

# **Immigration Act 2010**

**REPUBLIC OF VANUATU**

**IMMIGRATION ACT NO. 17 OF 2010**

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*Assent: 17/01/2011*  
*Commencement: 07/02/2011*

## **IMMIGRATION ACT NO. 17 OF 2010**

An Act relating to immigration, and to regulate the determination of the status of refugees, and for related purposes.

Be it enacted by the President and Parliament as follows-

## **PART 1 PRELIMINARY**

### **1 Interpretation**

In this Act, unless the contrary intention appears:

**adopted** in relation to a child, means adopted under the law of any place relating to the adoption of children;

**aircraft** means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy, but does not include a hovercraft;

**appointed airport** means an airport appointed under section 10 of the [Customs Act](#) [CAP 257];

**appointed port** means a port appointed under section 10 of the [Customs Act](#) [CAP 257];

**approved form** means a form approved by the Principal Immigration Officer;

**asylum claim** means a claim for asylum in Vanuatu to be recognised as a refugee;

**asylum claimant** means a person who makes an asylum claim;

**character test** means the character test in section 38;

**child** includes an adopted child;

**citizen** means a citizen of the Republic of Vanuatu;

**customs officer** has the same meaning as in the [Customs Act](#) [CAP 257];

**dependent child** means a child of a person, being a child who is unmarried and:

(a) is under 18 years of age; or

(b) is 18, 19 or 20 years of age and is dependent on the person for financial, psychological or physical support;

**exempt** person has the meaning given by section 2;

**extended visitor visa** means an extended visitor visa mentioned in section 29;

**Government** means the Government of Vanuatu;

**holder**, in relation to a visa, means the person to whom the visa is granted;

**immigration officer** means a person:

(a) appointed as an immigration officer under subsection 9(1); or

(b) designated to be an immigration officer under subsection 9(2); or

(c) mentioned in subsection 9(2);

**member of the family of a person** means:

(a) the partner of the person; or

(b) any dependent child of the person; or

(c) another person who, in the opinion of the Principal Immigration Officer, should be treated for the purposes of this definition as a member of the person's family;

**Minister** means the Minister responsible for immigration;

**partner**, in relation to a person, means:

(a) if the person is legally married to another person, that other person; or

(b) if the person is not legally married to another person, but is living in a marriage like relationship with that other person, that other person;

**police officer** means an officer of the Vanuatu Police Force;

**premises** includes any place, building, dwelling or structure;

**prescribed** means prescribed by the regulations;

**Principal Immigration Officer** means the Principal Immigration Officer appointed under subsection 7(1) or mentioned in subsection 96(1);

**prohibited immigrant** has the meaning given by section 50;

**proclaimed area** has the meaning given by section 3;

**refugee** means a person determined by the Principal Immigration Officer to be a refugee under [Part 9](#);

**regulations** means the regulations made under this Act;

**removal order** means an order for the removal of a person from Vanuatu made under [Part 6](#);

**residence visa** means a residence visa mentioned in section 30;

**security** means a security provided under [Part 8](#);

**special category visa** means a special category visa mentioned in section 32;

**student visa** means a student visa mentioned in section 31;

**subsequent asylum claim** means an asylum claim made by a person in Vanuatu who has previously made an asylum claim in Vanuatu that has been finally determined;

**transit visa** means a transit visa mentioned in section 33 and provided for by [Part 10](#);

**travel document** means a passport, certificate of identity, visa, permit, ticket or other document necessary for international travel;

**terrorist** means a person who:

(a) is a member of a terrorist group within the meaning of the [Counter Terrorism and Transnational Organised Crime Act](#) [CAP 313]; or

(b) has committed a terrorist act within the meaning of that Act;

**terrorist act** has the same meaning as in the [Counter Terrorism and Transnational Organised Crime Act](#) [CAP 313];

**this Act** includes the regulations;

**vehicle** includes a hovercraft;

**vessel** means a ship, boat, raft or pontoon or any other thing capable of carrying persons or goods through or on water, but does not include a hovercraft;

**visa** means a visa granted under this Act;

**visitor visa** means a visitor visa mentioned in section 28.

## **2 Exempt persons**

Each of the following is an exempt person:

- (a) a national or citizen of a Commonwealth country, other than a Commonwealth country prescribed by the regulations;
- (b) a national or citizen of a member state of the European Union, other than a member state prescribed by the regulations;
- (c) a person, or a person who is a member of a class of persons, prescribed by the regulations;
- (d) a national or citizen of a member state of the Melanesian Spearhead Group.

## **3 Proclaimed areas**

Each of the following is a proclaimed area:

- (a) an area of an appointed port or appointed airport;
- (b) any other area or place;
- (c) any transport between a proclaimed area and another proclaimed area;

determined to be a proclaimed area by the Principal Immigration Officer.

## **4 Meaning of persons entering and departing Vanuatu**

(1) Subject to subsection (2), a person enters Vanuatu if:

(a) in the case of a person arriving on a vessel from a place outside Vanuatu, the person disembarks from the vessel onto:

- (i) the land that is part of the Republic of Vanuatu at mean low water; or
- (ii) a pier, jetty or other structure connected to such land; or

(b) in the case of a person arriving on an aircraft from a place outside Vanuatu:

- (i) at an appointed airport, if the person leaves the precincts of the appointed airport; or
- (ii) at any other place, when the aircraft lands in Vanuatu.

(2) A person does not enter Vanuatu if:

- (a) the entry is caused solely by stress of weather or the condition of a vessel or aircraft; and
- (b) the Principal Immigration Officer exempts an entry for the purposes of this subsection .

(3) A person departs Vanuatu if:

- (a) in the case of a person departing on a vessel, the person departs from Vanuatu to a place outside Vanuatu; or
- (b) in the case of a person departing on an aircraft from an appointed airport or any other place, the person departs from the appointed airport or the other place to a place outside Vanuatu.

(4) In this section, **Vanuatu** is the area that comprises:

- (a) the land that is part of the Republic of Vanuatu at mean low water; and
- (b) any piers, jetties or similar structures, and any part of which, are connected to such land.

(5) Subsection (4) does not encompass:

- (a) any areas of sea, including within a port; and
- (b) in the case of a person arriving by aircraft at an appointed airport- the proclaimed area of the appointed airport.

## **5 Extension of application of this Act**

Without prejudice to any other Act or law, the application of this Act extends to any act done or offence committed within the exclusive economic zone of Vanuatu as prescribed under the [Maritime Zones Act](#) No. 6 of 2010.

## **6 Minister may give general policy directions**

- (1) The Minister may in writing give general directions to the Principal Immigration Officer in relation to the administration of this Act.
- (2) A direction must not be inconsistent with this Act or relate to an individual.
- (3) The Minister must cause a copy of a direction to be presented at the next sitting of the Parliament.

## **PART 2 PRINCIPAL IMMIGRATION OFFICER AND IMMIGRATION OFFICERS**

### **Division 1 General provisions**



## **7 Principal Immigration Officer**

- (1) The Public Service Commission is to appoint a person in writing to be a Principal Immigration Officer.
- (2) The Principal Immigration Officer is responsible for performing the functions and exercising the powers of the Principal Immigration Officer and immigration officers under this Act.

## **8 Delegation of functions and powers**

- (1) The Principal Immigration Officer may, in writing, delegate to an immigration officer any of his or her functions or powers under this Act, other than the power of delegation.
- (2) The delegation may be made generally, or in respect of a particular matter or class of matters.
- (3) The Principal Immigration Officer may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Principal Immigration Officer from performing the function or exercising the power that he or she has delegated.

## **9 Immigration officers**

- (1) The Public Service Commission is to appoint in writing persons to be immigration officers.
- (2) Without limiting subsection (1), the Principal Immigration Officer may in writing designate all or any of the following persons to be immigration officers for the purposes of this Act:
  - (a) a customs officer or class of customs officers;
  - (b) a police officer or class of police officers;
  - (c) any overseas representative of the Republic of Vanuatu;
  - (d) any other person or class of persons.
- (3) A designation may be made generally, or in respect of a particular matter or class of matters.
- (4) The Principal Immigration Officer may at any time revoke or vary a designation.
- (5) In this section, **overseas representative** means a head of mission, consul general or honorary consul appointed under the Foreign Service Act No. 22 of 2008.

## **10 Assistance by police or customs officers**

- (1) An immigration officer may request a police officer or a customs officer to assist him or her in the performance of a function or the exercise of a power under this Act.

(2) The police officer or customs officer must so far as practicable assist the immigration officer.

### **11 Identity of officers**

If an immigration officer is performing a function or exercising a power under this Act, the officer must on demand by a person produce to the person:

- (a) an identity card issued by the Principal Immigration Officer; or
- (b) another document establishing his or her identity as an immigration officer.

