

Examined and certified by:

N. Valoa
Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to this Act this 16th day of July 2009



Sir F. Goodwin KBE
Queen's Representative

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BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same, as follows:

1. Short title – This Act is cited as the Public Service Act 2009.
2. Commencement – This Act comes into force on 1 August 2009.

PART 1
PRELIMINARY PROVISIONS

3. Purpose – The purpose of this Act is to –
 - (a) amend and consolidate the law relating to the Public Service; and
 - (b) ensure that the members of the Public Service are impartially selected, fairly remunerated, and administratively competent; and
 - (c) make provision for State Services and for the human resource development of members of the Public Service.

4. Interpretation – In this Act, unless the context otherwise requires, –

“agency” has the meaning given by section 2(1) of the Public Expenditure Review Committee and Audit Act 1995–96;

“Board” means the Cook Islands Public Service Board of Appeal, which is the same Board of Appeal as that existing under the same name in article 76 of the Constitution;

“Commissioner” means the Public Service Commissioner appointed under article 73 of the Constitution and section 5;

“department” means any Ministry, department, and includes any agency or instrument prescribed under section 48(1)(i);

“employee” in relation to the Public Service, means a person employed therein, whether as an officer or temporarily salaried employee or as wage worker whether by way of written contract or otherwise; but does not include a head of department or the Commissioner.

“employer”, in relation to an employee in a department, means the head of the department;

“head of department” means a person appointed as a head of a department under section 14;

“Minister” means the Minister responsible for the Public Service;

“officer” means an employee who is not a temporary salaried employee, a wage worker, or a person employed under section 31;

“public expenditure” has the meaning given by section 2(1) of the Public Expenditure Review Committee and Audit Act 1995–96;

“responsible Minister” means, in relation to a department or the office of head of department, –

- (a) the Minister of the Crown who is charged by the Prime Minister under article 16 of the Constitution with the responsibility for the department concerned;
- (b) in any other case, the Prime Minister.

PART 2

PUBLIC SERVICE COMMISSIONER AND OFFICE OF THE PUBLIC SERVICE COMMISSIONER

5. Public Service Commissioner – (1) There is from time to time to be a Public Service Commissioner appointed by the Queen’s Representative on the advice of the Prime Minister in accordance with Article 73 of the Constitution and Schedule 1.

(2) The terms and conditions of employment of the Commissioner are governed by article 73 of the Constitution.

(3) Members of the panel established in accordance with Schedule 1 must be remunerated in accordance with that schedule.

6. Functions of Commissioner – (1) The functions of the Commissioner are --

- (a) to review the machinery of government, including –
 - (i) the allocation of functions to and between departments; and
 - (ii) the desirability of, or need for, the creation of new departments and the amalgamation or abolition of existing departments; and
 - (iii) the co-ordination of the activities of departments; and
- (b) to ensure compliance with the code of conduct and values of the public service set out in Schedule 4;
- (c) to issue written instructions to heads of departments relating to the implementation of government policies to ensure uniformity and cohesion in the Public Service;
- (d) to carry out inquiries relating to the administration of the public service or any other matters relating to the public service in accordance with section 11;

- (e) to investigate any dispute between an employer and an employee and make recommendations as to how the dispute should be settled;
- (f) to ensure heads of departments discharge their responsibilities specified in section 16;
- (g) to review the performance of heads of departments, including the performance of their contracts of employment and compliance with their performance agreements;
- (h) to ensure the heads of departments are not subjected to unlawful or improper pressure from Ministers of the Crown or members of parliament, in particular with regard to public expenditure;
- (i) to act as an intermediary between Ministers of the Crown and heads of departments in relation to the functions specified in paragraphs (f), (g), and (h);
- (j) to appoint heads of departments and negotiate with the successful candidates' conditions of employment;
- (k) to develop and promote personnel policies and standards, including performance management systems for heads of departments and the Public Service;
- (l) to provide advice on the training and career development of staff in the Public Service;
- (m) to determine salary ranges for positions in the Public Service in accordance with the remuneration system for the time being approved by Cabinet;
- (n) to tender advice to the Minister and other Ministers of the Crown as necessary in relation to the Commissioner's functions.

(2) In carrying out his or her functions, the Commissioner must give effect to the policies of the Government relating to the Public Service as communicated to the Commissioner from time to time by the Prime Minister in writing.

7. Instructions to heads of departments – (1) The Commissioner may issue written instructions to heads of departments for the purpose of the effective administration of the public service and to give effect to Government policies referred to in section 6(2).

(2) Heads of departments are bound by any instructions made under this section that apply to them.

(3) If a head of department breaches any instructions made under subsection (1), that breach is, in the absence of proof to the contrary, to be treated as misconduct for the purposes of any provision in an enactment or a contract of employment relating to the suspension or removal from office of that head of department.

(4) Instructions made under this section are subject to this Act.

8. Office of Public Service Commissioner – (1) This section establishes an Office of the Public Service Commissioner, to assist the Commissioner with the general administration of this Act, and with such other functions as may from time to time be lawfully conferred on it.

(2) The administrative head of the Office of the Public Service Commissioner shall be the Chief Executive Officer, appointed under section 14.

(3) Despite section 17, the Chief Executive Officer, in consultation with the Commissioner, may appoint such employees as may be necessary to enable the Commissioner to carry out his or her functions and duties.

