

**REPUBLIC OF VANUATU**  
**OMBUDSMAN ACT NO. 14 OF 1995**

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# REPUBLIC OF VANUATU

Assent: 11/08/95

Commencement: 18/09/95

## OMBUDSMAN ACT NO. 14 OF 1995

Being an Act to provide for the powers and procedures and immunities of the Ombudsman in addition to those provided for in the Constitution and for other matters relating to the Ombudsman and his delegates, and for the purposes of giving effect to the principles of Chapter 10 (Leadership Code) of the Constitution.

**BE IT ENACTED** by the President and Parliament as follows:

### PART 1 - INTRODUCTION

#### 1. DEFINITIONS.

In this Act, unless the context otherwise requires -

"appropriate Authority" means in the case of an offence against the Public Service Act or regulations, the Departmental Head. In the case of an offence against the Penal Code or any law prohibiting acts or omissions or constituting criminal offences, the Commissioner of Police, or the Public Prosecutor;

"conduct" except in relation to enquiries conducted by the Ombudsman into the conduct of leaders under Chapter 10 (Leadership Code) of the Constitution, includes -

- (a) any action or inaction relating to a matter of administration; and
- (b) any alleged action or inaction relating to a matter of administration;

"Deputy Leader of the Opposition" means the member of Parliament (if any) recognized by the Parliament as being the second spokesman on behalf of those members of the Parliament who are not generally committed to support the Government in the Parliament;

"Governmental Body" means -

- (a) the Government; or
- (b) a Local Government Council; or

- (c) a Municipal Council; or
- (d) an Arm, Department, Agency or instrumentality of the Government or a Local Government Council or a Municipal Council; or
- (e) a body set up by statute or administrative act for governmental or, official purposes;

"Government Member" means any member of Parliament recognized by the Parliament as being generally committed to supporting the Government in the Parliament;

"Leader of the Opposition" means the member of Parliament (if any) recognized by the Parliament as being the principal spokesman on behalf of those members of the Parliament who are not generally committed to support the Government in the Parliament;

"Local Government Body" means those bodies established by the Decentralization and Local Government Regions Act No.1 of 1994;

"Ministerial Department" means a Ministry of the government or a department within a Ministry;

"misconduct in office" means any conduct on the part of a leader, which is a breach of the principles of Leadership as enunciated under Articles 66 (1) and (2) of the Constitution;

"Municipal Body" means those bodies established by the Municipalities Act [CAP 126];

"Ombudsman" means the Ombudsman established by Article 61, Part II of the Constitution;

"Opposition Member" means a member of Parliament (if any) recognized by the Parliament as not being generally committed to supporting the Government in the Parliament;

"President" means the President of the Republic of Vanuatu;

"public Authority" means any body, authority or instrumentality (corporate or unincorporate) set up by Statute or administrative act for public or official purposes, other than a Ministerial Department or in which the government has an interest;

"public Servant" means any person holding or acting in any office in the Public Service;

"public Service" means the service of the Republic in any capacity other than as a judge, or member of the armed forces, police or teaching services;

"report of the Ombudsman" or "Ombudsman's report" means any written statement prepared by the Ombudsman after due enquiry into a justified complaint over which he has jurisdiction, and includes annexures or exhibits referred to therein;

"State Services" include -

- (a) the Public Service; and
- (b) the Police Force including the Vanuatu Mobile Force and Prison Services; and
- (c) Parliament; and
- (d) any other service exercising state functions.

## **2. USE OF THE MASCULINE GENDER**

Use of the masculine gender in this Act is only a matter of drafting convention. All reference to the male includes the female: "he" "his" and "him" are interchangeable with "she" "hers" and "her".

## **3. APPLICATION OF LAWS**

- (1) Subject to Article 63 (4) of the Constitution, the provisions of the Act shall not in any way limit or affect the provisions of any other law under which any remedy or right of appeal is provided for any person, or any procedures provided for the enquiry into or investigation of any matter.
- (2) The powers conferred on the Ombudsman may be exercised notwithstanding any provision of any law to the effect that any administrative action is final or may not be appealed against.

## **4. ADDITIONAL POWERS OF THE OMBUDSMAN**

The Ombudsman shall have all powers to perform his functions and carry out his duties described in this Act in addition to the functions and duties vested in him by the Constitution.

# **PART II - QUALIFICATIONS AND CONDITIONS OF EMPLOYMENT, ETC.**

## **5. QUALIFICATIONS FOR APPOINTMENT**

- (1) The Ombudsman is appointed pursuant to the provisions of the Constitution, for 5 years, by the President after consultation with the Prime Minister, the Speaker of Parliament, the leaders of the political parties represented in Parliament, the chairman of the National Council of Chiefs, the chairmen of the Local Government Councils, and the chairmen of the Public Service Commission and the Judicial Service Commission.

