

# REPUBLIC OF VANUATU

## BILL FOR THE ELECTORAL ACT NO. OF 2023

### Explanatory Note

This Bill provides for the preparation and conduction of elections for the national Parliament, Provincial Government Councils and Municipal Councils.

The existing legal and regulatory basis for the preparation and conduct of direct elections in Vanuatu is based on several laws. The *Representation of the People Act [CAP 146]* provides for Parliamentary elections and that Act will now be repealed. Electoral provisions for Municipal Councils in the *Municipalities Act [CAP 126]* and Provincial Government Councils in the *Decentralization Act [CAP 230]* will also be repealed and in some instances amended.

Since independence, Vanuatu has conducted periodic elections at the national, provincial and municipal level. While the legal framework has allowed for credible elections to take place, a review in 2020 highlighted that the electoral laws are complicated and outdated. Acts have been amended over time resulting in a fragmented and inconsistent legal framework. The review concluded that there was a need to harmonize legislation governing direct elections. The Vanuatu Law Reform Commission supports the harmonization and integration of the electoral legal framework into a new single Electoral Act. There has been widespread consultation on the new law. In addition to the new law, detailed operational procedures will be developed and set out in regulations and other subordinate instruments made by the Electoral Commission.

This Bill will ensure the legal and regulatory framework for elections is strengthened and fit for purpose to prepare and conduct elections at the national, provincial and municipal level.

Key elements of the Bill include:

- Strengthening the independence of the Electoral Commission and the Vanuatu Electoral Office which will become the operational arm of the Commission;
- At least one member of the Electoral Commission will be a woman;
- Providing for reserved seats for women in municipal council constituencies;
- Vacant seats will as a general rule be filled by the ‘runner up candidate’ from the last election, however, by-elections will still be held if there is no suitable runner up;
- A Voter Register will replace the electoral rolls. The Electoral Commission and Vanuatu Electoral Office will no longer be responsible for collecting information for “registration of electors in the field”, but rather for the “establishment and maintenance of the Voter Register” relying on information from the new Civil Register;

- There will be a single ballot paper with all candidates on it for each constituency. This is a cost saving measure to replace the current ballot paper structure with booklets of ballots per candidate;
- Special measures for polling for internally displaced persons resulting from natural disasters within flexible timeframes set by the Electoral Commission;
- Introducing basic campaign financing disclosure provisions for candidates to improve oversight of campaign contributions and expenditures in order to provide for greater transparency and accountability;
- Providing special voting measures for certain voters to cover polling outside their allocated polling stations, including possible future e-voting options;
- Election petitions for provincial government council and municipal council elections will be determined by the Magistrates Court while election petitions for Parliamentary elections will continue to be determined by the Supreme Court;
- It is intended that provision for out-of-country voting will be expanded beyond Ni-Vanuatu voters in New Caledonia;
- An expanded range of electoral offences together with increased penalties.

**Minister of Internal Affairs**



## REPUBLIC OF VANUATU

### BILL FOR THE ELECTORAL ACT NO. OF 2023

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# REPUBLIC OF VANUATU

## BILL FOR THE ELECTORAL ACT NO. OF 2023

An Act to provide for Parliamentary, Provincial Government Council and Municipal Council elections, and for related purposes.

Be it enacted by the President and Parliament as follows-

### PART1 PRELIMINARY MATTERS

#### 1 Objectives of the Act

The objectives of this Act are:

- (a) to strengthen the independence of the Electoral Commission and the Vanuatu Electoral Office; and
- (b) to provide a comprehensive framework for the conduct of Parliamentary, Provincial Government Council and Municipal Council elections consistent with best practice for democratic elections; and
- (c) to provide for temporary special measures for the election of women in certain Municipal Council elections.

#### 2 Interpretation

In this Act, unless the contrary intention appears:

**approved form** means a form approved under section 140;

**assistant provincial electoral officer** means a person appointed as such under subsection 23(3);

**assistant returning officer** means a person appointed as such under subsection 24(3);



PART1 PRELIMINARY MATTERS

**by-election** means an election held to fill a vacant seat if a member of Parliament or a councillor resigns or dies or otherwise vacates his or her seat;

**campaign activity** has the meaning given in section 3;

**campaign period** has the meaning given in section 39;

**candidate** means a candidate for an election;

**candidate nomination fee** means the candidate nomination fee prescribed under subsection 47(1);

**candidate representative** means a person accredited as a representative of an independent candidate under the Regulations;

**Central Register** has the same meaning as in the Civil Registration and Identity Management Act No. 28 of 2021;

**Commission** means the Electoral Commission established by Article 18 of the Constitution of the Republic of Vanuatu;

**committee** means a committee appointed under section 15;

**constituency** means:

- (a) a parliamentary constituency; or
- (b) a provincial constituency; or
- (c) a municipal constituency;

**councillor** means a member of a Provincial Government Council or a Municipal Council;

**Court** means the Supreme Court or the Magistrates Court;

**election** means an election for members of:

- (a) a Municipal Council; or
- (b) the Parliament; or

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(c) a Provincial Government Council,

and includes a by-election;

**election date** means the date determined for an election under section 36;

**election petition** means an election petition referred to in section 87 or 100;

**electoral list** means a final electoral list drawn up in accordance with section 35 or 113;

**electoral observer** means a person accredited as a national or international electoral observer under the Regulations;

**electoral official** means any of the following:

- (a) a person appointed under Division 4 of Part 3; or
- (b) the Commission; or
- (c) the Principal Electoral Officer; or
- (d) a staff member carrying out the functions or powers of an electoral official under a delegation;

**first past the post voting system** in relation to a single member constituency has the meaning given by subsection 5(2);

**general election** means an election held following a dissolution of Parliament;

**independent candidate** means a candidate who does not represent a political party;

**inspection period** means the period referred to under section 33;

**invalid ballot paper** means a ballot paper that is invalid under section 76;

**media representative** means a person accredited as a media representative under the Regulations;

**Minister** means the Minister responsible for internal affairs;

PART1 PRELIMINARY MATTERS

**Ministry** means the Ministry responsible for internal affairs;

**multi-member constituency** means a constituency where more than one member is elected to represent the constituency at a single election;

**municipal constituency** means a constituency in relation to a municipality determined under subsection 6(3);

**Municipal Council** means a municipal council established under the Municipalities Act [CAP 126];

**National Identity Card** has the same meaning as in the Vanuatu National Identity Act No. of 2021;

**national identification number** has the same meaning as in the Vanuatu National Identity Act No. 27 of 2021;

**national referendum** has the same meaning as in the Referendum Act [CAP 297];

**nomination** means the nomination of a person to stand as a candidate in an election;

**nomination period**, for an election, means the period determined under subsection 37(1) for nominating candidates for election;

**nomination place**, for a constituency, means a place declared as such under subsection 37 (2);

**nominator** means a person who nominates a candidate for election;

**notice of election** means a notice of election published under section 38;

**Office** means the Vanuatu Electoral Office established by subsection 16(1);

**official mark** means a mark referred under subsection 63(2);

**ordinary election**, for a Provincial Government Council or a Municipal Council, means an election other than a by-election;

**parliamentary constituency** means a constituency for an election to the Parliament referred to in paragraph 6(1)(b);

PART I PRELIMINARY MATTERS

**political party** means a political party contesting an election;

**political party representative** means a person accredited as a representative of a political party under the Regulations;

**poll** means the process of voting in an election;

**polling assistant** means a person appointed as such under subsection 25(3);

**polling booth** means a building, structure or enclosure, or a part of a building, structure, or enclosure, at a polling station used for the purpose of voting during polling;

**polling centre** means a polling centre established under section 54;

**polling day**, for an election, means the election date;

**polling district** has the meaning given in section 7;

**polling station** has means a polling station appointed under section 54;

**Population Register** has the same meaning as in the Civil Registration and Identity Management Act No. 28 of 2021;

**preliminary electoral list** means a preliminary electoral list drawn up in accordance with section 32;

**presiding officer** means a person appointed as such under subsection 25(1);

**provincial constituency** means a constituency in relation to a province determined under subsection 6(2);

**provincial electoral officer** means a person appointed as such under subsection 23(1);

**Provincial Government Council** has the same meaning as it has in the Decentralization Act [CAP 230];

**qualifying date**, in relation to an election, means the date determined by the Commission under section 4 for that election for the purposes of the Voter Register;

**registration** means registration as an elector;

PART1 PRELIMINARY MATTERS

**Regulations** mean the Regulations made under this Act;

**returning officer** means a person appointed as such subsection 24(1);

**seat** means a seat referred to in paragraph 6(1)(c), 6(2)(c) or 6(3)(c) in relation to a constituency;

**single-member constituency** means a constituency where only one member is elected to represent the constituency at a single election;

**single non-transferable voting system** in relation to a multi-member constituency has the meaning given by subsection 5(3);

**special electoral guest** means a person accredited as a special electoral guest under the Regulations;

**spoilt ballot paper** means a ballot paper cancelled section 69;

**staff member** means a member of the staff of the Vanuatu Electoral Office employed under section 19;

**tendered ballot paper** means a ballot paper mentioned in section 70;

**voter** means a person voting at an election;

**Voter Register** means the Voter Register established under section 29.

**3 Meaning of campaign activity**

(1) A **campaign activity** is any activity that:

- (a) is intended, calculated or likely to affect the result of an election or influence an elector in relation to the casting of his or her vote at an election; or
- (b) is prescribed by the Regulations to be a campaign activity.

(2) The Regulations may also prescribe activities that are not campaign activities.

PART1 PRELIMINARY MATTERS

**4 Qualifying date**

- (1) On the advice of the Principal Electoral Officer, the Commission must by Order determine the qualifying date for each election.
  
- (2) There may be different qualifying dates for different elections.

**PART2 VOTING SYSTEMS, CONSTITUENCIES, POLLING DISTRICTS AND FILLING OF VACANT SEATS**

**5 Voting systems**

- (1) A first past the post voting system applies in single member constituencies and a single non-transferable voting system applies in multiple member constituencies.
- (2) If there is only one seat to be filled in each constituency, under the first past the post voting system each voter votes by choosing one of the candidates and the winning candidate is the person with the most votes.
- (3) If there is more than one seat to be filled in each constituency, under the single non-transferable voting system each voter casts one vote for a candidate and the winning candidates are those persons with the highest vote totals required to fill the seats.