### **12 Recovery of certain costs**

(1) The regulations may prescribe charges for providing immigration clearance and other immigration services:

- (a) outside of the normal immigration operational hours prescribed by the regulations; or
- (b) at a port or airport, other than an appointed port or airport.

(2) The owner, owner's agent, charterer, master and commander of a vessel or aircraft in respect of which the services are provided are jointly and severally liable to pay to the Government the prescribed charges.

(3) The charges mentioned in subsection (2) are recoverable as a debt due to the Government in a court of competent jurisdiction.

## **Division 2 Powers**

### **13 Power to question and obtain travel documents**

(1) An immigration officer may question a person if the person:

- (a) is about to enter or has entered Vanuatu, or is about to depart Vanuatu; or
- (b) has applied for a visa; or
- (c) is a person whom the officer suspects on reasonable grounds to be a prohibited immigrant; or
- (d) is a person who can provide information regarding any person mentioned in paragraph (a), (b) or (c).

(2) An immigration officer may require any person mentioned in subsection (1) to produce any travel documents in his or her possession.

(3) A person commits an offence if the person:

- (a) refuses or fails to answer a question; or
- (b) gives an answer to a question that is false or misleading in a material particular; or
- (c) refuses or fails to produce a travel document within a reasonable time; or
- (d) produces a travel document that is false or misleading in a material particular.

(4) A person who commits an offence under paragraph 3(a), (b), (c) or (d) is liable on conviction to a fine not exceeding VT500,000 or a term of imprisonment not exceeding 1 year or both.

(5) Any answer to a question or any travel document produced is admissible in evidence in relation to any matter arising under or connected with this Act in any civil or criminal proceedings.

(6) Subsection (5) does not render an answer or travel document admissible in evidence in proceedings in which the answer or travel document would be otherwise inadmissible.

#### **14 Medical examinations**

(1) This section applies to a person if he or she:

- (a) is about to enter or has entered Vanuatu; or
- (b) is about to depart Vanuatu; or
- (c) has applied for a visa, other than a transit visa.

(2) An immigration officer may require the person:

- (a) to be examined by a registered medical practitioner to determine the person's health, or physical or mental condition; and
- (b) to undergo any test or investigation which the practitioner requires.

#### **15 Detention of persons**

(1) An immigration officer may detain a person for questioning if the officer suspects on reasonable grounds that:

- (a) the person:
  - (i) is about to enter or depart Vanuatu in contravention of this Act; or
  - (ii) is a prohibited immigrant; and

(b) if the person is not detained, the person would attempt to evade the officer or otherwise not co-operate with the officer.

(2) Without limiting subsection (1), an immigration officer may question a person who is detained about:

- (a) the person's visa and matters relevant to the visa; and
- (b) the circumstances of the person's arrival and presence in Vanuatu.

(3) Subject to subsection (4), a person must be released from detention within 24 hours after being detained.

(4) If a person is to be detained for more than 24 hours, the Principal Immigration Officer must, before the expiry of the 24 hour period, apply to a magistrate for an order to detain the person for a longer period and the Principal Immigration Officer must comply with any order made by the magistrate.

(5) A person cannot be detained under this section for more than 48 hours in total in any period of 7 consecutive days, unless a magistrate otherwise orders.

(6) An immigration officer may seize and retain the passport or any other travel document of a non-citizen while he or she is detained under this section.

(7) A person is to be detained at such places and subject to such conditions as the Principal Immigration Officer determines.

## **16 Arrest without warrant**

(1) An immigration officer may, without a warrant, arrest a person if the officer believes on reasonable grounds that:

- (a) the person has committed an offence against this Act; and
- (b) proceedings by summons against the person would not be effective.

(2) An immigration officer must as soon as practicable bring a person who has been arrested before a magistrate to be dealt with in accordance with the law.

(3) Nothing in this section prevents the arrest of a person under any other law.

## **17 Search of persons**

(1) This section applies to a person if:

- (a) the person has been detained or arrested under this Part; and
- (b) an immigration officer suspects on reasonable grounds that the person has in his or her possession any thing that may afford evidence about the commission of an offence against this Act.

(2) An immigration officer may conduct a frisk search or an ordinary search of the person and seize any thing mentioned in paragraph (1)(b).

(3) An ordinary search or a frisk search of a person must be conducted by an immigration officer of the same sex as the person.

(4) An immigration officer who conducts an ordinary search or a frisk search must not use more force, or subject a person to greater indignity, than is reasonable or necessary in order to conduct the search.

(5) Subject to any order of a court, if an immigration officer seizes a thing under subsection (2), the officer:

- (a) may take possession of the thing; and
- (b) may retain the thing for such time as he or she thinks necessary for the purposes of this Act.

(6) An immigration officer must return the thing seized to its owner if the reason for its seizure no longer exists or it is decided that it is not to be used in evidence, unless the thing is forfeited or forfeitable to the Government or is the subject of a dispute as to ownership.

(7) In this section,

**frisk search** means:

- (a) a search of a person conducted by quickly running the hands over the person's outer clothing; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person;

**ordinary search** means a search of a person or of articles in a person's possession that may include:

- (a) requiring the person to remove his or her coat or jacket, and his or her gloves, shoes and hat; and
- (b) an examination of those items.

## **18 Search of aircraft, vessels, vehicles, premises and land**

(1) This section applies to a vessel, aircraft, vehicle, premises or land if an immigration officer

suspects on reasonable grounds that there is in or on the vessel, aircraft, vehicle, premises or land:

- (a) a prohibited immigrant; or
- (b) a person about to enter or depart Vanuatu in contravention of this Act; or
- (c) any thing that may afford evidence about the commission of an offence against this Act.

(2) An immigration officer may:

- (a) stop and detain the vessel or vehicle, or detain the aircraft, and search the vessel, aircraft or vehicle; and
- (b) with the consent of the owner or occupier of the land or premises or under a warrant issued under section 19, enter the land or premises and search the land or premises, or any vessel, vehicle, aircraft or other thing in or on the land or premises.

(3) An immigration officer may:

- (a) break open and search any compartment, container or other receptacle, in or on the vessel, aircraft, vehicle, premises or land; and
- (b) detain any person mentioned in paragraph (1)(a) or (b); and
- (c) examine and seize any thing mentioned in paragraph (1)(c).

(4) The master of a vessel, the commander of an aircraft and the driver of a vehicle must do all things reasonably required by an immigration officer to facilitate the stopping, detaining and searching of the vessel, aircraft or vehicle by the officer.

(5) If the master of a vessel, the commander of an aircraft or the driver of a vehicle fails to comply with subsection (4), he or she commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or a term of imprisonment not exceeding 1 year or both.

(6) If an entry is under a warrant issued under section 19, an immigration officer must produce the warrant to the owner or occupier for inspection if requested to do so by him or her.

(7) Subsections 15(3) to (7) apply to a person detained under paragraph (3)(b).

## **19 Warrants for searches**

(1) A magistrate may issue a warrant if the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(2) A warrant authorises an immigration officer named in the warrant, with such assistance, and by such force, as is necessary and reasonable:

- (a) to enter premises or land; and
- (b) to exercise the powers mentioned in paragraphs 18(3)(a), (b) and (c), or paragraph 55(1)(b).

(3) An immigration officer may apply for a warrant by telephone, facsimile or other electronic means if he or she is satisfied that:

- (a) it is an urgent case; or
- (b) the delay that would occur, if an application were made in person, would frustrate the effective execution of the warrant.

(4) Regulations may be made in relation to all or any of the following:

- (a) applying for warrants;
- (b) issuing warrants;
- (c) the form of warrants;
- (d) the conditions of warrants.

## **PART 3 ENTRY AND DEPARTURE**

### **20 Appointed ports and airports**

(1) A person must enter Vanuatu at, and depart Vanuatu from, an appointed port or an appointed airport.

(2) The master of a vessel or the commander of an aircraft must ensure that the vessel or aircraft arrives in Vanuatu at, and leaves Vanuatu from, an appointed port or an appointed airport.

(3) A person who fails to comply with subsection (1) or (2), commits an offence and is liable on conviction to a fine not exceeding VT 500,000 or a term of imprisonment of not more than 2 years or both.

(4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the person charged proves that he or she was prevented from complying with the subsection because of:

- (a) the illness of the person or another person on board a vessel or aircraft; or
- (b) stress of weather, or other circumstances beyond the control of the person.

### **21 Documents required on entry and departure**

(1) If a person is about to enter or depart Vanuatu, the person must present to an immigration officer a completed declaration in the approved form and:

(a) if the person is a citizen, the person's Vanuatu passport, or certificate of identity or other travel document issued under the [Passports Act](#) No. 20 of 2009; and

(b) if the person is a non-citizen:

(i) the person's passport or other evidence of the person's identity approved by the Principal Immigration Officer; and

(ii) subject to subsection (2), the person's visa, or evidence of the person's visa, to enter and remain in Vanuatu.