- (2) A person is disqualified for appointment as Ombudsman if he is a member of Parliament, the National Council of Chiefs or a Local Government Council, if he holds any other public office, or if he exercises a position of responsibility within a political party.
- (3) The Ombudsman must be a person of high integrity with a university degree or similar educational level and suitable experience in the public or private sector, politically independent, capable of discharging his constitutional duties without fear or favour, independent of mind and of high standing in the eyes of the community.

## **6. CONDITIONS OF EMPLOYMENT**

The salary and other conditions of employment of the Ombudsman shall be as determined by the President, acting on, and in accordance with the advice of the Council of Ministers given after receiving a report from the Public Service Commission, but in any event shall not be less than or inferior to the salary and other conditions of employment of a Supreme Court Judge without taking into account any conditions of employment personal to any Supreme Court Judge.

## **7. OMBUDSMAN ELIGIBLE FOR REAPPOINTMENT**

An Ombudsman is eligible for reappointment after the expiration of his term of appointment.

## **8. SPECIAL CONDITIONS OF EMPLOYMENT OF OMBUDSMAN**

- (1) An Ombudsman shall not, during the term of his appointment -
  - (a) engage in politics other than by way of voting in an election; or
  - (b) subject to subsection (2) hold any other office or engage in a business trade or profession; or
  - (c) except on leave granted by the President, or because of illness, absent himself from duty for more than 14 consecutive days or more than 28 days in any period of 12 months; or
  - (d) acquire by way of gift or otherwise, or hold in any other manner any interest in any state property or solicit, accept or receive any other benefit in addition to his terms and conditions of employment.
- (2) Nothing in subsection (1) (b) prevents the Ombudsman from holding office in a professional association not conducted for profit in relation to which his qualifications are relevant.

## 9. TERMINATION OF APPOINTMENT

- (1) The Ombudsman may resign by giving not less than six months notice in writing of his intention to do so to the President.
- (2) A person shall cease to be Ombudsman if circumstances arise that, if he were not the Ombudsman, would disqualify him for appointment as such.
- (3) The appointment of the Ombudsman may be terminated by the President after consultation with the parties identified in Article 61 (1) of the Constitution in the event of:
  - (a) The Ombudsman being adjudicated bankrupt; or
  - (b) The Ombudsman being convicted and sentenced on a criminal charge (not being a road traffic offence); or
  - (c) The Ombudsman becoming permanently incapacitated by accident or ill health from performing his duties (in the event of disagreement, such incapacity to be certified by two medical practitioners, one nominated by the President and one nominated by the Ombudsman or his personal representative); or
  - (d) A finding of gross misconduct against the Ombudsman such as to make it inappropriate for him to continue to carry out the duties of his office. Such finding to be made by not less than three members of a tribunal appointed by the President and consisting of the Chief Justice (or a judge of the Supreme Court appointed by him), the Attorney General, a nominee of the Prime Minister and a nominee of the Leader of the Opposition. The Ombudsman shall be given a fair opportunity to make representations to such tribunal about all allegations against him (the detail of which shall have previously been supplied to him in writing) and to be legally represented (if he so desires):

Provided that the Ombudsman shall be offered a reasonable opportunity to answer any allegations made against him before the President makes a decision terminating the appointment.

## 10. RETIREMENT

A person who has attained the age of 65 years shall not be appointed or re-appointed as an Ombudsman and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 65 years.

## 11. ACTING OMBUDSMAN

- (1) If the office of the Ombudsman is vacant or if a person holding the Office of Ombudsman is for any reason unable to perform the functions of his office, a person suitably qualified may be appointed to be an acting Ombudsman in



accordance with the procedures prescribed under Article 61 (1) of the Constitution.

- (2) Any person appointed under the provisions of subsection (1) to act as an Ombudsman shall, unless he earlier resigns his acting office or for any other reason is unable to perform the functions of his office, continue to so act until the end of the period for which he was appointed or, if he was not appointed for a specified period, until his appointment is revoked by those persons who appointed him or until the Ombudsman returns to office.

## 12. DECLARATION OF OFFICE

Before entering upon the duties of his office, the Ombudsman shall make the Declaration of Office before the President or a person appointed by the President.

## PART III - FUNCTIONS OF THE OMBUDSMAN

### 13. GENERAL

The Ombudsman shall exercise the functions appertaining to his office as provided by the Constitution and by the provisions of this Act.