**6 Members of Parliament, Councillors and Electoral constituencies**

- (1) The President may, acting on the advice of the Commission, by Order:
  - (a) determine the number of Members of Parliament; and
  - (b) divide Vanuatu into parliamentary constituencies for the purposes of Parliamentary elections; and
  - (c) distribute the seats for the Members of Parliament among the constituencies.
- (2) The Commission may by Order:
  - (a) divide a province into one or more provincial constituencies for the purposes of Provincial Government Council elections; and
  - (b) prescribe the number of councillors to be elected in respect of each provincial constituency; and
  - (c) distribute the seats for the councillors among the constituencies.
- (3) The Commission may by Order:

PART2 VOTING SYSTEMS, CONSTITUENCIES, POLLING DISTRICTS AND  
FILLING OF VACANT SEATS

- (a) divide a municipality into one or more municipal constituencies for the purposes of Municipal Council elections; and
  - (b) prescribe the number of councillors to be elected in respect of each municipal constituency; and
  - (c) distribute the seats for the councillors among the constituencies.
- (4) The Regulations may prescribe matters in relation to constituencies, including the criteria for constituency delimitation to ensure fair representation and distribution of constituencies throughout Vanuatu.

**7 Polling districts**

- (1) The Commission may by Order divide constituencies into one or more polling districts.
- (2) Polling districts may be the same for all elections or may be different for different elections.

**8 Filling of vacant seats**

- (1) In this section, **threshold number** means a number, subject to subsection (2), being 70% of the number of votes of the candidate who was declared the winning candidate for a seat by the Commission.
- (2) If a threshold number is a number calculated to one decimal place, the threshold number must be rounded to the nearest whole number, rounding up in the case of a threshold number ending in 0.5 or more, and rounding down in any other case.
- (3) If:
  - (a) a seat becomes vacant in a parliamentary, provincial or municipal constituency; and
  - (b) at least one other candidate who was not declared the winning candidate at the last election or by-election (if applicable) received the threshold number of votes,

then, subject to subsection (4), the Commission must, by Order, declare that other candidate, or if there is more than one candidate who received the threshold number of votes, the candidate who received the highest



PART2 VOTING SYSTEMS, CONSTITUENCIES, POLLING DISTRICTS AND  
FILLING OF VACANT SEATS

number of votes amongst those candidates, as the winning candidate to fill the vacancy.

- (4) The Commission must make a declaration only if it is satisfied that the candidate:
- (a) is available to represent the seat and agrees to do so; and
  - (b) would be qualified under section 45 to stand as a candidate, had the election been held on the day the declaration is made.
- (5) If the Commission is not satisfied about a particular candidate under paragraph (4)(a) or (b), the Commission must:
- (a) notify him or her in writing of its decision; and
  - (b) apply subsections (3) and (4) again with such modifications as are necessary until another candidate is declared the winning candidate or a by-election is held under subsection (6).
- (6) If:
- (a) no candidate received the threshold number of votes; or
  - (b) no candidate satisfies the Commission under subsection (4); or
  - (c) only one candidate contested the seat,
- a by-election must be held on a date the Commission by Order determines to fill the vacancy.
- (7) If there is a vacant reserve seat under Part 4, subsection (3) applies only to female candidates at the last election, unless there were no other female candidates at the last election in which case a by-election of female candidates must be held to fill the vacancy.
- (8) If a person fills a vacant seat under subsection (3), (6) or (7), he or she does so for the balance of the term of the Parliament unless the person dies, resigns or otherwise vacates that seat.
- (9) This section applies to municipal council and provincial government council constituencies with such modifications as are necessary.

PART2 VOTING SYSTEMS, CONSTITUENCIES, POLLING DISTRICTS AND  
FILLING OF VACANT SEATS

- (10) To avoid doubt, an election petition does not apply to a person who fills a vacant seat under subsection (3).
- (11) The Commission is to determine the date of a by-election and the Regulations may prescribe matters in relation to the filling of vacant seats and the conduct of by-elections.
- (12) If two candidates are runners up and have an equal number of votes and satisfy the requirements under subsection (4), the older of the two candidates is to be declared the winning candidate to fill the vacant seat.

**PART 3 ADMINISTRATION**

**Division 1 Electoral Commission**

**9 Membership**

- (1) At least one of the 3 members of the Electoral Commission provided for under Article 18 of the Constitution must be a woman.
- (2) A member of the Commission may resign by giving the President a signed notice of his or her resignation.
- (3) The President, acting in accordance with the advice of the Judicial Service Commission, may, by instrument in writing, suspend or remove a member of the Electoral Commission from office if the member:
  - (a) is convicted of an offence against the Leadership Code Act [CAP 240]; or
  - (b) is convicted of a criminal offence for which the maximum penalty is imprisonment for a term of at least 12 months; or
  - (c) becomes bankrupt; or
  - (d) in the case of the Chairperson, engages in any other paid employment, or engages in any trade or business; or
  - (e) fails to perform his or her duties in a manner that is satisfactory to the Judicial Service Commission; or
  - (f) is unable to perform his or her duties, permanently or for a period of at least 6 months due to illness supported by written confirmation of at least 2 medical practitioners.
- (4) Before suspending or removing a member from office, the President must give the member a reasonable opportunity to answer any allegation made against him or her.
- (5) An instrument suspending a member must specify the period of the suspension.

**10 Functions of the Commission**

- (1) In addition to the functions provided for under Article 20 of the Constitution, the Commission has the following functions:

PART 3 ADMINISTRATION

- (a) to establish and maintain the Voter Register; and
  - (b) to supervise the preparation and conduct of elections; and
  - (c) to develop electoral policies for consideration by the Commission and the Government; and
  - (d) to promote public awareness of elections, including conducting education and voter information programmes; and
  - (e) to initiate, sponsor, and carry out study or research necessary for the performance of its functions; and
  - (f) such other functions as may be conferred on the Commission under this Act or any other Act.
- (2) In the performance of its functions, the Commission may request assistance from any government or non-government organisation.

**11 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.

**12 Independence and impartiality of the Commission**

- (1) In performing its functions and exercising its powers under this Act or any other Act, the Commission must act independently and impartially, and in accordance with the law.
- (2) The Commission is not subject to the direction or control of any other person in the performance of its functions and the exercise of its powers.

**13 Funding, financial records and audit**

- (1) The Government must ensure that there is a sufficient budget allocated to the Commission to enable it to fully perform its functions and exercise its powers.
- (2) The operations of the Commission are to be funded by monies appropriated by Parliament for that purpose.
- (3) The budget procedure provided for by the Public Finance and Economic Management Act [Cap. 244] applies to the budget for the Commission.
- (4) To ensure independence of the Commission, the budget of the Commission must be separate from the budget of the Ministry.

PART 3 ADMINISTRATION

- (5) The Commission must keep proper accounting records in relation to its financial affairs and must cause to be prepared annual statements of account for each financial year.
- (6) The Commission's accounts for each financial year must be audited within 3 months after the end of that financial year by the Auditor-General or a suitably qualified person authorised by the Auditor-General.

**14 Meetings**

- (1) The Chairperson of the Commission must convene meetings of the Commission as required and preside at all meetings.
- (2) A quorum for a meeting of the Commission is the Chairperson and one other member of the Commission present at the meeting.
- (3) At a meeting of the Commission, the Chairperson has a deliberative vote and, if the votes are equal, has a casting vote.
- (4) To avoid doubt, the Commission cannot meet if the Chairperson is not present.
- (5) The Commission may determine its other meeting procedures, including holding meetings using virtual meeting technology.

**15 Committees**

- (1) The Commission may appoint committees to assist the Commission in the performance of its functions.
- (2) A member of the Commission may be appointed to a committee.
- (3) The Commission is to determine the functions of a committee and a committee is subject to the direction of the Commission.
- (4) A member of a committee is to be paid such sitting allowances as are prescribed.

**Division 2 Electoral Office**

**16 Vanuatu Electoral Office**

- (1) The Vanuatu Electoral Office is established.
- (2) The Office has the following functions:

PART 3 ADMINISTRATION

- (a) to be the operational arm of the Commission; and
  - (b) to provide the administrative and logistical framework for the conduct of elections; and
  - (c) to provide support for the establishment and maintenance of the Voter Register; and
  - (d) to be the secretary for the Commission; and
  - (e) such other functions as may be conferred on the Office under this Act or any other Act.
- (3) The Office is under the supervision of the Commission and not the Ministry.
- (4) The Office has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (5) The Office is to be located in Port Vila and the Principal Electoral Officer must establish branch offices throughout Vanuatu.

**Division 3 Principal Electoral Officer**

**17 Functions of the Principal Electoral Officer**

The Principal Electoral Officer has the following functions:

- (a) to assist the Commission to establish and maintain the Voter Register; and
- (b) to prepare and conduct elections; and
- (c) to manage the Commission in the performance of its functions and the exercise of its powers; and
- (d) to manage the Office, its staff members and electoral officials; and
- (e) to develop and formulate policies on the Voter Register and the conduct of elections for consideration by the Commission and the Government; and
- (f) such other functions as may be conferred on the Principal Electoral Officer under this Act or any other Act.

**18 Independence and impartiality of the Principal Electoral Officer**

- (1) In performing his or her functions, the Principal Electoral Officer must act independently and impartially, and in accordance with the law.

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- (2) The Principal Electoral Officer is not subject to the direction or control of any other person in performing his or her functions.
- (3) Despite subsection (2), the Principal Electoral Officer must comply with the general electoral policy directions of the Commission.

**19 Staff of the Office and consultants**

- (1) The Commission is to employ the staff of the Office and is to determine their terms and conditions of employment.
- (2) A staff member may be employed on a permanent or temporary basis and is subject to the direction and control of the Principal Electoral Officer in undertaking his or her duties.
- (3) The Commission may employ, under agreements in writing, such additional temporary staff members as the Commission considers necessary for the preparation and conduct of an election.
- (4) The Commission may engage, under agreements in writing, persons having suitable qualifications and experience as consultants or contractors to perform services for the Commission or the Office on such terms and conditions as the Commission determines.

