

**NATIONAL LIBRARY OF  
VANUATU**

**COUNTRY PAPER**

**submitted for the**

**16<sup>TH</sup> CONFERENCE OF DIRECTORS OF NATIONAL LIBRARIES  
IN ASIA AND OCEANIA (CDNLAO)  
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**Prepared by:**

**Mrs. Anne Naupa, Chief Librarian.**

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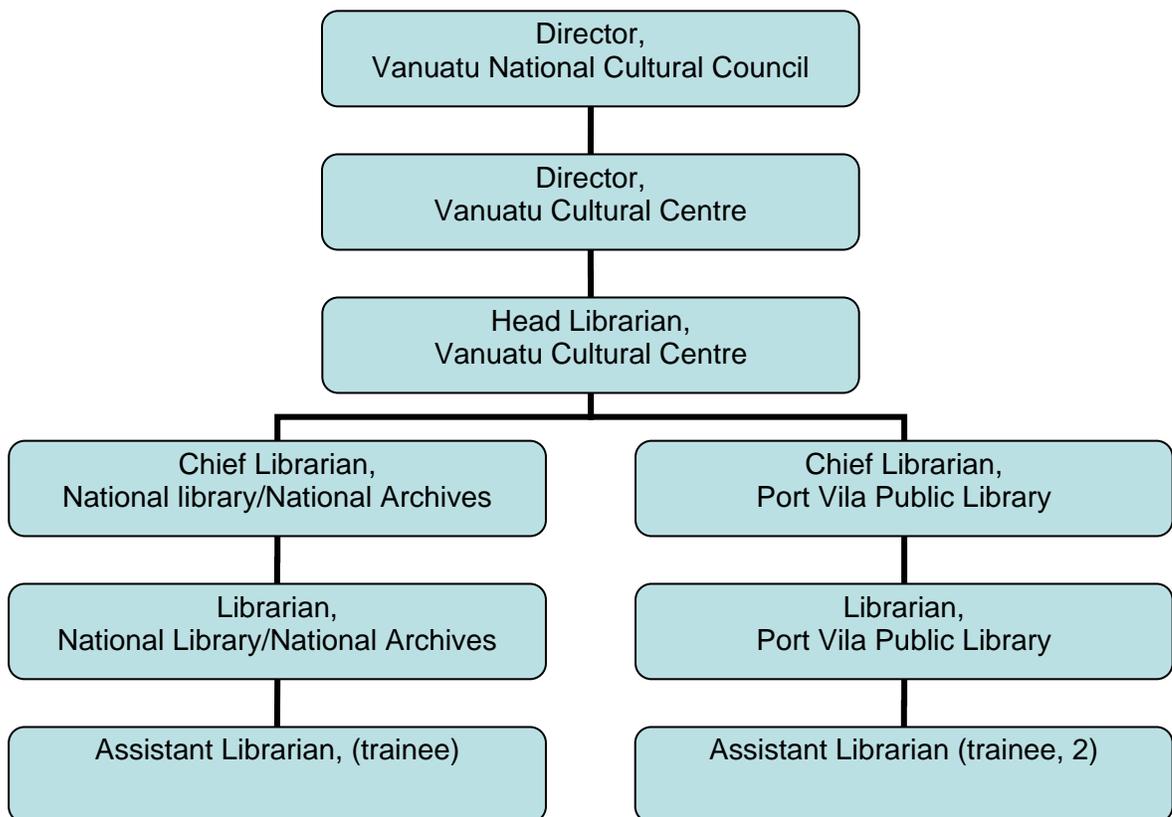
**Ms. June Bela Norman, Counterpart Chief Librarian.**

## 1. Introduction

The Republic of Vanuatu is made up of some 80 islands in the south-western Pacific Ocean. There is a President as Head of State, who is elected for a five-year term, and a one-chamber Parliament of 52 Members of Parliament, who are elected for four years. The country has a total population of about 200 000 people, of whom an estimated 90% are indigenous. An estimated 40 000 people live in the capital, Port Vila, on the island of Efate. With 112 distinct vernacular languages, Vanuatu has perhaps the highest linguistic diversity (for its population) in the world. The national language is Bislama, and English and French are also used for official and educational purposes. Over 50% of the population is under 18 years of age.

The National Library of Vanuatu is situated in the capital, above the National Museum (where it was newly established in April, 2004) and opposite Parliament House. Its Collections are freely accessible to all nationalities, ages and social groups, both to researchers and readers within the country and from overseas. Its staff operates in three languages – Bislama, English and French.

## 2. (a) Organizational structure



## 2. (b) (i) Vision

### MISSION STATEMENT

The mission of the National Library of Vanuatu is to:

- Ⓢ collect and preserve in a special Vanuatu Collection and in the Bislama, French, English and the vernacular languages all literature pertaining to and published about Vanuatu: such literature to cover all aspects of Vanuatu's customs and culture; its social, economic, political and religious life; the land and natural environment; its people, communities, institutions and history. The Library will also house Pacific and General Collections.
- Ⓢ encourage and develop public interest in its Collections, including a sense of national pride in and respect for the Collections, which are being preserved, maintained and developed on the nation's behalf.
- Ⓢ provide, maintain and enhance public access to the Collections, for the purpose of reference, research and general enjoyment of our national literary heritage.
- Ⓢ act as a specialized information service and educational tool in assisting students of all ages to access and use reference and other resources for their general and educational benefit.

### MAIN GOALS AND OBJECTIVES 2006-2010

1. To ensure that the National Heritage Collections are maintained and developed in a safe, secure building.
2. To provide, maintain and develop adequate reading, shelving and storage facilities so that researchers, students and the general public may gain maximum benefit from the Collections.
3. To act as a continually expanding repository of quality information on Vanuatu and the Pacific region.
4. To maintain and develop the Library's database and cataloguing system so that it may eventually be accessible by network to government departments and provincial headquarters.
5. To find means to create an annual recurrent budget in order for the National Library of Vanuatu to achieve its mission.

## 2. (b) (ii) Activity evaluation

- Ⓢ Plans for a separate National Library/National Archive building were included in the original Vanuatu Cultural Centre Complex plans (1994-1996). Draft architectural designs for a two-storey building (with the National Library premises on the ground floor and the National Archives on the upper floor) were first produced in 2003, then amended in 2006 by a Committee to include the Cultural Centre film, photo and audio as well as documentary archives. These plans were approved by the Vanuatu National Cultural Council and then forwarded to the Prime Minister's office with a request for priority funding of this important national development project. During 2007 no funding was identified. In 2008, it has been requested that, with the 30<sup>th</sup> Anniversary of the Independence of Vanuatu being celebrated in 2010, this building project should be treated as one of national significance and that it be completed in time for the country's celebrations in that year.
- Ⓢ In September 2007, the Minister for Internal Affairs transferred responsibility for the National Archives from the Department of Provincial Affairs to the National Library (under the Vanuatu Cultural Centre). After discussions with the National Museum Curator and PARBICA (Pacific Regional Branch of the international Council of Archives) it was decided to find funds for an insulated shipping container that would house the National Archives safely and securely within the Cultural Centre complex for a limited period (a maximum of three years) until the completion of a National Library/National Archives building. Funds for the purchase of a container were generously donated by Mr William Rudin, a World War II veteran who served with the US 13<sup>th</sup> Air Force in the New Hebrides (now Vanuatu) in 1943.

## 2. (c) Manpower

- Ⓢ The National Library of Vanuatu staff currently comprises two permanent librarians, the Chief Librarian (Mrs Anne Naupa) and the Counterpart Chief Librarian (Ms June Norman). In 2007, Ms Norman won an Australian Leadership Fellowship Award which allowed her to take up a two-month attachment to the National Library of Australia in March-April 2008. These two staff members are currently supported by a part-time Assistant Librarian and non-permanent staff trainee, Ms Karen Taresesei.
- Ⓢ With the added responsibility of sorting, inventorising and cataloguing the National Archives, the two librarians need urgently to be supported by a third permanent member of staff, in order for all to cope efficiently with the added workload in what is currently a vibrant, busy National Library/Archives.

## 2. (d) Library users

- Ⓢ The National Library currently has adequate reading space in its two rooms for a maximum of 30 users. Compared with a total of 2469 library users in 2006, 3149 people of all ages and literacy levels used the Library in 2007. In the first half of 2008 (January to June inclusive) a total of 2443 Library users have been reading and researching the Collections.
- Ⓢ In 2007, 32 different schools and higher educational institutions (individuals and groups) used the library's research and information services regularly and heavily throughout the year. Other locally based researchers included members of the general public, Government officers, employees in Non-Government Organizations, banks and numerous other fields.
- Ⓢ Overseas researchers during 2007 came from Australia, Canada, France, the Isle of Man, Israel, Japan, New Caledonia, New Zealand, Norway, Papua New Guinea, Solomon Islands, South Africa, Sweden, United Kingdom, U.S.A. and West Papua.

## 2. (e) Collection

- Ⓢ **Total collection.** In December 2004 the newly-established National Library Collections comprised 800 catalogued items; by December 2007, 8000 items had been catalogued on the Library's database, with an estimated 2000 items still awaiting cataloguing. As at 30 June 2008, some 9000 items have been catalogued.

Collections of films and other audio-visual materials, CD-Roms and DVDs, photos and maps are currently stored in the (air conditioned) National Film, Photo and Sound Unit and in the Historic Sites Section, both located in the Vanuatu Cultural Centre building and very close to the National Library.

- Ⓢ **Unique and rare items.** Some 500 rare items on the New Hebrides/Vanuatu (books and documents) are housed in a special glass-fronted, lockable "Rare Books" section within the Library. In addition, the Library has recently been made responsible for preserving, sorting and indexing the National Archives, many of which are unique and historic.
- Ⓢ **Secondary publications.** Due to shortage of staff, the National Library has not yet been able to publish any of its own bibliographies. However, Library users can obtain a 'print-out' of bibliographies on most Vanuatu and Pacific topics from the computerized Library catalogue. Dr Chris Ballard, from the Australian National University in Canberra, has produced a very comprehensive bibliography for the island of Efate, Vanuatu, and is currently working on a bibliography for the island of Malakula.
- Ⓢ **Digitized materials.** The National Library, through the Vanuatu National Cultural Council and bearing in mind cultural and intellectual property rights, has yet to formulate a digitization policy.

