

REPUBLIC OF VANUATU

BILL FOR THE

DIGITAL SAFETY AUTHORITY

ACT NO. OF 2024

Explanatory Note

The Government recognizes the need to institutionalize a robust Digital and Online Safety framework to ensure proper and balanced measures are in place to recognize the use of a secure, protected and fair digital economy in Vanuatu. Such a framework will enhance the current Government mechanisms and ensure that all national critical infrastructure and essential services contribute to the well-being of the citizens and businesses in Vanuatu.

The Government recognizes the need to develop and establish a holistic standardized institution to oversee and manage a comprehensive Data Protection and Privacy legislation as well as the Harmful Digital Communications legislation so as to prevent the unsafe malpractices in the Digital and Online environment. This includes providing a centralized framework to address the misuse of Personal Identifiable Information and violating the principles of digital communication.

The Bill will achieve the following Policy Objectives and Strategies:

- Policy objectives 6.3, 6.4, 6.7, and 6.9 under Goal 6 of the Society Pillar; and
- Policy Objective 2.9 under Goal 2 of the Economic Pillar of the National Sustainable Development Plan 2016 – 2030; and
- Policy Objectives under the National Cyber Security Priority 6 (CSP-6) of the Vanuatu National Cyber Security Strategy of 2023; and
- Policy Objectives under the Harmful Digital Communications Policy of Vanuatu.

Key features of this Bill include:

- (a) The establishment of the Digital Safety Authority as the body responsible for Digital Safety in Vanuatu; and
- (b) The appointment of a Chief Executive Officer who will be mainly responsible for the daily operations of the Authority and to provide advise to the Commission and the Minister; and
- (c) The establishment of the Digital Safety Commission to determine and approve standards for digital safety, digital communications and digital content; and
- (d) The appointment of a Commissioner for the Data Protection and Privacy and a Commissioner for the Harmful Digital Communication; and

- (e) The establishment of a complaint system to deal with complaints that can be made against the Commissioners; and
- (f) The requirement for the Authority to report annually to the Minister responsible.

Prime Minister



REPUBLIC OF VANUATU

BILL FOR THE DIGITAL SAFETY AUTHORITY ACT NO. OF 2024

Arrangement of Sections

PART 1	INTERPRETATION	
1	Interpretation.....	3
PART 2	DIGITAL SAFETY AUTHORITY AND CHIEF EXECUTIVE OFFICER	
Division 1	Establishment of the Digital Safety Authority	
2	Establishment of Digital Safety Authority.....	5
3	Functions of the Authority.....	5
4	Powers of the Authority.....	6
5	Staff of the Authority.....	6
Division 2	Chief Executive Officer of the Authority	
6	Appointment of Chief Executive Officer.....	6
7	Functions of the Chief Executive Officer.....	7
8	Powers of the Chief Executive Officer.....	8
9	Delegation of functions and powers.....	8
10	Resignation of Chief Executive Officer.....	8
11	Disqualification and termination of Chief Executive Officer.....	8
PART 3	DIGITAL SAFETY COMMISSION	
12	Establishment of the Digital Safety Commission.....	10
13	Composition of the Commission.....	10
14	Function of the Commission.....	10
15	Powers of the Commission.....	11
16	Delegation of functions and powers.....	11
17	Chairperson and Deputy Chairperson of the Commission.....	11
18	Meetings of the Commission.....	11

19	Sitting allowances of the members of the Commission.....	12
20	Secretary of the Commission	12
21	Removal of a member	13

PART 4 COMMISSIONER OF HARMFUL DIGITAL COMMUNICATIONS AND COMMISSIONER OF DATA PROTECTION AND PRIVACY

22	Appointment	14
23	Term of office	14
24	Functions of Commissioners	15
25	Powers of the Commissioners.....	15
26	Resignation of a Commissioner	15
27	Removal of a Commissioner.....	15
28	Contractors.....	16

PART 5 COMPLAINTS

29	Submission of complaints	17
----	--------------------------------	----

PART 6 MISCELLANEOUS PROVISIONS

30	Funds of the Authority	18
31	Accounts of the Authority.....	18
32	Annual reports.....	18
33	Immunity.....	18
34	Regulation	19
35	Commencement	19

REPUBLIC OF VANUATU

BILL FOR THE DIGITAL SAFETY AUTHORITY ACT NO. OF 2024

An Act to provide for the establishment, operation and management of the Digital Safety Authority and related matters.