**20 Annual report**

- (1) The Principal Electoral Officer must prepare and give to the Speaker of Parliament a report on the activities of the Commission and the Office during each year and the Office's financial accounts prepared in accordance with the requirements of the Public Finance and Economic Management Act [Cap. 244].
- (2) The report must be given to the Speaker of Parliament by 31 March following the end of the year to which the report relates.
- (3) The Speaker of Parliament must cause the report to be tabled in the next sittings of Parliament after receiving the report.

**Division 4 Electoral officials**

**21 Appointment of electoral officials**

- (1) An electoral official appointed under this Division must be appointed on merit and be:

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- (a) suitably qualified or experienced for the position; and
  - (b) a fit and proper person to carry out the functions of the position.
- (2) So far as practicable appointments must reflect a gender balance at all levels of electoral officials.

**22 Deputy Principal Electoral Officers**

The Commission must appoint one or more deputy principal electoral officers on such terms and conditions as the Commission determines.

**23 Provincial electoral officers and assistants**

- (1) The Commission must appoint a provincial electoral officer for each province on such terms and conditions as the Commission determines.
- (2) The provincial electoral officer is responsible for the preparation and conduct of any election in the province, including overseeing the work of the returning officers.
- (3) A provincial electoral officer may, with the approval of the Principal Electoral Officer, appoint assistant provincial electoral officers on such terms and conditions as the Principal Electoral Officer determines.
- (4) An assistant provincial electoral officer is to assist in the preparation and conduct of an election in a province.

**24 Returning officers and assistants**

- (1) The Principal Electoral Officer must appoint a person to be the returning officer for each constituency on such terms and conditions as the Principal Electoral Officer determines.
- (2) A returning officer is responsible for the preparation and conduct of an election in that constituency.
- (3) A returning officer may, with the approval of the Principal Electoral Officer, appoint assistant returning officers on such terms and conditions as the Principal Electoral Officer determines.
- (4) An assistant returning officer is to assist the returning officer to prepare for and conduct an election in the constituency.



**25 Presiding officers and polling assistants**

- (1) The returning officer for a constituency may, with the approval of the Principal Electoral Officer, appoint a person to be the presiding officer for a polling station in the constituency on such terms and conditions as the Principal Electoral Officer determines.
- (2) A presiding officer is responsible for the preparation and conduct of an election at the polling station.
- (3) The returning officer for a constituency may, with the approval of the Principal Electoral Officer, appoint persons as polling assistants for a polling station on such terms and conditions as the Principal Electoral Officer determines.
- (4) A polling assistant is to assist the presiding officer to prepare for and conduct an election at the polling station.

**26 Remuneration**

- (1) An electoral official is entitled to the remuneration determined by the Government Remuneration Tribunal.
- (2) To avoid doubt, the Official Salaries Act [CAP168] applies to the Chairperson and other members of the Commission.

**Division 5 Election Reports**

**27 Election Reports**

- (1) Not later than 3 months after an election is held, the Principal Electoral Officer must submit a report about the election to the Commission.
- (2) The Commission must not more than 3 months after receiving the report of the Principal Electoral Officer prepare a report concerning the conduct of the election and provide it to the Speaker of Parliament.
- (3) Without limiting the Commission's report, it must include:
  - (a) information about the overall cost of the election; and
  - (b) the difficulties encountered in conducting the election and how they were dealt with; and

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- (c) recommendations for improvements and changes in procedure for future elections.
  
- (4) The Speaker must cause the report to be tabled in the next sittings of Parliament after receiving the report.

**PART 4 RESERVED SEATS FOR WOMEN FOR  
MUNICIPAL COUNCILS**

**28 Municipal Council - reserved seats for women**

- (1) In each municipal constituency one seat is reserved for a female member of the Municipal Council (reserved seat).
- (2) The female candidate:
  - (a) who was not declared by the Commission as the winning candidate for a seat other than the reserved seat; and
  - (b) who obtained the highest number of votes amongst other female candidates in that constituency,is to be declared by the Commission as the winning candidate for the reserved seat.
- (3) To avoid doubt, the operation of subsections (1) and (2) are not affected if a female candidate is declared by the Commission as the winning candidate for a seat other than the reserved seat.

**PART 5 VOTER REGISTER**

**29 Voter Register**

- (1) The Principal Electoral Officer is to establish and maintain a Voter Register of persons who:
  - (a) are citizens of Vanuatu; and
  - (b) have attained the age of 18 years on or before the qualifying date for an election; and
  - (c) are registered in the Central Register, and are the holders of a National Identity Card, on the qualifying date; and
  - (d) satisfy any other voter eligibility criteria prescribed by the Regulations.
- (2) The Voter Register is to be in electronic form and kept up to date by the Principal Electoral Officer.
- (3) The Registrar-General must provide the Principal Electoral Officer with information recorded in the Central Register and the Population Register under the Civil Registration and Identity Management Act No. 28 of 2021 for the purposes of the Voter Register.
- (4) The information referred to in subsection (3) must be provided quarterly or at such other times as are agreed to by the Principal Electoral Officer and Registrar-General.
- (5) The Regulations may prescribe persons or classes of persons who are to be excluded from the Voter Register.

**30 Details in the Voter Register**

The following information must be recorded for each person included in the Voter Register:

- (a) the person's given name or names;
- (b) the person's surname;
- (c) the sex of the person;

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- (d) the person's date of birth;
- (e) the person's national identification number;
- (f) the date of issue and expiration of the person's National Identity Card;
- (g) the address or location of the person's place of residence recorded in the Central Register, or the Population Register if it contains more up to date information, and the constituency in which that place of residence is located; and
- (h) any other information determined by the Principal Electoral Officer.

**31 Changes to registration**

- (1) A person may apply:
  - (a) to the returning officer for a constituency for his or her registration in the Voter Register to be transferred to that constituency from another constituency; or
  - (b) to the returning officer for the constituency for which he or she is included in the Voter Register to amend any of the person's registration details.
- (2) The application must:
  - (a) be made in the approved form; and
  - (b) be accompanied by evidence sufficient to support the application as prescribed by the Regulations; and
  - (c) be made during the period determined by Order by the Commission for the election concerned.
- (3) The returning officer must approve an application if he or she is satisfied that the applicant is eligible for registration in that other constituency or the amendments to the applicant's details are correct.
- (4) The returning officer's decision is final.

**32 Preliminary electoral lists**

- (1) The Principal Electoral Officer must make preliminary electoral lists allocating each person registered in the Voter Register to the closest polling station to his or her civil registration address or location recorded under paragraph 30(g).
- (2) In preparing the preliminary electoral lists, the Principal Electoral Officer may correct any duplication in the lists that appear to have been made by mistake.
- (3) As soon as practicable after the preliminary electoral lists are made, the Principal Electoral Officer must make the lists available for inspection in accordance with section 33.
- (4) A person included in the preliminary electoral list for a polling station under this section may, upon request to the Principal Electoral Officer, be included in the electoral list for an overseas polling station under Part 10.
- (5) A person who is included in the electoral list for an overseas polling station is to continue to be included in the preliminary electoral list for the polling station under this section.
- (6) Despite subsection (1), if:
  - (a) a person is:
    - (i) a Minister; or
    - (ii) a Member of Parliament; or
    - (iii) any member of the Minister's or Member's immediate family; or
    - (iv) a political advisor of the Minister; or
    - (v) any support staff of the Minister; and
  - (b) the person is required to attend Ministerial or official duties in Port Vila or Luganville because of his or her occupation,

the person is to be allocated to a polling station nominated by him or her and that is situated in the constituency the Minister or Member of Parliament represents, unless the person otherwise requests.

**33 Making preliminary electoral list available for inspection**

The Principal Electoral Officer must make the preliminary electoral list for each polling station available for inspection by members of the public at the polling station, or at one or more places in the constituency to which members of the public have access, for a period of 14 days starting on a date determined by the Commission.

**34 Application for changes to preliminary electoral list**

- (1) Any person who is eligible for inclusion in a preliminary electoral list but whose name has not been included in the list may apply in the approved form to the Principal Electoral Officer before the end of the inspection period for the inclusion of his or her name in the list.
- (2) Before the end of the inspection period, any person may apply in the approved form to the Principal Electoral Officer for:
  - (a) the inclusion or deletion of any names from a preliminary electoral list; or
  - (b) the correction of any matter in a preliminary electoral list; or
  - (c) the addition or deletion of any matter in a preliminary electoral list.
- (3) The Principal Electoral Officer must decide an application as soon as practicable and notify the applicant in writing of his or her decision, and the action taken (if any) to give effect to the decision.
- (4) The Principal Electoral Officer's decision on an application is final.

**35 Final electoral list**

The Principal Electoral Officer must prepare the final electoral list for each polling station after determining all applications under section 34.

## **PART 6 CONDUCT OF ELECTIONS**

### **Division 1 Dates and matters in the conduct of an election**

#### **36 Election dates**

- (1) Subject to Article 28(4) of the Constitution, the President is, acting on the advice of the Prime Minister and the Minister given after consultation with the Commission and the Principal Electoral Officer, to determine the date for a general election for Parliament.
- (2) Subject to subsection (3), the Commission is, in consultation with the Minister, to determine the date for an ordinary election for a Provincial Government Council or a Municipal Council.
- (3) An ordinary election for a Provincial Government Council or a Municipal Council must be held not earlier than 30 days and not later than 60 days after the end of the current term of the Provincial Government councillors or Municipal councillors.
- (4) The Commission must publish a notice of an election.
- (5) To avoid doubt, all or any of the following may be held on the same day:
  - (a) a Parliamentary election;
  - (b) a Provincial Government Council election;
  - (c) a Municipal Council election;
  - (d) a Presidential election;
  - (e) an election for the Malvatumauri Council of Chiefs;
  - (f) a national referendum.

#### **37 Nomination period and place of nomination**

- (1) The Commission must declare by Order a period for the nomination of candidates for an election.
- (2) The Commission must declare by Order a place situated within a constituency to be a nomination place for an election in the constituency.



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- (3) The Commission may by Order also declare a place within Vanuatu situated outside a constituency to be a nomination place for an election in the constituency.

**38 Notice of election date**

- (1) The returning officer for a constituency must publish a notice of an election in the constituency at a place in the constituency to which members of the public have access and in such other ways as the returning officer considers appropriate.
- (2) The notice must contain the following information:
- (a) the date of the election and the hours of voting for the election;
  - (b) the nomination period for a candidate for the election and each nomination place situated inside and outside (if any) of the constituency;
  - (c) where and when a candidate for the election may withdraw his or her nomination.
- (3) The returning officer must publish the notice within 7 days after the election date is determined.