- Ⓢ **Audio-visual materials.** Films, CD-Roms, DVDs, microfilms and photos are currently stored in the air-conditioned National Film, Photo and Sound Unit, which is located on the ground floor of the Vanuatu Cultural Centre building and easily accessible for National Library staff. There is a separate catalogue for each of these media. The Historic Sites Office, located on the upper floor of the Cultural Centre and next to the National Library, keeps historic maps, until such time as the planned new National Library/National Archives building becomes a reality.
- Ⓢ **National and special databases.** In addition to the Vanuatu and Pacific Collections, the National Library has also recently been made the national repository for all World Health Organization (Western Pacific) publications; a special WHO Collection has therefore been set up within the Library and is regularly used for reference. In addition, a General Collection has been newly established; literary gifts from other countries and on topics outside Vanuatu and Oceania generally are now catalogued and located in this new section.

## 2 (f) Services

- Ⓢ **Reference** Due to the valuable and historic nature of the Collections within the National Library, items are available for reference only. However, photocopies of parts of most of the items can be made on request. (Culturally restricted items are stored in the “Tabu Rum” of the Cultural Centre and can only be accessed with the permission of the Director.)
- Ⓢ **Lending and interlibrary loan.** These services are not available at the National Library, which is solely a reference library. The National Library’s sister library, the Port Vila Public Library, provides comprehensive lending services to members of the general public.
- Ⓢ **National bibliographic services** These are currently provided through the National Library database system.
- Ⓢ **Reading promotion.** The National Library displays copies of all Vanuatu daily and weekly newspapers in a special area for adult readers. It has been very encouraging to observe the growing numbers of the adult general public who visit the Library first of all to read the newspapers and who then move on to read items in the Collections. Library staff also prepare research aids for the large numbers of school children and students who use the Library to research information on Vanuatu and the Pacific. In addition, staff assist the Port Vila Public Library with its annual Children’s Library Week and participate in the annual Literacy Week which is run by the Vanuatu Library Association. Staff have drafted and distributed Literacy Survey questionnaires in the one national and two official languages for this last annual event.
- Ⓢ **Information literacy programs.** Not currently available.
- Ⓢ **Acquisition, donation and exchange.** Excluding journals, newsletters, newspapers and other periodicals, some 2000 new items were recorded on the Accessions List in 2007. The Legal Deposit of Books Act requires that two copies each of all publications within Vanuatu be deposited for heritage purposes with the National Library. However, the Library relies mostly on donors for its new accessions, and notably the National Library of Australia, which generously donated 74 new books for

the General, Pacific and Vanuatu Collections in May 2008. There is currently no formal exchange policy or programme.

- ② **Digital library.** With the advice and approval of the Vanuatu National Cultural Council , a digital library will be considered in future National Library planning.

## 2 g. Projects

- ② **Seminars, workshops, etc. (local, regional and international)** National Library staff have both assisted and participated in a number of seminars and workshops, locally, regionally and internationally in the three years that the Library has been established. Some of these activities include:

- (i) a presentation given to the Friends of the Museum organization in Vanuatu in May, 2005 – “The role of the National Library in a changing environment”;
- (ii) active and ongoing involvement with and often complete organization of National Museum of Vanuatu Exhibitions (works of late Terry Crowley, linguist; voyages of explorer de Quiros; Year of Traditional Economy and a photographic exhibition entitled “People and Places:1908-2008”); participation in an Archives Management Seminar in China, 2006;
- (iii) active participation in the PARBICA (Pacific Regional Board of the International Council of Archivists) “Record Keeping for Good Governance” workshops in 2007 and 2008 (Nouméa, New Caledonia, and Brisbane, Australia);
- (iv) attendance at the biennial meeting of PARBICA in Nouméa, New Caledonia, October, 2007 and presentation of country report; and
- (v) presentation of a paper, “Hidden treasures: accessing the riches in the Pacific Collections as a cultural issue” at a meeting of the Pacific Libraries Association at the East-West Center in Hawaii, 2007; and
- (vi) a two-month attachment for the Counterpart Chief Librarian to the National Library of Australia, 2008.

- ② **Physical facilities.** As aforementioned, a new, two-storey National Library/National Archives building is planned and is part of the Vanuatu National Cultural Council's Corporate Plan for 2006-2010.

- ② **Affiliations, cooperation, membership (local and foreign)**

The National Library of Vanuatu is an active member of the following associations:

- (i) Vanuatu Libraries Association (VLA); and
  - (ii) Pacific Regional Board of the International Council of Archivists (PARBICA).
- It is hoped to join PIALA as soon as funds for annual membership become available.

### 3. Library at the national level

#### 3 (a) Number of

- ② **Library councils, associations, foundations, etc.** One (Vanuatu Libraries Association).
- ② **Public libraries, including mobile and community libraries.**
  - (i) One Public Library: the Port Vila Public Library, in the capital.
  - (ii) One mobile library, run by the Alliance Française.
  - (iii) Several community libraries (no official statistics available), including the newly established Pango Village Community Library, on the island of Efate.
- ② **Special libraries.** There are a growing number of special libraries, including the Parliament House library, the Reserve Bank Library and some Government Department libraries ( for example, the Environment Unit Library). The Supreme Court has recently funded the establishment of its own library. No official statistics are currently available.
- ② **University libraries.** The University of the South Pacific has a well-established Library on its Emalus Campus in Port Vila; the main collections, however, encompass Law and Pacific Languages.
- ② **School libraries.** No official statistics currently available, although all public secondary schools and most private secondary schools have small libraries. Depending on resources, a growing number of primary schools are also establishing library services for their pupils.
- ② **Ecclesiastical libraries.** The Roman Catholic Church in Vanuatu has substantial and valuable library collections. The Presbyterian Church of Vanuatu has a library at its Talua Theological College on the island of Espiritu Santo. Information on other ecclesiastical libraries is not currently available.

**3. (b) New libraries being established.** The Vanuatu Cultural Centre has recently established a small library at the provincial Cultural Centre on the island of Malakula. A library section is also planned for the new provincial Cultural Centre on the island of Tanna. Information on other new library projects is not currently available.

**3. (c) Current features incorporated into libraries, e.g. cafés, reading and book clubs.** None.

**3. (d) Digital library initiatives.** No information currently available.

**3. (e) Library and manpower development.** The Vanuatu Libraries Association sponsors and encourages professional study and development. The National Library of Vanuatu has an ongoing library and manpower development policy but progress is hampered by lack of funds. In effect, there are fewer than 10 fully qualified ni-Vanuatu librarians in the country.

#### 4. Infrastructure.

**4. (a) Library network.** The Vanuatu Libraries Association is working on this.

**4. (b) Telecommunications facilities, e.g. dial-up, broadband, VSAT.** The National Library has access to internet. Other telecommunications are not yet available.

**5. Preservation.**

**5(a) Activities, including digital preservation.** The National Library, recently handed the responsibility for the long-neglected National Archives, has taken steps to retrieve the historic archives in the old and now derelict National Archives building and is currently drafting a National Archives preservation policy. With the generous assistance of both French Embassy staff in Vanuatu and two archivists from the Archives Territoriales de Nouvelle-Calédonie, the Supreme Court archives were retrieved from a burnt-out building and now wait to be sorted, catalogued, micro-filmed and digitally preserved.

**5 (b) Reprography, photography and microphotography.** A national policy has yet to be put in place.

**5 (c) Disaster preparedness.** As far as is known, there is no national plan of disaster preparedness specifically in relation to libraries. However, each library should have its own “back-up” plan. This is an important area to be examined and acted upon in the immediate future.

**6. Education and training.**

**6.(a) Number of professional and paraprofessional librarians.** As previously stated, no official statistics are currently available. It is estimated that there are less than 10 fully qualified and employed ni-Vanuatu librarians, with the number of paraprofessionals not being much higher.

**6. (b) Presence of library schools (degree and non-degree) and courses.** The Government of the Republic of Vanuatu has recently (2007 and 2008) added tertiary librarianship studies to its annual list of subjects approved for scholarship grants. However, librarianship is not a popular choice among young people looking for a financially attractive career, as most library posts in Vanuatu come with a sub-standard wage for the level of professionalism required.

As previously mentioned, the Vanuatu Libraries Association and the National Library of Vanuatu both encourage and sponsor trainees at two levels: the two-year paraprofessional Basic Skills in Librarianship course at the University of the South Pacific; and the three-year professional Diploma in Library and Information Studies (Dip. LIS), also at the University of the South Pacific.

**7. Copyright and Library Acts**

While a Copyright and Related Rights Act passed through Parliament in 2000, the Act has not yet been officially gazetted and has therefore not yet been commenced.



**Appendix I: Vanuatu National Cultural Council Act**

**Appendix II: Archives Act**

**Appendix III: Deposit of Books Act**

**Appendix IV: Copyright and Related Rights Act**



Commencement: 1 April 1988



## CHAPTER 186

# VANUATU NATIONAL CULTURAL COUNCIL

Act 30 of 1985  
Act 13 of 1992  
Act 14 of 1992  
Act 18 of 1995

### ARRANGEMENT OF SECTIONS

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## VANUATU NATIONAL CULTURAL COUNCIL

**An Act to provide for the establishment of the Vanuatu National Cultural Council, for the preservation, protection and development of various aspects of the rich cultural heritage of Vanuatu, and for the provision of public libraries.**

### **1. Interpretation**

In this Act, unless the context otherwise requires –

“Council” means the Vanuatu National Cultural Council established under section 2;

“commercial filming” means the taking of motion pictures for reproduction on film, television, video cassette or any other means for profit or reward or in the course of a business;

“director” means the director of the Council appointed by the Minister under section 9;

“financial year” means the financial year of the Council which shall be the same as that of the Government;

“member” means a member of the Council appointed by the Minister under section 3;

“Minister” means the Minister responsible for cultural affairs.