(2) Subparagraph (1)(b)(ii) does not apply to a person if the person is about to enter Vanuatu and the person is an exempt person.

3) A person who:

(a) fails to present any document required under subsection (1); or

(b) completes and presents a declaration which is false or misleading in a material particular,

commits an offence and is liable on conviction to a fine not exceeding VT500,000.

## **22 Duties of masters of vessels and commanders of aircraft**

(1) The master of a vessel or the commander of an aircraft about to arrive in or leave Vanuatu must:

(a) deliver to an immigration officer a list in duplicate of all officers, crew members, passengers (including passengers in transit) and other persons on the vessel or aircraft; and

(b) inform an immigration officer of any person on the vessel or aircraft who is a prohibited immigrant or a stowaway; and

(c) use all reasonable means to prevent any person on the vessel or aircraft entering or departing Vanuatu in contravention of this Act; and

(d) make arrangements to the satisfaction of the Principal Immigration Officer to enable immigration officers to carry out their duties; and

(e) provide such accommodation and other facilities and assistance as the Principal Immigration Officer may reasonably require to enable immigration officers to perform their duties; and

(f) provide the Principal Immigration Officer with such other information and documents as the Principal Immigration Officer may require; and

(g) comply with such other lawful directions as the Principal Immigration Officer may give.



(2) In addition to subsection (1), the master of a vessel or the commander of an aircraft about to arrive in Vanuatu must:

- (a) inform an immigration officer of any person on the vessel or aircraft who has a contagious or other disease, or has a health condition, which poses a risk to the health of the community in Vanuatu; and
- (b) not permit any person on the vessel or aircraft to disembark until disembarkation has been authorised by an immigration officer; and
- (c) prevent, with such force as may be reasonably necessary in the circumstances, the disembarkation of any person who is a prohibited immigrant.

(3) The master of a vessel or the commander of an aircraft who:

- (a) fails to provide a list required by paragraph (1)(a); or
- (b) provides a list required by paragraph (1)(a) which is false or misleading in a material particular; or
- (c) contravenes any other paragraph of subsection (1) or (2);

commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or a term of imprisonment of not more than 1 year or both.

### **23 Certificate of clearance**

(1) The master of a vessel or the commander of an aircraft must not allow the vessel or aircraft to leave from Vanuatu unless the Principal Immigration Officer has issued a certificate of clearance in an approved form to the master or the commander.

(2) After a certificate of clearance has been issued by the Principal Immigration Officer, the master of the vessel or the commander of the aircraft must not:

- (a) allow the vessel or aircraft to call at any other port or place in Vanuatu; or
- (b) permit any person whose name does not appear on the list delivered under paragraph 22(1)(a) to board the vessel or aircraft.

(3) The master of a vessel or the commander of an aircraft who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or a term of imprisonment of not more than 2 years or both.

### **24 Refused entry**

(1) If an immigration officer refuses permission for any person disembarking from a vessel or

aircraft to enter Vanuatu, the officer may direct the owner, owner's agent, charterer, master or commander of the aircraft or vessel:

- (a) to receive and retain the person on the vessel or aircraft using such force as may be reasonably necessary in the circumstances; and
- (b) to transport the person from Vanuatu to a place outside Vanuatu as determined by the Principal Immigration Officer; and
- (c) to provide accommodation and maintenance for the person during the journey.

(2) The owner, owner's agent, charterer, master or commander of the vessel or aircraft must as soon as practicable comply with the direction.

(3) The owner, owner's agent, charterer, master or commander of the vessel or aircraft who fails to comply with subsection (1) or (2), commit an offence and is liable on conviction to a fine not exceeding VT1,000,000 or a term of imprisonment of not more than 2 years or both.

## **25 Duties of controllers of appointed airports and ports**

(1) The controller of an appointed port or an appointed airport must:

- (a) make arrangements to the satisfaction of the Principal Immigration Officer to enable immigration officers to carry out their duties; and
- (b) provide such accommodation and other facilities and assistance as the Principal Immigration Officer may reasonably require to enable immigration officers to perform their duties.

(2) The Principal Immigration Officer may, after consultation with the controller of an appointed port or an appointed airport, determine the duties and responsibilities of the controller for the purposes of subsection (1).

(3) In this section, controller of an appointed airport or an appointed port means the person who operates the airport or port.

## **PART 4 VISAS FOR NON-CITIZENS**

### **Division 1 General provisions**

#### **26 Requirement for a visa**

(1) A person commits an offence if the person:

- (a) is a non-citizen; and
- (b) is not the holder of a visa issued under this Act; and

(c) either:

- (i) attempts to enter Vanuatu; or
- (ii) enters Vanuatu; or
- (iii) enters and remains in Vanuatu.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding VT500,000 or a term of imprisonment of not more than 2 years or both.

(3) It is a defence to a prosecution for an offence against subparagraph (1)(c)(i) if the person charged proves he or she was an exempt person at the time of attempting to enter Vanuatu.

(4) A non-citizen who lawfully enters Vanuatu commits an offence if he or she remains in Vanuatu and is not the holder of a valid visa.

(5) A non-citizen who commits an offence under subsection (4) is liable on conviction to a fine not exceeding VT500,000 or a term of imprisonment of not more than 2 years or both.

## **27 Classes of visas**

There are the following classes of visas:

- (a) a visitor visa;
- (b) an extended visitor visa;
- (c) a residence visa;
- (d) a student visa;
- (e) a special category visa;
- (f) a transit visa;
- (g) an interim visa

## **28 Visitor visa**

(1) A visitor visa is to be granted for a period of 30 days.

(2) However, if a person who is the holder of a visitor visa departs Vanuatu before the 30 days ends, the person's visitor visa is taken to have expired on the day the person departs Vanuatu.

## **29 Extended visitor visa**

(1) An extended visitor visa is to be granted for a period of less than 12 months, but more than 30 days.

(2) However, a person must not be granted extended visitor visas for periods that total more than 18 months in any period of 3 consecutive years.

### **30 Residence visa**

(1) A residence visa is to be granted for a period of at least 1 year, but must not be granted for a period that exceeds 10 years.

(2) If a person is the holder of a residence visa (“the holder”), then, subject to sections 37 and 38, a member of the family of the holder may be granted a residence visa for a period that is the same as the period for which the holder’s residence visa has been granted.

### **31 Student visa**

(1) A student visa is to be granted for a period similar to the period of the program of study awarded to the student.

(2) A person must not be granted a student visa unless the Principal Immigration Officer is satisfied that the person is undertaking, or is likely to be undertaking, a course of study in any secondary, tertiary or technical institution in Vanuatu.

(3) If a person is the holder of a student visa (“the holder”), then, subject to sections 37 and 38, a member of the family of the holder may be granted a student visa for a period that is the same as the period for which the holder’s student visa has been granted.

### **31A Interim visa**

(1) The Principal Immigration Officer may grant an interim visa to an applicant for a period of not more than 4 months.

(2) The Principal Immigration Officer must not grant an interim visa to an applicant unless he or she is satisfied that the person is likely to undertake a specified employment in Vanuatu.

(3) Subject to sections 37 and 38, a member of the family of a person who is the holder of an interim visa may be granted an interim visa for a period that is the same as the period for which the holder of that visa has been granted.

### **32 Special category visa**

(1) A special category visa is to be granted to a person for a period determined by the Principal Immigration Officer, but must not be granted for a period that exceeds 5 years.

(2) Without limiting subsection (1), the following persons may be granted a special category visa:

(a) a person employed by the Government;

- (b) a person seconded to the Government;
- (c) a member of a diplomatic mission in Vanuatu;
- (d) a member of a prescribed donor agency;
- (e) a member of a class of persons prescribed by the regulations;
- (f) subject to sections 37 and 38, a member of the family of a person mentioned in paragraph (a), (b), (c), (d), or (e).

### **33 Transit visa**

## **PART 10 APPLIES IN RELATION TO A TRANSIT VISA.**

### **Division 2 Application for a visa**

### **34 Applications**

- (1) An application for a visa must be made to the Principal Immigration Officer in the approved form.
- (2) A person who is in Vanuatu can apply for a visa (other than a visitor visa) only if the person is the holder of a valid visa, whether or not it is of the same kind or a different kind to the visa being applied for.
- (3) A person can apply for a visitor visa only if the person is outside Vanuatu.

### **35 Visa application charges**

- (1) Subject to subsection (2), an application for a visa must be accompanied by the prescribed charge.
- (2) No visa application charge is payable for an application for the following:
  - (a) a visitor visa if the applicant is an exempt person;
  - (b) a special category visa;
  - (c) a student visa if the applicant is a member of a class of persons exempted by the regulations.

### **36 Invalid applications**

- (1) An application for a visa is invalid if the application:
  - (a) is not in the approved form; or
  - (b) is not accompanied by the prescribed charge and is not exempt under subsection 35(2).