### 14. FUNCTIONS OF THE OMBUDSMAN

- (1) For the purposes of Article 62 (1) of the Constitution, in addition to the functions of the Ombudsman specified therein, the Ombudsman may also -
  - (a) enquire into, either on complaint of a person or body referred to in Article 62 (1) (a) and (b) of the Constitution or on his own initiative, any conduct on the part of -
    - (i) any State Service, or a member of any State Service; or
    - (ii) any Governmental Body, or an officer or employee of a Governmental Body; or
    - (iii) any other body -
      - (A) that is wholly or mainly supported out of public moneys of Vanuatu; or
      - (B) all of, or the majority of, the members of the controlling authority of which are appointed by the President, the Council of Ministers or a Minister, or an officer or employee of any such body; and
    - (iv) the Leader and Deputy Leader of the Opposition; or
    - (v) any body or service set up by statute, that the President, acting on, and in accordance with, the advice of the Council of Ministers, declares by

notice in the gazette to be a service or body for the purpose of this section;

- (b) enquire into any defects in any law or administrative practice appearing from any matter being enquired into; and
  - (c) enquire into, either on complaint of a person or body referred to under Article 62 (1) (a) and (b) of the Constitution or on his own initiative, any case of an alleged or suspected discriminatory practice; and
  - (d) enquire into, either on complaint of any person or body referred to under Article 62 (1) (a) and (b) of the Constitution, or on his own initiative, any case of alleged or suspected breach of Chapter 10 (Leadership Code) of the Constitution by a leader.
- (2) For the purposes of paragraph (d) of subsection (1), in addition to those persons referred to as leaders under Article 67 of the Constitution, leaders shall include -
- (a) the Chairman and members of the Council of Chiefs; and
  - (b) the Chairman and members of Local Government Councils; and
  - (c) the Mayors and members of Municipal Councils; and
  - (d) all Constitutional Office holders; and
  - (e) all Political Secretaries of Ministerial Departments; and
  - (f) all Heads or members of boards of statutory authorities; and
  - (g) all Heads of Departments; and
  - (h) Chairmen, Managing Directors, Directors appointed by the President, Council of Ministers, Prime Minister, Deputy Prime Minister or a Minister, and General Managers of corporations in which the government has an equity holding; and
  - (i) any other person holding public office that the President declares on the advice of the Ombudsman after consultation with the Prime Minister and Leader of Opposition to be a leader for the purposes of this Act, such declaration to be published in the Gazette.
- (3) For the purposes of Article 63 (2) of the Constitution and of the above subsections the Ombudsman may, after due enquiry, additionally conclude that conduct was -
- (a) oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or
  - (b) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or

- (c) contrary to natural justice; or
  - (d) conduct for which reasons should be given but were not.
- (4) For the purposes of enforcing the principles of Article 66 (Leadership Code) of the Constitution, the following provisions shall apply:-
- (a) the Ombudsman may enquire into the conduct of a leader other than the President or any person holding judicial office; and
  - (b) the President may enquire into the conduct of the Ombudsman and any person holding judicial office and, for that purpose, shall -
    - (i) have all of the powers given to the Ombudsman pursuant to this Act in respect of such an enquiry; and
    - (ii) be entitled to delegate such enquiry to the Ombudsman or any judicial or legal officer.
- (5) The Ombudsman or the President, as the case may be, may conclude after due enquiry and on reasonable evidence, that the Leader who is the subject of the inquiry is guilty of misconduct in office or has failed to carry out, or has in any way breached, the duties and responsibilities of office imposed on him under Article 66 (1) and (2) of the Constitution.

## 15. DELEGATION

- (1) The Ombudsman may from time to time either generally or particularly delegate, by instrument in writing under his hand, to any officer of the Office of the Ombudsman, any of his powers and functions (other than this power or function or any power or function prescribed by regulations under section 49 to be non-delegable) so that the delegated powers and functions may be exercised and performed by the delegate in relation to the matters or class of matters specified in the instrument of delegation.
- (2) Subject to any general or special directions given by the Ombudsman, the officer to whom any powers or functions are delegated may exercise those powers or functions in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.
- (3) Every person purporting to act in accordance with a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (4) Every delegation shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Ombudsman.
- (5) Any delegation shall, until it is revoked, continue in force notwithstanding the fact that another Ombudsman may be appointed in the meantime.

- (6) Any investigation or enquiry which the Ombudsman is empowered to conduct under this Act may be conducted by the Ombudsman acting in his own right or by one of his officers.
- (7) (a) The Ombudsman may, where he is himself unable for any reason to enquire into any matter, over which he has jurisdiction, appoint one or more Constitutional office holders or, with the approval of the President, independent persons of high integrity and standing in the community, to carry out the enquiry and to report to him on the results of the enquiry.  
  
(b) All persons appointed under paragraph (a) of this subsection have, for the purposes of carrying out any enquiry in respect of which they are appointed, all the powers of the Ombudsman necessary to enable them to carry out the enquiry, including the powers referred to in section 17 and are subject to all restrictions, limitations and duties of secrecy affecting the Ombudsman.