### **2. Establishment of the Council**

- (1) There is hereby established a body corporate to be known as the Vanuatu National Cultural Council.
- (2) The Council shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

### **3. Composition of the Council**

- (1) The Council shall consist of the following members –
  - (a) six members appointed by the Minister of whom –
    - (i) one shall be a representative of the Ministry responsible for Cultural Affairs nominated by the Minister of Cultural Affairs;
    - (ii) one shall be a representative of the National Council of Chiefs nominated by the National Council of Chiefs;
    - (iii) one shall be a representative of the National Council of Women nominated by the National Council of Women;
    - (iv) one shall be a representative of the Vanuatu Cultural Centre;
    - (v) two shall be persons whom the Minister considers have relevant experience in matters relating to museums, public libraries or archives; and
  - (b) the director.
- (2) Subject to subsections (3) and (4) members of the Council other than the director shall serve for a term of 3 years but may be eligible for re-appointment.
- (3) If the Minister is satisfied that a member appointed under subsection (1)(a) –
  - (a) has been absent from 2 consecutive meetings of the Council without the consent of the chairman;
  - (b) has become insolvent;

- (c) is incapacitated by physical or mental illness;
- (d) has been convicted of a crime involving moral turpitude; or
- (e) is otherwise unable or unfit to discharge the function of a member;

the Minister may by notice published in the Gazette declare the office of the member vacant.

- (4) A member appointed by the Minister in accordance with subsection (1)(a) may resign by giving not less than 30 days' notice in writing to the Minister.

#### **4. Chairman and deputy chairman**

- (1) The Minister shall appoint from among the members a chairman and a deputy chairman of the Council.
- (2) The chairman and deputy chairman shall each serve as such until their term as a member expires and may be re-appointed.
- (3) Where the chairman is absent or otherwise unable or unfit to discharge his functions, the deputy chairman shall have and exercise all the powers of the chairman under this Act.

#### **5. Objects of the Council**

The objects of the Council shall be –

- (a) to support, encourage and make provision for the preservation, protection and development of various aspects of the cultural heritage of Vanuatu;
- (b) *(repealed)*;
- (c) to support, encourage and make provision for the establishment, maintenance and development of public libraries;
- (d) to establish, maintain, administer and make provision for such national institutions as the Council shall consider necessary and appropriate for the purposes of its objects including (but not limited thereto) the following national institutions –
  - (i) the Vanuatu Cultural Centre, including the National Museum, the National Library, the National Film and Sound Unit and the National Cultural and Historic Sites Survey; and
  - (ii) the National Archives.
  - (iii) *(repealed)*
- (e) to initiate, encourage and support all services, matters or things which are conducive towards the proper and orderly development of any national institution set up in accordance with this Act;
- (f) to initiate, encourage, support and conduct research and training programmes on any matters related to any national institution set up in accordance with this Act;
- (g) to foster co-operation in matters related to the provision of museums, libraries and international relations between the Council and governments, organisations and bodies interested therein.

#### **6. Powers of the Council**

- (1) The Council shall have the powers to do all the things which are necessary or conducive to the carrying out of its objects.
- (2) Without derogating from the generality of subsection (1) the Council may –

- (a) acquire, hold and dispose of real and personal property including houses and other accommodation for occupation by employees and advisers;
- (b) promote or finance any undertaking related to the provision and promotion of museums or libraries;
- (c) borrow or lend money on such terms and conditions as it thinks fit;
- (d) establish or participate in any pension and provident fund schemes for the benefit of its employees and their dependents;
- (e) sponsor or regulate or carry out programmes of research;
- (f) establish training programmes;
- (g) sponsor cultural shows;
- (h) publish printed or audio visual matter for sale or otherwise;
- (i) acquire copyright;
- (j) charge fees for the service rendered by it;
- (k) enter into agreements with any government organisation or body or person for the better carrying out of its objects;
- (l) regulate and control commercial filming concerning cultural subjects.

**7. Secretary**

- (1) There shall be a secretary to the Council who shall be an employee thereof and shall be appointed by the Council.
- (2) The secretary or a person acting as such shall attend all meetings of the Council and prepare the minutes thereof.
- (3) The secretary shall keep in safe custody the seal and all documents of the Council; receive all process served on the Council and carry out such other duties as the Council or the director shall direct.

**8. Meetings of the Council**

- (1) The Council shall meet not less than 4 times in every 12 months.
- (2) Subject to subsection (3) the chairman shall convene the meetings at such times and places as he thinks fit.
- (3) The first meeting of the Council shall be convened by the Minister.
- (4) The quorum at meetings shall be the chairman and two other members.
- (5) The chairman or in his absence the deputy chairman shall preside at every meeting of the Council.
- (6) The proceedings at any meeting shall not be invalidated by any defect in the appointment of any member.
- (7) Decisions of the Council shall be made by a majority vote of members present and voting. The chairman shall have a casting vote.
- (8) If a member has any pecuniary interest, direct or indirect, in any contract or other matter relating to the Council he shall as soon as practicable disclose to the chairman the fact and nature of his interest.
- (9) The Council may invite any person to participate in its meetings but they shall have no vote.
- (10) Subject to this Act, the Council may make internal rules regulating its procedure.

- (11) Any rules made in accordance with subsection (10) shall be issued under the hand of the chairman.

**9. Director of the Council**

- (1) The Minister may after consultation with the Council, appoint upon such terms and conditions as the Council thinks fit a director who shall be an employee of the Council.
- (2) The director shall be the chief executive of the Council and of all its operations.
- (3) The Council may delegate to the director, with or without restrictions or conditions, such of its powers and functions as it may consider expedient for the day to day operation of the Council.

**10. Other officers and employees**

The Council may appoint, at such remuneration and upon such terms and conditions as it thinks fit such other officers and employees as may be required for the proper and effective discharge of the objects of the Council.

**11. Liability of members, officers and employees**

No personal liability shall attach to any member, officer or employee of the Council in respect of anything done or omitted to be done in good faith and without negligence in the course of the operation of the Council.

**12. Funds of the Council**

The funds of the Council shall consist of –

- (a) grants from the Government out of monies appropriated by Parliament for such purposes;
- (b) grants from other sources;
- (c) monies borrowed by the Council;
- (d) monies received by the Council in any other way in the course of the discharge of its objects.

**13. Investment of funds**

Any funds of the Council not immediately required for the carrying out of its objects may be invested in such manner as the Council may approve.

**14. Guarantee of loans**

The Government may guarantee any loans to the Council.

**15. Control of borrowings**

The Minister responsible for finance, may, after consultation with the Minister, by Order prescribe –

- (a) the aggregate maximum indebtedness that the Council may incur without his consent in writing; and
- (b) the maximum individual sums that the Council may likewise borrow.

**16. Accounts and audit**

- (1) The Council shall keep proper accounts and other records in respect of its receipts and expenditure and shall cause to be prepared an annual statement of accounts in respect of each financial year.
- (2) The accounts of the Council shall be audited annually by the Auditor-General.

- (3) As soon as it is reasonable after the end of each financial year the Council shall submit to the Minister responsible for finance and the Minister audited accounts together with any report made by the Auditor-General thereon and such explanations as the Council may consider appropriate.

**17. Annual report**

- (1) The Council shall submit an annual report of its activities to the Minister not less than 45 days prior to the commencement of the annual budget session of Parliament.
- (2) A copy of the audited accounts for the previous financial year provided for in section 16 and provisional accounts for the current financial year shall be attached to the annual report.
- (3) The Minister shall table the annual report together with such comments as he may have thereon before Parliament during its annual budget session.

**18. Submission of estimates for the purpose of grants**

If the Council shall need a grant referred to in section 12(a), so that the Government may determine the amount thereof for inclusion in the Budget, the Council shall not less than 90 days before commencement of the financial year during which the grant is required submit to the Minister and to the Minister responsible for finance estimates of expenditure and receipts for that year and of unexpended funds carried forward.

**19. Evidence of sealing of documents**

The fact that a document bears the seal of the Council shall be *prima facie* evidence in any court or legal proceedings that the document has been properly executed by and on behalf of the Council.

**20. Ministerial directions**

The Minister, may, after consultation with the Council, give to the Council such directions of a general character with respect to the performance of any objects of the Council as appear to the Minister to be requisite in the public interest.

**21. Regulations**

The Minister may by Order make regulations not inconsistent with this Act for the better carrying out of the provisions of this Act.

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**Table of Amendments (since the Revised Edition 1988)**

Long Title	Amended by Acts 13 of 1992, 14 of 1992
1	Amended by Act 18 of 1995
3(1)(a)(iii)	Amended by Acts 13 of 1992, 14 of 1992
3(1)	Substituted by Act 18 of 1995
5(b)	Repealed by Acts 13 of 1992, 14 of 1992
5(d)(i), (ii)	Substituted by Act 18 of 1995
5(d)(iii)	Repealed by Acts 14 of 1992, 18 of 1995
5(g)	Amended by Acts 13 of 1992, 14 of 1992
6(2)(b)	Amended by Acts 13 of 1992, 14 of 1992
6(2)(l)	Inserted by Act 18 of 1995

Commencement: 10 August 1992



## CHAPTER 216

### ARCHIVES

Act 13 of 1992

#### ARRANGEMENT OF SECTIONS

##### **PART 1 – PRELIMINARY**

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2. Application

##### **PART 2 – ADMINISTRATION**

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4. National Archives
5. Archivist
6. Delegation of the Archivist's powers

##### **PART 3 – CUSTODY AND PRESERVATION OF ARCHIVES**

7. Deposit of public archives in the National Archives
8. Deposit of public archives of less than fifteen years of age
9. Public records and archives not in the National Archives

10. Return of public archives to Government office
11. Public archives and records to be surrendered on demand
12. Public archives not to be destroyed or disposed of without authority of Archivist
13. Destruction of routine public archives
14. Access of public to National Archives
15. Publication of public archives
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##### **PART 4 – MISCELLANEOUS PROVISIONS**

17. National Archives seal
18. Certified copies
19. Directions, etc.
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## ARCHIVES

**An Act to provide for the continuity of the National Archives and to provide for the custody and preservation of the public archives of Vanuatu and for matters connected therewith.**

### PART 1 – PRELIMINARY

#### 1. Interpretation

In this Act, unless the context otherwise requires—

“Archivist” means the Archivist appointed under section 5 of this Act;

“Government office” means any ministry, department, office, agency, or instrument of any kind of the legislative or executive or judicial government of Vanuatu, and includes any Office in whose any office declared under section 3;

“National Archives” means the National Archives of Vanuatu established under section 4 of this Act;

“public archives” means all public records that have ceased to be in current use in the Government Office in which they were originally made or received or in the Government office in whose custody they have been placed or that have been deposited in the National Archives;

“public records” means all papers, documents, or records of any kind whatsoever officially made or received by any Government office in the conduct of its affairs or by any employee of the Government in the course of his official duties; and without limiting the generality of the foregoing provisions of this definition, include registers, books, maps, plans, drawings, photographs, cinematography films, and sound recordings so made or received; and also includes copies in public record.