9. Annual report – (1) The Commissioner must, within 3 months after the end of each financial year or within any further period the Minister may allow, furnish a report to the Minister concerning –

- (a) the state of the machinery of government; and
- (b) the outcome of each review conducted by the Commissioner and every inquiry carried out under section 11.

(2) The Minister must lay a copy of the report before Parliament –

- (a) at the expiry of 14 days after the Minister receives it if Parliament is then sitting; or
- (b) if Parliament is not sitting, immediately on the commencement of the next sitting of Parliament.

(3) Nothing in this section affects the responsibility of the chief executive officer to meet the reporting requirements specified in section 28 of the Ministry of Finance and Economic Management Act 1995–96.

10. Delegation of functions or powers of Commissioner – (1) The Commissioner may from time to time, either generally or specifically, delegate any of his or her functions or powers to any head of department or head of agency.

(2) The Commissioner must not, however, delegate the general power of delegation or the power to appoint candidates as heads of departments.

(3) Every delegation must be in writing.

(4) A delegate to whom any functions or powers are delegated may delegate the function or power to any other person or to the holder for the time being of any specified office in the Public Service only with the prior approval of the Commissioner.

(5) Subject to any general or special directions given by the Commissioner, a person to whom a delegation is made may perform the delegated functions or exercise the delegated powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(6) A person purporting to act under a delegation is presumed to be acting in accordance with its terms in the absence of proof to the contrary.

(7) No delegation in accordance with this Act –

- (a) affects or prevents the performance of any function or the exercise of any power by the Commissioner; or

- (b) affects the responsibility of the Commissioner for the actions of any delegate acting under the delegation; or
 - (c) is affected by any change of Commissioner.
- (8) A delegation may be revoked at will by written notice to the delegate or sub-delegate, as the case may be.
- (9) Until a delegation is revoked, it continues in force according to its tenor.

11. Commissioner's powers of inquiry – (1) The Commissioner may carry out an inquiry if–

- (a) the Commissioner considers that a head of department may have breached this Act, including the code of conduct set out in Schedule 4; or
 - (b) the Commissioner considers it is necessary for the performance of his or her functions under this Act.
- (2) In carrying out an inquiry under this section, the Commissioner has the powers to summon witnesses, administer oaths, and to receive evidence as if it were a Commission of Inquiry under the Commissioners of Inquiry Act 1966.
- (3) Every person attending or giving evidence before the Commissioner under this section shall have the same privileges and immunities as witnesses in the High Court.
- (4) For the purposes of carrying out an inquiry under this section, the Commissioner may appoint another person to conduct an inquiry and make a report to the Commissioner.
- (5) A person appointed under subsection (3) has the powers of the Commissioner set out in subsection (2).

12. Power to obtain information – (1) The Commissioner may require, by written notice, a head of department to supply to the Commissioner, information concerning the department's activities.

(2) The department to which the notice is given must comply with the notice, and must keep all records that are necessary to enable it to comply with the notice.

13. Power to enter premises – (1) For the purpose of carrying out the functions of the Commissioner, the Commissioner, or any person specifically or generally authorised in writing by the Commissioner, may from time to time –

- (a) enter the premises of any department; or
- (b) require the production of any information, documents, or files in the custody of any department, and examine any such information, documents, or files; or
- (c) require any employee of any department to answer questions for the purpose of enabling the Commissioner to carry out the functions assigned to the Commissioner.

- (2) Every written authorisation under subsection (1) must contain –
- (a) a reference to this section; and
 - (b) the full name of the authorised person; and
 - (c) a statement of the powers conferred on the authorised person by subsection (1).
- (3) The power to enter premises under subsection (1) is subject to the following conditions –
- (a) entry must be made only by the Commissioner or by a person specifically or generally authorised in writing by the Commissioner;
 - (b) reasonable notice of the intention to enter must be given;
 - (c) entry must be made at reasonable times;
 - (d) the person entering must –
 - (i) carry evidence of that person's identity; and
 - (ii) carry either evidence that that person is the Commissioner or that person's written authorisation under subsection (1); and
 - (iii) on first entering the premise, and, if requested, at any subsequent time, produce to a representative of the department the evidence referred to in subparagraphs (d)(i) and (ii).
- (4) Every person has the same privileges under this section as witnesses have in a court of law in relation to –
- (a) the production of information, documents, and files; and
 - (b) the furnishing of any information or particulars; and
 - (c) the answering of questions.
- (5) No person may exercise any of the powers conferred by subsection (1) unless the Commissioner or that person has first given the head of department the opportunity of consulting with the Commissioner or that person about the exercise of those powers.
- (6) Before exercising any of the powers under this section, the Commissioner must inform the head of department affected.

PART 3 **HEADS OF DEPARTMENTS**

14. Appointment of heads of departments – (1) Each department must have a head of department.
- (2) Each head of department must be appointed by the Commissioner in accordance with Schedule 2.
- (3) The terms and conditions of employment of a head of department are governed by Schedule 3.
- (4) Members of the panel established in accordance with Schedule 2 must be remunerated in accordance with that schedule.

15. Acting head of department – (1) This section applies if –

- (a) there is a vacancy in the office of a head of department; or
- (b) a head of department is absent from duty (for whatever cause) and that head of department is unable to delegate his or her responsibilities under this Act to any person under section 19.

