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PUBLIC SERVICE (DISCIPLINE) REGULATIONS 2009

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STATE SERVICES DECREE 2009  
(DECREE NO. 6 OF 2009)  
PUBLIC SERVICE ACT 1999  
(ACT NO. 8 OF 1999)

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## Public Service (Discipline) Regulations 2009

IN exercise of the powers conferred on it by section 29 of the State Services Decree 2009 and section 15 of the Public Service Act 1999, and with the agreement of the Prime Minister, the Public Service Commission makes these Regulations –

## PART 1 – PRELIMINARY

*Short title and commencement*

1. These Regulations may be cited as the Public Service (Discipline) Regulations 2009, and shall come into force on 1st August, 2009.

*Application*

2. These Regulations apply to all government employees, including wage earners.

*Interpretation*

3. In these Regulations, unless the context otherwise requires –

“chairperson” means the chairperson of the Tribunal established under regulation 4;

“Commission” means the Public Service Commission established under the State Services Decree 2009;

“disciplinary charges” means charges or allegations against an employee involving breaches of the Public Service Code of Conduct as disciplinary action under sections 6 and 7 of the Public Service Act 1999;

“employee” means a person employed in the public service, and includes wage earners;

“member” means the members of the Tribunal established under regulation 4, and includes the Chairperson;

“Tribunal” means the Public Service Disciplinary Tribunal established under regulation 4.

## PART 2—PUBLIC SERVICE DISCIPLINARY TRIBUNAL

### *Establishment*

4.—(1) This regulation establishes the Public Service Disciplinary Tribunal, which shall have such powers, functions and duties as prescribed in these regulations or any other written law.

(2) The Tribunal shall consist of the following members—

- (a) one chairperson; and
- (b) two other members.

### *Appointment*

5.—(1) The chairperson of the Tribunal shall be appointed by the Commission, following consultation with the Prime Minister.

(2) The other members of the Tribunal shall be appointed by the Commission.

(3) A person holding public office must not be appointed as a member.

(4) The Commission may appoint persons who are not citizens of Fiji as members of the Tribunal.

(5) The members of the Tribunal may be appointed either on a part-time or full-time basis.

### *Functions and powers*

6.—(1) The Tribunal has the functions conferred by these Regulations or any other written law.

(2) The Tribunal has all the powers necessary to perform its functions, including the powers conferred on the Tribunal under these Regulations or any other written law.

(3) In the performance of its functions or the exercise of its powers, the Tribunal is not subject to the direction or control of any other person or authority, except a court of law or as otherwise provided by these Regulations.

(4) The Commission may give general policy, administrative and financial guidelines to the Tribunal and the Tribunal must act in accordance with any guidelines given by the Commission.

### *Remuneration*

7. The chairperson and other members of the Tribunal shall be entitled to such remuneration or allowances as fixed by the Commission.

*Removal from office*

8. The chairperson or other members of the Tribunal may be removed from office by the Commission for inability to perform the functions of the office (whether arising from infirmity of body or mind, absence, or any other cause) or for misconduct, or may otherwise be removed by giving one month's notice or one month's remuneration in lieu of notice.

*Acting Appointment*

9.—(1) The Commission may appoint a person to act as chairperson or as a member—

- (a) during a vacancy in the position; or
- (b) during any period when the chairperson or member is absent from duty, or from Fiji, or is for any other reason, unable to perform the duties of the office.

(2) Any acting appointment shall be for such term as specified in the instrument of appointment, and such person appointed shall be eligible for re-appointment.

(3) Any person appointed in an acting capacity shall perform all the functions of that position during the term of appointment, and is entitled to such remuneration conferred upon that position.

(4) The Commission may remove any acting appointments at any time.

*Validity of acts and findings*

10. An act or finding of the Tribunal is not invalid only because—

- (a) of a defect or irregularity in, or in connection with, an appointment; or
- (b) in the case of an acting chairperson or member, that the occasion for so acting had not arisen or had ceased.