## PART IV - COMPLAINTS AND PROCEEDINGS

### 16 PROCEDURES OF THE OMBUDSMAN

- (1) For the purposes of Article 62 (1) of the Constitution the Ombudsman may enquire into the conduct of any person or body or leader to which the Constitution or this Act applies unless:
  - (a) the complaint relates to a matter outside his jurisdiction; or
  - (b) the complaint is frivolous, vexatious or manifestly without foundation; or
  - (c) the complainant has available to him another remedy or channel of complaint that he could reasonably be expected to use; or
  - (d) the complainant's interest is insufficiently related to the subject matter; or
  - (e) the complaint has been too long delayed to justify present examination of its merit; or
  - (f) the complainant has not a sufficient interest in the subject of the complaint; or
  - (g) other complaints are more worthy of attention; or
  - (h) his resources are insufficient for adequate enquiry.
- (2) The Ombudsman's declining to enquire into a complaint shall not affect his power to enquire generally into a matter on his own initiative.
- (3) The Ombudsman shall, as soon as reasonably possible on or before commencing an inquiry inform the person or body which is the subject of the inquiry of his intention to make the enquiry. Such notification may however be

deferred if the Ombudsman has reasonable grounds for believing that such notification will interfere with his preliminary inquiry.

- (4) It shall not be necessary for the Ombudsman to hold any hearing and no person shall be entitled as of right to be heard by the Ombudsman except that:
  - (a) where a report of the Ombudsman may affect any service, or body or authority, the Ombudsman shall grant to the Head of that service, or body or authority complained of, as the case may be, an opportunity to comment on the subject of the enquiry, either orally or in writing;
  - (b) Where a report of the Ombudsman may affect the person complained of, he shall grant to that person an opportunity to reply to the complaints made against him, either orally or in writing;
  - (c) where the Ombudsman publishes an opinion that is adverse to or derogatory of any service, body, authority, person or leader, he shall, unless he has obtained the consent of the responsible person to do otherwise, include in the document published the substance of any statement the responsible person may have made in explanation of or opposition to the Ombudsman's conclusions.

## 17. EVIDENCE

- (1) The Ombudsman shall, where possible, obtain evidence and information by informal request, seeking the cooperation of those concerned.
- (2) The Ombudsman may, by instrument in writing, summons any person to appear before him to furnish any information or any other thing relating to any matter being enquired into by him, or to furnish any documentary evidence needed for his enquiry, for examination by him in the form contained in the Schedule.
- (3) The Ombudsman may administer an oath or affirmation to a person appearing as a witness before him, and may examine the witness on oath or affirmation.
- (4) A witness appearing before the Ombudsman shall have the same privileges, immunities and obligations as a witness giving evidence before a court of first instance would have, including the right against self-incrimination.
- (5) Except on the trial of any person for perjury in respect of his sworn testimony, no statement made or answer given to that or any other person in the course of any enquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or any enquiry or other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person, including the person under investigation, except in relation to enforcement proceedings under section 30.
- (6) Where any person is required by the Ombudsman to appear before him, for the purposes of this section, the person is entitled to the same fees, allowances and expenses actually incurred as if he were a witness in a court of first instance.

- (7) If any person fails or refuses to appear or fails or refuses to provide any information after having been served with a summons, the Ombudsman may apply to the Court for the person to be summoned to appear before the Court and furnish the information or other thing requested in the summons.
- (8) The Court may, at any time after issuing a summons to a person who has failed to comply with a summons from the Ombudsman, order that person to pay a fine pursuant to the provisions of section 45.

## **18. APPLICATION OF OFFICIAL SECRETS ACT**

Subject to the provisions of section 19, the Ombudsman and his officers are subject to the provisions of the Official Secrets Act [CAP 111].

## **19. OMBUDSMAN AND HIS OFFICERS TO MAINTAIN SECRECY**

- (1) Before entering on the exercise of his duties as Ombudsman, the Ombudsman shall make a declaration in the form in the schedule to the Official Secrets Act [CAP 111].
- (2) Every officer in the service of the Ombudsman shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their duties and shall, before entering on the exercise of their duties, make a declaration in the form in the schedule to the Official Secrets Act, before the Ombudsman.
- (3) Notwithstanding the provisions of section 18, the Ombudsman may disclose for the purposes of any enquiry being conducted by him and in any report made by him, such matters as in his opinion ought to be disclosed in order to properly investigate the matter before him or establish grounds for his conclusions and recommendations, as the case may be, unless he decides to keep the report, or part of it, confidential, pursuant to the provisions of Article 63 (3) of the Constitution and section 24 of this Act.
- (4) The power conferred by subsection (3) does not extend to any matter that might prejudice the security, defence or international relations of Vanuatu (including Vanuatu's relations with the government of any other country or with any international organization) or the investigation or detection of offences or that might involve the disclosure of proceedings, deliberations or decisions of the Council of Ministers, which relate to matters of a secret or confidential nature, disclosure of which would be injurious to the national security.
- (5) When the Ombudsman is dealing with an enquiry that involves disclosure of any information which is prohibited or restricted by any law of Vanuatu (excluding the Official Secrets Act) or any recognised duty of professional confidentiality or privilege, the following provisions shall apply:-
  - (a) the Ombudsman shall only request such information if it is needed for his enquiry;