(2) All or any of the functions and powers of the head of department or pertaining to the office may be performed and exercised by the person for the time being directed by the Commissioner.

(3) A direction may be given before the absence or vacancy occurs or while it continues.

(4) No such direction and no act done by any person acting pursuant to any such direction may in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the person had not been appointed to the office concerned.

16. Principal responsibilities – The head of department is responsible to the responsible Minister for –

- (a) carrying out the functions and duties of the department, including the implementation of Government policies; and
- (b) tendering advice to the responsible Minister and other Ministers of the Crown; and
- (c) complying with the obligations under the Ministry of Finance and Economic Management Act 1995–96; and
- (d) complying with the obligations pursuant to his or her employment contract and performance agreement; and
- (e) the efficient, effective, and economic management of the activities of the department.

17. Duty to act independently in relation to employees – Despite section 16, in matters relating to decisions affecting employees of a department (whether matters relating to the appointment, remuneration, promotion, demotion, transfer, disciplining, or the cessation of employment of any employee or other matters) the head of department must act independently having regard to his or her duty under section 21.

18. Functions, responsibilities, duties, and powers – (1) The functions, responsibilities, duties, and powers imposed on or given to a head of department by this Act are in addition to those imposed on or given to that head of department by or under any other Act.

(2) The head of department has the powers necessary to carry out the functions, responsibilities, and duties imposed on that head of department by or under this Act, as well as the powers necessary to carry out the functions, responsibilities, and duties imposed on that head of department by or under any other Act.

19. Delegation of functions or powers of head of department – (1) A head of department may from time to time, either generally or specifically, delegate all or any of his or her functions or powers (including the general power of delegation) to an employee of the department concerned.

(2) A delegation –

(a) must be in writing; and

(b) may be subject to any restrictions and conditions the head of department thinks fit.

(3) Except as provided in the instrument of delegation, a person to whom a delegation is made may perform the delegated functions or exercise the delegated powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) Unless the context otherwise requires, every provision of this Act applying to a head of department in respect of the performance of a function or the exercise of a power applies, with any necessary modifications, to any person performing the function or exercising the power under a delegation made by the head of department as if that person were that head of department.

(5) A person purporting to act under a delegation is presumed to be acting in accordance with its terms in the absence of proof to the contrary.

(6) No delegation under this section –

(a) affects or prevents the performance of any function or the exercise of any power by the head of department that made the delegation; or

(b) affects the responsibility of the head of department for the actions of any delegate acting under the delegation.

(7) A delegation may be revoked at will by written notice to the delegate.

(8) Until a delegation is revoked, it continues in force according to its tenor.

PART 4

VALUES AND CODE OF CONDUCT

20. Values of the Public Service – Subject to the Constitution and the rule of law, the Commissioner, every head of department, and every employee must uphold the following values in their work –

(a) honesty – acting honestly, being truthful, and abiding by the laws of the Cook Islands;

(b) impartiality – providing impartial advice, acting without fear or favour, and making decisions on their merits;

(c) service – serving the people well through faithful service to the Government of the Cook Islands;

(d) respect – treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect;

- (e) transparency – taking actions and making decisions in an open way;
- (f) accountability – being able to explain the reason for actions taken, and taking responsibility for those actions;
- (g) efficiency and effectiveness – achieving good results for the Cook Islands in an economical way.

21. Duty to act as good employer – (1) In performing his or her functions, responsibilities, and duties, the Commissioner and every head of department, as the case may be, must operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this section, a “good employer” is one who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees with respect to all aspects of their employment, including provisions requiring –

- (a) good and safe working conditions; and
- (b) the impartial selection of suitably qualified persons for appointment; and
- (c) opportunities for the enhancement of the abilities of individual employees.

22. Code of conduct – (1) The code of conduct set out in Schedule 4 sets out the minimum standards of integrity and conduct that apply in the Public Service.

(2) The Commissioner, every head of department and every employee must comply with the code of conduct.

(3) The Commissioner may advise the Minister if, in the opinion of the Commissioner, a serious breach of the code of conduct has occurred, or is likely to occur.

(4) The Queen’s Representative may, by Order in Executive Council, amend Schedule 4 to –

- (a) amend the code of conduct; or
- (b) substitute a new code of conduct.

PART 5 **PUBLIC SERVICE**

Employment in the Public Service

23. Public Service defined – The Public Service is constituted by -

- (a) heads of departments;
- (b) employees of departments.

24. Appointments to Public Service – (1) All appointments and promotions to the Public Service must be made in accordance with this Act.

(2) No act done by any person by virtue of any appointment or promotion may be questioned in any proceedings on the ground that the appointment or promotion had not been validly made.

25. Evidence of appointments – (1) Any appointment to an office or position in the Public Service must be made, confirmed, or approved in writing by an instrument or minute by the Commissioner or the head of department (as the case may be).

(2) A certificate signed by the Commissioner or head of department, that any person named in the certificate was appointed to any office or position in the Public Service from and including the date stated in the certificate is sufficient evidence that the person named was duly appointed to and continued to hold the office or position unless the contrary is proved.

