

# REPUBLIC OF VANUATU

## BILL FOR THE OFFICE OF THE ATTORNEY GENERAL (AMENDMENT) ACT NO. OF 2026

### Explanatory Note

This Bill amends the Office of the Attorney General Act [CAP 242] (“the Act”).

Since 2021 there has been no other substantial amendments to the core functions and work of the Office of the Attorney General. After certain observations and challenges experienced in the carrying out of the functions of the Attorney General, loopholes have been identified which require amendments to the Act.

The following issues have been identified to be addressed in this amendment:

#### **Definition of Government and State**

There is currently no definition of State in the Act. The definition of Government needs to be redefined so there is a clear distinction between Government and State.

Government will now be defined as the Executive Government and includes Constitutional Bodies and Statutory Entities (excluding Statutory Corporations).

State will be defined as the Republic of Vanuatu and includes the President, the Parliament (excluding the Government back benchers and Members of the Opposition side), and the Judiciary.

#### **Confidentiality**

Currently there is no provision for confidentiality in the Act. Clients have been disclosing any document that have been classified as “confidential” by the Attorney General to persons who are not privy to such documents. The Attorney General as the Principal Legal Advisor of the State is mandated to provide legal services to the Government. All documents provided by the Attorney General to his or her clients are covered by legal privilege, unless the consent of the Attorney General is sought to waive this privilege. Furthermore, this amendment will also apply to legal officers and support staff of the Office of the Attorney General.

#### **Private Legal Practitioner engagement and costs**

Under the Act, only the Attorney General may authorize a private legal practitioner to undertake legal work on behalf of the Office when he or she considers it prudent to do so or when circumstances warrant such engagement.

With this amendment, the Attorney General may approve the engagement of a private legal practitioner by the State or Government in the following cases:

- (a) in a case where the State or Government has considered the advice of the Attorney General and intends to seek a second legal opinion; or
- (b) in a case where the State or Government acted in contrary to the advice of the Attorney General resulting in legal proceedings; or
- (c) in a case where the State or Government insists to proceed with a legal proceeding contrary to the Attorney General's legal assessment on the high likelihood of the matter being unsuccessful in the legal proceeding.

The Office of the Attorney General is established to provide legal services to the State and the Government. To protect public funds being spent on legal services other than that provided by the Office of the Attorney General, the following amendments must be made:

- (i) If the second legal opinion provided reaches the same legal position stated in the Attorney General's legal advice, the official of the State or Government who requested the second legal opinion is personally liable to pay the costs for that second legal opinion.
- (ii) If the State or Government in the legal proceedings is unsuccessful, the official who acted in contrary to the advice of the Attorney General is liable to pay all costs arising out of those legal proceedings.
- (iii) If the State or Government in the legal proceeding is unsuccessful, the official who insisted to proceed with the legal proceeding contrary to the Attorney General's legal assessment is liable to pay all costs arising out of that legal proceeding.

To avoid doubt, if a second legal opinion does not reach the same legal position stated in the Attorney General's legal advice; or if the State or Government in a legal proceeding is successful, the costs for that second legal opinion or the costs arising out of that legal proceeding will be paid using public funds as approved by the Attorney General.

### **Offence Provisions**

The introduction of an offence provision serves as a deterrent against any breach of the Act.

This amendment will provide that if a person breaches any provisions of the Act, that person commits an offence and is liable on conviction to a fine not exceeding VT5,000,000.

### **Immunity Provision**

Immunity provisions are essential to protect the Attorney General, the legal officers and support staff from legal proceedings arising from the performance of their official duties in good faith. Such immunity is considered vital to ensure that the Attorney General, the legal

officers and support staff can act without fear and being impartial, without the constant threat of personal liability for decisions made in the interest of the State and the Government.

**Prime Minister**



**REPUBLIC OF VANUATU**

**BILL FOR THE  
OFFICE OF THE ATTORNEY GENERAL  
(AMENDMENT)  
ACT NO.    OF 2026**

**Arrangement of Sections**

<b>1</b>	<b>Amendment .....</b>	<b>2</b>
<b>2</b>	<b>Commencement.....</b>	<b>2</b>

# REPUBLIC OF VANUATU

## **BILL FOR THE OFFICE OF THE ATTORNEY GENERAL (AMENDMENT) ACT NO. OF 2026**

An Act to amend the Office of the Attorney General Act [CAP 242].

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The Office of the Attorney General Act [CAP 242] is amended as set out in the Schedule.

### **2 Commencement**

This Act commences on the day on which it is published in the Gazette.

## SCHEDULE

### AMENDMENTS OF OFFICE OF THE ATTORNEY GENERAL ACT [CAP 242]

#### **1 Section 2 (Definition of “Government”)**

Repeal the definition, substitute

““Government” means the Executive Government and includes:

- (a) the Prime Minister; and
- (b) Ministers; and
- (c) all Departments and other administrative units of a Ministry, however described; and
- (d) Constitutional Bodies; and
- (e) Statutory Entities (excluding a Statutory Corporations).”

