Commencement: 14 September 1998

CHAPTER 242

OFFICE OF THE ATTORNEY GENERAL

Act 4 of 1998
Act 5 of 1999
Act 9 of 2001
Act 1 of 2020
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OFFICE OF THE ATTORNEY GENERAL

An Act to provide for a Office of the Attorney General 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 Office of the Attorney General, 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 Office of the Attorney General;

"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;

PART 2 – OFFICE OF THE ATTORNEY GENERAL

3. Office of the Attorney General
There is hereby established a Office of the Attorney General.

4. Minister responsible for Office
The Minister responsible for the Office shall be the Prime Minister.

5. Head of Office
The Attorney General shall be the head of the Office.

6. Principal functions of the Office
The principal functions of the Office are:

(a) to provide legal advice to the Prime Minister, the Council of Ministers, the President, a Director General, a Director, and a First Political Advisor; and

(b) to represent the President and Government on legal matters; and

(c) to provide legislative drafting services to the Government; and

(d) to provide advice to the Government on policy matters relating to the development of legislation; and

(e) to issue and maintain records of Vanuatu Gazettes.

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. Criteria of appointment of the Attorney General

A person must not be appointed to the position of the Attorney General unless he or she has:

(a) been in practice as a barrister or solicitor in Vanuatu for periods amounting in aggregate to, not less than 10 years; and

(b) at least 7 years' experience in managing a legal office; and

(c) has not occupied a position of responsibility within a political party; and

(d) no prior conviction.

9. Term of office and employment

(1) The Attorney General shall be appointed for a term of 5 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 be removed from Office by the President, on the advice of the Judicial Service Commission if he or she:

(a) is incompetent; or

(b) is declared bankrupt; or

(c) is incapacitated; or

(d) is involved in a serious misconduct; or

(e) is convicted of an offence; or

(f) is actively involved in politics in Vanuatu; or

(g) neglects to carry out his or her functions under the Act or any other Act.

(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. Functions and powers of the Attorney General

(1) The Attorney General is the principal legal officer and the principal legal adviser to the State.

(2) The Attorney General is to participate in all meetings and deliberations of the Council of Ministers for the purpose of providing legal advice.

(3) The Attorney General has a right of audience in, and is to take precedence over, any other person appearing before any court or tribunal.

(4) All courts and tribunals, and all judges, magistrates and members of tribunals are to take judicial notice of the signature of a person who is, or was the Attorney General or who is, or has been, authorised by the Attorney General to act under section 12.

(5) Subject to the Government Contracts and Tenders Act [CAP 245], and with the prior approval of the Council of Ministers, the Attorney General has the power to do all things necessary or convenient to be done, in the name of the Office, for or in connection with the principal functions of the Office including:

(a) acquiring, holding and disposing of property; and

(b) entering into contracts, agreements or arrangements.

11. Independence of the Attorney General

The Attorney General is not subject to the direction of any person 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, the Parliamentary Counsel, the General Counsel 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 this Act and any other Act to be performed by the Attorney General may be discharged by the Solicitor General, the Parliamentary Counsel or the General Counsel if:

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

(b) the Attorney General is unable to act due to his or her absence or illness; or

(c) the Attorney General authorises the Solicitor General, the Parliamentary Counsel or the General Counsel to act in any particular matter.

PART 4 – LEGAL OFFICERS OF THE STATE

13. Legal officers

(1) The Attorney General is to appoint the following officers based on a fair and transparent selection process:

(a) the Solicitor General; and

(b) the Parliamentary Counsel; and

(c) the General Counsel; and

(d) State Counsels as are required to assist in fulfilling the functions of the Office.

(2) A person appointed to the Office under this section must have:

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

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

14. Solicitor General

The principal function of the Solicitor General is to conduct civil proceedings and to perform such other functions 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 and to perform such other functions as directed by the Attorney General.

16. General Counsel

The principal function of the General Counsel is to be in charge of other general legal functions of the Office and to perform such other functions as directed by the Attorney General.

17. State Counsels

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

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.

(2) The salary and any allowances and entitlements shall be as determined by the Attorney General.

19. Independence of legal officers and support staff

(1) A legal officer or any other private legal practitioner engaged by the Attorney General on legal matters of the State, must carry out his or her duties under this Act or any other Act.

(2) A legal officer, any other legal practitioner referred to under subsection (1) and a support staff 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 – HEADS OF UNITS COMMITTEE AND SUPPORT STAFF

20. Heads of Units Committee

(1) The Heads of Units Committee is established.

(2) The Committee consists of:

(a) the Attorney General; and

(b) the Solicitor General; and

(c) the Parliamentary Counsel; and

(d) the General Counsel; and

(e) the Director of Corporate Services.

(3) The Committee is responsible to consider administrative matters brought to it by the Attorney General or any other Heads of Units.

(4) The decision of the Attorney General on any administrative matter brought to the Heads of Units under subsection (3) is final.

20A. Director of Corporate Services

(1) The Attorney General is to appoint the Director of Corporate Services based on a fair and transparent selection process.

