



**REPUBLIC OF VANUATU**

**OMBUDSMAN (AMENDMENT)  
ACT NO. 46 OF 2019**

**Arrangement of Sections**

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# REPUBLIC OF VANUATU

**Assent:** 10/01/2020  
**Commencement:** 06/02/2020

## OMBUDSMAN (AMENDMENT) ACT NO. 46 OF 2019

An Act to amend the Ombudsman Act [CAP 252].

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The Ombudsman Act [CAP 252] is amended as set out in the Schedule.

### **2 Commencement**

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

## SCHEDULE

### AMENDMENTS OF OMBUDSMAN ACT [CAP 252]

#### **1 Section 1**

Insert in their correct alphabetical positions:

““Deputy Ombudsman General Complaints” means the Deputy Ombudsman General Complaints appointed under section 43;

“Deputy Ombudsman Leadership Investigations” means the Deputy Ombudsman Leadership Investigations appointed under section 44;

“staff” means the staff of the office of the Ombudsman appointed under section 45;”

#### **2 Section 9**

Repeal the section, substitute

##### **“9. Acting Ombudsman**

If the position of the Ombudsman is vacant, the Deputy Ombudsman General Complaints is to perform the functions and exercise the powers of the Ombudsman as the Acting Ombudsman.”

#### **3 Paragraph 19(a)**

Repeal the paragraph.

#### **4 Paragraphs 19(b) and (c)**

Re-letter the paragraphs as (a) and (b) respectively.

#### **5 Subsection 22(7)**

Repeal the subsection, substitute

“(7) A statement made by a person in the course of any enquiry by, or any proceedings before, the Ombudsman, is admissible in evidence against that person or any other person in any Court proceedings, enquiry or other proceedings required under Part 6 of the Leadership Code Act [CAP 240].”

#### **6 Section 23**

Repeal the section, substitute

**23. Failure to comply with a notice**

If a person who has been served with a notice under section 22:

- (a) fails or refuses to appear before the Ombudsman; or
- (b) fails or refuses to furnish any information or documentary evidence to the Ombudsman,

the Ombudsman may apply to the Court for the person to be summoned to appear before the Court or to furnish to the Court the information or documentary evidence requested in the notice.

**7 Part 6**

Repeal the Part, substitute

**“PART 6 – STAFF OF THE OFFICE OF THE OMBUDSMAN**

**43. Deputy Ombudsman General Complaints**

- (1) Subject to subsection (2), the Ombudsman may appoint on merit a suitably qualified person as the Deputy Ombudsman General Complaints.
- (2) A person is eligible for appointment as the Deputy Ombudsman General Complaints if he or she:
  - (a) is a qualified public administrator or investigations manager; and
  - (b) holds a bachelor’s degree or an equivalent qualification from a recognized tertiary institution; and
  - (c) has at least 5 to 10 years experiences in investigations management; and
  - (d) has at least 6 years experience in a senior leadership or management position.
- (3) The principal functions of the Deputy Ombudsman General Complaints is to:
  - (a) administer investigations into any complaints made against a leader for a breach of any of his or her duty under any Act, except for the Leadership Code Act [CAP 240]; and

- (b) perform such other functions as may be directed by the Ombudsman.

**44. Deputy Ombudsman Leadership Investigations**

- (1) Subject to subsection (2), the Ombudsman may appoint on merit a suitably qualified person as the Deputy Ombudsman Leadership Investigations.
- (2) A person is eligible for appointment as the Deputy Ombudsman Leadership Investigations if he or she:
  - (a) is a qualified public administrator or investigations manager; and
  - (b) holds a bachelor's degree or an equivalent qualification from a recognized tertiary institution; and
  - (c) has at least 5 to 10 years experience in investigations management; and
  - (d) has at least 6 years experience in a senior leadership or management position.
- (3) The principal function of the Deputy Ombudsman Leadership Investigations is to:
  - (a) administer investigations into any complaints made against a leader for a breach of a provision under the Leadership Code Act [CAP 240]; and
  - (b) perform the duties directed by the Ombudsman.