(2) The Principal Immigration Officer must not accept an application for a visa that is invalid under paragraph (1)(a) or (b).

### **Division 3 Grant of a visa**

#### **37 Criteria for grant of a visa**

The criteria for the grant of a visa are:

- (a) the person is not a prohibited immigrant; and
- (b) a determination under section 85 is not in force in relation to the person; and
- (c) the person passes the character test; and
- (d) the person is not suffering from a contagious or other disease, or a mental condition, which makes his or her presence in Vanuatu a risk to the health of the community in Vanuatu; and
- (e) any security required to be provided under [Part 8](#) in relation to the visa being applied for has been provided to the satisfaction of the Principal Immigration Officer; and
- (f) the person has the financial means to support himself or herself, and all of his or her dependants (if any); and
- (g) any other criteria prescribed by the regulations.

#### **38 Character test**

(1) A person does not pass the character test if:

- (a) the person has been sentenced to:
  - (i) death; or
  - (ii) imprisonment for life; or
  - (iii) a term of imprisonment of 12 months or more; or
  - (iv) 2 or more terms of imprisonment (whether on one or more occasions) where the total of those terms is 2 years or more; or
- (b) the person has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution; or
- (c) the person has or has had an association with another person, or with a group or organisation, and the Principal Immigration Officer suspects on reasonable grounds that the other person, group or organisation has been or is involved in criminal conduct.

(2) If the Principal Immigration Officer is satisfied that it is in the public interest for a person who does not pass the character test to enter Vanuatu, the Principal Immigration Officer may

deem the person to have passed the character test.

(3) If:

(a) a person does not pass the character test because he or she has been convicted of one or more offences; and

(b) the Principal Immigration Officer is satisfied that the offence or offences were committed at least 5 years ago and were of a minor nature;

the Principal Immigration Officer may deem the person to have passed the character test.

### **39 Decision to grant or refuse to grant a visa**

(1) The Principal Immigration Officer must grant an applicant a visa if the Principal Immigration Officer is satisfied that:

(a) the application for the visa is in the approved form; and

(b) any visa application charge payable in relation to the application for the visa has been paid; and

(c) the applicant for the visa has:

(i) passed the character test; and

(ii) satisfied the other criteria in section 37.

(2) If the Principal Immigration Officer is not satisfied of any of the matters in paragraph (1)(a),(b) or (c), the Principal Immigration Officer must refuse the application for a visa.

### **40 Notice of visa decision**

(1) As soon as practicable after making a decision to grant a visa or to refuse an application for a visa, the Principal Immigration Officer must give the applicant notice of the decision.

(2) Notice of a decision to refuse an application for a visa must be in the approved form and:

(a) specify the criteria the applicant did not satisfy under section 37; and

(b) state that the applicant can apply under section 58 to the Minister for a review of the Principal Immigration Officer's decision.

(3) Failure to give notice of a decision does not affect the validity of the decision.

(4) The Principal Immigration Officer must not re-open an application for a visa for further

consideration after his or her decision on the application has been made.

#### **41 When visa is in effect**

(1) A visa has effect as soon as it is granted, but may provide that it comes into effect at the beginning of a day specified in the visa, being a day after its grant.

(2) Subject to the cancellation of a visa, a visa ceases to be in force at the end of the last day of the period for which the visa has been granted.

#### **42 Special timing rule for certain foreign investors**

(1) This section applies to a person if:

(a) the person has applied for an extended visitor visa or a residence visa; and

(b) the person is a foreign investor within the meaning of the [Vanuatu Foreign Investment Promotion Act](#) [CAP 248] ; and

(c) an approval certificate within the meaning of that Act has been issued in relation to the person; and

(d) the person has given to the Principal Immigration Officer the approval certificate or a copy of the approval certificate certified by the Vanuatu Investment Promotion Authority to be a true copy.

(2) Subject to sections 37 and 38, the Principal Immigration Officer must so far as practicable determine the person's application for an extended visitor visa or a residence visa within 5 working days after the approval certificate or certified copy is given to him or her.

#### **43 Extended visitor visa for certain asylum claimants**

If the United Nations High Commissioner for Refugees or a representative of the High Commissioner has issued to a person seeking asylum as a refugee a certificate approved by the Principal Immigration Officer, the person may be granted an extended visitor visa by the Principal Immigration Officer, and sections 37 and 38 do not apply to the person.

### **Division 4 Conditions of a visa**

#### **44 General conditions**

A visa is granted subject to each of the following conditions:

(a) the holder of the visa must comply with the laws of Vanuatu;

(b) the holder of the visa must comply with the conditions of the visa;



- (c) the holder of the visa must not behave in a manner that is prejudicial to peace, good order, good government or public morality in Vanuatu;
- (d) the holder of the visa must advise the Principal Immigration Officer of any significant changes to his or her personal or financial circumstances;
- (e) such other conditions prescribed by the regulations.

#### **45 Employment and commercial or business activities**

(1) The holder of a visitor visa must not commence or continue:

- (a) in any employment in Vanuatu; or
- (b) any commercial or business activities in Vanuatu.

(2) The holder of a residence visa may:

- (a) subject to the [Labour \(Work Permits\) Act](#) [CAP. 187], commence or continue in any employment in Vanuatu; and
- (b) subject to the [Business Licence Act](#) [CAP 249], the [Vanuatu Foreign Investment Promotion Act](#) [CAP 248], the Companies Act [CAP. 191] and any other relevant law, commence or continue any commercial or business activities in Vanuatu.

(3) The holder of a student visa may:

- (a) despite the [Labour \(Work Permits\) Act](#) [CAP. 187], commence or continue in any employment in Vanuatu if the employment is a required part of the person's course of study; and
- (b) despite any other law, commence or continue any commercial or business activities in Vanuatu if the activities are a required part of the person's course of study.

(4) The holder of a special category visa may commence or continue in employment in Vanuatu if it is a condition of his or her visa to do so.

#### **46 No extensions or renewals of visas**

A visa cannot be extended or renewed.

### **Division 5 Cancellation of a visa**

#### **47 Grounds for cancellation**

(1) The Principal Immigration Officer may cancel a visa that has been granted to a person if the Principal Immigration Officer is satisfied that:

- (a) the person has not passed the character test or no longer passes the character test; or
- (b) the person has on or after the grant of the visa been convicted of an offence, in Vanuatu or another country, and sentenced to a term of imprisonment of 12 months or more, life imprisonment or the death penalty; or
- (c) the person is suffering from a contagious or other disease, or a mental condition, which makes his or her presence in Vanuatu a risk to the health of the community in Vanuatu; or
- (d) the person does not have the financial means to support himself or herself, and any of his or her dependants; or
- (e) the person made a statement that is false or misleading in a material particular in his or her application for the visa; or
- (f) the person has not complied with a condition of his or her visa; or
- (g) another person required to comply with a condition of the visa has not complied with that condition; or
- (h) the visa should not have been granted because the application for the visa or its grant was in contravention of this Act; or
- (i) any circumstances which permitted the grant of the visa no longer exist; or
- (j) the presence of the person in Vanuatu is a risk to the safety or good order of the community in Vanuatu; or
- (k) a ground prescribed by the regulations for cancelling a visa applies to the person.

(2) If the visa of a person (“the first mentioned person”) is cancelled, a visa of the same class held by another person because that other person is a member of the family of the first mentioned person is by force of this subsection cancelled.

(3) A visa may be cancelled if the holder of the visa is in or outside Vanuatu.

#### **48 Notice of proposed cancellation**

(1) If the Principal Immigration Officer is proposing to cancel a visa, whether its holder is in or outside Vanuatu, the Principal Immigration Officer must give the holder notice in the approved form that:

- (a) states there appears to be grounds for cancelling the visa and give particulars of those grounds; and
- (b) provides a summary of the information on which the Principal Immigration Officer is relying; and
- (c) specifies that the holder has 14 days from the date of the notice to make a written submission to the Principal Immigration Officer showing that:

- (i) those grounds do not exist; or
- (ii) there is a reason why the visa should not be cancelled.

(2) If the holder does not make a submission within the 14 days, the Principal Immigration Officer may cancel the visa at the end of that period.

(3) If the holder makes a submission within the 14 days, the Principal Immigration Officer must consider the submission before deciding whether or not to cancel the visa.

#### **49 Notice of cancellation decision**

(1) As soon as practicable after making a decision whether or not to cancel a visa, the Principal Immigration Officer must give the holder of the visa notice of the decision.

(2) If the Principal Immigration Officer's decision is to cancel the visa, notice in the approved form must:

- (a) set out the reasons for the decision; and
- (b) state that the holder can apply under section 58 to the Minister for a review of the Principal Immigration Officer's decision.

(3) If a person applies for a review under section 58, the person's visa remains valid until the review is finally determined.

