

LAWS OF THE REPUBLIC OF VANUATU

TEACHING SERVICE

[CAP. 171.

*Commencement: 21 November 1983*

LAWS OF THE REPUBLIC OF VANUATU

REVISED EDITION 1988

## CHAPTER 171

### TEACHING SERVICE

Act 15 of 1983  
Act 12 of 1987

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To provide for the establishment of a Teaching Service Commission and to confer powers and functions on that Commission, and to provide for matters connected therewith.

PART I

PRELIMINARY

INTERPRETATION

1. (1) In this Act, unless the context otherwise requires-

"Commission" means the Teaching Service Commission established under section 2(1);

"educational duties" means-

(a) teaching duties; and

(b) such duties relating to the provision of educational support services and the administration of educational institutions as the Minister determines to be educational duties;

"employee" means a person engaged under section 14(1) as a temporary employee and includes a transferred employee;

"Minister" means the Minister for the time being responsible for education;

"officer" means a person appointed under section 11(1) as an officer and includes a transferred officer;

"position" means a position in the Service created under section 19;

"promotion" means the placing, under section 20(1)(c), of an officer in a level or a position that has a higher attainable maximum salary than the level or position that he was in immediately before he was placed in the first-mentioned level or position;

"Service" means the Vanuatu Teaching Service established under section 10(1);

"transfer" means the placing, under section 20(1)(b), of an officer or employee in a level or a position that has the same attainable maximum salary as the level or position he was in immediately before he was placed in the first-mentioned level or position;

"transferred employee" means a temporary employee of the Vanuatu Public Service transferred to the Vanuatu Teaching Service pursuant to arrangements made under section 29(2);

"transferred officer" means an officer of the Vanuatu Public Service transferred to the Vanuatu Teaching Service pursuant to arrangements made under section 29(1);

"Vanuatu Teachers' Federation" means a federation or association consisting of officers and employees and which is recognised by the Minister for the purposes of this Act;

(2) In this Act, a reference to an officer or temporary employee of the Vanuatu Public Service means a person appointed as an officer or engaged as a temporary employee, as the case may be, by the Vanuatu Public Service Commission.

## PART II

## ESTABLISHMENT OF THE TEACHING SERVICE COMMISSION

## ESTABLISHMENT OF THE TEACHING SERVICE COMMISSION

2. (1) There is hereby established a Teaching Service Commission.
- (2) The Teaching Service Commission shall consist of-
  - (a) a chairman and three other members appointed by the President after consultation with the Minister; and
  - (b) the chairman of the Public Service Commission.
- (3) A person shall not be qualified to be appointed chairman or a member of the Commission if he is-
  - (a) a member of Parliament;
  - (b) a member of any board or other authority responsible for the management of schools; or
  - (c) any person who exercises any position of responsibility in a political party;
  - (d) a member of a Local Government Council or Municipal Council.

## TERM OF OFFICE OF MEMBERS OF THE COMMISSION

3. (1) Subject to subsection (2) the appointed members of the Commission shall serve for a period of 4 years.
- (2) Should the Minister be satisfied that an appointed member of the Commission-
  - (a) *is* no longer qualified to be a member;
  - (b) has been absent from 2 consecutive meetings of the Commission without the consent of the chairman;
  - (c) has become insolvent;
  - (d) has been convicted of a crime involving moral turpitude; or
  - (e) *is* otherwise unable or unfit to discharge the functions of a member;the Minister may by notice published in the *Gazette* declare the office of the member vacant.
- (3) An appointed member may resign by notice in writing to the Minister.

## ACTING CHAIRMAN AND MEMBERS

4. (1) If at any time there is no chairman or he is unable to perform the functions of his office, the Minister shall designate a member to perform the functions of that office except in the case of absence from a meeting when the other members will elect a chairman for that meeting.
- (2) If the number of members of the Commission falls below three, the Minister shall appoint such number of acting members as may be needed to make up that number.
- (3) Section 2(3) shall apply to acting members.

## FUNCTIONS OF THE COMMISSION

5. (1) The functions of the Commission are-
  - (a) to make officers and employees available to the Minister for the performance of educational duties; and
  - (b) such other functions as are conferred on it by this Act.

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- (2) Subject to this Act, the Commission shall make available to the Minister for the performance of educational duties such number of officers and employees, possessing such qualifications, as the Minister requires.