Staffing structures and salaries

26. Approved staffing structure – (1) Despite section 17, the Commissioner must, after consulting with the head of each department, determine and approve a staffing structure for each department from time to time

(2) The approved staffing structure must specify –

- (a) the total number of positions; or
- (b) the number of positions in which employees, wage workers, and temporary employees may be employed to carry out the functions of the department.

(3) Despite subsection (1), where a head of department considers it necessary to amend the approved staffing structure, he or she must advise the Commissioner in writing.

(4) Where the Commissioner receives such advice, he or she may, after consulting with the head of department, amend the approved staffing structure.

27. Salaries and allowances – Employees are to be paid salaries and allowances at the rates determined from time to time by the relevant head of department but within the salary range for the position determined by the Commissioner in accordance with the remuneration system for the time being approved by Cabinet.

Temporary salaried employees, wage workers, expatriate employees, and contract employees

28. Temporary salaried employees – (1) Subject to section 26, a head of department may employ such temporary salaried employees as may from time to time be required.

(2) Subject to subsection (3), the terms and conditions of employment are as determined by the relevant head of department.

(3) The terms and conditions of employment of a temporary salaried employee must be in writing.

(4) The relevant head of department may terminate the employment of a temporary salaried employee by giving not less than 1 week's notice or, in the case of misconduct or inability, without notice.

(5) When employing a temporary salaried employee, the relevant head of department must comply with section 21 (which imposes a duty on a head of department to act as a good employer).

(6) No action lies in any court or to the Board in relation to the termination of employment of a temporary salaried employee unless the head of department has failed in his or her duty to act as a good employer.

29. Wage workers – (1) Subject to section 26, where any work required to be done by a department does not, in the opinion of the relevant head of department, warrant the employment of a permanent employee, subsections (2) to (7) apply.

(2) The relevant head of department may employ a wage worker to do the work required.

(3) Subject to subsection (4), the terms and conditions of employment are as determined by the relevant head of department.

(4) The terms and conditions of employment of a wage worker must be in writing.

(5) The relevant head of department may terminate the employment of a wage worker by giving not less than 1 week's notice or, in the case of misconduct or inability, without notice.

(6) When employing a wage worker, the relevant head of department must comply with section 21 (which imposes a duty on a head of department to act as a good employer).

(7) No action lies in any court or to the Board in relation to the termination of employment of a temporary salaried employee unless the head of department has failed in his or her duty to act as a good employer.

30. Expatriate employees – (1) Subject to section 26 and despite section 17, a head of department may, in consultation with the Commissioner, employ persons from outside the Cook Islands to a position within his or her department.

(2) Subject to subsection (3), the terms and conditions of employment are as determined by the relevant head of department.

(3) The terms and conditions of employment of a person appointed under this section must be in writing.

31. Employment pursuant to written contract – (1) Despite section 26, where any work required to be done by a department is, in the opinion of the relevant head of department, of a special nature requiring specialised skills or expertise, or the circumstances of the person who is to undertake the work are such that it would be inappropriate for that person to be employed in the Public Service, the head of department may employ that person pursuant to a contract of service.

(2) Subject to subsection (3), the terms and conditions of employment are as determined by the relevant head of department.

(3) The terms and conditions of employment of a person appointed under this section must be in writing.

(4) A person employed under this section must comply with the code of conduct and adhere to the Values of the public service.

(5) Except as provided in subsections (2) to (4), nothing in this Act applies to a person employed under subsection (1).

Transfers and termination of employment

32. General transfers – (1) Despite section 17, if a head of department at any time finds that a greater number of persons is employed in the department than is considered by that head of department to be necessary for the efficient working of the department, he or she shall advise the Commissioner pursuant to section 26(2).

(2) Where the Commissioner concurs with the advice of the head of department, such persons as are redundant may be transferred by the head of department to any other department with the consent of the head of department to which the transfer is to be made.

(3) If the head of department cannot transfer a person found to be redundant, he or she must advise the Commissioner and terminate that person's employment.

33. Failure to comply with direction to transfer – (1) An employee who fails to comply with a direction of a head of department requiring him or her to transfer from one position or locality to another may immediately be dismissed or demoted with a consequent reduction in remuneration unless, in the opinion of the head of department, the employee justifies the non-compliance by adducing some valid and sufficient reason for failing to comply with the direction.

(2) This section is subject to a head of department's obligations under section 21.

34. Notice of termination – (1) Every employee who is not a temporary salaried employee or a wage worker is deemed to be a 4-weekly employee and, despite any other provision in this Act, that employment may be terminated at any time after 4 weeks' notice in writing has been given –

(a) by the head of department to the employee; or

(b) by the employee to the head of department.

(2) A head of department may immediately terminate the employment of any employee who gives less than 4 weeks' notice.

(3) This section –

(a) is subject to the express terms and conditions of any written contract of employment; and

(b) does not derogate in any manner from any other provisions of this Act conferring a power to dismiss employees.

Collective bargaining

35. Collective bargaining permitted – Subject to this Act a representative of:

- (a) heads of departments;
- (b) employees,

may negotiate with the Commissioner on behalf of its members for terms and conditions of employment to be fixed.

Complaints and disputes

36. Complaints and disputes – (1) Except as provided in subsection (9), this section applies where an employee has a complaint or dispute with his or her head of department.

(2) The employee must first refer the complaint or dispute to the head of department within 14 days of the circumstances giving rise to the complaint or dispute arising.

