

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

**Constitutional  
Case No. 25/2012 SC/CNST**

**BETWEEN:** HIS EXCELLENCY NIKENIKE VUROBARAVO  
Referral Authority

**AND:** THE SPEAKER OF PARLIAMENT  
HONOURABLE STEPHEN DERRICK FELIX  
Respondent

**Date of Hearing:** 27 August 2025

**Coram:** Hon. Chief Justice Vincent Lunabek

**Counsel:** Mrs Mary Grace Nari for the Applicant  
Mr Sammy Aron and Mr Tom Loughman for the Respondent

**Date of decision:** 16 October 2025

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**JUDGMENT**

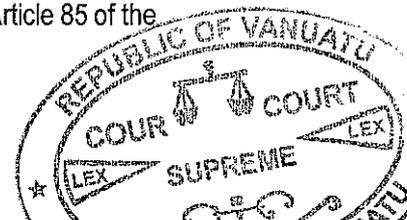
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**I. Introduction – Constitutional Amended Referral**

1. By an Amended Constitutional Referral ("*the Referral*") filed 5 August 2025, the Referral Authority ("*the R. A.*"), His Excellency Nikenike Vurobaravo, President of the Republic of Vanuatu, having considered that Item 1A of the Constitution (Ninth) (Amendment) Act No. 7 of 2025 ("*the Bill*") is inconsistent with Article 5(1)(k) and Article 16(1) of the Constitution of Vanuatu, referred it to the Supreme Court for its opinion, pursuant to his powers under Article 16(4) of the Constitution.
2. Article 16(4) of the Constitution provides:  
*"If the President considers that the bill is inconsistent with a provision of the Constitution he shall refer it to the Supreme Court for its opinion. The bill shall not be promulgated if the Supreme Court considers it inconsistent with a provision of the Constitution."*

**II. Background facts**

3. The facts of this case are not in dispute. They are as follow – A Bill for the Constitution (Ninth) (Amendment) Act No. 7 of 2025 was passed by a Majority of two thirds of the members of Parliament on 30 April and 7 May 2025, in accordance with Article 85 of the Constitution.



4. Article 84 deals with who should introduce the Bills for amendment of the Constitution – A bill for an amendment of the Constitution may be introduced either by the Prime Minister or any other member of Parliament. Article 85 deals with the procedure for passing constitutional amendments. A bill for an amendment of the Constitution shall not come into effect unless it is supported by the votes of no less than two-thirds of all the members of Parliament at a special meeting of Parliament at which three-quarters of the members are present. If there is no such quorum at the first sitting, Parliament may meet and decide by the same majority a week later even if only two-thirds of the members are present.
5. The Bill was passed by Parliament in accordance with Articles 84 and 85 of the Constitution.
6. On 5 June 2025, the Clerk of Parliament certified the Bill and presented it to the President of the Republic for his assent.
7. The Bill has eight (8) Items as set out in the schedule to it – Items 1, 1A, 2, 3, 4, 4A, 5 and 6.
8. The President says he is not concerned with Items 1, 2, 3, 4, 4A, 5 and 6. But, the President says he is only concerned with Item 1A of the Bill. Item 1A provides:

*"1A Paragraph 5(1)(k)*

*Repeal the paragraph, substitute*

*(k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph in so far as it makes provision for the:*

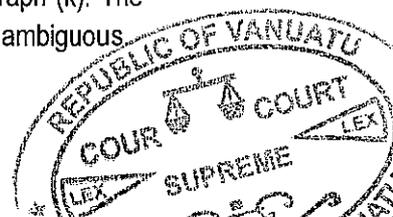
*(i) Special benefit, welfare, protection or advancement of females, children and young persons, members of under privileged groups or inhabitants of less developed areas; and*

*(ii) Purpose of economic development zones."*

9. The reasons of the concerns of the President are set out in the grounds of the Referral.

### **III. Grounds of the Referral**

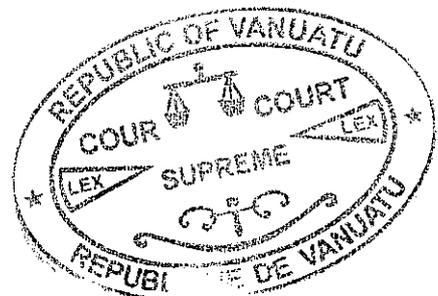
10. The grounds of the Referral are these –
  - (a) Article 5(1)(k) provides for the fundamental rights of the most vulnerable groups of individuals – female, children, young persons and/or members of under-privileged groups or persons living in less developed areas.
  - (b) The legislature has added a sub-paragraph to the existing paragraph (k). The intent of this phrase "*purpose of economic development zones*" is ambiguous.