(4) If a person does not apply for a review under section 58, the person's visa is cancelled with effect from the end of the period for making an application for review under that section.

(5) To avoid doubt, this section does not affect the expiry of a visa before:

- (a) a review mentioned in subsection (3) is finally determined; or
- (b) the end of the period mentioned in subsection (4).

### **PART 5 PROHIBITED IMMIGRANTS**

#### **50 Prohibited immigrants**

(1) The following non-citizens are prohibited immigrants:

(a) a person who is removed from Vanuatu under [Part 6](#), or is removed or deported from any other country;

(b) a person who attempts to enter or enters Vanuatu, or who enters and remains in Vanuatu, in contravention of this Act;

- (c) a person who breaches a condition of his or her visa;
- (d) a person who is convicted of an offence, in or outside Vanuatu, and is sentenced to a term of imprisonment of 12 months or more, life imprisonment or the death penalty;
- (e) a person who is or is likely to be involved in the commission of an offence against the [Counter Terrorism and Transnational Organised Crime Act](#) [CAP 313] ;
- (f) a person who is a terrorist within the meaning of the [Counter Terrorism and Transnational Organised Crime Act](#) [CAP 313];
- (g) a person whose presence in Vanuatu is a risk to the security or defence of Vanuatu, or to public order in Vanuatu;
- (h) a person who is wanted in another country by the relevant authorities in that country in relation to the commission of an offence in that country;
- (i) a person who arrives in Vanuatu as a stowaway;
- (j) a person who is a people smuggler or a person involved with people smuggling;
- (k) a person who is in the process of being deported from or has been asked to leave any other country;
- (l) a person who is a member of any class of persons prescribed by the regulations to be prohibited immigrants;
- (m) a member of the family of a prohibited immigrant, unless the Principal Immigration Officer declares in writing that the member is not a prohibited immigrant.

(2) The Principal Immigration Officer may in writing declare that a person is not a prohibited immigrant.

(3) To avoid doubt, if a visa is cancelled, its former holder, if in Vanuatu, becomes, on the cancellation, a prohibited immigrant unless, immediately after the cancellation, the former holder holds another visa that is in effect.

## **51 Offences relating to prohibited immigrants**

(1) A person commits an offence if the person is a prohibited immigrant and he or she:

- (a) attempts to enter or enters Vanuatu; or
- (b) enters and remains in Vanuatu.

(2) A person commits an offence if the person:

- (a) brings or attempts to bring a prohibited immigrant into Vanuatu; or
- (b) assists or attempts to assist a prohibited immigrant to enter or remain in Vanuatu.

(3) The owner, owner's agent, charterer, master and commander of a vessel or aircraft each commit an offence if:

- (a) a person who is a prohibited immigrant arrives in Vanuatu on the vessel or aircraft; and
- (b) the owner, owner's agent, charterer, master or commander knew, or ought reasonably to have known, that the person is a prohibited immigrant.

(4) A person who commits an offence under subsection (1),(2),or (3) is liable on conviction to a fine not exceeding VT1,000,000 or a term of imprisonment of not more than 2 years or both.

## **52 Liability for costs and expenses concerning prohibited immigrants**

(1) If:

- (a) a person who is a prohibited immigrant arrives in Vanuatu on a vessel or aircraft; and
- (b) the owner, owner's agent, charterer, master or commander knew, or ought reasonably to have known, that the person is a prohibited immigrant;

the owner, owner's agent, charterer, master and commander of the vessel or aircraft are jointly and severally liable to pay to the Government all costs and expenses incurred by the Government in connection with the prohibited immigrant's removal from Vanuatu.

(2) The costs and expenses mentioned in subsection (1) are recoverable as a debt due to the Government in a court of competent jurisdiction.

## **PART 6 REMOVAL OF NON-CITIZENS**

### **53 Grounds for removal orders**

(1) The Minister may make an order for the removal from Vanuatu of a person who is a non-citizen if the Minister is satisfied that:

- (a) the person is a prohibited immigrant; or
- (b) the person:
  - (i) refuses to submit to an examination by a registered medical practitioner after being required to do so under section 14 or to undergo any test or examination which the practitioner requires under that section; or
  - (ii) is suffering from a contagious or other disease, or a mental condition, which makes his or her presence in Vanuatu a risk to the health of the community in Vanuatu; or

- (c) the person does not have the financial means to support himself or herself, and any of his or her dependants; or
- (d) the person is an asylum claimant whose asylum claim has been refused or a refugee whose status has been cancelled; or
- (e) a ground prescribed by the regulations for removing a person applies to the person.

(2) Before making an order under subsection (1), the Minister must give the person notice in writing that:

- (a) the Minister proposes to make the Order; and
- (b) the reasons why the Minister proposes to make the order; and
- (c) that the person may within 14 days from the date of notice, make written representations to the Minister stating why the person should not be removed from Vanuatu.

(2A) The Minister must consider the representations before making an order under subsection (1).

(3) If the Minister is proposing to make a removal order, he or she must consult the Attorney General and take into account any advice received from the Attorney General about the proposed order.

(3A) If the Minister makes an Order under subsection (1), the Minister must:

- (a) record the decision in writing; and
- (b) give a copy of the order and the reasons to the person affected and the Principal Immigration Officer.

(4) A removal order is subject to such conditions as the Minister may determine.

### **53A Removal of non-citizens without notice**

(1) If in the opinion of the Minister, a person who is a non-citizen:

- (a) is involved in activities that are detrimental to national security, defence or public order; or
- (b) is a wanted person in a foreign country for any criminal offence he or she has committed in that foreign country.

the Minister, may by Order, remove such person from Vanuatu.

(2) The Minister does not need to give any notice for the removal of this person from Vanuatu.

(3) This section applies notwithstanding any other provision in this Act.

#### **54 Notice and form of removal orders**

The removal order made by the Minister under section 53 must be in the approved form and:

- (a) set out the grounds for making the removal order; and
- (b) provide a summary of the information on which the Minister is relying; and
- (c) state that the person may appeal to the Supreme Court against the decision of the Minister under section.59.

#### **55 Removal procedure**

(1) An immigration officer may:

- (a) detain a person subject to a removal order using such force as may be reasonably necessary in the circumstances; and
- (b) with the consent of the owner or occupier of land or premises or under a warrant issued under section 19, enter the land or premises and search the land or premises, or any vessel, vehicle, aircraft or other thing in or on the land or premises, for a person subject to a removal order, and detain that person.

(2) A person subject to a removal order may be detained in custody or at such a place as the Principal Immigration Officer may determine until the person is removed from Vanuatu.

(3) Subject to subsection (5), a removal order takes effect on:

- (a) if the period for applying to the Supreme Court for a review of the order has expired without any application having been made, the end of that period; or
- (b) if an application is made within that period, when the application is finally determined.

(4) If:

- (a) a non-citizen is to be removed from Vanuatu; and
- (b) the non-citizen or another person holds a ticket for the non-citizen from a place within Vanuatu to a place outside Vanuatu;

the Principal Immigration Officer may arrange (with or without the ticket holder's consent) for the ticket to be used for the transport of the non-citizen from Vanuatu.

(5) If a person in respect of whom a removal order is made has been sentenced to any term of imprisonment, the sentence must be served before the order takes effect unless the Principal Immigration Officer otherwise directs following consultation with the Commissioner of Police.

### **56 Removed non-citizen liable for costs of removal**

(1) A non-citizen who is removed from Vanuatu is liable to pay the Government the costs of his or her removal.

(2) The costs payable by a person to the Government under subsection (1) are recoverable as a debt due to the Government in a court of competent jurisdiction.

### **57 Seizure and sale of property etc.**

(1) If the Principal Immigration Officer is satisfied that:

(a) a person is liable, or may, on removal become liable, to pay the Government an amount under this Part; and

(b) there is a risk that the Government will not be able to recover the whole or a part of any amount that the person is, or may become, liable to pay to the Government;

the Principal Immigration Officer may take action under subsection (2).

(2) The Principal Immigration Officer may:

(a) seize any real or personal property or money that the Principal Immigration Officer believes on reasonable grounds is owned by or held by or in the possession or control of the person; and

(b) sell or otherwise realise the value of such property or money in such a manner as the Principal Immigration Officer may determine.

(3) The Principal Immigration Officer must give the person at least 24 hours notice of any action he or she proposes to take under subsection (2).

(4) A person may apply to the Supreme Court for an order restraining any action proposed to be taken by the Principal Immigration Officer, and the Court may make such orders on the application as it considers appropriate.

## **PART 7 APPEALS**

### **58 Review of certain decisions by Minister**

(1) In this section, reviewable decision means any decision of the Principal Immigration Officer to:



- (a) refuse to grant a visa; or
- (b) cancel a visa.

(2) When a reviewable decision is made, a person affected by the decision may apply in writing to the Minister for a review of the decision.