(3) The head of department must then advise the Commissioner and attempt to resolve the complaint or dispute.

(4) If the complaint or dispute; –

- (a) is resolved, the head of department must advise the Commissioner; or
- (b) is not resolved, the head of department must refer it to the Commissioner,

within 14 days after the matter is brought to the attention of the head of department.

(5) A referral of a complaint or dispute under subsection (4) must be in writing.

(6) The Commissioner must investigate the complaint or dispute and make a recommendation to the head of department as to how the complaint or dispute should be determined.

(7) An employee or head of department, as the case may be, has a right of appeal to the Board if –

- (a) either the employee or head of department is not satisfied with the Commissioner's recommendation; or
- (b) a head of department refuses to follow the Commissioner's recommendation.

(8) The Commissioner may authorise the payment, out of money appropriated by Parliament for the purpose, of fees and expenses incurred in connection with an investigation by the Commissioner.

(9) This section does not apply if the complaint or dispute relates to job sizing.

Miscellaneous

37. Private employment and elections – (1) An employee must not accept or continue to hold or discharge the duties of any other paid office outside the Public Service or engage (whether as principal or agent) or be employed in any other paid occupation outside the Public Service that, in the opinion of the head of department, is incompatible with the due performance and proper discharge of his or her duties as an employee of the Public Service.

(2) However, an employee has a right of appeal in respect of a decision by a head of department made under this section.

(3) A head of department or employee who intends becoming a candidate for election to Parliament must resign from the Public Service before filing a nomination as a candidate for election to Parliament.

38. Fees for official services – (1) Unless otherwise provided in this Act or any other enactment, no fee, reward, or remuneration of any kind, beyond an employee's remuneration and approved allowances, may be received by any employee for the employee's own use or benefit for the performance of any service on behalf of the Government.

(2) Where an employee is required to perform any service for which a charge would lawfully be payable, that charge must be levied and the amount paid must be paid into the public account or into the account of the department concerned.

(3) Nothing in this section applies to an employee in respect of the performance of services outside the normal working hours of the employee.

PART 6
APPEALS

39. Rights of appeal – (1) Subject to this Act, an employee has a right of appeal from –

- (a) a recommendation of the Commissioner under section 36;
- (b) any other decision in respect of which a right of appeal is expressly conferred by this Act or any other enactment.

(2) The following apply to appeals relating to a decision to transfer an employee from one locality to another within the Cook Islands -

- (a) the only ground of appeal is undue personal hardship;
- (b) the lodging of a notice of appeal under section 40, shall have the immediate effect of staying the decision to transfer an employee, until the appeal has been determined by the Board;
- (c) a transfer does not mean a temporary posting not exceeding 3 months to another locality when a travelling allowance is payable for the whole of the absence from the usual place of employment.

(3) The appeal is by way of rehearing provided, however, that the Commissioner must submit to the Board a written report of his or her investigation and recommendation (as required by section 36) and may, at the discretion of the Board, be called before the Board at the appeal hearing to answer any query or clarify any matter contained in the report.

(4) A copy of the Commissioner's report must be made available to the parties to the appeal not less than 7 days prior to the commencement of an appeal hearing.

40. Notice of appeal – (1) An appeal is made by lodging a written notice of appeal to the Board within 21 days after the date on which the Commissioner's recommendation was made.

(2) A notice of appeal must set out the grounds for the appeal.

(3) A copy of the appeal must be sent to the respondent, who must receive it within the 21 days referred to in subsection (1).

(4) The Board may allow an extension of the time for lodging an appeal under subsection (1) if the appellant shows good and sufficient reason for the extension.

(5) An appellant is to be treated as having complied with this section if the appellant establishes to the satisfaction of the Board that the notice of appeal was sent to the Board in time for it to have been received at the office of the Registrar of the High Court in the normal course of postal delivery within the 21 days referred to in subsection (1).

(6) However, in the case of an appellant who is an employee, if the appellant is stationed on an island of the Cook Islands other than Rarotonga, he or she is to be treated as having complied with the requirements of this section if the notice of appeal is handed to the senior person on that island for the department in which the appellant is employed and the Government Representative for the island at which the appellant is stationed within the 21 days referred to in subsection (1).

41. Appeal process – (1) The Board has jurisdiction to hear and determine every appeal and, for this purpose, to summon witnesses and to examine the witnesses on oath or otherwise.

(2) Within the scope of its jurisdiction, the Board is deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1966 and, subject to this Act, all the provisions of that Act, except sections 13 and 14 (which relate to costs), apply.

(3) The Board may receive any evidence as it thinks fit, whether or not the evidence would otherwise be admissible.

(4) The onus of proof in an appeal lies on the appellant.

(5) At the hearing of an appeal –

(a) the appellant and respondent may be represented by counsel or other advocate; and

(b) the appellant and the respondent are entitled to be present; and

- (c) any person authorised by the Board may attend.
- (6) The Board may direct that appeals affecting more than one appellant are to be heard together.
- (7) The proceedings of the Board are not open to the public.
- (8) Proceedings of the Board may not be held bad for want of form.
- (9) If the Board considers that an appeal is frivolous or vexatious or should not have been made, –
 - (a) the appellant is not entitled to a refund of expenses; and
 - (b) the Board may order the appellant to pay all or some of the costs of the appeal; and
 - (c) in the case of an appellant who is an employee, any costs ordered to be paid by the appellant may be recovered by deduction from the salary of the appellant or as a civil debt recoverable by action through the High Court.