- (c) The new category has no connection to the protection of the rights of the most vulnerable groups of people. It is a separate concept that can be regulated through existing legislation or new legislation and state tax policies.
  - (d) Lastly, Item 1A of the Constitution (Ninth) (Amendment) Act No. 7 of 2025 is not supported by Article 16(1) of the Constitution which require Parliament to create laws that promote peace, order and good Government of Vanuatu.
11. The President says that Item 1A of the Constitution (Ninth) (Amendment) Act No. 7 of 2025 (*"the Bill"*) is severable from Items 1, 2, 3, 4, 4A, 5 and 6.
  12. The Constitutional Referral is supported by a sworn statement of Clarence Marae, Principal Private Secretary in the State House filed on 14 July 2025. A copy of the Constitution (Ninth) (Amendment) Act No. 7 of 2025 is attached to that statement.

**IV. Response to the Amended Referral**

13. A response to the Amended Referral was filed on 22 August 2025. The Respondent responded to each paragraph of the grounds of the Referral as follows.
14. As to paragraphs 1 and 2, the Respondent says that –
  - (a) pursuant to Article 16(1) *"Parliament may make laws for peace, order and good government of Vanuatu"*.
  - (b) pursuant to Article 16(4) of the Constitution *"If the President considers that the bill is inconsistent with a provision of the Constitution, he shall refer it to the Supreme Court for its opinion. The bill shall not be promulgated if the Supreme Court considers it inconsistent with a provision of the Constitution"*.
  - (c) Article 5(1)(k) provides for *"equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privilege groups or inhabitants of less developed areas"*.
  - (d) pursuant to *In re the President's Referral In President of the Republic of Vanuatu v Attorney General* [1998] VUSC 18 the Court held that *"a proposed Act (Bill) of the legislature is presumed to be valid and will not be declared unconstitutional unless by virtue of the exercise of Article 16(4) of the Constitution, the Supreme Court is of the opinion that the Bill contravenes some constitutional provision, and if so, then it will not be promulgated;*



## Particulars

*In re the President's Referral. President of the Republic of Vanuatu v Attorney General* [1998] VUSC 18 at P.8 the Court held that:

*Accepting these words of caution and bearing them in mind in this case, I must reiterate the two constitutional limitations to the exercise of Parliament's power under Article 16 of the Constitution in the Virelala's case which is now extended to a Bill in this case:*

*"Firstly, the Court will declare an Act, a Bill or a provision of an Act, or of a Bill unconstitutional when it infringes one of the fundamental rights and freedoms guaranteed and protected under Article 5 of the Constitution... (and)*

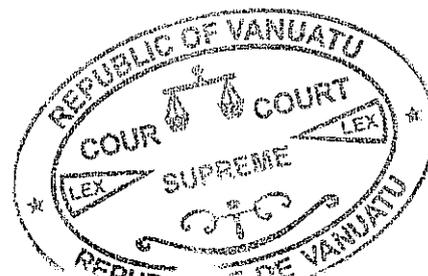
*Secondly, the Court will intervene to sanction an Act, a Bill or a provision of a Bill or of an Act of Parliament, by declaring it unconstitutional in the circumstances where there is an express/explicit constitutional prohibition provision but, Parliament, nevertheless legislates to that prohibited effect in contravention of the constitutional express prohibition provision."*

*Equally, a proposed Act (Bill) of the legislature is presumed to be valid and will not be declared unconstitutional unless by virtue of the exercise of Article 16(4) of the Constitution, the Supreme Court is of the opinion that the Bill contravenes some constitutional provision, and if so, then it will not be promulgated*

- (e) the President has exercised its powers under Article 16(4) whereby it referred Item 1A of the Constitution (Ninth) (Amendment Act No. 7 of 2025 to the Supreme Court in this matter; and
- (f) otherwise, will rely on Articles; 5(1)(k), 16(1) and (4), and Item 1A of the Constitution (Ninth) (Amendment) Act No.7 of 2025 (Constitution Amendment), for their full terms and effect.

15. As to paragraphs 3 and 4, the Respondent says that –

- (i) Repeats paragraph 1 above.
- (ii) Admits paragraph 3(a).
- (iii) In response to paragraphs 3(b) and (c), the Respondent says that –
  - (a) Parliament by its law-making powers under Article 16(1), repealed Article 5(1)(k) and substituted by paragraph 5(1)(k) (i) and (ii) and will rely on Article 16(1) for its full terms and effect.