(3) An application for review must be made within 14 days after:

- (a) the date of the notice of the decision given under section 40 or 49; or
- (b) the date on which a copy of the removal order is given under section 54.

(4) An application for review of a decision must set out the reasons for making the application.

(5) Within 14 days after receiving an application for review of a decision, the Minister must:

- (a) affirm the decision under review; or
- (b) vary the decision under review; or
- (c) set aside the decision under review and make a decision in substitution for it.

(6) The Minister must:

- (a) record in writing any decision made under subsection (5), and the reasons for the decision; and
- (b) give a copy of the decision and the reasons to the applicant and the Principal Immigration Officer within 7 days after making the decision.

(7) This section does not apply to the refusal to grant or the cancellation of a transit visa.

### **59 Appeal to Supreme Court against Minister's decision**

(1) If an applicant for review under section 58 is dissatisfied with any decision of the Minister made under subsection 58(5), or the decision of the Minister under section 53, the applicant may appeal to the Supreme Court against that decision.

(2) An appeal must be made within 21 days after the date of the Minister's decision that is the subject of the appeal, or within such extended time as the Supreme Court allows.

(3) On any appeal under this section, the Supreme Court may affirm, vary or set aside the decision that is the subject of the appeal, and may give all such directions (if any) to the Minister or any other person concerned as may be necessary to give effect to the Court's decision.

## **PART 8 SECURITIES**

### **60 Securities**

- (1) The Principal Immigration Officer may require the applicant for an extended visitor visa, a residence visa or a student visa to provide a security in accordance with this Part.
- (2) The purpose of the security is to ensure the holder of the visa complies with the provisions of this Act and the conditions of the visa.
- (3) The security must be provided to a financial institution approved by the Principal Immigration Officer before the visa is granted.

### **61 Form, amount and conditions of securities**

- (1) The Principal Immigration Officer is to determine the form and the amount of a security.
- (2) The amount of the security must be sufficient to cover the cost of locating and the repatriation of the holder of the visa and his or her dependants.
- (3) The Principal Immigration Officer is to determine the conditions to which the security is subject, including the rate of interest payable on the security.

### **62 Forfeiture of securities**

- (1) A security is by force of this section forfeited to the Government if the holder of the visa:
  - (a) breaches a condition of the visa; or
  - (b) is or becomes a prohibited immigrant; or
  - (c) is removed from Vanuatu under [Part 6](#).
- (2) The financial institution holding a security that has been forfeited must return or refund the security together with any interest paid on the security to the Principal Immigration Officer within 7 days after the date of a written request from the Principal Immigration Officer.

### **63 Refund or return of securities**

- (1) Subject to subsection (2), a security is to be returned or refunded together with any interest paid on the security:
  - (a) to the depositor within 7 days after the permanent departure from Vanuatu of the depositor and his or her dependents; or

- (b) if the depositor is granted another visa which does not require a security, to the depositor within 7 days after the grant of that other visa; or
- (c) if the depositor becomes a citizen of Vanuatu, to the depositor within 7 days after the depositor provides the Principal Immigration Officer with satisfactory evidence that he or she has become a citizen; or
- (d) if the depositor dies, as soon as practicable to his or her estate,

whichever happens first.

(2) A security and interest can be returned or refunded only if the Principal Immigration Officer gives his or her written approval to the return or refund.

## **PART 9 DETERMINATION OF REFUGEE STATUS**

### **64 Asylum claim for refugee status**

- (1) An asylum claim must:
  - (a) be made in the approved form to the Principal Immigration Officer; and
  - (b) contain a statement of the grounds for the asylum claim; and
  - (c) contain a statement explaining whether any other person who is a member of the family of the asylum claimant and who is in Vanuatu is also seeking to be recognised as a refugee in Vanuatu, and, if so, whether any such asylum claim is on different grounds.
- (2) If an asylum claimant who has made an asylum claim departs Vanuatu, his or her asylum claim is taken to have been withdrawn.

### **65 Criteria for refugee status**

- (1) Subject to subsection (2), the Principal Immigration Officer must determine an asylum claimant is recognised as a refugee in Vanuatu if the Principal Immigration Officer is satisfied that:
  - (a) the asylum claimant holds a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) the asylum claimant:
    - (i) is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or
    - (ii) does not have a nationality and being outside his or her country of former habitual residence is unable, or, owing to such fear, is unwilling to return to it; and

(c) the asylum claimant is not excluded from recognition as a refugee in Vanuatu under subsection (2).

(2) An asylum claimant is excluded from recognition as a refugee in Vanuatu if the Principal Immigration Officer is satisfied that the asylum claimant:

- (a) is receiving protection or assistance from an agency of the United Nations; or
- (b) has been recognised by the competent authorities of a country in which he or she has taken residence or held residence as having the rights and obligations which are attached to possession of the nationality of that country; or
- (c) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or
- (d) has been convicted by a court in another country of an offence and sentenced to a term of imprisonment of 2 years or more, life imprisonment or death; or
- (e) has been found guilty of acts contrary to the purposes and principles of the United Nations; or
- (f) is a threat to the national security or defence of Vanuatu if he or she remains in Vanuatu; or
- (g) is a member of, or adheres to, any organisation or group of persons that has engaged in, or has claimed responsibility for, a terrorist act in or outside Vanuatu and the continued presence of that person in Vanuatu constitutes a threat to public safety; or
- (h) has engaged in, or has claimed responsibility for, a terrorist act in or outside Vanuatu and the continued presence of that person in Vanuatu constitutes a threat to public safety; or
- (i) is receiving effective protection and assistance from a third country or prescribed international agency in Vanuatu; or
- (j) has travelled through a third country on route to Vanuatu, being a country in which he or she has a right to enter and reside.

## **66 Determination of asylum claim for refugee status**

(1) As soon as practicable after receiving an asylum claim, the Principal Immigration Officer must determine whether the asylum claimant is to be recognised as a refugee in Vanuatu under section 65.

(2) For the purpose of determining an asylum claim, the Principal Immigration Officer may:

- (a) seek information from any source; and
- (b) require the asylum claimant to attend one or more interviews.

(3) However, the Principal Immigration Officer:

(a) is not obliged to seek any information, evidence or submissions further to that provided by the asylum claimant; and

(b) may determine the asylum claim on the basis of the information, evidence and submissions provided by the asylum claimant.

(4) If an asylum claimant who is required to attend an interview fails to attend the interview, the Principal Immigration Officer may determine the asylum claim without conducting the interview.

### **67 Subsequent asylum claim**

(1) On receipt of a subsequent asylum claim from a person, the Principal Immigration Officer must determine whether, since the most recent asylum claim by the person, circumstances in the asylum claimant's home country have changed to such an extent that the subsequent asylum claim is based on significantly different grounds to that previous asylum claim.

(2) If the Principal Immigration Officer is satisfied that circumstances have so changed, the Principal Immigration Officer must determine whether the asylum claimant is to be recognised as a refugee in Vanuatu under section 65.

(3) If the Principal Immigration Officer is satisfied that circumstances have not so changed, the Principal Immigration Officer must reject the subsequent asylum claim.

### **68 Notice of refugee status decision**

(1) As soon as practicable after making a decision on an asylum claim, including a subsequent asylum claim, the Principal Immigration Officer must give the asylum claimant notice of the decision.

(2) The notice must be in the approved form and set out:

(a) the decision on the asylum claim; and

(b) the reasons for the decision; and

(c) if the claim has been rejected, details of the claimant's right of appeal under section 71.

(3) The Principal Immigration Officer must not re-open an asylum claim for further consideration after his or her decision on the claim has been made.

### **69 Powers of Principal Immigration Officer**

(1) The Principal Immigration Officer may exercise all or any of the following powers for the purposes of this Part:

- (a) require the asylum claimant to supply information within the period specified by the Principal Immigration Officer;
- (b) require the asylum claimant to produce documents in the asylum claimant's possession or within the asylum claimant's ability to obtain as the Principal Immigration Officer requires;
- (c) require the asylum claimant to consent to the release by any other person of any relevant documents or information relating to the asylum claimant;
- (d) if the Principal Immigration Officer believes on reasonable grounds that a person other than the asylum claimant has in his or her possession or control any document of the asylum claimant (including any passport or travel document), request the person to produce the document;
- (e) require the asylum claimant to provide or allow the taking of such fingerprints and photographs of the asylum claimant as are reasonably necessary for the purpose of ascertaining or confirming the asylum claimant's nationality or identity, including authenticating a relationship to another person.

(2) A person who is requested to produce a document under paragraph (1)(d) is not entitled to refuse to comply with the request by reason only that the person has a lien over the document.

## **70 Cancellation of refugee status**

(1) The Principal Immigration Officer may, on his or her own initiative or if requested by a refugee in Vanuatu, cancel a person's recognition as a refugee in Vanuatu.