POWERS OF THE COMMISSION

6. Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

DELEGATION BY THE COMMISSION

7. (1) The Commission may, from time to time, by instrument in writing, delegate to a person such of its powers and functions other than this power of delegation, as are specified in the instrument.

- (2) A delegation under subsection (1) may be made generally or for any particular case or class of cases specified in the instrument of delegation.

A power or function delegated under this section may be exercised or performed, in accordance with the terms of the delegation, by the person to whom the delegation is made.

- (4) A delegation under subsection (1) is revocable at will and does not prevent the exercise of a power or the performance of a function by the Commission.

ADDITIONAL FUNCTIONS AND DUTIES OF THE COMMISSION

8. Subject to this Act, the Commission shall in respect of the Service be responsible for-
- (a) advising the Minister on matters relating to the general administration of schools;
  - (b) advising the Minister on Service salaries and scales;
  - (c) reviewing the efficiency and economy of the Service;
  - (d) advising the Minister on the establishment and grading of posts;
  - (e) acting as the personnel authority for the Service;
  - (f) approving training programmes for and recommending the training of particular officers or employees.

THE COMMISSION TO HAVE POWER TO PROVIDE SERVICES TO OTHER BODIES

9. (1) The Commission may also provide any statutory body or any independent educational establishment with-
- (a) advice on and assistance in the training of its teachers;
  - (b) advice on organisation of school establishments;
  - (c) advice on recruitment of staff.
- (2) The Commission may charge fees for any of the services it provides in accordance with subsection (1).

PART III

THE VANUATU TEACHING SERVICE

THE VANUATU TEACHING SERVICE

10. (1) There is hereby established the Vanuatu Teaching Service.
- (2) The Service consists of persons appointed as officers or engaged as employees.

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## APPOINTMENT OF OFFICERS

11. (1) Subject to this section, the Commission may appoint to the Service as officers to perform educational duties such number of persons as the Minister, after receiving a report from the Commission, determines.
- (2) A person shall not be appointed as an officer unless-
- (a) he has such qualifications as are determined by the Commission;
  - (b) he is, in the opinion of the Commission, healthy and physically fit; and
  - (c) he is, in the opinion of the Commission, a fit and proper person to be an officer.

Subject to this Act, officers hold office on such terms and conditions as the Commission from time to time determines.

- (4) The Commission shall not determine terms and conditions of employment in respect of transferred officers that are less favourable than the terms and conditions of employment enjoyed by such officers under any Government service at the time of their transfer.

## INVITATION TO APPLY FOR APPOINTMENT

12. (1) Where the Minister so requests, the Commission may, by advertisement in such manner as the Minister requires, invite persons to apply for appointment as officers.
- (2) An advertisement under subsection (1) shall specify-
- (a) the classes of positions in respect of which applications for appointment are invited;
  - (b) the salaries, or limits of salaries, of those classes of positions;
  - (c) where applicable-
    - (i) the age limits for appointment;
    - (ii) the qualifications required or relevant for those classes of positions; and
  - (d) such other matters, if any, as the Minister requires.

Nothing in this section prevents the appointment as an officer of a person who has applied for appointment otherwise than in answer to an advertisement under this section.

## APPOINTMENTS TO BE ON PROBATION

13. (1) Unless the Commission, in a particular case or class of cases, otherwise directs, the appointment of every officer shall be on probation for a period not exceeding 1 year commencing from the date on which the officer commences duty.
- (2) A person appointed as an officer on probation remains on probation until his appointment is confirmed or terminated in accordance with this section.
- (3) The Commission may, at any time during the period of probation of an officer, terminate the appointment of the officer.
- (4) As soon as practicable after the expiration of the period of probation of an officer, the Commission shall-
- (a) confirm the appointment of the officer;
  - (b) terminate the appointment of the officer; or
  - (c) direct that the officer continue on probation for such further period, not exceeding 1 year, as the Commission thinks fit.

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Where, under subsection (4)(c), the Commission directs that an officer continue on probation for a further period, it may confirm or terminate the appointment of the officer at any time during that further period and, if it has not confirmed or terminated the appointment before the expiration of that period, shall do so as soon as practicable after the expiration of that period.

- (6) Where the appointment of an officer is terminated under this section, the Commission shall, as soon as practicable, notify the officer in writing of the reasons for the termination.