#### 2. Application

Nothing in this act shall apply with respect to any public archives which has been drawn up, acquired or used by any Government office if such archives discloses any information which is required to be kept secret under any law in force in Vanuatu.

### PART 2 – ADMINISTRATION

#### 3. Declaration of office for the purpose of this Act

The Minister, acting in accordance with the advice of the Council of Ministers, may declare any office, corporation or body to be a “Government office” for the purpose of this Act.

#### 4. National Archives

- (1) There shall continue to be a national institution to be known as the National Archives, which shall be the same national institution as that established under the Vanuatu National Cultural Council Act [Cap. 186] and existing under the same name on the date of coming into force of this Act.
- (2) Public archives of Vanuatu which are considered worth permanent preservation, shall in the manner prescribed by this Act, be deposited and preserved in the National Archives.
- (3) Subject to any general or special directions which may be given to him by the Minister, the Archivist may by contract or bequest or in any like manner acquire for

the National Archives all such original records, manuscripts and other documentary materials, or copies or replicas thereof, other than public archives as he thinks necessary or desirable to secure and all such materials shall be deemed to be public archives of Vanuatu for the purposes of this Act.

- (4) For the purposes of this Act the National Archives shall be deemed to have been established under this section with effect from the date of coming into force of the Act.

#### **5. Archivist**

There shall be appointed a public servant to be known as the Archivist who shall, subject to any direction given to him by the Minister, in respect of the public archives of Vanuatu be charged with the care, custody, control and administration of the public archives in the National Archives and the public access to the National Archives and with the performance of any other duties prescribed by this Act.

#### **6. Delegation of the Archivist's powers**

- (1) The Archivist may from time to time delegate in writing any of his powers under this Act except the power of authorizing the destruction or disposal of public archives, to any public servant.
- (2) Subject to any general or special directions given or conditions attached by the Archivist, the public servant to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by a delegation.

Provided that no such delegation shall prevent the exercise of any power so delegated by the Archivist.

- (3) Every public servant purporting to act pursuant to any delegation under this section shall, in absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (4) Every delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the Archivist by whom it was made may have ceased to hold office, and shall continue to have effect as if made by his successor in office.

### **PART 3 – CUSTODY AND PRESERVATION OF ARCHIVES**

#### **7. Deposit of public archives in the National Archives**

- (1) All public archives of the age of fifteen years or over (other than those which under any Act are required to be held in the custody of a specified person or Government office) which in the opinion of the Archivist are of sufficient value to warrant their preservation as –

- (a) evidence of the organization, functions and transactions of the Government office in which they were originally made or received; or
- (b) evidence of public or private personal or property rights or civic rights; or
- (c) containing historical or general information,

shall be transferred to the custody of the Archivist and be deposited in the National Archives.

- (2) Notwithstanding subsection (1) –

- (a) where the Archivist is satisfied that the deposit in the National Archives of any particular public archives of the age of fifteen years or over would unduly prejudice the effective administration of any Government office, he shall defer

- the deposit of that public archives for such period as may be agreed upon between the Archivist and the head of the Government office affected;
- (b) where the head of the Government office having the possession or control of any public archives satisfies the Archivist that by reason of its secret or confidential nature it would not be in the public interest immediately to deposit that archives in the National Archives, the Archivist shall from time to time defer the deposit of that public archives for such period as may be agreed upon between that head of the Government office and the Archivist;
  - (c) where the Minister in charge of any Government office certifies that in his opinion any specified archives or specified class of public archives in the custody or control of the Government office contains information the release of which may adversely affect the security of Vanuatu or relations between the Government of Vanuatu and the government of any other country, the deposit in the National Archives of that public archives or of public archives of that class shall be deferred for such period or shall be made subject to such conditions as to access or otherwise as that Minister from time to time directs;
  - (d) where the deposit of any public archives in the National Archives is deferred under paragraphs (a), (b) or (c), the Archivist may impose any conditions he thinks fit to ensure the safe preservation of any such archives during the time they are kept in a Government office.
- (3) Any public archives deposited under subsection (2) may be deposited unconditionally or, if the head of the Government office making the deposit so requires, shall be deposited subject to such conditions as to access and otherwise as may be agreed upon from time to time by the Archivist and the head of that Government office.
  - (4) Where the head of any Government office and the Archivist are unable to agree as to whether or not the deposit of any public archives in the National Archives should be deferred or as to the period for which that deposit should be deferred or as to the conditions as to access and otherwise on which any public archives should be so deposited, that question shall be determined by the Minister acting in accordance with the advice of the Council of Ministers, and his decision shall be final.
- 8. Deposit of public archives of less than fifteen years of age**
- (1) The Archivist may allow the deposit in the National Archives of public archives of less than fifteen years of age if he considers that they are of sufficient value of deposit.
  - (2) Any deposit of public archives under subsection (1) may be subject to any special conditions imposed by the head of the Government office making the deposit.
- 9. Public records and archives not in the National Archives**
- (1) The Archivist may from time to time inspect any public records or public archives that are for the time being in the possession or under the control of any Government office and give such instructions as to their safe preservation and such advice as to their efficient and economical administration and management as he considers necessary.
  - (2) Nothing in this section shall be deemed to authorize the Archivist to inspect the contents of any public records or public archives –
    - (a) which by any written law are forbidden to be communicated to him; or
    - (b) which are secret or confidential, except with the consent of the head of the Government office having the custody of any such public records or public archives.

**10. Return of public archives to Government office**

Where the head of the Government office by which any public archives was deposited in the National Archives or the head of the successor of that Government office satisfies the Archivist that the public archives is required for use in that Government office, the Archivist shall return the public archives to the custody of that Government office for such period as may be agreed upon between the Archivist and the head of that Government office, and subject to such conditions as the Archivist may impose to ensure the safe custody and preservation of that public archives during the time it is kept in that Government office.

**11. Public archives and records to be surrendered on demand**

Where any public archives or public record (being an archives or a record that is the property of the Government) is in the custody or possession of any person other than a Government office, a public officer or other person authorized to have such custody or possession in his official capacity (whether it came into his possession before or after the commencement of this Act), and the original of that public archives or public record is not in the possession of any Government office or deposited in the National Archives, that person shall, on demand writing by the Archivist, deposit that public archives or public record in the National Archives.

**12. Public archives not to be destroyed or disposed of without authority of Archivist**

- (1) No person shall destroy or otherwise dispose of, or authorize the destruction or other disposal of, any public archives of any kind whatsoever that are in his possession or under his control, except with the consent of the Archivist given in accordance with the provisions of this Act.
- (2) Before authorizing the destruction of any public archives or any class of public archives, the Archivist may, if he thinks fit, consult with any person whom the Archivist considers qualified to advise him as to the value of any such public archives for permanent preservation.

**13. Destruction of routine public archives**

The Archivist may authorize the immediate destruction, or the destruction after the expiration of such specified time as may be agreed upon between the Archivist and the head of the Government office concerned, of any specified classes of public archives that:

- (a) by reason of their number, kind or routine nature do not in his opinion possess any enduring value for preservation in the National Archives as public archives; and
- (b) are not required for reference purposes in any Government office after action on them is completed, or after the expiration of such period of years from the date on which action on them is completed as may be agreed upon between the Archivist and the head of the Government office concerned.

**14. Access of public to National Archives**

(1) Subject to –

- (a) any written law providing for any information or records to be kept secret;
- (b) any conditions under which any archives are deposited;
- (c) any orders or regulations made under this Act,

all archives deposited in the National Archives shall be available for public reference:

Provided that –

- (a) the Archivist may, for any good cause, withhold access to any specified class of public archives in his custody subject to the right of the person so denied access to appeal to the Minister, whose decision thereon shall be final;

- (b) any public archives deposited in the National Archives by any court and containing any information relating to the trial or punishment of any particular person may be inspected only by a person authorized in writing by the Chief Justice or by any other person authorized by the Chief Justice in that behalf.
- (2) Nothing in this section shall limit the powers of any competent court to order the production of any public archives of Vanuatu.
- (3) Notwithstanding the other provisions of this section and subject to the provisions of paragraph (b) of subsection (1), the Minister may at any time, by order in writing addressed to the Archivist, withhold access either generally or by any person or class of persons to any specified public archives or to any specified class of public archives in the custody of the Archivist.
- (4) Any person may, with the consent of the Archivist, make or cause to be made at his own expense copies of or extracts from any public archives which are available for public reference under this section.

**15. Publication of public archives**

On the recommendation of the Archivist, the Minister may authorize the publication of any public archives deposited in the National Archives and available for public reference which he considers to be of sufficient interest to warrant their publication.

**16. Copyright**

- (1) Nothing in this Act shall derogate from any provision of the law relating to copyright in relation to anything contained in any public archives deposited in the National Archives under the provisions of this Act.
- (2) Where any person publishes any work containing any passage from any public archives deposited in the National Archives, he shall in that publication acknowledge the source from which that passage is taken.

**PART 4 – MISCELLANEOUS**

**17. National Archives Seal**

The Archivist shall cause to be made a seal for the National Archives, with which all certified copies issuing out of the National Archives shall be sealed.

**18. Certified copies**

Any copy of any public archives of Vanuatu in the custody of the Archivist which is certified by the Archivist to be a true copy of such public archives shall be received as evidence of the contents of such record in all courts of law within Vanuatu

**19. Directions, etc.**

Any arrangement, directions, consent or conditions made, given or imposed under this Act shall be in writing.

**20. Offences and penalties**

- (1) Any person who –
- (a) willfully or negligently damages any public archives; or
  - (b) willfully or negligently disposes any public archives otherwise than in accordance with the provisions of this Act; or
  - (c) contravenes or fails to comply with any provisions of this Act.
- commits an offence and shall be liable on conviction to a fine exceeding VT 100,000.

- (2) Where any person is convicted of an offence under subsection (1), the court convicting such person may, in addition to any penalty imposed for the offence, order that that person shall not be entitled to have access to the National Archives for such period as the court thinks fit.

