Commencement: 14 September 1998

CHAPTER 242

STATE LAW OFFICE

Act 4 of 1998
Act 5 of 1999
Act 9 of 2001

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STATE LAW OFFICE

An Act to provide for a State Law Office and for the legal officers of the State.

PART 1 – PRELIMINARY

1. Purpose

The purpose of this Act is to provide for the establishment of a State Law Office, the appointment of legal officers of the State and to provide for the duties, functions and responsibilities of the Office and of legal officers.

2. Interpretation

In this Act, unless the context otherwise requires:

"Attorney General" means the person appointed as Attorney General under section 7;

"Office" means the State Law Office;

"Government" means the Government of the Republic of Vanuatu and includes, for the purposes of this Act, those elected members of Parliament comprising the Government;

"legal officer" means a person appointed to the State Law Office under this Act and includes the Attorney General;

"Trust Fund" means the State Law Office Trust Fund established by section 24A.

PART 2 – STATE LAW OFFICE

3. State Law Office

There is hereby established a State Law Office.

4. Minister responsible for Office

The Minister responsible for the Office shall be the Prime Minister or a Minister appointed by the Prime Minister for that purpose.

5. Head of Office

The Attorney General shall be the head of the Office.

6. Principal functions of Office

The principal functions of the Office shall be:

(a) to provide advice to, and represent the Government on, legal matters that may be referred to it by the President, the Council of Ministers, the Prime Minister, a Minister, a director-general of a ministry, or a director of a department; and

(b) to provide legislative drafting services to Government.

PART 3 – ATTORNEY GENERAL

7. Appointment of Attorney General

The Attorney General shall be appointed by the President on the advice of the Judicial Service Commission.

8. Qualifications of Attorney General

No person shall be appointed to the position of Attorney General unless he or she has:

(a) been in practice as a barrister or solicitor or both in Vanuatu or in a Commonwealth country or French territory or partly in one and partly in one of the others for a period of, or periods amounting in aggregate to, not less than 7 years; and

(b) has been admitted to practice in Vanuatu as a legal practitioner.

9. Term of office and employment

(1) The Attorney General shall be appointed for a term of 3 years and may be reappointed.

(2) The Attorney General may on 3 months' notice resign from office in writing addressed to the Prime Minister.

(3) The Attorney General may only be removed from office by the President on the advice of the Judicial Service Commission for disability, bankruptcy, neglect of duty, incompetence or misconduct.

(4) Subject to the provisions of any other enactment the salary, and any allowances and other entitlements of the Attorney General shall be determined by the Judicial Service Commission.

10. Role, functions and powers of Attorney General

(1) The Attorney General shall be the principal legal officer of the State and the principal legal adviser to Government.

(2) The Attorney General shall be vested with all such duties, functions and powers as may be provided for by the Constitution, statute and at common law.

(3) The Attorney General shall participate in all meetings and deliberations of the Council of Ministers for the purpose of providing independent legal advice but shall have no vote, and shall not be deemed to be a member of the Council.

(4) The Attorney General shall have a right of audience in, and shall take precedence over, any other person appearing before any court or tribunal.

11. Independence of Attorney General

(1) The Attorney General must carry out his or her obligations under the Constitution, this Act or any other enactment or at common law independently and shall provide legal advice to the Government accordingly.

(2) The Attorney General is not to be subject to the direction of any other person or body in the exercise of his or her functions.

12. Exercise of the Attorney General's functions and powers

(1) The Attorney General may exercise his or her functions through the Solicitor General or any other legal officer appointed to the Office.

(2) Notwithstanding the delegation of functions under subsection (1), the Attorney General must supervise his or her legal officers and remain responsible for their performance of such functions.

(3) Any function authorised or required by any enactment or at common law to be performed by the Attorney General may be discharged by the Solicitor General if.

(a) the office of the Attorney General is vacant; or

(b) the Attorney General is unable to act owing to absence or illness; or

(c) the Attorney General authorises the Solicitor General to act in any particular case.

(4) During any period when the office of Attorney General is vacant, any certificate, petition, direction, notice, proceeding or other document, matter or thing whatsoever authorised or required by any enactment to be given, delivered, served, taken or done to, on or against the Attorney General, may be given, delivered served, taken or done to, on or against the Solicitor General.

PART 4 – LEGAL OFFICERS OF THE STATE

13. Legal officers

There shall be appointed to the Office, the following legal officers:

(a) a Solicitor General; and

(b) a Parliamentary Counsel; and

(c) such other legal officers, to be known as State Counsel, as are required to assist in fulfilling the functions of the Office.

14. Solicitor General

The principal function of the Solicitor General is to conduct civil proceedings as directed by the Attorney General.

15. Parliamentary Counsel

The principal function of the Parliamentary Counsel is to draft legislation on behalf of the Government as directed by the Attorney General.

16. State Counsel

The principal function of State Counsel is to assist in the functions of the Attorney General and the Office, as directed by the Attorney General.

17. Appointment of legal officers

(1) Subject to subsection (2), the Attorney General is to appoint all legal officers to the Office.

(2) No person shall be appointed to the Office as a legal officer unless that person:

(a) has a law degree from a recognized tertiary institution or similar qualification; and

(b) has sufficient experience and ability to fulfil the role to which he or she is to be appointed; and

(c) is approved by a committee consisting of a private legal practitioner appointed by the Attorney General, and a representative from the State Law Office, the Public Solicitor's Office and the Public Prosecutor's Office.

(3) The Attorney General may, by instrument in writing, appoint a person as a legal officer:

(a) for a period specified in the instrument; or

(b) in respect of a particular legal matter specified in the instrument.