EMPLOYEES

14. (1) Where the Minister so requests, the Commission may engage temporary employees to perform educational duties.
- (2) Subject to this Act, persons engaged as employees are employed on such terms and conditions as the Commission from time to time determines.

Notwithstanding the position occupied by an employee, he may perform duties as directed by the Minister.

DEPLOYMENT OF OFFICERS AND EMPLOYEES

15. Where the Commission makes an officer or employee available to the Minister for the performance of educational duties, the Minister may, notwithstanding the position occupied by the officer or employee, make use of the officer or employee in whichever school or educational unit he thinks fit.

DUTIES OF OFFICERS

16. Notwithstanding the position occupied by an officer, he shall perform duties as directed by the Minister.

APPEALS AGAINST DIRECTIONS

17. (1) If an officer or employee considers that he has grounds for complaint arising out of a direction as to duties given by the Minister under section 14(3) or 16, the officer or employee may appeal to the Commission.
- (2) An appeal shall be in writing delivered to the Commission and shall set out the grounds of appeal.
- (3) Where the Commission so directs, an officer or employee who appeals under subsection (1) shall carry out the direction appealed against until the appeal is determined under subsection (4).
- (4) The Commission shall, after receiving a report from the Minister, consider an appeal and shall determine the appeal by-
  - (a) allowing the appeal; or
  - (b) refusing the appeal.

The Commission shall, in writing, give to the Minister and to the officer or employee who has appealed its reasons for allowing or refusing an appeal.

- (6) Where an appeal is allowed by the Commission, it may, after consultation with the Minister, give such directions in relation to the officer or employee who has appealed, including directions in substitution for any direction appealed against, as it thinks fit, and any person to whom they are given shall carry them out accordingly.

Where an appeal under this section is refused by the Commission, the officer or employee who has appealed shall carry out or continue to carry out, as the case may be, the direction appealed against.



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## ALLOCATION OF OFFICERS AND EMPLOYEES TO POSITIONS

18. Where an officer is appointed or an employee is engaged, the Minister shall allocate the officer or the employee to a position.

## CREATION AND ABOLITION OF POSITIONS

19. The Commission may, after receiving a report from the Minister-
- (a) create and abolish positions in the Service;
  - (b) classify a position by determining the salary, or the range of salary, applicable to a position in the Service.

## FILLING A VACANT POSITION

20. (1) The Minister may fill a vacant position by-
- (a) allocating an officer or employee under section 18;
  - (b) transferring an officer or employee; or
  - (c) promoting an officer,  
to the vacant position.
- (2) Except where the Commission otherwise directs-
- (a) all vacant positions which the Minister wishes to fill; and
  - (b) all allocations, appointments, transfers, promotions and confirmations of promotions,
- shall be notified in the Gazette by the Minister or in such other publication as the Commission directs.
- The Commission may determine that a position or class of positions is to be filled by an officer or officers who possesses or possess qualifications specified in the determination and, where the Commission has so determined, an officer shall not be allocated, transferred or promoted to the position or a position in the class of positions, as the case may be, unless he possesses those qualifications.
- (4) The Minister after consultation with the Commission, may by Order make regulations for the temporary promotion or transfer of an officer or employee to fill a vacant position.

## RECLASSIFICATION

21. (1) The Commission may, after receiving a report from the Minister, alter the classification of a position by raising or lowering the salary, or the range of salary, applicable to the position.
- (2) Subject to subsections (3) and (4), whenever the classification of a position is altered, the position shall be deemed to be vacant.
- Where the Commission makes the same alteration of the classification of all positions having the same classification, the Commission may direct in writing that subsection (2) shall not apply and, accordingly, that subsection shall not then apply.
- (4) Where-
- (a) the Commission makes an alteration of the classification of a position in a case where there is no other position having the same classification as the first-mentioned position; and
  - (b) the Commission declares in writing that that alteration is related to an alteration in respect of which a direction is or has been given under subsection (3),

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the Commission may direct in writing that subsection (2) shall not apply in relation to the first-mentioned alteration and, accordingly, that subsection shall not then apply.

- (5) A direction given by the Commission under subsection (3) or (4) shall be made known as prescribed.

