

Republic of Vanuatu

Parliamentary

Handbook



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ERRATA

1. On page 12, the sentence about the National Council of Chiefs should conclude with the following: “ which is elected, and has advisory powers under Articles 29 and 30 of the Constitution”.
2. On page 13, the sentence about the Constitution being “entrenched” should conclude with the following: “..... only after a national referendum (public vote) under Articles 85 and 86”.
3. On page 13, the sentence about French and British laws should conclude with the following: “... Unless they are inconsistent with independent status (Article 95 (2))”.
4. On pages 30 and 31, there is a discussion of the theory of the separation of powers which inspired the Fathers of the American Constitution. Vanuatu’s system of parliamentary democracy, however, is based on the British model which fuses executive and legislative power in a single institution: Parliament.

Parliament is the national legislative body of Vanuatu and is empowered to make laws for the peace, order and good government of Vanuatu.

The executive power of the people of Vanuatu is exercised by the Prime Minister and the Council of Ministers.

However, the Prime Minister and the other members of the Council of Ministers must be members of Parliament and they cease to exercise their powers if they cease to be members of Parliament for any reason other than the dissolution of Parliament.

Furthermore, only members of the Council of Ministers can present a bill in Parliament that would create or increase taxes or provide for the spending of public money: such bills constitute the near-totality of Parliament’s legislative programme.

This is why an important role for members of Parliament is to hold the Government accountable for governmental policies, for acts by the executive branch of government (including the public service) and for the expenditure of public money.

Dedicated to the memory of the Hon. Fr. Walter Lini.
Father of the Nation,
and to the courageous women and men who supported the
struggle for a free and independent Vanuatu.

Republic of Vanuatu Parliamentary Handbook
By the Hon. Margaret Shields
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The frontispiece is derived from three photographs by Brian Brake, of a hafted shell adze (an important possession of a grade society member): a slit gong from North Ambrym, and a grade society monument of tree fern from Malekula.

Preface

This handbook was written in response to a request from the Vanuatu Parliament, after two workshops for Members of Parliament in 1997 and 1988. It does not pretend to tell you everything an MP needs to know. Rather, it is designed to introduce new Parliamentarians, and people planning to be candidates for election to Parliament, to the most fundamental aspects of the job. The serious student of Vanuatu politics will have to read more than this. However, I hope that new Members of Parliament will find this a useful document to keep beside them, to answer their many questions when they are first elected to the House of Representatives.

Section One gives a brief history of the Vanuatu Parliament. The intention is to set it in context, as one of the most recent Parliaments in the Pacific. This section does not try to detail the intricate discussions, debates and conflicts that took place during the transition from the Condominium of the New Hebrides to the Republic of Vanuatu. The rich oral History of Vanuatu yields many different views on that topic. This section deals more narrowly with the facts that are generally agreed on. It identifies the basic elements of the Parliament of Vanuatu, and describe how it fits into the family of Parliaments around the world, particularly those within the British Commonwealth.

Section Two deals with Vanuatu's electoral processes, drawing on both the Constitution and the Representation of the People Act. The introduction of democratic forms of government is never easy, and Vanuatu (like almost all its neighbors) has had its share of problems in establishing a system that draws on the best of its own and other nations' experience. It needs to be mentioned that the electoral processes and procedures are still evolving. This section covers the situation as it was in 1998-9, and provides a guide for MPs and aspiring politicians to the most important rules and regulations that apply to the electoral process.

Section Three covers the Constitution of the Republic of Vanuatu and links it to some of the legislation that flows from it. As the founding document of the Republic, the Constitution should be the starting point for any new MP to learn the job of being a politician. The Constitution also forms the framework within which all new laws sit. It is impossible for any MP to do a good job of being a legislator without a basic understanding of this Document. Within this section, the work of the Prime Minister and the Executive, the Council of Chiefs and the President (as Head of State) are dealt with in some detail.

Section Four describes the main purposes of the Standing Orders of the Vanuatu Parliament, as well as the role of the Speaker. All MPs must understand Standing Orders if they are to take a full part in the proceedings of Parliament. This section is meant to be a supplement to, rather than a replacement for, the Standing Orders. Any wise MP will have a copy of the Standing Orders always at hand. The work of the Speaker as the presiding officer or chairman of Parliament is explained, and his or her main functions are outlined. Section Five is concerned with the many, varied roles of Members of Parliament – not only



Their work in the House and their offices, but also the many ways they may become involved in their own communities. Most Parliaments are true Houses of Representatives, and MPs are as varied as the communities that they represent. The way they carry out their tasks will vary according to their personalities, their background and the expectations of the people they represent. This section is designed to cover the essentials, and also offering some suggestions about other activities that may prove helpful to both the MP and those they represent.

Section Six deals with the basic and most important work of Parliament, the making of laws. It describes the basic structure of Bills and Acts of Parliament, and the process Bills must pass through before they become new laws. It also deals briefly with the Budget as a special form of legislation. Because the Budget is expected to be the subject of another workshop, this topic is covered more lightly than the others in this section. More notes will be provided during later training workshops and may be included in future editions of this Guide.

Section Seven is about committees, an area of parliamentary activity that has not been used much in Vanuatu, except for the review of public expenditure. However, parliamentary committees can be a useful way of enriching the process of law-making, and this section outlines some of the ways committees might be used. If more use is made of committees, though, they must be adequately funded. Other committees might be used, as they are in other parts of the Pacific, both to increase participation in the legislative process and to increase public acceptance of new laws.

Section Eight is about parliamentary privilege. The concept is very old, and enables the open debate of questions of public interest. However, it is made clear that, far from being above the law, Parliamentarians are expected to be good leaders, and to set the best of examples to the people that they represent. This is spelt out in the Leadership Code. I heartily agree with the old adage, that “Law-makers should not be Law-breakers”.

Section Nine is concerned with another difficult area for politicians everywhere; appointing people to government boards and bodies. The appointments are often controversial, and most countries have had problems in this area, but all small Pacific countries, with their intricate networks of relationships and obligations, have special problems. It is clear that the more effort politicians put into appointing people on the basis of merit (rather than influence) the better the outcome. This Section outlines how to develop systems of appointment that are both fair and seen to be fair.

Section Ten brings together some short outlines of the responsibilities and duties of some of the important officials in Vanuatu whose work touches on the work of Parliament. There is one important addition to this list. Vanuatu has signed the United Nations Declaration on Human Rights, but it has not yet established the post of a Human Rights Commissioner. Therefore, there is a brief description of the possible role of such a person, and how he or she might help to maintain the human rights of the people of Vanuatu, such as freedom of speech, association and religion, and freedom from discrimination, violence, and oppressive practices.

There have been particular difficulties in providing references for the French text, since there has been no review or revision of the French versions between 1980 and 1989. For that reason, the French numbering of the Constitution and some statutes is different from the English.

A glossary of words, expressions and usages that may be unfamiliar to new MPs completes the handbook.



Acknowledgments

The writing of this guide was made possible by the sponsorship of the United Kingdom development agency, DFID. The cheerful and constructive help of Mr Leonard Chan, Manager of the Fiji office of the DFID Pacific Governance Fund, could always be relied upon. He facilitated the whole process and smoothed away many problems. There are many other people to whom I owe thanks for assistance along the way. First, this guide (and the workshops that gave rise to it) would not have happened without the initiative of the Vanuatu National Council of Women (VNCW) and the United Nations Development Fund for Women (UNIFEM). These two groups organized a seminar to review the experience of woman candidates in the 1976 General Election. The involvement of some parliamentary and government officials and some MPs in that seminar gave rise to the two parliamentary workshops.

Thanks are also due to the New Zealand and Australian Ministries of Foreign Affairs who funded the first of the Parliamentary workshops. Special tributes is due to Cleaver Elliott, Deputy Clerk of the Australian Senate, who assisted me in the training given at that first workshop.

Similarly, thanks are due to DFID for funding of the second workshop, “More Skills for Better Governance”, and for its sponsorship of Simon Pentanau, Chief Ombudsman of Papua New Guinea, who gave very valuable help to all who took part.

I am grateful to Michelle Powles, from the School of Law at Victoria University of Wellington, who wrote most of the section on the history of Vanuatu’s government.

In the final stages I could not have done without the assistance of Hugh Young Momoka, who assisted expertly with editing and layout and wrote the glossary and the section about debates, and that of Sue Moriarty, with typing.

In the same way, I must acknowledge the special contribution of Donny McLeod of the Office Pub, Port Vila and others, who were responsible for the drawings and cartoons that enliven the text.

Finally, the warmest of thanks are due to the Speaker of the House, the Hon. Edward Natapei, and the other Ni-Vanuatu, MPs and non-politicians alike, who took part in the three workshops that gave rise to this handbook. I felt right from the beginning that it was a great privilege to work with, and learn from, all the participants. I hope that by writing this handbook I am able to return and share some of the knowledge gained there.

Mi hapi tumas blong givim bak long yufala evriwan samfala save ia.

Hon. Margaret Shields, QSO
Former New Zealand MP and Cabinet Minister



Foreword

Eighteen years of a parliamentary system of government that is foreign to Melanesian society has given the leadership of the nation the experience to appreciate the need for strengthening and improving the role of Parliament in the legislative process.

The National Level Task Team, established to draw up a Comprehensive Reform Programme, clearly states in the CRP document that, to establish an effective basis for good governance in Vanuatu in the future, there must be a concerted process of renewal and rebuilding of the institution of Parliament.

Among ten main areas identified as needing some attention is the strengthening of Parliament's role, so that it makes better laws, provides an active forum for national debate, and closely reviews the policies and activities of the Executive.

The effectiveness of Parliament depends to a large extent on the effectiveness of its members. For members of Parliament to contribute constructively to Parliament's work, they need to go through some training to help improve their capacity to undertake their duties. To facilitate this training, a seminar for Parliamentarians was organized in 1997 with the assistance of the Office of the Ombudsman and generous financial support of the Governments of Australia and New Zealand. A second seminar, organized by Parliament with the financial support of DFID, took place in 1998.

A former New Zealand Cabinet Minister and MP, the Hon. Margaret Shields QSO, was a trainer at both of these seminars, and she was given the task of preparing this handbook. Her knowledge of the Westminster parliamentary system, and her experience in organizing and running training workshops and seminars in the Pacific, is reflected in the way this handbook has been written and put together.

This handbook would not have been completed without Margaret Shields' dedication to the improvement of Parliament and good governance in Vanuatu and the Pacific.

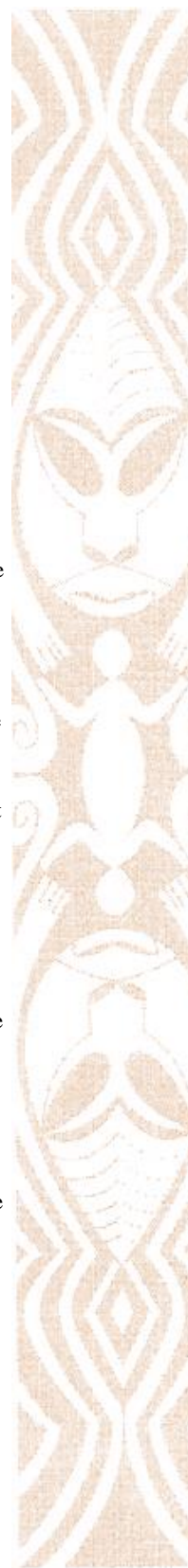
The value of this handbook lies in the potential for equipping Members of Parliament with the knowledge they need to effectively perform their duties as legislators and representatives of the people. This includes such things as how and where to go for assistance in preparing Private Members' Bills.

Both present Members of Parliament and interested members of the public hoping to represent their people in the future will find this handbook very informative: it deals with the history of Vanuatu, the electoral process, the Constitution, the Standing Orders of Parliament, Committees of Parliament and Parliamentary privilege.

In the Chapter dealing with the electoral, the writer has drawn on her knowledge of electoral laws in other countries of the region to compare with the corresponding sections of Vanuatu law. Particular attention is drawn to the section that deals with those who are not permitted to contest an election. It is a piece of Vanuatu's legislation that prohibits people who have the potential to be good and effective Members of Parliament. It can be seen as a disqualification for educated or experienced Ni-Vanuatu from standing for Parliament, thus limiting the candidates to people who are quite often inexperienced.

This handbook is the basis on which future training of Members of Parliament will be built, and also the first attempt at improving the Members' capacity to undertake their duties effectively.

Honourable Nipake E. Natapei
Speaker of the Parliament
Vila, March 1999



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A Brief History of the Vanuatu Parliament

Section 1



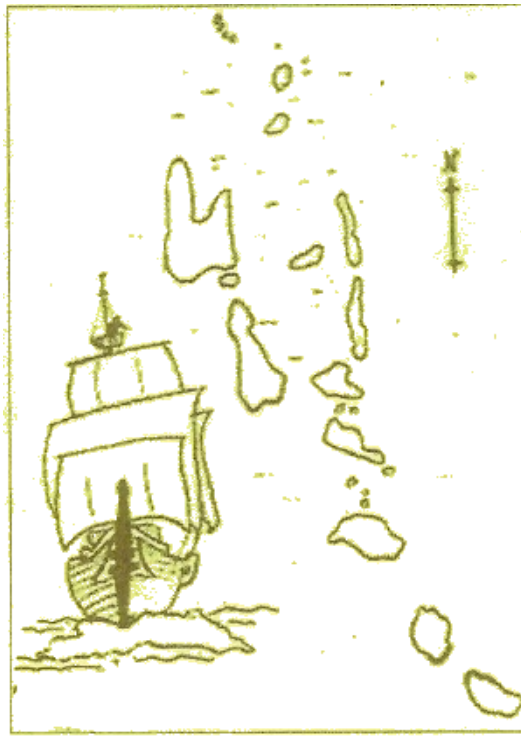
A Brief History of the Vanuatu Parliament

Section 1

People first came to the islands we now call Vanuatu from the north and west about 3500 years ago. We know little about those brave explorers and their descendants, the first Ni-Vanuatu but we may guess that they had little of what we now call “government”. They probably were organized in groups no bigger than a village, with a big man or chief, and perhaps a sorcerer (magician), to keep the affairs of the people in order. The smaller islands or groups may have had one “chief of chiefs” (highest grade chief) or island councils. Men love to talk of power, and to make themselves important, everywhere in the world. But just as the languages of Vanuatu grew into many different languages, different islands may have developed different forms of government, a chief here, a council there, maybe even assemblies of the whole community, or powerful women. So ‘devolution’ – limited self-government for different parts of the country – may not be such a foreign idea. And over more than 2400 years, customs certainly changed.

First Contact

The first Europeans to
Come to Vanuatu were
Spanish, the crews of
The Capitana, Almiranta
And Los Tres Reyes
Under Pedro Fernandez
De Quiros, who called
The islands “Tierra Australia
Del Espiritu Santo” – Southern
Land of the Holy Spirit –
in May, 1606. (The name
Has shortened and its use
Has narrowed to the one
island). It was Captain
James Cook in 1774 who
Renamed the islands “the
New Hebrides”, after some
Cold and windswept (but
Much loved) islands off the
north-west of Scotland.

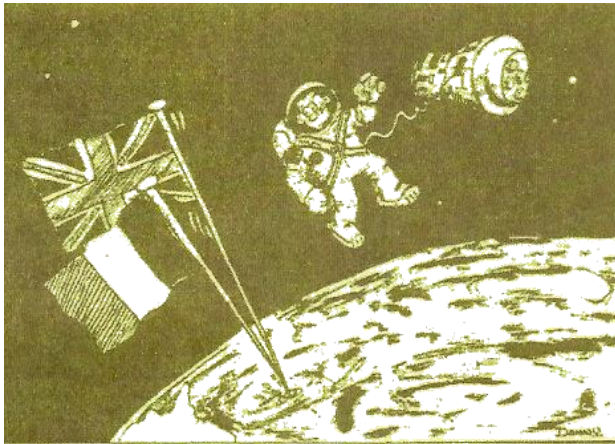


Condominium

As recently as 1815, England and France were at war. Relations between the two countries remained uneasy long after that, and this has cast a long shadow over the government of what is now Vanuatu.

In 1887, a joint English-French Naval Commission was set up to take control over the English and French people in the islands, the traders, planters and missionaries. A “Condominium” (shared government) was agreed to in 1906, a protocol (plan) was written in 1914, and it finally came into force in 1922. British and French people (including the “Tonkinese” brought from what is now Vietnam) came under the governments of their own countries, and other foreigners could choose which government to have. Ni-Vanuatu did not come under either umbrella, so there were really three seats of people in Vanuatu.

The Condominium was jokingly called a “Pandemonium” (terrible noise) because of the clashes between the governments. A symbol of this was the fact that neither government could bear to have its flag lower than the others, so they both put up higher and higher flagpoles – until they finally agreed they were being silly and decided on a single height.



As well as French and British law, there was New Hebridean customary law. This had power over Ni-Vanuatu unless the case was covered by the Joint Regulations made “for the good government of the group” in the 1922 Anglo-French Protocol.

The Joint Regulations were made by a Joint Commission, controlled by French and British officials. These regulations were the starting point of a national law for Vanuatu after Independence.

Ni-Vanuatu had no say in government until 1957, when an Advisory Council was set up. This still gave little power to the indigenous people, and did not satisfy the growing interest in self-government. Demands for independence increased through the 1970s as countries around went independent, and in



1975, the first step towards indigenous government was taken, when elections were held for municipal councils in Port Vila and Luganville. Soon after, elections were held for a Representative Assembly, but there was also conflict between European authorities and local political parties.

Constitution

As a result, discussions began between French and British officials and Ni-Vanuatu over the political future of the New Hebrides. A Constitution Committee was set up, and after much discussion, it reached agreement on a Constitution for an independent nation.

It was agreed on September 19, 1979, by the representatives present at the Constitutional Conference held in Port Vila, and put into effect by “an exchange of notes” (actually very formal documents) between France and the United Kingdom. Independence was declared officially on July 30, 1980.

Republic

Under the 1980 Constitution, Vanuatu has a unitary state (unlike, say, Australia, which has federal government and separate state parliaments). The Vanuatu Parliament was founded on the Rule of Law, the Separation of Powers (see Section Three), and what is often called a “Westminster” style of government (an elected Parliament divided into a Government and a loyal Opposition).

Democracy

The first Article of the Constitution recognizes democracy as the foundation of the Republic. Democracy means government by the people, but in practice it is almost always done through their elected representatives. (Switzerland is a country where the people do some of the governing directly, through public votes – referendums.) The Constitution provides for this with.

- Emphasis on the Rule of Law
- Basic human rights and duties
- A free and universal franchise (all adults – with a few exceptions – may vote) and election processes
- The Separation of Powers. The Constitution has separate chapters for the Legislature, the Executive and the Judiciary.



The Westminster Model

Vanuatu uses what is called “the Westminster model of government. Like most Commonwealth countries, this is actually different in some important ways from the British system whose Parliament is at Westminster. That one has

- Parliamentary sovereignty
- A head of state with few powers
- A bipartisan (two-sided) and bicameral structure (with an Upper and a Lower House of Parliament)
- Executive control through a strong one-party Government
- a suffrage-based electoral system (people, not only land-owners, vote) and
- no entrenched (hard-to-change) Constitution

In most Commonwealth countries, those have changed. Parties may still be strong, but there are usually more than two of them, and the Government may be formed from more than one (a coalition government), though the executive may still be controlled by a One-party Cabinet. Many countries now have a written Constitution which is entrenched – built in to the structure of the government – and can only be changed with extra difficulty.

The Vanuatu form of government is quite similar to those of other Commonwealth countries. What makes it different is the French influence. That is probably why the Head of State is called the “President” and not, say, the “Governor”. Unlike Other Pacific states, the colonial Government never installed a local government, whether French or British, so what has come out is designed especially for the needs of Vanuatu. An example of that is the National Council of Chiefs (Malvatumauri), which is elected, and has advisory powers under Article 27 and 28 of the Constitution.

The President

The role of President seems to conflict with the supremacy of Parliament, which is part of the Westminster model. But the President can’t over-rule Parliament unless the Supreme Court has ruled that Parliament has broken the Constitution. And the President is not elected directly by the people, so that title could be misleading. The Constitution grants the President only a restricted role. The President is something of a figure-head (respected but with no power), like the Monarch of Britain or the Governor-General of a country like New Zealand, but in New Zealand it is the Attorney General who checks Legislation for breaches of human rights (NZ Bill of Rights Act 1990s7). But he (President) has power to pardon convicted criminals and to appoint the Ombudsman (and exercises both during any time).