18. Terms of employment

(1) An appointment as a legal officer shall be pursuant to a written contract of employment with the Attorney General on such terms and conditions as shall be determined by the Attorney General and appointed by the Judicial Service Commission.

(2) The salary and any allowances and entitlements shall be as determined by the Attorney General in consultation with the Judicial Service Commission.

(3) In the appointment of a legal officer the Attorney General must have regard to the budget available to the Office.

19. Independence of legal officers

(1) A legal officer must carry out his or her duties under the Constitution, this Act or any other enactment and at common law at the direction of the Attorney General.

(2) A legal officer is not to be subject to the direction of any other person or body in the exercise of his or her functions other than by the Attorney General.

PART 5 – SUPPORT STAFF

20. Support staff

(1) The Attorney General may appoint such other employees as may be necessary for the efficient carrying out of the functions of the Office.

(2) The Government will ensure that there is a sufficient budget allocated to the Office to enable it to properly fulfill its functions. The Attorney General must have regard to that budget when employing staff.

(3) No person will be deemed to be employed in the Public Service by reason of appointment under this section.

PART 6 – GOVERNMENT AND THE ATTORNEY GENERAL

21. Interference with Attorney General and Office prohibited

The President, Government and all other persons whether in the Public Service or otherwise must not interfere or attempt to interfere in the performance and independence of the Attorney General and the Office.

22. Duty to consult with Attorney General

(1) In all legal matters concerning the State or Government, the President, and Government, must consult the Attorney General.

(2) The President or Government will not instruct a private legal practitioner in matters of State without the prior written approval of the Attorney General.

(3) The Attorney General may when he or she considers it prudent or when the circumstances warrant, engage a private legal practitioner to undertake legal work on behalf of the Office.

PART 7 – MISCELLANEOUS

23. Legal officers not entitled to private practice

(1) Subject to subsection (2) no legal officer appointed to the Office, including the Attorney General, will engage in private practice of any kind.

(2) The Attorney General may grant prior written approval to a legal officer (but may not himself or herself) or private practitioner temporally appointed to the Office whatever his or her designation, to carry on private practice, subject to such conditions as the Attorney General may impose, and may from time to time cancel such permission or vary or add to the conditions.

24. Remuneration

The salary, allowances and entitlements of any legal officer or support staff appointed under this Act, including the Attorney General, are subject to any limitations imposed in any other enactment.

24A. State Law Office Trust Fund

(1) An account to be known as the State Law Office Trust Fund is established.

(2) There is to be paid into the Trust Fund:

(a) any amounts recovered by the Office for legal or professional costs, or disbursements, arising from proceedings in any court within or outside Vanuatu including for any cases settled out of court; and

(b) interest from the investment of moneys standing to the credit of the Trust Fund.

(3) Amounts standing to the credit of the Trust Fund are to be paid out of the Fund only for the purposes of the Office.

(4) Without limiting subsection (3), amounts may be used for all or any of the following:

(a) providing financial incentives to legal and support staff within the Office;

(b) training and development of legal and support staff within the Office;

(c) the purchase of equipment and furniture for the Office;

(d) additional legal and support staff for the Office;

(e) such other matters related to the functions of the Office that the Attorney General authorises in writing.

(5) Money standing to the credit of the Trust Fund can be invested only with the National Bank of Vanuatu.

24B. Accounts and auditing, and annual report

(1) The Office must keep proper accounting records in relation to the Trust Fund, and must cause annual statements of account to be prepared for the Trust Fund.

(2) The Trust Fund for each financial year must be audited within 3 months after the end of the financial year by the Auditor-General or a person authorised by the Auditor-General.

(3) Details of monies paid into and out of the Trust Fund must be included in the annual report for the Office.

25. Rights of legal officers and others to practice law

(1) The Attorney General, Solicitor General or any other legal officer when carrying out work of a legal professional nature in that capacity for the Office:

(a) is entitled to practice as a barrister and solicitor in any court in Vanuatu; and

(b) is entitled to all the rights and privileges of a barrister and solicitor in that court,

whether or not he or she is so entitled apart from this subsection.

(2) If:

(a) the Attorney General, Solicitor General or any other legal officer does or omits to do any act; and

(b) he or she does or omits to do that act in the course of carrying out work of a legal professional nature in that capacity for the Office;

he or she is subject to the duties and obligations to which he or she would be subject if that act had been done or omitted to be done in the course of practice by him or her as a barrister and solicitor.

25A. Regulations

(1) The Minister may, by Order in writing, make regulations not inconsistent with this Act for the better carrying out or giving effect to the provisions of this Act.

(2) Without limiting subsection (1), regulations may be made for any of the following purposes:

(a) the classification of legal officers and other staff;

(b) the promotion of legal officers and other staff;

(c) the training and education of legal officers and other staff.

26. Transitional

Every person appointed to an office in the Office of the Attorney General under the Law Officers Act [Cap. 118] or employed in that Office immediately before the commencement of this Act will, after the commencement of this Act continue in office as if appointed or employed (as the case may be) under and subject to the provisions of this Act.

27. Repeal

The Law Officers Act [Cap. 118] is repealed.

Table of Amendments

2	*Amended by Act 9 of 2001*	*24A*	*Inserted by Act 9 of 2001*
17(2)(a)	*Substituted by Act 5 of 1999*	*24B*	*Inserted by Act 9 of 2001*
17(2)(c)	*Substituted by Act 9 of 2001*	*25*	*Substituted by Act 5 of 1999*
17(3)	*Inserted by Act 5 of 1999*	*25A*	*Inserted by Act 5 of 1999*
19(1)	*Amended by Act 5 of 1999*		