(2) The Principal Immigration Officer must cancel a person's recognition as a refugee in Vanuatu if the Principal Immigration Officer is satisfied that:

- (a) he or she voluntarily re-availed himself or herself of the protection of the country of his or her nationality; or
- (b) having lost his or her nationality, he or she has voluntarily re-acquired it; or
- (c) he or she has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
- (d) he or she has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
- (e) because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, he or she:
  - (i) can no longer continue to refuse to avail himself or herself of the protection of the country of his or her nationality; or
  - (ii) being a person who has no nationality, is able to return to the country of his or her former habitual residence; or
- (f) the recognition given by the Principal Immigration Officer was procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or

(g) subsection 65(2) was not properly considered by the Principal Immigration Officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information.

(3) As soon as practicable after cancelling a person's recognition as a refugee, the Principal Immigration Officer must give the person notice of the Principal Immigration Officer's decision.

(4) The notice must be in the approved form and set out:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) details of the person's right of appeal under section 71.

### **71 Minister to review decision of Principal Immigration Officer**

(1) In this section, reviewable decision means any decision of the Principal Immigration Officer to:

- (a) refuse to recognise an asylum claimant as a refugee in Vanuatu; or
- (b) cancel a person's recognition as a refugee in Vanuatu.

(2) When a reviewable decision is made, a person affected by the decision may apply in writing to the Minister for a review of the decision.

(3) An application for review of a decision must be made within 14 days after the date of the notice of the decision given by the Principal Immigration Officer under subsection 68(1) or 70(3).

(4) Within 14 days after receiving an application for a review of a decision, the Minister must:

- (a) affirm the decision under review; or
- (b) vary the decision under review; or
- (c) set aside the decision under review and make a decision in substitution for it.

(5) The Minister must:

- (a) record in writing any decision made under subsection (4), and the reasons for that decision; and
- (b) give a copy of the decision and the reasons to the applicant and the Principal Immigration Officer within 7 days after making the decision.

## **71A Appeal to Supreme Court against the decision of the Minister**

(1) If an applicant for a review under section 71 is dissatisfied with any decision of the Minister under subsection 71(4), the applicant may appeal to the Supreme Court against that decision.

(2) An appeal must be made within 14 days after the date of the decision given under paragraph 71(5)(b) or within such extended time as the Supreme Court allows.

(3) The Supreme Court may affirm, vary or set aside the decision that is the subject of the appeal, and may give such directions to the Principal Immigration Officer or any other person concerned as may be necessary to give effect to the Court's decision.

## **72 Confidentiality**

(1) The Principal Immigration Officer and the Supreme Court must maintain confidentiality as to:

(a) the identity of an asylum claimant whose asylum claim is being considered under this Act; and

(b) the particulars of his or her asylum claim or any other matter relevant to the asylum claim;

both during and subsequent to the determination of the asylum claim, including any appeal.

(2) Subsection (1) does not prevent disclosure of particulars:

(a) to a person necessarily involved in determining the relevant asylum claim, including any appeal; or

(b) to an officer or employee of a Government department or agency whose functions in relation to the asylum claimant require knowledge of those particulars; or

(c) to the United Nations High Commissioner for Refugees or a representative of the High Commissioner; or

(d) in dealing with government officials of other countries, not being the country of feared persecution.

(3) Subsection (1) does not apply if an asylum claimant has waived his or her rights under that subsection.

## **73 Prohibition of expulsion or return**

(1) The Principal Immigration Officer or any other person must not expel or return a person determined to be recognised as a refugee in Vanuatu to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality,



membership of a particular social group or political opinion.

(2) However, nothing in subsection (1) prevents a person from becoming a prohibited immigrant and being removed from Vanuatu under [Part 6](#).

#### 279535312">**74 Offences in relation to asylum claim**

(1) A person commits an offence if the person in support of an asylum claim for refugee status in Vanuatu:

- (a) makes a statement; or
- (b) provides any information or evidence; or
- (c) produces or surrenders a document,

that is false or misleading in a material particular.

(2) A person commits an offence if the person refuses or fails to produce or surrender any document, or to provide any information, when required to do so by the Principal Immigration Officer.

(3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding VT500, 000.

### **PART 10 TRANSIT VISAS**

#### **75 General provision**

(1) A transit visa is to be granted to a person to enter a proclaimed area and remain in the proclaimed area as part of the person's journey from a place outside Vanuatu to another place outside Vanuatu.

(2) An application for a transit visa must:

- (a) be made in the approved form to the Principal Immigration Officer; and
- (b) be accompanied by the prescribed charge unless the applicant is an exempt person.

(3) The holder of a transit visa must not commence or continue:

- (a) in any employment in Vanuatu; or
- (b) any commercial or business activities in Vanuatu.

(4) A transit visa is to be granted subject to such conditions and for such a period as the Principal Immigration Officer may determine.

(5) A person commits an offence if the person:

(a) is the holder of a transit visa; and

(b) either:

(i) attempts to enter or enters Vanuatu; or

(ii) enters and remains in Vanuatu.

(6) A person commits an offence if the person:

(a) is the holder of a transit visa; and

(b) prior to the expiry of the person's transit visa or after the cancellation of the person's transit visa, fails to depart from a proclaimed area on the next available vessel or aircraft leaving Vanuatu.

(7) The holder of a transit visa does not enter Vanuatu if he or she enters a proclaimed area.

(8) A person who commits an offence under subsection (5) or (6) is liable on conviction to a fine not exceeding VT500, 000 or imprisonment for a term of 2 years or both.

## **76 Directions**

(1) The Principal Immigration Officer may:

(a) direct that the holder of a transit visa be transferred from one proclaimed area to another proclaimed area; and

(b) issue such other directions to the holder of a transit visa as the Principal Immigration Officer considers appropriate in the circumstances.

(2) If the holder of a transit visa fails to comply with a direction, he or she commits an offence and is liable on conviction to a fine not exceeding VT100, 000.

## **77 Cancellation of a transit visa**

(1) The Principal Immigration Officer may cancel a transit visa on specific grounds to be prescribed by Order

(2) If the Principal Immigration Officer cancels a transit visa, the Principal Immigration Officer must give the former holder of the transit visa notice in the approved form that states:

- (a) the transit visa has been cancelled; and
- (b) the former holder must not enter Vanuatu and must depart Vanuatu as soon as possible from a proclaimed area on the next available vessel or aircraft leaving Vanuatu.

(3) The Principal Immigration Officer may direct the master of a vessel or the commander of an aircraft about to leave Vanuatu:

- (a) to transport the former holder of a transit visa whose visa has been cancelled to a place outside Vanuatu specified by the Principal Immigration Officer; and
- (b) to provide accommodation and maintenance for him or her during the journey.

(4) If the master of a vessel or the commander of an aircraft fails to comply with a direction, he or she commits an offence and is liable on conviction to a fine not exceeding VT500,000 or a term of imprisonment of not more than 2 years or both.

(5) A direction under subsection (3) may be specified to apply in relation to an escort who is to accompany the former holder of a transit visa.

## **78 Offence in relation to proclaimed area**

(1) A person commits an offence if:

- (a) the person enters a proclaimed area without a transit visa or any other visa; and
- (b) the person is not an exempt person.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding VT500, 000.

## **PART 11 OFFENCES**

### **79 Carriage of non-citizens to Vanuatu without documentation**

(1) The owner, owner's agent, charterer, master and commander of a vessel or aircraft on which a non-citizen is brought into Vanuatu each commit an offence if:

- (a) the non-citizen is not an exempt person; and
- (b) when entering Vanuatu, the non-citizen is not in possession of a visa that permits him or her to travel to and enter Vanuatu, or evidence of such a visa.

(2) The owner, owner's agent, charterer, master and commander of a vessel or aircraft on which

a non-citizen is brought into Vanuatu each commit an offence if the non-citizen, when he or she enters Vanuatu, is not in possession of a passport or other document of identification approved by the Principal Immigration Officer.

(3) The owner, owner's agent, charterer, master and commander of a vessel or aircraft who commit an offence under subsection (1) or (2) are liable on conviction to a fine not exceeding VT1000,000 or a term of imprisonment of not more than 2 years or both.

## **80 False statements**

(1) A person commits an offence if the person makes a statement that is false or misleading in a material particular in:

- (a) an application for a visa; or
- (b) a declaration or any other document required by or under this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding VT500,000 or a term of imprisonment of not more than 1 year or both.

(3) In proceedings for an offence under this section, a person is deemed to know the contents of any document which the person has signed or marked, whether or not the person has read the document.