Structure

The Westminster model is one thing in theory, another in practice. In countries like New Zealand, the very existence of Cabinet (the Council of Ministers) is only a matter of convention. One of its basic rules, that once Cabinet has decided anything, every Minister must support it (collective responsibility), is another convention.



Vanuatu has important features like the Council of Ministers written into its Constitution. The Constitution is “entrenched”: it can only be changed by a two-thirds majority of three-quarters of the Members of Parliament, and for some issues, only after a national referendum (public vote, under Articles 83 and 84).

The Constitution gives complete jurisdiction (power to decide) about Constitutional matters to the supreme court. This means the Judiciary can stop the Executive from using its power wrongly, following the principle of the Separation of Powers (see Section Three, and especially the diagram on page 3-2). Usually, the real centre of the system is a powerful Cabinet, accountable to Parliament, but rarely controlled by any other body. In giving final say to the Supreme Court, the Vanuatu Constitution is different from the Westminster (English) model. It still keeps to the Commonwealth model because Parliament usually has the final say, and the powers of the Supreme Court are not often used, usually only when parties affected by the decision ask for it.

And French?

So how much influence did the French government system have? The name “Westminster” implies that the British model was the main one. French is a national language, and French law a source of Vanuatu law, but French law has not Constitutional role.

Both French and British laws that applied before Independence continue unless they are inconsistent with independent status (Article 93 (2)). This could create conflict between French and British law.

There is a trend towards the use of common law rather than other possible systems. That is because it fits in with Vanuatu having a government and constitutional system that is related to the Commonwealth version of the Westminster system. Vanuatu has a rich mixture of systems borrowed from various forms of government, but the main influence is British law, in both Parliament and the Judiciary.



How elections are held in Vanuatu

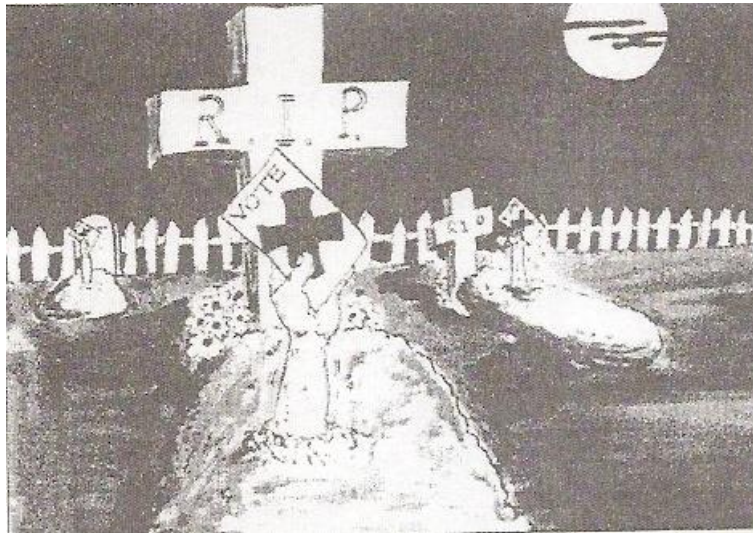


How elections are held in Vanuatu

Section 2

Introduction

One of the hardest problems facing any democratic country is to make sure that the election process is fair, and seen to be fair. Many things have been said about politicians, and many of those things have been less than complimentary. Some were deserved. It is said that the notorious Mayor Richard J. Daley of Chicago advised his supporters, before every election, to "Vote early, vote often!" To do this, they were said to copy names from the death notices of newspapers and new gravestones, so that on election day they could vote using the names of those who had just died.



The stories may not be true, but the fact that they are told shows how people are always ready to believe the worst of the people who hold power over them. For that reason, it is especially important that the processes by which people are elected to power are open to examination, and that every care is taken to make sure that the results of elections are believed to be an expression of the will of the people.

Fortunately those who wrote the Constitution of the Republic of Vanuatu took great care to guard against the problems faced by Chicago in the 1950s. There are many ways care is taken to make sure that all those who are entitled to vote can vote (once at each election) and that all those who are not entitled to vote, do not. There are also basic rules to encourage fair conduct of elections. In fact, in some ways the Vanuatu rules about who may stand for Parliament are very strict indeed, compared with other countries.



Getting to know the Rules

Before you can become a Member of Parliament you must be elected. To avoid problems in the election process it is very important to become familiar with the main processes and practices of the electoral laws of Vanuatu. It is not unknown in other countries for a Member of Parliament to serve several terms in Parliament and then find, to their horror, that they or one of their campaign team is being charged with a breach of the electoral law. The laws and regulation about elections in Vanuatu are in the Constitution (especially Articles 17-20) and “Representation of the People” (Chapter 146 of the Laws of the Republic of Vanuatu, Revised Edition 1988). Two other important documents are the Representative Assembly (Constituencies and Membership) Regulation No. 22 of 1979, and Election Regulation No. 19. Every MP should have access to these documents, either through the Parliamentary Library or from the Clerk of the House. As mentioned in the Preface, the French versions of these laws and regulations are numbered differently from the English.

Representation of the People Act

Short Title: The Short Title of the electoral Act of Vanuatu is simply the “Representation of the People” and the Long Title, given on page 5 of the Act is “To provide for registration of voters and elections to Parliament”. (An even shorter title, used here, is “ROTP”). But the Act is not simple. It has to cover all the administrative detail required to give life to the intentions of the Constitution, and to ensure that the Parliament of the Republic of Vanuatu truly represents all Ni-Vanuatu.

This section of the handbook deals with the parts of the Act in a different order from the Act itself. References are given so you can check the details in the documents themselves.

The Electoral Commission

The Electoral Commission is set up under Article 18 of the Constitution to take responsibility for the running of elections. The Chairman and the other two members of the Electoral Commission are appointed for five year terms by the President, acting on the advice of the Judicial Services Commission. There are strict rules about who may be a member of the Electoral Commission. Nobody who is elected or a candidate to be a

- Member of Parliament
- Member of a local or municipal council or
- Member of the National Council of Chiefs

can be appointed to the Commission. Nor may anyone who exercises any position of responsibility within a political party be considered for membership.

As laid out in Article 20 of the Constitution, the Electoral Commission has the responsibility to supervise the registration of voters and the conduct of elections, not only to Parliament but also to the National Council of Chiefs and to local and municipal councils. Any proposed Bill or regulation about the registration of electors or the election of members must be referred to the Commission. That must be done early enough for the Commission to consider the matters raised and make comments before the Bill is introduced to Parliament or the regulation made.



The Principal Electoral Officer

The Principal Electoral Officer (and his or her Deputy) are the officials responsible for the carrying out of the actual work of conducting elections. The Principal Electoral Officer must keep the Electoral Commission fully informed about everything concerning the exercise of his or her functions. The Principal Electoral Officer is a public servant, but is directly responsible to the Electoral Commission. The Principal Electoral Officer may attend meetings of the Commission, and must comply with any instructions given by the Commission. The Electoral Commission reports to Parliament on any matters relating to its responsibilities, and on any draft Bill or Instrument (other document), as it sees fit.

Constituencies and Polling Districts

Under Clause 70 of the ROTP, the parliamentary seats and constituencies are set up under the Representative Assembly (Constituencies and Membership) Regulation No. 22 of 1979. These remain the parliamentary seats and constituencies until they are changed by an order made by the President, acting on the advice of the Electoral Commission. The approach to polling districts within constituencies is more flexible. These can be changed or replaced by the Electoral Commission.

Constituencies change, usually, because their populations change. Polling districts should stay as similar in size as possible. However, under Article 17 of the Constitution, the electoral system should include an element of proportional representation. This means that the desire for constituencies to be nearly equal in size must be balanced against other considerations.

Because different parts of the country have more or fewer people per square kilometer living in them, the areas of the constituencies vary greatly. This means that there need to be more polling districts and polling places in some constituencies than in others. It is the job of the Electoral Commission to decide the number of polling districts.

Registration of Voters

Because fair representation is almost totally dependent on enrolment procedures, a great deal of attention is paid to this in the ROTP Act. The Principal Electoral Officer (PEO) must (under Part V of the Act) appoint a registration officer for each constituency. The registration officers are required to draw up electoral lists each year for the purpose of compiling electoral rolls. Assistant registration officers carry out the actual work. Their job it is to check each name on the roll and to enroll people who are eligible to be enrolled.

The qualifications to become an elector are spelled out in Clause 9 of the ROTP Act. A person may register in the polling district where he or she lives (“is resident”) if he or she

- ✓ Is a citizen, and
- ✓ Will have reached the age of 18 years on or before the qualifying date (that is the first day of July in the year the list is prepared).

(The ROTP Act does not define “residence” or how long a person has to live in a polling district before they are “resident” there. So it is possible that someone could register in one area and then in another).



If there is any doubt about whether a person is qualified, by virtue of residence, to enroll on an electoral list, the registration officer makes any inquiries they think necessary, and makes a report to the PEO.

Such a report may include

- ✓ A declaration signed by two other people that the applicant for registration is qualified by virtue of residence.
- ✓ The applicant's previous enrolment card
- ✓ A certificate from an employer stating that the applicant has been employed by him or her for not less than three months, and/or a certificate from a school or college verifying that the applicant is a student of that institution.

Under the ROTP Act, people who are outside their own polling districts can still enroll.

Registration of a person from outside a polling district: Anyone who is not in their own polling district at the time of registration may apply to the registration officer of the district they are in, for an application to be enrolled in their home district. The registration officer should then give them the correct form and help them to fill it out correctly. It is then the job of the registration officer who signed the form to forward it to the registration officer in the person's home district. If the registration officer in the applicant's home district is satisfied the person is qualified to vote there, they will be registered and informed accordingly.

Registration of overseas voters: Part VI of the ROTP Act applies to registration of Ni-Vanuatu who are outside Vanuatu at the time of the annual registration. Those people may enroll by applying to the Principal Electoral Officer and submitting the right form. They will then be registered on the overseas electoral list, on the section of the roll for the constituency where they normally live when they're in Vanuatu. If you know that one of your constituents is likely to be overseas at the time of registration, you should tell the person they can do this. You could suggest to constituents travelling abroad that they take with them as many forms as they need and send back a completed form to the PEO each July.

Supplementary Electoral Rolls and Lists: There are several reasons that some people who are entitled to vote at an election are left off the roll during the July registration. The commonest reason is that they turn 18 between July 1 and polling day. Other reasons include being away from home, sick or just forgetful. Still other people are left off the roll because a clerk has made a mistake. Whatever the reason for them being left off the roll, the Principal Electoral Officer may draw up a supplementary Electoral Roll and put those people on the proper district electoral lists for them. The Principal Electoral Officer has to receive applications for such late Registration no more than 30 days before polling day.

Again, a wise MP or party organizer will keep a stack of the appropriate forms to give to people who are entitled to be on the roll but have been left off. Some well-organized MPs have been known to keep a list of the young people in their constituency and their birthdays, and then send both a birthday greeting and an enrolment form when the young person turns eighteen.



Electoral Cards: Every citizen of Vanuatu should be familiar with electoral cards. Every person who registers on the electoral list, the supplementary electoral list or the overseas electoral list is issued with a card. This is proof of registration, and it must be produced on polling day when its holder goes to vote. If a voter mislays, loses or accidentally destroys their electoral card, or if it is mutilated or unusable, it can be replaced. There is a charge of VT50 to replace a card. Applications for replacement must be made to the local registration officer or to the PEO, on the appropriate form, and should include the fee. If the application is being made because the card has become un-serviceable, the old card should be sent with the application and the fee.

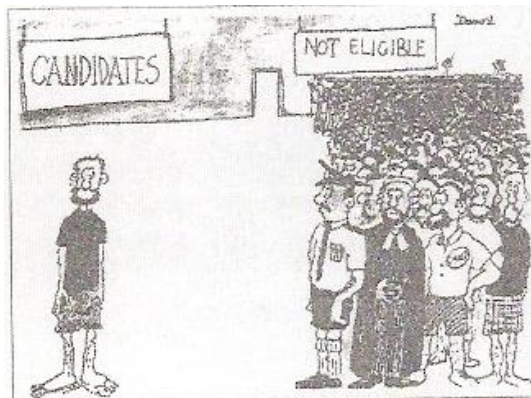
Elections and Candidates

The rules for holding elections in Vanuatu are to be found first in the Constitution and second in the ROTP Act. Under Article 28 (1) of the Constitution, Vanuatu's Parliament has a four-year term. However, it is rare for a Parliament to last that long, so it is important to understand the rules about earlier dissolution. A general election must be held between 30 and 60 days after the dissolution of Parliament, whether that was at the end of a four-year term or earlier.

When a vacancy occurs in a constituency for any reason except the dissolution of Parliament (such as the death or resignation of an MP), a by-election must be held to fill that vacancy. Other Members still serving in that constituency are not affected, and do not have to take part in the by-election.

Who can be a Candidate

The rules about who can stand for Vanuatu's Parliament (see the list below) are unusually strict compared with some other Commonwealth countries. In most countries, public servants, teachers and police officers are not allowed to campaign for parliamentary office while carrying out their normal duties, but there is no rule to stop them from becoming candidates. They can take leave of absence for the official election period. If they are elected, they are automatically deemed to have resigned from their earlier job. If they are not elected they can go back to their old job after a short time. Unlike Vanuatu, in many other countries the Chairmen and officials of local authorities and government councils are free to stand as candidates for Parliament. They are generally expected to



resign from their other post if they are elected as an MP. In New Zealand, many people have become MPs after previously being teachers, local government officials, policemen and public servants, and their experience has been very helpful to Parliament.

Under Part XII, Clause 23 (1) of the ROTP Act, the following people are disqualified from standing for election to Parliament:

- The President of the Republic
- Judges and magistrates
- Members of the police force
- Members of the National Council of Chiefs
- Anyone who is
 - Chairman
 - Vice-chairman
 - Secretary of
 - Treasurer of
 - A District Council of Chiefs
 - An Island Council of Chiefs or
 - An Area Council of Chiefs
- Public servants
- Members of the teaching service, and
- Members of the Citizenship Commission.

Under section 23 (2) of the ROTP Act, the Election Commission can add even more people or classes of people to this list. Subject to those restrictions, a person may stand for Parliament if he or she

- ✓ Is not disqualified from voting
- ✓ Has not been sentenced (including a suspended sentence) to a term or terms of imprisonment which has not ended.
- ✓ Is not an un discharged bankrupt
- ✓ Has reached the age of 25 years, and
- ✓ Is a citizen.

Becoming a Candidate

For someone to become a parliamentary candidate, there are procedures that must be followed strictly. The Electoral Commission sets a date when all declarations of candidature must be lodged with the Principal Electoral Officer. Everyone would be candidate, including sitting MPs, must send to the PEO, on or before that date.

- ✓ A declaration of candidature signed by the candidate and containing all the details required in part 1 of Schedule 3 of the ROTP Act. This includes a declaration that the person is eligible to be a candidate, not ruled out by any of the restrictions in the Act. A declaration of candidature must be signed by at least five other people who are.



- ✓ Registered to vote in the constituency for which the candidate is standing and
- ✓ Not related to the candidate. (The definition of "related" is in the Preliminary section of the ROTP Act" that person's spouse. Or the brother, sister, uncle, aunt or lineal ancestor or descendant of that person or his spouse". This sounds quite restrictive, but if candidates can't find at least five supporters in the voting district outside their immediate family, they would be wasting their time to stand).
 - ✓ A deposit of VT 50,000. This deposit is not refundable and that must make it very hard for some people to put themselves forward as candidates. It must certainly discourage candidates from coming forward unless they either know they have a reasonable chance of success, or belong to a group who feels that their message needs to be heard during the election period.
 - ✓ Two full-face photographs of the candidate.
 - ✓ A candidate who is not standing for a political party that has already had a political symbol approved by the Electoral Commission must supply an illustration on paper of the candidate's personal electoral symbol.
 - ✓ No candidate may stand for more than one constituency.
 - ✓ No Member of Parliament may contest a by-election (because they already represent a constituency).

Within 24 hours of the date set for receiving declarations the PEO must make a list of all the candidates, for all constituencies, and send that list to the Electoral Commission. The PEO is also required to attach to that list and any comments they may have on the validity of the application and of any persons named on the list. The Electoral Commission then decides on the nomination. The Electoral Commission can only rule a would-be candidate invalid if they or their sponsors do not have the necessary qualifications, or are disqualified, or if the candidate is not sponsored by at least five eligible voters.

Correction of errors, and late candidature

If a candidate has made a mistake in their declaration, the Electoral Commission has the power to ask for a fresh declaration. It may ask the candidate to resubmit the declaration with the necessary changes within 72 hours of the request being made, as long as this is done no later than 14 days before polling day. To avoid last minute problems, it makes sense for a serious candidate to submit their declaration well before the due date. Then, if there are any problems they can be corrected before the close-off time.



If a candidate standing for a registered party is declared invalid by the Electoral Commission, or if a party candidate dies during the period between declaration day and polling day, another candidate sponsored by the same party may be put forward. Those candidates must lodge their declaration within 72 hours of the first candidate being declared invalid or dead.

Publication of Lists of Candidates

Lists of candidates for election must be displayed at

- The Office of every Local Government Council
- The Parliament Building
- The Electoral Office, and
- Any other places that the Electoral Commission may direct for not less than 14 days before polling day. Late candidatures do not have to be displayed for the full time, but must be displayed within 9 days of polling day.

The notice for an election must contain

- ✓ The names of the candidates
- ✓ The hours of polling
- ✓ Where all the polling stations are
- ✓ Enough information so that voters know which polling station they should vote at, and
- ✓ Any other information that may be considered necessary by the PEO or the Electoral Commission.

Special Exceptions: There are two special exceptions to those rules:

1. If, when declarations close, the number of candidates is exactly equal to the number of Members to be elected, the PEO tells that to the Electoral Commission, which declare those candidates elected without a poll. This is called “being elected unopposed”.
2. If the number of candidates is less than the number required for the constituency, the Electoral Commission declares the number of candidates elected and the number of seats still vacant. Then, within 30 days of the declaration, and after consultation with the Prime Minister, the Electoral Commission fixes a date for an election to the vacant seats.



The Campaign Period

Introduction

The campaign period is usually one of great excitement. Candidates and their supporters always try very hard to squeeze every last vote out of their districts, and emotions can be raised to a feverish level. While it is perfectly permissible to try to persuade people, by rational argument and discussion, to give their vote to a particular candidate, some people can be tempted to go too far. Part XV of the ROTP Act, Clauses 40-53 details the law about election offences. It is absolutely essential that any candidate for Parliament in Vanuatu, including sitting MPs are familiar with this section of the ROTP Act.

If you commit an offence under this Act, or encourage one of your supporters to do something that is an offence under this Act, you can't plead ignorance of the law as a defense. At the same time, people in the constituencies will expect their candidates and MPs to know the law, and will ask your advice on voting matters. It is important to give only the correct advice. And beware! Some voters may actually encourage you to break the law, by asking you for favors or money in return for a vote. You should not only be ready for this, but also be ready to say "NO!" and to explain why. A wise candidate will be ready with sound arguments why they are not prepared to "buy" votes. For example, a candidate who is prepared to buy votes can't be relied on to be an honest representative of the people. A candidate who buys vote would probably also say that you only want the votes of the people who know that you will be the best person for the job. One slogan that sums up this idea is "Law-makers should not be law-breakers".

The seriousness of offences against the ROTP Act can't be over-emphasised. If an offence against a candidate is proved, the election of that candidate is declared void. As well, there are heavy penalties for anyone found guilty by the Supreme Court of committing this kind of offence. This is all part of keeping Vanuatu's democratic processes healthy.

Offences against the ROTP Act before polling day

General Offences: It is an offence under Clause 40 of the ROTP Act to obstruct, hinder or prevent an electoral officer from carrying out his or her duties under the Act. It is also an offence for anyone to knowingly give false information to an electoral officer, when making an application for registration or in supplying information about another person to the electoral officer.

Anybody who refuses to obey a lawful request made under the ROTP Act commits an offence. General Offences under the ROTP Act are punishable, on conviction, with a fine of up to VT20,000 or up to 12 months in prison.



Defacing and Destruction of Cards, Documents and Notices: There are strict rules to make sure electoral materials (application forms, cards and official publicity materials) are kept safe and sent where they ought to go.

Anybody without a lawful excuse who defaces or destroys any card or document issued to any one under the Act commits an offence. Anybody who defaces, destroys or Removes any notice exhibited Under the Act commits another offence. (Penalty for both, a fine up to VT20,000 or up to 12 months in Prison).