**39 Campaign period**

The campaign period for an election begins on a date determined by Order by the Commission and ends at midnight on the second last day before the day of the election.

**40 Form of ballot paper**

- (1) The ballot paper for an election must be in a form approved by the Commission and must contain alongside a candidate's name:
- (a) a photograph of the candidate's face; and
  - (b) if the candidate is an independent candidate who wishes to be represented by a symbol, a symbol allocated by the returning officer for the constituency; and

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(c) if the candidate is representing a political party, the symbol of the political party.

(2) The Regulations may prescribe other requirements for ballot papers.

**41 Ballot paper draw**

(1) The Regulations may prescribe the procedures for deciding the sequence in which the names of candidates in an election in a constituency will appear on the ballot paper for the constituency.

(2) As soon as practicable after the nomination period ends, the returning officer for a constituency must publish a notice:

(a) fixing the place, date and time (which must not be later than 7 days after the nomination period ends) at which the sequence will be decided; and

(b) inviting candidates contesting the election for the constituency to attend.

**42 Special measures for internally displaced persons due to natural or man-made disasters**

(1) The Commission may determine special measures for voters if the Commission is satisfied that they have become internally displaced persons due to unforeseen natural or man-made disasters, including civil disturbances.

(2) To avoid doubt, the special measures apply despite any other provisions of this Act.

**43 Details of special measures**

Without limiting section 42, the Commission may do all or any of the following:

(a) advise the President to appoint a new date for a Parliamentary election;

(b) determine a new date for a Provincial Government Council or a Municipal Council election or a national referendum;

(c) determine a new date for the last day of the nomination period for an election;

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- (d) direct that the counting of votes be deferred or suspended to a later date if an election or national referendum has taken place;
- (e) extend the date of voting in polling stations or polling districts;
- (f) allocate internally displaced persons to special polling stations in other constituencies;
- (g) in the case of a Provincial Government Council election or a Municipal Council election, allow a person to nominate as a candidate for the election even if the person is not residing in the constituency in which he or she intends to stand as a candidate;
- (h) determine other special measures that the Commission considers to be necessary to allow internally displaced persons to exercise their right to vote within a specified period.

**Division 2 Candidates for election**

**44 Disqualification of candidates**

- (1) The following persons are not qualified to stand as a candidate in any election:
  - (a) the President of the Republic; and
  - (b) a judge or magistrate; and
  - (c) a member of the Vanuatu Police Force; and
  - (d) a person who is a member of the Malvatumauri Council of Chiefs, the District Council of Chiefs, the Island Council of Chiefs or the Area Council of Chiefs if the person holds the position of chairperson, vice-chairperson, secretary or treasurer; and
  - (e) a public servant; and
  - (f) a member of the teaching service; and
  - (g) a member of the Citizenship Commission,

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unless the person resigns from such position or office on or before a date determined by the Commission.

- (2) The Regulations may add other persons or classes of persons to subsection (1).
- (3) A person who is a Member of Parliament is not qualified to stand as a candidate in an election to a Municipal Council or a Provincial Government Council unless he or she resigns from being a Member of Parliament.
- (4) A person who is a Municipal Councillor or a Provincial Government Councillor (whether or not he or she is the Lord Mayor of the Municipal Government Council or the President of the Provincial Government Council) is not qualified to stand as a candidate in an election to Parliament unless he or she resigns from being a Councillor.
- (5) A person who is a Municipal Councillor (whether or not he or she is the Lord Mayor of the Municipal Government Council) is not qualified to stand as a candidate in an election to a Provincial Government Council unless he or she resigns from being a Municipal Councillor.
- (6) A person who is a Provincial Government Councillor (whether or not he or she is the President of the Provincial Government Council) is not qualified to stand as a candidate in an election to a Municipal Council unless he or she resigns from being a Provincial Government Councillor.
- (7) A resignation under subsection (3), (4), (5) or (6) must be in writing and given to the Minister not more than 7 days after a date determined by the Commission.
- (8) A copy of the resignation must be given to the Commission.

**45 Qualification of candidates**

- (1) A person is qualified to stand as a candidate in an election if he or she:
  - (a) is registered as a voter in the Voter Register; and
  - (b) has attained the age of:
    - (i) 25 years for an election for the Parliament; and
    - (ii) 21 years for a Municipal Council or a Provincial Government Council election; and
  - (c) is a citizen of Vanuatu; and

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- (d) has not received a sentence including a suspended sentence of a term or terms of imprisonment which has not ended; and
  - (e) is not an undischarged bankrupt; and
  - (f) is a person who is not in default of a payment of rates, charges or other debts totalling VT 5000 or more due to:
    - (i) the Government or a Government agency within the meaning of the Public Finance and Economic Management Act [CAP 244]; or
    - (ii) a Provincial Government Council; or
    - (iii) a Municipal Council,for a period exceeding 2 months after the payment becomes due; and
  - (g) is not disqualified under section 44; and
  - (h) in the case of a person who intends to stand as a candidate in a constituency for election to a Provincial Government Council or Municipal Council, is registered as a voter in and resides in that constituency at the time of his or her nomination as a candidate for the election.
- (2) For the purposes of paragraph (1)(f):
- (a) an arrangement with a candidate for payment of any rates, charges or other debts due to the Government or the Government agency, the Provincial Government Council or the Municipal Council after the period set out in that paragraph does not qualify a person for election; and
  - (b) the person must provide to the Commission an original copy of an official receipt that is acceptable to the Commission certifying that the Government or the Government agency, the Provincial Government Council or the Municipal Council has received the payment referred to in paragraph (1)(f).

**46 Nomination of candidate**

- (1) If a person intends to stand as a candidate for election in a constituency, the person must be nominated as a candidate by:
  - (a) 3 Chiefs each of whom is a member of the Village Council of Chiefs, Area Council of Chiefs or Island Council of Chiefs of that constituency and approved by the Malvatumauri Council of Chiefs; or
  - (b) 5 voters who are registered in and reside in that constituency at the time of the nomination.
- (2) A nomination must:
  - (a) be made by lodging a declaration of candidature in the approved form signed by the proposed candidate and the persons nominating the candidate with the returning officer for the constituency; and
  - (b) be made in person by the proposed candidate at a nomination place for the constituency; and
  - (c) be made within the nomination period; and
  - (d) be accompanied by a candidate nomination fee; and
  - (e) in the case of a candidate who is not sponsored by a political party, be accompanied by a copy of the policy platform of that candidate; and
  - (f) comply with any additional requirements prescribed by the Regulations.
- (3) A person may be nominated as a candidate in only one constituency.
- (4) A person, other than a chief referred to in paragraph (1)(a), may nominate only one candidate and if a person nominates more than one candidate, the person's first nomination is valid and the person's second or subsequent nomination is void.
- (5) The returning officer after receiving a nomination must give a receipt for the candidate nomination fee to the proposed candidate in the approved form.
- (6) The Principal Electoral Officer must:

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- (a) make a list of the candidates named in the nominations of candidature received for each constituency; and
  - (b) send a copy of the list to the Commission with such comments on the validity of the candidature of any person named in the list as the Principal Electoral Officer thinks fit.
- (7) A list of candidates for each election for a constituency must be published for not less than 14 days before polling day for that election except in the case of new candidatures under subsection 48(5) or 52(2), or section 49 where the period must be not less than 9 days.

**47 Candidate nomination fees**

- (1) Subject to subsection (2), the Commission may by Order prescribe the candidate nomination fee to be paid by each person nominated as a candidate in an election.
- (2) The fee payable by each person nominated as a candidate must not exceed:
  - (a) VT 200,000 for a Parliamentary election; and
  - (b) VT 100,000 for a Provincial Government Council election or a Municipal Council election.
- (3) The candidate nomination fee is not refundable.

**48 Invalidity of nomination of candidate**

- (1) The Commission must decide whether the nomination of a person to stand as a candidate in an election is valid or invalid.
- (2) The nomination of a person is invalid if:
  - (a) the person:
    - (i) is disqualified for election under section 44; or
    - (ii) does not meet the qualification for election requirements under section 45; or
    - (iii) is already nominated as a candidate in another constituency; or

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- (b) the nomination was not made in accordance with the requirements of section 46 or 50 (if applicable); or
  - (c) one or more of the nominators of the person are not eligible to nominate him or her.
- (3) If the Commission decides that the nomination of a person is invalid, the Commission must:
- (a) record the decision and the reasons for it on the nomination form; and
  - (b) give the person or one of the person's nominators a copy of the nomination form with the decision recorded.
- (4) The decision of the Commission that a nomination is invalid is final.
- (5) If the Commission decides that:
- (a) a person's nomination as an independent candidate is invalid, the person may be nominated again to stand as a candidate for election within the nomination period or such other period determined by the Commission; and
  - (b) the nomination of candidate sponsored by a political party is invalid, another candidate sponsored by the same political party may lodge a nomination of candidature no later than 48 hours after the end of the nomination period.
- (6) If, after deciding that a person's nomination of candidature is valid (original decision), whether or not the nomination has been published in the Gazette, the Commission:
- (a) becomes aware of new information; and
  - (b) is satisfied that the person's nomination would have been invalid under subsection (2) had the Commission been aware of the new information at the time it made the original decision,
- the Commission may in writing declare the nomination is invalid and the declaration takes effect on the day on which it is made.
- (7) If a person's nomination of candidature is declared invalid under subsection (6), the Commission must give the person a copy of the declaration together with a statement of reasons for the decision.
- (8) The decision of the Commission under subsection (6) that a nomination is invalid is final.



**49 Correction of technical defect and invalid candidature**

If the Principal Electoral Officer decides under section 48 that a nomination of candidature is invalid by reason of a bona fide error, the Commission may request the proposed candidate to resubmit a valid nomination within a period determined by the Commission.

**50 Candidate representing political party**

- (1) A person nominated to stand as a candidate for election representing a political party must:
  - (a) be a member of the political party; and
  - (b) in addition to his or her nomination form, give the returning officer a letter signed by the leader of the political party confirming that the person is a member of the political party and is a candidate representing the political party at the election.
- (2) Subject to subsection (3), the nomination of a candidate representing a political party cannot be amended to change the status of the candidate so that the candidate becomes an independent candidate or represents another political party.
- (3) A person may withdraw his or her nomination as a candidate and be nominated again under a different status during the nomination period.

