

REPUBLIC OF VANUATU

BILL FOR THE

DIGITAL SAFETY AUTHORITY

ACT NO. OF 2024

Explanatory Note

The Government recognizes the need for a Digital and Online Safety framework to ensure that proper and balanced measures are in place for a secure, protected, and fair digital economy in Vanuatu.

The Government also recognizes the need for the establishment of an institution to regulate and oversee any matter relating to data protection and privacy, and harmful digital communications.

Key features of this Bill include the following:

- (a) the establishment of the Digital Safety Authority as the body responsible for Digital Safety in Vanuatu; and
- (b) the appointment of a Commissioner who will be responsible for the daily operations of the Authority and to provide advice 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 Deputy Commissioner for the Data Protection and Privacy and a Deputy Commissioner for the Harmful Digital Communication; and
- (e) the establishment of a complaint system to deal with complaints that can also be made against the Deputy Commissioners; and
- (f) the requirement for the Authority to report annually to the Minister responsible.

Prime Minister



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Arrangement of Sections

PART 1	INTERPRETATION	
1	Interpretation.....	3
PART 2	DIGITAL SAFETY AUTHORITY AND COMMISSIONER	
	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.....	5
	Division 2 Commissioner of the Authority	
5	Appointment of the Commissioner.....	6
6	Functions of the Commissioner.....	7
7	Powers of the Commissioner.....	7
8	Delegation of functions and powers.....	7
9	Resignation of the Commissioner.....	8
10	Disqualification of appointment as the Commissioner.....	8
11	Termination of the Commissioner.....	8
	Division 3 Other Staff	
12	Other Staff of the Authority.....	9
PART 3	DIGITAL SAFETY COMMISSION	
13	Establishment of the Digital Safety Commission.....	10
14	Composition of the Commission.....	10
15	Function of the Commission.....	10
16	Powers of the Commission.....	11

17	Delegation of functions and powers	11
18	Chairperson and Deputy Chairperson of the Commission	11
19	Meetings of the Commission	11
20	Sitting allowances of the members of the Commission.....	12
21	Removal of a member of the Commission	12
PART 4	DEPUTY COMMISSIONER OF HARMFUL DIGITAL COMMUNICATIONS AND DEPUTY COMMISSIONER OF DATA PROTECTION AND PRIVACY	
22	Appointment of Deputy Commissioners	13
23	Term of office	14
24	Functions of the Deputy Commissioners.....	14
25	Powers of a Deputy Commissioner	14
26	Resignation of a Deputy Commissioner	14
27	Removal of a Deputy Commissioner.....	15
28	Contractors to assist the Deputy Commissioners	15
PART 5	COMPLAINTS	
29	Submission of complaints	16
PART 6	MISCELLANEOUS PROVISIONS	
30	Funds of the Authority	17
31	Accounts of the Authority.....	17
32	Annual reports.....	17
33	Immunity.....	17
34	Regulation.....	18
35	Commencement	18

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 13;

Commissioner means the Commissioner appointed under subsection 5(1);

Deputy Commissioner means the Deputy Commissioner of Harmful Digital Communications or the Deputy Commissioner of Data Protection and Privacy appointed under section 22;

digital means electronic technology that generates, stores, and processes data in terms of 2 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 COMMISSIONER

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.

Division 2 Commissioner of the Authority

5 Appointment of the Commissioner

- (1) The Commission is to appoint the Commissioner.
- (2) A person may be eligible for appointment as Commissioner 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) has 5 to 10 years of experience in dealing with Information and Communications Technology; and
 - (d) has at least 5 years of experience in managing an office.
- (3) The Commission is to determine the terms and conditions of the employment of the Commissioner.
- (4) The appointment of the Commissioner must follow a fair and transparent selection process and must be based on merit.

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

6 Functions of the Commissioner

The Commissioner has the following functions:

- (a) to advise the Commission and the Minister on matters relating to the administration of this Act; and
- (b) to advise the Minister, after receiving advice from the Commission, on digital safety matters; and
- (c) to manage and oversee the operations of the Authority; and
- (d) to encourage and support a government agency to follow digital safety best practices and standards; and
- (e) to, on the advice of the Commission, produce, publish, issue, circulate and distribute reports, papers, periodicals or any other information; and
- (f) to supervise the Deputy Commissioners; and
- (g) such other functions that may be conferred on the Commissioner by this Act or any other Act.

7 Powers of the Commissioner

The Commissioner 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.

8 Delegation of functions and powers

- (1) Subject to this section, the Commissioner may delegate its functions and powers to a staff of the Authority.
- (2) The Commissioner cannot delegate the power of delegation.
- (3) A delegation made under subsection (1) is subject to instructions, guidelines or conditions imposed by the Commissioner.

- (4) A delegation under this section does not prevent the exercise of any powers by the Commissioner.
- (5) A delegation under this section may be revoked by the Commissioner at any time.