**SELECTION OF OFFICERS FOR PROMOTION**

22. (1) In the selection of an officer for promotion under section 20(1), consideration shall be given only to the relative efficiency of the officers available for promotion.
- (2) For the purposes of this section, "efficiency" means suitability for the discharge of the duties of the kind to be performed by the person selected, having regard to-
- (a) aptitude for the discharge of those duties;
  - (b) relevant experience and qualifications;
  - (c) training, including formal training;
  - (d) capacity for development; and
  - (e) relevant personal qualities.

**PROMOTION OF OFFICERS PROVISIONAL**

23. (1) Subject to the regulations, if any, made in pursuance of section 20(4), the promotion of an officer under section 20(1)(c) to a vacant position shall be provisional and shall be subject to appeal as provided by section 24.
- (2) Unless the Commission otherwise directs, the promotion of a person shall, while it is provisional, be without an increase in salary.
- Where a provisional promotion is confirmed, salary at the rate applicable to the position to which the promotion was made shall be payable to the person promoted from the date of the provisional promotion.
- (4) Where an appeal against a provisional promotion is allowed, salary at the rate applicable to the position to which the promotion was made shall be payable to the successful applicant from the date of the provisional promotion.

**APPEALS AGAINST PROMOTION**

24. (1) An officer of the Service who claims that he should have been promoted in preference to an officer provisionally promoted may appeal, to a Promotions Appeal Board, on the grounds of superior efficiency, against the provisional promotion.
- (2) An appeal under subsection (1) shall be in writing delivered to the Commission within 21 days after notification under section 20(2) of the provisional promotion appealed against.
- Upon an appeal or appeals, a Promotions Appeal Board shall make full inquiry into the claims of the appellant or appellants and of the person provisionally promoted and determine; the appeal or appeals.
- (4) Where an appeal is allowed, the Minister shall cancel the provisional promotion and if the appellant or the appellant with the best established claim is an officer of the Service, the Minister shall promote that appellant.
- Where, in respect of a provisional promotion, no appeal is made within the time allowed under subsection (2) or an appeal has, or appeals have, been duly made but the appeal has, or each of the appeals has, been disallowed or has become inoperative, the Minister shall confirm the provisional promotion.

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- (6) If, after notification under section 20(2) has been made of a provisional promotion to a vacant position but, before the promotion has been confirmed, the Minister is satisfied that the position is unnecessary or can be filled by the transfer of an excess officer, or that the notification or further notification of the vacancy in the position is desirable, the Minister may cancel the provisional promotion.

The Minister may cancel a provisional promotion in accordance with subsection (6) whether or not there has been an appeal under this section, but, upon the cancellation, any appeals in respect of the promotion shall be discontinued.

- (8) For the purposes of this section, an appeal shall be taken to become inoperative if—
- (a) the appeal is withdrawn by the appellant; or
  - (b) the appellant ceases to be eligible for the particular promotion.

**PROMOTIONS APPEAL BOARD**

25. (1) There is hereby established a Promotions Appeal Board for the purposes of hearing appeals under section 24 which shall consist of such boards as the Commission, from time to time, appoints.
- (2) A board appointed under subsection (1) shall, in respect of an appeal made under section 24, be constituted by—
- (a) the chairman of the Promotions Appeal Board;
  - (b) one officer nominated by the Vanuatu Teachers' Federation; and
  - (c) one officer nominated by the Minister.
- (3) The Chairman of the Promotions Appeal Board shall be appointed by the Commission on such terms and conditions as the Commission determines.

**RECRUITMENT AND PROMOTION PROCEDURES**

26. The Commission shall, after consultation with the Minister, develop recruitment and promotion procedures not inconsistent with this Act, being procedures for the careful assessment of personal qualifications and capabilities that are likely to contribute to the efficient working of the Service and that preclude patronage, favouritism and unjustified discrimination.

**PART IV****TENURE****TENURE**

27. (1) The employment of an officer in the Service shall not be terminated except by resignation or retirement as provided by this section or by retirement or dismissal as provided under Part VI of this Act or section 41(3).
- (2) An officer may resign from the Service at any time by writing signed by him and delivered to the Commission.
  - (3) An officer who attains the minimum prescribed age may retire from the Service.
  - (4) Subject to subsection (5), an officer who attains the maximum prescribed age shall be retired by the Commission from the Service.
  - (5) The Commission may, if it is satisfied that, in the interests of the efficient working of the Service, an officer should continue to be employed after he has attained the maximum prescribed age, permit the officer to be employed for such further period as the Commission, in the particular case, determines.