Offences Relating to Declaration of Candidature and Ballot Papers: It is an offence (under Clause 42 of the Act) to forge or fraudulently deface or destroy any declaration of candidature or to lodge such a false declaration with the Electoral Office. This is to stop anyone being nominated for election without their knowledge. The provisions for the protection of ballot papers are even more detailed.

It is a crime to

- ✓ Forge or counterfeit, or fraudulently destroy, any ballot paper or an official mark on any ballot paper.
- ✓ (without proper authority) supply any ballot paper to any person sell or offer to sell, or buy or offer to buy, any ballot paper from any person
- ✓ (not being a person entitled to be in possession of any ballot paper) have a ballot paper in their possession).
- ✓ Knowingly or intentionally put into any ballot box, anything other than the ballot paper which they are authorized by law to put in.
- ✓ (without proper authority) take any ballot paper out of a polling station or be found to be owning any ballot paper outside a polling station.
- ✓ (without proper authority) destroy, take, open or otherwise interfere with any ballot box, ballot paper or packet of ballot papers being used or intended to be used for an election.
- ✓ (without proper authority) print any ballot paper, or
- ✓ (not being authorized to do so under this Act) use somebody else's ballot paper to cast a vote in their name.



Those laws are all designed to uphold the principle of “one person, one vote” which is the “keel” of Vanuatu’s democracy and Constitution. The penalty for all those offences (after being convicted in court) is the same: a fine of up to **VT20,000** or up to **12 months** in prison.



Unauthorised Voting and Personalization: Clauses 43 and 44 of the Act are also concerned with protecting the “one person/one vote” principle. Clause 43 make it a crime to knowingly vote.

- ✓ At an election at which he or she is not entitled to vote
- ✓ More than once at an election
- ✓ At a polling station where you are not entitled to vote
- ✓ As a proxy knowing that the person has already voted or is no longer qualified to vote.

These are regarded even more seriously, and the penalty is a fine of up to **VT50,000** or up to two years in prison.

The offence of “personalization” (anywhere else, we usually say “impersonalization”) is set down in Clause 44. A person commits the offence of personalization if he or she votes as some other person, whether that person is living or dead, except when voting as a lawful proxy.

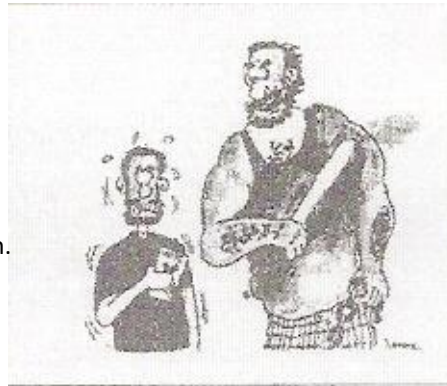
Bribery: Bribery is perhaps the best known type of election offence, and the most difficult to stamp out. By its very nature it is often hard to identify when bribery takes place, especially in countries like Vanuatu, where owing and repaying obligations to your extended family and tribal systems are customary transactions. The people who framed the Constitution clearly saw the need to elect to Parliament people who could set aside those personal issues and speak not only for their own groups, but in the interests of the whole nation. These people must be citizens of the highest integrity who are above manipulating power in their own personal interest. One of the tests of personal integrity is whether a person would change, or try to change, a voters’ intentions by offering them money, or any gift or action that has value for the recipient. In fact Clause 45 is an important protection for hopeful candidates in Vanuatu. It protects you from greedy voters who might be tempted to sell off their vote to the candidate who offers the best bribe. Any candidates who make promises of jobs or any other favors to any voters are behaving very foolishly. Not only is it an offence, but if the case is proven in Court, the election is declared void. In other words you would lose your seat even if you had got the most votes.



Treating: Clause 46 creates the offence of “treating”. Treating is described as a candidate providing or paying for food, or drinks or entertainment, for any voter, with the intention of influencing that voter to vote for the candidate, or to fail to vote for another candidate. Equally, voters who accept free food or drinks or entertainment in exchange for their votes are guilty of corruption. Treating has always been a difficult matter to deal with. Obviously, when people come to a political meeting, food and drink will often be consumed. If this is available to all present, with no suggestion that accepting the refreshments is an agreement to vote for the candidate or Party, then there should be no difficulty. However, a wise candidate will insist that any refreshments are kept at a modest level, and that people are invited to make a small donation to cover the cost.

Undue influence: Clause 47 deals with “undue influence”. Although every election is about trying to get people to support particular candidates, persuasion must be kept within limits.

It is against the law to threaten, or use Any form of violence or restraint, in your Efforts to persuade anyone to vote for someone, or not to vote at all. Threats to injure a voter (or anyone connected to that voter in any way) are strictly forbidden. (This includes both physical and spiritual threats). Similarly, any attempt to stop a Voter getting to a polling place is strictly forbidden.



Penalty for Corrupt Practices: Clause 46 says that personalization, bribery treating and undue influence are all corrupt practices under the ROTP Act. Anyone convicted of corrupt practice under this Act faces a fine of up to **VT 100,000** up to **five years** in prison, or both.

False Statements About Candidates: It is an offence under Clause 49, for anyone to make, publish, or cause to be published, a false statement of fact about the personal character or conduct of any candidate, unless they can show that they had good grounds for believing the statement to be true. It is also an offence under this provision, to publish or make a false statement about the withdrawal of a candidate. (This would include the practice, common overseas, of slapping false “WITHDRAWN” stickers over posters, though that is also the crime of defacing, under Clause 41).

The penalty for making a false statement about candidates is a fine of up to **VT40,000** or up to **two years** in prison, or both.

This provision of the ROTP Act does not take away any person’s rights to sue for defamation of character under the common law.

Offences on and after polling day

Although it is all right to try to influence a voter (by gentle persuasion) before polling day, stricter rules apply on polling day itself. Under Clause 50 it is forbidden for any person within 100 metres of any polling station to

- Try to influence anyone to vote for any candidate
- Try to find out which candidate any voter wants to vote for, or
- Hold any deliberations or discussions.

This last Clause prevents the taking of “exit polls”. An exit poll is a survey of people who have just voted, to try to predict the result of an election before all the votes have been counted. Such surveys are common in the U.S.A. and some other countries, but are forbidden in others.

The other activity that is prohibited under Clause 50 is the sale of intoxicating liquor within one kilometer of a polling station. Laws against the sale of liquor on polling day until the close of voting, used to be common throughout the world, but that is tending to change.

The penalty for people convicted for a breach of Clause 50 is a fine of up to **VT20,000**.

Requirements of Secrecy

Clause 51 is a series of provisions to protect the secrecy of the ballot. These provisions reinforce the provisions against “undue influence” and other corrupt practices, they are to make sure that the way every voter has cast their vote stays a secret.

Under Clause 51 (1), every election officer, candidate, authorized representative of a candidate, and any other person lawfully present at a polling place must help in maintaining the secrecy of the ballot, and is not allowed to tell any other person, unless the law requires them to do so.

- The name of any voter who has not applied for a ballot paper or voted at a polling station.
- The number on the register of any voter who has not applied for a ballot paper or voted at a polling station, or
- An official mark.

Those present at the official counting of the votes are also prevented from releasing any information about the counting without authority.



Offences during voting

There are even stricter requirements, under Clause 51 (3), about the period when voters are casting their votes. Nobody may

- ✓ Interfere with (or try to interfere with) a voter when recording their vote
- ✓ In a polling station, find out (or try to find out) which candidate anyone has voted for, or is going to vote for
- ✓ Tell (in any way), at any time, to any person, anything learnt in a polling station about which candidate anyone is going to vote for, or has voted for
- ✓ Cause (directly or indirectly) a voter to display his or her ballot paper after he or she has selected it (or marked it, as the case may be) so as to let anybody else know who they are going (or not going) to vote for, or have (or have not) voted for.

Under Clause 51 (4) there are special rules to protect the secrecy of the ballots of those who need help with voting. This applies to people who are blind, or who need help for some other reason in marking their ballot paper. Anybody who helps any of those people vote may not let any other person know how those people voted.

The penalties for people convicted of breaking the secrecy provisions of the Act are a fine of up to **VT40,000** or up to **two years** in prison, or both.

Offences by Election Officers: Under Clause 52 of the ROTP Act there are more things electoral officers must and must not do. Because electoral officers have more power, offences by them are considered more serious than offences by other people. As an MP you do not need to know these in detail, but the people who work for you might need to. You should make sure that anyone acting on your behalf at a polling place knows very well what is allowed and what is not. If anyone notices anything wrong, they should tell the electoral officer. If it is serious, and the electoral officer goes on acting in a way that seems to be against the law, the person who notices it should write down the details and put the matter in the hands of the PEO. An electoral officer is breaking the law if he or she

- Makes (in any record, return or other document which he or she is required to make under this Act) any entry which he(or she) knows (or has reasonable cause to believe) to be false (or does not believe to be true)
- Lets someone vote in the way provided for blind or otherwise disabled people, when he (or she) knows (or has reasonable cause to believe) they are not blind or disabled.
- Stops anyone from voting in the way provided for blind or otherwise disabled people, when he (or she) knows (or has reasonable cause to believe) they are not blind or disabled



- Stops anyone from voting in the way provided for blind or otherwise disabled people, when he (or she) knows (or has reasonable cause to believe) they are blind or disabled.
- Willfully stops anyone from voting at a polling station where he knows (or has reasonable cause to believe) is properly cast
- Willfully rejects or refuses to count any ballot paper which he or she knows (or has reasonable cause to believe) is properly cast
- Willfully counts any ballot paper as being cast for any candidate if he knows (or has reasonable cause to believe) it was not properly cast for that candidate, or, in general.
- (without reasonable cause) acts (or falls to act) in a way that breaches his (or her) official duty.

An electoral officer who is convicted of doing any of those things faces a fine of up to **VT60,000** or up to **three years** in prison, or both.

Offence of conspiring to or attempting to commit an election offence: Finally, Clause 53 of the Act creates the combined offence of conspiring (plotting with other people) to commit any of the offences listed here, and of attempting to commit any of them. Anyone convicted of either conspiring to, or attempting to, defeat the purpose of the election in any of those ways, faces the same penalties as if they had acted along or been) successful in their attempt.

Conduct within Polling Places

Rules for conduct of Polling places: The details for the conduct of the voting inside polling places are in Schedule 5 of the ROTP Act. Candidates and their helpers should be very familiar with these rules, so they are reprinted as an appendix to this section of the handbook, on page 2-15 to 2-20. From time to time problems can arise with the rules. For example, in a recent general election, voters thumbnails were marked as provided for under rule 11 (a). (See page 2-19). But the ink used was not permanent, and it seems that many people voted, cleaned the ink off, then went back to the polling place to vote again in the name of another voter – possibly one who had died. These offences against the ROTP Act became known when the counting showed that more votes had been cast (than there were voters on the roll.

Returning Officers: Clause 30 of the ROTP Act says the person in charge of each polling place is the returning officer. The registration officer for each polling district is responsible for ensuring that there is a returning officer for each polling place.

Display and Locking of Ballot Boxes: Clause 36 orders the returning officer, before polling starts, to show the inside of the ballot box to everybody lawfully present in the polling station. (It is a good idea for the returning officer to ask each person if it is empty, and for them



to answer so that everyone else can hear. This avoids any arguments about it later).

Once they have seen it is empty, the ballot box is locked with two padlocks. The returning officer keeps one key, and the other is given to one of the poll clerks.

Electoral Rolls and Electoral Cards: Clause 31 says an electoral roll must be kept in each polling place. Nobody may vote unless

- ✓ Their name is on the electoral roll, and
- ✓ They have their electoral card with them.

That is why it is important for every voter to have an up-to-date electoral card and to make sure it is kept in a safe place.

Clause 32 says people detained by law in a mental institution at the time of an election, may not vote even if they are on the roll and have a valid electoral card. (But not every patient in a mental institution has been detained by law. Those who have asked to be there as “voluntary patients” may still vote).

Polls to be secret and voters to have only one vote: Clause 33 repeats the basic principle (contained in Article 4 (2) of the Constitution) that the ballot is secret, and each voter is entitled to vote only once and for only one candidate.

Proxy Votes: Proxy voting (getting someone else to cast your vote for you) is a very important exception to the rules for voting in Vanuatu, because many people may be away from their voting area at the time of an election. The rules for casting a proxy vote are laid out in Schedule 4 of the ROTP Act. Proxy voting is only allowed when voters are able to show that they will not be able to vote at the polling station where they are registered, because of their

- ✓ Occupation, including absence for holidays of work-related conferences.

The voter must produce a certificate to confirm this from

- ✓ A departmental head
- ✓ A senior manager, or
- ✓ Another responsible person

- ✓ Health

The voter must produce a certificate from

- ✓ A registered medical practitioner (a doctor)
- ✓ A nurse
- ✓ A dresser or, in the absence of such people
- ✓ Some other person of standing who can confirm that the voter can't be present at the polling station on polling day

- ✓ Religion

The voter must produce a certificate from a minister of religion confirming that the voter can't vote on polling day for religious reasons

- ✓ Serious ill health or (recent) death of a family member



The voter must produce a certificate signed by a person of standing in their community certifying that the voter is related to the sick or dead person and can't vote in person

- ✓ Involvement in national or international sport
The voter must produce a certificate signed by the head of the appropriate Vanuatu sporting body certifying that the voter can't vote in person

Anybody wanting to vote by proxy must apply to the registration officer, on the correct form, at least 72 hours before the election. He or she must have his or her electoral card with the form. The voter must say on the application form who is to be their proxy. A proxy voter must be registered to vote at the same polling place as the voter applying. Nobody may cast more than two proxy votes.

A proxy vote (or votes) must be cast at the same time as the proxy voter casts their own vote. The proxy voter must have not only their own electoral card but also the electoral card (or cards) for the person (or two people) they are casting proxy votes for.

It is advisable for anyone who wants to vote by proxy to name their proxy well before the cut-off time for applications, in case there is any problem about the application. For example, if a voter's first choice as proxy has already been chosen by two other voters, they will have to choose someone else.

Suspension and Stopping of Poll: To make sure that the results of the voting are not affected by any disturbance while the polling booths are open, there are rules about suspending and reopening of polling. These rules apply if there is any kind of disturbance that (in the opinion of the returning officer) makes it impossible to go on polling (See Clause 35 (2)). In that case, the polling time can be extended to make up for any lost time. The polling time may also be extended by one hour if, half an hour before closing, the returning officer and at least one polling clerk believe that the people still waiting to vote will take longer than the time available. If all voters on the roll have voted before the official closing time, the returning officer may close the polling station early, but counting of the votes may not begin until one hour before the official closing time.

Election petitions

Part XVI of the ROTP Act is about election petitions. Most MPs and candidates never have to go through the drama of an election petition, (but they can cause a lot of trouble, which can be avoided or minimized by sticking to the rules). An election petition may be taken up when either a candidate or a registered voter in an election claims that there is reason for the election result to be declared null and void (cancelled). This could be because of some unlawful action,



in the time before the election, or during the actual counting of the votes. All election petitions must be heard by the Supreme Court. To prevent people petitioning without some good reason, all petitions must be accompanied by a deposit of **VT20,000**. This will be returned to the petitioner after the petition has been heard, but the amount of any costs awarded by the Court may be taken out of the VT20,000. Any petition must be presented within 21 days of the official publication of the results of the election, except that if the petition claims a bribe was paid after an election, the petition may be lodged up to 21 days after the alleged payment.

Grounds for Declaring Election Void: Under Clause 61 of the Act, the grounds for declaring an election void (if proved to the satisfaction of the Supreme Court) are:

- ✓ Bribery, treating, undue influence or other misconduct (even if not of a kind spelt out in the Act), so extensive that it may be assumed it affected the result of the election
- ✓ Such non-compliance with the Act in the way that the poll was conducted that it could be expected to affect the result.
- ✓ That the candidate was not qualified, or disqualified, from election, or
- ✓ that there was such irregularity in the counting of the votes that anyone might reasonably conclude that it had affected the result.

If a candidate is convicted by a Court of a corrupt practice, or of attempting or conspiring to commit a corrupt practice, the election of that candidate is declared void. (See Clauses 44-48 and 53 of the ROTP Act). There is more detail in the Act but, as already noted, most candidates will not need to have a detailed knowledge of the intricacies of election petitions. In fact, the best way to void election petitions is to show that you know and respect the law. If your political opponents appear to be “stretching” the boundaries of the law, you should report this at once to the electoral officer. That can then be dealt with before it becomes a major issue.



The Constitution

Section 3



The Constitution

Section 3

Introduction

Not all countries have a Constitution. Many countries, including some British countries that gained their independence a long time ago, have to rely on a “patchwork quilt” of precedents, treaties and common law to decide the basis of their law and order. Vanuatu is lucky. It was able to learn from the experience of other, older states. In putting together its Constitution, it has used the strengths of its own cultural and leadership customs. The Constitution is the foundation document of the Republic of Vanuatu. It contains the supreme law of the Republic. It is of the highest importance that Members of Parliament know the basic provisions of the Constitution very well. The Constitution was last revised in 1988.

The Separation of Powers

The most important part of constitutional law in the Vanuatu Constitution is the “Separation of Powers”, that is, the separation of the power of Parliament (which makes the laws) from the power of the Government (which administers the laws) and from the power of the Judiciary (the Courts, which interpret and enforce the laws). Throughout the world it has long been recognized that

“Power tends to corrupt, and absolute power tends to corrupt absolutely”.

- Sir J.E.E. Dalberg (Baron Action) in
Letter in Life of Mandell Creighton
(Vol I, p. 372), 1904

However it was a Frenchman, Charles Montesquieu, who best stated the reasons for making sure that there are always limits to the power of any person or group. His statement of the concept of the separation of Powers is worth knowing, because it explains the central ideas of the Vanuatu Constitution.

“Political liberty Is there only when there is no abuse of power: but constant experience shows us, that every man invested with power is likely to abuse it; he pushes on till he comes to the utmost limit

“To prevent the abuse of power it is necessary that, by the very disposition of things, power should be a check to power.

“In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the judiciary, in regard to things that depend on the civil laws.

“When the legislative and executive powers are united in the same person, or in the same body of magistracy, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

“Again, there is no liberty, if the powers are united in the same person, or in the same body of magistracy, there can be no liberty; because apprehensions may arise, lest the



same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

“Again, there is no liberty, if the power of judging is not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with all violence of an oppressor. “Miserable indeed would be the case, were the same man, or the same body, whether of nobles or of the people, to exercise those three powers; that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals”.

- *The Spirit of the Laws* (pp. 200 – 202)

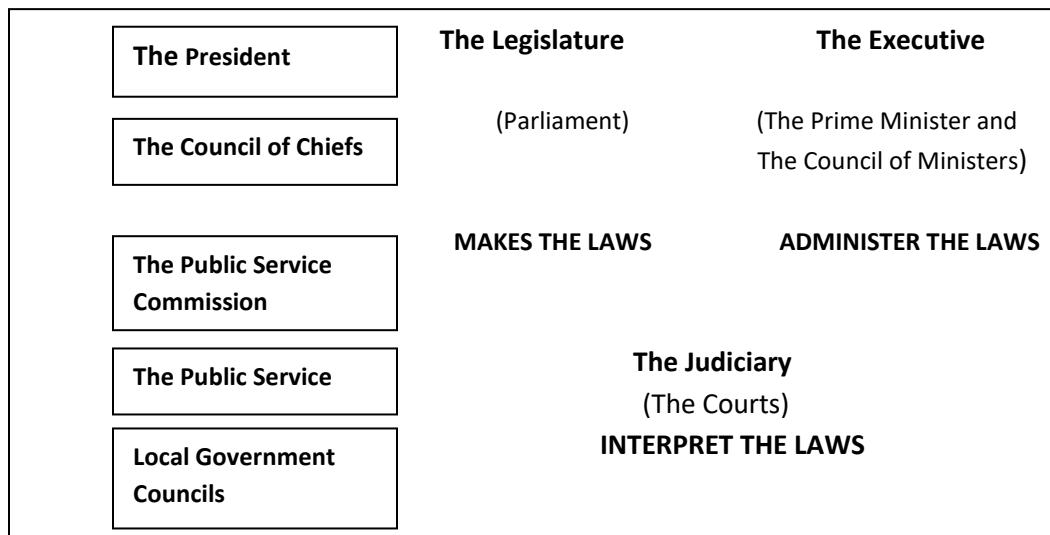
Checks and Balances

In a parliamentary system, governing is by the consent of the people, through elections, not by the “unfettered power” of the Government, and there are “checks and balances” to make sure that this is so. The Constitution provides for the three arms of government.

- The Executive (the Prime Minister and the Council of Ministers)
- The Legislature (the Members of Parliament) and
- The Judiciary (the Judges of the Courts).