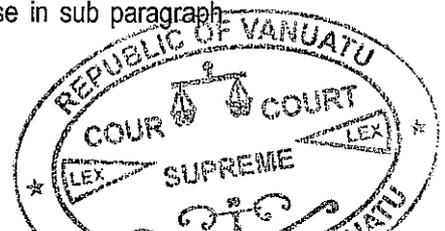
- (b) Admits that pursuant to the Constitution Amendment, the Legislature added a sub-paragraph to the existing Article 5(1)(k) as Item 1A and the result is the existing Article 5(1)(k) was repealed and substituted by 5(1)(k) (i) and (ii).

Particulars

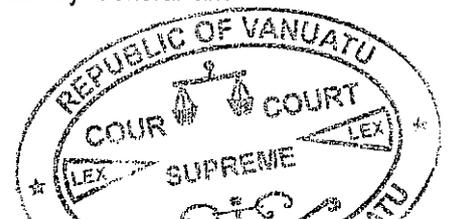
1A Paragraph 5(1)(k)

Repeal the paragraph, substitute

- “(k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provisions for the:
- (i) Special benefit, welfare, protection or advancement of females, children and young persons, members of under-privilege groups or inhabitants of less developed areas; and
  - (ii) Purpose of economic development zones.”
- (c) Article 5 provides for fundamental rights and freedoms for all individuals and 5(1)(k), the legislature made exceptions to the *“equal treatment under the law or administrative action of all individuals to cover, females, children and young persons, members of under-privilege groups or inhabitants of less developed areas.*
- (d) with respect to sub-paragraphs 5(1)(k)(ii) of the Constitution Amendment, the exception to *“equal treatment under the law or administrative action”* also covers *“purpose of economic development zone”* (EDZ).
- (i) the intention of the Constitution Amendment and in respect to Item 1A paragraph 5(1)(k)(ii) is to allow for laws that are much lenient to EDZ, with the view to promote economic development.
- (ii) based on paragraphs 2(a) to (e) above, denies that Item 1A of the Constitution Amendment in so far as the exception to *equal treatment under the law or administrative action* to cover *“economic development Zone”* infringes any of the fundamental rights and freedoms guaranteed and protected under Article 5 of the Constitution.
- (iii) it denies the Referral's reasoning that the added sub-paragraph 5(1)(k)(ii), on the EDZ to the Constitution is ambiguous on the alleged basis that, it has no connection to the protection of the rights of the vulnerable groups of people in 5(1)(k)(i) as amended. This is because the amendment to 5(1)(k) expands and/or categorised the exceptions to the *equal treatment under the law or administrative action* into two categories, those in sub paragraph 5(1)(k)(i) and the EDZ in 5(1)(k)(ii); and



- (iv) accordingly, the two exceptions in sub paragraph 5(1)(k)(i) and (ii) to the equal treatment under the law or administrative actions in Article 5(1)(k) should not interpret to have a connection as alleged.
- (iii) In respond to paragraph 3(d), says as per the case of *Jean Paul Virelala v The Ombudsman* [1997] the reference to "*peace, order and good government of Vanuatu*" does not limit the legislative making power under Article 16(1). And
- (iv) Otherwise says that Item 1A of the Constitution Amendment, Articles 5(1)(k) and 16(1) and (4) speak for themselves and will rely on them for their full terms and effect.
16. In response to paragraph 5, says items 1, 2, 4, 4A, 5 and 6 in relation to other provisions of the Bill speak for themselves and will rely on them for their full terms and effect.
17. In further answer to the Amended Referral, the Respondent says that –
- (a) Article 5(1)(k) and as repealed and substituted as Item 1A paragraph 5(1)(k)(i) in the Constitution Amendment, protects the individual rights to *equal treatment under the law and administrative action, except that no law shall be inconsistent with the sub-paragraphs in so far as it makes provisions for special benefit, welfare protection or advancement of groups of persons including, females, children and young persons, members of under- privilege groups or inhabitants of less developed areas;*
- (b) by the substituted provision in the Constitution Amendment, item 1A paragraph 5(1)(k)(ii), the legislature added "*Economic Development Zone*" (EDZ) and which effect is for the exception to *equal treatment under the law or administrative action* as applicable to the vulnerable groups of persons in Article 5(1)(k) to also cover EDZ.
- (c) Article 16(1) empowers the Parliament to make laws for the peace, order and good government of Vanuatu, and is subordinate to Article 16(4) that such laws can only be promulgated if the Supreme Court does not consider it inconsistent with a provision of the Constitution, once the matter is referred to the Supreme Court for its opinion under Article 16(4).
- (d) The insertion under Article 5(1)(k)(ii) to allow for preferential treatment, for the "*purpose of economic development zone*" does not infringe any of the fundamental rights and freedoms guaranteed by Article 5 of the Constitution.
- (e) Says that based on the above paragraphs, denies that the phrase "*for the purpose of economic development zone*" is ambiguous; and
- (f) Says the Amended referral is misconceived and must be dismissed.
18. The Response to the Amended Referral is supported by the sworn statements of Joe Junior Natuman, Acting Parliamentary Counsel, Office of the Attorney General and Maxim Banga, Clerk of Parliament both filed on 22 August 2025.



