

REPUBLIC OF VANUATU

BILL FOR

THE PUBLIC SERVICE

ACT NO 3 OF 1981

To confer powers and functions on the Public Service Commission in addition to those conferred upon it by the Constitution and to provide for a Public Service Disciplinary Board, for appeals therefrom and for other matters relating to the Public Service.

Be it enacted by the President and Parliament as follows :-

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

"Board" means the Public Service Disciplinary Board established under Section 9;

"Association" means the staff association recognised by the Prime Minister in accordance with section 14;

"Commission" means the Public Service Commission established by Article 57 of the Constitution;

"Commissioner" means a member of the Commission;

"department" means a Ministry of the Government or a Department within a Ministry;

"officer" means a person holding or acting in any office in the Public Service;

"Public Service" means the service of the Republic in any capacity other than as a judge, or member of the armed forces, police or teaching services;

"Statutory body" means any statutory body, other than a Department, created by any written law and responsible to a Minister.

2. The Commission shall have all powers necessary to perform the functions and carry out the duties described in this Act in addition to the functions and duties vested in it by the Constitution.

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3. (1) The Commission shall in respect of the Public Service, be responsible for -
- (a) reviewing the machinery of government, including the need for the establishment of new departments and the amalgamation or abolition of existing departments, the co-ordination of the activities of departments and, subject to the provisions of any other law, the extent and nature of the controls over the operations of a department;
  - (b) reviewing the efficiency and economy of the Public Service, including the discharge by heads of departments of the responsibilities placed in them by this Act or any other law;
  - (c) advising the Prime Minister on Public Service salaries and salary scales;
  - (d) the provision of suitable office accommodation and the prescription and supervision of the physical working conditions of all officers in the Public Service;
  - (e) for the purposes of efficient Government reviewing establishments and approving the grading of posts;
  - (f) acting as the personnel authority for the Public Service;
  - (g) prescribing training programmes for and assisting with the training of officers;
  - (h) providing or causing to be provided management consultation services, including advice as to efficient work and control methods and techniques, data processing and organisation.
- (2) The Commission shall be empowered at all times in respect of the Public Service to carry out such inspections and investigations, and to receive such reports, as it shall consider necessary to advise any head of department or to report to the Prime Minister on matters referred to in this section or on such other matters as the Prime Minister may direct.

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4. (1) The Commission may also provide any statutory body -
- (a) with advice on and assist in the training of its staff;

- (b) with management consultation services;
- (c) with assistance in recruitment of staff.

(2) The Commission may charge fees for any of the services it provides in accordance with subsection (1).

**Annual reports.** 5.(1) The Commission shall as soon as is practicable after the end of each financial year furnish to the Prime Minister a report on the state of the efficiency and economy of the Public Service and on the operations of the Commission for the year ending on that date.

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

**Delegation  
of powers  
and functions.**

6.(1) The Commission may from time to time either generally or particularly delegate any of its powers and functions under this Act except those contained in Sections 10 and 11 to a Commissioner or to any officer who in this section shall include a person appointed to any office under the Constitution.

(2) In any case where the Commission has delegated any of its powers to a Commissioner or any officer, that Commissioner or officer may, with the prior approval in writing of the Commission, delegate such of those powers to any other officer.

(3) Subject to any general or special directions given by the Commission, the Commissioner or officer to whom any powers or functions are delegated may exercise those powers or functions in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.

(4) Every Commissioner and other person purporting to act in accordance with a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or of specified classes of offices.

(6) Every delegation shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Commission.

- (7) Any delegation shall, until it is revoked, continue in force notwithstanding any changes in the membership of the Commission.
- (8) Any investigation or inquiry which the Commission is empowered to conduct under this Act may be conducted by the Commission acting in its own right or by a Commissioner or any officer or any other person specially or generally appointed by the Commission to conduct the investigation or inquiry and to report thereon to the Commission and for the purposes of any such investigation or inquiry the powers and authority conferred on the Commission by section 12 shall attach to and may be exercised by any officer or other person so appointed.

Transfers.

- 7. Subject to the power of the Prime Minister under Article 56 (2) of the Constitution the Commission may transfer any officer from one office or position to another office or position in the Public Service of equivalent rank, whether or not the transfer involves a change of location.

Disciplinary offences.