## **81 Offences relating to visas and other travel documents**

(1) A person commits an offence if the person:

- (a) uses a visa for the purpose of travel to Vanuatu or remaining in Vanuatu, being a visa that was granted to another person; or
- (b) uses or has in his or her possession any forged or unlawfully issued visa or other travel document; or
- (c) alters or defaces a visa or other travel document, or any official or certified copy of a visa or such document; or
- (d) gives, sells, lends or parts with possession of any visa or other travel document, and the person knows that it will be used or is likely to be used in committing an offence against this Act.

(2) A person who commits an offence under paragraph (1) (a),(b), (c) or (d) is liable on conviction to a fine not exceeding VT 500,000 or a term of imprisonment of not more than 2 years or both.

(3) If a person is convicted of an offence under paragraph (1)(a), (b), (c) or (d), the Principal Immigration Officer may, in addition to the penalty imposed by a court for the offence, cancel

any visa or other travel document issued to the person under this Act.

## **82 Offences relating to immigration officers**

(1) A person commits an offence if the person:

(a) resists, hinders or obstructs an immigration officer in the course of his or her duties under this Act; or

(b) misleads or attempts to mislead an immigration officer in the course of his or her duties under this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding VT500, 000 or a term of imprisonment of not more than 2 years or both.

## **83 Penalty notices**

(1) The Principal Immigration Officer or any immigration officer may serve a penalty notice on a person if it appears to the Principal Immigration Officer or any immigration officer that the person has committed an offence under:

(a) section 13, 20, 21, 22, 23, 26 or 79; or

(b) any other provision prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person must, within 30 days after the date of the notice, pay to the Principal Immigration Officer the amount of the penalty prescribed by the regulations.

(3) The amount prescribed by the regulations must not exceed the maximum penalty for the offence.

(4) If the amount specified in the penalty notice is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

## **PART 12 MISCELLANEOUS**

### **84 Departure prohibition orders**

(1) On application by the Principal Immigration Officer or any interested person, a magistrate may make an order for a period not exceeding 6 months prohibiting a person from departing

Vanuatu to a place outside Vanuatu if the magistrate is satisfied that the person subject to the application:

(a) has a debt or debts to the Vanuatu Government in excess of the prescribed amount and is unlikely to pay such debt or debts if allowed to depart from Vanuatu; or

(b) is involved as a party or as a witness in a civil or criminal proceeding and it is not in the interests of justice for the person to depart from Vanuatu.

(2) The magistrate may make an order in the absence of the person subject to the application if the magistrate believes that it is just to do so in all of the circumstances.

(3) An immigration officer may seize and retain the passport or other travel documents of a non-citizen while he or she is subject to a departure prohibition order.

### **85 Prevention of return of certain persons to Vanuatu**

(1) The Minister may in writing determine that a person is not to return to or enter Vanuatu for such a period as is specified in the determination if:

(a) the person has previously been refused a visa; or

(b) the person has previously been removed from Vanuatu under [Part 6](#); or

(c) the person has previously been a prohibited immigrant; or

(d) the person has a debt or debts to the Vanuatu Government in excess of the prescribed amount; or

(e) the Minister believes on reasonable grounds that the person has been, is or is likely to be, involved in the commission of an offence against the [Counter Terrorism and Transnational Organised Crime Act](#) [CAP 313]

(2) A determination is subject to such conditions as the Minister specifies in the determination.

### **86 Immunity**

If:

(a) the Minister, Principal Immigration Officer or an immigration officer does any act or thing, or makes an omission; and

(b) the act or thing is done, or the omission is made, in good faith and for the purpose of exercising a power or performing a function under this Act;

he or she is not liable to any civil or criminal action in respect of the doing of the act or thing, or the making of the omission.

## **87 Notice**

For the purposes of any provision of this Act that requires or permits notice to be given to a person, the notice may be given by:

- (a) delivering the notice personally to the person; or
- (b) leaving it at, or by sending it by pre-paid post to, the address of the place of residence or business of the person last known to the person giving the notice; or
- (c) such other means as the Principal Immigration Officer considers appropriate in the circumstances.

## **88 Proof of documents**

(1) This section applies to:

- (a) any document purporting to be a record of a decision, delegation, visa, declaration, notice or cancellation under this Act; and
- (b) any other document purporting to be made under this Act;

being a document executed by the Minister, the Principal Immigration Officer or an immigration officer.

(2) A document to which this section applies is to be received in evidence and is, without further proof, taken to have been executed by the Minister, the Principal Immigration Officer or the immigration officer, as the case may be, unless the contrary is shown.

## **89 Public interest privilege**

For the purposes of this Act, the Minister may, on the advice of the Attorney General, certify in writing that the disclosure of information about a particular matter, or the disclosure of any particular matter contained in a document, would be contrary to the public interest.

## **90 Registers, information systems and data bases**

- (1) The Principal Immigration Officer may establish and maintain registers, information systems and data bases in computer based electronic forms and such other forms as the Principal Immigration Officer may determine.
- (2) A person commits an offence if the person, without the authority of the Principal Immigration Officer:
  - (a) attempts to access or accesses such registers, information systems or data bases; or

(b) attempts to disclose or alter, or discloses or alters any information held in such registers, information systems or data bases.

(3) A person who commits an offence under subsection (2) is liable on conviction to a fine not exceeding VT100, 000 or a term of imprisonment of not more than 1 year or both.

## **91 Regulations**

(1) The Minister may by Order make regulations prescribing 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), the regulations may:

- (a) prescribe fees and impose charges for and in relation to all or any of the following:
  - (i) any application for a visa under this Act;
  - (ii) any other application under this Act;
  - (iii) the issue of any visa or other document under this Act;
  - (iv) the provision of any service or facility to the owner, the owner's agent, the charterer, the master or the commander of any vessel or aircraft arriving in or leaving Vanuatu;
  - (v) the exercise of any power or the performance of any function under this Act; or
- (b) make provision for and in relation to all or any of the following:
  - (i) the recovery of any fees or charges;
  - (ii) the way, including the currency, in which any fees or charges are to be paid;
  - (iii) the remission, refund or waiver of any fees or charges, or for exempting persons from the payment of any fees or charges; or
- (c) prescribe penalties not exceeding a fine of VT100,000 in respect of offences against the regulations.

(3) Any prescribed fee or charge is non-refundable unless the regulations prescribe otherwise.

## **92 Guidelines**

(1) The Principal Immigration Officer may on the approval of the Minister issue advisory guidelines for the purposes of this Act.

(2) The guidelines must be consistent with this Act.



### **93 Repeal**

The [Immigration Act](#) [CAP. 66] and the regulations made under that Act are repealed.

### **94 Saving provision for certain visas and permits under repealed Act**

(1) This section applies to a visa or permit issued under the old Act if the visa or permit was in force immediately before the commencement.

(2) Subject to subsection (3), on and after the commencement:

(a) a visa or permit to which this section applies continues in force until the visa or permit expires or is cancelled under the old Act; and

(b) the old Act and the old regulations continue to apply to the visa or permit;

as if the old Act and the old regulations had not been repealed under section 93.

(3) A visa or permit to which this section applies cannot be extended or renewed under:

(a) the old Act; or

(b) the old regulations; or

(c) any other law.

(4) To avoid doubt, on and after the expiry or cancellation of a visa or permit to which this section applies, the provisions of this Act apply to the former holder of the visa or permit.

(5) In this section,

**commencement** means the commencement of this Act;

**old Act** means the [Immigration Act](#) [CAP. 66] as in force immediately before the commencement;

**old regulations** means the regulations made under the old Act, being regulations that were in force immediately before the commencement.

### **95 Saving provision for certain applications under repealed Act**

(1) This section applies to an application for a visa or permit if, immediately before the commencement, the processing of the application had not been completed under the old Act and the old regulations.

(2) An application for a visa or permit to which this section applies is to be processed under the old Act and the old regulations as if the old Act and the old regulations had not been repealed

under subsection 93(1).

(3) If a visa or permit mentioned in subsection (2) is issued under the old Act, then:

(a) subsections 94(2) and (3) apply to the visa or permit as if the visa or permit had been in force immediately before commencement; and

(b) subsection 94(4) applies to the former holder of the visa or permit on and after the expiry or cancellation of the visa or permit.

(4) In this section, commencement, old Act and old regulations have the same meaning as in section 94.

### **96 Savings for Principal Immigration Officer and immigration officers**

(1) The person (if any) who was the Principal Immigration Officer mentioned in subsection 3(1) of the [Immigration Act](#) [CAP. 66] immediately before the commencement of this Act continues as the Principal Immigration Officer under this Act, on and after that commencement, on the same terms and conditions of service.

(2) A person who was an immigration officer mentioned in subsection 3(1) of the [Immigration Act](#) [CAP. 66] immediately before the commencement of this Act continues as an immigration officer under this Act, on and after that commencement, on the same terms and conditions of service.

(3) Subsection (1) or (2), as the case requires, does not apply to a person who is acting as the Principal Immigration Officer or acting as an immigration officer.

### **97 Commencement**

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