**21. Regulations**

- (1) The Minister may make regulations not inconsistent with this Act for the better carrying into effect the provisions of this Act and may prescribe in such regulations all matters which are necessary or required to be prescribed under this Act.
- (2) Without prejudice to the generality of subsection (1) the Minister may in such regulations provide for all or any of the following matters –
- (a) to regulate the transfer of public archives from any Government office to the National Archives or any record center or other repository which may be established for the purposes of this Act;
  - (b) to regulate the manner of destruction or other disposal of valueless public archives;
  - (c) to regulate the admission of the public to the national Archives and the use by the public of public archives of Vanuatu deposited in the National Archives;
  - (d) to provide for the custody and preservation of public archives deposited in the national Archives under section 4(2) of this Act, and prescribing the fees (if any) to be charged for their custody and preservation.

**22. Repeal and savings**

- (1) *(Omitted)*
- (2) Any public records acquired, maintained, protected and preserved in the National Archives under the Vanuatu National Cultural Council Act [Cap. 186], for the purposes of this Act, shall be deemed to have been acquired, maintained, protected and preserved in accordance with this Act.
- (3) Any arrangements, directions or conditions made, given or imposed under the Vanuatu National Cultural Council Act [Cap. 186] as is in force on the date of operation of this Act shall remain in force until the expiry of the period of validity of that arrangement, direction or condition.
- (4) Any regulation made under the Vanuatu National Cultural Council Act [Cap. 186] as is in force on the date of operation of this Act relating to the acquisition, maintenance, custody, protection or preservation of public records in so far as such regulation is not inconsistent with this Act, shall be deemed to be a regulation made under this Act and may be amended by regulations made under this Act.

**23. Transfer of powers**

The powers, duties and functions of the Vanuatu National Cultural Council in respect of the preservation, protection, custody, acquisition, maintenance and use by the public of public archives in the National Archives shall, on the commencement of this Act vest in the Archivist.

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**Table of Amendments**

22(1) *Consequential amendments to Cap. 186 are omitted as spent, per Cap. 295.*

Commencement: 9 May 1975



## CHAPTER 88

# DEPOSIT OF BOOKS

JR 36 of 1974

### ARRANGEMENT OF SECTIONS

- |  |                                 |
|--|---------------------------------|
| 1. Interpretation  | 3. Reference to books by public |
| 2. Delivery of copies of books printed or published in Vanuatu | 4. Powers of Minister           |
|  | 5. Offences                     |

## DEPOSIT OF BOOKS

**To provide for the deposit and preservation of copies of books printed or published in Vanuatu and for matters incidental thereto.**

### **1. Interpretation**

In this Act, unless the context otherwise requires –

“book” includes every part or division of a book, pamphlet, periodical, newspaper, magazine, review, gazette, sheet of letterpress, sheet of music, map, plan, plate, chart or table separately printed, or any dustjacket, cover or wrapper pertaining thereto, but does not include any re-issue or new impression or any second or subsequent edition of a book unless such edition contains any addition or alterations either in the letterpress or in the maps, prints, plans or other illustrative materials belonging thereto, or any books which are not intended to be available to or open to inspection by the public at large;

“Minister” means the Minister responsible for culture;

“printed” as applied to books means produced by printing, lithography or any other like processes, or by stencil duplication or any other like process, and “printer” shall be construed accordingly.

### **2. Delivery of copies of books printed or published in Vanuatu**

- (1) The printer of every book printed in Vanuatu and the publisher of every book published in Vanuatu but printed on behalf of the publisher outside Vanuatu shall deliver 1 copy of the book, free of charge, to such person and at such place as the Minister may from time to time direct by order.
- (2) In the case of a book printed in Vanuatu the copy to be delivered to the person designated by the Minister shall be delivered not later than 30 days after the day on which the first copy intended for publication is delivered out of the press, and in the case of a book printed outside Vanuatu, the copy shall be delivered to the person designated by the Minister not later than 1 month after the day on which any copies thereof first become available to the public in Vanuatu.
- (3) The Minister may extend the time for delivery of any book to the person designated by them.
- (4) Every book delivered under the provisions of this section shall be a complete copy of the book, with all maps, illustrations and plates belonging thereto finished and coloured in the same manner as the best copies of the same are produced, and shall be bound, sewed or stitched together, and on the best paper on which the book is printed.
- (5) The person designated by the Minister to receive copies of books shall give or cause to be given to the printer or publisher delivering any copy of a book to him a receipt in writing for the same.

### **3. Reference to books by public**

Books delivered to the person designated by the Minister shall be available for consultation by members of the public, but the public shall not be entitled to remove such books from the library or other depository in which they are normally stored.

**4. Powers of Minister**

- (1) The Minister may by Order exempt from the provisions of section 3 any book or class or description of books either absolutely or subject to such conditions as he may specify.
- (2) The Minister may by Order make such regulations as he may deem necessary for the safe storage of books deposited in accordance with this Act and for all matters necessary for the better carrying out of the provisions and purpose of this Act.

**5. Offences**

Any person who fails to comply with any of the provisions of section 2, other than subsection (5) thereof, shall be guilty of an offence and liable to a fine of VT 10,000, and the court convicting such person of any offence may in addition order him to comply with the provision of section 2 hereof.

*NOT COMMENCED*

**REPUBLIC OF VANUATU**

**COPYRIGHT AND RELATED RIGHTS ACT  
NO. 42 OF 2000**

Arrangement of Sections

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**REPUBLIC OF VANUATU**

*Assent: 29 December 2000*

*Commencement: (not commenced)*

**COPYRIGHT AND RELATED RIGHTS ACT  
NO. 42 OF 2000**

An Act to provide for copyright and related rights.

Be it enacted by the President and the Parliament as follows-

**PART 1**

**PRELIMINARY MATTERS**

**INTERPRETATION**

1. (1) In this Act, unless the contrary intention appears:

'artistic work' means:

- (a) a painting, sculpture, drawing, engraving, lithography, tapestry, photograph and other works of fine art whether of artistic quality or not; or
- (b) a building or a model of a building, whether the building or model is of artistic quality or not; or
- (c) an illustration, map, plan, sketch and a three-dimensional work relating to geography, topography, architecture or science; or
- (d) a work of applied art;

'audiovisual work' means a work that consists of a series of related visual images which impart the impression of motion, with or without accompanying sounds, susceptible to being made visible, and includes the aggregate of the sounds embodied in a sound-track associated with such visual images;

'author' of a work is the individual who has created the work;

'broadcast' means a sound or visual broadcast by wireless transmission, including by satellite, to the public;

'collective work' is a work created by 2 or more individuals at the initiative and under the direction of another person on the understanding that:

- (a) the work will be disclosed by that other person under that person's own name; and
- (b) the identity of the contributing individuals will not be indicated;

'computer' is an electronic device having digital information-processing capabilities;

'computer program' means a set of statements or instructions to be used directly or indirectly by a computer in order to bring about a certain result;

'copyright' in a work comprises the economic rights set out in section 8 and the moral rights set out in section 9 in relation to the work;

'dramatic work' includes:

- (a) a dramatic work, dramatic-musical work, pantomime, choreographic work and other works created for stage productions; and
- (b) a scenario or script for an audiovisual work;

'economic right' means a right mentioned in section 8, 23, 27 or 30;

'expression of indigenous culture' means any way in which indigenous knowledge may appear or be manifested, and includes:

- (a) all material objects; and
- (b) names, stories, histories and songs in oral narratives; and
- (c) dances, ceremonies and ritual performances or practices; and
- (d) the delineated forms, parts and details of designs and visual compositions; and
- (e) specialised and technical knowledge and the skills required to implement that knowledge, including knowledge and skills about biological resources, biological resource use and systems of classification;

'fixation' means the embodiment of:

- (a) sounds or visual images; or
- (b) the representations of sounds or visual images;

in such a manner that they can at a later time be perceived, reproduced or communicated with or without the aid of a device (for example, a recording of a live musical performance);

'indigenous knowledge' means any knowledge:

- (a) that is created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and
- (b) whose nature or use of which has been transmitted from generation to generation; and

(c) that is regarded as pertaining to a particular indigenous person or people in Vanuatu;

'infringement' is any act that infringes copyright or any other right protected under this Act, and includes any act done in relation to an expression of indigenous culture that is taken to be an infringement under section 42;

'infringing copy' means:

(a) in relation to a work or sound recording - a reproduction of the work or sound recording; and

(b) in relation to a broadcast or performance- a reproduction of a fixation of the broadcast or performance;

being a thing the making or importing of which is an infringement of a right protected under this Act;

'literary work' includes:

(a) a book, pamphlet, article, computer program and other writings; and

(b) a speech, lecture, address, sermon and other oral works;

'moral right' means a right mentioned in section 9 or 24;

'musical works' include musical works with or without accompanying words;

'National Cultural Council' means the Vanuatu National Cultural Council established by the Vanuatu National Cultural Council Act [CAP 186];

'owner' of a right protected under this Act has the meaning given by subsections (3) to (5);

'performers' mean singers, musicians, and other persons who sing, deliver, play in or otherwise perform:

(a) dramatic works (including an improvisation) or part of such a work; or

(b) musical works or part of such a work; or

(c) literary works or part of such a work; or

(d) expressions of indigenous culture;

'person' means an individual, a statutory body, a company or any other body corporate or unincorporate;

'photograph' means a product of photography or of a process similar to photography, but does not include a still picture extracted from an audiovisual work;

'producer' of an audiovisual work or a sound recording is the person that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording;

'public lending' means the lending by a public institution, such as a public library or archive, of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes;

'published' means making available to the public in a reasonable quantity for sale, rental or public lending;

'reproduction' is the making of one or more copies of a work or sound recording in any manner or form, including any permanent or temporary storage of the work or sound recording in electronic form;

'rights management information' has the meaning given by section 2;

'right protected under this Act' means:

- (a) the copyright in a work; or
- (b) any other right protected under section 23, 24, 27 or 30;

'sound recording' is any exclusively aural fixation of sounds or representation of sounds regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied, but does not include a fixation of sounds and images, such as the sound track of an audiovisual work;

'work' has the meaning given by sections 5 and 6;

'work of applied art' means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

'work of joint authorship' is a work created by 2 or more authors and in which the contribution of each author is not separate from the contribution of the other author or the contributions of the other authors, but does not include a collective work.

(2)A reference in this Act:

- (a) to the doing of an act in relation to a work or other subject matter is to be read as including a reference to the doing of that act in relation to a substantial part of the work or other subject matter; and

(b) to a reproduction, adaptation or copy of a work is to be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work, as the case may be.

(3) The owner of the copyright in a work is the author of the work or any other person who is the original owner of the economic rights in the work in accordance with section 20 (eg an employer is usually the owner of the copyright in the work of an employee).