*Secretary and other staff*

11. The Commission shall appoint a secretary of the Tribunal, and shall provide the Tribunal with such other staff, official accommodation and other resources, needed for the efficient performance of the functions of the Tribunal.

*Confidentiality*

12. The chairperson and other members, as well as the secretary and other staff of the Tribunal must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the disciplinary tribunal hearing, unless—

- (a) it is necessary to do so for the purpose of, or in connection with, the performance of a function under these Regulations;
- (b) it is necessary to do so for the purpose of producing a document or giving evidence to a court or a tribunal in the course of civil or criminal proceedings or proceedings under these Regulations; or
- (c) it is necessary to do so for reporting a suspected offence to the Fiji Police Force or Fiji Independent Commission Against Corruption, or assisting them in their investigations.

*Guidelines and directions*

13. The Tribunal may from time to time, with the approval of the Commission, issue guidelines and directions for the performance of the Tribunal's functions under these Regulations.

*Protection from suit*

14. Neither the chairperson or other members of the Tribunal or the secretary or any staff of the Tribunal shall be liable to an action, suit or proceeding for or in relation to any act done or omitted to be done in good faith in exercise or purported exercise of a function, power or authority conferred under these Regulations.

*Annual report*

15. Without limiting the right of the Tribunal to report at any other time, the Tribunal must, as soon as practicable after the end of each year, furnish to the Commission an annual report on the exercise of the Tribunal's functions under these Regulations during the year.

## PART 3—REFERRAL OF DISCIPLINARY ACTION TO THE TRIBUNAL

*Referral to Tribunal*

16.—(1) Where—

(a) a disciplinary action has been initiated against an employee by way of disciplinary charges for a breach or breaches of the Public Service Code of Conduct; and  
 (b) upon service of the disciplinary charges, the employee has replied to the disciplinary charges and has denied the disciplinary charges,  
 the Commission, upon receipt of the disciplinary charges, the employee's reply and such other documents submitted to the Commission by the relevant ministry or department, shall refer the disciplinary charges and all other documentary materials received to the Tribunal.

(2) Upon referring disciplinary charges against an employee to the Tribunal, the Commission shall accordingly inform the employee and the relevant ministry or department of the referral.

(3) Upon referring disciplinary charges against an employee to the Tribunal, the Commission shall forward to the Tribunal—

- (a) a copy of the disciplinary charges laid against the employee;
- (b) a copy of the written reply by the employee to the disciplinary charges, together with any other document supplied by the employee to the Commission; and
- (c) such other documents provided by the relevant ministry or department, which were provided to the Commission and which relate to the disciplinary charges against the employee.

(4) Where an employee admits the disciplinary charges or fails to reply to the disciplinary charges, the Commission may deal with the disciplinary charges and determine the disciplinary action to be taken against the employee without referral to the Tribunal under sub-regulation (1).

(5) Nothing in sub-regulation (1) limits the power of the Commission to deal with disciplinary charges laid against an employee without referral to the Tribunal under sub-regulation (1), and any decision of the Commission not to refer disciplinary charges against any employee to the Tribunal shall not be challenged in any court of law or tribunal established by written law.

*Pre-hearing disclosure*

17.—(1) Upon receipt of disciplinary charges laid against an employee, the Tribunal shall issue a notice to the relevant ministry or department requiring, within the period of time specified in the notice, the production of all documentary materials which the ministry or department intends to rely upon at the hearing, together with a list of names of all persons whose evidence will be relied upon by the ministry or department at the hearing.

(2) The Tribunal shall provide a copy of all materials and information (if any) provided by the relevant ministry or department under sub-regulation (1) to the employee, and shall then issue a notice to the employee requiring the production of all documentary materials which the employee intends to rely upon at the hearing, together with a list of names of all persons whose evidence will be relied upon by the employee at the hearing.

(3) The Tribunal shall ensure that copies of all materials and information (if any) provided by the employee are disclosed to the relevant ministry or department.