It also provides for the office of the President (mainly a ceremonial position, but with important powers kept for times of political trouble, called “reserve powers”) and for the Council of Chiefs (which has the important job of advising the Government about preserving Vanuatu customs and traditions).

The Separation of Powers



The Constitution

Chapter 1: The State and Sovereignty

The Constitution is the supreme law of the Republic of Vanuatu: Articles 1 & 2 provide the framework for governing the Republic of Vanuatu and make it clear that the Constitution is the supreme law of the Republic of Vanuatu. This means that all other laws must be consistent with the Constitution.

National and official languages: Article 3 makes Bislama the official national language of the Republic, and makes English and French also official languages. It says that the main languages of education are to be English and French. It also protects local languages and says Parliament can name them official languages, too.

National sovereignty, the electoral franchise and political Parties: Article 4 makes it clear that the highest power in Vanuatu is with the people of Vanuatu, and they exercise it through their elected representatives. It lays down the principles by which elections are to be organized. It sets the voting age at 18 years. It makes all votes equal and secret, and it says only Parliament can change the voting system. It says how political parties can be formed.

Chapter 2: Fundamental Rights and Duties

This chapter of the Constitution is about the most basic things about citizenship of the Republic. Members of Parliament, as representatives of the people of Vanuatu, need to know this section very well, so that they can act to uphold these provisions at all times.

Part I – Fundamental Rights

Fundamental rights and freedoms of the individual: The first part of the chapter is concerned only with “rights”. It says how citizens are different in law from non-citizens, upholds respect for the freedom of others, and the legitimate public interest in defense, safety, public order, welfare and health. Article 5 grants the fundamental rights and freedoms of the individual. These rights are listed as the rights to:

- (a) Life
- (b) Liberty
- (c) Security
- (d) Protection of the law
- (e) Freedom from inhuman treatment and forced labour
- (f) Freedom of conscience and worship
- (g) Freedom of expression



- (h) Freedom of assembly and association
- (i) Freedom of movement
- (j) Protection for the privacy of the home and other property and from deprivation of property.
- (k) Equal treatment under the law or administrative action (except that a law may discriminate when “It makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged or inhabitants of less developed areas”).

It says that people must be able to enjoy these rights without anyone discriminating against them on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex.

Paragraph (k) above is very important because it makes it possible for the government, or any group or individual, to discriminate in a good way, to advance a group of people who have been kept back in the past.

Article 5 (2) sets out the basic right to the protection of the law and spells out these principles in some detail. These include

- (a) The right to a fair hearing and a lawyer to represent you
- (b) The assumption that you are innocent until a court has proved you guilty
- (c) The right to be told, soon, and in a language you understand, what you are charged with
- (d) The right to an interpreter, if you need one to understand what is happening
- (e) The right to be at all court hearings where you are accused unless you [yourself] make that impossible
- (f) The right not to be convicted for anything you did (or didn't) do if it was not breaking the written or custom law of the Republic at the time you did it (or failed to do it). (This stops a government passing laws that are “retroactive”. That means that no-one can be convicted for doing something that was not a crime when they did it. For example if someone didn't like the Government, and publicly burnt a photograph of the Prime Minister at a demonstration, the Government could not then make a law against burning pictures of public figures and use it to convict that person.)
- (g) The right not to be punished with a greater penalty than that which was set at the time the offence was committed. (The penalties for offences are generally set under statute law or by custom. Just as the Government can't make new laws act on old crimes, it can't make new penalties act on old crimes.)
- (h) The right – if you have been pardoned, or tried and convicted, or acquitted – not to be tried again for the same offence. (The only time a person can be tried twice for the same offence is when the court could not reach a verdict at the first trial.) This is protection against what is called “double jeopardy”.



Enforcement of fundamental rights: Finally, under Article 6, Part 1, any alleged breach of the Fundamental Rights provisions may be heard by the Supreme Court.

Part II – Fundamental Duties

The second part of the chapter deals with “duties” and is more like a code of social responsibility than a set of laws. There are no legal penalties for breaking these “fundamental duties”. However, all public authorities are expected to encourage people to obey the list of fundamental duties.

Chapter 3: Citizenship

This provides the basis of the rules for citizenship of the Republic of Vanuatu. These rules should be read together with Any extension that may have been made to them by Parliament. (Such changes are provided for under Article 14 of this chapter). It is important that the Constitution is clear That nobody can be a citizen of the Republic Of Vanuatu and also a citizen of some other country at the same time. Members of Parliament are often asked questions about How to become a citizen, and how to get the Right to live here permanently (permanent Residence). A person can only become a citizen after living here for ten years or more. It is important that MPs get to know both this Section of the Constitution and also the latest provisions relating to permanent residence. These should be available either through the Parliamentary Library or from the immigration authorities.



Automatic citizens: Article 9 provides that all people who, on the Day of Independence (July 30, 1980) had four grandparents who belonged to a tribe or community indigenous to Vanuatu became, automatically, citizens of Vanuatu. Also, a person with any Ni-Vanuatu ancestry, who had no other citizenship or ancestry, automatically became a citizen of Vanuatu. (Most people in Vanuatu are citizens under this Article).

Entitlement to citizenship: Article 10 provided that persons of Ni-Vanuatu descent who had some other citizenship or nationality on the Day of Independence had the right to apply within three months of the Day of Independence for citizenship. (That is they had to apply

before September 30, 1980). This only applied if the person concerned renounced (gave up) his or her other nationality within three months. An exception was made in the case of children under the age of eighteen. They were required to renounce their other citizenship or nationality within three months of attaining the age of eighteen.

Persons born after the Day of Independence: Article 11 deals with the citizenship of those born after the Day of Independence. Such people become citizens of Vanuatu if at least one parent is a citizen of Vanuatu, no matter where they are born (unless they become citizens of the country where they are born).

Naturalisation: Article 12 provides that a citizen of a foreign state or a stateless person (a person with no citizenship anywhere, such as a refugee), may apply to become a citizen of Vanuatu if he or she has lived continuously in Vanuatu for at least 10 years immediately before the date of the application. Parliament is required, under the Constitution, to provide the “machinery” necessary to decide on applications for naturalisation and may also set further conditions before such people can become citizens.

Avoidance of dual nationality: Article 13 of the Constitution makes it very clear that no citizen of Vanuatu can hold dual nationality (be a citizen of some other country as well). The exception to this is children under the age of eighteen. However, these people (the same as under Article 10) must renounce their other citizenship within three months of reaching the age of eighteen, or they automatically lose their Vanuatu citizenship. It is becoming more and more common for other nations to provide for dual nationality, but the position of Vanuatu is different and very clear.

Further Provision for Citizenship: Article 14 provides for Parliament to make other rules about people who are not covered by the other Articles of this chapter becoming citizens of Vanuatu. It may also make ways for people to give up their Vanuatu citizenship, or have it removed from them.

Chapter 4: Parliament

This chapter lays out the framework for the organization of Parliament. This chapter should be read together with Chapter 146 of the *Laws of the Republic of Vanuatu* (Revised Edition 1988), being the law about the “Representation of the People”.

Parliament is one of the three arms of the power of the state, and is affected by the “separation of powers” discussed in the introduction to this section of the handbook.

Parliament: Article 15 lays down the basic provision that the legislature consists of a single House or “chamber” to be known as the Parliament. Single-Chamber parliaments are sometimes



called “unicameral” systems. (Two-chamber systems, such as that of Australia, are called “bicameral”.)

Power to make laws: Article 16 deals with Parliament’s power to make laws. (This has been dealt with in more detail in Section Six of this handbook, and more details can be found in Part V of the *Standing Orders of Parliament*.)

Election of Members of Parliament: Article 17 provides for the election of Members of Parliament. It provides for an element of proportional representation (although there is no method for this laid down in the Constitution), and that people must be 25 years old before they are allowed to stand for Parliament. In many other countries anyone who has reached the voting age (18 in Vanuatu) is able to stand for election.

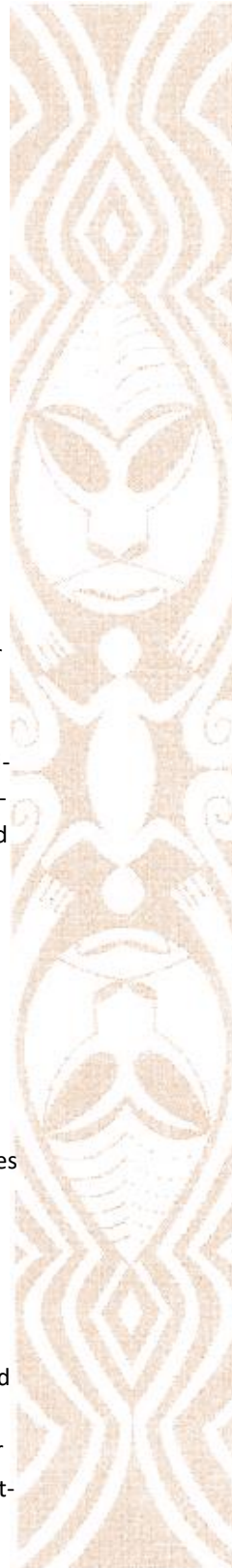
Electoral Commission: Articles 18-20 provides for the setting up of an Electoral Commission and for the running of elections. The Electoral Commission administers, not only parliamentary elections, but also the registration of electors for the election of the Council of Chiefs, as well as local government and municipal offices. (Refer to Section Two of this handbook, and to “Representation of the People” – Chapter 146 of the Laws of the Republic of Vanuatu – for more details of the rules about elections.)

Procedures of Parliament: The framework for the procedures of Parliament is laid out in Article 21. This important clause provides the basis for the Parliamentary Standing Orders in sub-article 5. The procedures are covered in more detail in the Standing Orders of Parliament and in Section Four of this Handbook.

Speaker and Deputy Speakers: Article 22 provides the rules for the election of the Speaker and Deputy Speaker (s). More details on what the Speaker and his or her Deputies do is in Section Four of this handbook.

Committees: Article 23 is a simple provision that gives Parliament the power to set up committees and appoint members to them. Until now, the only committee that has been regularly created under this clause is the Finance and Expenditure Committee, which examines the Budget each year. However, Parliament may set up a committee just to examine one Bill after its introduction, or permanent Standing Committees to examine any Bills or related matters.

Proceedings to be public: Article 24 requires that, in general, parliamentary proceedings should be open to the public, but also provides that, in special cases, they may be held behind closed doors. One such case is when a standing committee is discussing evidence that has been laid before it. It is then quite proper for Members to talk officially but in private, and/or to hear comments and further evidence from public officials. This is sometimes called “meeting in committee”, though Parliament as a whole may also meet in committee and stay open to the public.



Public finance: Article 25 provides the framework for managing public finance; producing the annual budget and the appointment and functions of the Auditor-General. More detail on the budget is in Section Six of this handbook, and information on the work of the Auditor-General is in Section Ten.

Ratification of treaties: One of the special jobs of Parliament is to ratify (sign, and so join) treaties that have been negotiated by the Government on behalf of the people of Vanuatu. This is an important reminder that the Government is accountable to Parliament.

A treaty must be referred to Parliament to be ratified if it

- Is about international organizations, peace or trade
- Mean public money will be spent
- Affects the status of the people
- Means the laws of Vanuatu will have to be changed, or
- Changes the ownership of any land, including to or from ownership by some other country.

Examples of such treaties are the Convention on the Elimination of Discrimination against Women and the General Agreement on Tariffs and Trade, or a trade agreement with Solomon Islands or Fiji.

Privileges of Members: Article 27 deals briefly with the question of Parliamentary Privilege. It spells out that Members of Parliament may not be “arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast”....In Parliament in the exercise of the work of a Member of Parliament. This does not mean MPs can do whatever they like. It does not mean they are above the law. Sub-article 27 (2) says no Member of Parliament may be arrested or prosecuted for any offence, during a session of Parliament “except with the authorization of Parliament”. Parliamentary Privilege is dealt with in more detail in Section Eight of this handbook.

Life of Parliament: Article 28 sets out the rules about when Parliament starts and finishes. There are three ways that Parliament can be dissolved:

- Automatically, at the end of its four year term,
- By Parliament itself, with three quarters of the Members present, passing a motion
- for dissolution by an absolute majority (more than half of all members voting for dissolution), and
- By order of the President on the advice of the Council of Ministers.

Parliament can't be dissolved less than twelve months after a General Election that resulted from an early dissolution.





The President of the Republic must then announce the dissolution, on the advice of the Council of Ministers. An election must then be held [more than 30 days but less than 60 days after the announcement.]

Chapter 5: The National Council of Chiefs

This provides for the setting up of the Council of Chiefs, and its rules.

Council must meet every year: Article 29 sets out in very general terms how the National Council is elected and its rights to regulate itself. The National Council must have at least one meeting every year. The Council elects its own Chairman.

Functions of the Council: Article 30 says the Council of Chiefs can discuss everything to do with custom and tradition, and recommend to Parliament what it thinks should be done about preserving and protecting Ni-Vanuatu Culture and languages. Parliament can ask the Council about any Bill it is considering (especially, of course, any questions about tradition and custom). In practice this is difficult because it takes so long to communicate between Parliament and the other islands, and Parliament often wants to pass laws quickly.

Organisation of the Council and the role of Chiefs: Article 31 says Parliament is responsible for the organisation of the Council of Chiefs, and for saying what Chiefs are responsible for at the village, island and district level.

Privileges of Members of Council: Article 32 gives members of the Council of Chiefs the same privileges, of free speech and immunity from prosecution, as Members of Parliament.

Chapter 6: The Head of State

This provides for the position of President.

President of the Republic: Article 33 says “the head of the Republic shall be known as the President and shall symbolize the unity of the nation”. The second part means the President is expected to be “above” politics, so that he or she exercises judgment in a fair way. The President should be “non-partisan” and should not take part in party political debates. He or she should not comment publicly on what either the Government or Opposition does, in a way that looks like taking sides on an issue.

Election of President: Article 34 and Schedule 1 of the Constitution say how the President is elected. When the position of President becomes empty, it is the job of Parliament and the Chairman of the Local Government Councils to elect a new President. Together for this purpose, they are called the “electoral college”. This must be done no more than three weeks after the vacancy occurs. If the vacancy occurs while Parliament is dissolved (that is, during an election period), then the election must be held no more than three weeks after the first meeting of the new Parliament. The election can only take place when at least three-quarters of all the Members are present, and at least two-thirds of the Members voting must vote for the same person, to elect that person. If three quarters of the members of the electoral college are not present, it must meet again 48 hours later. It can then go ahead and elect the President if two-thirds of the electoral college are present. In practice, when it is known that there is going to be a vacancy, because the term of the President is coming to an end, there is a lot of talk and guessing about who should be the next President, and Parliament always takes account of what the public thinks on the matter.

Qualification for election as President: Article 35 makes it clear that “Any indigenous Vanuatu citizen qualified to be elected to Parliament shall be eligible for election as President of the Republic”. This is an important provision. It means that, although the President has similar powers to the Governor-General in other British Commonwealth countries, the post may not be filled by a foreigner, or by a person who gained their citizenship by naturalisation. (For many years after their independence, the Governors-General of Australia, New Zealand and Canada were always British).

Term of office and removal of President: Article 36 says “The term of office of the President shall be five years”. It also sets the strict conditions for a President to be removed. This can only be done for “gross misconduct or incapacity”. (Incapacity means things like serious illness or insanity). Similar rules apply to the vote to remove a President as to an election. That is, three quarters of the Electoral College (the Members of Parliament together with the Chairman of the Local Government Councils) must be present and there must be a two-thirds majority vote. Two weeks’ notice must be given of the motion to remove a President. If enough members (a “quorum”) are not present at the first sitting, the electoral college may decide, by formal motion, to meet and vote on the matter one week later. At the second sitting, the required quorum is reduced to two thirds of the electoral college.



Speaker to act as President: Article 37 says that whenever there is a vacancy in the office of the President, or the President is overseas or unable to do his work, the Speaker of Parliament performs the functions of President. Even after Parliament is dissolved, the Speaker of that Parliament can stay on in office just to carry out the functions of President, if need be.

Presidential powers of pardon, commutation and reduction of Sentences:

Article 38 defines some very special powers the President has. “The President of the Republic may pardon, commute or reduce a sentence imposed on a person convicted of an offence. [“Commute” means “change to a different type”, in practice always to a lighter sentence]. Parliament may provide for a committee to advise the President in the exercise of this function”. In practice, this power should be used only rarely, and in very special cases. The power the President uses most often is that of signing, and so approving, new laws and regulations. However, because the President of the Republic symbolizes the unity of the nation, he or she will often officiate at important public gatherings, and be present to meet and greet important overseas visitors.

Chapter 7: The Executive

This defines the second arm of the powers of the State. It says what the powers of the executive are and are not, and how it connects with Parliament. The executive is the Council of Ministers. This chapter says how a person becomes Prime Minister, Deputy Prime Minister or a member of the Council of Ministers. It says how any Minister, including the Prime Minister, may be removed from office, and how government carries on when that happens.

Executive power: Article 39 says the Prime Minister and the Council of Ministers are responsible for administering the Government, and that must be in accordance with the Constitution and laws of the Republic. To make sure of this, the Prime Minister must “keep the President of the Republic fully informed concerning the general conduct of the government of the Republic”. If the President thinks any regulation is inconsistent with the Constitution, he (or she) may send it to the Supreme Court to be judged.

Council of Ministers: Article 40 says how the Council of Ministers is formed (in some countries, the Council of Ministers is called the Cabinet). The Council may have no more than a quarter of the number of Members of Parliament. In practice, this means that the executive may have no more than thirteen members, including the Prime Minister. This makes sure that the Prime Minister can’t be put under pressure to add more members to the Council of Ministers.

Election of Prime Minister: Article 41 and Schedule 2 to the Constitution say how Parliament elects the Prime Minister. It is a secret ballot. The winning candidate must have a clear majority (more than half) of the votes cast by Parliament. If no candidate has a clear majority, the candidate who got the fewest votes is taken off the list and the Parliament votes again. They can keep on doing this until there is a winner, but in practice, the Party with most MPs can usually elect their preferred candidate on the first ballot.



Appointment and removal of other Ministers: Article 42 gives the Prime Minister the right to appoint all other Ministers, including one Deputy Prime Minister. The Prime Minister can also remove and replace Ministers. All Ministers must be Members of Parliament. (In some countries, such as the United States, Ministers may be appointed from outside Parliament. In other countries like New Zealand, there are political parties that have separate rules to allow a Government “caucus” to vote for the members of the Cabinet – although the Prime Minister gets to choose who hold the various portfolios).

Collective responsibility of Ministers and votes of no confidence: Article 43 says how Parliament and the Council of Ministers are linked. This is another aspect of the “separation of powers”. The Prime Minister and the Council of Ministers are, as a body, responsible to Parliament. If at least one sixth of the Members of Parliament are not satisfied with the conduct of the Prime Minister and the Ministers. They may move a motion of “no confidence” in the Prime Minister. They must give at least a week’s notice of that motion, and it must be signed by at least a sixth of the Members of Parliament. (In, some countries, “no confidence in the Government” is moved every year, as a way of debating the government’s performance, but the vote is almost always lost). If the motion is passed by an absolute majority (more than half of all the Members of Parliament present), the Prime Minister and all the Ministers immediately stop holding office, but they go on doing their work until a new Prime Minister is elected.

Termination of office of Ministers: Article 44 is also about how the Council of Ministers depend on the Prime Minister for their posts. If the Prime Minister resigns or dies, all members of the Council of Ministers stop holding office, but they go on doing their work until a new Prime Minister is elected. If the Prime Minister dies, the Deputy Prime Minister acts as Prime Minister until a new Prime Minister is elected. If there is no Deputy Prime Minister, the President of the Republic may appoint a Minister to act as Prime Minister until a new Prime Minister is elected.

Other times when a Minister ceases to hold office: Article 45 states the other times when a Minister, including the Prime Minister stops holding office.

These are:

- After a General Election, when Parliament elects a new Prime Minister
- If a Minister stops being a Member of Parliament
- If a Minister is elected as President of the Republic, or as Speaker of Parliament.

Ministers to remain Members of Parliament: Article 46 says Ministers must be Members of Parliament, and they continue being Members of Parliament while they are on the Council of Ministers.



Chapter 8: Justice

This section of the Constitution deals with the third arm of the powers of the State. This is the third of the “separate powers”. This chapter says that the work of the judiciary is to interpret the Constitution and the common law, and to settle disputes in those cases where there is no law that exactly deals with the matter. This part of the Constitution also provides the framework for the judicial system, for appointing judges, and for the settling of different kinds of legal issues, including election disputes. It also provides for the appointment of the Public Prosecutor and the Public Solicitor by the Judicial Service Commission.

