

Customary Law

Customary laws continue to be part of the law in Vanuatu unless they conflict with what the Constitution or legislation says. This means that if a customary law would breach a right given to someone in the Constitution or by legislation, that customary law would not be part of the law of Vanuatu.

How is Law enforced?

Law is enforced by the **police** and the **courts**.

The main duty of the **police** is to maintain law and order in society. They have special powers that allow them to protect people and their property and arrest those who break the criminal law. People who commit crimes are charged with an offence and then taken to Court.



The courts enforce the law by deciding if there has been a breach of the relevant laws, and if so, what the penalty, sentence or compensation should be. The court can also order someone to do or stop doing something or to act or stop acting in a certain way.



If a court orders you to go to prison, to pay money, to do community service or any other thing, you must do it, or the police can arrest you for not doing so.

Want to Know More?

You can find out more about the law from:

- **The University of the South Pacific Library** Ph: 22748;
- **The State Law Office** Ph: 22362; or
- **The Judicial Services Commission** Ph: 22420

If you have a legal problem and can't afford a lawyer, contact:

- **The Public Solicitor** Ph: 23450
- **USP Community Legal Centre** Ph: 27026

Produced with the generous assistance of



Australian Agency for International Development

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. The information in this brochure is current as at 30 June 2006.

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What is the Law?



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What is Law?



Laws are basically rules for the control and guidance of human behaviour.

Rules of sport also guide and control human behaviour. Imagine how sports such as netball, rugby, football or boxing would continue if there were no agreed rules, no authority to create rules where they were needed, and no referees to enforce those rules in the interest of order and fair play. Without rules and referees, unfairness, disorder and even violence might result in any sport.

This is the same in a society without law.

There are different types of law, and different ways in which laws can be made.

Law is concerned with both **criminal** and **civil** matters.

The criminal law is a set of rules relating to the relationship between the State (eg Vanuatu) and its people. In order to keep the peace in society, certain behaviour is not allowed, for example theft, rape or murder. These are crimes or criminal offences. If you commit a crime, the police will arrest you and the public prosecutor, representing the State, will take you to court. You may be fined or sent to prison for committing criminal offences.

Civil laws are rules to control the behaviour of people towards each other. They are concerned with things like contracts, property, family matters, business and employment. If you break a civil law, you can be taken to court by the person who has been affected by your behaviour. You can be made to pay compensation if you break a

civil law.

Where does law come from?

In Vanuatu, the law comes from several sources:

- the Constitution;
- legislation;
- the “common law”, or the courts; and
- custom.

The Constitution

The Constitution of Vanuatu is the highest law in Vanuatu. As the highest law, it sets out the framework for all other laws to follow.

The Constitution was written at the time of Vanuatu’s independence and it sets out the basic values and structure of Vanuatu. It deals with things like how the State is organised and the rights and duties of people in Vanuatu.

If any law is made or action taken that goes against what the Constitution says, then it is illegal and has no effect.

In order to change, or “amend”, the Constitution two-thirds of the members of Parliament agree to the changes. Any proposed changes to the parts of the Constitution that deal with the status of Bislama, English and French, the electoral system, or the parliamentary system also requires support in a national referendum. This means that the majority of the electors must also agree to the change.

Legislation

Most of the laws in Vanuatu are what is called

“legislation”. This is a law that is made by the Parliament. It is also known as an “Act of Parliament” or a “statute”.

Legislation is not permanent like the Constitution; it can be changed or removed by Parliament.

Where the Parliament has not passed a law on a particular area, the laws that applied before independence can still apply.

Laws can also come from “subsidiary legislation”. This is where the Parliament has passed legislation that allows a government body or authority to make its own regulations and by-laws about certain things. Those regulations do not have to be passed by Parliament in order to become law.



The Common Law or Courts

The role of the courts is to look at the laws of Vanuatu and apply them to the cases that they decide. This can be legislation or the Constitution. It can also be something called the “**common law**”.

Sometimes when judges have to decide a case, there is nothing in the legislation or the Constitution which tells them what the law actually is for that situation. When this happens, they use previous decisions of courts in similar cases to fill in the gaps and help them make a decision. The law that comes from these earlier cases is called the “common law”.