

## CHAPTER 146

### REPRESENTATION OF THE PEOPLE

**To provide for registration of voters and elections to Parliament.**

#### PART 1 – PRELIMINARY

##### 1. Interpretation

In this Act unless the context otherwise requires –

a person shall be related to a person if he is that person's spouse, or the brother, sister, uncle, aunt or lineal ancestor or descendant of that person or his spouse;

“constituency” means one of the constituencies into which Vanuatu is divided by Order made by the President acting on the advice of the Electoral Commission;

“election” includes a by-election;

“election offence” means any offence provided for under this Act and includes an offence under section 53;

“Electoral Commission” means the Electoral Commission established by article 18 of the Constitution;

“electoral list” means the electoral list drawn up in accordance with Parts 5, 6 and 7;

“electoral officer” means the Principal Electoral Officer and officers of the Electoral Office, a registration officer, an assistant registration officer, a returning officer or a polling clerk;

“polling day” means the day fixed for an election or the commencement of an election in accordance with section 21;

“Principal Electoral Officer” means the Principal Electoral Officer established by article 19 of the Constitution and includes a deputy principal electoral officer;

“registration officer” means a registration officer appointed under section 6(1) and includes an assistant registration officer.

#### PART 2 – PRINCIPAL ELECTORAL OFFICER

##### 2. Organisation and administration of elections by the Principal Electoral Officer

- (1) The Principal Electoral Officer shall be responsible for the Organisation and administration of elections subject to the powers of the Electoral Commission under the Constitution and this Act.
- (2) There shall continue to be an Electoral Office which shall be a public office and which shall be supervised by the Principal Electoral Officer.
- (3) There shall be one or more deputy Principal Electoral Officers responsible to the Principal Electoral Officer, who shall be public servants.
- (4) The Public Service Commission shall second to the Electoral Office such staff as in the opinion of the Principal Electoral Officer may be required for the effective discharge of his functions.
- (5) The Electoral Office shall be in Port Vila and the Principal Electoral Officer may establish branch offices.

##### 3. Responsibilities of Principal Electoral Officer

- (1) The Principal Electoral Officer shall be responsible for the registration of electors and the conduct of elections.
- (2) The Principal Electoral Officer shall in particular be responsible for –
  - (a) control of electoral expenditure;
  - (b) dividing Vanuatu into registration areas for the purpose of registering voters;
  - (c) instruction and supervision of registration officers;
  - (d) transport, travel and equipment for registration officers;
  - (e) the design and printing of electoral cards, forms and other materials;
  - (f) arrangements for voters resident overseas;
  - (g) production, distribution and publication of electoral lists;
  - (h) providing information to voters and the general public;
  - (i) provision and distribution and security of ballot papers, ballot boxes and equipment for polling stations;

- (j) preparation and distribution of instructions for returning officers, and polling clerks;
- (k) maintenance, preservation and security of all electoral records;
- (l) preparation of the electoral report required under section 39(1);
- (m) such other duties as may from time to time be assigned by the Electoral Commission in accordance with its powers under the Constitution and this Act.

### **PART 3 – POLLING DISTRICTS**

[OMITTED]

### **PART 4 – OVERSEAS POLLING STATIONS**

[OMITTED]

### **PART 5 – ELECTORAL LISTS**

[OMITTED]

### **PART 6 – REGISTRATION OF OVERSEAS VOTERS**

[OMITTED]

### **PART 7 – ELECTORAL CARDS**

[OMITTED]

### **PART 8 – CHANGES TO AND COMPLETION OF ELECTORAL LISTS**

[OMITTED]

### **PART 9 – (*Repealed*)**

### **PART 10 – ESTABLISHING ELECTORAL ROLLS**

[OMITTED]

### **PART 11 – ELECTIONS**

#### **21. Polling day**

Subject to article 28(4) of the Constitution polling day shall be a day fixed for an election or the commencement of an election by the President acting on the advice of the Prime Minister given after consultation with the Electoral Commission and the Principal Electoral Officer.

