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CHAPTER 250

GOVERNMENT REMUNERATION TRIBUNAL

Act 20 of 1998

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GOVERNMENT REMUNERATION TRIBUNAL

An Act to provide for a government remuneration tribunal.

PART 1 – PRELIMINARY

1. Purpose
The purpose of this Act is to establish a government remuneration tribunal which will consider and determine the maximum remuneration payable to those persons employed by or appointed to positions by the Government or by an agency of Government.

2. Object
The object of this Act is to adopt principles of consistency, economy of resources, and disciplines in determining the remuneration of those persons employed by, or appointed to positions by, the Government or by an agency of Government.

3. Interpretation
In this Act, unless the context otherwise requires:

"determination" means a decision of the Tribunal fixing the maximum amount of remuneration payable to persons subject to this Act;

"member" means a member of the Tribunal appointed under section 6;

"Minister" means the minister responsible for the Tribunal;

"public sector" comprises those persons employed by Government who are not members of the public service and not a person or class of persons listed under paragraphs (i) to (vi) of section 13(1)(a);

"Public Service" comprises those persons employed in the ministries, departments, State appointed offices, agencies and instruments of the Government of Vanuatu as are designated by the Prime Minister pursuant to an enactment;

"Tribunal" means the Government Remuneration Tribunal established under section 5;

"remuneration" means a reward for services and includes salaries, wages, allowances, fees, expenses and every other form of income or recompense whatsoever.

4. Application
This Act shall bind the State.

PART 2 – GOVERNMENT REMUNERATION TRIBUNAL

5. Establishment of Government Remuneration Tribunal
There is established a tribunal to be called the Government Remuneration Tribunal.

6. Membership of Tribunal
(1) The Tribunal shall consist of 3 members to be appointed by the Minister as follows:

(a) one member nominated by the Prime Minister who will be the Chairperson;

(b) one member nominated by the Public Service Commission;

(c) one member nominated by the President of the Chamber of Commerce.

(2) The Tribunal may from time to time appoint one of the other members of the Tribunal to be the Deputy Chairperson.

(3) The member nominated by the Prime Minister must be a person who has a wide and detailed knowledge in employment issues, management and policy in the public sector.

(4) The member nominated by the Public Service Commission must be a person who has a wide and detailed knowledge in employment issues, management and policy in the public service.

(5) The member nominated by the President of the Chamber of Commerce must be a person who has a wide and detailed knowledge in employment issues, management and policy in the private sector.

7. Term of office

(1) Except as otherwise provided in this Act, every member of the Tribunal will be appointed for a term of 3 years, but may from time to time be reappointed.

(2) Unless a member vacates his or her office under section 8, a member of the Tribunal will continue in office until his or her successor comes into office, notwithstanding that the term for which he or she was appointed may have expired.

(3) A member may be appointed to the Tribunal on a part time basis.

8. Extraordinary vacancies

(1) A member of the Tribunal may only be removed from office by the President for disability, bankruptcy, neglect of duty, misconduct, or if convicted of an offence involving moral turpitude.

(2) A member may resign at any time by giving written notice to that effect to the Prime Minister.

(3) If a member dies, or resigns, or is removed from office, the vacancy created will be deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy will be filled by the appointment of a member by the Minister in accordance with section 6(1).

(5) The person that would be entitled to nominate that member in accordance with section 6(1) will nominate the new member.

(6) The powers of the Tribunal will not be affected by one vacancy in its membership.

9. Meetings

(1) Meetings of the Tribunal will be held at such times and places as the Tribunal or its chairperson from time to time appoints.

(2) There will be a quorum of 2.

(3) The chairperson will preside at every meeting at which he or she is present, and in his or her absence the Deputy Chairperson will preside.

(4) A decision of a majority of the members present shall be the decision of the Tribunal. The chairperson will have, in the event of an equality of votes, a casting vote.

(5) Subject to the provisions of this Act, the Tribunal may regulate its own procedure.

(6) No decision or determination of, or proceeding before, the Tribunal, will be questioned for want of form.

10. Members and officers to maintain secrecy

(1) A member or person engaged or employed in connection with the work of the Tribunal will maintain, except in the course of his or her duty, confidentiality in all matters which come to his or her knowledge when carrying out his or her functions or duties under this Act.

