

The Judicial Service Commission is made up of the Minister responsible for justice, the Chief Justice, the Chairman of the Public Service Commission, and a spokesperson of the National Council of Chiefs.

#### How are Members of the Judiciary removed?

Members of the Judiciary remain in office until they reach retirement age, unless they are removed by the President in the event of a conviction and sentence on a criminal charge, or by the Judicial Service Commission for gross misconduct, incapacity or professional incompetence.

The Judiciary should be independent of the Parliament and the Executive so that they can make important decisions about the law.

#### What are the powers of the Judiciary generally?

The Judges, Magistrates and Island Court Justices have different powers according to the seriousness of criminal charges, or in civil cases, the amount of the claim. All must decide cases according to law.

#### How does the Supreme Court protect people's rights?

The Supreme Court has a special duty to protect people's rights and to make sure that the Constitution is followed.

If the President thinks a new law is contrary to the Constitution, he can refer it to the Supreme Court. If any person thinks that his or her fundamental rights listed in the Constitution have been broken, or the Constitution is not being followed, they can apply to the Supreme Court for help. The other Courts also refer difficult questions about the Constitution to the Supreme Court.

#### **What are some other important parts of government?**

**The National Council of Chiefs** (or *Malyatumauri*) is the peak representative body of custom chiefs. Members of the Council are custom chiefs who are elected by their peers. Their role is to:

- discuss all matters relating to custom and tradition;
- make recommendations for the preservation and promotion of Ni-Vanuatu culture and languages; and
- give advice when asked, particularly on matters of custom and tradition raised in any bill before Parliament.

**The Ombudsman** is an independent person, not under the control of any other person, who investigates:

- complaints by any person about conduct of public servants, public authorities and ministerial departments (with the exception of the President, the Judicial Services commission and judicial bodies) when the person believes that there has been a mistake, an unjustified delay or unreasonably conduct; and
- corruption and other failures of leaders of the country.

The Ombudsman has no power to punish people, but can make recommendations to the Ministers and Prime Minister, and make public reports.

#### **For further information**

For any further information about how power is shared in Vanuatu, see the Constitution of the Republic of Vanuatu, visit the USP web-site at [http://cow.vanuatu.usp.ac.fj/pacgovs/pacgov\\_Vanuatu.html](http://cow.vanuatu.usp.ac.fj/pacgovs/pacgov_Vanuatu.html) or visit the USP library at the Emalus Campus, Port Vila.

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The information contained in this brochure is only intended as a guide to the law and is not a substitute for obtaining legal advice. If you have any further questions we strongly suggest you seek legal advice.

Note: This information applies to people who live in, or are affected by, the law as it applies in Vanuatu.

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# HOW GOVERNMENT POWER IS SHARED



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## **What is this brochure about?**

This brochure is about how Government power is divided up in Vanuatu so that no single person or group has all the power.

The government in Vanuatu can be divided into three groups:

- the **Parliament**;
- the **Executive**; and
- the **Judiciary**.

These groups are sometimes called the branches or arms of government. This brochure briefly explains what they do.

## **The Parliament**

### What is the role of the Parliament?

Parliament does two things:

- it makes laws; and
- it checks on the work of the Executive.

### How are members of Parliament appointed?

Members are chosen by the people of Vanuatu through elections. Vanuatu is divided up into areas, and each area elects a Member to represent them. Members are elected for four year terms.

### What power does Parliament have?

Parliament has the power to make laws for the peace, order and government of the people. The Members vote on new laws, on the budget and on international treaties.

It is the responsibility of Members of Parliament to carefully check all laws that are passed and to watch the Executive to make sure they administer the laws properly.

Parliament also decides who shall be the Prime Minister.

### How is Parliament ended?

Every four years there must be another election in which the public decides who the Members shall be. The public can choose a new Member or re-elect the old Member.

The Members of Parliament can force an election to be called early by having a special meeting in which at least three quarters of all of the Members are present and an absolute majority vote for an early election.

The President can also call an early election, but only when

he has been asked to do so by the Council of Ministers.

### What is the role of the President in relation to Parliament?

When the Parliament passes legislation, it does not become law until it has been agreed to by the President. However, the President cannot refuse to agree to legislation which has been passed by Parliament. He must agree to it within two weeks, and if he thinks that the new law is contrary to the Constitution, he must ask the Supreme Court to review it.

## **The Executive**

### What is the role of the Executive?

The role of the Executive is to implement the laws of Parliament and to administer the delivery of Government services.

### Who exercises the Executive power of Vanuatu?

The Executive is made up of:

- the Prime Minister, who is the head of the Government; and
- the Ministers, who together with the Prime Minister form the Council of Ministers.

### How is the Executive appointed?

The Prime Minister must be a Member of Parliament and is elected by a vote among all Members of Parliament.

Ministers must be Members of Parliament who are appointed by the Prime Minister. The number of Ministers, including the Prime Minister, must not be more than a quarter of the Members of Parliament.

### What are the responsibilities of the Executive?

The Prime Minister has overall responsibility for running the Government.

Ministers are responsible for the conduct of areas of government allocated to them by the Prime Minister. As part of this, they administer the laws of Parliament, suggest changes to laws, and make sub-laws called Regulations which must be consistent with the laws of Parliament.

Collectively, the Council of Ministers is responsible to Parliament.

### How can the Executive be removed?

The Prime Minister can be removed by a special vote called a 'vote of no confidence' by an absolute majority of the

Members of Parliament.

The Ministers can be removed from their office by the Prime Minister and are automatically removed when the Prime Minister resigns, dies or is removed.

### How does the President function in relation to the Executive?

The President is the Head of State, which is mostly a symbolic role representing the unity of the nation. The President is not involved in the administration of government but is entitled to be kept fully informed about it.

In addition to representing the people of Vanuatu in ceremonial occasions, the President is given some important powers under the Constitution. Most of these powers are to be used by the President only when asked to by other people, usually the Prime Minister or Council of Ministers. For example, the President must consult the Judicial Services Commission when appointing the Chief Justice and Judges, the Public Prosecutor and the Public Solicitor.

The President can pardon, commute or reduce the sentence of a person convicted of a criminal offence. Parliament may provide for a committee to advise the President in relation to this.

## **The Judiciary**

### What is the role of the Judiciary?

The Judiciary are the Courts, whose job is to hear and decide cases. This means that they must decide what the relevant law is and how it applies in a particular case.

### Who is the Judiciary made up of?

The Judiciary is made up of:

- the Chief Justice and Judges of the Supreme Court and the Court of Appeal;
- the Magistrates of the Magistrate's Court; and
- the Justices of the Island Courts.

### How is the Judiciary appointed?

The Chief Justice is appointed by the President after consultation with the Prime Minister and Leader of the Opposition. Other Judges, Magistrates and Justices are appointed by the President acting on the advice of the Judicial Service Commission.