#### **22. By-elections**

When a Parliamentary seat becomes vacant in a constituency for any reason except dissolution of Parliament a by-election shall be held to fill that vacancy and no by-election shall be held for any other seat in that constituency by reason of such vacancy.

### **PART 12 – CANDIDATES FOR ELECTION**

#### **23. Persons disqualified from being Parliamentary candidates**

(1) The following persons shall not be qualified as candidates for election to Parliament –

- (a) the President of the Republic;
- (b) judges and magistrates;
- (c) members of the police force;
- (d) members of the National Council of Chiefs, any member of the District Council of Chiefs, Island Council of Chiefs and Area Council of Chiefs, who holds the position of chairman, vice-chairman, secretary or treasurer of these councils;
- (e) public servants;
- (f) members of the teaching service; and
- (g) members of the Citizenship Commission.

- (2) The Electoral Commission may after consultation with the Council of Ministers add other persons or classes of persons to subsection (1).

**24. Eligibility of candidates**

- (1) Subject to section 23 a person shall be eligible to stand as a candidate for election to Parliament if he –
- (a) is not disqualified from voting;
  - (b) has not received a sentence including a suspended sentence of a term or terms of imprisonment which has not ended;
  - (c) is not an undischarged bankrupt;
  - (d) has attained 25 years of age; and
  - (e) is a citizen.

**25. Declaration of candidature**

- (1) Not later than a date declared by the Electoral Commission by Order every candidate for election shall lodge with the Electoral Office –
- (a) a declaration of candidature signed by him in the form and containing the particulars provided for in Part 1 of Schedule 3 which shall include a declaration that the candidate is eligible as provided for in section 24;
  - (b) a deposit of VT 50,000;
  - (c) 2 full face photographs of himself;
  - (d) except for a candidate sponsored by a political party having a symbol approved by the Electoral Commission, an illustration on paper of his personal electoral symbol.
- (2) A declaration of candidature shall also contain the signatures of not less than five sponsors being persons registered to vote in the constituency of the candidate and not being related to the candidate.
- (3) No person may lodge a declaration of his own candidature –
- (a) for more than 1 constituency; or
  - (a) if he is a member of Parliament in the case of a by-election.
- (4) A deposit paid under subsection (1)(b) shall not be refunded.
- (5) The Principal Electoral Officer when receiving a declaration of candidature shall give a receipt to the candidate in the form contained in Part 2 of Schedule 3.
- (6) The Principal Electoral Officer shall within 24 hours of the day declared by the Electoral Commission under subsection (1) make a list of the candidates named in the declarations of candidature received by him and send copies to the Electoral Commission.
- (7) The Principal Electoral Officer shall send with the list referred to in subsection (6) such comments on the validity of the candidature of any person named in the list as he shall consider fit.

**26. Declaration of invalidity of candidature by Electoral Commission**

- (1) When a declaration of candidature has been delivered and a deposit paid in compliance with section 25 the candidate shall stand sponsored for election unless and until the Electoral Commission declares the candidature invalid or evidence is given to the satisfaction of the Electoral Commission that the candidate has died, or the candidate withdraws by notice in writing given to the Principal Electoral Officer.
- (2) The Electoral Commission shall only declare a candidature invalid if –
- (a) the candidate or his sponsors do not have the necessary qualifications or are disqualified; or
  - (b) the declaration of candidature is not sponsored as provided in section 25(2).
- (3) Where the Electoral Commission decides that a candidature is invalid it shall so endorse the declaration of candidature giving reasons for the decision.
- (4) The decision of the Electoral Commission that a candidature is valid or invalid shall be final and shall not be questioned in any proceedings whatsoever.
- (5) Nothing in this section shall prevent the Supreme Court declaring the election of a candidate void after the election on the grounds that he was not qualified or was disqualified for election.

