorney General on the legal implications of the submission.

(2) The Council must not consider a submission unless the Council has available to it advice from the Director-General of the Ministry of Finance and Economic Management on the financial implications of the submission and whether the submission complies with the principles of responsible fiscal management.

(3) The advice referred to in subsection (1) or (2) must be provided within a reasonable time before the Council meets.

PART 4 – POLITICAL ADVISORS

16. Political advisors

A political advisor must:

(a) subject to section 21(3), be appointed by the relevant minister;

(b) not be, or will cease on appointment to be, a member of the Public Service;

(c) have his or her employment terminated in accordance with his or her employment contract;

(d) not direct or attempt to direct the director-general or his or her staff in the administration of a Ministry, other than to convey a lawful direction of the relevant minister relating to the implementation of government policy.

(e) not interfere or attempt to interfere in Public Service employment issues including appointments and terminations; or

(f) not interfere or attempt to interfere in employment issues relating to the Teaching Service Commission, Judicial Service Commission and Police Service Commission including appointments and terminations; or

(g) not interfere or inhibit or attempt to interfere or inhibit a director-general, director or his or her staff or any other person entitled to do so from giving policy advice to a minister; or

(h) not prevent or attempt to prevent a director-general, director or his or her staff or any other person entitled to do so from providing information or communicating with a minister about matters pertaining to the operations of his or her ministry.

17. Number of political advisors

(1) The Committee of the Council referred to in section 21 is to determine the number of political advisors to be appointed to advise the Prime Minister and each minister.

(2) The number of political advisors must not exceed:

(a) 5 for the Prime Minister; and

(b) 4 for the Deputy Prime Minister; and

(c) 3 for any other minister, unless a genuine need has arisen for additional advice in which case it must not exceed 4.

18. Role of political advisors

(1) The role of a political advisor is:

(a) to provide advice and assistance to his or her minister in relation to political issues, including in relation to policy matters; and

(b) to act as a liaison on that minister's behalf.

(2) Without limiting subsection (1), a political advisor is to:

(a) interact with the public and communities on behalf of the minister; and

(b) support the Minister in performing his or her parliamentary duties; and

(c) liaise with the media for and on behalf of the minister; and

(d) liaise with the Ministry and bodies that report to the minister on the implementation of the Government's policies and the minister's lawful directions; and

(e) monitor the performance of the Ministry and bodies that report to the minister; and

(f) monitor the implementation of the Government's policies and the minister's lawful directions by the director-general of the Ministry; and

(g) administer the minister's office within the budget allocated to the office; and

(h) respond to representations made to the minister; and

(i) participate in briefings given by the director-general to the minister; and

(j) do such other matters in relation to political issues as are specified by the minister.

(3) Each political advisor for a minister and the director-general of the Ministry are to support the minister by developing constructive and cooperative relationships.

PART 5 – BREACHES OF THE ACT

19. Offences and penalties

(1) A minister who contravenes section 9(4) commits an offence against the Leadership Code [Cap. 240] and is liable to be dealt with under that Act accordingly.

(2) A political advisor who contravenes paragraphs (e), (f), (g), (h) or (i) of section 16 commits an offence against the Leadership Code [Cap. 240] and is liable to be dealt with under that Act accordingly.

(3) A Secretary to Council who contravenes section 10(3) commits an offence and is liable on conviction to a fine not exceeding VT 200,000, and must be dismissed from office if the Court considers the offence a serious one.

20. Conduct of proceedings

Proceedings against a minister for a breach of section 9(4) or a political advisor for a breach of section 16(d), (e), (f), (g) and (h) or Secretary to Council under section 10(3) are to be conducted in the same manner as any other criminal proceedings.

PART 6 – COUNCIL COMMITTEE ON POLITICAL ADVISORS

21. Council Committee on political advisors

(1) Council will convene a committee of the Council comprising not less than 5 members for the purposes of determining the qualifications necessary to hold a position of political advisor in each particular area, and to determine the terms and conditions of employment of political advisors generally.

(2) The Committee must ensure that the candidate:

(a) has the necessary qualifications or the position; and

(b) is suitable for the position; and

(c) is of good character; and

(d) will attend work and carry out is or her appointed functions; and

(e) is appointed in accordance with the general terms and conditions for the employment of political advisors established by the Committee.

(3) A minister must not appoint a political advisor until the Committee has approved the candidate in accordance with subsection (2).

(4) The Committee must have a quorum of not less than 3 members.

(5) The Committee will be chaired by the Prime Minister or a minister appointed by him.

(6) The Chairperson must give to each member of the Committee not less than 7 days notice in writing of the date, time and venue of a meeting of the Committee.

(7) The notice must provide an agenda for the meeting including the name of any candidate for the position of a political advisor.

22. Further responsibilities of Committee

(1) The Committee on political advisors will also:

(a) determine the structure and budget of each ministerial office; and

(b) specify the number of support staff to be employed; and

(c) ensure that the terms and conditions of employment of political advisors are recorded in a written contract of employment at the time of appointment.

(2) The support staff (other than political advisors) for each minister are to be appointed by the Committee on political advisors on the recommendation of the minister.

(3) The Committee must determine general terms and conditions of employment for such support staff.

(4) Each member of the support staff of a minister must enter into a written contract of employment with the minister.