**EXCESS OFFICERS**

28. (1) If, at any time, in the opinion of the Commission a greater number of officers than is necessary for the efficient working of the Service are occupying positions of a particular classification, an officer whom the Commission finds to be in excess may be transferred by the Commission to such other position of equal classification as the officer is competent to fill and, if no such position is available, the officer may be transferred to a position of lower classification.
- (2) If no position is available for an officer referred to in subsection (1), the Commission may retire the officer from the Service.

**PART V**

**TRANSFER TO THE SERVICE**

**ARRANGEMENT FOR TRANSFER**

29. (1) The Commission may make arrangements with any person authorized by the Public Service Commission in that behalf for the transfer to the Service on a specified day of a specified officer or of a specified class of officers of the Vanuatu Public Service.
- (2) The Commission may make arrangements with any person authorized by the Public Service Commission in that behalf for the transfer to the Service on a specified day of a specified temporary employee or of a specified class of temporary employees of the Vanuatu Public Service.
- (3) The Commission may do such things as are necessary to carry out an arrangement made under this section.

**TRANSFERRED OFFICERS AND EMPLOYEES APPOINTED TO THE SERVICE**

30. (1) A transferred officer shall be deemed, by virtue of his transfer, to be duly appointed, on the date of his transfer, as an officer of the Service.
- (2) A transferred employee shall be deemed, by virtue of his transfer, to be duly engaged, on the date of his transfer, as an employee of the Service.

**CONDITIONS OF APPOINTMENT OF TRANSFERRED OFFICERS AND EMPLOYEES**

A transferred officer shall be deemed to have been appointed under this Part

- (a) subject to paragraph (b)-without probation; or
- (b) if his appointment as an officer of the Vanuatu Public Service has not been confirmed before the date of his transfer-upon probation for a period not exceeding the period of probation required by the Public Service Commission.
- (2) For the purposes of subsection (1)(b)-
- (a) the probationary service in the Vanuatu Public Service of a transferred officer shall be treated as probationary service in the Service;
- (b) a transferred officer shall be subject to subsections (2), (3), (4), (5) and (6) of section 13; and
- (c) if a direction in relation to a transferred officer had been given before his transfer that he continue on probation in the Vanuatu Public Service for a period in excess of 6 months, that direction shall have effect as if it were made under section 13(4).

A transferred officer shall be entitled, upon his transfer, to be paid at a rate equal to the rate at which salary was payable to him in respect of the substantive office occupied by him in the Vanuatu Public Service immediately before the date of his transfer.

- (4) For the purpose of ensuring that conditions of employment of a transferred officer are, as far as possible, as favourable as those that, in the opinion of the Commission, he enjoyed immediately before his transfer, the Commission may notwithstanding anything in any other provision of this Act-
- (a) determine any conditions of employment (including conditions relating to salary, pay or allowances) that are to apply to him; or
  - (b) determine that an allowance is payable to him as compensation.

A transferred employee shall be deemed, by virtue of his transfer, to have been engaged on terms entitling him to continue to be employed in the Service-

- (a) at such a salary as the Commission determines to be the appropriate salary for the employee having regard to the work performed by the employee during the period of his temporary employment in the Vanuatu Public Service or, if that period is in excess of 3 months, during the period of 3 months immediately preceding the date of his transfer; and
  - (b) for such period as the Commission determines, having regard to the work performed or last performed, by the employee in the Vanuatu Public Service and to the period during which the employee was likely to continue as a temporary employee in the Vanuatu Public Service.
- (6) Where, but for his transfer, the salary payable to a transferred officer or transferred employee would or might have been increased by reason of an increment of salary in respect of the office held by him immediately before his transfer, the entitlement to salary on his transfer by virtue of this section includes an entitlement to increments of salary on the same terms as applied to him immediately before his transfer.

A transferred officer or transferred employee shall retain such rights (including rights as to annual leave and leave on the grounds of illness), if any, and under the same conditions as had accrued to him as an officer or temporary employee of the Vanuatu Public Service, immediately before the date of his transfer.