**27. Correction of technical defects and late candidatures**

- (1) Notwithstanding the provisions of section 26 the Electoral Commission shall where it considers that a declaration of candidature is invalid by reason of a bona fide error not less than 14 days before polling day request the candidate to resubmit a valid declaration not less than 72 hours after such request.
- (2) Where a declaration of candidature sponsored by a political party is declared invalid by the Electoral Commission or a candidate dies not less than 14 days before polling day another candidate sponsored by the same party may lodge a declaration of candidature provided that he does so within 72 hours of the

declaration or death but notwithstanding that he does so within a shorter time before polling day than shall have been provided by the Electoral Commission under section 25(1).

**28. Publication of lists of candidates**

A list of candidates shall be displayed at –

- (a) the office of every Local Government Council;
- (b) the Parliament Building;
- (c) the Electoral Office; and
- (d) such other places in Vanuatu as the Electoral Commission may direct,

for not less than 14 days before polling day except in the case of new candidatures under section 27 where the period shall be not less than 9 days.

**PART 13 – ELECTION OF MEMBERS OF PARLIAMENT**

**29. Declaration of election without a poll and notice of new poll**

- (1) If at the close of or at any time after the close of the period for declaration of candidatures the number of candidates in any constituency is not more than the number of members to be elected the Principal Electoral Officer shall so report to the Electoral Commission which shall declare the candidates elected without a poll.
- (2) If the number of candidates is less than the number of members to be elected the Electoral Commission shall when it declares the number of candidates elected declare the number of seats vacant.
- (3) The Electoral Commission shall within 30 days after the declaration referred to in subsection (2) and after consultation with the Prime Minister fix the date of an election for the seats declared vacant.
- (4) If the number of candidates exceeds the number of members to be elected a poll shall be taken in accordance with this Part and without undue delay. After the closing of the list of candidates the Principal Electoral Officer shall publish a notice stating –
  - (a) the names of the candidates;
  - (b) the hours of polling;
  - (c) the situation of each polling station;
  - (d) sufficient information to enable voters to know which polling station they are required to vote at;
  - (e) any other information that may be prescribed.

**30. Returning officers**

Every polling station shall be presided over by a returning officer appointed for that purpose by the registration officer.

**31. Electoral rolls to be in polling stations and voters only to vote if therein and have electoral cards**

- (1) During voting a copy of the electoral roll shall be kept in every polling station.
- (2) No person may vote unless his name is contained in the roll of electors of the polling district of the station at which he presents himself for voting, and he produces a valid electoral card issued to him.

**32. Persons not entitled to vote**

Persons detained in a mental institution in accordance with the law shall not be entitled to vote whether or not their names may be on an electoral roll.

**33. Polls to be secret and electors to vote once for one candidate**

- (1) A poll shall be taken by secret ballot.
- (2) Subject to section 34 no person shall have more than 1 vote nor vote for more than one candidate.

**34. Proxy votes**

A person may vote by proxy in the circumstances and in the manner provided for in Schedule 4.

**35. Suspension and stopping of poll**

- (1) Where polling is interrupted at a polling station in such circumstances that in the opinion of the returning officer, it is temporarily impossible to continue he may suspend the poll and recommence it when he considers polling may continue undisturbed.
- (2) Where there has been a suspension and reopening in accordance with subsection (1) polling shall continue after the time fixed for ending the poll for the period of the suspension unless the returning officer is satisfied that every elector on the roll has cast his vote.
- (3) When circumstances arise which in the opinion of a returning officer make it impossible to continue with a poll within a reasonable time whether or not polling has already been suspended under subsection (1) he shall declare the poll stopped and inform the Principal Electoral Officer of the declaration who shall immediately forward a report thereon with any comments he may have to the Electoral Commission.