42. Remedies of Board – (1) In deciding any appeal, the Board may allow or disallow the appeal.

(2) If the Board allows the appeal, it may provide for one or more of the following remedies –

- (a) the reimbursement to the employee of a sum equal to the whole or any part of the wages, salary, or other money lost by the employee due to any breach by the head of department of the obligation to be a good employer;
 - (b) reinstatement of the employee to the employee's former position or the placement of the employee in a position no less advantageous to the employee;
 - (c) the payment to the employee of compensation including compensation for –
 - (i) humiliation, loss of dignity, and injury to the feelings of the employee;
 - (ii) loss of any benefit, whether or not of a monetary kind, that the employee might reasonably have been expected to obtain if the head of department had not breached the obligation to be a good employer;
 - (d) any other order the Board thinks just.
- (3) Despite subsection (2)(d), no sum of compensation (other than in the case where an employee is reinstated having been suspended without pay and only to the extent that the compensation is for the loss of salary or wages the employee would have otherwise received) may exceed 3 months' salary of that employee.
- (4) If an appellant's appeal is allowed, the appellant is entitled to a refund, out of money appropriated by Parliament for the purpose, of actual and reasonable personal travelling and accommodation expenses incurred within the Cook Islands in attending the hearing; but if the appeal is not allowed, the appellant is not entitled to a refund of any such expenses.

43. Restriction on challenge to decision of Board – No proceeding or decision of the Board is liable to be challenged in any court, except on the ground of lack of jurisdiction.

44. Provisions relating to members of Board – (1) No member of the Board may sit on the Board on any appeal affecting an employee employed in the department or office in which the member is employed, or on any appeal affecting that member or his or her immediate family.

(2) In the event of the unavoidable absence or disqualification under subsection (1) of a member of the Board, the Queen's Representative acting on the advice of the Prime Minister may appoint a deputy member (being an employee or former employee of the Public Service) to act in the place of the member who is absent or disqualified.

(3) A member of the Board (including a deputy member) who is in receipt of a salary from the Government may not be granted remuneration in addition to his or her salary while he or she acts as a member of the Board except where the Board sits outside of normal work hours.

(4) Any other member of the Board may be paid out of the public account such remuneration, expenses, and allowances as may be determined by the Queen's Representative by Order in Executive Council.

45. Services for Board – The Registrar of the High Court must furnish secretarial, recording, and clerical services as are necessary to enable the Board to discharge its functions.

PART 7

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC SERVICE

46. Medical examinations – The relevant head of department may require an employee or an applicant for employment to submit to a medical examination by a registered medical practitioner at the employee's own expense for the purpose of determining the employee's fitness to continue to perform duties, or the applicant's fitness to perform duties, in the Public Service.

47. Bonds and loan agreements – (1) Subject to the provisions of the Ministry of Finance and Economic Act 1995-96, this section applies to an employee or prospective employee to whom money is advanced, or on whose behalf expenditure is incurred, in connection with transportation, education, training or living expenses, or for any other special purpose.

(2) The head of department may require the employee or prospective employee to enter into a bond or loan agreement and may require the giving of a surety or guarantee by a parent or guardian or some other person approved by the Commissioner or head of department.

- (3) A bond or loan agreement entered into under this section –
- (a) must specify the amount of the bond or loan; and
 - (b) must provide that the amount of the bond or loan is reduced in proportion to the period of the bond or loan the employee has worked in the Public Service; and
 - (c) is enforceable against the person who signed it and against any person who signs the bond or loan as surety or guarantor despite anything in this Act or any other Act or any rule of law.

48. Regulations – (1) The Queen's Representative may, from time to time, by Order in Executive Council, make regulations so as to give effect to all or any of the purposes of this Act, including regulations for all or any of the following -

- (a) regulating the conduct of heads of departments, or any class of heads of departments, including but not limited to regulating or prohibiting activities that are or may be detrimental to the performance of their official duties;
- (b) prescribing terms and conditions of employment for heads of departments;
- (c) prescribing offences, penalties and disciplinary measures for head of departments and employees;
- (d) amending the code of conduct or substituting a new code of conduct;
- (e) prescribing matters relating to the furnishing of annual reports;
- (f) prescribing conditions of retirement;
- (g) prescribing the procedure of the Board;
- (h) prescribing the form of documents to be used in dealing with staff and employment and appeal matters;
- (i) prescribing ministries, departments, and other instrumentalities or agents of the Crown, whether established by enactment or otherwise, that must be treated as a department for the purposes of this Act;
- (j) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and its administration.

(2) If a person breaches a regulation made under subsection (1)(a) (b), that breach is, in the absence of proof to the contrary, to be treated as misconduct for the purposes of any provision in an enactment or a contract of employment relating to the suspension or removal from office of that person.

(3) Every regulation made under this section comes into force on the date specified in the regulation and, if no date is specified, comes into force on the day the regulation is made.

(4) On the coming into force of regulations made under this section, every determination, decision, matter, or thing made or done before the date of their coming into force and affected by, and not inconsistent with, those regulations remain in force and are deemed to have been determined, decided, or made under those regulations, but if inconsistent, cease to exist unless otherwise provided by those regulations.