Be it enacted by the President and Parliament as follows-

PART 1 INTERPRETATION

1 Interpretation

In this Act, unless a contrary intention appears:

Authority means the Digital Safety Authority established under section 2;

Commission means the Digital Safety Commission established under section 12;

Commissioner means a Commissioner appointed under section 22;

digital means electronic technology that generates, stores, and processes data in terms of two states- positive and non-positive;

digital communication means:

- (a) any email, phone call, social media messaging, sms or text message, web chat, blog, podcast or video; or
- (b) any writing, photograph, picture, recording or other matter that is communicated electronically; or
- (c) any other form of electronic communication;

digital content means information in the form of a digital communication;

digital safety means protecting electronic devices connecting to the internet from potential threats and intruders, so that the digital platform is safe to use;

government agency means:

- (a) a Ministry; or
- (b) an office or body established under the Constitution; or
- (c) an office or body established under an Act of Parliament; or
- (d) a prescribed agency.

Minister means the Minister responsible for Information and Communications Technology.

PART 2 DIGITAL SAFETY AUTHORITY AND CHIEF EXECUTIVE OFFICER

Division 1 Establishment of the Digital Safety Authority

2 Establishment of Digital Safety Authority

- (1) The Digital Safety Authority is established.
- (2) The Authority is:
 - (a) a body corporate with perpetual succession; and
 - (b) to have a common seal; and
 - (c) capable of suing and being sued.

3 Functions of the Authority

The Authority has the following functions:

- (a) to promote digital safety, digital communication and digital content in Vanuatu; and
- (b) to coordinate activities on digital safety, digital communication and digital content with a government agency; and
- (c) to assist to protect the public against any digital safety issues and harm; and
- (d) to represent Vanuatu internationally in matters relating to data protection and privacy and harmful digital communication; and
- (e) such other functions that may be conferred on the Authority by this Act or any other Act.

4 Powers of the Authority

- (1) The Authority 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 Authority has the power to do all or any of the following:
 - (a) to acquire, purchase, hold, manage and dispose of real or personal property;
 - (b) subject to the prior approval of the Minister responsible for finance, to borrow or lend money on such terms and conditions as the Commission thinks fit;
 - (c) to develop any land or other property and to build and maintain buildings or other structures;
 - (d) to enter into agreements with any local authority, corporation, society, firm or person for the management and maintenance of any land, buildings or facilities.

5 Staff of the Authority

- (1) The Chief Executive Officer may, with the prior approval of the Commission, employ any staff of the Authority as he or she considers necessary for the proper and efficient performance of the functions of the Authority.
- (2) The Chief Executive Officer is to determine the terms and conditions of the employment of the staff of the Authority.
- (3) The appointment of a staff must follow a fair and transparent selection process and must be based on merit.

Division 2 Chief Executive Officer of the Authority

6 Appointment of Chief Executive Officer

- (1) The Commission is to appoint the Chief Executive Officer.

- (2) A person may be eligible for appointment as Chief Executive Officer if he or she meets the following criteria:
- (a) is a Vanuatu citizen; and
 - (b) has a Master's Degree in Digital Safety or Cyber Security from a recognised university; and
 - (c) 5 to 10 years' experience in Information and Communications Technology; and
 - (d) has not less than 5 years' experience in managing an office.
- (3) The Commission is to determine the terms and conditions of employment of the Chief Executive Officer.
- (4) The appointment of the Chief Executive Officer must follow a fair and transparent selection process and must be based on merit.
- (5) The Chief Executive Officer is to hold office for a period of 5 years and is eligible for re-appointment only once.

7 Functions of the Chief Executive Officer

The Chief Executive Officer has the following functions:

- (a) to administer this Act; and
- (b) to advise the Commission and the Minister on matters relating to the administration of this Act; and
- (c) to advise the Minister, after receiving advice from the Commission, on digital safety matters; and
- (d) to manage and oversee the operations of the Authority; and
- (e) to encourage and support a government agency to follow digital safety best practices and standards; and

- (f) to, on the advice of the Commission, produce, publish, issue, circulate and distribute reports, papers, periodicals or any other information; and
- (g) such other functions that may be conferred on the Chief Executive Officer by this Act or any other Act.

8 Powers of the Chief Executive Officer

The Chief Executive Officer has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions under this Act.

9 Delegation of functions and powers

- (1) Subject to this section, the Chief Executive Officer may delegate its functions and powers to a staff of the Authority.
- (2) The Chief Executive Officer cannot delegate the power of delegation.
- (3) A delegation made under subsection (1) is subject to instructions, guidelines or conditions imposed by the Chief Executive Officer.
- (4) A delegation under this section does not prevent the exercise of any powers by the Chief Executive Officer.
- (5) A delegation under this section may be revoked by the Chief Executive Officer at any time.

10 Resignation of Chief Executive Officer

The Chief Executive Officer may resign by giving 3 months written notice to the Commission.