(4) The Tribunal may, at its discretion, extend the time for compliance of this regulation by the employee or the ministry or department.

*Hearing date*

18. Within 7 days of the compliance of pre-hearing disclosure under regulation 17, the Tribunal shall assign a date for hearing of the disciplinary charges, and shall issue a notice notifying the employee and the ministry or department of the hearing date:

Provided that the Tribunal may, on its own motion or at the request of the employee or the ministry or department, adjourn the hearing to such other date and time as the circumstances of the case may require.

*Charges against different employees may be heard together*

19. The Tribunal may order that disciplinary charges laid against different employees arising from the same allegation to be heard together, and in such a case, a single report may be made to the Commission by the Tribunal.

*Tribunal hearing to be private*

20. The hearing of a disciplinary charge shall be held in private:

Provided that the following persons shall be allowed to be present at the hearing:

- (a) the employee, or a representative of the employee;

- (b) the permanent secretary or the head of department of the relevant ministry or department;
- (c) any person appearing on behalf of the ministry or department;
- (d) the members and the permanent secretary of the Commission, and any person appearing on their behalf;
- (e) any other person whom the Tribunal in its discretion allows to be present.

*Hearing before the Tribunal*

21.—(1) The Tribunal shall hear all disciplinary charges referred to it by the Commission.

(2) The Tribunal is not bound by formal rules of evidence:

Provided that the Tribunal shall give the employee an opportunity to be heard and the Tribunal must act fairly in relation to the proceeding.

(3) Subject to these regulations, the conduct and proceedings of the hearing before the Tribunal shall be determined by the Tribunal, and the Tribunal shall regulate its own procedure.

(4) The documents and materials disclosed under regulation 17 shall be deemed to be admitted before the Tribunal and shall be part of the record of the Tribunal, unless any objections are made to any such document or material, whereupon the Tribunal shall make a decision on the admission of any such document or material.

(5) Any employee against whom disciplinary charges are laid and referred to the Tribunal shall be entitled to appear before the Tribunal, together with a representative, whether legal or otherwise.

(6) Unless the Tribunal otherwise directs, the order of the proceedings for hearing before the Tribunal shall be as follows—

- (a) submissions by or on behalf of the relevant ministry or department;
- (b) hearing of any witnesses called by or on behalf of the ministry or department, followed by cross-examination of such witnesses by or on behalf of the employee, and re-examination by or on behalf of the ministry or department of a witness who has been cross-examined.
- (c) submission by or on behalf of the employee;
- (d) hearing of any witnesses called by or on behalf of the employee, followed by cross-examination of such witnesses by or on behalf of the ministry or department, and re-examination by or on behalf of the employee of a witness who has been cross-examined;
- (e) closing submissions by or on behalf of the ministry or department;
- (f) closing submissions by or on behalf of the employee.

(7) The Tribunal may ask any questions of any witness or other persons appearing before the Tribunal at any time, and the Tribunal may direct any witness to be recalled.

(8) The Tribunal may prohibit the production of documentary evidence and calling of witnesses not notified in the pre-hearing disclosure under regulation 17, unless it considers that there were good grounds for such non-disclosure.

*Witnesses*

22.—(1) Any witness shall, upon the direction of the Tribunal, attend the hearing and be given due notice of the time and place of the hearing.

(2) The Tribunal may by notice in writing require to appear before it any person who may, in the opinion of the Tribunal, be able to give evidence or produce documents related to hearing before the Tribunal, or whom the employee or the ministry or department may desire to call as a witness.

(3) Any witness who, upon being given a notice to attend before the Tribunal, fails to appear before the Tribunal shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

(4) Any witnesses before the Tribunal may take an oath or affirmation for the purpose of giving evidence.

*Hearing in the absence of employee*

23.—(1) Where an employee, who has been notified of the hearing before the Tribunal of disciplinary charges against the employee, does not attend the hearing without providing any good reason, the Tribunal hearing may proceed and be concluded in his or her absence.