The Judiciary: Article 47 defines the judiciary, what their powers are and how they are to be appointed.

First, it makes clear that the judiciary are independent in their job of administering justice. The judiciary has to obey only the Constitution and the law. This means that the Government and Parliament can never tell the judiciary what to do in any particular case. It makes the judiciary responsible for deciding things on the basis of “substantial justice and whenever possible in conformity with custom” when there is no law about something before the courts.



Second, Sub-article 47 (2) says how the judges, except the Chief Justice, are to be appointed. This is done by the President, after advice from the Judicial Services Commission. Sub-article 47 (3) says that all judges stay in office from their appointment until they reach the age of retirement. A judge can only be removed from office “in the event of

- Conviction and sentence on a criminal charge; or
- A determination by the Judicial Service Commission of gross misconduct, incapacity or professional misconduct”.

Sub-article 47 (4) underlines the independence of the judiciary. Only the President can promote or transfer judges, and then only on the advice of the Judicial Services Commission. This keeps the administration of justice free of political control. This is important. Sometimes, Members of

Parliament or the Council of Chiefs may not like a judgment in the Courts. But sub-article 47 (4) is there to prevent Parliament from interfering with the judgment, or the judges who made the decision. So judges can look at the facts of every case, without worrying what someone else – such as the Government – might think about the case, or what it might want to do to them. The Government’s only power over the courts is to pass the laws for the courts to enforce fairly. Sub-article 47 (5) provides for the appointment of acting judges for limited periods of time. It provides the same protection for acting judges as for all other judges.

The Judicial Services Commission: Article 48 says how the Judicial Services Commission is set up, and who its members are. They are the Minister of Justice (as Chairman), the Chief Justice, the Chairman of the Public Service Commission, and a representative of the Council of Chiefs, appointed by the Council. Sub-article 48 (2) says the Judicial Services Commission is absolutely independent. This protects it from outside interference and influence.

The Supreme Court, the Chief Justice and other Judges: Article 49 says the Supreme Court has “unlimited jurisdiction”, to hear and decide any civil or criminal proceedings, under the Constitution. It defines the members of the Supreme Court: the Chief Justice, sitting together with three other judges.

Sub-article 49 (3) says how the Chief Justice is appointed. This is done by the President, after consulting the Prime Minister and the Leader of the Opposition. This is very important, because it means both sides of Parliament decide together (a “bi-partisan agreement”). In that way the choosing of the Chief Justice, and so of the whole judiciary, should be above politics.

Sub-article 49 (4) sets out the qualifications needed for someone to be appointed as a judge or Chief Justice of the Supreme Court. They must be qualified to practice as a lawyer in Vanuatu.

Appeals from the Supreme Court to the Court of Appeal: Article 50 provides for a Court of Appeal to be set up from time to time. It consists of two judges of the Supreme Court. It hears appeals against decisions of the Supreme Court.

Ascertaining rules of custom: Article 51 recognises that the judges of the Supreme Court sometimes need to have people who know about custom, to sit with them and to advise them if it is needed. These people need not be qualified in the law. (In some places they are called “lay advisers”).

Village and Island Courts: Article 52 tells Parliament to arrange for village and island courts to be set up, to hear cases about customary and other matters. Although it tells Parliament to put Chiefs in such courts, the Constitution does not say anything about how the courts are to be organized.



Application to the Supreme Court about infringements of the Constitution:

Article 53 says it is the Supreme Court that interprets the meaning of the Constitution. Any person may appeal to the Supreme Court if he or she believes that the Constitution has been breached. In the same way, when a question about how to interpret the Constitution comes up in a lower court, and the judge there believes that it concerns a fundamental point of law, that question must be sent to the Supreme Court.

Election disputes: Article 54 says how the Supreme Court is responsible to hear election disputes. This applies to Parliamentary elections, elections to the Council of Chiefs, and to Local Government Councils.

Public Prosecutor: Article 55 says how the President, advised by the Judicial Services Commission, appoints the Public Prosecutor. This is another position where it is vital that the person appointed is free from political or other influence in the exercise of his or her duties.



Public Solicitor: Article 56 says how the Public Solicitor is appointed (like the Public Prosecutor), by the President, on the advice of the Judicial Services Commission. The work of the Public Solicitor is “to provide legal assistance to needy persons”. This makes sure that anyone accused of a civil or criminal offence (no matter how poor they are) can have a lawyer to help them defend themselves.

Chapter 9: Administration

Part I – The Public Service

The Public Service is the main body of people responsible for carrying out the policies of the Government. This part says how the Public Service Commission is set up and who is in it. It makes it clear that the Public Service Commission has no responsibility over the Judiciary, the armed forces, the police or the teaching service.

Public Servants: Article 57 sets out the responsibilities of public servants, their appointment and payment, and how they are protected under the Constitution. Public servants owe their loyalty to the Constitution and to the people of Vanuatu. This is very significant: the role of a public servant is not political one; the job of public servants is to serve all governments. When governments change, public servants in Vanuatu stay on in their jobs, and then work for the new Government for the people of Vanuatu. In many countries this is not the case. There, when the Government changes, most of the public service (especially senior members) are replaced by friends of the new government. This opens the way to corruption. The Vanuatu Constitution makes it quite clear that this should not happen here.

Only citizens of Vanuatu can be appointed to public office. The Public Service Commission is responsible for deciding what other qualifications they need for a particular post. Sub-article 57 (3) says no-one can be appointed to a post that has not been created according to the law. This avoids the possibility of the Public Service Commission or senior public servants creating jobs for their family or friends. However, Sub-article 57 (4) lets the Prime Minister or the chairman of the Local Government Commission employ temporary staff to meet unexpected needs. In urgent

cases, the Public Service Commission also has this power. After consulting with the Ministers responsible for finance and public administration, it may make such decisions instead of the Prime Minister. Sub-article 57 (5) protects public servants from “summary dismissal” (being sacked without warning). A public servant can only be removed lawfully in terms of the Constitution. (But Article 58 makes some exceptions). Sub-article 57 (6) says that increases in salary must be provided for by Parliament.

Sub-article 57 (7) provides for the retirement of public servants on reaching the set retirement age, or if they are dismissed by the Public Service Commission. They can only be demoted (be moved to a lower grade) after consultation with the Public Service Commission. This is to stop the Head of a Department or Ministry from acting in an unfair way. Sub-article 57 (8) says that the “security of tenure of public servants provided for in sub-article 57 (5) shall not prevent such compulsory early retirement as may be decided by law in order to ensure the renewal of holders of public offices”.

Exclusion of security of tenure from political advisors and transfer of public servants: Article 58 of the Constitution makes an important exception from the general rules applying to public servants. Personal political advisers of the Prime Minister and other Ministers do not have the security of tenure (holding their jobs) that other public servants have under Sub-article 57 (5). Also, while under Article 57 (5) the Prime Minister can’t sack or demote senior public servants, he or she can move them to other posts of equal rank.

Membership of Public Service Commission: Article 59 provides the rules for setting up the Public Service Commission (PSC), and its membership. The PSC must have five members, appointed by the President after consultation with the Prime Minister. Their term of office is three years. The President of the Republic chooses the Chairman (who may be a woman). The Chairman has the responsibility to organize the proceedings of the PSC. Under this Article, some people are not allowed to be members of the Public Service Commission:

- Members of Parliament
- Members of the National Council of Chiefs
- Members of local Government Councils and
- People with positions of responsibility in political parties

If a member of the PSC is elected to any of these positions they must leave the PSC.

Functions of the Public Service Commission: Article 60 sets out the responsibilities of the PSC. It appoints and promotes public servants, and chooses those who are to have training, both in Vanuatu and overseas. To do this, the PSC may organize competitive examinations. Sub-article 60 (2) makes the PSC responsible for the discipline of public servants. Sub-article 60 (3) stops the PSC from having authority over the judiciary, the armed forces, the police or the teaching service. Sub-article 60 (4) makes the PSC independent: “in the exercise of its functions the PSC shall not be subject to direction and control by any other person or body”.



Part II – The Ombudsman

Part II of Chapter 9 of the Constitution deals with the office of the Ombudsman. It is made law in detail by the Ombudsman Act of 1995. The President appoints the Ombudsman, but must first consult with

- The Prime Minister
- The Speaker of Parliament
- The Leaders of all political parties represented in Parliament
- The Chairman of the National Council of Chiefs
- The Chairman of the Local Government Councils
- The Chairman of the Public Service Commission and
- The Chairman of the judicial Services Commission.

A person can't be made Ombudsman if he or she is

- A Member of Parliament
- On the National Council of Chiefs
- On any Local Government Council
- Someone who holds any other public office or
- In a position of responsibility within a political party.

These rules (and Article 65 of this section) help to make sure that the Ombudsman's job stays non political.

For more about the work of the Ombudsman, see Section Ten of this handbook (page 10-2).

Chapter 10: The Leadership Code

The provisions of the Constitution dealing with the Leadership Code have been expanded in 1998 by the Leadership Code Act. Although this has not changed the provisions contained in this chapter it has made the intention of the provisions much clearer. It is therefore very important for all Members of Parliament to become familiar with both this section of the Constitution and the Leadership Code Act (1998).

Conduct of Leaders: Article 66 is the centre-post of this section of the Constitution. It lays out that any person defined as a leader has a duty to conduct himself or herself in such a way, both in public and private life, as not to

- Place himself (or herself) in a position in which he or she has (or could have) a conflict of interests or in which the fair exercise of his public or official duties might be compromised. (This would include such things as speaking in favour of a transaction, agreement of project, in which the leader had a personal or financial involvement. If such an issue arises in debate, it is proper for the leader concerned to declare his or her interest and to withdraw from any discussion of the matter).
- Demean his office or position (by behaving in a way that would be regarded as disorderly or immoral, or likely to set a bad example for the maintenance of a good society).



- Allow his or her integrity to be called into question (acting in a dishonest way. It requires a leader to tell the truth and be trustworthy in his or her dealings).



- Endanger or diminish respect for, and confidence in, the integrity of the Government of the Republic of Vanuatu. (This spells out the need for leaders to act in ways that do not reflect badly on Vanuatu, or cause other people or nations to lose respect for the country. This would include entering into agreements that would be regarded as dishonest or disreputable in terms of other international agreements).

Article 66 concludes with the statement that

“In particular, a leader shall not use his (or her) office for personal gain, or enter into any transaction, or engage in any enterprise or activity, that might be expected to give rise to doubt in the public mind as to whether he (or she) is carrying out (or has carried out) the duty imposed by” the list of duties above.

Definition of a Leader: Article 67 states that for the purposes of this chapter a leader means

- The President of the Republic
- The Prime Minister and other Ministers
- Members of Parliament
- Such public servants, officers of Government agencies and other officers as may be prescribed by law.

Parliament to give effect to this chapter: Article 68 directs Parliament to give effect to the principles of this chapter by developing appropriate laws. This has been done through the Leadership Code Act.

Chapter 11: Emergency Powers

Article 69 sets out what must happen before the Council of Ministers may make regulations for dealing with a public emergency. These are “whenever;

- The Republic of Vanuatu is at war; or
- The President of the Republic, acting on the advice of the Council of Ministers, declares a state of emergency by reason of natural calamity or to prevent a threat to or to restore public order”.

(The commonest kind of “natural calamity” would be a cyclone).

There are limitations placed upon the exercise of emergency powers. Sub-article 70 (1) says if Parliament is in session when a state of emergency is declared, the state of emergency can last no longer than one week, unless Parliament votes, by a two-thirds majority, to extend it. If Parliament is not in session, the state of emergency ends after two weeks.

When Parliament (using sub-article 70 (1) votes for a state of emergency, its duration must be stated in the resolution, and may not be more than three months. During a state of emergency, Parliament may meet at any time that it decides. During a state of emergency, Parliament may not be dissolved under Article 28 (2) or Article 28 (3); but if the life of Parliament ends during a state of emergency, the former Members of Parliament may meet again – but only to consider the state of emergency, and only until the new Parliament first meets. Parliament has the right, under Sub-article 70 (6) to end a state of emergency by a simple majority vote.

Sub-Article 71 (1) and 71 (2) spell out the limits of the extraordinary powers of emergency regulations. Regulations made under Article 69 “shall be such as are reasonably necessary in the circumstances of the emergency to which they relate and as are justifiable in a democratic society”. Also, “no regulation made under these provisions shall

- (a) Derogate from [limit] the right to life and the freedom from inhuman treatment and forced labour; and
- (b) Make provision for the detention of a person without trial for more than one month unless such person is an enemy alien”.

Under Article 72, any citizen has the right to challenge the legality of any regulation made by the Council of Ministers under these provisions. They do this by complaining to the Supreme Court. (This, again, shows the limits on absolute power provided by the separation of powers)

Chapter 12: Land

This chapter is extremely important, because it lays out the very strict rules about the ownership of land in Vanuatu. It gives the people of Vanuatu very strong protection against any threat to ownership of their own lands. It also gets ready for the way new laws about land may be made and how land transactions might take place.

Land belongs to custom owners: Article 73 says all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants (children, grandchildren, etc).



Basis of ownership and use: Article 74 says the rules of custom form the basis of ownership and use of land.

Perpetual ownership: Article 75 says only indigenous citizens of the Republic of Vanuatu, who have gained ownership of their land through a recognized system of land tenure (ownership), can have the ownership of their land forever.

National land law: Under Article 76, Parliament after consulting with the Council of Chiefs, is to make a national land law that gives effect to Article 73, 74 and 75 and provides for different kinds of land, including urban land.

Compensation: Under Article 77, Parliament is responsible for deciding what compensation might be payable, because of actions taken under land laws made using the powers given by this chapter of the Constitution. (For example, a piece of land might become less valuable if Parliament ruled that it was of a kind that could, or could not, be used for certain purposes, and the owner might want compensation for that).

Disputes: Article 78 deals with disputes over land. If there is a dispute about land ownership, the Government holds the land until the dispute is settled. The Government must also set up whatever procedures or customary institutions are needed to settle the dispute.

Land transactions: Article 79 sets out how indigenous citizens and non-indigenous or non-citizens can sell (or give) land to each other. That can't be done unless the Government gives its consent. But the Government must give its consent unless the ownership change is bad for

- The custom owner(s) of the land
- The indigenous citizen (if he or she is not the custom owner)
- The community where the land is, or
- The Republic of Vanuatu".

Government may own land: Article 80 provides that the Government may own land, but only if it needs to for the good of the public. (Such a purpose might be the building of a new school or health facility or for the construction of a road).

Redistribution of Land: An exception to Articles 73 and 74 is in Article 81. This allows the Government to buy land from custom owners if it is to sell it or give it to other indigenous citizens such as to indigenous citizens from over-populated islands. (This is an example of the "positive discrimination" provided for under Article 5 (1) (k) of the Constitution). Sub-Article 81 (2) says that in redistributing land the Government must give first importance to ethnic, linguistic, customary and geographical ties.

Chapter 13: Decentralisation

This part of the Constitution takes into account the problems of communication and administration that come about because of the geography of Vanuatu. As a widely scattered group of islands, Vanuatu has a special problem to make sure that the people can take part in the business of government, compared to countries like, say, Nauru or Switzerland.

Legislation for Decentralisation: Article 82 makes clear that the Republic, through the Constitution, is committed to decentralization and that the Government must make law to provide for Local Government Regions.

Local Government Councils: Without going into any detail Article 83 says the laws about local government must arrange for Vanuatu to be divided into Local Government Regions. Each region is to be administered by a Local Government Council. These councils must include representatives of custom chiefs.

Devolution: One idea that has yet to be explored in detail in Vanuatu is “devolution” – giving some self-government to the different parts of the country. The concept of Vanuatu as a single country is one that was imposed from the outside, and in practice for not much more than the last hundred years. Custom, in particular, may vary from one part to another, and some laws may fit better in some parts of the Republic than in others. Local Government Councils are a form of devolution. Any further devolution would have to be considered very carefully. It could create many new problems while it solved others.

Chapter 14: Amendment of the Constitution

This part of the Constitution is extremely important. The Constitution of the Republic of Vanuatu was put together to protect the rights of the people. Any change to the Constitution must therefore be considered with the greatest care to ensure that it does not damage or destroy those rights. But all societies change over time. New ways of doing things (such as the computer, or women now doing work that once only men did) may bring new opportunities, but also new threats. Therefore the Constitution must be able to be changed to allow for these new ways, but any change should be carefully considered, and agreed to by most people.

Bills that amend the Constitution: Article 84 says the Prime Minister or any other Member of Parliament may introduce a Bill to amend (change part of) the Constitution. Procedure for passing Constitutional Amendments: The way Parliament votes on a Bill to amend the Constitution is like the way it votes to elect a President. It is laid out in Article 85. However for an Amendment to the Constitution, representatives of Local Government Councils do not vote. The Constitution can only be amended at a special sitting of Parliament. Three-quarters of the Members of Parliament must be present before a vote can be taken, and two-thirds of the Members present must vote for the Amendment, in order for it to become part of the Constitution. If there is no quorum – that is, if three-quarters of the Members of Parliament are not present – Parliament may meet a week later, and then it may vote on the Amendment even if only two-thirds of all the Members are present. Two-thirds of the members present must still vote for the Amendment to pass it at a second sitting.

Amendments requiring the support of Referendums: There are some important exceptions to the procedures laid out in Article 85. Article 86 says that even if an amendment to the Constitution is passed (under Article 85) about

- The status of Bislama, English or French
- The electoral system, or
- The Parliamentary system

The proposed change can't come into force unless it is supported by a national referendum. This means that every citizen of Vanuatu who is old enough to vote has a chance to vote for or against the change.

Standing Orders and the Speaker

Section 4



Standing Orders and the Speaker

Standing Orders

Every parliament in the world has rules. They have them to try to make the conduct of their Houses of Representatives orderly and constructive. The rules of the Parliament of Vanuatu are in the Standing Orders of Parliament. These rules started to be used in Parliament in 1982. They are published in French and English. Every Member of Parliament should be given a copy of the Standing Orders as soon as possible after they are elected. It is very important that all MPs know what is in the Standing Orders. They tell in detail how an MP can add to the life of Parliament. The authority of the Standing Orders is given by the Constitution of the Republic of Vanuatu 1988 under Clause 21(5). This clause hands over to Parliament the right to “make its own rules of procedure”.

The Speaker

The responsibility for enforcing the Standing Orders rests with the Speaker of the House. The Constitution says that each new Parliament must elect a Speaker and one or more Deputy Speakers the first time it sits. The main work of the Speaker is to maintain order. That is stated clearly in Clause 22(2) of the Constitution.

The Deputy Speaker: Clause 22(3) says that the work of the Speaker can be done by a Deputy Speaker (when the Speaker is away, or sick, or asks the Deputy Speaker to take over the chair for some other reason).

The Clerk: Part of the work of the Clerk of the House is to help the Speaker (or Deputy Speaker) to do their work. The Clerk is not elected, and because a Clerk stays on while Parliament changes, he or she is usually very experienced in how the House does its work and how the rules are kept.

Keeping Order

Some MPs become very good at seeing how far they can “stretch” the Standing Orders, and it is the job of the Speaker to make sure that they do not actually break them. If a Member is speaking in a debate and raises matters that are not relevant (not to do with the real subject of the debate), the Speaker may “call that Member to order” and tell them to get back to the subject under debate. If the Member keeps on talking about irrelevant things after that, the Speaker may tell him or her to stop talking. In the same way, if a Member uses language that is not proper for Parliament (usually an insult to another MP or Party), the Speaker may ask the Member to withdraw (take back what was said) and apologise. The only proper words to use for this are “I withdraw and apologise”.



Other things that are strictly not allowed are

- Saying an MP is lying
- Saying an MP has been bribed
- Saying someone else has told an MP what to say
- Saying an MP is drunk, or
- Saying an MP has behaved in a disreputable manner, inside or outside the House. “Saying” includes using any words or expressions that can only mean those things. It is also not allowed.
- To draw attention to the absence of a member from the House.

The Speaker usually gives a ruling when another Member “raises a Point of Order”. The Member raising a Point of Order should say what Standing Order has been breached (broken), although this is often ignored. The Member raising a point of order should briefly say what words or behavior they object to, and ask the Speaker to take action. Other Members may also add their comments, he or she will make a ruling. **The Speaker’s ruling may not be challenged**, except by means of a motion. To do so is itself a very serious breach of Standing Orders, and the Speaker may order an MP who argues with the Speaker’s ruling to leave the House. An MP who then refuses to leave may be removed by force. While the Speaker is giving a ruling, **no-one else may speak**.