**V. Issue**

19. Is the Bill [Item 1A] inconsistent with Article 5(1)(k) and Article 16(1) of the Constitution?

**VI. Court considerations**

20. The question for the Court to determine is this – Is the bill [Item 1A] inconsistent with Article 5(1)(k) and Article 16(1)?

21. I set out the relevant provisions of the Constitution and Item 1A of the Bill.

22. Article 5(1)(k) says:

*"The Republic of Vanuatu recognises, that subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –*  
....

*(k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph in so far as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privilege groups or inhabitants of less developed areas".*

23. Article 16 says:

*"(1) Parliament may make laws for the peace, order and good government of Vanuatu.*

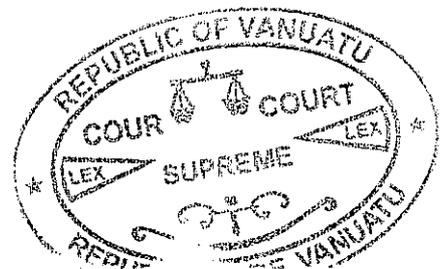
*(2) Parliament shall make laws by passing bills introduced either by one or more members or by the Prime Minister or a Minister.*

*(3) when a bill had been passed by Parliament it shall be presented to the President of the Republic who shall assent to it within 2 weeks.*

*(4) if the President considers that the bill is inconsistent with a provision of the consistent, he shall refer it to the Supreme Court for its opinion. The bill shall not be promulgated if the Supreme Court considers it inconsistent with a provision of the Constitution."*

24. Item 1A of the Constitution (Ninth) (Amendment) Act No. 7 of 2025 ("the Bill") under challenge provides:

"1A Paragraph 5(1)(k)



Repeal the paragraph, substitute

(k) equal treatment under the law or administration action, except that no law shall be inconsistent with this sub-paragraph in so far as it makes provision for the:

(i) Special benefit, welfare, protection or advancement of females, children and young persons, members of under-privilege groups or inhabitants of less developed areas; and

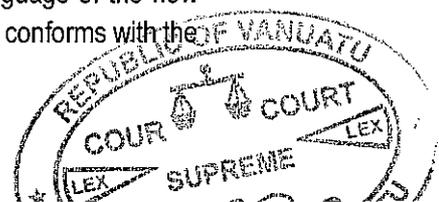
(ii) Purpose of economic development zones."

**A. Is the Bill [Item 1A] inconsistent with Article 5(1)(k)**

25. I deal first with the first aspect of the issue.
26. The RA says that Article 5(1)(k) of the Constitution talks about "equal treatment under the law or administrative action". It is part of the fundamental rights and freedoms of the individuals provided under Article 5.
27. The RA says that the fundamental rights and freedoms under the Constitution are not absolute and may be granted subject to restrictions.
28. The RA says that Article 5(1)(k) recognises and allows the exceptions for a law relating to special benefit, welfare, protection or advancement of females, children and young persons, member of under-privilege groups or inhabitants of less developed areas. The fundamental rights and freedoms relate to individuals or persons.
29. The RA submitted that the inclusion of a new category under Article 5(1)(k)(ii) "purpose of economic development zones" is ambiguous because it does not relate to individuals or persons. It speaks of a concept connected to foreign investment and taxation policies.
30. The RA submitted that Item 1A of the Bill is inconsistent with Article 5(1)(k) of the Constitution. The Constitution must be interpreted sui-generis, unique species of its own based on Kilman v Speaker of Parliament [2011] VUCA 15. The Constitution cannot be treated as an act of Parliament.
31. The RA submitted that if there is any ambiguity, the Court will consider the context of Article 5(1)(k) and, Article 5 as a whole, to see the clear intention of these provisions in comparison or contrast to the new sub-paragraph (ii) based on Kilman case referred to above.
32. The RA submitted that the Bill is a change to the Constitution about giving an exception relating to a concept and not individuals or groups of people within the area of "equal treatment under the law or administration action". Item 1A of the Bill is a change to the Article 5(1)(k) of the Constitution as it does not relate to individuals but to the concept