**51 Withdrawal of nomination**

- (1) A candidate for election in a constituency may withdraw his or her nomination by written notice to the returning officer for the constituency signed by the candidate.
- (2) The candidate must give the notice to the returning officer no later than 48 hours after the end of the nomination period.
- (3) The withdrawal takes effect when the notice is received by the returning officer.

**52 Death of candidate**

- (1) If a candidate for election in a constituency dies after the end of the nomination period but before the day of the election, the returning officer for the constituency must report the death to the Commission.
- (2) If a candidate sponsored by a political party dies more than 14 days before the day of the election, another candidate sponsored by the same political party may lodge a nomination of candidature no later than 72 hours after the death.

**53 Representative of independent candidate and political party**

- (1) An independent candidate and a political party may nominate to the Commission not more than 3 representatives for a polling station during the nomination period.
- (2) The Commission is to accredit the representatives in accordance with the Regulations.
- (3) The function of a representative is to observe the election process in a polling station and to observe the counting of votes.
- (4) A nomination must be made in the approved form.

**Division 3 Preparations for voting**

**54 Polling stations and polling centres**

- (1) For the purposes of preparing for an election, the Commission may, after consultation with the Principal Electoral Officer, do all or any of the following:
  - (a) appoint a place as a polling station in each polling district;
  - (b) appoint more than one place as a polling station in a polling district having regard to the population of the polling district;
  - (c) appoint places as temporary polling stations if satisfied that a conflict exists or is likely to arise between different communities registered at the same polling station;
  - (d) establish polling centres;
  - (e) appoint more than one polling station at a polling centre;
  - (f) appoint places as temporary polling stations for the purposes of special voting arrangements under section 65.
- (2) In appointing polling stations and establishing polling centres, the Commission must, so far as practicable, ensure that all voters have a fair chance of reaching a polling centre or polling station so as to be able to vote.
- (3) The Commission must publish the location of each polling station and polling centre.

**55 Arrangements for voting**

The returning officer for a constituency is responsible for making arrangements for voting at an election in the constituency.

**56 Notice of election**

(1) The returning officer for a constituency must publish a notice of election in the constituency at a place in the constituency to which members of the public have access and in such other ways as the returning officer considers appropriate.

(2) The notice must be in the approved form and be published at least 14 days before the date of the election.

**57 Ballot boxes**

The presiding officer at a polling station must ensure that the polling station has a sufficient number of ballot boxes.

**58 Display of candidates' names, photographs and symbols**

The presiding officer for a polling station must display in a conspicuous place at the polling station voter awareness information provided by the Office.

**59 Arrangements for persons with disabilities or other special needs**

The returning officer for a constituency must ensure that appropriate arrangements are made for persons with disabilities or other special needs to cast their votes.

**Division 4 Voting**

**60 Persons entitled to vote**

A person is entitled to vote at an election if:

- (a) the person presents his or her National Identity Card in physical form or electronic form; and
- (b) the person's name is included in the Voter Register in accordance with section 29.

**61 Voting methods**

A person who is entitled to vote at an election may cast his or her vote:

- (a) in person at a polling station if the person is included in the electoral list for that polling station; or
- (b) by using a prescribed electronic voting method; or
- (c) if a special voting arrangement under section 65 applies to the person, by voting in accordance with that arrangement.

**62 Opening of voting and hours of voting**

- (1) The hours of voting on polling day are from 7.30 am to 4.30 pm unless the Commission approves other hours of voting.
- (2) Despite subsection (1), if a person, at the end of the voting hours, is standing in the line to vote (even if the person is outside the polling station in the line) or is inside the polling station, then the presiding officer at the station must allow the person to vote.

**63 Ballot paper account and official mark**

- (1) Before voting begins at a polling station, the presiding officer of the polling station must fill in an account in the approved form recording the total number of ballot papers received at the polling station.
- (2) The returning officer for a constituency must prepare a list of official marks that may be used to mark ballot papers.
- (3) The returning officer must give the list to the presiding officer for each polling station in the constituency.

**64 Assisted voting**

- (1) This section applies if a person registered to vote at a polling station is unable to cast his or her vote because of a physical disability or other special needs as determined by the presiding officer for the polling station.
- (2) The presiding officer must, in the presence of the person and a witness chosen by the person:
  - (a) ask the person the name of the candidate he or she wishes to vote for, and confirm the answer; and

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- (b) record the voter's vote; and
- (c) fold and insert the marked ballot paper into the ballot box.

**65 Special voting arrangements for absentee and certain other voters**

- (1) This section applies to a person who:
  - (a) is not in his or her constituency on polling day, whether or not the person is outside of Vanuatu; or
  - (b) is unable to vote at the polling station where he or she is included in the electoral list because:
    - (i) of illness or incapacity; or
    - (ii) he or she is confined in a prison; or
    - (iii) of any other prescribed circumstances; or
  - (c) is serving on polling day as a police officer or providing security; or
  - (d) is an electoral official engaged in the conduct of the election on polling day.
- (2) The Office may establish for persons referred to in subsection (1) special voting arrangements for general elections for Parliament.
- (3) Without limiting subsection (2), the Office must so far as practicable arrange to have persons referred to in paragraphs (1)(c) and (d) serve in a polling station that is located in their constituency.

**66 Preferential voting treatment**

- (1) The persons listed in subsection (2) are to be given preference to vote at a polling station:
  - (a) before members of the public begin to vote at the polling station; or
  - (b) upon their arrival at the polling station.
- (2) The following persons are to be given preference:

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- (a) a political party representative or a candidate representative;
- (b) an electoral official or a member of the Vanuatu Police Force who is registered to vote in the polling station where he or she is assigned to work;
- (c) an electoral observer who is registered to vote in the polling station where he or she is observing;
- (d) pregnant women, nursing mothers, elderly people and people with disabilities or other special needs as determined by the presiding officer for the polling station.

**67 Issuing of ballot paper to voter**

Before giving a person a ballot paper at a polling station, the presiding officer must follow the prescribed procedures.

**68 Recording of votes generally**

- (1) Upon being given a ballot paper at a polling station, a person must immediately go into a polling booth and secretly record his or her vote on the ballot paper by placing one mark inside the square opposite the name of the candidate he or she wishes to vote for.
- (2) The voter must then fold and insert the marked ballot paper into the ballot box before leaving the polling station.
- (3) More than one person is allowed in a polling booth for the purposes of assisted voting.

**69 Spoilt ballot papers**

If a voter at a polling station:

- (a) accidentally deals with his or her ballot paper in a way that renders it invalid; and
- (b) returns the ballot paper to the presiding officer; and
- (c) satisfies the presiding officer that the ballot paper has been spoilt by accident,

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the presiding officer must cancel and retain the spoilt ballot paper, and give the voter a new ballot paper.

**70 Tendered ballot papers**

- (1) This section applies if a person applies to a presiding officer for a ballot paper after another person has voted under the same name.
- (2) The presiding officer must give the applicant a tendered ballot paper.
- (3) A tendered ballot paper must not be the same colour as a normal ballot paper.
- (4) The presiding officer must enter the name of the applicant on a list of voters who have been given tendered ballot papers.
- (5) The list is admissible in a legal proceeding.

**Division 5 Management and security for voting**

**71 Management and security at polling stations**

- (1) The presiding officer for a polling station is responsible for managing the polling station and is to be assisted by polling assistants.
- (2) Members of the Vanuatu Police Force or persons authorised by the Office are to provide security at polling stations during an election.
- (3) Without limiting subsection (2), one or more police officers or authorised persons are to be positioned at the entrance of each polling station, but may enter the polling station if required by the presiding officer.

**72 Conduct in polling stations**

The presiding officer for a polling station is responsible for keeping order at the polling station.

**73 Suspension of poll**

- (1) If voting is interrupted at a polling station in such circumstances that in the opinion of the presiding officer for the polling station it is temporarily impossible for the voting to continue, he or she may suspend the poll.
- (2) If there has been a suspension of the poll, the polling officer may recommence voting when he or she considers voting may continue

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undisturbed and the voting must be continued, unless the presiding officer is satisfied that every voter on the electoral list for that polling station has cast his or her vote.

**74 Stopping of poll**

- (1) If circumstances arise which in the opinion of a presiding officer make it impossible to continue with a poll within a reasonable time, whether or not polling has already been suspended, the presiding officer must declare the poll stopped and inform the Principal Electoral Officer of the declaration.
- (2) The Principal Electoral Officer must as soon as practicable provide a report to the Commission on the declaration to stop a poll.
- (3) If a poll has been stopped, the Commission must by Order annul proceedings that occurred before the declaration to stop the poll, either:
  - (a) in every polling station in the relevant constituency if the result in the constituency as a whole could be affected by the addition of the votes of voters where the poll has been stopped; or
  - (b) in the polling station where the poll has been stopped if the results in the relevant constituency as a whole could not be materially affected by the addition of the votes of the voters where the poll has been stopped.
- (4) The Commission must in its Order under subsection (3) fix a new day and time for polling and a new poll must be held accordingly.



## **PART 7 COUNTING OF VOTES**

### **75 Stages in the counting of votes**

- (1) The counting of votes must be carried out in accordance with the procedures prescribed by the Regulations.
- (2) Without limiting subsection (1), the counting of votes must comply with the following stages:
  - (a) after the close of voting at a polling station, each ballot box at the polling station must be opened and the ballot papers removed from that ballot box and sorted; and
  - (b) the ballot papers issued to voters must be reconciled with the ballot papers found in each ballot box; and
  - (c) the votes must be counted.

### **76 Invalid ballot papers**

A ballot paper is invalid if:

- (a) the ballot paper is torn, or completely damaged, so as to make it impossible to determine which candidate received a vote; or
- (b) the ballot paper is marked for more than one candidate; or
- (c) there are no marks on the ballot paper for any candidates; or
- (d) it is impossible to determine for which candidate a mark is made;  
or
- (e) there is a mark on the ballot paper clearly indicating the identity of the voter.

### **77 Votes generally to be counted at polling station**

- (1) Subject to subsections (3) and (4), the votes cast at a polling station must be counted at the polling station.
- (2) The presiding officer of a polling station is responsible for overseeing the counting of votes at the polling station.