- (4) When a poll has been stopped under subsection (3) all proceedings before the declaration shall be annulled by the Electoral Commission by order either –
- (a) in every polling station in the relevant constituency if the result in the constituency as a whole could be affected by the addition of the votes of voters of the polling district where the poll has been stopped; or
  - (b) in the polling station where the poll has been stopped only if the results in the relevant constituency as a whole could not be materially affected by the addition of the votes of the voters of the polling districts where the poll has been stopped,
- and in either case the Electoral Commission shall in its order fix a new day and time for polling and a new poll shall be held.
- (5) If in the opinion of the returning officer and not less than one polling clerk not later than half an hour before the time fixed for polling to close the number of voters waiting will not be able to vote in that time he may extend the time to the close of the poll by 1 hour and shall record the extension in his report under Rule 19 of Schedule 5.
- (6) The returning officer may close the polling station when all the voters on the roll have voted but the counting of votes shall not start earlier than 1 hour before the time fixed for the end of polling.

### **36. Display and locking of ballot boxes**

Immediately before the commencement of a poll the returning officer shall show the interior of the ballot box to those lawfully present in the polling station and then lock the box with 2 padlocks having different keys and shall retain the key of one and give the other to a polling clerk.

### **37. Method of voting and procedures**

The method of voting, procedures to be observed during polls, and the manner of counting votes and declaring the election of candidates shall be in accordance with the provisions of Schedule 5.

### **38. Publication of results**

As soon as practicable after an election the Electoral Commission shall cause the results to be published in each constituency in such manner as it considers appropriate and in the Gazette.

## **PART 14 – ELECTION REPORTS**

[OMITTED]

## **PART 15 – ELECTION OFFENCES**

[OMITTED]

## **PART 16 – ELECTION PETITIONS**

### **54. Elections only to be challenged under this Act**

- (1) The validity of any election to Parliament may be questioned by a petition brought for that purpose under this Act and not otherwise.
- (2) Every election petition shall be heard by the Supreme Court.

### **55. Persons who may present election petitions**

An election petition may be presented by one or more of the following –

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

### **56. Petition only valid if deposit made**

- (1) The presentation of an election petition shall not be valid unless within the time limited by section 57 for presentation of the petition the person seeking to present the same lodges with the Supreme Court a deposit of VT 20,000 as security for costs.
- (2) Subject to subsection (3) a deposit made under subsection (1) shall be returned to the petitioner after the petition has been heard.
- (3) The Supreme Court may deduct from a deposit made under subsection (1) the amount of any costs ordered to be paid.

### **57. Time for presentation of petitions**

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

- (2) If a petition alleges a specific payment of money or other reward after an election by or on the account of a person whose election is disputed, the petition may be presented within 21 days of the alleged payment.
- (3) The time limit provided for in this section shall not be extended.

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

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

**59. Rules for election disputes**

- (1) The Chief Justice may make such rules not inconsistent with this Act concerning the conduct of proceedings before the Supreme Court under this Part, the times and places of hearings and adjournment thereof as he shall consider proper.
- (2) The proceedings of the Court shall be conducted in English, French or Bislama according to the choice of the petitioner and interpreters shall be provided by the Supreme Court.
- (3) The proceedings of the Court shall be recorded in writing.
- (4) A summons to a witness shall be in the form contained in Schedule 6.
- (5) A person who without sufficient excuse –
  - (a) disobeys a summons or reasonable direction of the court;
  - (b) hinders or obstructs the court;
  - (c) gives false evidence to the court; or
  - (d) insults the court by word of mouth, writing, radio broadcast or in any other manner,
 commits an offence and shall be liable on conviction to a fine not exceeding VT 75,000 or to imprisonment not exceeding 5 years or to both such fine and imprisonment.
- (6) No person appearing before the Court during the hearing of an election petition shall be bound to incriminate himself and all such persons shall be entitled to the privileges accorded to a witness appearing before the Supreme Court when exercising its normal jurisdiction.