11 Disqualification and termination of Chief Executive Officer

- (1) The Chief Executive Officer is disqualified from his or her appointment if he or she:
 - (a) is or becomes a member of Parliament, a Provincial Government Council or a Municipal Council; or

- (b) is declared bankrupt or has made an arrangement in the nature of composition or assignment with his or her creditors; or
 - (c) has been convicted of an offence and sentenced to a term of imprisonment of 12 months or more, whether or not it is a suspended sentence; or
 - (d) is a director of company.
- (2) The Chief Executive Officer ceases to hold office if:
- (a) he or she is disqualified from his or her appointment under subsection (1); or
 - (b) is incapacitated and is unable to perform his or her functions; or
 - (c) commits a serious misconduct; or
 - (d) breaches the terms and conditions of his or her employment; or
 - (e) misappropriate funds of the Authority; or
 - (f) neglects to carry out his or her functions under this Act or any other Act.

PART 3 DIGITAL SAFETY COMMISSION

12 Establishment of the Digital Safety Commission

The Digital Safety Commission is established.

13 Composition of the Commission

- (1) The Commission consists of the following persons:
 - (a) the Director General of the Office of the Prime Minister; and
 - (b) a person representing a tertiary institution nominated by the Head of the tertiary institution; and
 - (c) the Director of the Vanuatu Internet Governance Forum; and
 - (e) the Chief Executive Officer of the Authority.
- (2) Subject to subsection (3), the Minister is to appoint the member under paragraph (1)(b).
- (3) The person nominated under paragraph (1)(b) must:
 - (a) have a tertiary qualification in cyber security and digital safety; and
 - (b) have no criminal convictions or records; and
 - (c) be a citizen of Vanuatu.
- (4) The member appointed under paragraph (1)(b) is to be appointed for a term of 3 years and is to be reappointed only once.

14 Function of the Commission

The Commission has the following functions:

- (a) to determine and approve the standards for digital safety; and
- (b) to determine and approve the standards for digital communication; and

- (c) to determine and approve the standards for digital content; and
- (d) to supervise the data protection and privacy Commissioner and harmful digital communication Commissioner.

15 Powers of the Commission

The Commission 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.

16 Delegation of functions and powers

- (1) Subject to this section, the Commission may delegate its functions and powers to the Chief Executive Officer or to a member of the Commission.
- (2) The Commission cannot delegate the power of delegation.
- (3) A delegation made under subsection (1) is subject to instructions, guidelines or conditions imposed by the Commission.
- (4) A delegation under this section does not prevent the exercise of any powers by the Commission.
- (5) A delegation under this section may be revoked by the Commission at any time.

17 Chairperson and Deputy Chairperson of the Commission

- (1) The Director General is the Chairperson of the Commission.
- (2) The members of the Commission are to elect from amongst themselves a Deputy Chairperson.
- (3) The Deputy Chairperson is to hold office for a period of 1 year and may be re-elected.

18 Meetings of the Commission

- (1) The Commission is to meet at least once every quarter within a year at a place and time to be determined by the Chairperson, and may hold such

other meetings as are necessary for the performance of its functions under this Act.

- (2) The Chairperson is to preside at all meetings of a Commission and if the Chairperson is absent, the Deputy Chairperson is to chair that meeting.
- (3) The quorum for a meeting is 3 members of the Commission present at the meeting.
- (4) A member present at the meeting has 1 vote and questions arising at a meeting are to be decided by a majority of votes.
- (5) If the voting at the meeting is equal, the Chairperson or the Deputy Chairperson (if he or she is presiding over the meeting) has a casting vote.
- (6) The Secretary after consultation with the Chairperson, is to notify the other members of the Commission of the venue, time and date of the meeting.
- (7) Subject to this Act, the Commission may determine and regulate its own procedures.

19 Sitting allowances of the members of the Commission

The Minister may, by Order, prescribe the sitting allowances for the members of the Commission.

20 Secretary of the Commission

- (1) The Chief Executive Officer is the Secretary of the Commission.
- (2) The Secretary has the following functions:
 - (a) to prepare and circulate agenda and issue papers for meetings of the Commission; and
 - (b) to take minutes of the meetings of the Commission and circulate the minutes to members of the Commission within 3 weeks after each meeting; and
 - (c) to organize general meetings of the Commission; and

- (d) such other functions as are imposed on the Secretary by this Act or any other Act.

21 Removal of a member

The member appointed under paragraph 13(1)(b) is to be removed as a member if he or she:

- (a) fails to attend 3 consecutive meetings of the Commission without the permission of the Commission; or
- (b) is suspended from his or her profession for misconduct; or
- (c) is incapable of performing his or her duties as a member.