(4) However, if the economic rights in a work are owned by another person (eg the author or other original owner has assigned the economic rights to another person), that other person is the owner of the copyright in the work.

(5) The owner of any other right protected under this Act is the person specified in the relevant section as the owner of that right (eg the performer is the owner of the rights protected under section 23).

## **RIGHTS MANAGEMENT INFORMATION**

2. Information is rights management information if it is:

(a) information that identifies any of the following:

(i) the author of a work;

(ii) a work;

(iii) a performer;

(iv) the performance of a performer;

(v) the producer of a sound recording;

(vi) a sound recording;

(vii) a broadcaster;

(viii) a broadcast;

(ix) the owner of any right protected under this Act; or

(b) information about the terms and conditions of use of a work, a performance, a sound recording or a broadcast and any numbers or codes that represent such information;

and is information that:

(c) is attached to a copy of a work, a fixed performance, a sound recording or a fixed broadcast; or

(d) appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast.

### **APPLICATION**

3. This Act applies to works, performances, sound recordings, broadcasts and expressions of indigenous culture that:

- (a) are created on or after the commencement of this Act; or
- (b) were in existence before that commencement.

### **CONTRACTUAL RIGHTS NOT AFFECTED**

4. This Act does not affect contracts or agreements made before the commencement of this Act relating to works, performances, sound recordings, broadcasts or expressions of indigenous culture.

### **WORKS PROTECTED**

5. (1) work is an original intellectual creation.

(2) Without limiting subsection (1), each of the following is a work:

- (a) an artistic work;
- (b) a literary work;
- (c) a dramatic work;
- (d) a musical work;
- (e) an audiovisual work;
- (f) a collective work.

(3) Works are protected by the sole fact of their creation and irrespective of their mode or form of expression, content, quality or purpose.

### **DERIVATIVE WORKS**

6. The following are also to be protected as works:

- (a) translations, adaptations, arrangements and other transformations or modifications of works;
- (b) collections of works, collections of data sets (whether in machine readable or other form), and collections of expressions of indigenous culture if the

collections are original by reason of the selection or arrangement of their contents.

## **CERTAIN SUBJECT MATTER NOT PROTECTED**

7. Despite sections 5 and 6, any idea, procedure, system, method of operation, concept, principle, discovery or mere data, (even if expressed, described, explained, illustrated or embodied in a work) is not a work and is not protected under this Act.

## **PART 2**

### **COPYRIGHT**

#### **ECONOMIC RIGHTS**

8. (1) The owner of the copyright in a work has the exclusive right to carry out or to authorize the following acts in relation to the work:

- (a) to reproduce the work in any manner or form;
- (b) to publish the work;
- (c) to perform or display the work in public;
- (d) to broadcast the work;
- (e) to make an adaptation, arrangement or other transformation of the work;
- (f) to translate the work;
- (g) to cause the work to be transmitted to subscribers to a communications service;
- (h) to distribute the work to the public by sale, rental, public lending or otherwise;
- (i) to enter into a commercial rental arrangement in respect of an audiovisual work, a work reproduced in a sound recording or a musical work in the form of a notation;
- (j) in the case of a computer program - to enter into a commercial rental arrangement in respect of the program;
- (k) in the case of an artistic work - to include the work in a television broadcast;
- (l) to communicate the work in any other way to the public;
- (m) to import copies of the work.

(2) The rental rights under paragraph (1)(j) do not apply unless the computer program is the essential object of the rental or lending.

### **MORAL RIGHTS**

9. (1) The author of a work has the moral rights set out in subsection (2) in relation to the work independently of his or her economic rights in the work, (including when the author is no longer the owner of the economic rights in the work).

(2) The moral rights are:

(a) to have the author's name indicated prominently on copies of the work and in connection with any public use of the work, as far as practicable; and

(b) to not have the author's name indicated on copies of the work and in connection with any public use of the work; and

(c) to use a pseudonym; and

(d) to object to:

(i) any distortion, mutilation or other modification of the work; or

(ii) any other action in relation to the work;

if it would be prejudicial to the author's honour or reputation.

(3) Moral rights are not transmissible during the life of the author. However, after an author dies the right to exercise moral rights is transmissible by testamentary disposition or by operation of law.

(4) An author may waive all or any of his or her moral rights.

(5) A waiver must:

(a) be in writing; and

(b) specify the right or rights waived; and

(c) specify the circumstances in which the waiver applies, including the nature and extent of the modification or other action in respect of which the right is waived.

(6) Following the death of the author, the person upon whom the author's moral rights have devolved has the right to waive those rights.

### **PART 3**

#### **ACTS NOT CONSTITUTING INFRINGEMENT OF COPYRIGHT IN WORKS**

## **PRIVATE REPRODUCTION FOR PERSONAL PURPOSES**

10. (1) Subject to subsection (2), an individual may reproduce a published work in a single copy exclusively for his or her own personal purposes and the reproduction is not an infringement of the copyright in the work.

(2) An individual must not reproduce the following:

- (a) a work of architecture in the form of a building or other construction;
- (b) the whole or a substantial part of a book or musical work in the form of notation;
- (c) the whole or a substantial part of a database in digital form;
- (d) a computer program, except as provided for in section 16;
- (e) any work if the reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the owner of the copyright.

## **TEMPORARY REPRODUCTION**

11. A temporary reproduction of a work is not an infringement of the copyright in the work if:

- (a) the reproduction is made in the process of a digital transmission of the work or is an act of making a digitally stored work perceptible; and
- (b) the person is lawfully entitled to make the transmission or the making perceptible of the work.

## **QUOTATION**

12. (1) The reproduction of a short part of a published work in the form of a quotation is not an infringement of the copyright in the work if the reproduction:

- (a) is compatible with fair practice; and
- (b) does not exceed the extent justified by the purpose.

(2) The quotation must be accompanied by:

- (a) an indication of its source; and
- (b) the name of the author if his or her name appears in the work from which the quotation is taken.

## **REPRODUCTION FOR EDUCATIONAL OR LEGAL PURPOSES**

13. (1) The reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, is not an infringement of the copyright in the work if:

- (a) the reproduction is compatible with fair practice; and
- (b) the reproduction does not exceed the extent justified by the purpose; and
- (c) a collective licence to reproduce the work is not available to the educational institution concerned.

(2) The source of the work reproduced and the name of the author must be indicated as far as practicable on all copies made under subsection (1).

(3) A fair dealing with a work for the purpose of research or study does not constitute an infringement of the copyright in the work.

(4) The copyright in a work is not infringed by anything done for the purposes of a judicial proceeding or of a report of a judicial proceeding.

(5) A fair dealing with a work does not constitute an infringement of the copyright in the work if it is for the purpose of the giving of professional advice by a legal practitioner or patent attorney.

## **REPRODUCTION BY LIBRARIES AND ARCHIVES**

14. (1) This section applies to a library or archive that does not operate for commercial gain.

(2) The reproduction of a work in a single copy by the library or archive is not an infringement of the copyright in the work if:

- (a) the work reproduced is a published article or a short extract of a work; and
- (b) the purpose of the reproduction is to satisfy the request of an individual; and
- (c) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research; and
- (d) a collective licence to reproduce the work is not available to the library or archive.

(3) The reproduction of a work in a single copy by a library or archive is not an infringement of the copyright in the work if:

- (a) the copy is made in order:
  - (i) to preserve a copy of the work; or

(ii) to replace a copy of the work which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive; and

(b) it is impossible to obtain such a copy under reasonable conditions.

**REPRODUCTION, BROADCASTING AND OTHER COMMUNICATION TO THE PUBLIC FOR INFORMATION PURPOSES**

15. (1) If:

(a) a person:

(i) reproduces a work or broadcast referred to in subsection (3), (4) or (5) in a newspaper or periodical publication; or

(ii) broadcasts or communicates in any other way to the public such a work or broadcast; and

(b) the person indicates the source of the subject matter and the name of the author as far as practicable;

the reproduction, broadcast or other communication of the work or broadcast is not an infringement of copyright.

(2) Subsection (1) does not apply if the right to authorise the reproduction, broadcasting or other communication to the public of the work is expressly reserved by the owner of the copyright in the work:

(a) on the copies of the work; or

(b) in connection with broadcasting or other communication to the public of the work.

(3) A person may reproduce:

(a) an article published in a newspaper or periodical publication on a topic of current interest; or

(b) a broadcast on a topic of current interest.

(4) A person may reproduce:

(a) a political speech, a lecture, address, sermon or a work of a similar nature delivered in public; or

(b) a speech delivered during legal proceedings;

(c) to the extent justified by the purpose of providing current information.

(5) A person may reproduce for the purpose of reporting current events short excerpts of a work seen or heard in the course of such events to the extent justified by the purpose.

(6) A fair dealing with a work does not constitute an infringement of the copyright in the work if:

(a) it is for the purpose of criticism or review, whether of that work or of another work; and

(b) an acknowledgment of the work and the author as far as practicable is made.

### **REPRODUCTION AND ADAPTATION OF COMPUTER PROGRAMS**

16. (1) The lawful owner of a copy of a computer program may reproduce a single copy of the computer program, or make an adaptation of the computer program, if the copy or adaptation is necessary for:

(a) the use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or

(b) archival purposes; or

(c) replacement of the lawfully owned copy of the computer program if that copy is lost, destroyed or rendered unusable.

(2) The reproduction or adaptation of a computer program in accordance with subsection (1) is not an infringement of the copyright in the computer program.

(3) A copy or adaptation of a computer program must not be used for any purpose other than a purpose mentioned in subsection (1).

(4) A copy or adaptation of a computer program must be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

### **IMPORTATION FOR PERSONAL PURPOSES**

17. An individual may import a copy of a work for his or her own personal purposes and the importation is not an infringement of the copyright in the work.

### **DISPLAY OF WORKS**

18. (1) A person may display in public the original or copies of a work if:

(a) the display is made other than by means of an audiovisual work, slide, television image or otherwise on screen; and

(b) either:

(i) the work has been published; or

(ii) the original or the copy of the work displayed has been sold, given away or otherwise transferred to another person by the author or his or her successor in title.

(2) The display of the work in accordance with subsection (1) is not an infringement of the copyright in the work.

(3) The display in public of the original or copies of a work by means of an audiovisual work, slide, television image or otherwise on screen is not an infringement of copyright in the work if its inclusion in such is only incidental to the principal matters being represented.