- (b) the person holding the information shall obtain any consents required by the law or duty before disclosing any information of a personal nature except where the information of a personal nature is or may reveal (either alone or taken with other information) a breach of the Leadership Code, corruption or misappropriation;
- (c) the disclosure of information to the Ombudsman pursuant to the provisions of this section by a person from whom the Ombudsman may request information pursuant to Article 62 (3) of the Constitution shall be deemed not to be a disclosure which breaches any provisions of such law or duty as is referred to in this section;
- (d) the Ombudsman shall take care in any report not to disclose -
  - (i) any information which is normally prohibited or restricted from disclosure by any law or recognised duty unless the inclusion of such information is necessary for the proper understanding of the report; and
  - (ii) any such information if it is of a personal nature without the consents required by the law or duty for such disclosure except where the disclosure of personal information relates to a leader or his associates and indicates a possible breach of the Leadership Code, corruption or misappropriation.

## 20. PRESERVATION OF SECRECY

It shall be an offence for any person to publish or disclose to any person any evidence, documents or other information given to the Ombudsman other than

- (a) private disclosure to any person who might be criticised in an Ombudsman's report as a result of such evidence or information, for the purpose of giving that person the right to respond to such evidence or information; or
- (b) disclosure in a report of the Ombudsman.

Penalty : Vt 100,000 or 6 months imprisonment or both.

## 21. POWER TO ENTER PREMISES ETC.

(1) Where the Court is satisfied that -

- (a) a person summoned to provide documents under section 17 (7) has failed or refused to do so or failed or refused to provide all relevant documents under his possession or control; or

- (b) there is a likelihood that documents needed for the Ombudsman's enquiry will be destroyed or otherwise become unobtainable unless a search warrant is issued to the Ombudsman,

the Court may issue a search warrant to the Ombudsman in respect of any premises at which the documents needed for his enquiry are located or at which there is a likelihood of their being located.

- (2) (a) The Ombudsman or an officer authorized by him shall at any time have the right to enter and inspect any premises in respect of which a warrant has been issued to call for, examine and, where necessary, seize, retain and remove any document needed for his enquiries which is kept on these premises or make extracts from copies of any such document.
- (b) The occupier of the premises in respect of which a warrant has been issued shall provide the Ombudsman or person authorized by him as the case may be with all reasonable facilities and assistance for the effective exercise of his powers under this section.
- (c) Any person who obstructs the Ombudsman in the exercise of his powers under this section or who fails to provide the Ombudsman or his officer with all reasonable facilities and assistance as required by paragraph (b) of this subsection is guilty of an offence;

Penalty : Vt 100,000 or imprisonment for 6 months or both.

## 22. PROCEDURES AFTER INVESTIGATION

- (1) Where after completing any enquiry into matters over which he has jurisdiction, either under the Constitution or this Act, other than enquiries into the conduct of a leader under Chapter 10 (Leadership Code) of the Constitution, the Ombudsman is of the opinion that the conduct, the subject of his enquiry was :-
- (a) contrary to the requirements of Article 63 (2) of the Constitution, or
- (b) the law or administrative practice, the subject of the investigation, or any other law or administrative practice, is defective, or
- (c) the practice, the subject of the investigation, is discriminatory,
- and as a consequence any decision taken should be annulled, changed, revised, cancelled, modified, more fully explained or other specific action taken, the Ombudsman shall forward his findings to the Prime Minister and to the Head of the service, body or department directly concerned.
- (2) The Ombudsman shall, as soon as reasonably possible after concluding that a complaint or enquiry is not well founded or does not give rise to any of the matters referred to in subsection (1), advise the complainant (if any) and any person notified of the enquiry of his conclusions, in writing.



## **23. PROCEDURES AFTER AN ENQUIRY UNDER CHAPTER 10 (LEADERSHIP CODE) OF THE CONSTITUTION**

- (1) Where after completing any enquiry under Chapter 10 (Leadership Code) of the Constitution concerning the conduct of a leader, the Ombudsman is of the opinion that a leader has failed to carry out or has breached any of the duties and responsibilities of office imposed on him under Article 66 sub-articles (1) and (2) of the Constitution, and as a consequence the leader is guilty of misconduct in office he shall in the case of an elected leader who is identified to be a member of the Government forward a report of his findings with appropriate recommendations to the President and Prime Minister. In the case of an elected leader who is identified to be a member of the Opposition he shall forward his report and recommendations to the President and Leader of the Opposition. In the case of a non elected leader, the Ombudsman shall send a copy of his report and recommendations to the President and Prime Minister, and additionally to the appropriate appointing authority.
- (2) The Ombudsman shall, as soon as reasonably possible after concluding that a complaint or enquiry is not well founded or does not give rise to any of the matters referred to in subsection (1), advise the complainant (if any) and any person notified of the enquiry of his conclusions, in writing.

## **24. PUBLICATION OF REPORTS**

The Ombudsman shall publicly report the results of any enquiries carried out by him, including his findings, recommendations and opinions, unless he decides to keep his report, or parts of it, confidential to the Prime Minister, or person in charge of the service or body referred to in his report, on the grounds of public security or public interest. In the event that the Ombudsman decides to keep his report, or part of it, confidential he shall inform the complainant of his findings, but otherwise he shall furnish the complainant with a copy of his report.

