REPUBLIC OF VANUATU

CONSOLIDATION OF THE FRENCH AND ENGLISH TEXTS OF THE LAWS OF VANUATU ACT [CAP 295]

Approval of the English Text of the National Security Consolidation Edition 2023 Order No. 113 of 2023

In exercise of the powers conferred on me by subsection 9(1) of the Consolidation of the French and English Texts of the Laws of Vanuatu Act [CAP 295], I, the Honourable JOHN STILL TARI QETU, Minister of Justice and Community Services, make the following Order:

1 Approval of the English Text of the National Security Consolidation Edition 2023

The English Text of the National Security Consolidation Edition 2023 is approved.

2 Appointed day

The appointed day for the coming into operation of the National Security Consolidation Edition 2023 is the day on which this Order is made.

3 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 06th **day of** July **, 2023.**

REPUBLIC OF VANUATU
Ministry of Justice & Community Service
MINISTER
Ministère de la Justice et services du Communauté
RÉPUBLIQUE DE VANUATU

Honourable JOHN STILL TARI QETU
Minister of Justice and Community Services

Commencement: 6 February 2020

NATIONAL SECURITY ACT NO. 41 OF 2019

Act 41 of 2019
Act 7 of 2023

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NATIONAL SECURITY ACT NO. 41 OF 2019

An Act to establish the National Security Council and to provide for other matters relating to national security.

PART 1 – PRELIMINARY

1. Interpretation

In this Act, unless the contrary intention appears:

"Council" means the National Security Council established under section 3;

"Chairperson" means the Chairperson of the Council;

"Deputy Chairperson" means the Deputy Chairperson of the Council;

"government agency" means:

(a) a Ministry of the Government; or

(b) a Department within a Ministry; or

(c) an office or body established by the Constitution; or

(d) an office or body established by or under an Act;

"high risk" means a threat and the high possibility of suffering harm or loss of significant consequence. It includes espionage and foreign interference;

"intelligence information" means the information and data collected, analysed and processed, regarding threats to Vanuatu, the Government and its people;

"national security" includes:

(a) the protection of Vanuatu from any of the following, whether or not directed from or committed with Vanuatu:

  (i) espionage;

  (ii) sabotage;

  (iii) seditious intention;

  (iv) active measures of foreign intervention;

  (v) terrorism; and

(b) the protection of Vanuatu from climate change, health emergencies and environmental disasters; and

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

"National Security Advisor" means the National Security Advisor referred to in section 18;

"Secretariat" means the Secretariat of the Council established under section 16.

"security threat" means someone, or something that poses danger to the security and safety of Vanuatu, the Government of the Republic of Vanuatu, or an individual. It includes natural and man-made disasters, pandemic, corruption, transnational organized crime, money laundering, terrorism, environmental crime, espionage or cybercrime;

2. Purpose

This Act has the following purposes:

(a) to give effect to the national security objectives outlined in the National Security Strategy to:

(i) ensure a safe, stable and prosperous society in Vanuatu and protection of Vanuatu's values; and

(ii) protect and strengthen Vanuatu's sovereignty; and

(iii) secure Vanuatu's assets, infrastructure and institutions; and

(iv) ensure Vanuatu's foreign policy and external engagement maximise Vanuatu's national interests; and

(b) to provide a comprehensive legislative framework for a well-co-ordinated and effective government machinery to manage national security issues.

PART 2 – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE NATIONAL SECURITY COUNCIL

3. Establishment of the National Security Council

The National Security Council is established.

4. Functions of the National Security Council

The functions of the Council are:

(a) to advise, and make recommendations to, the Council of Ministers on national security, and law and order issues in Vanuatu; and

(b) to make decisions or issue directives under section 6.

5. Function to provide advice and make recommendations

Without limiting paragraph 4(a), the Council may provide advice and make recommendations on any or all of the following:

(a) matters affecting national security, and law and order;

(b) the development and implementation of Government objectives, policies and programmes relating to national security, and law and order, including at government agency level;

(c) the preparation of medium and long-term national security, and law and order, plans;

(d) any action taken to address risks or threats to national security, or law and order;

(e) the management of crisis situations arising from risks or threats to national security, and law and order;

(f) any other matter relating to national security, and law and order, as requested or directed by the Prime Minister or as the Council considers necessary.

6. Urgent action if high risk or threat to national security

(1) This section applies if the Council is satisfied that the circumstances require urgent action to be taken to address a high risk or threat to Vanuatu's national security.

(2) Without limiting paragraph 4(b), the Council may do any or all of the following:

(a) decide, manage and oversee a whole-of-Government response to the risk or threat;

(b) issue written directions to one or more of the following persons to take specified action to address the risk or threat:

(i) the Commissioner of Police;

(ii) the Commander of the Vanuatu Mobile Force;

(iii) the head of a government agency.