- 8. Every officer commits a disciplinary offence for the purposes of disciplinary proceedings who -
  - (a) by any wilful act or omission fails to comply with the requirements of this Act or of any order hereunder or of any official instrument made under the authority of the Commission or of the head of the Department in which the officer is employed;
  - (b) in the course of his duties disobeys, disregards or makes wilful default in carrying out any lawful order or instruction given by any person having authority to give the order or instruction or by word or conduct displays insubordination;
  - (c) is negligent, careless, indolent, inefficient, or incompetent in the discharge of his duties;
  - (d) behaves in a manner calculated to cause unreasonable distress to other officers or to affect adversely the performance of their duties;
  - (e) uses intoxicating liquors or drugs to excess or in such manner as to affect adversely the performance of his duties;

- (f) improperly uses or removes property, stores, monies, stamps, securities or negotiable instruments for the time being in his official custody or under his control, or fails to take reasonable care of any such property, stores, monies, stamps, securities or negotiable instruments;
- (g) otherwise than in the proper discharge of his duties directly or indirectly discloses or for private purposes uses any information acquired by him either in the course of his duties or in his capacity as an employee;
- (h) absents himself from his office or from his official duties during hours of duty without leave or valid excuse, or is habitually irregular in the time of his arrival or departure from his place of employment;
- (i) is guilty of any improper conduct in his official capacity, or of any other improper conduct which is likely to affect adversely the performance of his duties or is likely to bring the Public Service into disrepute;
- (j) is guilty of any other offence prescribed from time to time by orders made under this Act.

9. (1) There is hereby established a Public Service Disciplinary Board which shall consist of five members appointed by the Public Service Commission who shall consist of :-
- (a) a member of the Commission who shall be chairman;
  - (b) two public officers from different departments to be nominated by the Association;
  - (c) two other members.
- (2) The members of the Board shall hold office for a term not exceeding three years, but may be re-appointed.
- (3) Notwithstanding the provisions of subsection (2) every member of the Board shall continue to hold office until his successor is appointed.
- (4) No member shall sit on the Board on any case affecting an officer of the Department in which the member is an officer, or on a case affecting himself.

Establishment of  
Public Service  
Disciplinary  
Board.

- (5) If any member of the Board dies, or by notice in writing addressed to the Commission resigns his office, or refuses or neglects without sufficient cause to attend any duly appointed meeting of the Board or (being a service member) becomes employed in the Department in which the other service member is already employed, his seat shall become vacant and the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made.
- (6) In the event of both service members of the Board being absent or unable for any reason to attend any meeting of the Board or to sit for the hearing of any particular case, an officer, nominated by the Association, or on failure of the Association to nominate, nominated by the Prime Minister, shall act in place of the service members of the Board at the meeting or at the hearing of the case as the case may be, and that officer shall for the purpose of this Act be considered a duly appointed service member of the Board for the purposes of the meeting or of the hearing of the case.
- (7) Notwithstanding anything in this section, the Board may, if in its opinion a case involves matters of a professional, technical or specialised nature, appoint a person who in its opinion has expert knowledge of such matters to be an assessor for the purposes of the case, and the assessor shall sit with the Board and in all respects act as an extra member thereof for the hearing and determination of the case, except that he shall have no vote in the determination of the case.

Hearing and  
Confirmation  
of Disciplinary  
offences.

10. (1) All disciplinary offences shall be heard by the Board in accordance with rules that shall be prescribed.
- (2) Unless an appeal has been lodged in accordance with Section 11 (2) all decisions of the Board shall be subject to confirmation by the Commission not later than 30 days after they have been published or notified to the officer concerned.
- (3) The Commission may confirm decisions of the Board, vary such decisions or quash them.
- (4) If the Commission fails to confirm vary or quash a decision of the board within the time provided in subsection (2) it shall be considered to have quashed the decision.

Officers of Appeal  
Officers  
appointed by  
Commission.

- 11.(1) Subject to the provisions of subsection (2) every officer other than an officer on probation appointed by the Commission shall have a right of appeal to the Commission in accordance with this section against any punishment imposed by the Board or an officer.
- (2) Notice of appeal under subsection (1) setting out the grounds of the appeal, shall be forwarded to the Secretary of the Commission in writing by registered post within 15 days after the date on which the decision has either been published or been notified to the officer concerned as the case may be or within such extended time as the Commission may in any case allow after good and sufficient reason has been shown in writing by the appellant.
- (3) The Commission may allow or disallow any appeal.
- (4) In any appeal the onus of proof shall rest with the appellant.
- (5) The proceedings of the Commission on appeal shall not be open to the public but any person authorised by the Commission may attend any hearing or part of a hearing.
- (6) At the hearing of any appeal the appellant shall be entitled to be present and may be represented or assisted by a lawyer or any officer.
- (7) In matters not expressly provided for in this Act or in any orders made under this Act the procedure of the Commission shall be such as it may determine.
- (8) Proceedings before the Commission shall not be held bad for want of form. No appeal shall lie from any decision of the Commission except on the ground of lack of jurisdiction and no proceedings or decisions of the Commission shall be liable to be challenged, reviewed, quashed, or called in question in any court.
- (9) Notwithstanding any thing to the contrary in this Act or in any other written law the Commission may either before the hearing or any time during the hearing of an appeal summarily dismiss or disallow the appeal without hearing it or without hearing it any further, as the case may be, on the ground that the appeal is frivolous or vexatious or should not otherwise have been brought or made.