(2) Where an employee does not attend the hearing before the Tribunal on the hearing of disciplinary charges against the employee and a good reason is provided by or on behalf of the employee, the hearing shall be postponed or adjourned, as the case may be.

*Tribunal to report other misconduct or indiscipline*

24. Where the Tribunal hearing a disciplinary charge is of the opinion that such evidence discloses other misconduct or indiscipline against the employee or any other employee, the Tribunal shall report the matter to the Commission and if the Commission or its delegate thinks fit to proceed against the employee or any other employee in respect of such other misconduct or indiscipline, it shall cause the employee or such other employee to be informed in writing of any further charges.

*Record of proceedings*

25. The Tribunal shall arrange for a record to be made of its proceedings and of oral evidence given by witnesses during the hearing.

**PART 4—REPORT**

*Tribunal to submit report*

26.—(1) At the end of the hearing, the Tribunal shall make a report to the Commission containing its findings on the facts and evidence presented and an expression of opinion as to the meaning and value of the facts found.



(2) In the absence of unanimity amongst members of the Tribunal, dissenting views shall also be recorded in the report of the Tribunal.

(3) The Tribunal shall not make any recommendations in the report on penalty to be imposed on an employee.

(4) The report of the Tribunal in relation to disciplinary charges referred to the Tribunal shall include a transcript or record of the proceedings before the Tribunal, and shall include all documents adduced or presented before the Tribunal.

#### PART 5—DECISION BY THE COMMISSION

##### *Disclosure of report*

27.—(1) Upon receipt of the report under regulation 26, the Commission shall disclose the report and the record of the proceedings of the Tribunal to the employee and the relevant ministry or department, and shall invite the employee and the ministry or department or their representatives to make representations by way of submissions to the Commission and to state their views on the findings of the Tribunal.

(2) The Commission shall consider the submissions made by the employee and the relevant ministry or department before making any decision.

##### *Commission to decide on guilt*

28. The Commission shall consider the report of the Tribunal submitted to the Commission under regulation 26 and any submissions made to the Commission by the employee or the ministry or department or their representatives under regulation 27, and make a decision on whether or not the employee has breached the Public Service Code of Conduct.

##### *Mitigation hearing*

29. If the Commission is satisfied that the employee has breached the Public Service Code of Conduct and is guilty of one or more disciplinary charges brought against the employee, the Commission shall inform the employee of its decision, and shall invite the employee or its representative to be heard in mitigation. At this hearing, the ministry or department or its representative shall also be entitled to appear and be heard by the Commission.

##### *Disciplinary action*

30. After hearing the employee or its representative in mitigation, or if the employee fails to appear before the Commission for a hearing in mitigation under regulation 29, the Commission may then take disciplinary action and take one or more of the actions prescribed in regulation 22(1)(a) to (h) of the Public Service (General) Regulations 2009 (as amended).

##### *Notification of decision*

31. The Commission shall, within 7 days, notify an employee in writing, of its decision made under regulation 30.

PART 6—TRANSITIONAL

*Transitional*

32. Any disciplinary charge initiated against any employee before the commencement of these Regulations and which has not yet been determined by the Commission as to whether or not the employee has breached the Public Service Code of Conduct, shall be referred by the Commission to the Tribunal, and the Tribunal shall deal with any such disciplinary charge in accordance with Part 3 of these Regulations.

Made at Suva this 21st day of July 2009.

JOSEFA SERULAGILAGI  
Chairman,  
Public Service Commission

PARMESH CHAND  
Secretary,  
Public Service Commission

Approved by me at Suva this 21st day of July 2009.

JOSAIA VOREQE BAINIMARAMA  
Prime Minister & Minister for Finance, National Planning,  
Public Service, People's Charter for Change & Progress, Information,  
Sugar Industry, Foreign Affairs, International Co-operation and Civil Aviation