## **25. POWER TO REFER TO PUBLIC PROSECUTOR, ETC.**

- (1) If the Ombudsman after due enquiry, is of the opinion that the commencement of criminal proceedings or disciplinary action is justified against any person involved in the subject matter of his enquiry, including any enquiry into the conduct of a leader under Chapter 10 (Leadership Code) of the Constitution, he should refer the matter to the Appropriate Authority including all relevant supporting documents.
- (2) For the purposes of Article 63 (4) of the Constitution, the Prime Minister or the person in charge of the relevant Public Authority, or Ministerial Department or Governmental body or other service or body referred to under section 14 of this Act, as the case may be, shall, within a reasonable time, as specified by the Ombudsman, decide upon the findings of the Ombudsman and shall notify the Ombudsman in writing of, what steps he proposes to take (and notify the Ombudsman if he does not propose to take any) to give effect to his recommendations.

## **26. ANNUAL GENERAL REPORTS**

- (1) For the purposes of Article 63 (5) of the Constitution the Ombudsman shall give to the President, for presentation to Parliament at least once in each period of 12 months, a general report on the functions and workings of his office, with such recommendations as to improvement as the Ombudsman thinks proper.
- (2) Where the Ombudsman is of the opinion that an administrative action has produced unfair or objectionable results and that that action was caused wholly or partly by legislation, the Ombudsman shall forward a report on the matter to -
  - (a) in the case of parliamentary legislation - the Parliament and the Attorney General; and
  - (b) in the case of legislation made by Local Government Councils or Municipal Councils - the Chairman of the Local Government Council or Mayor of the Municipality, as the case may be and the Attorney General.

## **27. OTHER REPORTS**

The Ombudsman may, at any time as he considers necessary or desirable, make and transmit to the President, for presentation to Parliament, other reports on any matters of pressing importance or urgency that, in his opinion, should not be deferred until the presentation of his annual general report, concerning the discharge of his functions, action taken on his findings, and defects which appear to him to exist in the administration of the Public Service or any other service, body or authority over which he has jurisdiction under the Constitution and this Act; or of any defects which appear to him to have been caused wholly or partly by defective legislation or laws of the Parliament; or for the purposes of giving effect to Chapter 10 (Leadership Code) of the Constitution any matters relating to the conduct of leaders.

## **28. POWER TO PARTICIPATE IN OTHER ENQUIRIES ETC.**

The Ombudsman may undertake to participate in, or co-operate with any general study or enquiry whether or not it is related to any particular department or public authority or any particular administrative act, if the Ombudsman believes that it may enhance knowledge about or lead to improvement in the functioning of any body or authority referred to under Article 62 (2) of the Constitution and section 14 of this Act, or an improvement in the quality of Leadership of Vanuatu.

## **29. OMBUDSMAN MAY DETERMINE OWN PROCEEDINGS**

- (1) The Ombudsman shall have all powers necessary to perform the functions and carry out the duties described in this Act in addition to the functions and duties vested in him by the Constitution.
- (2) Subject to the Constitution and any law, the Ombudsman may determine -

- (a) the methods by which complaints are received and acted upon, provided that this shall not result in complaints not being dealt with through any lack of procedural formality;
- (b) the scope and manner of enquiries to be made; and
- (c) the form, frequency and distribution of his conclusions and recommendations.

### 30. POWERS OF ENFORCEMENT

- (1) The Ombudsman's powers of enforcement are limited to publicity of his proceedings, reports and recommendations, to the making of reports and recommendations to the Parliament and the Prime Minister and other relevant bodies and persons as provided for under this Act, and to the giving of advice.
- (2) The Ombudsman may however apply to the Court for an order that the Court make an order giving effect to a recommendation of the Ombudsman in the event that -
  - (a) (i) the responsible person has failed to respond to the Ombudsman's report after being given a reasonable opportunity to do so; or
  - (ii) the responsible person has responded to the Ombudsman's report in a manner which fails to resolve the problems identified by the Ombudsman's report; or
  - (iii) the responsible person has responded to the Ombudsman's report but has thereafter failed or refused to carry out the decision communicated in his response after being given a reasonable opportunity to do so; and
  - (b) (i) the report reveals (whether this is stated or not) a breach of any of the fundamental rights contained in Article 5 (1) of the Constitution; or
  - (ii) a breach of the Leadership Code; and
  - (c) (i) the application is made within 24 months of the date of the Ombudsman's recommendation; or
  - (ii) The Court has within that period of 24 months granted to the Ombudsman an extension of time for the Lodging of an application based on sub-section (2)(a) (iii) of this section on the grounds that the responsible person requires a further period of time in order to carry out the required actions.
- (3) The Court may make an order on such application requiring the person responsible to carry out the Ombudsman's recommendations or the decision of the person responsible or to take such other reasonable action

as is necessary to resolve the breach of fundamental rights or of the Leadership Code identified by the report.