To make it easier for MPs to know what kinds of thing they may say and may not say, some Parliaments build up a list of “Speakers’ Rulings”. This is a listing of all the decisions that Speakers have taken and is kept up to date and reprinted regularly. In making a ruling, the Speaker may refer to earlier Speaker’s rulings or deal with a new problem as he or she thinks best, following the general way the House has done things in the past.

The Clerk of the House (who is appointed by the President of the Republic, on the advice of the Speaker) is expected to be present, to help the Speaker. For example, the Clerk may draw the Speaker’s attention to a ruling of a previous Speaker on a similar matter. But the final decision about misconduct in the House, or any other breach of privilege, rests with the Speaker unless he or she decides otherwise.

Privileges Committee

Some Parliaments have a Privileges Committee. In difficult cases, the Speaker calls on the Privileges Committee to hear evidence on cases where privilege may have been breached and the matter is complex. This Committee usually consists of the most senior members of Parliament: for example the Prime Minister, the Deputy Prime Minister, the Leader of the Opposition, the Deputy Leader of Opposition and the Attorney-

General would be a likely combination. Because Parliament is responsible for its own rules and decisions, what goes on in a Privileges Committees is usually private, and only the final decision becomes public knowledge when it is reported back to Parliament.



Impartiality

The Speaker is usually elected from the Members of the governing Party, but his or her job is to serve Parliament in a completely fair and impartial way. For that reason, it is customary that the Speaker does not attend caucus meetings of his or her party, and does not discuss policy with other Members of Parliament. The Speaker does not usually vote on matters before the house, but if the Government has only a narrow majority, there is no rule to stop the Speaker from voting.

Other duties

The Speaker of the House is also responsible for the buildings and the precincts (surroundings) of Parliament. This means that if you want to organize a function in any of the rooms or buildings of Parliament, or a gathering outside Parliament, you must get the permission of the Speaker in writing. In many countries, the Members of Parliament invite visiting groups of voters or school children who are visiting the capital to take a tour of Parliament and, if it is convenient, to meet the Speaker. Such tours are a good way of educating voters (and future voters) about what happens in the Parliament and the important part that they themselves play in the electoral process.

Important Government Officials

The Attorney-General The Public Prosecutor The Public Solicitor The Commissioner of Police The Ombudsman The Auditor-General A Human Rights Commissioner?

In this Section are brief descriptions of the work of the main government officials who politicians deal with in their daily work. All these officials have very important work to do in the service of the Parliament and people of Vanuatu. As an MP you need to know something of their work and their powers in order to understand where your own jobs fit in.

The Attorney-General

The Attorney-General's main work is as the head of the State Law Office. The main functions of the State Law Office (set out in the State Law Office Act of 1998) are

- To give advice to the Government and act as the Government's lawyer on legal matters that may be referred to it by
- The President
- The Council of Ministers
- The Prime Minister
- A Minister
- A Director-General of a Ministry, or
- A Director of a Department, and
- To provide legislative drafting services to the Government.



While the Attorney-General is responsible to the Prime Minister (or a Minister appointed by the Prime Minister for the purpose) he or she is appointed by the President on the advice of the Judicial Services Commission. A person can only be appointed to the office of Attorney-General if he or she has

- Been in practice as a barrister or solicitor (or both) in Vanuatu or in a Commonwealth country or a French territory (or partly in one or the other) for a period of (or periods amounting in total to) not less than seven years, and
- Been admitted to practice in Vanuatu as a lawyer.

The Public Prosecutor

In Vanuatu, the Public Prosecutor is the person responsible for acting on behalf of the Government in legal cases, both criminal and civil. The Public Prosecutor is appointed by the President, using advice from the Judicial Services Commission (under Article 55 of the Constitution). The Public Prosecutor is another official who must be seen to be free from political influence.



Bills

Section 6



Bills

Government Bills Private Bills The Budget
Putting Bills through Parliament

Many things happen in Parliament, but its main work is to pass legislation (or laws). That is why Parliament (the House of Representatives) is often called the legislature. That is where the real work of MPs comes into full flower. It is also where the job of an MP, in representing individuals and groups, can be most powerful.

From Bill to Law: A law begins its life as a Bill. This is a proposal for a new Act of Parliament. However before a Bill can become an Act (or Statute) it must pass through several stages in Parliament. As it passes through Parliament a Bill can be amended (changed) during the Committee stages. All actions taken by a Government must always be lawful in terms of the Constitution. That means that no Bill can be in conflict with what is in the Constitution. The only exception to this is a Bill to amend the Constitution. (The Constitution provides for this in its own Articles 84, 85 and 86, as explained in Section Three of this handbook).

There are two main types of Bills in the Vanuatu Parliament. These are Government Bills and Private Bills. The Budget is simply a rather complicated form of Government Bill and it will be dealt with separately below. Government Bills are by far the most common. They may arise from party policy, or because interest groups have asked for them, or because the Administration has decided it needs them, or they may be to make Vanuatu follow a new international agreement or United Nations Resolution.

Private Bills

Private Bills are very rare in the Vanuatu Parliament. They are a useful way of dealing with “conscience issues”, where MPs do not have to vote with their Party. (Conscience issues are usually about things like liquor or moral issues, where MPs might have strong opinions that are not the same as those of their parties). A Private Bill can also be at the request of an interest group, where that group was not able to persuade the Government to propose a Government Bill. Finally, a Private Bill may simply be the result of a special concern of a particular MP and might represent his or her ideas, or the concern of his or her electoral district.

There is a very important limitation on Private Bills in the Vanuatu Parliament. (This is set out in Clause 51 of the Standing Orders). This forbids anyone other than a Minister from putting forward any Bill or amendment to a Bill that (in the opinion of the Speaker) involves, or could involve, spending public money, and therefore imposing a new tax or increasing existing taxes. Only the Government can demand the people’s money.

It is a good idea for any MP thinking about putting forward a Private Member's Bill to go to the Parliamentary Library, to see if any similar Bills have been put forward in some other country. This could be a useful starting point. It would also be sensible to ask for the help of the Clerk of the House and the Parliamentary Counsel at an early stage. (In the Republic of Vanuatu the job of Parliamentary Counsel is carried out by the Attorney-General, who is responsible for providing legislative drafting services to the Government). They should be able to provide expert help at drafting the Bill and checking that it is not in conflict with any other legislation.

Parts of a Bill (or an Act)

All Bills have the same general form, whether they are Private Government Bills. Bills are divided into the following parts:

1. **Short Title:** The short title is the name of the Bill. It should say what the Bill is about, and must be different from the short title of any other Bill or Act. Sometimes numbers and dates are used to tell it apart from other legislation on the same topic. For example, the Bill might be called the control of Pigs Number 4 Bill (1998) – if there have been three earlier control of Pigs Bills that year.
2. **Long Title:** The long title is a fuller description of the Bill's purpose. For instance the long title of the Control of Pigs Number 4 Bill (1998) might be, "A Bill to provide for the control of pigs in villages and urban areas and to prescribe penalties in the event of breach". The long title should enable anyone picking up a copy of the Bill to quickly understand what it is about.
3. **Preamble:** Some Bills (but not all) contain a preamble to give details of the origins of the Bill, why it is being proposed, and a more detailed account of its purposes. The Budget is a Bill with a very long preamble. The book that was published together with the 1998 Budget, called "Supplement to the 1998 Budget" can be considered to be its preamble, because it lays the foundation (or the "keel") for the Budget itself. Volume 1 of the Budget is basically the Bill (Program Budget Estimates) and Volume 2 (Department Program Budget Narratives) contains explanations of the specific programs that are meant to be carried out as a result of the financial provisions in the Budget.
4. **Preliminary – Interpretations of Definitions:** In most legislation it is important to define the exact meanings of some words in the Bill. If a word is being used in a special way, it should be explained in the "Definitions" or "Interpretation" section of the Bill. These definitions help to make clear what Parliament wants, if there is a disagreement about the meaning of anything in an Act. In that case, the Judiciary is responsible for settling the dispute, so clarity of meaning is very important. In Vanuatu the interpretation section can be found in Part I of a Bill, where it is usually called "Preliminary". This section should be read before the main sections of the Bill.



5. **Main Provisions:** The main provisions of the Bill follow the “Preliminary” part. Bills (and Acts) are almost always divided into Parts that deal with different topics within the general purpose of the Bill. Within each part of a Bill (or Act) there will be one or more Clauses. Each Clause of a Bill should have a heading to indicate the purpose of the Clause, and these headings are repeated in the index at the front of the Bill. A quick reading of the index helps one to understand more what the Bill is all about.
6. **Penalties:** If a Bill defines a crime or crimes, the penalties for those crimes will be set out in a separate Part, after all the crimes have been defined.
7. **Enacting Words:** At the end of a Bill there will be a Clause stating when the Bill will come into force, that is, the date and time when it becomes law. Although a Bill becomes an Act as soon as the President of the Republic has signed it, sometime is often allowed after that before the Bill’s provisions come into force.
8. **Schedules and Regulations:** In some, but not all, pieces of legislation there may be schedules attached to the Bill. These include the form of documents that must be used to carry out the processes required by the new legislation. (So the schedules to a Bill requiring dogs to be licensed would include an example of an application for a dog license, and of a dog license itself....). Schedules must be passed by Parliament after the other parts have been dealt with. Regulations related to a bill may also be detailed at the end of a piece of legislation. However, Regulations differ from laws: Parliament often gives power to the Government to let it amend (change) Regulations, without going back to Parliament. However, the limits of that power are usually given in detail in the Bill itself.

Drafting and Reading Bills:

Most MPs never get to draft a Bill. Drafting of legislation is complex work. The most important thing about any legislation is that it must be consistent (must fit in) with the Constitution. It should not override any other Act that is already in force. If it does, it should say clearly what other Acts it affects, and how they must be amended to remove any clashes. Any new piece of legislation might affect other legislation that is already in force. Statute law is a special area of knowledge, and the Parliamentary Counsel (in Vanuatu this is the Attorney-General) is responsible to Parliament for making sure that any new laws are clear and do not contradict either the constitution or any existing laws.

MPs are not expected to be able to draft a Bill, but all MPs should be able to read and understand a Bill, and work out how it can affect the life of people in their area and in Vanuatu as a whole. Government Bills are usually drafted by the Government Department concerned, or by a person employed by the Department for the purpose before being checked by the Attorney-General. Sometimes the Attorney-General (in his role as Parliamentary Counsel) may be called on to draft or help with the drafting of a Bill.

Drafting instructions: The process begins with the development of drafting instructions. The Minister, MP or senior official who is responsible for the Bill will give drafting instructions to the person who is to write the Bill. Drafting instructions should refer to all the parts of the Bill; its short and long titles, an interpretation section, the sections and content of the Bill and what is to be achieved, and any special features such as penalties, regulations or schedules to the Bill.



It is the job of the Parliamentary Counsel to ensure that a Bill conforms to all legal requirements and is consistent with other legislation. A Bill can't be brought into the House until it has been checked and approved by the Parliamentary Counsel. In Vanuatu all Bills must be produced in both English and French. The two versions of every Bill must be carefully checked to make sure they both mean exactly the same thing in every respect.

From a Bill to an Act

❖ **Giving Notice**

Once the person responsible for a Bill is satisfied everything is correct the Minister (or Member) must deliver it, in both French and English, to the Clerk of the House. This must be done at least 15 days before the Bill is to be introduced. It is then the job of the Clerk to send copies, in French and English, to all MPs. This must be done at least 10 days before the Bill is introduced.

❖ **Working on the Bill**

As soon as MPs receive a new Bill, they should Read it through carefully to find out what it is all about. They might then send copies of the Bill to any people and groups in their networks who might have an interest in the proposals, or useful comments to make about it. If an MP has a Particular interest in a Bill or knowledge about it, he or she might decide to contact the Minister or the Party Leader, to make sure of getting a chance to speak about the Bill when it comes before the House. In any case, the MP will want to look at the Bill to see if there are ways it might be improved.



❖ **Introduction and First Reading**

In the Vanuatu Parliament, under the Standing Orders, Private Bills can be dealt with only on Monday and Thursday mornings. Government Bills, on the other hand, can be dealt with on any day of the week while Parliament is in session (according to the Parliamentary timetable as laid out in the Standing Orders under Clause 23). Private Bills and Government Bills are both dealt with in the same way when they are introduced to the House. When the mover (the Member or the Minister responsible) is called upon by the Speaker, they say, "Mr [or Madam] Speaker, I move that the First Reading of the Bill be agreed to". This sentence signals the beginning of the debate.

In theory, speakers in a debate try, by the weight of their arguments, to convince their opponents to change their minds. An MP will gain respect by trying to do that, in practice, everybody's mind is usually made up, and the debate is just an excuse for scoring political points.

A seconder of the motion for the First Reading is not required. A First Reading debate may only be about the principles and merit of the Bill, not the details. Speakers supporting the Bill take turns with Speakers against it. Usually each party will draw up a list of those who are to "speak to the Bill" (that is, speak about it). Opposition parties usually join together to represent all those against a Government Bill while the Governing party or Coalition will have its own list of speakers in favour. In the case of a Private Bill, things can become a little more complicated; the proposer of the Bill draws up a list of supporters, while someone else takes responsibility for drawing up a list of opposing speakers.

The Government, by definition, has a majority, so the motion for the First Reading of a Government Bill is automatically agreed to at the end of the debate. A Private Bill though, may

well be defeated at this early stage if it does not have the support of the majority of Members. However, if the Government knows that there is a lot of public support for something in a Private Members Bill, they may decide to let that Bill go further. (But remember that very few Private Bills have ever been put forward in the Parliament of Vanuatu).

When the First Reading of a Bill has been agreed to, it is automatically referred to the Committee of the Whole House, unless Parliament decides otherwise. At that stage any Member can move that the Bill be referred to an ad hoc Committee (a Committee set up just for this purpose) for more detailed consideration. This is the general practice in many other Parliaments. In fact, most Parliaments have a series of Standing Committees to look more closely at legislation before it is sent back to the House to be considered again. These Standing Committees are often called “Select Committees”. They can hear what the public has to say (submissions) on the details of the Bill. After considering these suggestions and the comments of officials, they may suggest changes to it. Although the Select Committee procedure slows down the process of passing laws, it usually means the law is better, and more accepted by the public. If the Parliament of Vanuatu were to adopt the practice of using ad hoc, Standing or Select Committees more, it would need more staff to service those committees.

❖ **Committee Stage**

After the first reading of a Bill, and if the House has not decided to refer the matter to an ad hoc committee, the Parliament resolves itself into the Committee of the Whole House. In the Vanuatu Parliament, all Bills are dealt with section by section at the Committee stages. (In some other Parliaments, Bills may be dealt with clause by clause, if they are either very complicated or very likely to cause serious disagreements). The Committee stage of a Bill’s progress is the most important of all, because it is at this stage that **Amendments** may be proposed. An Amendment can’t be in direct conflict with the principles of the Bill as it was when Parliament agreed to its First Reading. If you disagree with the whole content or principle of a section, all you can do is vote against that section. Any Amendment must be relevant to the section of the Bill that is being considered at the time. If, in the opinion of the Speaker, an Amendment is “unintelligible, irrelevant, frivolous or scandalous, or is otherwise out of order” the Speaker may refuse to accept that Amendment. It is normal for an Amendment to be proposed in writing and the text handed to the Speaker. All motions for Amendments must be both moved and seconded. Therefore, any Member who plans to propose an amendment should make sure that there is someone ready to second it.

If more than one Amendment is moved to the same section, the Speaker puts the proposals to the vote in the same order that they were moved unless he decides otherwise. Amendments can be moved to an Amendment, and things can get very complicated. Amendments to an Amendment are all put (also in the order they were moved) before the main Amendment. If an Amendment is lost, then any Amendments to it are automatically lost with it, even if they are passed earlier.

One important way the Vanuatu Parliament differs from most other Parliaments is that it has the power (under clause 29 (6) of the Standing Orders) to “seek the advice of any person or group of persons who may be of assistance during the consideration of a Bill”. This is an important way of resolving difficulties, but it is a little more difficult to manage than the system of Standing Committees used in other Parliaments.

❖ **Second Reading**

When all sections of the Bill have been passed through the Committee stages, the motion for the Second Reading may be put to the House. Generally this is the simple motion, “That this Bill be now read a second time and do pass”. However two other things could happen:

1. The Second Reading could be postponed to sometime in the future (which may or may not be specified); or
2. The Bill could be referred back to the Committee of the Whole House for a limited and defined purpose. (This might be done where it has become clear that there is a conflict between one section of the Bill and another, or that there is a need for more information).

❖ **Certification and Assent**

When a Bill has completed its Second Reading it is returned to the Clerk of the House for a final check. When the Clerk is satisfied that everything is in order he certifies the Bill to be sent to the President. The Bill is then sent to the President for his or her assent (formal agreement). If the President thinks that the Bill is inconsistent with anything in the Constitution, he or she may refer it to the Supreme Court for its opinion (as provided for under Article 16 (4) of the Constitution). Otherwise the President must sign the Bill no more than two weeks after receiving it. When the Bill is signed by the President, it becomes an Act. (As mentioned earlier, the Act may not come into force until sometime after it is signed, depending on the date specified in the Bill).



Committees and Officials

Section 7



Committees and Officials

Vanuatu's Parliament does not make as much use of committees as may others do. However, the Constitution clearly provides for Parliament to set up committees.

Expenditure Review Committee

One of the most important and powerful committees in any Parliament is its budget and finance committee. In Vanuatu, this Committee has been given great significance, by being set up under special legislation, the Expenditure Review and Audit Act No. 3 of 1998. This committee is different in several ways from most parliamentary committees in other countries. Someone who is neither a Member of Parliament nor a public servant chairs Vanuatu's Expenditure Review (E.R.) Committee. The other Committee members (up to four) are Members of Parliament. Half of them are members of the Government and half are not.

The aims and functions of the Expenditure Review Committee are set out in Clause 14 of the Act. This Clause also makes clear that the Committee works closely with the Auditor-General's Office to fulfill its responsibilities. These are "to ensure that adequate public accountability is achieved by, confirming that the obligations under the (Expenditure Review and Audit) Act are met, in particular,

- i. Required economic and financial statements are produced and are reviewed;
- ii. Adherence to fiscal disciplines is explicit;
- iii. Statements of responsibilities are completed and sufficient undertakings exist in order to rely on them;
- iv. That all obligations of directors-general of ministries are met".

Any Member of Parliament appointed to this Committee will find that this is a very heavy set of duties, and that expert help, from people skilled in accountancy, is needed to fulfill this first set of objectives. Members of such Committees should not be too worried, though. Sometimes people serving on Committees are frightened to ask questions about technical matters for fear of revealing their ignorance. At times, though, it is vital that the obvious questions are asked, because they may go right to the heart of the matter. Sometimes it may be important for an MP who is not part of the Committee to supply information to someone who is, in order to ensure that Government action is properly examined. For example, you may have been waiting for a particular public health program to be completed in your district as part of a larger national program. You might contact one of the members of the E.R. Committee to ensure that questions are asked about why this project, funded under the previous year's budget, has not been begun. This is part of accountability.



Clause 14 of the Act sets out further function of the Committee to be “achieved by;

- (a) Providing a mechanism for public consultation about budget and expenditure matters;
- (b) Undertaking or supervising all audits in order to ensure the reliability of systems and procedures and the integrity of information produced;
- (c) The pursuit of legitimate issues of public concern that affect the management of public money;
- (d) Reviewing the efficiency and effectiveness of the financial performance of those persons, organizations or entities managing, collecting, expending or administering public money”.

The Act further states (in Clause 14 (2) that, “In the performance of its duties it shall be the function of the Committee to:

- (a) Review the policy statements under the Act and the relevance of the provisions or outcomes proposed and note submissions from the public;
- (b) Review and comment on the content of the various other statements, economic updates and reports required under the Act;
- (c) Note compliance by the Minister of Finance in terms of the provision of those statements required under the Act and comment publicly if there is any non-compliance by any party;
- (d) Consider and report to Parliament (after consultation with the Auditor General) on the adequacy and nature of the program intended to be undertaken by the Auditor-General;
- (e) Report to Parliament (after consultation with the Auditor-General) on the adequacy of the external audit arrangements proposed by the Auditor-General including the standards to be followed;
- (f) Review and report to Parliament (after consultation with the Auditor-General) on whether the Auditor-General’s Office has sufficient resources to enable the Auditor-General to perform his or her functions and if the Committee finds there are insufficient resources, to advise Parliament on the additional resources required;
- (g) Review annual statements of the State, and the audit opinion thereon, including any concerns raised by the Auditor-General;
- (h) Receive submissions from the public;
- (i) Examine the details of all reported offences and penalties imposed under the Act;
- (j) Regularly report to Parliament upon any matters considered by the Committee which the Committee considers ought to be brought to the notice of the Parliament;
- (k) Pursue any concerns that the Committee believes are justified, and in particular in the context of other parties’ responsibilities under the Act, that the Committee believes are within the legitimate functions of the Committee”.