PART 7 COUNTING OF VOTES

(3) The votes cast under special voting arrangements under section 65 must be counted in accordance with those arrangements.

(4) The votes cast using electronic voting methods must be counted in accordance with the prescribed procedures.

**78 Persons who may be present during the counting of votes**

(1) Subject to subsection (2), the following persons are entitled to be at a polling station while votes are being counted:

- (a) the presiding officer for the polling station; and
- (b) police officers and other persons providing security at the polling station; and
- (c) candidate representatives; and
- (d) political party representatives; and
- (e) electoral observers; and
- (f) media representatives; and
- (g) any or all of the candidates; and
- (h) any other person permitted by the returning officer for the constituency.

(2) Only one representative for each independent candidate and political party is permitted in a polling station at any time, including during the counting of votes.

**79 Invalid and spoilt ballot papers**

Invalid ballot papers and spoilt ballot papers are not to be counted as part of the valid votes cast.

**80 Declaration of counting of votes completed and provisional results announced**

(1) After the close of the counting of votes at a polling station, the presiding officer for the polling station must:

PART 7 COUNTING OF VOTES

- (a) declare the counting of votes completed at the polling station; and
  - (b) announce provisionally the votes cast for each candidate at the polling station in a loud voice so that political party representatives and candidate representatives and electoral observers present at the polling station can record the results; and
  - (c) display for the public a copy of the provisional polling station results at the polling station.
- (2) The Principal Electoral Officer must make arrangements for the votes cast under special voting arrangements under section 65 and using electronic voting methods to be added to the relevant provisional polling station results.

**81 Tied votes in a constituency**

- (1) This section applies:
- (a) in the case of a single-member constituency - if two or more candidates have an equal highest number of votes; and
  - (b) in the case of a multi-member constituency - if two or more candidates have an equal number of votes for the last seat in the constituency.
- (2) The returning officer must:
- (a) recount the votes cast for those candidates; and
  - (b) if the votes are still equal after the recount, report the matter to the Commission.
- (3) The Commission must:
- (a) in the case of a Parliamentary election, advise the President to appoint a date for a fresh election in that constituency; or
  - (b) in the case of a Provincial Government Council or Municipal Council election, determine a date for a fresh election in that constituency.
- (4) The fresh election must be held between the 2 tied candidates only.

**82 Complaints during vote counting process**

- (1) A candidate representative or a political party representative at a polling station may complain to the presiding officer for the polling station during the counting of votes about:
  - (a) an alleged breach of the counting procedure; or
  - (b) an alleged interference with the rights of a candidate, or a candidate representative or a political party representative; or
  - (c) another alleged irregularity during the counting of votes.
- (2) The presiding officer must:
  - (a) record the complaint in the approved form; and
  - (b) immediately consider and make a decision on the complaint; and
  - (c) record the decision, including the reasons for the decision; and
  - (d) if the presiding officer is satisfied that the complaint is substantiated, immediately take appropriate action to remedy the cause of the complaint.
- (3) The decision of the presiding officer about a complaint is final.
- (4) To avoid doubt, nothing in this section affects Part 9.

**PART 8 RESULTS OF ELECTIONS**

**83 Verification of election results**

- (1) The Commission must verify the results of an election:
  - (a) from each polling station; and
  - (b) for the votes cast under special voting arrangements under section 65 and using electronic voting methods in accordance with the Regulations.
- (2) The Commission may request assistance from the Office and any other persons for the purpose of subsection (1).

**84 Tabulation of election results for each constituency**

The Commission must, after the verification of results:

- (a) declare the number of votes cast for each candidate in each constituency; and
- (b) compile the election results for each constituency; and
- (c) prepare the declaration of the final election results.

**85 Publication of official election results**

- (1) After the verification process under section 83 and the tabulation process under section 84 are completed for an election, the Commission must:
  - (a) make the final election results available to the media, political parties, candidates and other persons as the Commission determines; and
  - (b) publish the final election results; and
  - (c) arrange for the final election results to be displayed in each constituency at a place that is open to the public.
- (2) The Commission must announce and publish only the final election results.

## **PART 9 ELECTION PETITIONS**

### **Division 1 Election Petitions for elections for Parliament**

#### **86 Application of Division**

This Division applies to any election to Parliament including a by-election.

#### **87 Elections only to be challenged under this Act**

- (1) The validity of an election to which this Division applies may be challenged by a petition brought for that purpose under this Act and not otherwise.
- (2) Such an election petition must be heard by the Supreme Court.

#### **88 Persons who may present election petitions**

An election petition may be presented by:

- (a) a person who is registered to vote at the election to which the petition relates; or
- (b) a person claiming to have been a candidate at such election.

#### **89 Petition only valid if deposit made**

- (1) The presentation of an election petition is not valid unless the person presenting the petition lodges with the Supreme Court a deposit of VT 200,000 as security for costs within the time period referred to in section 90 for the presentation of the petition.
- (2) Subject to subsection (3), the deposit must be returned to the petitioner after the petition has been heard.
- (3) The Supreme Court may deduct from the deposit the amount of any costs ordered to be paid.

#### **90 Time for presentation of petitions**

- (1) Subject to subsection (2), an election petition must be presented within 21 days after the publication in the Gazette of the final results of the election to which the petition relates.

PART 9 ELECTION PETITIONS

(2) If a petition alleges a specific payment of money or other reward after an election by or on the account of a person whose election is disputed, the petition may be presented within 21 days after the alleged payment.

(3) The time limit referred to in subsections (1) and (2) must not be extended.

**91 Election petitions to be in writing and copies to be served on affected persons**

(1) An election petition must be in writing and specify the ground or grounds upon which an election is disputed.

(2) The Supreme Court must cause a copy of each election petition to be served on any person whose election may be affected by the petition and allow such person a reasonable time in which to make any submissions in writing on such petition and an opportunity to be heard on the hearing of the petition.

**92 Rules for election disputes**

(1) The Chief Justice may make such rules not inconsistent with this Act concerning the conduct of proceedings before the Supreme Court under this Division and the times and places of hearings and adjournment as the Chief Justice considers proper.

(2) The proceedings of the Court must be conducted in English, French or Bislama according to the choice of the petitioner and interpreters must be provided by the Court.

(3) The proceedings of the Court must be recorded in writing.

(4) A summons to a witness must be in the form set out in the Rules for election disputes.

(5) If a person without sufficient excuse:

(a) disobeys a summons or reasonable direction of the Court; or

(b) hinders or obstructs the Court; or

(c) gives false evidence to the Court; or

(d) insults the Court by word of mouth, writing, radio broadcast or in any other manner,

PART 9 ELECTION PETITIONS

the person commits an offence punishable on conviction to imprisonment for a term not exceeding 5 years or a fine not exceeding VT 500,000, or both.

- (6) No person appearing before the Court during the hearing of a petition is required to incriminate himself or herself and all such persons are entitled to the privileges accorded to a witness appearing before the Supreme Court when exercising its normal jurisdiction.

**93 Decisions of Court in election disputes**

- (1) On hearing a petition, the Supreme Court may:
- (a) declare the election to which the petition relates is void; or
  - (b) declare a candidate other than the person whose election is questioned was duly elected; or
  - (c) dismiss the petition and declare that the person whose election is questioned was duly elected.
- (2) The Supreme Court may make such orders as to the payment of costs by any person appearing before it as it considers appropriate.

**94 Grounds for declaring election void**

- (1) The election of a candidate may be declared void on an election petition if it is proved to the satisfaction of the Supreme Court that:
- (a) there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election; or
  - (b) the candidate was at the time of his or her election a person not qualified or disqualified for election; or
  - (c) there was such irregularity in the counting of the votes as may reasonably be supposed to have affected the result of the election.
- (2) The election of a candidate must be declared void if he or she is convicted of committing the offence of:
- (a) fraudulent voting under section 122; or
  - (b) election bribery under section 127; or



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(c) undue influence under section 128.

(3) Despite subsection (1), if upon the hearing of an election petition the Supreme Court finds that there has been failure to comply with any provision of this Act, but the Court further finds it is satisfied that:

(a) the election was conducted in accordance with the principles laid down in this Act; and

(b) such failure did not affect the result of the election,

then the election of the successful candidate is not by reason of such failure, void.

**95 Examination of votes cast**

If on an election petition the election is claimed for an unsuccessful candidate on the ground that he or she had a majority of lawful votes, the Supreme Court may direct an examination of the counted and void votes and of the counting of votes.

**96 Communication of decision of Court concerning election disputes**

(1) The decision of the Supreme Court must be communicated without delay to the petitioner and to all persons whose election is subject to such petition.

(2) There is no appeal from a decision of the Supreme Court under this Division.

**97 Reports to Public Prosecutor**

If the Supreme Court is satisfied that a person has committed an offence under Part 11 in connection with an election to which a petition heard by it relates, the Court must prepare and send a written report in respect of the alleged offence to the Public Prosecutor.

**98 No person required to reveal his or her vote**

A person who has voted in an election is not required in any proceedings to state for whom he or she has voted.

**Division 2 Election Petitions for elections for Municipal Councils and Provincial Government Councils**

**99 Application of Division**

This Division applies to any election for a Municipal Council or Provincial Government Council, including a by-election.

**100 Elections only to be challenged under this Act**

- (1) The validity of an election to which this Division applies may be challenged by a petition brought for that purpose under this Act and not otherwise.
- (2) Such an election petition must be heard by the Magistrates Court.

**101 Persons who may present election petitions**

An election petition may be presented by:

- (a) a person who is registered to vote at the election to which the petition relates; or
- (b) a person claiming to have been a candidate at such election.

**102 Petition only valid if deposit made**

- (1) The presentation of an election petition is not valid unless the person presenting the petition lodges with the Magistrates Court a deposit of VT 100,000 as security for costs within the time period referred to in section 103 for presentation of the petition.
- (2) Subject to subsection (3), the deposit must be returned to the petitioner after the petition has been heard.
- (3) The Magistrates Court may deduct from the deposit the amount of any costs ordered to be paid.

**103 Time for presentation of petitions**

- (1) Subject to subsection (2), an election petition must be presented within 21 days after the publication in the Gazette of the final results of the election to which the petition relates.
- (2) If a petition alleges a specific payment of money or other reward after an election by or on the account of a person whose election is disputed, the petition may be presented within 21 days after the alleged payment.

