



Tonga

PUBLIC SERVICE ACT 2002

No. 34 of 2002



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PUBLIC SERVICE ACT 2002

No. 34 of 2002

AN ACT TO REFORM THE LAW RELATING TO THE PUBLIC SERVICE AND TO ESTABLISH THE PUBLIC SERVICE

I assent,
TAUFA'AHAU TUPOU IV,
3rd April, 2003

[20th November, 2002]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the Public Service Act 2002.
- (2) This Act shall come into force on a day to be proclaimed by His Majesty in Council and different sections may be brought into force on different dates.

2 Exemption

All persons appointed under the King's prerogative powers and appointees under legislation set out in Schedule II are exempted from the provisions of this Act.

3 Interpretation

In this Act, unless the context otherwise requires:

“**Chairman**” means the Chairman of the Public Service Commission appointed under this Act;

“**Commission**” means the Public Service Commission established under this Act;

“**Commissioner**” means a member of the Public Service Commission;

“**daily paid worker**” means a person who is employed on a daily basis;

“**employee**” means all persons employed in the Public Service;

“**Head of Department**” means any person in charge of the administration of a Ministry, who is employed under a fixed contract of employment under this Act;

“**Ministry**” means any Ministry or Department listed in Schedule I;

“**Public Service**” means all persons employed in any Ministry listed in Schedule I.

4 Prime Minister to administer Act

- (1) The Prime Minister shall be responsible for the Public Service and the administration of this Act.

PART II - PUBLIC SERVICE COMMISSION

5 Establishment and operation of Commission

- (1) There shall be established a Public Service Commission.
- (2) The Commission shall comprise three members, one of whom shall be the Chairman.
- (3) The Prime Minister, with the consent of Cabinet, shall appoint all the members of the Commission.

- (4) The Chairman and each member shall serve for a term of 5 years and may be eligible for re-appointment.
- (5) The Prime Minister may, with the consent of Cabinet, remove a member of the Commission from Office and appoint a successor for the balance of the term.
- (6) The Commission may, with the consent of Cabinet, set its own procedures.
- (7) The Minister of Finance shall, with the consent of Cabinet, fix the remuneration of the members of the Commission.
- (8) The members of the Commission may serve on a part time basis.
- (9) A Commissioner may resign by giving the Prime Minister 3 month's written notice.
- (10) The quorum of the Commission shall be two members, one of whom shall be the Chairman.
- (11) The Chairman shall be the head of the Public Service Commission and shall:
 - (a) be responsible for the efficient and effective operation of the Commission;
 - (b) call and attend regular meetings of the Commission; and
 - (c) preside over the meetings of the Commission.

6 Principal functions of the Commission

- (1) The principal functions of the Commission, subject to this Act, shall be to:
 - (a) act as the advisor to Government on the management of the Public Service;
 - (b) set the guiding principles for the management and performance of the Public Service;
 - (c) set standards for performance and manage any performance management system for the Public Service;
 - (d) appoint, promote, confirm, discipline and dismiss employees and resolve employment disputes;
 - (e) monitor and report to Government on matters relating to the efficiency and effectiveness of the Public Service;
 - (f) fix with the approval of Cabinet salaries, allowances and other financial benefits for employees;
 - (g) making recommendations to Cabinet relating to the process of appointment and removal of Heads of Department;

- (h) ensure the management and internal controls of each Ministry are regularly reviewed by the relevant Head of Department;
 - (i) assist Ministers in assessing the performance and reviews of Heads of Department;
 - (j) assist Ministries to improve management practices by providing support for planning, training and development;
 - (k) formulate, with the consent of Cabinet, a code of ethics and standards of behaviour and conduct in the Public Service; and
 - (l) undertake such other duties as may be directed by Cabinet.
- (2) The Commission shall implement the written policies of Government as directed by Cabinet.
- (3) The Commission may at anytime in respect of matters referred to in this section or on such other matters as the Prime Minister may request:
- (a) carry out necessary inquiries, investigations or inspections; or
 - (b) require and receive reports and provide advice to a Head of Department.

7 Powers of Commission

- (1) The Commission may:
- (a) require free access at all times to all documents, books, accounts and records, of Ministries that relate to employment of employees and to inspect and inquire into and call for any information arising from those accounts and records;
 - (b) where it has reason to believe that an employee has been or may have been in contravention of this Act or any other Act, suspend that employee from all duties and responsibilities, pending an investigation;
 - (c) require any employee to supply any information or answer any questions relating to documents, books and accounts, money, or operations that relate to employees;
 - (d) by notice in writing, require any person having possession or control of any documents, books and accounts that relate directly to employees to deliver all or any of them, at a time and place and to such person specified in the notice; and
 - (e) enter any Government land or building (other than a dwelling-house) where employees are working.
- (2) The Commission may appoint any person in writing, to inquire into and report on any matter or matters specified in the instrument of appointment.

- (3) Any person who fails to comply with any direction given by the Commission, under this section commits an offence and is liable upon conviction to a fine not exceeding \$2000.
- (4) The Commission may dismiss any employee convicted of an offence under this section.