## PART VI

### DISCIPLINE OF OFFICERS

#### SUSPENSION BY THE MINISTER

32. (1) If, in the opinion of the Minister, an officer-
- (a) is inefficient, incompetent or unfit or unable to perform his duties; or
  - (b) is guilty of misconduct,
- the Minister may, by notice given to the officer specifying the grounds for suspension, suspend him from duty for a period not exceeding 1 month.
- (2) Where the Minister suspends an officer-
- (a) the Minister shall, in writing, immediately inform the Commission of the suspension and the grounds for suspension;
  - (b) the Minister may, at any time, remove the suspension; and
  - (c) the officer shall be paid his salary *in* respect of the period of the suspension.

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## APPEAL TO THE COMMISSION

33. (1) An officer who has been suspended under section 32(1) may appeal to the Commission against the suspension by writing delivered to the Commission.

- (2) Where an officer appeals to the Commission under subsection (1), the Commission shall determine the appeal by-
- (a) revoking the suspension; or
  - (b) dealing with the matter under section 34 or 35, and the Commission's decision shall be final.

Where the Commission determines an appeal in the manner provided under subsection (2)(b), the suspension appealed against continues in force-

- (a) until the matter is determined under section 34 or 35(1), as the case may be; or
- (b) until the Commission suspends the officer under section 35(3), whichever is the earlier.

## RETIREMENT ETC., ON GROUNDS OF INEFFICIENCY, INCAPACITY ETC.

34. If, in the opinion of the Commission, an officer is inefficient, incompetent or unfit or unable to perform his duties, the Commission may-

- (a) if the officer occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the minimum salary of that range-reduce his salary to a lower salary within that range;
- (b) if the officer occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the maximum salary of that range-determine that he shall not be granted, or shall not be granted until the expiration of a specified period, the whole or such part as the Commission specifies, of a specified increase in salary within that range that would otherwise be granted to him;
- (c) reduce him to a lower position and salary; or
- (d) retire him from the Service.

## DISCIPLINARY ACTION FOR MISCONDUCT

35. Where, after inquiry as directed by the Commission, it is found that an officer has been guilty of misconduct, the Commission may-

- (a) caution or reprimand him,
  - (b) *if* the officer occupies a position to which a range *of* salary is applicable and he is in receipt *of* a salary other than the minimum salary *of* that range-reduce his salary to a lower salary within that range;
  - (c) *if* the officer occupies a position to which a range *of* salary is applicable and he is in receipt *of* a salary other than the maximum salary *of* that range-determine that he shall not be granted, or shall not be granted until the expiration *of* a specified period, the whole or such part as the Commission specifies, *of* a specified increase in salary within that range that would otherwise be granted to him;
  - (d) reduce him to a lower position and salary; or
  - (e) dismiss him from the Service.
- (2) In an inquiry for the purposes of subsection (1), a formal hearing is not required but the officer shall be informed of the nature of the alleged misconduct and be given an opportunity of furnishing a statement in relation to the matters alleged to constitute the misconduct.

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**Where-**

- (a) an inquiry is being held into the alleged misconduct of an officer; or
  - (b) an officer has been charged with having committed an offence against a law of Vanuatu and it appears to the Commission that the act or omission alleged to constitute the offence is such as to constitute misconduct by the officer,
- the Commission may suspend the officer from duty.
- (4) Subject to subsections (5) and (8), where the Commission suspends an officer from duty under subsection (3), the officer shall be paid his salary in respect of the period of the suspension.

The Commission may, in its discretion, determine that the officer suspended under subsection (3) shall-

- (a) not be paid his salary in respect of such part of the period of the suspension;
  - (b) not be paid his salary in respect of such part of the period of the suspension as the Commission determines; or
  - (c) not be paid such part of his salary as the Commission determines in respect of the period of the suspension or in respect of such part of that period as the Commission determines.
- (6) Where the Commission has suspended an officer from duty under subsection (3), the Commission may, at any time, remove the suspension.

**(7) Where-**

- (a) after an inquiry has been held into alleged misconduct by an officer who has been suspended from duty under subsection (3), the Commission is not satisfied that the officer has been guilty of misconduct; or
- (b) upon the hearing by a court of a charge referred to in subsection (3)(b) against an officer who has been suspended from duty under that subsection, the officer does not plead guilty and is not found guilty of the offence with which he was charged or of another offence that appears to the Commission to be such as to constitute misconduct by the officer, or the charge against the officer is not proceeded with,

the Commission shall, if it has not already done so, remove the suspension.