- (4) On considering an application under the above sub-section (2), the Court shall give the person responsible an opportunity to be heard and may reopen issues decided by the Ombudsman, examine any witnesses examined by the Ombudsman or other witnesses and generally conduct the proceedings in the manner required to do justice to the case.
- (5) The Court may enforce an order made by it under this section by any method of enforcement available in civil proceedings, including committal for contempt and the payment of compensation to any person who has suffered damage as a result of failure to comply with the order. Such enforcement action may, at the Court's discretion, be taken against an individual person responsible provided that the ability to comply with the order is within the power of that person and is not dependent upon the action of any other person or body not under his control.
- (6) The Supreme Court shall continue to have jurisdiction to hear and determine the matter, even if either before or during the proceedings, the leader or person responsible, for whatever reason ceases to be a leader or person responsible.

### **31. PRIME MINISTER TO BE SPOKESMAN FOR THE OMBUDSMAN**

The Prime Minister, as the Head of the Government, should be the spokesman for the Ombudsman, and have responsibility for answering questions about the work of the Ombudsman in Parliament and in the Council of Ministers, for making submissions concerning the Ombudsman, to the Council of Ministers, and introducing relevant legislation into Parliament, but may delegate this portfolio to any other Minister.

### **32. DECENTRALIZATION**

The Ombudsman shall, within a reasonable time after the passing of this Act endeavour to decentralize his activities by establishing branch offices in other regions of Vanuatu.

## **PART V - IMMUNITIES**

### **33. IMMUNITIES**

- (1) The Ombudsman, or an officer or employee of the Ombudsman is not liable for any act or omission done or ordered to be done or made bona fide and without negligence under or for the purposes of this Act.
- (2) No proceedings, either criminal or civil, shall be issued against the Ombudsman or an officer or employee of his, for anything done or said or omitted by them under or for the purposes of the Constitution or this Act,

unless it is shown that the Ombudsman or his officer or employee acted in bad faith.

## **PART VI - THE SERVICE OF THE OMBUDSMAN**

### **34. STAFF AND FACILITIES**

- (1) It is the responsibility of the Government to ensure, as far as within their legal powers, that all arrangements are made, staff and facilities provided, and steps taken to enable and facilitate, as far as may reasonably be, the proper convenient performance of the functions of the office of the Ombudsman.
- (2) The Ombudsman shall be provided with adequate members of staff and with adequate facilities for the discharge of his duties.

### **35. OFFICERS ARE APPOINTED TO THE SERVICE OF THE OFFICE OF THE OMBUDSMAN**

Officers appointed by the Ombudsman constitute the Service of the Office of the Ombudsman.

### **36. TERMS AND CONDITIONS OF APPOINTMENT**

Subject to this part and to the regulations, officers of the Ombudsman shall hold office on such terms and conditions as the Ombudsman, after consultation with the Public Service Commission, fixes.

### **37. PUBLIC SERVANTS APPOINTED TO THE OFFICE OF THE OMBUDSMAN**

If an officer appointed under section 35 of this Act was, immediately before his appointment, a public servant, his service as an officer in the Office of the Ombudsman shall be counted as service in the Public Service for the purposes of determining his rights (if any) in respect of :-

- (a) absence or leave on the ground of illness; and
- (b) severance payment (including pay to dependants or personal representatives on the death of the officer).

### **38. PROVISIONS OF PUBLIC SERVICE ACT [CAP 129] APPLY**

Subject to the regulations, the provisions in the Public Service Act [CAP 129], apply in relation to officers in the Service of the Office of the Ombudsman as if they had been specifically included in the provisions of the Act.

### 39. CONTROL OF SERVICE

All persons employed in the office of the Ombudsman are subject to the Ombudsman's control and direction.

### 40. REGULATIONS FOR THE SERVICE OF THE OFFICE OF THE OMBUDSMAN

The regulations may make provision in relation to the Service of the Office of the Ombudsman and in particular, may -

- (a) prescribe the terms and conditions of employment of officers; and
- (b) make provision for the establishment of a superannuation scheme to provide benefits for officers of the office of the Ombudsman on retirement or resignation or retrenchment or death.

### 41. CASUAL EMPLOYEES

- (1) The Ombudsman may, subject to finance being available and subject to section 20 appoint such casual employees as he considers necessary for the purposes of this Act.
- (2) Employees so appointed shall be employed on such terms and conditions as the Ombudsman shall determine.