9 Resignation of the Commissioner

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

10 Disqualification of appointment as the Commissioner

A person is disqualified from his or her appointment as the Commissioner if he or she:

- (a) is a member of Parliament, a Provincial Government Council or a Municipal Council; or
- (b) 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
- (c) is a director of company.

11 Termination of the Commissioner

The Commission is to terminate the Commissioner if he or she:

- (a) becomes a member of Parliament, a Provincial Government Council or a Municipal Council; or
- (b) is incapacitated and is unable to perform his or her functions; or
- (c) is declared bankrupt; or
- (d) is 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
- (e) commits a serious misconduct; or
- (f) breaches the terms and conditions of his or her employment; or

- (g) misappropriates the funds of the Authority; or
- (h) neglects to carry out his or her functions under this Act or any other Act.

Division 3 Other Staff

12 Other Staff of the Authority

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

PART 3 DIGITAL SAFETY COMMISSION

13 Establishment of the Digital Safety Commission

The Digital Safety Commission is established.

14 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 the National University of Vanuatu nominated by the Chancellor; and
 - (c) the Director of the Vanuatu Internet Governance Forum.
- (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 for 1 term only.

15 Function of the Commission

The Commission has the function to determine the following standards:

- (a) the standards for digital safety; and
- (b) the standards for digital communication; and
- (c) the standards for digital content.

16 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.

17 Delegation of functions and powers

- (1) Subject to this section, the Commission may delegate its functions and powers to the Commissioner 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.

18 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.

19 Meetings of the Commission

- (1) The Commission is to meet at least once every quarter within a year and may hold such other meetings as are necessary for the proper 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 preside at these meetings.
- (3) The quorum for a meeting is 2 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 Commissioner is the Secretary of the Commission.
- (7) The Commissioner after consultation with the Chairperson, is to notify the other members of the Commission of the venue, time and date of the meeting.
- (8) Subject to this Act, the Commission may determine and regulate its own procedures.

20 Sitting allowances of the members of the Commission

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

21 Removal of a member of the Commission

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; or
- (c) is incapable of performing his or her duties as a member.

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

22 Appointment of Deputy Commissioners

- (1) The Commissioner may, with the prior approval of the Commission, appoint:
 - (a) the Deputy Commissioner of Harmful Digital Communications;
and
 - (b) the Deputy Commissioner of Data Protection and Privacy.
- (2) The appointment of a Deputy Commissioner under paragraphs (1)(a) and (b) must be based on merit and must follow a fair and transparent selection process.
- (3) A person may be eligible for appointment as the Deputy Commissioner of Harmful Digital Communications if he or she has 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 relating to the communications sector.
- (4) A person may be eligible for appointment as the Deputy Commissioner of Data Protection and Privacy if he or she has 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 relating to the communications sector.
- (5) The Commissioner is to determine the terms and conditions of employment of a Deputy Commissioner.

23 Term of office

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

24 Functions of the Deputy Commissioners

- (1) The Deputy Commissioners have the following functions:
 - (a) 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
 - (b) to provide education and advice on policies for online safety and conduct on the Internet; and
 - (c) such other functions that may be conferred on the Deputy Commissioners by this Act or any other Act.
- (2) In addition to subsection (1):
 - (a) for the Deputy Commissioner of Harmful Digital Communications - to receive and determine complaints about harm caused to individuals by digital communications; and
 - (b) for the Deputy Commissioner of Data Protection and Privacy - to receive and determine complaints related to data protection and privacy breaches.

25 Powers of a Deputy Commissioner

A Deputy Commissioner 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.

26 Resignation of a Deputy Commissioner

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

27 Removal of a Deputy Commissioner

The Commissioner may, on the approval of the Commission, remove a Deputy Commissioner if he or she is satisfied that the Deputy 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) engages in any activity in the course of his or her employment for personal financial gain; or
- (e) neglects to carry out his or her functions under this Act or any other Act.

28 Contractors to assist the Deputy Commissioners

- (1) The Commissioner may, on the advice of a Deputy Commissioner and on the approval of the Commission, engage persons as contractors to assist a Deputy Commissioner.
- (2) A person engaged must have the appropriate qualifications, skills or experience to assist the Deputy 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 Commissioner is to establish a system for receiving complaints relating to:
 - (a) services provided; and
 - (b) decisions made by a Deputy Commissioner.
- (2) The Commissioner 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 Deputy 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 Commissioner receives the complaint.

PART 6 MISCELLANEOUS PROVISIONS

30 Funds of the Authority

The funds of the Authority consists 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 expenditures and is to prepare an annual statement of accounts in respect of each financial year.
- (2) The accounts of the Authority are to be audited by the Auditor- General at the end of each financial year.
- (3) 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 to the operations of the Authority for the preceding year.

33 Immunity

- (1) A civil or criminal proceedings must not be brought against any staff of the Authority, the Commissioner, a Deputy Commissioner or a member of the Commission 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 staff of the Authority, the Commissioner, a Deputy Commissioner or a member of the Commission acted in bad faith in performing his or her functions or exercising his or her 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.