#### **PART 4**

### **DURATION, NATURE AND ASSIGNMENT OF COPYRIGHT IN WORKS**

#### **DURATION OF COPYRIGHT PROTECTION**

19. (1) The copyright in a work is protected for the period set out in the Table.

<b>COPYRIGHT PROTECTION PERIOD TABLE</b>		
<b>Item</b>	<b>Kind of work</b>	<b>Period of protection of economic and moral rights</b>
1.	Work of joint authorship	During the life of the last surviving author and for 50 years after his or her death
2.	Collective work (other than an work of applied art) and an audiovisual work	For 50 years on and after the date on which the work: was made; or first made available to the public; first published; whichever date is the latest

3.	Work published anonymously or under a pseudonym	For 50 years on and after the date on which the work: (a) was made; or (b) first made available to the public; (c) first published; whichever date is the latest  See also subsection (2)
4.	Work of applied art	25 years on and after the making of the work
5.	Any other work	During the lifetime of the author and for 50 years after his or her death.

(2) If the author's identity is revealed or is no longer in doubt before the expiration of the 50 year period, item 1 or 5 of the Table applies, as the case requires.

(3) A period provided for in the Table runs to the end of the calendar year in which it would otherwise expire.

### **ORIGINAL OWNERSHIP OF ECONOMIC RIGHTS**

20. (1) Subject to this section, the author of a work is the original owner of the economic rights in the work.

(2) The co-authors of a work of joint authorship are the original owners of the economic rights. However if:

- (a) a work of joint authorship consists of parts that can be used separately; and
- (b) the author of each part can be identified;

the author of each part is the original owner of the economic rights in the part that he or she has created.

(3) The person who initiated and directed the creation of a collective work is the original owner of the economic rights.

(4) If a person creates a work in the course of his or her employment, the employer of that person is the original owner of the economic rights unless provided otherwise in a contract.

(5) Subject to subsections (6) and (7), the producer of an audiovisual work is the original owner of the economic rights unless provided otherwise in a contract.

(6) However, the co-authors (if any) of the audiovisual work and the authors of the pre-existing works (if any) included in or adapted for the making of the audiovisual work maintain their economic rights in their contributions or pre-existing works.

(7) Such rights are maintained to the extent that those contributions or pre-existing works can be the subject of acts covered by economic rights separately from the audiovisual work.

### **PRESUMPTION OF AUTHORSHIP AND OF REPRESENTATION OF THE AUTHOR**

21. (1) An individual whose name is indicated as the author on a work in the usual manner is presumed to be the author of the work in the absence of proof to the contrary.

(2) Subsection (1) applies even if the name is a pseudonym and the pseudonym leaves no doubt as to the identity of the author.

(3) In the case of an anonymous or pseudonymous work, the publisher whose name appears on the work:

(a) is presumed to represent the author in the absence of proof to the contrary; and

(b) in this capacity, is entitled to exercise and enforce the moral and economic rights of the author.

(4) The presumption in subsection (3) ceases to apply when the author reveals his or her identity.

### **ASSIGNMENT AND LICENSE OF AUTHORS' ECONOMIC RIGHTS**

22. (1) Economic rights are assignable in whole or in part, and may also be subject to a licence.

(2) An assignment of any economic right:

(a) must be in writing signed by the assignor and the assignee; and

(b) does not include the assignment of any rights not explicitly referred to in the assignment.

(3) A licence to do an act in relation to a work subject to authorisation by the owner of the copyright in the work:

(a) must be in writing signed by the licensor and the licensee; and

(b) does not include any other act not explicitly referred to in the licence.

## **PART 5**

**PROTECTION OF PERFORMERS, PRODUCERS OF SOUND  
RECORDINGS AND BROADCASTING ORGANIZATIONS**

**Division 1 - Performers**

**ACTS REQUIRING AUTHORIZATION OF PERFORMERS**

23. (1) A performer has the exclusive right to carry out or to authorize any of the following acts:

- (a) to broadcast or communicate in any way to the public:
  - (i) his or her live performance; or
  - (ii) a fixation of his or her performance if the fixation has been made under section 32 or has been made without the authorisation of the performer;
- (b) to fixate his or her unfixed performance;
- (c) to reproduce directly or indirectly a fixation of his or her performance in any manner or form;
- (d) to make available to the public for the first time a fixation of his or her performance, or copies of it, through sale or other transfer of ownership;
- (e) to rent to the public a fixation of his or her performance, or copies of it, irrespective of the ownership of the copy rented;
- (f) to make available to the public his or her fixed performance, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

and is the owner of the rights protected under this section.

(2) A performer does not have the exclusive right referred to in paragraph (1)(a) if the broadcasting or other communication is a rebroadcasting made or authorised by the organisation initially broadcasting the performance.

(3) Subsection (1) does not apply if the performer has authorized the incorporation of his or her performance in an audiovisual fixation.

**PERFORMERS' RIGHTS IN RELATION TO LIVE AURAL  
PERFORMANCES AND PERFORMANCES FIXED IN PHONOGRAMS**

24. (1) The rights provided for under this section apply independently of the performer's rights provided for under section 23 even after the transfer of those rights to another person.

(2) The performer has in respect of his or her live aural performances and performances fixed in phonograms the right:

(a) to claim to be identified as the performer of his or her performances, unless the manner of the use of the performance makes it impossible; and

(b) to object to any distortion, mutilation or other modification of his or her performances that would be prejudicial to his or her reputation.

(3) The rights referred to in this section are not transmissible during the life of the performer. However, after a performer's death the right to exercise such rights is transmissible by testamentary disposition or by operation of law.

(4) The performer may waive all or any such rights.

(5) A waiver must:

(a) be in writing; and

(b) specify the right or rights waived; and

(c) specify the circumstances in which the waiver applies.

(6) Following the death of the performer, the person upon whom or which the performer's rights under this section have devolved has the right to waive the rights.

#### **PERIOD OF PROTECTION OF PERFORMERS' RIGHTS**

25. The rights under section 23 and 24 are protected until the end of the fiftieth calendar year following:

(a) the year in which the performance was fixed in a phonogram; or

(b) if this did not happen - the end of the year in which the performance took place.

#### **AGREEMENT FOR BETTER TERMS AND CONDITIONS**

26. A performer has the right to enter into agreements relating to his or her performances on terms and conditions that are more favourable than those provided for in this Division.

#### **Division 2 -Sound recordings**

#### **ACT REQUIRING AUTHORIZATION OF PRODUCERS OF SOUND RECORDING**

27. A producer of a sound recording has the exclusive right to carry out or to authorize any of the following acts:

- (a) to reproduce a sound recording in any manner or form;
- (b) to import copies of the sound recording;
- (c) to make available to the public by sale or other transfer of ownership, the original or copies of the sound recording, being a sound recording that has not already been subject to a distribution authorized by the producer;
- (d) to rent to the public a copy of the sound recording, irrespective of the ownership of the copy rented;
- (e) the making available to the public the sound recording, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them;

and is the owner of the rights protected under this section.

### **PERIOD OF PROTECTION FOR PRODUCERS OF SOUND RECORDINGS**

28. The rights under section 27 are protected from the publication of the sound recording until:

- (a) the end of the fiftieth calendar year following the year of publication; or
- (b) if the sound recording has not been published - from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

### **EQUITABLE REMUNERATION FOR USE OF SOUND RECORDING**

29. (1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is:

- (a) used directly for broadcasting or other communication to the public; or
- (b) is publicly performed;

the user of the sound recording must pay to the producer of the sound recording an amount for the performer or performers and the producer.

(2) The producer must pay half of the amount received under subsection (1) to the performer or performers unless otherwise agreed between the performers and the producer.

(3) The right to an equitable remuneration under this section subsists:

- (a) from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication; or

(b) if the sound recording has not been published - from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

### **Division 3 - Broadcasting organisations**

#### **ACTS REQUIRING AUTHORIZATION OF BROADCASTING ORGANISATIONS**

30. A broadcasting organisation has the exclusive right to carry out or to authorize the following acts:

- (a) to rebroadcast its broadcast;
- (b) to communicate to the public its broadcasts;
- (c) to fixate its broadcast;
- (d) to reproduce a fixation of its broadcasts;

and is the owner of the rights protected under this section.

#### **PERIOD OF PROTECTION FOR BROADCASTING ORGANISATIONS**

31. The rights under section 30 are protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.

### **Division 4 - Other matters**

#### **LIMITATIONS ON PROTECTION**

32. (1) Sections 23, 24, 27 and 30 do not apply if the acts referred to in those sections are related to:

- (a) using short excerpts for reporting current events to the extent justified by the purpose of providing current information; or
- (b) reproduction solely for scientific research; or
- (c) reproduction solely for the purpose of teaching activities, except for performances and phonograms, which have been published as teaching or instructional materials; or
- (d) a work and are not an infringement of copyright in the work.

#### **ASSIGNMENT AND LICENCES OF ECONOMIC RIGHTS**

33. (1) Economic rights under this Part are assignable in whole or in part, and may also be subject to a licence.

- (2) An assignment of any economic right:
- (a) must be in writing signed by the assignor and the assignee; and
  - (b) does not include the assignment of any rights not explicitly referred to in the assignment.
- (3) A licence to do an act in relation to a work subject to authorisation by the owner of the copyright in the work:
- (a) must be in writing signed by the licensor and the licensee; and
  - (b) does not include any other act not explicitly referred to in the licence.

## **PART 6**

### **ENFORCEMENT OF RIGHTS AND PROTECTION REQUIREMENTS**

#### **CIVIL REMEDIES**

34. (1) The Supreme Court has jurisdiction in respect of civil matters arising under this Act.
- (2) The owner of the copyright in a work or the owner of any other right protected under this Act may bring an action for an infringement of the copyright or that other right and is entitled to payment by the infringer:
- (a) of damages for the prejudice and loss suffered as a consequence of the infringement; and
  - (b) of expenses caused by the infringement, including reasonable legal costs.
- (3) The Court is to determine the amount of damages and may take into account:
- (a) the importance of the material and moral prejudice suffered by the owner of the right; and
  - (b) the amount of the infringer's profits attributable to the infringement.
- (4) The Court also has the following powers:
- (a) to grant injunctions to prohibit the infringement of copyright in any work or any other right protected under this Act;
  - (b) to order the impounding of any infringing copies and their packaging;
  - (c) to order the destruction or other reasonable disposition of any infringing copies and their packaging in such a manner as to avoid harm to the owner of the copyright or other right;

(d) to order the impounding of the implements that could be used for making infringing copies, and the documents, accounts or business papers referring to such copies;

(e) to order the destruction of such implements in such a manner as to minimize the risk of further infringements;

(f) to make such other orders as the Court considers necessary in the circumstances.