**45. Other staff of the office of the Ombudsman**

- (1) The Ombudsman may appoint on merit, suitably qualified persons as staff of the office of the Ombudsman.
- (2) The Ombudsman may under subsection (1), appoint such persons as may be necessary to enable the Ombudsman to perform his or her functions under this Act.

**46. Employment conditions for staff of the office of the Ombudsman**

- (1) The Ombudsman must prepare a written staff manual for the office of the Ombudsman which must include the terms and conditions of employment for the staff of the office of the Ombudsman.

- (2) The staff manual may provide for any or all of the following:
- (a) eligibility of appointment;
  - (b) procedure for such appointment (including probationary appointments and periods);
  - (c) salaries, allowances, and payments in respect of overtime;
  - (d) leave entitlements;
  - (e) staff entitlements and allowances;
  - (f) general conduct;
  - (g) appraisal of staff performance;
  - (h) discipline;
  - (i) training and courses;
  - (j) cessation of service;
  - (k) superannuation;
  - (l) employment of contract and temporary employees;
  - (m) the structure of the office of the Ombudsman; and
  - (n) such other matters as the Ombudsman considers relevant.
- (3) The Ombudsman may issue written instructions relating to any matter in the staff manual.
- (4) In preparing the staff manual and in issuing instructions, the Ombudsman:
- (a) must comply with the principle of being a good employer; and
  - (b) must have regard to relevant laws relating to remuneration and other employment matters.

**47. Control of service**

All staff are subject to the Ombudsman's control and direction.

**47A Temporary employee**

The Ombudsman may appoint a temporary employee as he or she considers necessary for the purposes of this Act.

## **PART 6A - TEMPORARY PROTECTION ORDERS**

### **47B. Definition**

In this Part, unless a contrary intention appears:

**complainant** means the Ombudsman or any of his or her staff;

**Court** means the Magistrate Court;

**defendant** means the person in which an application for a temporary protection order is being made against.

### **47C. Court may make temporary protection order**

- (1) On an application being made by the complainant, the Court may make a temporary protection order if the Court is satisfied that:
  - (a) the complainant is in danger of personal injury; or
  - (b) the defendant has committed an act of harassment against the complainant.
- (2) The application must be in writing and be accompanied with material evidence.
- (3) In deciding whether to make a temporary protection order, the Court must take into account the following matters:
  - (a) the need to ensure that the complainant is protected from harassment of all forms in the course of carrying out his or her functions, directly or indirectly; and
  - (b) the freedom, movement and security of the complainant and the complainant's family; and
  - (c) any other matter that the Court considers relevant.
- (4) The Court must give utmost importance to the matters in paragraphs (3)(a) and (b).
- (5) The Court may make a temporary protection order whether or not the defendant or complainant is in Court.

- (6) The temporary protection order made under this section is effective for a period of not exceeding 30 days, and may be renewed only once.

**47D. Further hearing by the Court**

- (1) If a temporary protection order is made by the Court in the absence of the defendant, the Court may issue:
- (a) a summons for the defendant to appear in Court at a specified date and time for a further hearing; or
  - (b) a warrant to arrest the defendant to appear in Court.
- (2) The Court must not issue a warrant unless the Court is satisfied that the personal safety of the complainant would be seriously threatened if the defendant is not apprehended and brought into custody.
- (3) The Court may confirm, vary or revoke the temporary protection order.

**47E. Conditions of temporary protection order**

The Court may include all or any of the following conditions in a temporary protection order:

- (a) to prohibit the defendant from:
  - (i) approaching the complainant; or
  - (ii) contacting the complainant; or
  - (iii) being in or near a specified premises, including premises where the complainant lives or works; or
  - (iv) causing another person to engage in any conducts referred to under subparagraphs (i) to (iii); or
  - (v) possessing any weapon; or
  - (vi) damaging a property of the complainant; or
- (b) to direct the defendant to:
  - (i) dispose any weapon to the Court; or

- (ii) return any specified personal property of the complainant.”

**8 Section 49(Heading)**

Delete “etc.”, substitute “before the Ombudsman”

**9 Transitional provisions**

A person employed by the Public Service Commission as a staff of the office of the Ombudsman before the commencement of this Act, is to continue to hold office as if he or she is appointed by the Ombudsman under this Act, on the same terms and conditions of employment with the same accrued and accruing entitlements.