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CHAPTER 111

OFFICIAL SECRETS

JR 15 of 1980

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OFFICIAL SECRETS

To provide for the preservation of the secrets of the Government.

1. Interpretation

(1) In this Act, except where the context otherwise requires –

"article" includes any official seal of the Government and any die, seal or stamp of or belonging to, or used by, the Government or any department or authority within the Government;

"classified material" means –

(a) any official code, plan, article or document relating to the affairs of the Government,

(i) which is classified for security purposes by the appropriate department or authority within the Government as top secret, secret, confidential or restricted material; or

(ii) the use or possession of which without lawful authority would or might, by virtue of the contents or nature of the material, directly or indirectly prejudice the safety or interests of the Government or the Republic;

(b) any official information, of a secret, confidential or restricted nature relating to the affairs of the Government and which if contained in a document would properly be classified as in paragraph (a)(i) of this definition;

(c) any confidential material or information lodged or registered in accordance with any law;

"code" means a code, code word, cipher or any group of letters or figures or both constituting part of a code;

"Government" means the Government of the Republic of Vanuatu;

"office in the service of the Government" means any office or temporary or permanent employment in or under the Government, and any office as member, officer or employee of any board, commission or other body established by or under the Constitution or an Act of Parliament, and includes an office in the teaching service and as an assessor in a court;

"plan" includes sketch, model, design, pattern and specimen;

"sketch" includes a photograph and any other mode of representing any place or thing;

"Vanuatu" means the Republic of Vanuatu.

(2) In this Act –

(a) expressions referring to communicating or receiving include any communicating or receiving whether in whole or in part and whether the classified material itself or only the substance, effect or description thereof is communicated or received;

(b) expressions referring to obtaining or retaining any classified material include copying or causing to be copied the whole or any part of any classified material; and

(c) expressions referring to the communication of any classified material include the transfer or transmission of the classified material.

2. Offences in connection with unauthorized use of, and wrongful communication of classified material or information by officers in service of Government

Any person, being the holder of an office in the service of the Government, who –

(a) without lawful authority, obtains, collects, records, publishes or has in his possession any classified material; or

(b) contrary to his official duty communicates any classified material to any person; or

(c) retains any classified material when he has no right to retain it or when it is contrary to his duty to retain it; or

(d) fails to comply with any directions issued by lawful authority with regard to the use, return or disposal of classified material; or

(e) permits any person to have possession of any classified material issued for his use alone; or

(f) on obtaining possession of any classified material by finding or otherwise, neglects or fails to restore it forthwith to the person or authority by whom or for whose use it was issued or to the Government; or

(g) fails to take reasonable care of, or so conducts himself as to endanger the safety of, any classified material in his possession or control; or

(h) uses, or permits to be used, any classified material in his possession or under his control in a manner which is calculated to be or might be or is intended to be indirectly prejudicial to the safety or interests of the Government,

shall be guilty of an offence.

3. Persons holding office in service of Government to make a declaration

(1) Subject to the provisions of subsection (2), this Act, and in particular section 2, shall be brought to the attention of every person who holds office in the service of the Government at the date of the coming into operation of this Act and of every person who, after the coming into operation of this Act, is appointed to an office in the service of the Government, and in each case, such person shall make and sign a declaration in the form in the Schedule.

(2) It shall be no defence for a person charged with an offence under section 2 to prove that this section was not complied with.

4. Offences by persons not holding office in service of Government

Any person, other than a person holding office in the service of the Government, who being in possession of any classified material which has, under lawful authority, been entrusted in confidence to him by a person holding office in the service of the Government –

(a) communicates in whatever manner the classified material, so entrusted to any person other than a person to whom he is authorised to communicate it or a person to whom it is his duty to communicate it; or

(b) retains any material, so entrusted, when he has no right to retain it or when it is contrary to his duty to retain it; or

(c) fails to comply with any directions issued by lawful authority with regard to the use, return or disposal of the material so entrusted; or

(d) permits any person to have possession of the material entrusted for his use alone; or

(e) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the material entrusted to him; or

(f) uses, or permits to be used, the material so entrusted in a manner which is calculated to be or might be or is intended to be directly or indirectly prejudicial to the safety or interests of the Government,

shall be guilty of an offence.

5. Offences connected with unauthorized possession of classified material by persons not in service of Government

Any person, other than a person holding office in the service of the Government, who on obtaining possession of any classified material, by finding or otherwise, neglects or fails to restore it forthwith to the person or authority by whom or for whose use it was issued or to the Government or to a police officer shall be guilty of an offence.

6. Attempts, incitements etc.

Any person who attempts to commit an offence under this Act, or solicits or incites or endeavours to persuade another person to commit any such offence, or aids or abets or does any act preparatory to the commission of such an offence under this Act, shall be guilty of an offence.

7. Consent to prosecution

A prosecution for an offence under this Act shall not be instituted except with the written consent of the Public Prosecutor.

8. Offences committed outside the Republic of Vanuatu

An act, omission or thing which would by reason of this Act be punishable as an offence if committed in Vanuatu shall, if committed outside Vanuatu by a person who at the time of the commission was a resident of Vanuatu or a person holding office in the service of the Government, be an offence under this Act triable and punishable in Vanuatu.

9. Place of offence

For the purpose of the trial of a person of an offence under this Act, the offence shall be considered to have been committed either at the place in which it was actually committed or at any place in Vanuatu in which the offender may be found.

10. Exclusion of public from trial

In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from the proceedings, if in the course of proceedings before the court against any person for an offence under this Act or of the proceedings on appeal, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the interest of the Government, that all or any portion of the public shall be excluded during the whole or any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

11. Presumption as to purpose prejudicial to safety of Government

On the prosecution of a person for an offence under paragraph (h) of section 2 or paragraph (f) of section 4, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the Government and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or from his conduct or his known character, as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the Government.

12. Proof of lawful authority

The burden of proving lawful authority shall be upon the person alleging it, and accordingly in any proceedings for prosecution for an offence under this Act it shall not be necessary to prove the lack of any such authority.

13. Penalty

Any person guilty of an offence under this Act shall be liable to a fine not exceeding VT 60,000 or to imprisonment for a term not exceeding 3 years, or to both such fine and such imprisonment.

SCHEDULE

(Section 3(1))

Official Secrets Act, Cap. 111

DECLARATION BY PERSON HOLDING OFFICE IN THE SERVICE OF THE GOVERNMENT OF THE REPUBLIC OF VANUATU

I ....., being
(full name)
the holder of an office in the service of the Government, hereby declare that the provisions of the Official Secrets Act, Cap. 111 and in particular section 2 thereof and the definition of classified material contained therein, have been brought to my attention, and I understand the same and that I am fully aware of the serious consequences which may follow any breach of those provisions.

I further understand that I am liable to be prosecuted for an offence under the Act whether committed during the tenure of my present office, or any other office I might hold, in the service of the Government or committed after I cease to hold office in the service of the Government.

MADE this ..... day of ..... 20 ..... in the presence of

.....
(witness)

.....
(Signature of declarant)