(2) Every person who wilfully acts in contravention of subsection (1) commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding VT 100,000 or to both.

11. Remuneration and allowances

There will be paid to the members of the Tribunal remuneration such fees, salary and/or allowances and expenses as may be fixed by the Minister from time to time on the advice of the Public Service Commission.

12. Staff of Tribunal

Subject to the budget allocated there shall be appointed under the Public Service Act [Cap. 246] such staff as are necessary to enable the Tribunal to exercise its functions and powers.

PART 3 – FUNCTIONS, RESPONSIBILITIES AND POWERS OF THE TRIBUNAL

13. Functions of the Tribunal

(1) The principal functions of the Tribunal are:

(a) to review and determine the maximum remuneration payable to those persons, or classes of persons listed in subparagraphs (i) to (viii):

(i) those persons listed in Part 1 of the Schedule to the Official Salaries Act [Cap. 168];

(ii) those persons appointed as directors to boards by Government or a Government ministry, agency or instrument;

(iii) those persons appointed to the boards of statutory corporations and authorities;

(iv) those persons appointed as chief executive officers of local government councils;

(v) town clerks of municipal councils;

(vi) directors-general of ministries and directors of departments;

(vii) persons, or classes of persons employed in the public service;

(viii) persons or classes of persons employed in the public sector;

(b) to receive written submissions from the public, and to investigate public concerns in matters relating to the remuneration payable to those persons or classes of persons listed in subparagraphs (i) to (viii) of subsection (1)(a);

(c) to consider reports from the Public Service Commission or any interested person or organization concerning the appropriate level of remuneration payable to those persons or classes of persons listed in subparagraphs (i) to (viii) of subsection (1)(a);

(d) to receive submissions and hear or receive evidence regarding any investigation and to publish in the Gazette a notice of a person found to be in breach of the provisions of this Act, and where applicable to refer the breach to the Public Prosecutor;

(e) to make a determination that adjusts, either upwards or downwards, the remuneration of any person listed in subparagraphs (i) to (viii) of subsection (1)(a), so long as that adjustment does not decrease a person's remuneration where that person is being paid under the level already determined for that position or a like position, by the Tribunal;

(f) to carry out such other functions as may be conferred or imposed on it by this Act or any other enactment.

(2) In carrying out its functions under subsection (1)(a) the Tribunal may fix scales of remuneration and prescribe rules governing the application of scales of remuneration to be fixed.

(3) Except as otherwise provided in this Act, where the remuneration payable to a person is fixed under this Act, no amount in excess of the remuneration so fixed for the time being shall be paid or payable to that person.

14. Implementation of determinations of Tribunal

Every determination of the Tribunal fixing a rate or rates of remuneration shall have effect according to its tenor, and notwithstanding any provision in any other enactment, no order will be required to give effect to that determination.

15. Release of determinations

(1) The Tribunal must publish within 21 days of making a determination, a notice in the Gazette of that determination and, where appropriate forward a copy of the determination to each person affected and to the entity that employs or remunerates that person.

(2) The Tribunal must deliver to the Minister copies of all determinations made by it.

(3) The Tribunal must publish within 21 days of it conducting a review under section 17 a notice in the Gazette stating the result of the review and where a determination is made as a consequence it, publish the determination in accordance with subsection (1).

16. Criteria for Tribunal

In determining any remunerations under section 12(1)(a) the Tribunal must have particular regard to the following criteria:

(a) the need to achieve and maintain relativity with the private sector;

(b) to ensure that the best persons are employed through a recruitment and retention of personnel policy that takes into account the special responsibilities and duties required of persons employed in Government.

(c) the adequacy of the current remuneration;

(d) the aim for consistency and uniformity in remuneration rates;

(e) the budget and resources available to Government for remuneration when making determinations.

17. Frequency of adjustments

(1) The determinations required under section 13(1)(a) must be made within 12 months of the coming into force of this Act.

(2) The Tribunal may follow whatever order it chooses when making determinations required under section 13(1)(a).

(3) Every determination of the Tribunal will continue in force until the Tribunal under this section makes another determination.