(2) The Director of Corporate Services is responsible for managing the corporate services of the Office and to perform such other functions as directed by the Attorney General.

20B. Support staff

The Attorney General may appoint such support staff based on a fair and transparent selection process, and is to determine the terms and conditions of employment of the support staff as may be necessary for the efficient carrying out of the functions of the Office.

PART 6 – GOVERNMENT AND THE ATTORNEY GENERAL

21. Interference with the Attorney General and the Office prohibited

A person 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.

(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.

(4) A legal practitioner referred to under subsection (3), is only entitled to costs approved by the Attorney General for services rendered pursuant to that subsection.

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. *(Repealed)*

24A. Office of the Attorney General's Development and Training Fund

(1) For the purposes of sections 24A and 24B, "Development and Training Fund" means the Office of the Attorney General's Development and Training Fund established under subsection (1A).

(1A) An account to be known as the Office of the Attorney General's Development and Training Fund is established.

(2) There is to be paid into the Development and Training 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 Development and Training Fund.

(3) Amounts standing to the credit of the Development and Training 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 Development and Training Fund may be invested with the National Bank of Vanuatu or such other financial institution as approved by the Attorney General.

24B. Accounts and auditing, and annual report

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

(2) The Development and Training 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 Development and Training Fund must be included in the annual report for the Office.

25. Rights of legal officers to practice law

(1) The Attorney General, Solicitor General, Parliamentary Counsel, General Counsel or State Counsels 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, Parliamentary Counsel, General Counsel or State Counsels 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

The Prime Minister may, on the recommendation of the Attorney General, 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.

26. Repeal

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

Table of Amendments

2	*Amended by Acts 9 of 2001, Act 25 of 2021*	*13*	*Substituted by Act 25 of 2021*
		14	*Amended by Act 25 of 2021*
4	*Amended by Act 25 of 2021*	*15*	*Amended by Act 25 of 2021*
6	*Substituted by Act 25 of 2021*	*16 and 17*	*Substituted by Act 25 of 2021*
8	*Substituted by Act 25 of 2021*	*17(2)(a)*	*Substituted by Act 5 of 1999*
9(1)	*Amended by Act 1 of 2020*	*17(2)(c)*	*Substituted by Act 9 of 2001*
9(3)	*Substituted by Act 25 of 2021*	*17(3)*	*Inserted by Act 5 of 1999*
10	*Substituted by Act 25 of 2021*	*18(1)*	*Amended by Act 2 of 2021*
11	*Substituted by Act 25 of 2021*	*18(2)*	*Amended by Act 25 of 2021*
12(1)	*Amended by Act 25 of 2021*	*18(3)*	*Repealed by Act 25 of 2021*
12(3)	*Substituted by Act 25 of 2021*	*19(heading)*	*Amended by Act 25 of 2021*
12(4)	*Repealed by Act 25 of 2021*	*19(1)*	*Amended by Act 5 of 1999*

19(1)	*Substituted by Act 25 of 2021*	*24A(4)(b)*	*Amended by Act 1 of 2020, 25 of 2022*
19(2)	*Amended by Act 25 of 2021*	*24A(4)(da)*	*Inserted by Act 1 of 2020*
Part 5 (heading)	*Substituted by Act 25 of 2021*	*24A(4)(da)*	*Repealed by Act 25 of 2021*
20	*Substituted by Act 25 of 2021*	*24A(5)*	*Substituted by Act 25 of 2021*
20B	*Inserted by Act 25 of 2021*	*24B*	*Inserted by Act 9 of 2001*
21	*Substituted by Act 25 of 2021*	*24B*	*Amended by Act 25 of 2021*
22(2)	*Amended by Act 25 of 2021*	*25(heading)*	*Amended by Act 25 of 2021*
22(4)	*Inserted by Act 25 of 2021*	*25*	*Substituted by Act 5 of 1999*
24	*Repealed by Act 25 of 2021*	*25(1)*	*Amended by Act 25 of 2021*
24A(heading)	*Amended by Act 25 of 2021*	*25(2)(a)*	*Amended by Act 25 of 2021*
24A	*Inserted by Act 9 of 2001*	*25A*	*Inserted by Act 5 of 1999*
24A(1)	*Substituted by Act 25 of 2021*	*25A*	*Substituted by Act 25 of 2021*
24(1A)	*Amended by Act 25 of 2021*	*25A(1)*	*Amended by Act 1 of 2020*
24A(2)	*Amended by Act 25 of 2021*	*Whole of the Act*	*Amended by Act 25 of 2021*
24A(3)	*Amended by Act 25 of 2021*		*State Law Office replaced with*
24A(4)(a)	*Amended by Acts 1 of 2020, 25 of 2022*		*Office of the Attorney General*

Transitional

Act 4 of 1998 — *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.*

Act 1 of 2020 — *The person who was appointed as the Attorney General before the commencement of this Act will continue to serve as the Attorney General for the period set out under subsection (9)(1).*