(3) A person to whom a direction is given under paragraph 2(b), must comply with the direction so far as is practicable.

7. Powers of the Council

(1) The Council has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.

(2) Without limiting subsection (1), the Council has the power to do all or any of the following to address a risk or threat to Vanuatu's national security:

(a) despite the provisions of any other Act, to instruct a Minister to stop events, ceremonies or other social activities under his or her prerogative;

(b) to instruct a Director General or a Director to take immediate actions;

(c) to request the presence of a public servant or an officer of a statutory body to appear before it on any matter involving national security;

(d) to prohibit the entry into Vanuatu waters of any military or research vessel or Vanuatu airspace of any military aircraft, if their entry into Vanuatu is not for purposes that are of national interest;

(e) to close Vanuatu borders;

(f) to prohibit a government agency from entering into a contract or agreement.

8. Request for assistance

(1) In performing any of its functions, the Council may request the assistance of any government agency.

(2) The government agency must comply with the request, including providing any information required by the Council to perform its functions.

8A. Independence of the Council

The Council is not subject to the direction of any other person or body in the exercise of its functions.

PART 3 – MEMBERSHIP AND MEETINGS OF THE NATIONAL SECURITY COUNCIL

9. Membership

The members of the Council are:

(a) the Prime Minister; and

(b) the Deputy Prime Minister; and

(c) the Minister responsible for internal affairs; and

(d) the Minister responsible for foreign affairs; and

(e) the Minister responsible for finance; and

(f) the Minister responsible for climate change; and

(fa) the Minister responsible for health; and

(g) the Commissioner of Police; and

(h) the Attorney-General.

10. Chairperson and Deputy Chairperson

The Prime Minister is the Chairperson of the Council and the Deputy Prime Minister is the Deputy Chairperson of the Council.

11. Meetings

(1) The Council is to meet on a monthly basis on such dates and at such times as the Chairperson determines.

(2) The Council may meet at such other times as the Chairperson determines is necessary for the proper performance of the Council's functions.

(3) The Chairperson is to preside at any meeting of the Council.

(4) If the Chairperson is absent from a meeting of the Council, the Deputy Chairperson is to preside at that meeting.

(5) If the Chairperson and the Deputy Chairperson are both absent from a meeting, the other members of the Council present at that meeting are to elect a member to preside at the meeting.

(6) The quorum for a meeting of the Council is 5 members present at the meeting.

12. Other persons may be invited to Council meetings

(1) The Council may invite other persons, including Ministers, to attend meetings of the Council.

(2) Representatives from the following organisations may attend meetings of the Council whenever required or approved by the Council:

(a) the Malvatumauri Council of Chiefs; and

(b) the Vanuatu Christian Council; and

(c) organisations representing youth and women.

(3) A Minister or other person invited to attend a meeting of the Council has no voting right at the meeting.

13. Council to operate by consensus

(1) So far as practicable, the Council is to operate by consensus.

(2) However if consensus is not reached at a meeting of the Council, each member present at a meeting has 1 vote and questions arising at a meeting are to be decided by a simple majority of votes of members present at the meeting.

(3) If, at a meeting of the Council, the voting is equal, then:

(a) the Chairperson has a casting vote if the Chairperson is presiding at that meeting under subsection 11(3); or

(b) the Deputy Chairperson has a casting vote if the Deputy Chairperson is presiding at that meeting under subsection 11(4); or

(c) if another member of the Council is presiding at that meeting under subsection 11(5), that other member has a casting vote.

14. Conflict of interest

(1) A member of the Council who has a direct or indirect interest in a matter being considered, or about to be considered, at a meeting of the Council must disclose the nature of the interest at the meeting.

(2) A disclosure is to be recorded in the minutes of the meeting of the Council and the member concerned must not:

(a) be present during any deliberation of the Council in relation to that matter; or

(b) take part in any decision of the Council in relation to that matter.

14A. Resolutions adopted by the Council

(1) Resolutions adopted by the Council, upon the endorsement of the Council of Ministers, are legally binding.

(2) Resolutions with budgetary consequences must be submitted to the Council of Ministers for consideration.

15. Meeting procedures

Subject to this Act, the Council is to determine and regulate its own procedures, including conducting meetings by electronic means of communication.

PART 4 – SECRETARIAT TO THE NATIONAL SECURITY COUNCIL

16. Establishment of Secretariat

(1) A Secretariat to the Council is established within the Office of the Prime Minister.

(2) The National Security Advisor is the head of the Secretariat.

(3) The staff of the Secretariat are to be employed or seconded to the Secretariat under the Public Service Act [CAP 246].

17. Functions of the Secretariat

(1) The functions of the Secretariat are:

(a) to provide, through the National Security Advisor, strategic policy support and recommendations to the Council; and

(b) to provide operational support to the Council.