(5) A person who was a member of the support staff of a minister immediately before this subsection commences, ceases to be an employee within the meaning of the Public Service Act [Cap. 246] on entering into a contract of employment under subsection (4).

PART 6A – NATIONAL SECURITY ADVISORY COMMITTEE

23A. Definitions

In this Part, unless the context otherwise requires:

"Committee" means the National Security Advisory Committee established under section 23B of this Act;

"reporting entity" has the same meaning as in section 1 of the Anti-Money Laundering and Counter-Terrorism Act No. 13 of 2014;

"security" includes:

(a) the protection of Vanuatu from:

(i) espionage; and

(ii) sabotage; and

(iii) seditious intention; and

(iv) active measures of foreign intervention; and

(v) terrorism;

whether directed from, or committed within Vanuatu or not; and

(b) the carrying out of Vanuatu's responsibilities to any foreign country in relation to a matter contained in paragraph (a);

"seditious intention" has the meaning given to it under section 63 of the Penal Code Act [CAP 135];

"UN Financial Sanctions Act" means the United Nations Financial Sanctions Act No. 6 of 2017;

"Unit" means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014.

23B. National Security Advisory Committee

(1) The National Security Advisory Committee is established.

(2) The Committee consists of the following members:

(a) the Director General of the Office of the Prime Minister;

(b) the Director General of the Ministry of Finance and Economic Management;

(c) the Director General of the Ministry of Internal Affairs;

(d) the Director General of the Ministry of Foreign Affairs;

(e) the Attorney General;

(f) the Commissioner of Police;

(g) the Chief Information Officer.

23C. Chairperson and Deputy Chairperson

(1) The Director General of the Office of the Prime Minister is the Chairperson of the Committee.

(2) The Director General of the Ministry of Finance and Economic Management is the Deputy Chairperson of the Committee.

23D. Functions of the Committee

The functions of the Committee are to advise the Prime Minister on:

(a) the designation of a person or entity under the UN Financial Sanctions Act, or an extension or revocation of such a designation; and

(b) an application by a person under the UN Financial Sanctions Act for authorisation to deal with frozen property or make property or a financial service available; and

(c) matters directly affecting the sovereignty, unity and security of Vanuatu; and

(d) the development of Government objectives, policies and programmes on security; and

(e) the preparation of medium and long-term security plans; and

(f) the preparation of security and intelligence programmes and projects, including the financing and implementation of such programmes and projects; and

(g) the monitoring, evaluation and reporting on implementation of the Government's development policies, programmes and projects on security, including at agency level; and

(h) any action required to be taken on any security, defence and intelligence tasks and activities as determined by the Committee; and

(i) the management of crisis situations created by security threats against the sovereignty of Vanuatu and against other security issues.

23E. Powers of the Committee

The Committee has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act or any other Act.

23F. Request for assistance by the Committee

The Committee may request the assistance of a person or any Ministry or Department of Government in carrying out any of its functions set out in section 23D.

23G. Meetings of the Committee

(1) The Committee is to meet on such dates and at such times as the Chairperson determines, and may hold such other meetings as are necessary for the performance of its functions under this Act.

(2) The Chairperson is to preside at all meetings of the Committee and if the Chairperson is absent, the Deputy Chairperson is to preside at that meeting.

(3) The quorum for a meeting of the Committee is the Chairperson or Deputy Chairperson and three other members.

(4) A member present at the meeting has one vote and questions arising at a meeting are to be decided by a majority of votes.

(5) If the voting at a meeting is equal, the member presiding at the meeting has a casting vote.

(6) Subject to this Act, the Committee may determine and regulate its own procedures.

PART 7 – MISCELLANEOUS

23. Responsible minister

Where two or more ministers are responsible for different functions within a ministry, and this Act or any other Act refers to one minister then the minister that the Prime Minister appoints to be responsible for the function will be the minister so responsible for that function.

24. Regulations

The Prime Minister may from time to time by order make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

Table of Amendments

3	*Amended by Act 2 of 2010*
7(2)	*Substituted by Act 2 of 2010*
9(4)	*Repealed by Act 23 of 2000*
9(4),(5),(6)	*Inserted by Act 38 of 2000*
13(1)	*Substituted by Act 23 of 2000*
13(1)(d)	*Repealed by Act 38 of 2000*
13(2)	*Repealed by Act 23 of 2000*
13(3)-(9)	*Inserted by Act 38 of 2000*
14A and 14B	*Inserted by Act 2 of 2008*
14A and 14B	*Repealed by Act 29 of 2008*
15	*Repealed by Act 23 of 2000; inserted by Act 38 of 2000*
16(c)	*Repealed by Act 2 of 2008*
16(d) – (i)	*Reletter by Act 2 of 2008*
16(c),(e)	*Repealed by Act 23 of 2000, inserted by Act 38 of 2000*
17	*Substituted by Act 23 of 2000; Substituted by Act 38 of 2000*
18	*Amended by Act 23 of 2000; substituted by Act 38 of 2000*
19(2)	*Repealed by Act 23 of 2000, inserted by Act 38 of 2000*
22(2)	*Substituted by Act 23 of 2000; Substituted by Act 38 of 2000*
22(3)-(5)	*Inserted by Act 38 of 2000*
Part 6A (23A-23G)	*Inserted by Act 7 of 2017*