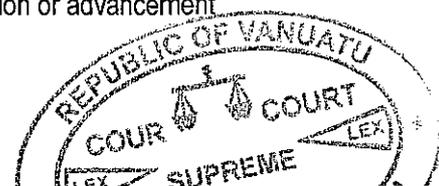


33. The RA says that the reason for the Referral is that sub-paragraph (ii) does not relate or is not connected to sub-paragraph (i). And so, sub-paragraph (ii) should be excluded from Article 5(1)(k) as it is not related to sub-paragraph (i) of Article 5(1)(k) which is about individuals.
34. However, the expression (“; and”) at the end of (i)(k)(1) of Article 5 of the Bill, includes “the purposes of economic development zones” in (ii) with the vulnerable groups of individuals in (i); but it is not related as the draft is intended to connect the (i) and (ii) together but not separately. The concept of economic development zone is not part of group of people in (i).
35. The RA submitted that because of the inclusion of (ii) with (i), it is an ambiguity that the Court should look at it. In terms of the drafting, there should be a separate provision of its own for the purpose of economic zones.
36. The second aspect of the issue concerns the Bill (Item 1A) and Article 16(1) of the Constitution.
37. Under the Amended Constitutional Referral, the RA says that the Item 1A of the Bill is inconsistent with Article 16(1) of the Constitution.
38. That challenge of constitutionality under Article 16 (1) disappears in the submissions of the RA by a clear concession to the effect that subject to the Constitution, Parliament may make laws for the peace, order and good government of Vanuatu based on President of the Republic of Vanuatu v Attorney General [1998] VUSC 18 and Attorney General v Timakata [1993] VUCA 2.
39. The RA conceded that Item 1A does not appear to infringe the rights protected under Article 5 of the Constitution.
40. The Respondent, in essence, says that the issue in this case is about the interpretation of the Constitution and in particular Article 5(1)(k). The interpretation of the Constitution must be sui generis. The starting point is the Constitution itself; and the ending point of interpreting the Constitution is the Constitution itself [see Silas v Public Service Commission [2014] VUCA 9 and Kilbride Limited v Republic of Vanuatu [2020] VUCA 24. Those cases dealt with the issue of interpreting the Constitution when a provision is ambiguous.
41. In the case of President Moses Tallis v Speaker of Parliament [2019] VUSC 39, the President referred the Constitution (Seventh) Amendment Act No. 01 of 2019 to the Supreme Court for its opinion under Article 16(4). The amendment inserted a new additional Article 46A in the Constitution. The new additional Article 46A was in respect to Parliamentary Secretaries. In that case, the Court observed that to provide interpretation of this new Article 46A, the Court must look at the language of the new Article or new additional. That the language used must be clear; that it conforms with the



context of the Constitution. The new Article 46A was declared unconstitutional as it was inconsistent with Articles 86 and 42 of the Constitution.