In summary: The Expenditure Review Committee carries out many functions about the control and proper spending of money. Under the system of program budgeting that is used in Vanuatu, this work has become very far-reaching.

Other Committees

The Standing Orders provide for much more extensive use of committees. Until now, these powers have been little used. One reason may be that, in order for committees to work well, they must have staff who are able to give expert assistance and servicing, to make sure that the committees can carry out their work in an efficient way. It is worthwhile to look at how and when Vanuatu's Parliament might make more use of committees in its work.

Ad Hoc Committees and Standing Committees

Clause 29 (1) of the Standing Orders says "when the First Reading of a Bill has been agreed to, it shall automatically be referred to the Committee of the Whole House unless Parliament shall otherwise decide on a motion stating "That the Bill be referred to an ad hoc Committee". Such motion may be moved orally and without notice by any Member and may be presented either immediately after the First Reading or at a later sitting".

In addition, Clause 49 (1) provides that "A Member may present a motion to constitute a standing committee of Parliament in order to examine, enquire or consider any business, question or matter related to a ministry, department or service of the Government of the Republic of Vanuatu".

These make it possible to examine a Bill much more closely than when it passes straight to the Committee of the Whole House. If the House decides to set up an Ad Hoc Committee, it chooses the members of the Committee, usually from both sides of the House. The Committee must consider the proposals contained in the Bill from all angles. In many Parliaments, so much use is made of this system that, instead of setting up ad hoc committees for each Bill, there is a set of standing (or Select) Committees. These are set up at the beginning of each term of Parliament to study almost all new legislation. At the end of the First Reading of a Bill, a motion is moved and passed "That the Bill be referred to the.....Committee for consideration and report back by date". It is then the job of the Committee to call for submissions from the public on the pro-posed Bill. Sometimes, if the legislation would affect and interest people who might find it difficult to travel to Parliament to make submissions, or if it will affect a large number of people, the Committee may travel to different regions to hear the views of citizens and groups. It is normal for a committee to have a permanent secretary (who should be a member of the Parliamentary staff) and the help of departmental officials when it needs it.

Although using committees to review legislation may cause Bills to take a great deal longer to go through Parliament, the committees give a number of advantages. These include

- A wide range of people, especially those likely to be most affected, able to make submissions on forthcoming legislation
- Greater understanding of the legislation, once passed, by the Members of Parliament



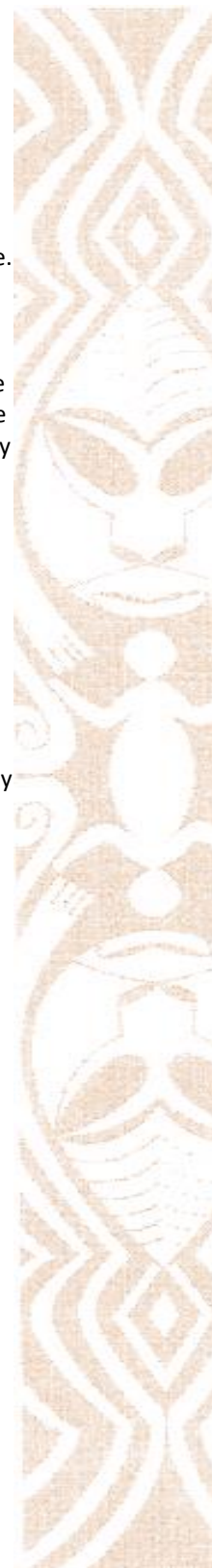
- Fewer mistakes in the legislation, because it is looked at more closely
- Much greater knowledge of legislation and what it means among the people of Vanuatu, because the committee stages can be reported in the media, and
- Much more acceptance of the legislation, once it becomes law, because the people will be more aware what it means, and will know that they have had the chance to be listened to.

Of course, not all suggestions made in submissions will be accepted by an ad hoc, standing or select committee. Some submissions will directly contradict each other; others will not fit with the main intention of the Bill, and will be discarded for that reason alone. It is the job of the Committee to sort through the submissions, to seek advice as necessary, and to make recommendations to the Minister or Member who has put the Bill forward. The Bill is then returned to the House, either unchanged or with amendments (including any changes that have been accepted as a result of submissions made). This stage, in Vanuatu's Parliament, would happen before the debate of the Committee of the Whole House. A second draft of the Bill would have to be made, to include any changes that had been made. In most Parliaments there is a general debate on the Bill following the "Report Back" stage but this is not entirely necessary. Where this occurs, it is usually the most wide-ranging debate on the Bill.

Committees of Inquiry

Standing Order 49 also makes it very easy to set up a Parliamentary Committee, to examine any issue of concern to Parliament. This is a very useful device for dealing with controversial issues, or ones where there is a wide range of opinion, or where community groups hold the bulk of the evidence. For example, Parliament might set up a Committee of inquiry on Family Violence. This would enable the Government to take action only after all concerned groups had had a chance to make submissions, and there had been wide public discussion.

In Vanuatu, the size of a standing committee is limited to seven people (with members drawn proportionally from all parties represented in Parliament). The term of a standing committee is for the life of the Parliament, unless Parliament decides otherwise.



Parliamentary Privilege

Section 8



Parliamentary Privilege

The question of Parliamentary Privilege has already been dealt with briefly in Section Three of this handbook, but there is something more that needs to be said about the traditional rights of MPs. Your greatest privilege as a Member of Parliament is the right to represent your constituents. If you behave in such a way that you are banned from Parliament, even for a short time, that privilege has been taken away. That may also cause the people WAO voted for you to lose their respect and support for you. New MPs should try to learn, as quickly as possible, the rules of behavior in Parliament, and how to use the privilege of being an MP to the best advantage of those who voted for you.

Freedom of Speech

Members of Parliament are immune (free) from arrest, from prosecution and from imprisonment (or other detention) for anything they say in a sitting of Parliament or any vote they cast, when carrying out their duties. This protection is like the protection MPs have in most Commonwealth Parliaments. Its purpose is to protect the MP from libel suits or other legal actions, when the MP expresses a view that he or she believes to be true. (This right derives from a provision in the English Bill of Rights of 1688, although it is said to have its beginning much earlier than that.) The ninth article of the Vanuatu Bill of Rights says

"That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament".

However, the protection that this "privilege" gives to freedom of speech does not include protecting you if you make false statements when you know they are false. No Member of Parliament is immune from the responsibility to tell the truth, as they know it, when speaking to the House. The impeachment proceedings against President Clinton in the United States, and the resignation of President Nixon in 1973 rather than face impeachment, are clear examples of how serious it is to mislead the country's House of Representatives.

Sometimes one MP will challenge another to "Say that outside the House!" This is not an invitation to a fist-fight, but a challenge to test whether the MP is telling the truth by having him or her risk being sued for saying it. You will save yourself a lot of trouble if you ignore such challenges. They are just a way for an MP to call another MP a liar without breaking Standing Orders.



The protection given to Members of Parliament who act "in good faith" (sincerely) is also extended to other people who serve the Parliament. They include officers of the House, people making submissions to Parliament and or petitioners to Parliament.

You do not have to serve on a jury while you are a Member of Parliament. If you did, that would breach (break) the principle of the Separation of Powers (between Parliament and the Judiciary). Parliamentary Privilege is not unlimited. It is modified by other provisions in the Standing Orders. If you use Parliamentary Privilege improperly – to say something in Parliament about a non-MP that would be slander if you were not in Parliament, for example – this is called "an abuse of Privilege" and the Speaker can call you to order for it, and tell you to stop doing it.

Section 8

Conduct in the House and Outside

It is the Speaker of the House who is first responsible for deciding on matters of privilege. After all, it is the Speaker who decides whether any statement made in debate in the House is permissible. It is also the responsibility of the Speaker to maintain order (See Clause 10 of Standing Orders). At the same time, MPs should not always be putting the Speaker to the test, but should try to obey Standing Orders without his or her help. Parliamentary debate should be vigorous, but standards of decency and good manners should always be up held.

The rules for debates in Parliament are laid out in Part VII of Standing Orders, in clauses 39 and 40. There are strict rules for dealing with disorderly behaviour in the House. However, there are other ways that an MP can bring Parliament into disrepute. Members ought not to behave in any way outside Parliament that makes other people lose respect for Parliament. This issue is partly looked after through the Leadership Code Act, and the provisions in the Constitution relating to the Leadership Code.



Government Appointments

Section 9



Government Appointments

Section 9

One of the great tests of a government is the way that it goes about making government appointments. There is always great pressure on politicians to reward the people who have supported them in their election. Also, in many countries like Vanuatu, there is intense pressure on each Minister to give jobs to their family and wantoks.



Although it does not mention this problem, the Constitution recognises it, by laying down rules for the appointment and dismissal of public servants. These are contained in Chapter 9 of the Constitution. The Public Service Commission has the responsibility of appointing public servants, but a particular exception is made in the case of the Judiciary, the armed forces, the police and the teaching service. The Public Service Commission is appointed for a term of three years, by the President, after consulting with the Prime Minister. The President is also responsible for the appointment of the Chairman of the Commission. Under Article 60(4) of the Constitution it is stated, quite explicitly, that

"The Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions".

While it is quite all right to tell a friend, a relation or any other citizen, how they can go about applying for a government job, that is about as far as an MP should go. To try to influence the members of the PSC is a breach of the Constitution, and is treated with the greatest seriousness.

The job of the PSC is to appoint the best person for each job when appointments are called for. No Member of Parliament or Minister can, or should, make promises about being able to arrange a job for anyone as a favour. The only jobs that a Minister controls are those of political advisers in his or her own office. The number of these jobs is limited, and a wise Minister will make sure that even those jobs are given to the person who is best qualified to do them.

Other ways to preserve neutrality in appointments to senior positions: Some countries go even further to try to make sure appointments are made neutrally and fairly. In New Zealand, as in Vanuatu, all senior appointments to the Public Service are made through the Public Service Commission. (In New Zealand it is called the State Services Commission). However, the head of the State Services is selected by a rather different and more detailed process. This job is the responsibility of the Minister of State Services and the Prime Minister, but they do not do it alone.

1. They draw up a list of ten candidates.
2. This list is passed to a professional management consultant.
3. The consultant interviews all the candidates and provides notes to the two Ministers.
4. On the basis of that advice, the list is reduced to four.
5. An advisory panel is set up. It consists of three chief executives from the private sector and one former chief executive from the public sector. It interviews the top four candidates, and
6. makes a recommendation to the Prime Minister and Cabinet.

The State Services Commissioner is responsible for all other Chief Executive appointments. This is usually done by appointing a panel of people who choose a short list of candidates. This list is passed on to the relevant Minister, who is asked if he or she has any problems with any of the candidates. The whole process, up to the actual appointment, is done in strict confidence to save the unsuccessful candidates from being embarrassed. With some appointments, though, the public and the media will guess.

Other Statutory Boards and Bodies

Most governments delegate some of their detailed work to committees and boards outside Parliament. Vanuatu does too. These may range from Commissions of Inquiry to committees to hear evidence on particular social or economic issues. Work on these bodies may give people status, though it is not often well-paid. Again, there will be a temptation to put forward the names of people who may be seen to have "earned" the privilege. It is wise to remember that if the people concerned are not the best people for the job, insisting on their appointment could fly back in the face of the MP who put forward the suggestion. Your judgment and wisdom is your most precious possession. If you regularly make poor suggestions or urge unwise or unsuitable appointments, you will not be taken seriously.

There are many different ways people can be appointed to statutory boards and other organizations, ways that can help to avoid being accused of bias or favouritism. An appointment system can split the responsibility for appointment among a variety of different interests. For example for a health board, the Minister of Health might appoint the Chair and two other members, the Medical Association and the Nurses' Association might appoint two others, and the Pharmaceutical Association might appoint the last member.

Representation of special interests: It is sometimes difficult to make sure that all interests present in a society are properly represented on statutory boards and committees. For example, in New Zealand it was recognized some years ago that few women were being appointed to such bodies. Ministers said that they could not appoint women because no women were suitably qualified. To help the ministers, three of the leading women's organizations set up a "Women's Appointment File". It is a list of women, sorted according to their qualifications and experience, from which names can be selected whenever appointments need to be made. The existence of the file has done a great deal to raise the awareness of the need to consider women for appointment. It has also reminded those responsible, that they should consider other minorities; tribal minorities, ethnic minorities, disabled people and others, whose viewpoints need to be considered in decision-making.



Important Government Officials

Section 10



Important Government Officials

Section 10

The Attorney-General The Public Prosecutor The Public Solicitor The Commissioner of Police The Ombudsman The Auditor-General A Human Rights Commissioner?

In this Section are brief descriptions of the work of the main government officials who politicians deal with in their daily work. All these officials have very important work to do in the service of the Parliament and people of Vanuatu. As an MP you need to know something of their work and their powers in order to understand where your own job fits in.

The Attorney General

The Attorney-General's main work is as the head of the State Law Office. The main functions of the State Law Office (set out in the State Law Office Act of 1998) are

- R:-- To give advice to the Government and act as the Government's lawyer on legal matters that may be referred to it by
- R:-- the President
- R:-- the Council of Ministers
- R:-- the Prime Minister
- R:-- a Minister
- R:-- a Director-General of a Ministry, or
- R:-- a Director of a Department, and
- R:-- To provide legislative drafting services to the Government.

While the Attorney-General is responsible to the Prime Minister (or a Minister appointed by the Prime Minister for the purpose) he or she is appointed by the President on the advice of the Judicial Services Commission. A person can only be appointed to the office of Attorney-General if he or she has

- R:-- been in practice as a barrister or solicitor (or both) in Vanuatu or in a Commonwealth country or a French territory (or partly in one or the other) for a period of (or periods amounting in total to) not less than seven years, and
- R: - been admitted to practice in Vanuatu as a lawyer.

The Public Prosecutor

In Vanuatu, the Public Prosecutor is the person responsible for acting on behalf of the Government in legal cases, both criminal and civil. The Public Prosecutor is appointed by the President, using advice from the Judicial Services Commission (under Article 55 of the Constitution). The Public Prosecutor is another official who must be seen to be free from political influence. It is the Public Prosecutor who, in most cases, decides whether there is enough evidence for a case to be taken to court by the police. The Public Prosecutor also has the power (under clause 30 of the Criminal Proceedings Act) to take over a case that began as a private prosecution.

State prosecutors: The Public Prosecutor has the power (under clause 31 of the Criminal Procedure Code) to appoint suitably qualified people to act as state prosecutors. These may look after certain kinds of court cases or any other cases. Whatever they were appointed for, all state prosecutors are under the direction of the Public Prosecutor. The Public Prosecutor may appoint (in writing) any person working in the public service, including a police officer, to act as a state prosecutor for any case or class of cases.



Giving up on a case: The Public Prosecutor may decide, while a case is going on that there is not enough evidence for it to continue. In that case the Public Prosecutor (or their representative) may enter a nolle prosequi (which means "to be unwilling to chase"). The accused person is immediately discharged and if he or she has been imprisoned for the offence, must be freed from custody. When a person has been released or discharged as the result of a nolle prosequi, they may not be tried again for the same offence. Anyone who believes that an offence has been committed may make a complaint to a prosecutor. Such complaints may be made either orally or in writing, and they are made under oath (the person swears that their complaint is true). If the complaint is made orally the prosecutor must record it in writing. In either case the complaint must be signed by the complainant and the prosecutor. If the prosecutor is satisfied that an offence has been committed, he or she will draw up a charge (or get someone else to draw one up). The complaint and the charge are then laid before a Court. It is the task of the Court to decide when it will hear the case. The Court must also draw up a statement of offence, and serve notice on the defendant that there is a case against them.

The Public Solicitor

The Public Solicitor is appointed by the President, on the advice of the Judicial Services Commission (under Article 56 of the Constitution). It is the job of the Public Solicitor to make sure that anyone accused of an offence has a lawyer to speak for them. These lawyers may be paid for (or partially paid for) by the Government. This is to make sure that no-one is denied their basic right to a defense. However it does not say exactly in the Public Solicitor Act (Chapter 177 of the Laws of Vanuatu) who is eligible for a free lawyer. Instead Clause 5 of the Act says that

"the term 'needy person' is to be interpreted in relation to each case and without limiting the generality of this expression."

However, the clause goes on to give some guidelines:

"account shall be taken of the means of the person to meet the probable cost of obtaining alternative legal assistance, the availability of such assistance and the hardship that might result to the person if compelled to obtain legal assistance other than by the Public Solicitor."

If a person is refused assistance by the Public Solicitor they may appeal to the Supreme Court against the decision. Part IV of the Public Solicitor Act says no-one working in the office of the Public Solicitor may also work in private legal practice. The Judicial Services Commission may appoint legal officers to help the Public Solicitor. The service may not be quite free: if the Public Solicitor decides to, the office may make a "reasonable" charge for its services. The Minister of Justice is responsible for administering the Act, and has the power to make regulations under the Act on the advice of the Judicial Services Commission. Those regulations would be to help carry out the purposes of the Act, or affect the matters inside the Public Solicitor's office. For example, after consultation with the Public Solicitor the Minister may make regulations about charges or part-charges to be made for services provided by the Public Solicitor.

The Commissioner of Police

The job of the Commissioner of Police is described in detail in the Police Act (Chapter 105 of the Laws of the Republic of Vanuatu, Revised Edition 1988). The Commissioner of Police takes general instructions from the Minister of Police. However, the Commissioner is not subject to the Public Service Commission in the same manner as other public officials. Instead, the police force is subject to the Police Service Commission. This is a three-person Commission chaired by a person nominated by the Minister of Police. The other members are a member nominated by the Chair of the Public Service Commission, and a member nominated by the Chief Justice. The Prime Minister may make orders about the appointment, payment and the length of the term of office of members of the Commission.



The Commissioner of Police is appointed by the President on the advice of the Police Service Commission. Senior officers (inspectors and higher ranks) are also appointed by the Police Service Commission, but it acts on the advice of the Police Commissioner.

The Police Commissioner has the final responsibility for maintaining "an unceasing vigilance for the prevention and suppression of crime" through the work of the Police Force. The Police Commissioner has broad powers to give responsibility to senior officers.

Arms: Police officers may carry firearms while on duty, but they may only be used on the instructions of the Commissioner (or of a senior officer authorized by him) and in accordance with the general directions of the Minister.

Police as soldiers: Since Vanuatu has no permanent defense force, if there is a grave threat to the country's security, the Prime Minister may direct that the Police Force (or part of it) may be used both as a military and as an internal security force. In such cases, the Force must obey any orders given by any military or other authority specified by the Prime Minister. However, the command of the Police Force remains in all other respects with the Commissioner.

Improper influence: It would be quite improper for any ordinary MP to do or say anything to try to direct the activities of the Police Force in any way or even to suggest that MPs might have that power.

The Ombudsman

The position and powers of the Ombudsman are laid out in Part II of Chapter 9 of the Constitution. (See Section Three of this handbook, page 3-13, for who is eligible to be Ombudsman, and how the Ombudsman is chosen.)

Enquiries

Article 62 of the Constitution sets out the powers of the Ombudsman to start an enquiry, and how that enquiry must be held. The Ombudsman can start an enquiry if

- a member of the public or a member of that person's family sends a complaint
- a Minister, a Member of Parliament, a member of the National Council of Chiefs or of a Local Government Council asks for one, or
- the Ombudsman decides without being asked that one is needed

The Ombudsman has the power to look into the actions of

- all public servants
- all public authorities, and
- all Ministerial departments.

The Ombudsman may not look into the actions of

- the President of the Republic
- the Judicial Services Commission
- the Supreme Court, or
- other judicial bodies.

The Ombudsman may ask any Minister, public servant, administrator, authority, or any person likely to be able to help, to give him or her any information or documents needed for an inquiry.



When the Ombudsman looks into a complaint about any person or body, they have the right of reply to the complaint made against them (And, under the Ombudsman Act 1995, Clause 16 (4) (c), that reply must be published with the Ombudsman's report on the inquiry, unless the person complaining agrees that it can be left out.) All inquiries by the Ombudsman are conducted in private.