**60. Decisions of Court in election disputes**

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

**61. Grounds for declaring election void**

- (1) The election of a candidate may be declared void on an election petition if it is proved to the satisfaction of the Supreme Court, that –
  - (a) bribery, treating, undue influence or other misconduct or circumstances whether similar to those herein before enumerated or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
  - (b) there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election;
  - (c) the candidate was at the time of his election a person not qualified or disqualified for election; or
  - (d) there was such irregularity in the counting of the votes as may reasonably be supposed to have affected the result of the election.
- (2) The election of a candidate shall be declared void if he is convicted by a Court of committing a corrupt practice or of attempting or conspiring to commit a corrupt practice.
- (3) Notwithstanding the provisions of subsection (1) –
  - (a) where upon the hearing of an election petition the Supreme Court finds that any agent of a candidate has been guilty of a corrupt practice and the Supreme Court further finds that the candidate has proved to the Supreme Court that –
    - (i) no corrupt practice was committed by the candidate himself or with his knowledge or consent or approval;

- (ii) the candidate took all reasonable means for preventing the commission or corrupt practices at such election;
  - (iii) in all other respects the election was free from any corrupt practice on the part of the candidate; and
  - (iv) such corrupt practices did not affect the result of the elections,
- then, if the Supreme Court so decided, the election of such candidate shall not by reason of any such practice be void;
- (b) where upon the trial of an election petition the Supreme Court finds that there has been failure to comply with any provision of this Act but the Court further finds, that it is satisfied that the election was conducted in accordance with the principles laid down in this Act and that such failure did not affect the result of the election, the election of the successful candidate shall not by reason of such failure, be void.

**62. Examination of votes cast**

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

**63. Communication of decision of Court concerning election disputes**

- (1) The decision of the Supreme Court shall be communicated without delay to the petitioner and to all persons whose election is subject to such petition.
- (2) There shall be no appeal from a decision of the Supreme Court under this Part.

**64. Reports to Public Prosecutor**

The Supreme Court shall if in its opinion anyone has committed an offence of a corrupt practice in connection with an election to which a petition heard by it relates, send a written report in respect thereof to the Public Prosecutor.

**65. No person required to reveal his vote**

No person who has voted in an election shall in any proceedings be required to state for whom he has voted.

**PART 17 – MISCELLANEOUS AND SUPPLEMENTAL****66. Notification to Electoral Commission and Principal Electoral Officer of election offences**

Any Court which convicts a person of an election offence shall inform the Electoral Commission and the Principal Electoral Officer.

**67. Saving when election declared void**

Where on an election petition the election of a member of Parliament is declared void nothing done by him prior to such declaration either as a member of Parliament or in an office for which membership of Parliament is a qualification shall be thereby invalidated.

**68. Disposal of reports and documents**

- (1) Subject to subsection (2) the Principal Electoral Officer shall retain for not less than 1 year all reports sent to him in accordance with this Act and all documents sent therewith including packets of counted and void votes.
- (2) Documents relating to an election in respect of which an election petition or any legal proceedings have been commenced shall not be destroyed until the proceedings have ended.
- (3) The Supreme Court when hearing an election petition or a court trying an election offence may make an order that any document retained by the Electoral Commission or the Principal Electoral Officer shall be inspected, copied or produced at such time and place and subject to such conditions as it thinks fit.
- (4) No order shall be made under subsection (3) unless the court is satisfied that the inspection, copying, or production is essential for the hearing of a charge of an election offence or the hearing of an election petition.
- (5) Except as provided by subsection (3) no person may inspect or copy any document retained by the Electoral Commission or the Principal Electoral Officer under this Act.

**69. Power of Electoral Commission to make orders**

[OMITTED]

**70. Saving of seats and constituencies and change of registration areas in polling districts**

[OMITTED]

**SCHEDULE 1**

[OMITTED]

**SCHEDULE 2**

[OMITTED]

**SCHEDULE 3**

[OMITTED]

**SCHEDULE 4**

[OMITTED]

**SCHEDULE 5**

(Section 37)

[OMITTED]

**SCHEDULE 6**

(Section 59(4))

[OMITTED]