42. In applying that principle in the present case, the Respondent submitted the Court will look at the language used in Item 1A in respect to the restructure of Article 5(1)(k)(i) and (ii). If there is any ambiguity, the Court will rely on the language used in the additional or new insertion which is Article 5(1)(k)(i) and (ii). The words must be clear.
43. The Respondent submitted that the words or expressions “; and” at the end of sub-paragraph (i) (k) (1) of Article 5 separated (i) and (ii) (k) (1) of Article 5 of the Constitution.
44. The Respondent says that Parliament has powers to amend Article 5 by expanding or adding new addition. That is the clear wordings in (i) and (ii). The expression (“; and”) at the end of sub-paragraph (i) indicates a clear intention of the legislature to separate matters in (i) and (ii).
45. The Respondent says the new addition in (i) is separated from (ii). The matters in sub-paragraph (i) will be appropriately dealt by legislations to advance for –
- Special benefit, welfare, protection or advancement of females, children and young persons, members of under-privilege groups or inhabitants of less developed areas as an exception to the fundamental rights and freedoms of the individuals of equal treatment under the law or administrative action.
46. The matters in sub-paragraph (ii) will be appropriately dealt with by legislations for -
- The purpose of economic development zones (EDZ). The new addition of EDZ is an additional exception to the fundamental rights and freedoms of equal treatment under the law or administrative action.
47. The Respondent submitted that the expression (“; and”) indicates the intention of Parliament to treat (k)(i) separately from (k)(ii) because of the exception.
48. The question that comes to my mind in this - Is a provision of a constitutional bill which is ambiguous, unconstitutional?
49. I answer this question in the negative, no. Ambiguity alone does not make a bill unconstitutional. Instead, it triggers a process where Courts try to interpret the law to be constitutional. Only when an ambiguous law cannot be interpreted in a constitutional manner, or when its vagueness is so severe it violates due process, will it be struck down.
50. In the present case, there seems to be an ambiguity between sub-paragraph (i) and sub-paragraph (ii) of (k) (1) of Article 5 of the Constitution because the words or expression (“; and”) at the end of sub-paragraph (i) seems to directly link or connect sub-paragraphs (i) and (ii). Yet, we know that sub-paragraph (i) (k) (1) of Article 5, as an exception, to the right of “equal treatment under the law or administrative action”, authorise for special legislations for special benefit, welfare, protection or advancement

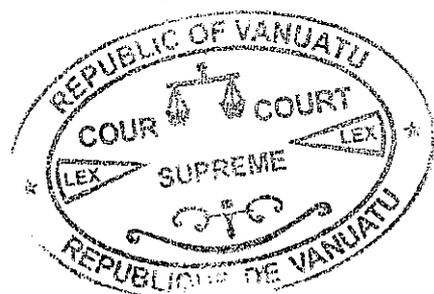


of females, children and young persons, members of under-privilege groups or inhabitants of less developed areas; while sub-paragraph (ii) (k) (1) of Article 5, as another and new exception, to the right of "equal treatment under the law or administrative action" authorise for special laws for the purpose of economic development zones. In essence, sub-paragraph (i) deals with special laws for special category of individuals, while sub-paragraph (ii) deals with a new concept of economic development. The drafting in the Constitution (Ninth) (Amendment) Act no. 7 of 2025 seems to directly connect or link the two exceptions to equal treatment under the law or administrative action under Article 5 (1) (k) of the Constitution, which is apparently ambiguous. To resolve that ambiguity, I accept and agree with the interpretation advanced by the Respondent that Parliament intended to treat sub-paragraph (i) (k) (1) of Article 5 separately from sub-paragraph (ii). Accordingly, the two exceptions in sub-paragraphs (i) and (ii) in Article 5 (1) (k) of the Constitution, should not be interpreted to have a connection or link.

51. Item 1A of the Constitution (Ninth) Amendment Act No. 7 of 2025 is not inconsistent with Article 5 (1) (k) of the Constitution.

**B. Is the Bill [Item 1A] inconsistent with Article 16(1) of the Constitution?**

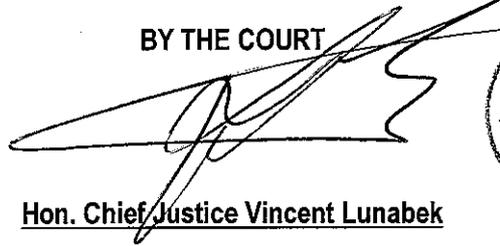
52. I answer this question in the negative, no.
53. The RA conceded that the Bill does not appear to infringe the rights protected under Article 5 of the Constitution.
54. The R.A. conceded that subject to the Constitution, the Parliament of Vanuatu is given plenary powers by Article 16 (1) of the Constitution and in the exercise of those powers it may repeal or alter existing laws: see Article 95 of the Constitution; see Attorney General v Timakata [1993] VUCA 2; President v Speaker [2012]VUSC183; and in Re: Presidential Referral, President of the Republic of Vanuatu -v- Attorney General [1998] VUSC 18.
55. The Item 1A of the Constitution (Ninth) Amendment Act No. 7 of 2025 ("the Bill") is not inconsistent with Article 16 (1) of the Constitution.
56. The Amended Constitutional Referral is, hereby, dismissed. There is no order as to costs.



57. The President of the Republic is authorised to assent to the Constitution(Ninth) (Amendment) Act No. 7 of 2025.

Dated at Port Vila, this 16<sup>th</sup> day of October 2025.

BY THE COURT



Hon. Chief Justice Vincent Lunabek