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12. For the purpose of carrying out their functions in relation to disciplinary offences the Commission and the Board shall have the same powers and authority to summon witnesses and admit and receive evidence as does the Supreme Court.

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13.(1) Except as provided in subsection (3) no person shall in any way attempt to influence the Commission, the Board or any member in respect of any disciplinary case or appeal.

(2) Any person who acts in contravention of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding £10,000.

(3) Nothing in this section shall be so construed as to prohibit any person from giving information or making representations in respect of any case or appeal at the request or invitation of the Board or the Commission or as a witness or as a defendant or appellant or the representative of an officer appearing at a hearing before the Board or the Commission.

... Membership

... Unions  
... Recognition  
... Staff  
... Association.

14.(1) No officer may be a member of a trade union or body or association affiliated to a trade union.

(2) If any question arises as to whether or not a body or association is a trade union, body or association to which subsection (1) applies the question shall be decided by the Commission and its decision shall be final.

(3) For the purpose of enabling officers to bring to the notice of the Commission any matter affecting their service apart from matters of promotion or discipline officers may belong to a Public Service Staff Association recognised by the Prime Minister for that purpose.

... Orders.

15.(1) The Prime Minister may make orders for the carrying out of the provisions of this Act and for the efficient management control and working of the Public Service.

(2) Different orders may be made in respect of different classes of officers.

(3) Without prejudice to the generality of subsections (1) and (2) the Prime Minister may in particular make orders with respect to any of the following matters -



- (a) the promotion of efficiency and economy in the Public Service;
- (b) for prescribing standards of and conditions relating to office accommodation and the physical working conditions of officers;
- (c) for facilitating the classification and grading of officers;
- (d) generally for prescribing the terms and conditions of service and employment of officers;
- (e) generally with regard to matters arising out of or in the course of the employment of officers;
- (f) generally for prescribing the terms and conditions which may be imposed in or in respect of any contracts or arrangements relating to the Public Service entered into between the Government on the one hand and its officers or any other person on the other hand;
- (g) generally for prescribing fees, allowances and expenses that may be paid to any person for carrying out any functions or duties prescribed or provided for by this Act;
- (h) for prescribing further disciplinary offences;
- (i) generally for prescribing the responsibilities and duties of officers;
- (j) generally providing for and facilitating the training and examination of officers;
- (k) for prescribing further matters or decisions in respect of which a right of appeal shall lie to the Commission.

- 16.(1) The Prime Minister or the Public Service Commission may from time to time issue Public Service Instructions covering every aspect of the work and privileges of officers.
- (2) Different Public Service Instructions may be made for and in respect of different classes of officers.
- (3) It shall not be necessary for instructions made under this section, which shall be for the internal use, guidance, assistance and general conduct of officers and which shall form part of the conditions of service of officers to be published in the Gazette.

(4) Whenever there is any conflict between any instruction made under this section and any orders made under section 15 or any provision of this Act, the Constitution or any written law the orders or provisions shall prevail.

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17.(1) Except as provided in subsections (3) and (4) of this section, every person shall commit an offence who directly or indirectly solicits or endeavours to influence the Commission or any Commissioner or any officer to whom any of the powers or functions of the Commission have been delegated under section 6, of this Act, with respect to its or their decisions.

(2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding N\$ 10,000.

(3) Nothing in this section shall apply to any person giving information advice or making representations to the Commission in respect of any matter whatsoever at the request or invitation of the Commission or in compliance with directives made by or procedures established by the Commission.

(4) Nothing in this section shall be construed so as to prevent the Association from making representation to the Commission on any matter affecting the salaries, wages or conditions of employment of any officer or class of officers.

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18.(1) The Public Service Regulation No 7 of 1978 is hereby repealed.

(2) Any orders made under the Public Service Regulation No 7 of 1978 or Public Service Instructions made prior to the coming into force of this Act shall remain in force until revoked.

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19. This Act shall come into force on the date of its publication in the Gazette.