(5) The Court must not make an order under subsection (4) in relation to infringing copies and their packaging which were acquired by a person in good faith.

(6) An exclusive licensee of a right protected under this Act may bring proceedings under this section for an infringement of that right as if the exclusive licence were an assignment of that right by the owner and the exclusive licensee were the assignee.

(7) The author of a work or a performer may bring an action for damages under this section for infringement of his or her moral right rights in relation to his or her work or performance, as the case requires.

(8) The Director of Customs may in accordance with the relevant provisions of the Customs Act No. 15 or 1999 seize infringing copies and implements mentioned in paragraph (4)(d) and deal with them in accordance with that Act.

## **OFFENCE**

35. (1) The Supreme Court has jurisdiction in respect of criminal matters under this Act.

(2) A person who intentionally and for profit making purposes infringes a right protected under this Act is guilty of an offence punishable on conviction by a fine not exceeding 2,000,000 Vatu or imprisonment for not more than 2 years, or both.

## **ACTIONS IN RELATION TO RIGHTS MANAGEMENT INFORMATION**

36. (1) If:

(a) a person without authority removes or alters any electronic rights management information from any work, performance, sound recording or broadcast; or

(b) the person:

(i) without authority distributes, imports for distribution, broadcasts, communicates to the public or makes available to the public any work, performance, sound recording or broadcast; and

(ii) knows that electronic rights management information has been removed or altered without authority in relation to the work, performance, sound recording or broadcast;

the person is guilty of an offence punishable on conviction by a fine not exceeding 1,000,000 Vatu or a term of imprisonment not exceeding one year, or both.

(2) Section 34 applies in relation to an act mentioned in subsection (1).

(3) For the purposes of section 34:

(a) an act mentioned in subsection (1) is taken to be an infringement of a right protected under this Act; and

(b) any work, performance, sound recording or broadcast from which rights management information has been removed, or in which such information has been altered, is taken to be an infringing copy.

### **ABUSES OF TECHNICAL MEANS OF PROTECTION**

37. (1) If a person manufactures or imports for sale or rental any device or means that:

(a) is specifically designed or adapted to circumvent any other device or means intended to prevent or restrict reproduction of a work, sound recording or broadcast or to impair the quality of any copies made; or

(b) can enable or assist people to receive an encrypted program that is broadcast or otherwise communicated to the public, including by satellite, being people who are not entitled to receive the program;

the person is guilty of an offence punishable on conviction by a fine not exceeding 1,000,000 Vatu or a term of imprisonment not exceeding one year, or both.

(2) Section 34 applies in relation to an act mentioned in subsection (1).

(3) For the purposes of section 34:

(a) an act mentioned in subsection (1) is taken to be an infringement of a right protected under this Act; and

(b) any device or means mentioned in subsection (1) is taken to be an infringing copy.

### **AFFIDAVIT EVIDENCE**

38. (1) This section applies at the trial of a proceeding if the proceeding is:

(a) a civil action brought under this Act; or

(b) a prosecution for an offence under this Act.

- (2) Evidence in the proceeding may be given by affidavit if the evidence is that:
- (a) at a particular time, a right protected under this Act subsisted in the work or other subject-matter to which the proceeding relates; or
  - (b) at a particular time, that right in that work or subject-matter was owned by, or exclusively licensed to, a particular person; or
  - (c) at a particular time, that right in that work or subject-matter was not owned by, or exclusively licensed to, a particular person; or
  - (d) a particular act was done without the authority of the owner of that right, or of the exclusive licensee of that right, in that work or subject-matter.
- (3) However, if a party to the proceeding wants in good faith to cross examine the person who made the affidavit with respect to the matters in the affidavit, the affidavit may not be used in the proceeding unless:
- (a) the person appears as a witness for such cross-examination; or
  - (b) the Supreme Court, in its discretion, permits the affidavit to be used without the person appearing.

### **PROTECTION REQUIREMENTS FOR WORKS**

39. (1) This Act applies to:
- (a) works of authors who are citizens of, or have their habitual residence in, Vanuatu; and
  - (b) works first published in Vanuatu irrespective of the nationality or residence of their authors; and
  - (c) works first published in another country and also published in Vanuatu within 30 days, irrespective of the nationality or residence of their authors; and
  - (d) audiovisual works if the producer of such works has his or her headquarters or habitual residence in Vanuatu; and
  - (e) works of architecture erected in Vanuatu and other artistic works incorporated in a building or other structure located in Vanuatu.
- (2) This Act also applies to works that are eligible for protection in Vanuatu by virtue of and in accordance with international conventions or other international agreements to which Vanuatu is a party.

### **PROTECTION REQUIREMENTS FOR PERFORMERS, SOUND RECORDINGS AND BROADCASTERS**

40. (1) This Act applies to:

- (a) performers who are citizens of Vanuatu; and
- (b) performers who are not citizens of Vanuatu but whose performances:
- (c) take place in Vanuatu; or
- (d) are incorporated in sound recordings that are protected under this Act; or
- (e) have not been fixed in a sound recording, but are included in broadcasts eligible for protection under this Act.

(2) This Act applies to:

- (a) sound recordings if the producers of the recordings are citizens of Vanuatu; and
- (b) sound recordings first fixed in Vanuatu; and
- (c) sound recordings first published in Vanuatu.

(3) This Act applies to:

- (a) broadcasts of broadcasting organizations if the headquarters of the organisation are situated in Vanuatu; and
- (b) broadcasts transmitted from transmitters situated in Vanuatu.

(3) This Act also applies to performers, producers of sound recordings and broadcasting organizations that are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which Vanuatu is a party.

## **PART 7**

### **EXPRESSIONS OF INDIGENOUS CULTURE**

#### **OFFENCE IN RELATION TO EXPRESSIONS OF INDIGENOUS CULTURE**

41. (1) If a person does an act of a kind mentioned in subsection 8(1) or 23(1) in relation to an expression of indigenous culture (for example, reproduces an indigenous carving) and the person:

- (a) is not one of the custom owners of the expression; or
- (b) has not been sanctioned or authorised by the custom owners to do the act in relation to the expression; or
- (c) has not done the act in accordance with the rules of custom;

the person is guilty of an offence punishable on conviction by a fine not exceeding 1,000,000 Vatu or a term of imprisonment not exceeding one year, or both.

(2) It is a defence to a prosecution of an offence against subsection (1) if the act concerned:

- (a) related to use exclusively for personal purposes; or
- (b) related to using short excerpts for reporting current events to the extent justified by the purpose of providing current information; or
- (c) related to use solely for the purpose of face to face teaching; or
- (d) is an act that is not an infringement of copyright under Part 3 or of a right protected under Part 5 (see section 32); or
- (e) is an act that has been authorised by the National Cultural Council or the National Council of Chiefs.

(3) To avoid doubt, this section applies:

- (a) in relation to an act whether or not the person did the act for profit making purposes; and
- (b) in relation to an expression of indigenous culture regardless of when that expression first came into existence.

#### **CIVIL REMEDIES IN RELATION TO EXPRESSIONS OF INDIGENOUS CULTURE**

42. (1) Section 34 applies in relation to a person ('the infringer') if the person does an act of a kind mentioned in subsection 8(1) or 23(1) in relation to an expression of indigenous culture (for example, reproduces an indigenous carving) and the person:

- (a) is not one of the custom owners of the expression; or
- (b) has not been sanctioned or authorised by the custom owners to do the act in relation to the expression; or
- (c) has not done the act in accordance with the rules of custom;

(2) The custom owners of the expression may institute proceedings under section 34 against the infringer for an infringement of copyright or a right protected under section 23, and for the purposes of those proceedings:

- (a) the custom owners of the expression are taken to be the owners of the copyright in the expression (whether or not copyright exists in the expression) or the right protected under section 23; and

(b) the infringer's act is taken to be an infringement of copyright or that other right; and

(c) any copy of the expression is taken to be an infringing copy.

(3) The custom owners of the expression may request the National Cultural Council or the National Council of Chiefs to institute proceedings on their behalf.

(4) If it is not possible to identify the custom owners or there is a dispute about ownership, the National Cultural Council or the National Council of Chiefs may institute proceedings under section 34 as if it were the owner of the copyright or other right. Any damages awarded to the National Cultural Council or the National Council of Chiefs must be used for the purposes of indigenous cultural development.

(5) Proceedings cannot be instituted under section 34 by the custom owners, the National Cultural Council or the National Council of Chiefs if the act concerned:

(a) related to use exclusively for personal purposes; or

(b) related to using short excerpts for reporting current events to the extent justified by the purpose of providing current information; or

(c) related to use solely for the purpose of face to face teaching.

(6) To avoid doubt proceedings may be brought under section 34:

(a) in relation to an act whether or not the person did the act for profit making purposes; and

(b) in relation to an expression of indigenous culture regardless of when that expression first came into existence.

(7) The source of any identifiable expression of indigenous culture must be indicated in an appropriate manner and in conformity with fair practice:

(a) in all printed publications of the expression; and

(b) in connection with any communication to the public of the expression;

(c) by mentioning the community or place from where the expression has been derived.

(8) Nothing in this section is to be taken to prevent a particular indigenous person of Vanuatu from relying on any other provision of this Act to enforce:

(a) the copyright in any of his or her works; or

(b) any other right protected under this Act.

(9)The National Cultural Council may issue written guidelines for the purposes of this section and section 41.

## **PART 8**

### **MISCELLANEOUS**

#### **APPLICATION OF INTERNATIONAL TREATIES**

43. (1) The provisions of any international treaties in respect of copyright and related rights protected under this Act to which Vanuatu is a party apply to matters dealt with in this Act, and such provisions prevail in the case of conflict with provisions of this Act.

(2) However, subsection (1) does not apply to sections 41 and 42.

#### **REGULATIONS**

44. (1) The Minister may, by Order in writing, make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may:

(a) prescribe fair dealings with works that do not constitute an infringement of the copyright in the work; and

(b) prescribe fair dealings in relation to performances, sound recordings or broadcasts that do not constitute an infringement of a right protected under Part 5.

#### **COMMENCEMENT**

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

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