49. Notice to employees – Any notice required to be given under this Act to any employee may be given –

- (a) by delivering it to the employee; or
- (b) by sending it to the employee in a letter addressed and posted to the employee at his or her usual place of employment or at his or her last known place of abode.

PART 8 **STATE SERVICES**

50. State Service defined – For the purposes of this Part, “State Service” means an agency that is not prescribed in regulations made under section 48(1)(i).

51. Employing authority defined – For the purposes of this Part, an “employing authority”, in relation to a State Service, means the person or body designated by any enactment as the employing authority in respect of that service and, if no such person or body is designated (for lack of enactment or otherwise), means the Minister responsible for that service or the person or persons designated for the purpose by that Minister.

52. Employing authority to be good employer – (1) Every employing agency of a State Service must be a good employer with regard to the employees of the State Service concerned.

(2) For the purposes of this section, “good employer” has the meaning given in section 21.

53. Employing authority and employees to uphold values in section 20 and comply with code of conduct – (1) Every employing agency and its employees must hold the values of the Public Service specified in section 20 and comply with the code of conduct set out in Schedule 4.

54. Employing authority to adopt remuneration system – For the purpose of establishing uniformity between the Public Service and State Services and in the interests of relativity, every employing authority must, in the performance of its functions, adopt the remuneration system for the time being approved by Cabinet for the Public Service.

PART 9
TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS

55. Continuation of Office of Public Service Commissioner and Public Service Commissioner – (1) There continues to be an Office of the Public Service Commissioner, which is the same office as the Office of the Public Service Commissioner established under section 4(1) of the Public Service Act 1995–96.

(2) The person who, immediately before the commencement of this Act, held office as Public Service Commissioner under the Public Service Act 1995–96 is to be taken to have been appointed as Commissioner under this Act –

- (a) for the term that, immediately before that commencement, represented the remainder of the person's term as Public Service Commissioner; and
- (b) subject to the terms and conditions of employment that applied to the person immediately before that commencement.

56. Continuation of existing employment – Every person employed in the Public Service or in a department prescribed under section 42(1)(d) of the Public Service Act 1995–96 immediately before the commencement of this Act continues to be employed, subject to the provisions of this Act.

57. Continuing effect of decision, determination, etc – Any decision, determination, matter, or thing not inconsistent with this Act made or done pursuant to the enactments repealed or revoked by this Act are deemed to have been made or done under this Act and continue to apply to all employees affected.

58. Transitional provision for pending appeals – In any case in which, immediately before the commencement of this Act, an appeal to the Board, the High Court of the Cook Islands, or the Court of Appeal of the Cook Islands was pending, that appeal may be continued after the commencement of this Act, and may otherwise be heard and disposed of under the law in force immediately before the commencement of this Act as if that law had continued in force.

59. Regulations and instructions revoked – Every regulation or Order made under the Public Service Act 1995–96 and every instruction published in the Public Service Manual that was in force immediately before the commencement of this Act shall continue in force and are deemed to have been made or done under this Act until revoked by this Act.

60. Repeals and consequential amendments – The following enactments are repealed.
- (a) the Public Service Act 1995–96;
 - (b) the Higher Salaries Commission Act 1989.

This Act is administered by the Office of the Public Service Commissioner

SCHEDULE 1**APPOINTMENT OF PUBLIC SERVICE COMMISSIONER AND
REMUNERATION OF SELECTION PANEL**

1. The Secretary to the Cabinet must inform the Prime Minister of any vacancy or impending vacancy in the office of Public Service Commissioner.
2. The Secretary to the Cabinet must notify any vacancy or impending vacancy in a manner that he or she considers sufficient to enable suitably qualified individuals to apply for the office.
3. The Prime Minister must establish a panel of 3 members consisting of –
 - (a) one person recommended by the Prime Minister, who shall be the Chairperson;
 - (b) one person recommended by the Leader of the Opposition;
 - (c) one person recommended by Cabinet.
4. The Prime Minister may inform the panel of any matter that the Prime Minister wishes the panel to take into account in making recommendations under clause 7.
5. The panel may –
 - (a) examine applicants for the office; and
 - (b) seek advice from any other sources the panel considers relevant; and
 - (c) deliberate on the persons to be recommended for appointment.
6. Following its deliberations, the panel (either by consensus or by a majority vote) must recommend to the Prime Minister up to 3 persons for the appointment, listed in order of the panel's preference. The recommendation must include full particulars of each person's qualifications.
7. The Prime Minister may consult with Cabinet to decide whether to accept for appointment to the office a person recommended by the panel.
8. If the Prime Minister decides to accept one of the persons recommended, the Prime Minister must advise the Queen's Representative accordingly and the Queen's Representative must appoint that person to the office and the Secretary to the Cabinet must announce publicly that the appointment has been made.
9. If the Prime Minister decides not to accept any of the persons recommended, –
 - (a) the Prime Minister must immediately advise the Queen's Representative to appoint another person named by the Prime Minister to the office and the Queen's Representative must appoint that person; and

- (b) the Secretary to the Cabinet must publish in the *Cook Islands Gazette* and a newspaper of general circulation in the Cook Islands notice of the making of an appointment under paragraph (a) and of the fact that the Prime Minister has decided not to accept any of the persons recommended by the panel for appointment to the office.
- 10. In deciding on the person to be appointed to the office, the panel must have regard to the need to appoint a person who can discharge the responsibilities of the office –
 - (a) effectively; and
 - (b) efficiently; and
 - (c) independently.
- 11. Each member of the panel must be paid out of the Cook Islands Government Account remuneration at the rate determined from time to time by the Queen's Representative by Order in Executive Council. The determination takes effect on the date specified in the Order.