(2) Without limiting paragraph (1)(b), operational support includes the following:

(a) to prepare, in consultation with the chairperson, and circulate the agenda for Council meetings;

(b) to keep records of advices, recommendations, decisions and directives made by the Council;

(c) to coordinate the implementation of Council decisions and directives;

(d) to liaise with government agencies which are represented on the Council regarding matters to be considered by the Council;

(e) to coordinate the preparation of submissions, reports, papers and briefs on national security matters for consideration by the Council;

(f) to keep minutes of the Council meetings;

(g) to prepare, in consultation with the, an annual work plan for the, Council;

(h) to prepare reports, on a monthly basis, on matters considered by the Council for submission to the Prime Minister;

(i) to provide other administrative and secretarial support to meetings of the Council as required;

(j) to perform such other functions as prescribed by the Regulations.

18. National Security Advisor

(1) A National Security Advisor is to be appointed under the Public Service Act [CAP 246].

(2) The National Security Advisor is also the secretary of the Council.

18A. Functions of the National Security Advisor

The National Security Advisor has the following functions:

(a) to lead the national intelligence effort to promote national security objectives; and

(b) to provide strategic intelligence assessments to the Prime Minister, the Council or any Minister as is required; and

(c) to ensure and coordinate the implementation of the decisions of the Council; and

(d) to coordinate and oversee the performance of the Government in the national security sector; and

(e) such other functions as may be conferred on the National Security Advisor under this Act or any other Act.

18B. Powers of the National Security Advisor

(1) The National Security Advisor has the power to do all things that are necessary or convenient to be done for or in connection to the performance of his or her functions under this Act or any other Act.

(2) Without limiting subsection (1), the National Security Advisor has the power to direct and coordinate intelligence collection and assessment on issues of national security.

18C. Independence of the National Security Advisor

The National Security Advisor is not subject to the direction of any other person or body (other than the Chairperson of the National Security Council and the Council), in the exercise of his or her functions.

PART 4A – ESTABLISHMENT OF THE NATIONAL SECURITY SENIOR OFFICIALS COMMITTEE

18D. Establishment of the National Security Senior Officials Committee

(1) The National Security Senior Officials Committee is established.

(2) The Committee consists of the following members:

(a) the Director General of the Prime Minister's Office who is to be the Chairperson of the Committee; and

(b) the Director General of the Ministry in which the Deputy Prime Minister is responsible for; and

(c) the National Security Advisor; and

(d) the Director General of the Ministry of Foreign Affairs and External Trade; and

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

(f) the Director General of the Ministry of Climate Change; and

(g) the Director General of the Ministry of Health; and

(h) the Director General of the Ministry of Infrastructure and Public Utilities; and

(i) the Director General of the Ministry of Internal Affairs; and

(j) the Deputy Commissioner of the Vanuatu Police Force; and

(k) the Parliamentary Counsel of the office of the Attorney General.

18E. Meetings of the Committee

(1) The Committee must meet on a monthly basis on a date which must be before the date set for the monthly meeting of the Council or at any time as required.

(2) The Chairperson of the Committee is to convene the monthly meetings and is to preside over all meetings of the Committee.

(3) If the Chairperson is unable to attend a meeting of the Committee, he or she must nominate a member to preside at the meeting of the Committee.

(4) At a meeting of the Committee, a decision is taken by majority votes of the members physically or virtually present at the meeting.

(5) The Chairperson and Deputy Chairperson of the Committee are entitled to a sitting allowance of VT10,000 for each day on which a meeting of the Committee is held. The Chairperson and Deputy Chairperson must be present for the duration of the meeting to be entitled to be paid this allowance.

(6) A member of the Committee is entitled to a sitting allowance of VT5,000 for each day on which a meeting of the Committee is held. A member must be present for the duration of the meeting to be entitled to be paid this allowance.

(7) The Committee may determine its own procedures.

18F. Other committees

The Chair of the Council, on the recommendation of the National Security Advisor, may appoint such committees as are necessary to ensure implementation and monitoring of the national security pillars.

PART 5 – MISCELLANEOUS

19. Official Secrets Act [CAP 111]

The Official Secrets Act [CAP 111] applies to a person performing a function for the purposes of this Act.

20. Regulations

(1) The Prime Minister may, on the recommendation of the Council, make Regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Prime Minister is to issue by Order, the Security Classification Handbook providing guidelines for protecting Government information.

Table of Amendments

1	*Amended by Act 7 of 2023*	*12(2)*	*Substituted by Act 7 of 2023*
7	*Substituted by Act 7 of 2023*	*14A*	*Inserted by Act 7 of 2023*
8A	*Inserted by Act 7 of 2023*	*18A-18C*	*Inserted by Act 7 of 2023*
9(fa)	*Inserted by Act 7 of 2023*	*Part 4A*	*Inserted by Act 7 of 2023*
11(1)	*Amended by Act 7 of 2023*	*20*	*Substituted by Act 7 of 2023*