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- (3) The time limit referred to in subsections (1) and (2) must not be extended.

**104 Election petitions to be in writing and copies to be served on affected persons**

- (1) An election petition must be in writing and specify the ground or grounds upon which an election is disputed.
- (2) The Magistrates Court must cause a copy of each election petition to be served on any person whose election may be affected by the petition and allow such person a reasonable time in which to make any submissions in writing on such petition and an opportunity to be heard on the hearing of the petition.

**105 Rules for election disputes**

- (1) After consultation with the Chief Justice, the Chief Magistrate may make such rules not inconsistent with this Act concerning the conduct of proceedings before the Magistrates Court under this Division and the times and places of hearings and adjournment as the Chief Magistrate considers proper.
- (2) The proceedings of the Court must be conducted in English, French or Bislama according to the choice of the petitioner and interpreters must be provided by the Court.
- (3) The proceedings of the Court must be recorded in writing.
- (4) A summons to a witness must be in the form set out in the Rules for election disputes.
- (5) If a person without sufficient excuse:
- (a) disobeys a summons or reasonable direction of the Court; or
  - (b) hinders or obstructs the Court; or
  - (c) gives false evidence to the Court; or
  - (d) insults the Court by word of mouth, writing, radio broadcast or in any other manner,
- the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

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- (6) No person appearing before the Court during the hearing of a petition is required to incriminate himself or herself and all such persons are entitled to the privileges accorded to a witness appearing before the Magistrates Court when exercising its normal jurisdiction.

**106 Decisions of Court in election disputes**

- (1) On hearing a petition, the Magistrates Court may:
- (a) declare the election to which the petition relates is void; or
  - (b) declare a candidate other than the person whose election is questioned was duly elected; or
  - (c) dismiss the petition and declare that the person whose election is questioned was duly elected.
- (2) The Magistrates Court may make such orders as to the payment of costs by any person appearing before it as it considers appropriate.

**107 Grounds for declaring election void**

- (1) The election of a candidate may be declared void on an election petition if it is proved to the satisfaction of the Magistrates Court that:
- (a) there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election; or
  - (b) the candidate was at the time of his or her election a person not qualified or disqualified for election; or
  - (c) there was such irregularity in the counting of the votes as may reasonably be supposed to have affected the result of the election.
- (2) The election of a candidate must be declared void if he or she is convicted of committing the offence of:
- (a) fraudulent voting under section 122; or
  - (b) election bribery under section 127; or
  - (c) undue influence under section 128.

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(3) Despite subsection (1), if upon the hearing of an election petition the Magistrates Court finds that there has been failure to comply with any provision of this Act, but the Court further finds it is satisfied that:

- (a) the election was conducted in accordance with the principles laid down in this Act; and
- (b) such failure did not affect the result of the election,

then the election of the successful candidate is not by reason of such failure, void.

**108 Examination of votes cast**

If on an election petition the election is claimed for an unsuccessful candidate on the ground that he or she had a majority of lawful votes, the Magistrates Court may direct an examination of the counted and void votes and of the counting of votes.

**109 Communication of decision of Court concerning election disputes**

- (1) The decision of the Magistrates Court must be communicated without delay to the petitioner and to all persons whose election is subject to such petition.
- (2) A person aggrieved by a decision of the Magistrates Court under this Division may appeal to the Supreme Court.

**110 Reports to Public Prosecutor**

If the Magistrates Court is satisfied that a person has committed an offence under Part 11 in connection with an election to which a petition heard by it relates, the Court must prepare and send a written report in respect of the alleged offence to the Public Prosecutor.

**111 No person required to reveal his or her vote**

A person who has voted in an election is not required in any proceedings to state for whom he or she has voted.

**Division 3 Cooperation with Courts**

**112 Cooperation by Commission and Office with Courts**

- (1) The Commission and the Office must cooperate fully with the Supreme Court and the Magistrates Court in regard to any election petition.
  
- (2) Any documents in the possession or control of the Commission or the Office that are relevant to an election petition must be digitally stored and must not be destroyed until the petition proceedings end, including any appeal proceedings.

**PART 10 DESIGNATION OF OVERSEAS POLLING  
STATIONS FOR PARLIAMENTARY ELECTIONS**

**113 Designation of overseas polling stations**

- (1) The Commission may, on the advice of the Principal Electoral Officer, designate one or more polling stations in a foreign country for a general election for Parliament.
- (2) Any designation is subject to the agreement of the foreign Government concerned.
- (3) The Office must prepare an electoral list for each overseas polling station and the constituency for each voter must be included in the list.
- (4) The electoral lists referred to in subsection (3) must be prepared based on entries in the Voter Register.

## PART 11 OFFENCES

### 114 Overview of this Part

- (1) This Part makes certain corrupt practices such as bribery, undue influence and fraudulent voting criminal offences. These criminal offences are to be prosecuted by the Public Prosecutor and not the Commission.
- (2) Part 9 deals with election petitions which are not criminal offences. Election petitions may be brought in the courts by candidates for elections or registered voters in accordance with Part 9, but are not initiated by the Commission.

### 115 Misleading information or document

- (1) If a person:
  - (a) gives information to an electoral official under this Act; and
  - (b) knows or is reckless as to whether the information is misleading, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.
- (2) If a person:
  - (a) gives a document to an electoral official under this Act; and
  - (b) knows or is reckless as to whether the document contains misleading information, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.
- (3) It is a defence to a prosecution for an offence under subsection (2) if the person, when giving the document:
  - (a) draws the misleading aspect of the document to the attention of the electoral official; and
  - (b) to the extent to which the person can reasonably do so – gives the electoral official the information necessary to remedy the misleading aspect of the document.
- (4) In this section, **misleading information** means information that is misleading in a material particular or because of the omission of a material particular.



**116 Confidentiality of information**

(1) If a person:

- (a) obtains information while exercising a power or performing a function under this Act as any of the following:
  - (i) the Chairperson of the Commission;
  - (ii) a member of the Commission;
  - (iii) an electoral official;
  - (iv) a staff member;
  - (v) a police officer; and
- (b) engages in conduct that results or is reasonably likely to result in the disclosure of the information to a person other than a person mentioned in paragraph (a),

the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

(2) It is a defence to a prosecution for an offence if the person discloses the information:

- (a) for the exercise of the person's powers or the performance of the person's functions; or
- (b) for the administration of this Act; or
- (c) for legal proceedings arising out of the operation of this Act; or
- (d) with the consent of the person to whom the information relates.

**117 Protection of Voter Register**

If a person alters any information in the Voter Register without authorisation under this Act, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

**118 Duty of employers to release voters**

If:

- (a) a voter employed by an employer requests to be released at a reasonable time to vote at an election; and

PART 11 OFFENCES

(b) the employer:

- (i) does not release the voter; or
- (ii) releases the voter but reduces the voter's remuneration for the time spent by the voter voting,

the employer commits an offence punishable on conviction to a fine not exceeding VT 100,000.

**119 Failure to comply with direction or requirement**

If a person fails to comply with a direction or requirement of an electoral official given or made under this Act, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding VT 200,000, or both.

**120 Obstructing or threatening an electoral official**

If a person obstructs or threatens an electoral official acting in an official capacity, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding VT 200,000, or both.

**121 Impersonating an electoral official**

If a person falsely represents, by words or conduct, that he or she is an electoral official, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding VT 200,000, or both.

**122 Fraudulent voting**

If a person:

- (a) votes more than once at an election; or
- (b) impersonates a voter (living or dead or fictitious) for the purpose of voting at an election; or
- (c) votes at an election knowing that he or she is not entitled to do so; or
- (d) induces another person to vote at an election knowing that that other person is not entitled to do so; or
- (e) votes at a polling station where he or she is not entitled to vote,

the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

**123 Interfering with voting**

If a person, without lawful authority:

- (a) interferes with a voter who is casting his or her vote; or
- (b) attempts to obtain information on the candidate for whom a voter is about to vote or has voted; or
- (c) enters into a polling booth while another person is in the booth; or
- (d) obstructs or unnecessarily delays proceedings at a polling station, including by obstructing access to the polling station,

the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

**124 Interfering with ballot papers and ballot boxes**

If a person, without lawful authority:

- (a) removes a ballot paper from a polling station; or
- (b) forges a ballot paper; or
- (c) defaces a ballot paper completed by another person; or
- (d) destroys a ballot paper; or
- (e) supplies a ballot paper to another person; or
- (f) destroys, takes, opens or interferes with a ballot box or packet of ballot papers,

the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

**125 Display, publication and distribution of false material**

If:

- (a) a person displays, publishes or distributes material (or causes material to be displayed, published or distributed); and
- (b) the material falsely appears to have been issued by the Commission or an electoral official,

the person commits an offence punishable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding VT 200,000, or both.

**126 Offences in relation to a campaign activity**

- (1) If a person engages in a campaign activity in relation to an election outside the campaign period for the election, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 200,000, or both.
- (2) If a person who is a member of Parliament spends, allocates or otherwise disburses any representation allowance received for the constituency he or she represents on a campaign activity, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 5 years or a fine not exceeding VT 1,000,000, or both.

**127 Election bribery**

- (1) Subject to subsection (2), if:
  - (a) a person (the first mentioned person) directly or indirectly promises, offers or gives a benefit to another person; and
  - (b) the first mentioned person does so with the intention of influencing the other person to:
    - (i) vote or refrain from voting at an election; or
    - (ii) vote in a particular way at an election; or
    - (iii) influence a third person to vote, refrain from voting or vote in a particular way at an election,

the first mentioned person commits an offence punishable on conviction to imprisonment for a term not exceeding 5 years or a fine not exceeding VT 1,000,000, or both.
- (2) Subsection (1) does not apply in relation to a declaration of policy or a promise of action by a candidate as a campaign activity.
- (3) If:
  - (a) a person (first mentioned person) directly or indirectly solicits, accepts or receives a benefit for himself or herself, or another person; and
  - (b) the first mentioned person does so with the intention that he or she will be influenced to:
    - (i) vote or refrain from voting at an election; or
    - (ii) vote in a particular way at an election; or

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- (iii) influence a third person to vote, refrain from voting or vote in a particular way at an election,

the first mentioned person commits an offence punishable on conviction to imprisonment for a term not exceeding 5 years or a fine not exceeding VT 1,000,000, or both.