**(8) Where-**

- (a) an officer has been suspended from duty under subsection (3); and
  - (b) an amount of salary that would otherwise have been paid to the officer in respect of the period of the suspension was not paid to him; and
  - (c) the Commission removes the suspension,
- the officer shall, subject to subsection (9), be paid that amount of salary.

Where the Commission is satisfied that an officer to whom subsection (8) applies has engaged in paid employment or work during the period of his suspension, the amount payable to him under that subsection shall be reduced by an amount equal to the total of the amounts of the earnings that the Commission is satisfied were received or are receivable by the officer in respect of that employment or work.

## EFFECT OF SUSPENSION

## 36. Where an officer is suspended under section 32(1) or 35(3)-

- (a) the period of suspension shall count as service for all purposes except where the officer is dismissed from the Service because of the same matter for which he was suspended; and
- (b) he is entitled to engage in paid employment during any period of suspension without salary.

**MEANING OF MISCONDUCT**

37. For the purposes of sections 32 and 35, an officer is guilty of misconduct if, and only if—
- (a) he wilfully disobeyed or disregarded a direction applicable to him as an officer and given by a person having authority to give the direction;
  - (b) he was negligent or careless in the discharge of his duties;
  - (c) he used intoxicating liquor to excess or drugs to excess;
  - (d) he was guilty of disgraceful or improper conduct, whether as an officer or otherwise;
  - (e) he failed to comply with a provision of this Act or the regulations applicable to him;
  - (f) he committed a breach of the terms and conditions under which he holds office; or
  - (g) whether before or after becoming an officer, he wilfully supplied to the Commission, the Minister, to an officer of the Service or to some other person acting on behalf of the Commission or Minister, incorrect or misleading information in connection with his appointment to the Service.

**APPEALS AGAINST DISCIPLINARY ACTION BY THE COMMISSION**

38. (1) Where, under section 34 or 35-
- (a) an officer has his salary or position reduced or is retired or dismissed; or
  - (b) a determination is made that an officer shall not be granted, or shall not be granted until the expiration of a specified period, the whole or a part of an increase in salary,
- the officer may appeal under Part VII.
- (2) Where an officer appeals in accordance with subsection (1), no action shall be taken to enforce the decision of the Commission appealed against until the appeal is determined under section 41(3).

**PART VII**

**DISCIPLINARY APPEAL BOARD**

**DEFINITIONS**

**39. In this Part-**

- "appeal" means an appeal in accordance with section 38;
- "Board", in relation to an appeal, means the Disciplinary Appeal Board established by section 40(1) as constituted in respect of that appeal;
- "Chairman" means the Chairman of the Board appointed under section 40(3);
- "member", in relation to an appeal, means a member appointed under section 40(2) in respect of that appeal and includes the Chairman.

**DISCIPLINARY APPEAL BOARD**

40. (1) There is hereby established a Disciplinary Appeal Board for the purpose of hearing appeals which shall consist of such boards as the Commission, from time to time, appoints.



## TEACHING SERVICE

[CAP. 171.]

- (2) A Board appointed under subsection (1) shall, in respect of an appeal, be constituted by-
  - (a) the Chairman;
  - (b) two officers nominated by the Vanuatu Teachers' Federation; and
  - (c) two persons other than officers nominated by the Commission.
- (3) The Chairman shall be appointed by the Commission on such terms and conditions as the Commission determines.
- (4) A member of the Commission shall not be eligible for membership of a Board appointed under subsection (1).

## HEARING OF APPEALS

41. (1) An appeal shall be by notice in writing, signed by the appellant and delivered to the Commission within 21 days after the decision of the Commission under section 34 or 35, as the case may be.

- (2) Immediately upon receipt of a notice of appeal, the Commission shall-
  - (a) appoint a Board;
  - (b) set a date and place for the Board to hear the appeal; and
  - (c) inform the appellant, the Minister and such other persons if any, as the Commission thinks fit, of the date and place of the hearing of the appeal.

A Board appointed under subsection (2) shall hear each appeal submitted to it by the Commission and shall determine the appeal by confirming, varying or setting aside the decision against which the appeal is made.

- (4) Where, under subsection (3), the Board varies a decision, it shall have all the powers of the Commission under section 34 and 35.

Where the Board does not, within 6 months after the date set under subsection (2), determine an appeal submitted to it under this section, the decision against which the appeal is made shall be set aside.

- (6) The Board may, when only three of the five members are present, if the appellant and the Commission consent, exercise all the powers of the Board in respect of an appeal.