(4) The Tribunal will conduct a general review of the determinations made by it at intervals of not less than 1 year and not more than 3 years.

(5) The Tribunal may conduct a review of a determination within 1 year of it being made where the Tribunal is satisfied in all the circumstances there are particular and special reasons that justify a period of less than 1 year.

18. Determination of persons subject to this Act

The Tribunal will identify and determine those persons or classes of persons for whom the Tribunal is required to make determinations under this Act.

19. Submissions to Tribunal

For the purposes of making a determination under section 13(1)(a) or conducting a review under section 17(4) any person or any organization with an interest in that determination or review is entitled to make written submissions and submit documents to the Tribunal.

20. Application of minimum remuneration levels

Notwithstanding any other provisions of this Act the Tribunal must not make any determination under section 13(1)(a) that is less than the minimum rate of remuneration payable to all employees in Vanuatu as provided for in any other enactment.

21. Powers of Tribunal

(1) For the purposes of fulfilling any function or lawful duty conferred or imposed on it, the Tribunal:

(a) will have full access at all convenient times to government contracts, documents, books and accounts relating to the payment of remuneration to any person subject to this Act;

(b) may by notice in writing, signed by the chairperson, require any person having possession or control of any Government contract, document, books and accounts relating to the payment of remuneration to any person subject to this Act, to deliver at a time and place specified in the notice, all or any Government contracts, documents, books and accounts;

(c) may cause extracts to be taken from any Government contract, document, books or accounts without payment of any fee;

(d) may summon any person to supply any information or answer any question on oath relating to the payment of remuneration to any person subject to this Act.

(2) No member of the Tribunal will have any civil liability for any act done in good faith pursuant to this Act.

22. Annual report

(1) As soon as practicable after the end of each year ending the 31st day of January, the Tribunal must furnish to the Minister a report of its operations during that year.

(2) The Minister must lay a copy of the report before Parliament within the first 14 sitting days after he or she receives the report.

23. Appropriation required for purposes of this Act

(1) All expenditure payable or incurred under or in the administration of this Act will be payable out of money to be appropriated by Parliament for that purpose.

(2) The Tribunal must have regard to the budget allocated to it when employing staff and incurring administrative expenses.

24. Act to prevail

Subject to section 20, and notwithstanding any provisions of any other Act authorizing any person or body to fix any remuneration, as from the commencement of this Act, any remuneration over which the Tribunal has jurisdiction to determine under this Act will be fixed by the Tribunal.

25. Determinations of Tribunal to prevail over contracts of service in case of conflict

Every determination of the Tribunal shall prevail over any contract of service to the extent that where there is a conflict between the determination and the contract, the contract will thereafter be construed and have effect as if it had been modified, so far as is necessary, in order to conform to the determination.

26. Consultation with Tribunal

Where any authority, organization or person representing either employers or employees considers that the remuneration determined by the Tribunal will or may lead to unreasonable disparities or inappropriate relativities with the remuneration determined by an employment authority that organization may consult with the Tribunal. Where this occurs the Tribunal must have regard to the views expressed and consider whether to adjust that determination (if already made) in accordance with section 17(5).

PART 4 – OFFENCES, PUNISHMENTS AND RECOVERY

27. Offences

(1) A person will not influence or attempt to influence the Tribunal or any member in respect of any matter within the functions, duties or power of the Tribunal.

(2) Nothing in this section will be so construed as to prohibit any person from giving information or advice or making representations in accordance with law.

(3) A person who knowingly pays or receives remuneration at a rate higher than that determined by the Tribunal commits an offence.

(4) Where applicable a person who commits an offence against this Act in addition commits an offence under the Leadership Code and may be dealt with under that Code.

28. Punishment

(1) A person who is convicted of an offence under section 27(1) and (3) is liable to a fine not exceeding VT 1,000,000 or imprisonment for a term not exceeding 2 years.

(2) If the offence is a continuing one the offender is liable to a fine not exceeding VT 1,000 for each day or part day the person remains in breach.

PART 5 – MISCELLANEOUS

29. Savings and validation

Notwithstanding any provision of this Act, the remuneration in respect of which the Tribunal may make determinations will, until amended or superseded by another determination of the Tribunal, continue to be payable at the rates applicable at the commencement of this Act.