## PART VII - FINANCE

### 42. ESTIMATES

- (1) The Ombudsman shall annually prepare an estimate of the sums that will be required to be provided by the Parliament for the payment of salaries, allowances and expenses of his office during the next ensuing financial year, and any supplementary estimates as and when the funds provided by Parliament are insufficient to enable him to perform the responsibilities of his office.
- (2) The estimates shall be submitted to the Prime Minister who, subject to the provision of subsection (3) and after consultation with the Minister for Finance shall -
  - (a) approve such items without amendment; or
  - (b) disallow or amend any item or any part of any item therein which, in his opinion is unnecessary or excessive.
- (3) The power of disallowance or amendment shall not be exercised by the Prime Minister until he has allowed the Ombudsman the opportunity of making representations on any proposed disallowance or amendment.

- (4) As soon as possible after the Prime Minister has approved the estimates, with or without amendment, he shall forward them to the Minister for Finance for presentation to Parliament.
- (5) Where additional financial provision is required during the course of any year, supplementary estimates shall be submitted and otherwise dealt with in the same manner as estimates.

#### **43. OFFICE SUBJECT TO AUDIT OF AUDITOR GENERAL**

The Auditor General is empowered to inspect and audit the accounts of the Office of the Ombudsman and the records of all of its financial transactions and to have full and free access to its accounts, financial records documents and papers.

### **PART VIII - OFFENCES AND PENALTIES**

#### **44. ATTEMPTS TO INFLUENCE THE OMBUDSMAN**

Any person who directly or indirectly solicits or endeavours to influence the Ombudsman, or any officer to whom any of his powers or functions have been delegated under section 15 of this Act, in the discharge of his, or their, official duties of office is guilty of an offence.

Penalty - Vt 100,000 or 6 months imprisonment or both.

#### **45. FAILURE TO APPEAR, ETC.**

Any person summoned to attend as a witness or to produce documents before the Ombudsman who without sufficient excuse refuses or neglects to do so, or refuses to be sworn or refuses to answer any questions relevant to the matters being enquired into, put to him by the Ombudsman or any officer to whom his powers under section 15 of this Act have been delegated; or who wilfully interrupts the proceedings before the Ombudsman or his delegate; or having attended leaves without the permission of the Ombudsman or his delegate, is guilty of an offence.

Penalty : Vt 100,000 or imprisonment for 6 months or both.

#### **46. GIVING FALSE EVIDENCE**

Any witness who wilfully gives false evidence in any enquiry being conducted by the Ombudsman or any officer to whom his powers under section 15 of this Act have been delegated shall be guilty of perjury and is liable to prosecution and punishment accordingly.

Penalty : Vt 100,000 or imprisonment for 6 months or both.

#### 47. CONTEMPT OF THE OMBUDSMAN

Any person who wilfully insults the Ombudsman or any officer to whom his powers under section 15 of this Act have been delegated is guilty of an offence.

Penalty : Vt 100,000 or 6 months imprisonment or both.

#### 48. PROSECUTION FOR OFFENCES

No proceedings for an offence under this Act shall commence except by direction in writing of the Ombudsman.

#### 49. REGULATIONS

The Prime Minister acting in accordance with the advice of the Council of Ministers may by Order make regulations not inconsistent with this Act for the better carrying out or giving effect to the provisions of this Act; and in particular for prescribing penalties not exceeding Vt 50,000 or a term of imprisonment not exceeding 6 months or both such fine and imprisonment for offences against or contravention of any such regulations.

#### 50. COMMENCEMENT

This Act shall come into force on the date of its publication in the gazette.

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**SCHEDULE**

(section 17)

**SUMMONS TO A WITNESS**

**IN THE MATTER** of  
an enquiry by the  
Ombudsman of  
Vanuatu under the  
Constitution and  
Ombudsman Act.

To A.B. (name of person summoned and his calling and residence if known)

Pursuant to Article 62 (3) of the Constitution and section 17 of the Ombudsman Act 1995, You, being a person who in the opinion of the Ombudsman is able to give information relating to a matter that is being enquired into by the Ombudsman **ARE REQUIRED** to attend in person at the office of the Ombudsman at ..... on the ..... day of ..... 19... at ..... o'clock in the ....., **AND UNTIL YOU ARE EXCUSED** from further attending, to give evidence in a **CONFIDENTIAL** matter being enquired into by the Ombudsman namely:

(here state matter being enquired into)

**FURTHERMORE YOU ARE REQUIRED** pursuant to Article 62 (3) of the Constitution and section 17 of the Ombudsman Act 1995 to bring with you and produce the following documents or papers you have in your possession or control, these being documents or papers which in the opinion of the Ombudsman, relate to a matter being enquired into by him and that may be in your possession or control:-

(here state documents or papers required)

**TAKE NOTICE** that if, having been summoned to attend the office of the Ombudsman, you fail without reasonable excuse to attend the office of the Ombudsman or to produce any documents or papers in your custody or control that you may have been required by the summons to produce, you will be guilty of an offence under section 45 of the Ombudsman Act No. of 1995 and liable upon prosecution to a penalty of Vt 100,000 or imprisonment for 6 months or both, for each offence.

Given under the hand of the Ombudsman this ..... day of ..... 19....

.....  
**(OMBUDSMAN)**