## DECISION OF THE BOARD FINAL

42. A decision of the Board under section 41(3) is final and the Commission shall take such action as is necessary to give effect to the decision.

## PROCEDURE OF THE BOARD

43. (1) Subject to this Act and the regulations, in an appeal before the Board, the procedure of the Board shall be as the Board determines.

- (2) The Board shall be presided over by the Chairman.
- (3) The Board may-
  - (a) proceed in the absence of a person entitled to be present if the person has had reasonable notice of the appeal;
  - (b) adjourn from time to time an appeal before it;
  - (c) summon a person to appear before it to give evidence and to produce such documents, if any, as are referred to in the summons;
  - (d) require a person appearing before it to give evidence either to take an oath or make an affirmation; and
  - (e) administer an oath or affirmation to a person appearing before it.

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TEACHING SERVICE

- (4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to questions asked of him will be true.

A summons to a witness under this section may be served personally or by sending it by prepaid post to the person to whom it is directed at his last-known place of residence or business.

- (6) When, at a hearing of an appeal by the Board, the members are divided in opinion on a question, that question shall be decided according to a decision of the majority but, if four members only are present and those members are divided evenly on a question, the appeal shall be adjourned until all members are present.

WITNESSES

44. A person summoned to attend as a witness before the Board shall not, without reasonable excuse-
- (a) refuse or fail to attend, or to produce documents, books or writings, in accordance with the summons; or
  - (b) refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings before the Board.
- Penalty: a fine not exceeding VT10,000.

OBSTRUCTION OF MEMBERS

45. A person shall not obstruct a member of the Board in the exercise of the powers conferred under this Act on the member.
- Penalty: a fine not exceeding VT10,000.

HEARINGS

46. (1) Subject to this section, the hearing of an appeal before the Board shall be in private.
- (2) A person who-
- (a) has been informed by the Commission of an appeal, or
  - (b) the Board considers should be in attendance,
- is entitled to be present at a hearing.
- The Board may, by order-
- (a) direct that a hearing, or part of a hearing, of an appeal shall not be in private and give directions as to the persons who may be present;
  - (b) give directions restricting or prohibiting the publication of evidence given before the Board, whether in public or in private, or of any matters contained in documents lodged with the Board or received in evidence by the Board; and
  - (c) give directions prohibiting or restricting the disclosure of evidence given before the Board, of the contents of a document lodged with the Board in relation to a proceeding or of any finding or decision of the Board in relation to a proceeding.
- (4) A person shall not without reasonable excuse contravene or fail to comply with an order of the Board made under subsection (3).
- Penalty: a fine not exceeding VT10,000.

**PARTIES MAY BE REPRESENTED**

47. At the hearing of an appeal before the Board, a party to the proceeding may appear in person or may be represented, by leave of the Board, by some other person.

**NEW MEMBER IF MEMBER UNABLE TO HEAR APPEAL**

48. If a member is unable, for any reason, to hear or continue to hear an appeal, the Commission may-

- (a) appoint a person in place of the member; or
- (b) dismiss the Board hearing the appeal and appoint a new Board.

**PART VIII****MISCELLANEOUS****OUTSIDE EMPLOYMENT**

49. (1) An officer shall not engage in paid employment outside his duties as an officer except with the approval of the Commission.

- (2) The Commission shall not give an approval for the purposes of subsection (1) unless it is satisfied that the paid employment will not interfere with the performance by the officer of his duties.

In this section, "paid employment" means employment, work or service for which payment is made by way of pay, salary, honorarium, commission, fee, allowance or other reward.

**RULES**

50. (1) The Commission may make Rules, not inconsistent with this Act, determining all matters (other than a matter in relation to a specified individual employee or officer) that are required or permitted to be determined by the Commission.

- (2) A Rule made under subsection (1) may apply generally to all officers and employees, to officers and employees included in a specified class of officers and employees or to an officer or employee specified by reference to his designation.

**ANNUAL REPORT**

51. (1) The Commission shall forward to the Minister as soon as practicable after the end of each financial year, a report on the operation of the Service for the year preceding that date.

- (2) A copy of the report shall be laid before Parliament within 30 days after it is received by the Minister but if Parliament is not sitting at the end of such 30 days it shall be laid before Parliament at the beginning of its next meeting.

**REGULATIONS**

52. The Minister may by Order make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.