Reports

Article 63 says what happens after the Ombudsman has finished an inquiry. If the Ombudsman finds that a complaint was not justified, this must be reported to the person who complained, as well as to the Prime Minister and to the head of the public department or authority that was complained about. But if the complaint is found to be justified and

- the conduct complained of was against the law
- it was based on an error of fact or law
- some action was left too late, or was unjust or unreasonable without some good excuse
- that as a result of the inquiry any decision should be wiped out or changed, or
- that any usual thing that was done should be changed, then the

Ombudsman should forward this finding to the Prime Minister and to the head of the relevant public department or authority.

The report of the Ombudsman is public unless he or she decides it would be in the public interest to keep its contents confidential (secret). Those reports are shown only to the Prime Minister and the head of the public service that was complained about. But whatever happens, the person who complained must be told the findings of the Ombudsman.

The Prime Minister, or the person in charge of the Public Service concerned, then decides what must be done, and straight away tells the person who complained what they are doing and why. The decision has to be made in "a reasonable time". If there is a delay, the person who complained does not lose any of their legal rights (such as the right to sue the person or body they are complaining about), because Sub-article 63 (4) says that "any period limiting the time in which legal proceedings may be commenced shall not begin to run until the complainant has received the decision".

The Ombudsman must present an annual report (of a general nature) to Parliament. The Ombudsman may choose to make extra reports on particular matters or cases when he or she thinks it is needed. In those reports the Ombudsman may tell Parliament about any flaws they find in the administration of the Government.

Language

Article 64 orders that the services of the Ombudsman are supplied in the official language of the citizen using them. In addition, because language is so important here, it orders the Ombudsman to make a special report to Parliament every year on the observance of multilingualism (fairness in the use of languages) and on any measures that might be necessary to ensure respect for it. For example, if the Ombudsman has had complaints that one Department never has forms in English or French, or something especially needs to be translated into Bislama or another language, that matter can be reported on and looked into.

A difficult job

These provisions are further amplified in the Ombudsman Act 1995. The Ombudsman's role is of the utmost importance in upholding the intent of the Constitution. Needless to say, the Ombudsman is not always popular. It is his or her job to investigate malpractice and corruption in any or all the parts of the government, and in doing that, an Ombudsman may, at times, annoy members of the Government, public officials or members of Parliament. But an Ombudsman who tried to stay popular by ignoring wrongdoing would not be doing his or her job.



The Ombudsman has the right and the duty to inquire into the behavior of all leaders, as defined in the Leadership Code, except the President and members of the judiciary. The Office of the Ombudsman has powers similar to that of a Court; evidence may be sought, and search warrants issued, in order to get information needed for an inquiry.

Any public official who behaves in a way that brings their job into disrepute can expect to be reported to the Ombudsman. An MP or public official who does his or her job honestly, and acts at all times with integrity, has nothing to fear. The Office of the Ombudsman has a very important job to do, keeping the work of the Government clean. In the long run, this is good for all citizens of Vanuatu. The reputation of Vanuatu in the world depends on the way people think of the way it handles both public and private business dealings. However, the most important reason for having an Ombudsman is to protect the ordinary citizen from corruption and, wherever possible, to prevent it from happening.

The Auditor General

The Office of the Auditor-General is established under article 25 of the Constitution (see also Section Three of this handbook). The Expenditure Review and Audit Act No.3 of 1998 spells out, in far greater detail, the responsibilities of the Auditor-General. Because of the nature of the work, the Auditor-General is much freer from external control than most other senior government officials. In simple terms, the job of the Auditor-General is to **keep the Government honest** in everything to do with the management of financial matters.

Duties: The Auditor-General is directed (by Clause 27 of the Expenditure Review and Audit Act) to make sure that all the requirements of that Act are met. In particular, the Auditor-General is responsible for constantly checking the work of the Expenditure Review Committee, helping that Committee to carry out its duties, including

1. conducting audits, investigations and inquiries into matters referred to the office by the ER Committee
2. examining and reviewing the estimates of revenue and expenditure of
 - the Public Fund
 - accounts of Ministries
 - agencies
 - local authorities and
 - Ministerial offices
3. furnishing the Committee with advice and suggestions that will be of help to it, and
4. carrying out the recommendations of the Committee, where appropriate.

The responsibilities of the Auditor-General are spelt out in great detail in the Act. They can be summed up by saying that the Auditor-General has the absolute responsibility to make sure that

- the methods by which public money is handled, whether as revenue or expenditure, are properly accounted for, and
- all finance is used lawfully and for the purposes set out in the Appropriation Act.

The Auditor-General is also responsible for ensuring that Government property is properly looked after and accounted for. The job of the Auditor-General is a very important one in helping to hold the whole structure of Government together. The person appointed must be suitably qualified and experienced to direct and carry out the many and varied tasks of investigation and reporting.

"Who will guard the guards?" The work of the Audit Office itself must be externally audited. This is done by the Auditor-General appointing two external auditors (on a temporary basis, from time to time) to review the work of the Office. The Auditor-General and the two external auditors are together called the Audit Commission.

Not all the work of the Auditor-General is carried out within the Audit Office. In any financial year, at least a fifth of the work must be contracted to other suitably qualified people or organizations. This system should help to make sure the methods employed by the Office are themselves free of fraud and follow accepted professional standards.



Auditor-General's reports: The Auditor-General must report to the relevant Ministers and to the ER Committee on every review, audit, investigation or inquiry undertaken by his or her Office, as well as preparing an Annual Report. In addition the Auditor-General must present an Annual Report to Parliament. This is forwarded to the Speaker who must arrange for the report to be debated in the Parliament.

MPs who are concerned about any aspect of the handling of public finance are free to ask the Office of the Auditor-General for more information.

A Human Rights Commissioner?

One notable gap in the array of public officials in Vanuatu is a Human Rights Commissioner. Although Vanuatu is a member of the United Nations, and has signed several of the UN's Human Rights Conventions, it has no formal system for monitoring progress on meeting the requirements of these agreements. Nor has it the systems in place needed to make sure that these conventions are enforced. From time to time, complaints have been made about possible breaches by Vanuatu of its obligations under the Declaration of Human Rights and other international conventions. A Human Rights Commissioner would both advance the human rights of all Ni-Vanuatu, and give the country a mechanism to answer such complaints. While Vanuatu is much happier and more unified than many other countries of the world, there are still many areas where the human rights of different sectors of the community could be enhanced.

There are now several different kinds of human rights Legislation and Offices of Human Rights in other Pacific countries, and it would be useful to examine them and see what could be learned from them.



Glossary



Glossary

Abstain: Not to vote, although one is present in the House when a vote is taken. Such a non-vote is an abstention. A Member may ask for his or her abstention to be recorded. (This is important when a member has a financial interest in the matter being voted on.)

Act: Legislation after it has been passed.

Agenda: (“things that must be done”) The matters to be debated. The agenda is written (in its correct order) on the Order Paper(s).

Amendment: A motion to change part of a Bill.

Bill: Legislation while it is still being debated.

By-election: A partial election, usually held in only one constituency, because the Member has died, resigned or otherwise lost his or her Membership of Parliament.

Caucus: A regular meeting of all the MPs of one party or group (coalition) of parties.

Constituency: The area where all the people live who elect the MP who represents them.

Constituent: Any person from a constituency. (People are constituents even when they are not voters, such as when they are too young to vote. An MP represents all his or her constituents.)

Debate: A contest of arguments, conducted according to strict rules. See page 5-6.

Deem: Formally treat something as if it were something else. So a person who is missing for a number of years may be legally deemed to be dead.

Division: Vote made by walking into either the “AYES” or “NOES” lobbies of Parliament House. This is usually only done for more important matters, [or] when there is some doubt about how members have voted by voice. It can be called for by as few as one Member contradicting the Speaker when he or she announces the result of a voice vote.

Electorate: All the people who elect one MP, the voters in one constituency (whether they vote for that MP or not). Many people say “electorate” when they mean “constituency”. “The electorate” may also mean all the voters in the country – especially in the expressions “going to the electorate” and “taking an issue to the electorate”.

Entrenched: (Like soldiers fighting from trenches where they are hard to shift). Able to be changed only by special effort. An entrenched clause is one (such as one in the Constitution) that can only be



changed by more than a simple majority (as specified in the Constitution or Act concerned).

Executive: The Prime Minister and the Council of Ministers; they execute (administer) the laws.

Judiciary: The Court system, but especially the Judges. They interpret the laws.

Leave of the House: Parliament may give leave for (allow) certain small breaches of Standing Orders, such as a member speaking longer than their time, if there is no dissent. If a member moves that leave be given, the Speaker asks “Have I the leave of the House to?” And a single member saying “No” (dissenting) can prevent leave being given. It is bad manners to refuse leave without good reason.

Legislation: Anything decided by Parliament. Legislation has the force of law, but it deals with a lot of other things as well as crime and punishment.

Legislature: Parliament, in its role as maker of laws.

Majority:

1. The side or Party that has the greater number of votes.

A simple majority is the greatest number of votes that are cast for one side or the other, not counting abstentions (more than half the number of MPs who vote for or against a motion). A simple majority can be a very small fraction of all the voters, if only a few vote. Most motions in Parliament require only a simple majority.

A clear or absolute majority is more than half of all possible votes (more than half of all the MPs).

2. The number of votes by which the winning side or candidate beats their strongest opponent.

Motion: A formal request for Parliament to do something. It becomes the subject of a debate.

↑ A procedural motion concerns how business is to be handled (such as “That this House adjourn” or “That the motion be put”).

↑ A substantive motion affects the contents of the business itself (such as “That the Bill be agreed to”. Or “That Clause 7 be struck out”.) “Substantive” may also describe a motion that may be, or has been, amended, in contrast to an Amendment. (Procedural motions may not be amended).

Order Paper: A list of what is to be debated in Parliament on one day.



Parliamentarian: A Member of Parliament including Ministers and the Speaker).

Point of order: A matter raised by an MP concerning the running of the House, usually advising the Speaker that another Member has broken Standing Orders.

Quorum: Enough members for a meeting to legally go ahead. The quorum for a sitting of Parliament is two-thirds of all the Members. (If there is no quorum at the first sitting. Parliament meets again three days later, and then the quorum is half of all the Members).

Referendum: A public vote on some issue, held like an election. (The formal word for referendums is Referenda).

Statute: A law passed by Parliament, as distinct from Common Law or Constitutional Law.

Supplementary Order Paper (S.O.P): A late addition to the Order Paper.



Appendix to Section Two

(pp 42 – 46 of Representation of the People, CAP 146 of Laws of the Republic of Vanuatu).

ELECTION OF CANDIDATE RULES

1. ONE POLLING STATION IN EACH POLLING DISTRICT

- (1) The registration officer after consultation with the Principal Electoral Officer shall determine the location of one polling station in each polling district.
- (2) The Principal Electoral Officer shall be responsible for its installation.

2. POLLING CLERKS

- (1) The registration officer after consultation with the Principal Electoral Officer where practicable shall appoint such number of polling clerks to assist the returning officer as shall be necessary.
- (2) The oldest polling clerk shall act as returning officer during the absence or incapacity of the returning officer.

3. AUTHORISED REPRESENTATIVES OF CANDIDATES

- (1) A candidate or political party may nominate in writing to the registration officer not less than 24 hours before polling an authorized representative for each polling station who may attend during voting and counting and who may require any comment, dispute or protest to be included in the report by the returning officer made under rule 19 (2).
- (2) Subject to sub rule (3) the Principal Electoral Officer shall issue each authorized representative nominated under sub rule (1) with a letter of authority and an identification badge or identification card.
- (3) No candidate shall have more than one authorized representative at one polling station but one representative may be authorized for more than one candidate and more than one polling station.
- (4) A returning officer shall not permit to remain in a polling station any person who claims to be an authorized representative of a candidate but who can't produce a letter of authority.
- (5) A list of all authorized representatives of candidates shall be displayed at all polling stations.



4. EQUIPMENT AT POLLING STATIONS

- (1) Each registration officer shall be provided by the Principal Electoral Officer with such number of ballot boxes, ballot papers and envelopes bearing official marking as shall be necessary for them to supply to returning officers for the purpose of carrying out their duties.
- (2) Each ballot box shall have 2 padlocks with dissimilar keys and shall be so constructed that when locked, ballot papers can be put therein but cannot be withdrawn.
- (3) The Principal Electoral Officer shall also provide each registration officer with:
 - (a) Lists of the authorized representatives provided for in rule 3(5) for each polling station;
 - (b) 2 copies of the electoral roll for each polling station in which the station is established;
 - (c) Sufficient copies of the electoral laws;
 - (d) Enough polling booths to enable voters to vote in secrecy;
 - (e) Sufficient tally sheets for recording the votes for each candidate;
 - and
 - (f) Sufficient numbers of any notices required by law to be displayed in polling stations.

5. NOTICES FOR GUIDANCE OF VOTERS

A notice in legible print giving descriptions in English, French and Bislama for the guidance of voters in voting shall be exhibited inside and outside each polling station.

6. OPENING OF POLLING STATION

The returning officer shall open the polling station over which he presides on polling day and at the time provided for in the notice referred to in section 29(4).

7. RESOLUTION OF DIFFICULTIES AND STATEMENT OF OBJECTIONS AND DECISIONS

- (1) A returning officer shall endeavor to amicably resolve all difficulties that may arise during the poll giving reasons for his decisions.
- (2) A written statement of all authorized representatives objections and decisions thereon together with any relevant document initialed by the returning officer and a polling clerk shall be included in the report made by the returning officer under rule 19(2).



8. REGULATION OF ADMISSION TO POLLING STATION

- (1) The returning officer shall regulate the number of voters to be admitted to a polling station at the same time and shall exclude all other persons except:
 - (a) The polling clerks;
 - (b) Officials of the Electoral Office;
 - (c) Registration officers and assistant registration officers;
 - (d) Candidates and their authorized representatives nominated in accordance with rule 3;
 - (e) Police officers on duty;
 - (f) Companions of disabled voters;
 - (g) Press representatives and other persons authorized by the Principal Electoral Officer.
- (2) All persons authorized to be in a polling station shall wear an identification badge or carry an identification card.

9. KEEPING OF ORDER IN POLLING STATIONS

- (1) It shall be the duty of the returning officer to keep order at his polling station.
- (2) If a person misconducts himself at a polling station or fails to obey the lawful orders of the returning officer he may by order of the returning officer be removed.
- (3) A person removed in accordance with sub rule (2) shall not without the permission of the returning officer re-enter the polling station.
- (4) The power conferred by this rule shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having the opportunity of voting at that polling station.

10. VOTING

- (1) Every voter desiring to vote shall present himself at his allotted polling station. The returning officer or polling clerk shall satisfy himself that:
 - (a) The voter is registered on the roll at the station;
 - (b) The voter has not already voted; and
 - (c) Place his signature or initials opposite the name of the voter in the margin of one of the electoral rolls; and
 - (d) Deliver to the voter one ballot paper for each candidate and one envelope.



- (2) Immediately on receipt of the ballot papers and envelope a voter shall:
- (a) Enter a polling booth
 - (b) Record his vote by placing the ballot paper bearing the name and symbol of his chosen candidate in the envelope;
 - (c) Leave all other ballot papers in the booth;
 - (d) Present himself to the presiding officer or polling clerk who without touching it Shall verify that the voter tenders one envelope;
 - (e) Place the envelope in the ballot box; and
 - (f) Leave the polling station without undue delay after the completion of the formalities referred to in rule 11.

11. POLLING CLERK'S DUTIES IN RESPECT OF PERSON WHO HAS VOTED

After each voter has voted a polling clerk shall:

- (a) In those polling districts where it is required, place an indelible mark on the thumb Nail of the voter which shall so far as possible be indelible for the period of the poll;
- (b) Stamp and endorse on the electoral card of the voter the date of election;
- (c) Place his signature or initials opposite the name of the elector in the margin of the second electoral roll; and
- (d) Return the card to the elector.

12. REPLACEMENT OF SPOILT BALLOT PAPERS

A voter who satisfies the returning officer that he has inadvertently spoilt a ballot paper may on surrendering it obtain another.

13. REPORT ON PERSONS SUSPECTED OF PERSONATION

If before a voter leaves a polling station a candidate or his authorized representative or a polling clerk informs the returning officer he has reasonable cause to believe that the voter has committed the offence of personation and agrees to substantiate the accusation in a court the returning officer shall report the matter to the Electoral Commission.

14. ASSISTANCE TO DISABLED VOTERS

- (1) Any person suffering from a physical disability may be granted permission by a returning officer to be accompanied into a polling station by a person of his choice to assist him in voting.
- (2) The granting of permission under this rule shall be recorded in the report made by the returning officer under rule 19(2).



15. MEMBERS OF PUBLIC TO BE ADMITTED TO OBSERVE COUNT

A returning officer shall allow as many members of the public to observe a count as can do so without hindering counting.

16. COUNTING OF VOTES

- (1) Immediately a poll is closed the returning officer shall administer the counting of the votes which shall be done by:
 - (a) Opening the ballot box or boxes;
 - (b) The returning officer removing all envelopes from each box;
 - (c) The returning officer taking the ballot papers from the envelopes;
 - (d) The returning officer reading out the name on each ballot paper;
 - (e) The polling clerks recording the number of votes cast for each candidate on 2 tally sheets provided for that purpose.

- (2) If the number of envelopes is found to be more or less than the marginal signatures or initials made in the roll in accordance with rule 11(c) the discrepancy shall be stated in the report provided for in rule 19(2).

17. VOID BALLOT PAPERS

Any ballot paper which:

- (a) By any writing or mark thereon identifies the voter;
- (b) Is not in an envelope or is in a non-official envelope; or
- (c) Is in an envelope containing more than 1 ballot paper; shall be Void and shall not be counted.

18. RECOUNTS

On the close of counting or on a recount a candidate or his authorized representative may request the returning officer to conduct a recount and further recounts but the returning officer may refuse to do so if in his opinion the request is unreasonable.

19. DECLARATION OF VOTES AND REPORT ON VOTING

- (1) When a returning officer is satisfied that the count or recounts are complete he shall declare counting of votes completed and formally announce the votes cast for each candidate.



- (2) Immediately after declaring the counting of votes completed the returning officer shall complete the official report on polling which shall state:
 - (a) The number of registered voters;
 - (b) The number of voters who voted;
 - (c) The number of void ballot papers;
 - (d) The number of valid votes cast for each candidate;
 - (e) Such other matters as these rules provide shall be included; and
 - (f) Such other matters as the Principal Electoral Officer shall direct may be included.
- (3) The report shall be made in duplicate in French, English or Bislama.
- (4) It shall be signed by the returning officer and the polling clerks. It shall be countersigned by such of the candidates as may be present at the count.
- (5) After it has been signed the report shall be placed in a sealed envelope.
- (6) The returning officer shall also seal in separate packets the counted and void ballot papers and endorse on each packet:
 - (a) A description of its contents;
 - (b) The date of polling; and
 - (c) The name and number of the polling station.
- (7) The packets referred to in sub rule (6) shall immediately they have been sealed and endorsed be signed on the outside by the persons referred to in sub rule (4).
- (8) The report and the sealed packets referred to in sub rule (6) shall be delivered to the registration officer responsible for the constituency in which the poll was taken by the returning officer or by a person instructed by him.

**20. NOTIFICATION OF VOTES CAST FOR EACH CANDIDATE TO
ELECTORAL COMMISSIONER BY REGISTRATION OFFICER**

When a registration officer has received all the reports provided for in rule 19 including reports from any polling stations where a new poll has been held under the provisions of section 35 he shall notify the Electoral Commission of the number of votes cast for each candidate in the constituencies for which he is responsible.

**21. DECLARATION BY ELECTORAL COMMISSION OF CANDIDATES
ELECTED**

- (1) The Electoral Commission shall as soon as practicable after receiving notification in accordance with rule 20 from all the registration officers announce the number of votes cast for each candidate in each Constituency.



(2) The Electoral Commission shall as soon as practicable after receiving notification in accordance with rule 20 from all the registration officers announce the number of votes cast for each candidate in each constituency.

(3) (a) Where:

- i. Two or more candidates in a constituency receive the same number of votes, and
 - ii. If one candidate only had received those votes he would have been declared elected in accordance with sub rule (2) but because of the equality of votes it is not possible to declare a person elected to one or more seats as there would be more persons elected than there are seats; the Electoral Commission shall declare those seats, to which it is not possible to declare a person as elected, to be vacant. It shall also declare the persons with an equality of votes not to be elected.
- (c) Where the Electoral Commission has made a declaration under paragraph (a) it shall within 30 days fix the date of an election for the seat or seats declared vacant.





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