**PART 4 COMMISSIONER OF HARMFUL DIGITAL
COMMUNICATIONS AND COMMISSIONER OF
DATA PROTECTION AND PRIVACY**

22 Appointment

- (1) The Commission is to appoint the Commissioner of Harmful Digital Communications and the Commissioner of Data Protection and Privacy.
- (2) The appointment of a Commissioner must be based on merit and must follow a fair and transparent selection process.
- (3) To be eligible for appointment as the Commissioner of Harmful Digital Communications, a person must have reasonable experience and knowledge:
 - (a) in the operation of social media services; or
 - (b) in the operation of the internet industry; or
 - (c) in public policy in relation to the communications sector.
- (4) To be eligible for appointment as the Commissioner of Data Protection and Privacy, a person must have reasonable experience and knowledge:
 - (a) in the operation of data protection and privacy services; or
 - (b) in the operation of the internet and computer security industry; or
 - (c) in public policy in relation to the communications sector.
- (5) The Commission is to determine the terms and conditions of employment of a Commissioner.

23 Term of office

- (1) A Commissioner is to hold office for a period of 5 years and is eligible for re-appointment only once.

- (2) During his or her term in office, a Commissioner must not occupy or engage in any other activity, profession or trade outside his or her office for financial gain.

24 Functions of Commissioners

The Commissioners have the following functions:

- (a) the Commissioner of Harmful Digital Communications- to receive and determine complaints about harm caused to individuals by digital communications; and
- (b) the Commissioner of Data Protection and Privacy- - to receive and determine complaints related to data protection and privacy breaches; and
- (c) to establish and maintain relationships with domestic and foreign service providers, online content hosts, and agencies (as appropriate) to achieve the purpose of this Act; and
- (d) to provide education and advice on policies for online safety and conduct on the Internet; and
- (e) to enter into contracts; and
- (f) such other functions that may be conferred on a Commissioner by this Act or any other Act.

25 Powers of the Commissioners

The Commissioners have the power to do all things necessary or convenient to be done for or in connection with the performance of their functions under this Act.

26 Resignation of a Commissioner

A Commissioner may resign by giving 3 months written notice to the Commission.

27 Removal of a Commissioner

The Commission may remove a Commissioner if it is satisfied that the Commissioner:

- (a) is incapacitated and is unable to perform his or her functions; or
- (b) commits a serious misconduct; or
- (c) breaches the terms and conditions of his or her employment; or
- (d) neglects to carry out his or her functions under this Act or any other Act.

28 Contractors

- (1) A Commissioner may, on the approval of the Commission, engage persons as contractors to assist the Commissioner.
- (2) A person engaged must have the appropriate qualifications, skills or experience to assist the Commissioner.
- (3) The Commissioner is to determine in writing the terms and conditions of engagement of the person.

PART 5 COMPLAINTS

29 Submission of complaints

- (1) The Authority is to establish a system for receiving complaints relating to:
 - (a) complaints on services provided; and
 - (b) decisions made by a Commissioner.
- (2) The Authority has the following functions in relation to the complaints made under subsection (1):
 - (a) to receive complaints through any means of communication deemed appropriate; and
 - (b) to maintain a register of complaints; and
 - (c) in the case of where a complaint relates to a service of a Commissioner- to forward the complaint to the Commission to consider and make a decision.
- (3) A decision must be made on a complaint within 21 working days after the Authority receives the complaint.

PART 6 MISCELLANEOUS PROVISIONS

30 Funds of the Authority

The funds of the Authority consist of the following:

- (a) monies appropriated to the Authority by Parliament; and
- (b) grants from aid donors or other international organisations; and
- (c) monies received from any other source.

31 Accounts of the Authority

- (1) The Authority is to keep proper accounts and other records in respect of its receipts and expenditure and is to prepare an annual statement of accounts in respect of each financial year.
- (2) The accounts of the Authority are to be made up to the 31st day of December in each financial year and are to be audited by the Auditor-General.
- (3) Fees payable to the auditor appointed under subsection (2) is to be paid out of the funds of the Authority.
- (4) The Authority must provide the Minister with a copy of the audited accounts referred to in subsection (2).

32 Annual reports

The Authority must within 3 months after the end of each financial year provide a report to the Minister relating on the operations of the Authority for the preceding year.

33 Immunity

- (1) A civil or criminal proceedings must not be brought against an officer of the Authority, the Chief Executive Officer, Commissioners or member of the Commission for anything done or omitted to be done in good faith by him or her in the execution or purported executions of his or her functions and powers under this Act.

- (2) Subsection (1) does not apply if the officer of the Authority, the Chief Executive Officer, Commissioners or member of the Commission acted in bad faith in executing his or her functions or powers or in dereliction of his or her functions and powers under this Act.

34 Regulation

The Minister may, on the advice of the Commission, make Regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) that are necessary or convenient to be prescribed for the better carrying out or giving effect to the provisions of this Act.

35 Commencement

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