SCHEDULE 2**APPOINTMENT OF HEADS OF DEPARTMENTS AND REMUNERATION OF SELECTION PANEL**

1. The Commissioner must inform the Minister of any vacancy or impending vacancy in any office of head of department.
2. The Commissioner must notify any vacancy or impending vacancy in a manner that he or she considers sufficient to enable suitably qualified individuals to apply for the office.
3. The Commissioner must establish a panel of 4 members consisting of –
 - (a) the Commissioner, who shall be the chairperson
 - (b) one person recommended by the Minister Responsible for the Public Service; and
 - (c) one person recommended by the members of the Public Service Association; and
 - (d) one person recommended by Cabinet.
4. The responsible Minister may inform the panel of any matter that the Minister wishes the panel to take into account in making a recommendation under clause 7.
5. The panel may –
 - (a) examine applicants for the office; and
 - (b) seek advice from any other sources the panel considers relevant; and
 - (c) deliberate on the persons to be recommended for appointment.
6. Following its deliberations, the panel (either by consensus or by a majority vote) must recommend to the Cabinet up to 3 persons for the appointment, listed in order of the panel's preference. The recommendation must include full particulars of each person's qualifications and experience.
7. The Commissioner must refer the panel's recommendations to Cabinet through the Prime Minister.
8. Cabinet must accept for appointment to the office one of the persons recommended by the panel.
9. Cabinet may refer the recommendations back to the panel with a request that the panel reconsider any one or more of its recommendations.

10. If Cabinet refers the recommendations back to the panel, the panel must, after reconsidering any aspects referred to by Cabinet relating to one or any of the recommendations, resubmit the original recommendations or submit new recommendations.
11. If the panel resubmits the original recommendations to Cabinet, it must include a report setting out its reasons, having regard to any aspects referred to by Cabinet relating to the original recommendations.
12. As soon as practicable after Cabinet decides to accept one of the persons recommended, the Commissioner must –
 - (a) appoint the person to the office; and
 - (b) announce publicly that the appointment has been made.
13. An appointment is subject to the agreement of the proposed appointee to a contract of employment. If no agreement is reached, a new appointment must be made and clauses 7 to 13 apply.
14. In deciding on the person to be appointed to the office, the panel and Cabinet must have particular regard to the need to appoint a person who can discharge the responsibilities of that office –
 - (a) effectively; and
 - (b) efficiently; and
 - (c) independently of political influence and other political considerations.
15. Each member of the panel must be paid out of the Cook Islands Government Account remuneration at the rate determined from time to time by the Queen's Representative by Order in Executive Council. The determination takes effect on the date specified in the Order.
16. No appeal lies to the Board or any court against an appointment made in accordance with this schedule.

SCHEDULE 3**PROVISIONS GOVERNING TERM OF OFFICE AND TERMS AND
CONDITIONS OF EMPLOYMENT OF HEADS OF DEPARTMENTS**

1. Subject to this schedule, the terms and conditions of appointment of a head of department are to be set out in a contract of employment made between the appointee and the Commissioner and approved by Cabinet.
2. The term of appointment must not be for more than 3 years and the term must be specified in the contract of employment.
3. The appointee is eligible for reappointment and may be reappointed in accordance with Schedule 2.
4. The appointee may be suspended and removed from office only as follows:
 - (a) the Commissioner may, after consulting the Prime Minister, suspend the appointee from office for incompetence, redundancy, bankruptcy, disability, neglect of duty, or misconduct:
 - (b) the Commissioner must cause to be laid before Cabinet a full statement of the grounds of any suspension within one month after the date of that suspension:
 - (c) unless the Commissioner, within one month from the date on which the statement has been laid before Cabinet, decides that the appointee ought to be removed from office, the appointee is to be treated as being restored to office from the date of his or her suspension:
 - (d) however, if the Commissioner does within that time decide to remove the appointee from office, the appointee is to be treated as having been removed from office by the Commissioner from the date of suspension.

SCHEDULE 4**CODE OF CONDUCT**

Every employee and every head of department of the Cook Islands Public Service must, in the course of their employment –

1. behave with integrity and honesty; and
 2. exercise care and diligence; and
 3. be professional, courteous, and treat everyone with respect and without coercion or harassment; and
 4. comply with all applicable laws relating to their employment; and
 5. comply with all lawful and reasonable instructions; and
 6. take reasonable steps to disclose and avoid any real or apparent conflicts of interest in connection with their employment; and
 7. ensure the proper and prudent use of government resources; and
 8. use official information only for official purposes; and
 9. not improperly use their status or authority to seek or obtain a benefit for themselves or any other person or body; and
 10. at all times act and behave in a manner that upholds and promotes the integrity, values, and good reputation of the Cook Islands Public Service; and
 11. comply with any other conduct requirements as may be prescribed by regulations.
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