#### **2 Section 2**

Insert in its correct alphabetical position:

““State” means the Republic of Vanuatu and includes:

- (a) the President; and
- (b) the Parliament (excluding the Government back benchers and Members of the Opposition side); and
- (c) the Judiciary.”

#### **3 Paragraph 6(a)**

Repeal the paragraph, substitute

“(a) to provide legal advice to the State and the Government; and”

**4 Paragraph 6(b)**

Delete “President”, substitute “State”

**5 Section 13**

Repeal the section, substitute

**“13. Appointment of legal officers**

(1) The Attorney General is responsible for the appointment and promotion of the following legal officers:

- (a) the Solicitor General; and
- (b) the Parliamentary Counsel; and
- (c) the General Counsel; and
- (d) Deputy Solicitor Generals; and
- (e) Deputy Parliamentary Counsels; and
- (f) Deputy General Counsels; and
- (g) Principal State Counsels; and
- (h) Senior State Counsels; and
- (i) Assistant Senior State Counsels; and
- (j) State Counsels.

(2) A person may be eligible for appointment as a legal officer if he or she meets the following criteria:

- (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.

- (3) The appointment of a legal officer must follow a fair and transparent selection process and must be based on merit.”

**6 Section 17**

Repeal the section, substitute

**“17. Other legal officers**

The principal function of the other legal officers under paragraphs 13(1)(d), (e), (f), (g), (h), (i) and (j) is to assist in the functions of the Solicitor General, the Parliamentary Counsel and the General Counsel, as directed by the Attorney General.”

**7 Paragraphs 20(2)(e) and (f)**

Repeal the paragraphs, substitute

“(e) the Director of Corporate Services.”

**8 Subsection 22(1)**

Delete “the President, and Government”, substitute “the State and the Government”

**9 Subsection 22(2)**

Repeal the subsection, substitute

“(2) The State and the Government must not instruct a private legal practitioner in any matter of the State and the Government.

(2A) All private legal practitioners (including those employed by the State or Government) must not act on instructions of the State or Government without the approval of the Attorney General under this section.”

**10 After subsection 22(3)**

Insert

“(3A) Despite subsection (3), the Attorney General may, approve the engagement of a private legal practitioner by the State or Government in the following cases:

- (a) in a case where the State or Government has considered the advice of the Attorney General and intends to seek a second legal opinion; or
  - (b) in a case where the State or Government acted in contrary to the advice of the Attorney General resulting in legal proceedings; or
  - (c) in a case where the State or Government insists to proceed with a legal proceeding contrary to the Attorney General’s legal assessment on the high likelihood of the matter being unsuccessful in the legal proceeding.
- (3B) If the second legal opinion provided under the paragraph (3A)(a) reaches the same legal position stated in the Attorney General’s legal advice, the official of the State or Government who requested the second legal opinion is personally liable to pay the costs for that second legal opinion.
- (3C) If the State or Government in the legal proceedings under paragraph (3A)(b) is unsuccessful, the official who acted in contrary to the advice of the Attorney General is liable to pay all costs arising out of that legal proceedings.
- (3D) If the State or Government in the legal proceeding under paragraph (3A)(c) is unsuccessful, the official who insisted to proceed with the legal proceeding contrary to the Attorney General’s legal assessment is liable to pay all costs arising out of that legal proceeding.
- (3E) To avoid doubt:
- (a) if a second legal opinion does not reach the same legal position stated in the Attorney General’s legal advice; or
  - (b) if the State or Government in a legal proceeding is successful,
- the costs for that second legal opinion or the costs arising out of that legal proceeding will be paid using public funds as approved by the Attorney General.”

**11 At the end of section 22**

Insert

“(5) Any legal work carried out by a private legal practitioner that will be paid using public funds must be approved by the Attorney General.”

**12 After section 22**

Insert

**“22A. Prohibition to disclose confidential documents**

- (1) A person who is employed by the Government and the State, and any legal officer and support staff of the Office, must not disclose any document that is classified as “confidential” by the Attorney General to persons who are not privy to the documents.
- (2) Despite subsection (1), if a person employed by the Government and the State, and a legal officer, considers it necessary to disclose a document referred to under subsection (1), in whole or in part, he or she must obtain the written approval of the Attorney General.”

**13 After Part 6**

Insert

**“PART 6A- OFFENCES**

**22B. Offences**

A person who breaches any provisions of this Act commits an offence and is liable on conviction to a fine not exceeding VT5,000,000.”

**14 After section 23**

Insert

**“24 Immunity**

- (1) A civil or criminal proceedings must not be brought against the Attorney General, a legal officer or support staff for anything done or omitted to be done in good faith in performing his or her functions or exercising his or her powers under this Act.
- (2) Subsection (1) does not apply if the Attorney General, a legal officer or support staff acted in bad faith in performing his or her functions or exercising his or her powers under this Act.”

**15 Paragraphs 24A(4)(a) and (b)**

Delete “and the Director and staff of the Financial Intelligence Unit”

**16 Paragraph 24A(4)(da)**

Repeal the paragraph.