- (4) If a person gives person money or any other item with the intention that the money or item be used as a benefit in the commission of an offence under subsection (1) or (3), the person commits an offence punishable on conviction to imprisonment for a term not exceeding 5 years or a fine not exceeding VT 1,000,000, or both.
- (5) It is a defence to a prosecution of an offence under this section if the defendant proves that the defendant promised, offered, gave, solicited, accepted or received the benefit:
- (a) in accordance with custom; or
  - (b) openly, in the course of a traditional exchange of gifts; or
  - (c) for the benefit of a community or group of people and not for an individual; or
  - (d) for the purpose of providing entertainment to members of the public during the campaign period; or
  - (e) for the purpose of providing food, drink, entertainment, transport or accommodation to a person approved by a candidate as a member of the candidate's campaign team during the campaign period or on the polling day.
- (6) In this section, benefit includes food, drink, transport, accommodation or entertainment, and the cost of food, drink, transport, accommodation or entertainment.

**128 Undue influence**

If a person directly or indirectly, by violence, intimidation, threat or physical restraint, attempts to influence another person to:

- (a) vote or refrain from voting at an election; or
- (b) vote in a particular way at an election,

the first mentioned person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

**129 Inciting election boycott**

If:

- (a) a person has customary authority or religious influence over a group of people; and
- (b) the person issues or causes to be issued a direction that, having regard to the nature and extent of the person's authority or to a probable consequence of non-compliance with the direction, causes, or is likely to cause, a group of persons to refrain from voting in an election,

the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

**130 Offence to obstruct, hinder or interfere with candidate's campaign activities**

If a person obstructs, hinders or interferes with a candidate for an election so as to prevent or disrupt the candidate from carrying out any campaign activities during the campaign period, the person commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding VT 500,000, or both.

**131 Effect of certain offences and reporting of offences**

- (1) This section applies if a person is convicted of an offence against:
  - (a) section 122 (fraudulent voting); or
  - (b) section 127 (bribery); or
  - (c) section 128 (undue influence).
- (2) The person is disqualified for 5 years from the date of the conviction from being elected as a member of Parliament or a councillor.
- (3) The disqualification is in addition to any penalty imposed for the offence.
- (4) If a person observes or becomes aware of conduct that might constitute an offence against this Act, the person must, as soon as possible, report the conduct to a police officer.

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**132 Repeal of Act**

The Representation of the People Act [CAP 146] is repealed.

**133 Continuation of regulations and other subsidiary legislation**

- (1) Any Regulation, Order, Code of Conduct, notice or other instrument made under the Representation of the People Act [CAP 146] that was in force immediately before the commencement of this Act, continues with necessary modifications, on and after that commencement, until it is repealed or revoked.
- (2) Any Regulation, Order, notice or other instrument made under section 18A of the Decentralization Act [CAP 230] that was in force immediately before the commencement of this Act, continues with necessary modifications, on and after that commencement, until it is repealed or revoked.
- (3) Any Regulation, Order, notice or other instrument made under section 7 of the Municipalities Act [CAP 126] that was in force immediately before the commencement of this Act, continues with necessary modifications, on and after that commencement, until it is repealed or revoked.
- (4) Any Rules for Election Petitions made under the Representation of the People Act [CAP 146] that were in force immediately before the commencement of this Act, continue with necessary modifications, on and after that commencement, until they are repealed or revoked.

**134 Transitional arrangement**

- (1) The Chairman and the two other members of the Electoral Commission, and the Principal Electoral Officer, holding office immediately before the commencement of this Act, are to continue, on and after that commencement, on the same terms and conditions of service with accrued entitlements.
- (2) Subsection (3) applies to a person who was employed by the Public Service Commission in the Electoral Commission or the Vanuatu Electoral Office immediately before the commencement of this Act.
- (3) The person continues to be employed in the Electoral Commission or Vanuatu Electoral Office, on and after that commencement, on the same

PART 12 REPEAL, SAVINGS AND TRANSITIONAL MATTERS

terms and conditions of service with accrued entitlements as if he or she had been employed under this Act by the Commission.

- (4) Subsection (5) applies to a person who was working as a consultant for the Commission or the Office immediately before the commencement of this Act.
- (5) The person is to continue to work as a consultant for the Commission or the Office, on and after that commencement, on the same terms and conditions of engagement.

**135 Transitional Regulations**

- (1) A Regulation made by the Commission may provide for a matter of a transitional nature:
  - (a) because of the enactment of this Act; or
  - (b) to allow or facilitate the transition to the operation of this Act.
- (2) The Regulation may have retrospective operation to a day not earlier than the date this section commences.
- (3) However, to the extent to which the Regulation has retrospective operation, it does not operate to the disadvantage of a person by:
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The Regulation must declare it is made under this section.

**136 Savings provision certain election petitions**

If, immediately before the commencement of this Act, an election petition under Part 16 of the Representation of the People Act [CAP 146] had not been finally determined, then the petition is to be determined under that Act as if it had not been repealed.



**PART 13 MISCELLANEOUS PROVISIONS**

**137 Power to correct errors**

The Commission may correct any error, omission or duplication on an application, in any entry in the Voter Register or in any other document made or issued under this Act that appears to have been made by mistake.

**138 Delegation of powers and functions, and authorised persons**

- (1) The Commission may, in writing, delegate any of its functions or powers under this or any other Act or the Regulations made under this Act, other than this power of delegation.
- (2) The Principal Electoral Officer may, in writing, delegate any of his or her functions or powers under this or any other Act or the Regulations made under this Act, other than this power of delegation.
- (3) A delegation under subsection (1) or (2) may be made to any of the following:
  - (a) a member of the Commission;
  - (b) a staff member;
  - (c) an electoral official;
  - (d) any other suitably qualified person.
- (4) A delegation:
  - (a) may be subject to conditions; and
  - (b) may be varied, suspended or revoked; and
  - (c) does not prevent the Commission and Principal Electoral Officer from carrying out the delegated function or power.
- (5) A delegated function or power carried out by a person is taken to have been carried out by the Commission or Principal Electoral Officer, as the case may be.
- (6) A person who acts under a delegation is presumed to have had the delegation and acted under it unless it is proven otherwise.

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- (7) The Principal Electoral Officer may, in writing, appoint suitably qualified and trained persons who are not electoral officials or staff members to be authorised persons to perform or exercise any functions or powers of the Principal Electoral Officer, an electoral official or a staff member under this Act or the Regulations for a period of time as determined by the Principal Electoral Officer.

**139 Requirements for publication of notices, instruments and other documents**

- (1) This section applies to any requirement under this Act for a notice, declaration, determination, instrument, list or other document, including provisional and final election results, (the notice) to be published.
- (2) The notice may be published in all or any of the following ways:
- (a) in the Gazette;
  - (b) in a newspaper or magazine;
  - (c) displayed at a place to which the public has access;
  - (d) on a website;
  - (e) in a radio or television broadcast;
  - (f) in any other way considered appropriate in the circumstances.
- (3) If a provision of this Act or the Regulations requires the notice to be published in the Gazette, the notice must be published in the Gazette in addition to any other way chosen to publish the notice.

**140 Forms**

- (1) The Principal Electoral Officer may approve forms for the purposes of this Act and the Regulations.
- (2) An approved form may be in hard copy form or electronic form, including as part of an online system.

**141 Custody of election documents**

- (1) The Principal Electoral Officer must:

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- (a) ensure that any document relating to the conduct of an election is kept in safe custody; and
- (b) on the date fixed under subsection (2), destroy the following documents:
  - (i) any used and unused ballot papers; and
  - (ii) any spoiled ballot papers; and
  - (iii) any used and unused tendered ballot papers; and
  - (iv) any other document authorised by the Commission to be destroyed.
- (2) The Commission must fix a date at least 6 months after the final election results are published to destroy the documents.
- (3) However, if an election petition has been filed in relation to the election, the Commission must not destroy any document relating to the petition until it has been finally determined by the Supreme Court or Magistrates Court.
- (4) The Commission must not destroy a document that it knows will, or is likely to, be required for study or research.
- (5) Information used for study or research:
  - (a) may only be used for statistical or analytical purposes; and
  - (b) must not be used in a way that discloses the identity, personal information or vote of any person.

**142 Protection from liability**

Each of the following persons is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the performance of a function or exercise of a power under this Act or the Regulations:

- (a) the Principal Electoral Officer;
- (b) the Chairperson and the other members of the Commission;
- (c) an electoral official;

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- (d) a staff member;
- (e) a police officer;
- (f) a person providing security at a polling station.

**143 Regulations**

- (1) The Commission may make Regulations:
  - (a) prescribing any matter 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) Without limiting subsection (1), the Regulations may prescribe matters relating to all or any of the following:
  - (a) the qualifications and disqualifications of voters;
  - (b) the Voter Register;
  - (c) preliminary and final electoral lists;
  - (d) the nomination, qualification and disqualification of candidates for election;
  - (e) the conduct of elections;
  - (f) the management and security at polling centres and polling stations;
  - (g) the counting of votes;
  - (h) provisional and final election results;
  - (i) reserved seats for women;
  - (j) accrediting electoral observers, and observer groups or organisations;

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- (k) accrediting special electoral guests;
  - (l) accrediting persons as media representatives;
  - (m) accrediting a person as a representative of an independent candidate or a political party;
  - (n) Codes of Conduct for persons referred to in paragraphs (j), (k), (l) and (m);
  - (o) complaints in relation to the conduct of elections;
  - (p) election petitions;
  - (q) the nature of corrupt and illegal practices in connection with elections and penalties in relation to such practices;
  - (r) committees formed under this Act and sitting allowances for members of committees;
  - (s) electronic voting methods;
  - (t) an electronic results management system;
  - (u) the conduct of candidates campaigning during a campaign period;
  - (v) overseas polling stations;
  - (w) prescribing fees for the purpose of this Act and the Regulations.
- (3) The Regulations may prescribe offences against the Regulations and the penalties for the offences must not exceed a fine of VT 1,000,000.

**144 Application**

This Act applies only to an election that is called on or after the commencement of this Act.

**145 Commencement**

The Act will commence on the date appointed by the Minister by notice in the Gazette.