8 Annual report and reporting obligations of Commission

- (1) The Chairman shall within 90 days after the end of each calendar year furnish a report to the Prime Minister relating to the operations of the Commission and on the efficiency and effectiveness of the Public Service.
- (2) The Prime Minister shall, with the approval of Privy Council, forward a copy of the report to the Legislative Assembly.

9 Delegation of powers

- (1) The Commission may delegate in writing any of the employment functions of the Commission and the delegated is subject to the same duties and responsibilities as the Commission under this Act.
- (2) When employment functions are delegated by the Commission under subsection (1), the delegate is subject to the same duties and responsibilities as are on the Commission under this Act.

10 Secretary of Commission

- (1) The Commission shall appoint a Secretary as Head of Department, who will provide support services to the Commission.
- (2) The Secretary shall be subject to the direction of the Chairman.

11 Employees of the Commission

The Commission may appoint such employees as may be necessary to enable it to carry out its functions and duties under this Act.

PART III - PUBLIC SERVICE

12 Employee matters to be under Act

All appointments, promotions, disciplinary matters and terminations in respect of the Public Service shall be made in accordance with this Act and any written policies of Government as directed by Cabinet.

13 Appointment of Heads of Department

- (1) The Commission, with the consent of Cabinet, shall make all appointments to the position of Head of Department.
- (2) Subject to section 26, Heads of Department shall be employed under a fixed contract of employment for a term of up to 5 years and may be eligible for reappointment.

14 Appointments to the Public Service

- (1) Subject to section 13 and section 18 any appointment of an employee to or within the Public Service is to be made by the Commission.
- (2) The Commission shall prior to making an appointment under this section consult with and take into consideration the views and requirements of the relevant Minister.

15 Redundancy

The Commission may recommend to Cabinet that any post be made redundant.

16 Dismissal for cause

Every employee except those on contract wishing to resign from the Public Service shall give written notice of his resignation as prescribed by Regulation.

17 Notice of resignation

The Commission may dismiss an employee at any time for cause.

18 Daily paid workers

A Head of Department, with the consent of the relevant Minister, may engage such daily paid workers as may be required.

PART IV - CODE OF CONDUCT, DISPUTE AND DISCIPLINARY PROCEDURE

19 Code of Conduct

The commission shall, within 12 months of the coming into force of this Act, publish in the Gazette a code of conduct for the Public Service.

20 Candidacy for Legislative Assembly

A Head of Department or employee in the Public Service shall take a leave of absence upon registering as a candidate for election to the Legislative Assembly and shall resign if elected.

21 Dispute resolution and disciplinary matters

- (1) The procedure to determine disputes and disciplinary matters under this Act shall be prescribed by Regulation.
- (2) A person who is dissatisfied with a determination may appeal to Cabinet.

PART V - MISCELLANEOUS PROVISIONS RELATING TO THE PUBLIC SERVICE

22 Regulations

The Prime Minister may with the consent of Cabinet, make Regulations for the proper and efficient administration of this Act.

23 Policy Manual

Subject to the provisions of this Act the Commission may with the approval of Cabinet, publish in the Gazette a Public Service policy manual and issue instructions which shall be binding on all employees.

24 Obligation to report

A Head of Department or employee who has knowledge of any circumstance which may cause him to consider that a contravention of this Act or any other enactment has occurred shall report those circumstances to the Commission.

25 Transition

An employee in the Public Service holding office before the commencement of this Act shall, after the commencement of this Act continue to hold office in accordance with the provisions of this Act.

26 Transition for Head of Department

- (1) Every Head of Department who was appointed before the coming into force of this Act shall continue in such employment under a 12 month written fixed contract of employment entered into with the Commission.
- (2) The Commission may, with the approval of Cabinet, re-appoint a Head of Department on such terms and for such period as the Commission shall determine, but thereafter every Head of Department shall be appointed in accordance with section 13.
- (3) A Head of Department who has not been re-appointed in accordance with subsection (2), shall be deemed to have resigned.

27 Act to prevail

Subject to the Constitution, the provisions of this Act shall prevail when any of its provisions conflict with the provision of any other law.

Passed in the Legislative Assembly this 20th day of November, 2002.

SCHEDULE I

1. Prime Minister's Office
2. Ministry of Finance
3. Ministry of Education
4. Ministry of Lands, Survey and Natural Resources
5. Ministry of Marine and Ports
6. Ministry of Agriculture, Food and Forestry
7. Ministry of Fisheries
8. Ministry of Works
9. Ministry of Labour, Commerce and Industries
10. Ministry of Health
11. Ministry of Foreign Affairs
12. Ministry of Civil Aviation
13. Ministry of Justice
14. Office of the Commissioner for Public Relations
15. Palace Office
16. Audit Department
17. Central Planning Department
18. Statistics Department
19. Department of Environment
20. Tonga Visitors Bureau
21. Printing Department
22. Crown Law Department
23. Revenue Services Department
24. Communications Department
25. Public Service Commission
26. Office of the Governor of Ha'apai

27. Office of the Governor of Vava'u

SCHEDULE II

Commissioner for Public Relations under the Commissioner for Public Relations Act 2001.

Magistrates under the Magistrates' Court Act (Cap. 11)

Police Act (Cap. 35)

Prisons Act (Cap. 36)

Tonga Defence Services Act (Cap. 55)